

**THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'F' NEW DELHI**

**BEFORESHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER  
ANDSHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.2679/Del/2024

Assessment Year: 2015-16

Pawan Kumar, HUF, H. No. D 11 Dayanand Nagar, Ghaziabad PIN: 201 001	<b>Vs.</b>	Principal CIT Ghaziabad
<b>PAN :AAIHP0229G</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assesseeby	ShriKapil Garg, Adv.
Department by	Ms. Rajinder Kaur, CIT( DR)

Date of hearing	07.11.2024
Date of pronouncement	20.12.2024

**ORDER**

**PERSUDHIR KUMAR, JUDICIAL MEMBER:**

The assessee has preferred the present appeal by challenging the revision order dated 20.03.2024 of the Principal Commissioner of Income-Tax, Ghaziabad ( Ld. PCIT for short ) under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”).The

assessee in this appeal has agitated the action on the PCIT in exercising his revisional Jurisdiction under Section 263 of the Act and there by directing the Assessing officer to frame the assessment order afresh. The appeal is time barred by five days only.

2. Heard the parties. At the outset, Ld. counsel for the assessee orally made the request to Bench to condone the delay. The request is allowed and the delay is condoned *in filing the appeal, hence.* the appeal is admitted for hearing on merit.

3. The brief facts of the case are that the assessment proceeding u/s 147 of the Act was initiated on the basis of information received from DDIT (Inv) Unit-6(3), New Delhi vide dated 12-03-2021 that the assessee Pawan Kumar HUF has sold shares of Rs 4765566/- to M/s Negotium International Trade Ltd. during the A.Y. 2015-16. Re-assessment proceedings were initiated under Section 147 of the Act by issuing notice under Section 148 of the Act and after obtaining prior approval from the Competent Authority. In the response of the notice the assessee has not filed his return of income for the A.Y. 2015-16. Various notices u/s 142(1) of the Act were issued but the assessee

has made no compliance in giving reply of various notice. However, he complied with the directions of the authority on 17.03.2022 and submitted written explanation in this regard under Section 148 of the Act. Assessee had a Long-Term Capital Gain of Rs.43,83,009 during the financial year 2014-15 from the sale of 3,00,000 shares of M/s. Mahadushi International Trade Ltd. for a sale consideration of Rs.47,50,917 and the claim of exemption under Section 10(38) of the Act was done. Accordingly, National Faceless Assessment Centre (NFAC) passed the assessment order under Section 147 r.w.s. 144 read with section 144B on 21,03,2022 on a total income Nil at returned income.

4. In exercising of his revisional Jurisdiction under Section 263 of the Act, the Ld. Pr. CIT issued a show-cause-notice to the assessee and after considered the reply submitted by the assessed, the Pr. CIT relying upon certain case laws, held that the action of the Assessing Officer was not proper in terms of Explanation 2(a) to sub-section (1) of section 263 of the Act, so, the order passed by the Assessing Officer was considered to be erroneous and prejudicial to the interest

of the revenue as the order is passed without making inquiries or proper verification which should have been made by the Assessing Officer. Accordingly, Ld. PCIT set aside the order of the Assessing Officer and directed the Assessing Officer to afford sufficient opportunity of being heard to the assessee. The operating part of the order of the Ld. PCT is reproduced as under:

“2. From perusal of assessment record, for the year under consideration, following discrepancies/errors have been noticed:-  
(i) As per information received from DDIT(INV), unit-6(3), New Delhi, it is observed that the assessee had sold shares of Rs. 47,65,566/- of M/s Negotium International Trade Ltd. during the F.Y. 2014-15 relevant to A.Y. 2015-16. As per finding of investigation, it has been elaborately discussed that the assessee has made investment in M/s Negotium International Trade Limited to evade income tax through penny scrip. M/s Negotium International Trade Limited is a sham/bogus/non-genuine paper company with the only objective of providing of accommodation entries of pre-arranged bogus LTCG to various beneficiaries.

(ii) During the course of reassessment proceedings, no proper enquiry or verification has been made by the National Faceless Assessment Centre, Delhi and the assessment has also been completed u/s 147 r.w.s. 144 read with section 144B of the Act vide order dated 21.03.2022 at the return of Income as Nil.

(iii) In assessment order it is mentioned per reply of assessee total 3,00,000 shares was sold out for a sale consideration of Rs.47,50,917/-. But the details regarding purchase of these shares are not disclosed. As per report of investigation the quantity of sold shares is more than the quantity of shares purchased. The quantity of purchased share, total purchase

amount, the year of purchase and most important the source of income to purchase these shares is not discussed in assessment order. AO failed to make proper enquiry and verify these transactions through books of account of assessed.

