

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA No.930/Bang/2024
Assessment Year: 2017-18

Cisco Systems India Private Limited Sez Unit Kadubeesanahalli Village Kadubeesanahalli Bangalore 560 103 PAN NO : AABCC0258Q	Vs.	PCIT Bangalore-2 Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri Nageswar Rao, A.R.
Respondent by	:	Sri D.K. Mishra, D.R.

Date of Hearing	:	07.11.2024
Date of Pronouncement	:	18.11.2024

O R D E R

PER PRAKASH CHAND YADAV, JUDICIAL MEMBER:

Present appeal of the assessee is arising from the order of PCIT passed u/s 263 of the Income Tax Act, 1961 (in short “The Act”) dated 15.3.2024 and relates to assessment year 2017-18.

2. Facts giving rise to filing of present appeal are that the assessee is a company filed its original return on 30.11.2017 declaring a total income of Rs.1277,69,64,410/- under the normal provisions and Rs.537,41,47,069/- u/s 115JB of the Act. The return of income filed by the assessee was further revised and thereafter the case of the assessee was picked up for scrutiny. During the course of assessment proceedings, a reference was made to the ld. TPO for determining ALP in respect of the international transactions entered into by the assessee with its Associated Enterprises (AE). Afterwards, the AO completed the assessment vide order dated 16.08.2021.

3. Thereafter the Ld PCIT issued a notice dated 15.02.2024 u/s 263, proposing to revise the order of the AO. In this notice the PCIT observed as under: -

It is seen from the records that you had filed your return of income for AY 2017-18 on 30.11.2017 declaring an Income of Rs 1277,69,64,410/- under normal provisions and deemed income u/s 115JB of Rs 537,41,47,069/-

While reviewing the Assessment Order, it is found that the order is erroneous insofar as it is prejudicial to the interest of revenue for the reasons enumerated below :-

*“On perusal of the Assessment Order, it is noticed in financial statement that **assessee had invested 328,29,84,000 equity shares of face value of Rs.10 per share amounting to aggregate unquoted investments of Rs.328,98,40,000/- in its subsidiary company M/S Cisco Systems Capital India Private Limited.***

Further, it was noticed that pursuant to the share transfer agreement between Cisco Mauritius Inc and the assessee company, the assessee company had purchased 100% share held by the Cisco Mauritius Inc in Cisco Systems Capital India Pvt Ltd. As per share transfer agreement, the entire equity shares of M/S Cisco Systems Capital India Pvt Ltd in Cisco Mauritius Inc were transferred to M/S Cis Systems India Pvt Ltd and Cisco Mauritius Inc had only 252,41,61,440 equity shares which were transferred to Cisco Systems India Pvt Ltd during FY: 2016-17.

It was noticed in financial statement, that Cisco Systems Capital India Pvt Ltd had total authorized shares including equity and preference shares of having face value at Rs.10 per share. M/S Cisco Systems Capital India Pvt Ltd had issued 252,41,440 equity shares having face value of Rs.10 per share to M/S Cisco Systems India Pvt Ltd. In view of the above, M/S Cisco Systems India Pvt Ltd credited excess number of equity shares of 75,88,22,560 (328,29,84,000 — ,440) values at Rs.758,82,25,600/-. This resulted in unexplained cash credit u/s 68 r.w.s. 115BBE of This resulted in short levy of tax of Rs.896,87,13,542/- including interest u/s 234B of Rs.310,68,096,266/-.

In the circumstances, it is proposed to set aside the assessment order dated 16-08-2021 for the A.Y. 2017-18 to be reframed accordingly by virtue of the powers conferred upon the undersigned under the provisions of Section 263 of the Income-tax Act, 1961.”

4. In response to the above notice the Assessee vide its reply dated 26.02.2024 *interalia* explained that assessee has in fact acquired 252,41,61,440 number of shares for an amount of Rs328,29,84,000/- Assessee in order to support his submissions, has also filed the audited financial statement with its reply. Assessee further contended that provisions of section 68 read with 115BBE are not applicable to the facts of present case.

