

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, 'बी', अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" B " BENCH, AHMEDABAD

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

ITA No. 130/Ahd/2021  
Assessment Year : 2015-16

Pooja Rohan Shah, 401 Samutkarsh Residency, 19, Shrinivas Society, Nr. Sukhipura, Paldi,Ahmedabad-380007 (Gujarat)	Vs	The Pr. CIT-1 Ahmedabad
PAN: DXMPS8666E		

<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Mehul Thakkar, AR
Revenue by :		Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 25/04/2024  
घोषणा की तारीख /Date of Pronouncement: 08/05/2024

**आदेश/ORDER**

**PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER:**

This appeal is filed by the assessee against the order u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 09.03.2021 of the Learned Principal Commissioner of Income Tax, Ahmedabad 1 (hereinafter referred to as "Ld. PCIT") arising in the matter of assessment order passed by the Assessing Officer (hereinafter referred to as "the AO") under section 143(3) of the Act, relating to the Assessment Year 2015-16.

2. The assessee has raised following grounds of appeal:

1. *The Ld. PCIT-1 Ahmedabad has erred both on fact and law in not properly considering the submission made before him and further erred in assuming the jurisdiction u/s 263 of the IT Act, 1961 despite the fact that the assessing officer has conducted detailed inquiry before passing the assessment order.*
2. *The appellant craves leave to add, alter or delete any ground either before or in the course of hearing of the appeal.*

2.1 On 30 January 2024 the assessee filed following additional grounds of appeal:

1. *In view of the facts and circumstances of the case, the learned PCIT has erred in invoking his revisionary powers on the basis of proposal submitted by the ward officer. Therefore, the order passed by the Ld. PCIT under section 263 of the Act is bad in law.*
2. *The Ld. Pr. CIT erred in law and on facts of the case in not providing the proper opportunity of being heard to the appellant and thus in violating the principles of natural justice, before passing the order u/s. 263 of the Income Tax Act.*
3. *In view of the facts and circumstances of the case, the learned PCIT has erred in assuming jurisdiction under section 263 of the Act on the basis of incorrect facts as per para 6 of his SCN dated 06/03/2020 and therefore, the present order is liable to be quashed.*
4. *In view of the facts and circumstances of the case, the learned PCIT has erred in not pointing out the requisite/ relevant inquiry which A.O. failed to conduct and further erred in conducting such inquiries, therefore, the present order is liable to be quashed.*
5. *In view of the facts and circumstances of the case, the learned PCIT has erred in concluding that it is a case of no enquiry and therefore, the present order passed is liable to be quashed.*
6. *In view of the facts and circumstances of the case, the learned PCIT has erred in not appreciating the facts that the AO has completed the assessment only after satisfying himself on the points raised during assessment proceedings and after considering the detailed reply filed by the appellant before him and, therefore, the CIT has no jurisdiction to invoke the revisionary powers u/s.263 of the Act.*
7. *In view of the facts and circumstances of the case, the learned PCIT has erred in not appreciating the facts that the AO after examining the details, has adopted a possible opinion on the point raised in the show cause notice issued by him and, therefore, the CIT lacks jurisdiction to invoke s. 263 of the Act.”*

**Facts of the Case:**

3 The assessee had filed her return of income for A.Y. 2015-16 declaring total income at Rs.8,18,770/-. The case was selected for complete scrutiny through CASS with one of the reasons being "Suspicious sale transaction in shares and exempt long term capital gains shown in return (Penny Stock tab in ITS)" and assessment was completed u/s 143(3) of the Income-tax Act, 1961 ("Act") by the Assessing Officer accepting the returned income as such.

3.1 The assessee, during the year under consideration, had earned Long Term Capital Gain of Rs.23,46,345/-against the sale of 14500 shares of M/s Suchak Trading Limited and claimed the same as exempt u/s 10(38) of the Act.

3.2 While passing the order u/s 263 of the Act, Ld. PCIT concluded that the AO failed to take cognisance of the following facts which are significant to examine the correctness and genuineness of the transactions entered into by the assessee and claim u/s 10(38) of the Act:

- (i) The persons involved in the syndicate of penny stock accommodation entries, in their respective statements recorded by the Investigation Wing Kolkata, had categorically admitted that the scrip of M/s Suchak Trading Ltd. was utilised for facilitating accommodation entries to the desired beneficiaries.
- (ii) In this case, at the time of purchase, the value of the shares was very low and after making purchase by the assessee, the prices of the shares had gone astronomically high, without any commensurate financial results of the company or any other convincing reasons.
- (iii) The shares when sold by the assessee were allegedly purchased at high prices by accommodation entry providers/operators and there were no genuine/actual buyers, as evident from the fact that no real purchasers came to light after issuance of summons u/s 131 of the Act when investigations were carried out.

(iv) Trading in scrip "Suchak Trading Ltd." was suspended by the BSE due to abnormal behaviour of share trading.

3.3 Ld. PCIT also noted that the AO failed to make necessary enquiries to ascertain the actual strength of the company, investment profile of the assessee. He further noted that the assessee entered into transaction of only scrip (Suchak Trading Ltd) and the examination and inquiry of five entities, who purchased the shares sold by assessee, were left open without appropriate conclusion.

3.4 The PCIT also concluded that the order passed by the AO was finalised without adequate investigation and examination/verification or real nature of share transactions and consequently without considering the genuineness of allowability of exemption u/s 10(38) of the Act and therefore the order u/s 143(3) of the Act is erroneous insofar as prejudicial to the interest of revenue within the meaning of section 263 of the Act.

3.5 Accordingly, a show cause notice dated u/s 263 of the Act was issued to the assessee by PCIT-5, Ahmedabad.

3.6 In response thereto, the assessee vide letter dated 17.03.2020 filed written submission. Subsequently, the charge of PCIT-5, Ahmedabad got merged with Ld. PCIT(PCIT-1, Ahmedabad) and therefore a fresh opportunity of being heard was granted to the assessee by the Ld. PCIT. The assessee neither filed any further submission nor sought any further adjournment. Therefore, based on the material available on records and considering the submission dated 17.03.2020 filed by the assessee, Ld. PCIT passed the order u/s 263 of the Act setting aside order passed by the AO and directing him to pass a fresh assessment order after allowing adequate opportunities of being heard to the assessee.

### **Grounds of Appeal**

4. The additional grounds 1 to 7, raised by the assessee are questioning the jurisdiction of PCIT under section 263 of the Act, and hence they are adjudicated together.

5. The Counsel for the assessee argued that the AO was aware about the information about the suspicious sale transaction of in shares of Suchak Trading Ltd. and related LTCG. He also argued that the AO has conducted the inquiry relating the genuineness of the LTCG and hence Ld. PCIT has no jurisdiction.

6. During the course of hearing the Counsel for the assessee also took us through the submission made before the PCIT in response to notice u/s 263 of the Act. In the said submission the assessee has presumed that the AO must have taken possible steps to enquire in the matter. He also argued that the Ld. PCIT has not initiated this review on his own and therefore he was not right in assuming the jurisdiction. Ld. DR, in reply, explained that the review proposal sent by AO to PCIT is part of their internal procedure and Ld. PCIT has carried independent inquiry of the subject matter of review.

6.1 It is also clear from the material available on records that the AO in his proposal itself has stated that the assessment order is passed without proper examination of the facts.

6.2 We also take into consideration the fact that LD. PCIT, in his order, has distinguished the judicial pronouncements on which the assessee relied on.

6.3 The assessee relied upon the decision of co-ordinate bench in case of Smt. Sharadaben B. Patel Vs. Principal Commissioner of Income Tax, Ahmadabad

[2019] 112 taxmann.com 118. However, in the case relied on, details of information received by PCIT from DIT (Investigation) were not provided to assessee, at all at any stage of proceedings. In the present case the information was provided to the assessee during the course of assessment proceedings and based on the replies submitted by the assessee the AO failed in conducting inquiry as concluded by the Ld. PCIT. Therefore, the decision relied upon is not applicable.

6.4 Clause (a) of the Explanation 2 to section 263 empowers PCIT to invoke section 263. Clause (a) talks about the inquiry or investigation having not been made by the A.O., which 'should have been made'. The phrase 'should have been done' as provided in this clause means the verification/ enquiry which ought to have been done. Considering this provision coupled with the observations recorded by the Ld. PCIT as mentioned in the facts of the case above, we are of the opinion that the Ld. PCIT has exercised his discretion reasonably. Ld. PCIT has applied his mind to the record his reasons for assuming the jurisdiction.

7. We find no infirmity in the order of the Ld. PCIT in directing the AO to pass a fresh assessment order after allowing adequate opportunities of being heard to the assessee.

8. Therefore, all the grounds of appeal including additional grounds raised by the assessee are dismissed.

9. In the result, the appeal filed by assessee is dismissed.

**Order pronounced in the Open Court on 8<sup>th</sup> May, 2024 at Ahmedabad.**

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

**Sd/-**  
**(MAKARAND V.MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Ahmedabad, Dated 8<sup>th</sup> /05/2024

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)- (NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad