

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 715/Ahd/2024
Assessment Year 2013-14**

Lalitaben Dipakbhai Modh 10-A, C-Tower, Ratna Jyoti Appartment VIP Road, Near Sidhi Vinayak Temple, Vesu, Gujarat-395007 PAN: AHAPM4537D (Appellant)	Vs	The PCIT-3, Ahmedabad, Ahmedabad (Respondent)
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**Assessee Represented: Shri Rasesh Shah, A.R.
Revenue Represented: Shri A.P. Singh, CIT-DR**

Date of hearing : 17-10-2024
Date of pronouncement : 31-12-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the Revision order dated 16.03.2024 passed by the Principal Commissioner of Income Tax-3, Ahmedabad arising out of the reassessment order passed under section 147 r.w.s. 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2013-14.

2. Brief facts of the case is that the assessee is an individual engaged in investment in shares, trading of shares & securities and derivatives and Future and Option. Since the turnover from share trading activity was less than the prescribed turnover for which tax audit is required, the assessee has not maintained regular books of account and also not filed her Return of Income for the Asst. Year 2013-14. The Revenue was in possession of information that the assessee made fictitious profits in equity/derivative trading of Rs.23,30,537/- which has escaped assessment within the meaning of Section 147 of the Act. Therefore a notice u/s. 148 dated 31-03-2021 was issued to the assessee.

3. In response, the assessee filed her Return of Income on 28-04-2021 declaring total income of Rs.99,520/-. The Assessing Officer levied penalty u/s. 271F for not filing the return will within the time limit prescribed u/s. 139(1) of the Act. Further the A.O. issued various notices to the assessee. In response, the assessee filed letter dated 15-12-2021 which reads as follows:

“Reply of Point No 3 & 4:- with reference to your observation regarding, we had earned fictitious Profits an equity/derivative trading of penny stock shares of M/s. Pradip Overseas of Rs.23,30,537/- during the year under consideration. In this regard we have gathered information regarding share traded for the period April 2012 to March 2013 of M/s. Pradip Overseas stock. And as per Investment report available with us, we hereby inform you that during the period from 1st April 2012 to 31st March 2013 we have deal with the same securities and incurred an intraday profit of Rs. 1839.84/- and incurred a Short Term Loss of Rs. 10.53.688/

For your ready reference we attached herewith Detailed transaction report of Progressive Share Brokers Pvt. Ltd. in respect of securities under consideration.

We are unable to reconcile the profit mentioned by you of Rs. 23.30.537/- from trading/investment in M/s. Pradeep Overseas Limited In case you are in possession of any other detail / record in respect of said securities, kindly share with us the same, so that we can make comment upon that."

4. Considering the above reply filed by the assessee and detailed transactions report of M/s. Pradip Overseas Ltd. wherein intraday profit of Rs. 1839 earned by the assessee and also incurred a Short Term Loss of Rs. 10,53,688/-. The Assessing Officer not made any additions and accepted the Returned Income filed by the assessee.

5. On perusal of the above reassessment order by PCIT, as per the information uploaded by the DDIT(Inv.), New Delhi, the assessee had earned fictitious profits in equity/derivate trading of penny stock shares of M/s. Pradip Overseas of Rs. 23,30,537/- during the year under consideration. These penny stock shares had been used to facilitate the unaccounted income by way of LTCG/Short term capital loss, etc. On perusal of bank statement furnished during the reassessment proceedings, it was noticed that the assessee had received huge credit from certain entities and same has been invested in securities/share market. However, the explanation of such credit transaction was not called for by the A.O. during the course of reassessment proceedings. Moreover, on perusal of computation of income, it was noticed that you had shown short term capital loss of Rs.(-) 38,77,898/-. On perusal of statement of short-term capital gain/loss, it is noticed that the assessee had purchased equity shares of Rs.5,90,69,497/- and claimed short term loss of Rs. 38,77,898/- during the year. However, the assessee had shown meager income in her Return of Income during the year under consideration. Therefore the investment made in

securities/share does not commensurate with assessee's income. Therefore, the amount of Rs.5,90,69,497/- for investment in securities and shares remains unexplained u/s. 69A r.w.s. 115BBE of the Act. This has resulted in underassessment of income of Rs.5,90,69,497/-. Therefore a show cause notice dated 28-02-2024 was issued to the assessee as to why not revise the reassessment order passed by the Assessing Officer.

6. In response, the assessee filed detailed reply as follows:

"2 Assessee didn't file the return of income u/s 139(1) as her income was not taxable. Assessee filed the return of income on 28.04.2021 showing total income of Rs. 99,520/- by showing the income u/s. 44AD of the Act on turnover of Rs. 3,96,731/- in response to notice u/s. 148. The income declared u/s. 44AD is by way of derivative trading in F&O. During the year under consideration, assessee incurred the short term capital loss of Rs. 38,77,898/- which was carried forward.

3. The notice u/s. 148 was issued on 31.03.2021 for taking action u/s, 147 to tax alleged escaped income of Rs. 23,30,537/-, In the reasons recorded it has been mentioned that assessee earned the fictitious profit in equity/derivative trading of Rs. 23,30,537/- which has escaped the assessment. It has also been mentioned in the reasons recorded that assessee has not filed the return of income and therefore action u/s. 147 was taken under clause (a) of Explanation 2 to S. 147.