5. The Id. PCIT after considering the reply of the assessee has observed that the assessee in this case has invested an amount of Rs Rs.328,29,84,000/- for acquiring the 328,29,84,000 number of shares of M/s Cisco Capital. The Id. CIT further observed that the CISCO Inc was having only 252,41,61,440 shares of Cisco *System* Capital. The CIT further observed that the CISCO India was having total authorized capital of 256,00,00,000 shares. Therefore, the claim of the assessee that it had acquired 328,29,84,000 shares is factually incorrect and hence the assessee has paid an amount of Rs13.52 per share for acquiring 252,41,61,440 shares. The Id. CIT, was of the view that the assessee has paid an excess amount of Rs.75,88,22,560/- outside the books of accounts and hence, he formed an opinion that the AO's order was erroneous and prejudicial to the interest of the revenue. The relevant observations of the CIT are reproduced hereunder: -

“7.3 In its response, the assessee has not been able to justify how the assessee company could buy 328,29,84,000 shares of CISCO System Capital India Pvt Ltd considering the fact that total Cisco System Captial India Pvt Ltd had total authorized shares including equity and preference shares of 256,00,00,000 having face value of Rs 10 per share. As per the share transfer agreement dated 14.07.2016 the entire equity shares of Cisco System India Pvt Ltd in Cisco Mauritius Inc were transferred to Cisco India Pvt Ltd. It is pertinent to note here that Cisco Mauritius Inc had only 252,41,61,440 equity shares which were transferred to Cisco System India Pvt Ltd during FY 2016-17.”

6 Aggrieved with the view of the ld. CIT, the assessee has come up before us and raised 5 grounds of appeal. However, the solitary issue which we have to decide is whether the jurisdiction assumed by the ld. PCIT u/s 263 of the Act is valid or not.

6.1 Ld. Counsel appearing on behalf of the assessee has drawn the attention of the Bench towards the reply and documentary evidences filed before the ld. PCIT and pointed out that there is no error in the order of AO. He contended that the assessee has acquired 252,41,61,440 number of shares for an amount of Rs.3282,98,42,109/- and hence the price value of the share was not Rs.10/-, rather it was Rs.13.52/- and the ld. PCIT while issuing the notice u/s 263 of the Act and while passing the order u/s 263 of the Act, made factually incorrect observations.

7. The ld. D.R. appearing on behalf of the revenue supported the order of ld. PCIT.

8. After considering the rival submissions, we observe that the assessee has entered into an agreement namely "Share Transfer Agreement" dated 14.7.2016 with its AE CSI, Mauritius and in clause 1.1, it is categorically mentioned that the assessee will pay Rs.3282,98,42,109/- to the transferor company. This factual aspect is also coming out from the share transfer agreement which is produced before the ld. PCIT in the proceeding's u/s 263 of the Act. We failed to understand from where the ld. PCIT picked the value of Rs.10/-. Perusal of clause (b) of share transfer agreement would definitely show that the face value of the shares were Rs.10/-. However, the assessee has not acquired these shares at Rs.10/-, rather acquired these shares at Rs.13.52, as certified by the auditors of the assessee company and as disclosed by the assessee in its return of income and further documents. It is the settled position of law that for invoking the

provisions of section 263, there has to be some error in the order of the AO and the error should be of such nature that it would be prejudicial to the interest of revenue. Unless this twin condition is satisfied the provisions of section 263 cannot be invoked. In the case at hand we find from the records that the CIT has made certain factually incorrect observations while declaring the order of the AO as erroneous. However, the material on record would prove beyond doubt that the assessee has paid an amount of Rs Rs.3282,98,42,109/- for acquiring total 252,41,61,440 shares. Therefore, we are of the considered view that there was no error on the part of AO while framing the assessment. Hence, we allow the appeal of the assessee.

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

Order pronounced in the open court on 18th Nov, 2024

Sd/-
(Prashant Maharishi)
Vice President

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bangalore,
Dated 18th Nov, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.