

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.370/M/2024  
Assessment Year: 2011-12**

<b>Shri Anil Goyal,</b> C-2601, Oberoi Garden, Thakur Village, Kandivali (East), Mumbai, Maharashtra-400 101 <b>PAN: ABLPG4889M</b>	Vs.	<b>Principal Commissioner of Income Tax-5,</b> 515, 5 <sup>th</sup> Floor, Aayakar Bhawan, M.K. Road, Mumbai – 400 020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Prakash Jhunjunwala, C.A.  
Revenue by : Shri Ajay Chandra, CIT-DR

Date of Hearing : 25 . 06 .2024

Date of Pronouncement : 26 . 08 .2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 30.10.2023, impugned herein, passed by the Ld. Principal Commissioner of Income Tax (in short Ld. PCIT) under section 263 r.w.s. 254 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2011-12.

**2.** In the instant case, the Assessing Officer (AO) vide order dated 29.11.2017 u/s 143(3) r.w.s 147 of the Act has made the addition of Rs.4,52,57,410/- on account of disallowance of Long Term Capital Gain (LTCG) claimed u/s 10(38) of the Act qua share of M/s. Shrinath Commercial and Finance Ltd. The Ld. PCIT vide order dated 07.12.2021 u/s 263 r.w.s 254 of the Act held *the assessment order being erroneous in so far prejudicial to the interest of the Revenue within the meaning of section 263 of the Act without making any enquiry for verification qua disallowance/addition on account of commission expenses allegedly paid by the Assessee for obtaining the aforesaid bogus LTCG at reasonable rate* and ultimately directed the AO to examine the issue qua commission expenses and make disallowance/addition on account of commission expenses paid by the Assessee for obtaining the bogus LTCG, after conducting all necessary enquiries and verifications as circumstances warrant in this case and after giving sufficient opportunity to the Assessee of being heard before the passing a speaking order.

**3.** The Assessee, being aggrieved, is in appeal before us. The Assessee at the outset submitted that according to the judgment passed by the Hon'ble High Court of Madras in the case of Smt. Renuka Philip vs. Income Tax Officer-XV, Chennai (2019) 101 taxmann.com 119 (Madras) wherein it was held that where the larger issue was pending before the Commissioner (Appeals) then the Commissioner could not exercise powers u/s 263 of the Act on account of statutory bar and therefore the order passed by the Ld. Commissioner is unsustainable. The Assessee further relied on the judgment passed by the Hon'ble High Court of Delhi in the

case of Commissioner of Income Tax vs. Leisure Wear Exports Ltd. (2011) 11 taxmann.com 54 (Del.) wherein it was held that where the assessment order has been passed by the AO after taking into account assessee's submissions and document furnished by him and no material whatsoever has been brought on record by the Commissioner which showed that there was any discrepancy or falsity in evidences furnished by the Assessee then the order of AO cannot be set aside for making deep enquiry only on presumption and assumption that something new may come out. The Assessee further drew our attention to the statement of the Assessee recorded by the AO wherein the Assessee has categorically submitted that he is a chartered accountant and well-versed with the meaning of professional allotment by which the company raises fund by fresh issue of equity of shares. The Assessee is a regular investor in shares and does not monitor the financial purpose of every company individually and also did not contact the company/director in this respect. Further, market price of shares increases substantially and therefore he decided to sell his investment. The Assessee is a regular investor in share capital and has made several investments after this scrip and therefore has not paid any commission for earning the LTCG.

**4.** On the contrary the Ld. D.R. refuted the claim of the Assessee and vehemently supported the order passed by the Commissioner u/s 263 of the Act.

**5.** We have heard the parties and perused the material available on record. Admittedly, the appeal against the main addition of Rs.4,52,57,410/- on account of disallowance of LTCG is pending before the CIT(Appeals) and therefore in view of the decision rendered by the Hon'ble High Court in the case of Smt. Renuka Philip (supra) *wherein it was held that the assumption of jurisdiction u/s 263 of the Act on a smaller issue, based on the larger issue is un-sustainable, the impugned order is un-sustainable .*

**5.1** Even from the statement and relevant answers given by the Assessee, it clearly appears that the Assessee is well acquainted with the investment in shares and regularly investing in the share market and sold the shares when the price of the shares were increased substantially. Nowhere from the statement recorded u/s 131 of the Act, it appears that the Assessee has ever paid any commission/expenses as alleged by the PCIT for obtaining the said bogus LTCG.

**5.2** Considering the aforesaid peculiar facts and circumstances in totality specifically the statement of the Assessee recorded by the AO u/s 131 of the Act as re-produced in the original assessment order dated 29.11.2017 and the fact that the main/larger issue/addition on the basis of which the Ld. PCIT has alleged that the Assessee has paid commission, is pending for adjudication before the Ld. CIT (A), we are inclined to set aside the impugned order, consequently the same is set aside.

**6.** In the result, the appeal filed by the Assessee stands allowed.

**Order pronounced in the open court on 26.08.2024.**

**Sd/-  
(OMKARESHWAR CHIDARA)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.