6. In view of the judicial pronouncements discussed above and also in terms of Explanation 2(a) to sub-section (1) of section 263 of the Act, an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner the order is passed without making inquiries or verification which should have been made by the Assessing Officer.

7. After carefully examining the facts of this case and reply submitted by the assessee, I am of the view that the AO failed to examine the case on account of genuineness of share transactions. As the A.O. failed to conduct proper enquiry, investigation and examination, the assessment order is hereby set-aside to the A.O. with the direction to make proper verification/examination with regard to purchase and sale of impugned shares and to pass an assessment order considering the issues raised in the notice u/s 263 of the opportunity of being I.T. Act, 1961 and the findings given in the order & to the assessee. eME TAX DEPARTMENT after affording sufficient opportunity of being heard to the assessee.”

5. Being aggrieved by the said order of the 1d Pr. PCIT, the assessee has come in appeal before us.

6. We have heard the rival submission and gone through the record.

In this case assessee has asked to explained that the sale trades

quantity is higher than buy trades quantity and the assessee has not filed his return of income and he has claimed the invalid returned income of Rs. Nil. The assessee has explained the reason and submitted that assessee has not sold higher quantity shares than the buy quantity shares. The assessee has filed his return of income declaring nil in the compliance of the notice u/s 148 of the Act. A perusal of the impugned order passed by the Id PCIT u/s. 263 of the Act shows that the Id PCIT himself has noted that the assessee had furnished requisite details as were sought by the Id PCIT. The Id PCIT has simply noted that the Assessing Officer has not made the enquiry with regard to the share transaction despite having specific input in this regard.

7. Section 263(1) of the Act reads as under:

**“263. Revision of orders prejudicial to revenue.**

**(1)**The [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, [including,—**(i)**an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or **(ii)**an order modifying the order under section 92CA; or **(iii)**an order cancelling the order under section 92CA and directing a fresh order under the said section].Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—**(a)**an order

passed on or before or after the 1st day of June, 1988] by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall include—(i)an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;(ii)an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer [or the Transfer Pricing Officer, as the case may be,] conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;[(iii) an order under section 92CA by the Transfer Pricing Officer;](b)"record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner;(c)where any order referred to in this sub-section and passed by the Assessing Officer 92[or the Transfer Pricing Officer, as the case may be,] had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the\* Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner,—(a)the order is passed without making inquiries or verification which should have been made;(b)the order is passed allowing any relief without inquiring into the claim;(c)the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or(d)the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.[Explanation 3.—For the purposes of this section, "Transfer Pricing Officer" shall have the same meaning as assigned to it in the Explanation to section 92CA.](2)No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.(3)Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.”

8. The Ld. Pr. PCIT taking the shelter in Explanation 2(c) to section 263 (1) of the Act , held that the order of the AO was erroneous and prejudicial to the interest of the revenue on the ground of lack of enquiry which in our view is a general observation and no specific observation has been made in respect of any of the details or evidence furnished by the assessee and as to why the ld PCIT was not satisfied about such details furnished by the assessee. If the ld PCIT felt that the AO should have made further enquiry on the same issue or that the case was to be examined from some other angle, the same in our view cannot be a valid ground to set aside the assessment order. The Explanation 2(c) of the section 263(1) of the Act does not give unbridled powers to the ld PCIT to simply set aside the assessment order by saying that the AO required to make proper enquiry investigation and examination.

9. In the case of Narayan Tatu Rane v. ITO Reported in [2016] 70 taxmann.com 227 (Mum-Trib.) the Coordinate Mumbai Bench held that Explanation 2(a) of the section 263 of the Act does not authorize or give unfettered power and to revise each and every order on the

ground that the AO should have made more enquiries and investigation. The relevant part of the order of the Tribunal is reproduced as under:

"20. Further clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the A.O vis-à-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquires or verification that would have been carried out by a prudent officer. Hence, in our view, the question as to whether the amendment brought in by way of Explanation 2(a) shall have retrospective or prospective application shall not be relevant."

10. Further, the coordinate Kolkata Bench of the Tribunal in the case of Venerable Advertising Pvt. Ltd. vs. PCIT in ITA No. 459/Kol/2023 has adopted the same view and set aside the order.

In view of the above discussion and above referred to decision, we do not find any justification on the part of the ld PCIT in setting aside the assessment order for making a fresh assessment after proper verification. The impugned order of the ld PCIT is not sustainable as per law and same is accordingly quashed.

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

**Order pronounced in the open court on 20 /12/2024.**

<b>Sd/-</b>	<b>Sd/-</b>
<b>(S RIFAUR RAHMAN)</b>	<b>(SUDHIR KUMAR)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Dated: 20<sup>th</sup> December, 2024.

**Mohan Lal**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi