

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, AHMEDABAD**

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**  
**AND**  
**SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA No.627/Ahd/2024**  
**Assessment Year : 2014-15**

Jayantilal Panachand Shah 72, Topovan Society Nr. Manekbaug Hall Ambawadi Ahmedabad 380 015 PAN : AQNPS 2754 C	Vs	The Pr.CIT-1 Ahmedabad.
---	----	----------------------------

<b>(Applicant)</b>		<b>(Responent)</b>
--------------------	--	--------------------

Assessee by :	Shri S.N. Divetia, AR
Revenue by :	Shri A.P. Singh, CIT-DR

सुनवाई की तारीख/Date of Hearing : 13/11/2024  
घोषणा की तारीख /Date of Pronouncement: 16/12/2024

**आदेश/ORDER**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

The above appeal has been filed by the assessee against order passed by the Ld.Pr.Commissioner of Income Tax-1, Ahmedabad [hereinafter referred to as "ld.Pr.CIT"] dated 23.3.2024 under section 263 of the Income Tax Act, 1961 ("the Act" for short) pertaining to Assessment Year 2014-15.

2. The assessee has raised the following in the appeal:

*"1.1 The Order U/s.263 passed on 23-03-2024 by Pr.CIT.Ahmedabad-1, A'bad (for short Pr.CIT) for AY 2014-15 holding that the order of assessment u/s 147 rws 144B passed on 29.03.2022 by AO accepting the LTCG on sale of shares of Looks Health Services Ltd. (short 'LHSL') was genuine and the appellatant was entitled to exemption u/s 10(38) of the Act was erroneous and*

*prejudicial to the interest of the revenue is wholly illegal, unlawful and against the principles of natural justice.*

*2.1 The Id. Pr. CIT has grievously erred in law and or on facts in holding that the order of assessment u/s 147 rws 144B passed on 29.03.2022 by AO accepting the LTCG on sale of shares of Looks Health Services Ltd. (short 'LHSL') Rs. 1,02,18,980/- as genuine and the appellant was entitled to exemption u/s 10(38) of the Act was erroneous and prejudicial to the interest of the revenue.*

*2.2 That the in the facts and circumstances of the Id. Pr. CIT ought not to have invoked the powers of revision u/s 263 and thereby holding that LTCG on sale of shares of Looks Health Services Ltd. (short 'LHSL') of Rs.1,02,18,980/- was not genuine and the appellant was not entitled to exemption u/s 10(38) of the Act so that the AO should have made addition.*

*3.1 The Id. NFAC has grievously erred in law and or on facts in holding that the provision of Explanation-2 to sec.263 was attracted in the facts of the case.*

*3.2 That the in the facts and circumstances of the Id. Pr.CIT ought not to have directed AO to pass a fresh order of fresh assessment order in respect of LTCG on sale of shares of LHSL claimed exempt u/s 10(38) of the Act as per the observations made in the impugned order by him.*

3. We have heard both the parties, and have gone through the contents of the order of the Id.Pr.CIT, as also documents and case laws referred to before us during the course of hearing.

4. As transpires from the order of the Id.Pr.CIT, the revisionary power was exercised by him on an order passed under section 147 of the Act. The reopening under section 147 of the Act was resorted to for the reason that the AO was in possession of information that the Long Term Capital Gain earned by the assessee during the impugned year and claimed as exempt u/s 10(38) of the Act was in relation to a scrip which was found to be a penny stock and bogus. The alleged scrip, treated as penny stock by the department, is the scrip of Looks Health Services Ltd. ("LHSL" for short), which the assessee had sold during the year and earned capital gains thereon to the tune of Rs.1,02,18,980/-, having sold the same for a value of Rs.1,07,90,400/-.No addition however was made on account of the

same in the order passed under section 147 of the Act. The ld.Pr.CIT found the order passed to be erroneous so as to cause prejudice to the Revenue on the same issue and accordingly passed order u/s 263 of the Act.

5. Having gone through the order of the ld.Pr.CIT, we have failed to find any specific finding of the error in the order of the AO, in the entire order of the ld.Pr.CIT. We find that except for very general observations made therein, there is no single finding, which is based on information and material specifically extracted from the records of the re-assessment proceedings available with the ld.Pr.CIT. In fact on hearing the contentions of the ld.counsel for the assessee, we find that the ld.CIT(A) has made no attempt at all to go through the contents of the records before him, which otherwise would have clearly revealed that there was no error in the order passed by the AO under section 147 of the Act as noted by the Ld.PCIT. The reasons for the same are elaborated as under.

6. As noted above, the issue on which the order passed by the AO was found to be erroneous causing prejudice to the Revenue pertained to the allowance of claim of exempt income by the assessee under section 10(38) of the Act on long term capital gains earned on the sale of shares of "LHSL" amounting to Rs.1,02,18,980/-, which as per the information available with the Department, were allegedly penny stock.

7. The case of the ld.Pr.CIT is that there was information available in the insight portal of the Department of the share traded by the assessee, being a bogus penny stock and despite the specific information available with the AO, he did not make complete inquiry vis-à-vis such information, and allowed the assessee's claim of

treating such transaction as genuine and as a consequence exempt under section 10(38) of the Act.

8. Now what the ld.Pr.CIT has done in his order under section 263 of the Act is that in para-5, from page no.2 to 7 of his order, he has reproduced the entire contents of the information contained in the inside portal of the department. And it is all scanned version. What transpires from that information or what is gist of the information, is not mentioned in any where in his order. Despite the same, after going through it, what it appears is that, it merely showed that the Department was in possession of information that the assessee had traded in a scrip "LHSL" during the impugned year which departmental investigation had revealed to be a bogus penny stock. The portal also contains generalized findings of specialized agencies, i.e SEBI, on similar lines, with no specific reference to the particular scrip traded in by the assessee. This much and nothing more comes out from reading the contents of the insight portal in six pages of the ld.Pr.CIT's order.

9. After having reproduced the contents of the information contained in the insight portal, the ld.Pr.CIT finds the assessment order passed by the AO under section 147 of the Act, to be erroneous for the following reasons:

- i) The AO has not mentioned any justification for accepting the returned income in the assessment (page no.7 of the ld.Pr.CIT's order)
- ii) The AO did not go into the issue with respect to the whole amount (page no.8 of the order);
- iii) Finally in the conclusion at para-7 of his order, page no.17, ld.Pr.CIT holds that the order passed under section

147 of the Act is erroneous for the reason that the AO has not verified and confined to the information available in the insight portal and the specific reason of re-opening.

10. His finding in this regard at para 7 are reproduced hereunder:

*7. In the light of facts and circumstances narrated above, I hold that the Assessing Officer has erred in not making addition u/s 68 rws 115BBE of the Act on account of bogus LTCG claimed exempt u/s 10(38) of the Act from a penny stock scrip of Looks Health Service Ltd. **The AO has not verified and confined to the information available in INSIGHT PORTAL and specific reasons of reopening.** The error in the assessment order has resulted in short levy of taxes/revenue. Therefore, the impugned assessment order passed by the A.O. is erroneous in so far as prejudicial to the interest of the revenue. Accordingly, the impugned assessment order is set aside and the A.O. is directed to pass fresh assessment order by making addition u/s 68 rws 115BBE of the Act amounting to Rs.1,02,18,9807- (or to the extent of bogus LTCG claimed exempt u/s 10(38) of the Act from penny stock scrip of Looks Health Services Ltd.).*

*7.1 In view of the fact of the case and ruling of Hon'ble Supreme court, it is clear that **the assessment order is passed by the A.O., without making proper examination of the issues mentioned above.** The Assessing Officer has failed to make addition in accordance with the provisions of the Act. The error in the assessment order has resulted into loss of revenue. The order passed by the Assessing Officer is, thus, erroneous and prejudicial to the interest of the Revenue. Therefore, provisions of section 263 of the Act are applicable in this case.*

There is no other finding recorded in the entire order of the Id.Pr.CIT.

11. From the above, it is not clear as to what the AO has not verified. In the first place, as we have noted above, contents of the insight portal have not been clarified nor the Id.Pr.CIT had made any attempt to briefly summarise the same in his order. On the top of that, without any information about the contents of the insight portal, there is no clarity at as to what information was not verified by the AO.

12. It is clearly evident from the above that entire exercise by the Id.Pr.CIT is in gross misuse of his power under section 263 of the Act.

There is no finding as such, pointing out of any error in the order of the AO. We have not been able to gather what particular information available on the insight portal was not inquired into by the AO, nor was the ld.DR able to point out from the order of the ld.Pr.CIT before us.

13. Having stated so, the ld.counsel for the assessee, during the course of hearing before us, pointed out that during the re-assessment proceedings under section 147 of the Act, every query relating to the information available on insight portal was asked to the assessee vide various notices issued, and due reply was filed of the same. He pointed out that in the various replies filed, the assessee had pointed out that -

- these shares of LSHL were purchased by him in A.Y 12-13, much prior to sale in the impugned year i.e A.Y 14-15.
- That the shares were acquired in Private Placement allotment under Promoters quota having one of the terms of allotment that the shares will remain in lock in period of 1 year from the date of allotment.
- Payment for purchase of shares was made through banking channels and the shares were held in DEMAT form.
- That out of 25,000 shares purchased only 24800 were sold.
- That the shares had been purchased @ face value of Rs. 10/- and after 3 months the company had come with an IPO @ Rs.40 per share.
- That the assessee because of SEBI regulations was unable to sell shares in the lock in period and did so therefore after 1 year that too on different dates.
- That there was no question of rigging of price of shares as alleged by the department since they were sold as per Standard

Operating Procedure (SOP) and Rules framed by SEBI wherein shares were required to be sold online on live terminal by paying STT and the information of the buyer is not known to the seller.

- That assessee was into the activity of trading in shares and this was not the only scrip traded in by the assessee. That the assessee had also incurred losses in this activity.

14. The assessee pointed out that during assessment proceedings all possible queries pertaining to the information on the portal was asked of the assessee vide notice issued u/s 142(1) of the Act and were replied to. He pointed out that all details and explanation regarding way of choosing for investment in shares –

- detail of broker through whom transaction was undertaken,
- how assessee came in contact with him,
- Did the assessee read about the scrip in newspaper or magazine or TV,
- what made him invest in the scrip,
- whether other family members also invested in the scrip,
- how many transactions were done with the broker in the past

All the evidences were filed before us in the paper book from pages 10 to 98.

15. We have gone through the contents of the submissions made by the assessee, and we find that the AO has, during the assessment proceedings raised every possible query on the information available in the insight portal and the assessee did respond to the same.

The ld.DR before us was unable to point out, which query remained to be answered by the assessee or which inquiry was not

conducted by the AO, with respect to the information in the insight portal with the AO. Considering the same, it is highly strange that the Id.Pr.CIT still goes on holding that the AO had not conducted proper inquiries.

16. Considering the voluminous inquiries conducted by the AO, as noted above by us, the onus was on the Id.Pr.CIT to point out the specific inquiry which the AO had not conducted and which resulted therefor in the assessment order being erroneous, causing prejudice to the Revenue for a valid exercise of jurisdiction under section 263 of the Act.

In the light of the same, we hold that the impugned order passed by the Id.Pr.CIT u/s 263 of the Act is without any finding of error in the order of the AO and is therefore not sustainable in law.

17. The Ld.DR relied on the decision of the Hon'ble Delhi High Court in the case of PCIT vs M/s Paramount Propbuild Pvt. Ltd. ITA 247/2013 dated 19-03- 24 for the proposition that where the assessment records would reflect that the AO has not taken concrete steps to ascertain the genuineness and credit worthiness of the transactions , which merits consideration in the light of the findings that emerged from the DDIT Investigation report, the order passed by the AO was erroneous so as to cause prejudice to the Revenue.

18. There is no dispute with the above proposition. But the facts in the present case brought out in the order of the PCIT do not demonstrate the concrete steps which the AO as per him failed to take considering the report of investigation before him.

An order has to be a speaking and well-reasoned order bringing out clearly the basis for arriving at any findings. This is a basic rule/

principle of natural justice. There is no scope of any assumptions/ presumptions/reading between the lines, which can be left for the discretion of the appellate authorities.

19. In the present case, as noted above by us, the Ld.PCIT except for stating that the AO has not conducted full inquiry on the issue, has not pointed out what remained to be considered and inquired into by him considering the information on the insight portal and considering the investigation and inquiry on the issue conducted during reassessment proceedings. The Ld.PCIT seems to have left it for the appellate authorities to derive the same. Such orders are not sustainable.

In view of the above, the order passed by the ld.Pr.CIT is set aside. The grounds raised by the assessee are allowed accordingly.

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

**Order pronounced in the Court on 16<sup>th</sup> December, 2024 at Ahmedabad.**

**Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER**

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

Ahmedabad,dated 16/12/2024