4. In the course of assessment proceedings, the notice u/s, 142(1) was issued on 11.08.2021. In response thereto, assessee filed the detailed reply vide letter dated 25.08.2021 including bank statement of Kotak Mahindra Bank. Thereafter, the assessee was supplied with the copy of reasons recorded vide letter dated 12. 11.2021 in response thereto, assessee filed the reply on the reasons recorded vide letter dated 15.12.2021 that **assessee didn't earn the fictitious profit in equity/derivative trading of penny stock shares of Mis. Pradip Overseas of Rs. 23,30,537 Assessee explained that assessee earned intraday profit of Rs 1,839.84/- and incurred short term capital loss of Rs. 10,53,688 in case of M/s. Pradip Overseas.** With this letter, assessee filed the detailed transaction report of Progressive Share Brokers Pvt. Ltd. The assessing officer after

considering the reply of the assessee didn't make any addition to the total income of the assessee and assessed the same income as returned by the assessee in response to notice u/s 148

5. Your honour has issued notice u/s. 263 on the ground that assessee was not able to explain the credit entries received from certain entities and on the perusal of the return of income it was noticed that assessee purchased the equity shares of Rs. 5,00,60,467/- and claimed short term capital loss of Rs. 38,77,898/ Accordingly, your honour has held that amount of Rs 5,90,69,467/- should be treated as unexplained investment in securities and shares.

Arguments:

6. At the outset it is submitted that the reasons recorded by the assessing officer were factually incorrect as assessee didn't earn the profit in equity/derivative trading by way of transaction in shares of M/s. Pradip Overseas of Rs. 23,30,537/-, Even in the notice issued u/s. 263, although your honour has raised this issue as referred in the reasons recorded, your honour didn't give any material in support of this statement made in the notice issued u/s. 263. Even this addition was not proposed in the show cause notice issued u/s, 263.

7. The assessee explained vide letter dated 15.12.2021 filed in the course of assessment proceedings that that assessee derived intraday profit of Rs. 1,839.84/- and incurred short term capital loss of Rs. 10,53,688/- in scrip of M/s. Pradip Overseas. No material has been brought on record against this explanation filed in the course of assessment proceedings. After considering the explanation of the assessee filed vide letter dated 15.12.2021, no addition was made.

8. The assessing officer could make the other additions than the reasons recorded u/s. 148(2) only when it comes to the notice of the assessing officer subsequently in the course of the proceedings. In other words in terms of S. 147, the assessing officer can assess or reassess such income as mentioned in the reasons recorded and any other income only when the addition in respect of item mentioned in the reasons recorded is made. The reliance is placed on the decision of **jurisdictional Gujarat High Court and Bombay High Court in case of CIT vs. Mohmed Juned Dadani-84 CCH 0064 (Guj.) & CIT vs. Jet Airways (1) Ltd. - 239 CTR 0183 (Bom.) respectively**. Accordingly, your action proposing to make the other addition in the notice issued u/s. 263 of Rs. 5,90,69,467/- is not in accordance with the law.

9. Even otherwise, as the notice u/s. 148 was wrongly issued and therefore the reassessment proceedings are not valid. This is because

the reasons recorded are factually incorrect. Further the assessee didn't file the return of income as the income was not taxable. When the reassessment proceedings itself invalid, the action u/s. 263 cannot be taken.

10. In view of the above, your honour is requested to drop the proceedings initiated u/s. 263 as the assessment order passed u/s. 147 r.w.s. 144 of the Act on 25.03.2022 is neither erroneous nor prejudicial to the interest of the revenue. Further, as stated above the reassessment proceedings were itself not valid."

6.1. The above reply was considered by the Ld. PCIT and held that the A.O. has not taxed the entire sale proceeds of M/s. Pradip Overseas Ltd. as unexplained receipts u/s. 69A of the Act. As such receipt towards sale of penny shares and non-verification of such aspects also makes reassessment order erroneous and prejudicial to the interest of Revenue, thereby set aside the reassessment order with a direction to the Assessing Officer to pass fresh assessment order and treat the entire sale proceeds from the above referred scrips as unexplained deposits and tax the proceeds u/s. 115BBE of the Act after giving proper opportunity of hearing to the assessee.

7. Aggrieved against the Revision order, the assessee is in appeal before us raising the following Grounds of Appeal:

1. On the facts and in circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in passing the order u/s. 263, although the assessment order passed u/s. 147 r.w.s 144 of the I. T. Act, 1961 was neither erroneous nor prejudicial to the interest of the revenue.

2. On the facts and in circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in setting aside the assessment with the direction to pass fresh assessment order after treating the entire sale proceeds of scrips discussed in revision order as unexplained deposits/receipts and further directing to make addition of unexplained investments of source of such investments and frame the assessment de novo.

3. It is therefore prayed that above order passed by Pr. CIT u/s. 263 may please be quashed or modified as your honours deem it proper.
 4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.
8. We have heard rival submissions at length and perused the materials available on record including the Paper Book filed by the assessee. It is undisputed fact that the assessee has not filed original Return of Income u/s. 139(1) of the Act, but pursuant to the notice issued u/s. 148 on 31-03-2021, the assessee filed her Return of Income on 28-04-2021. The A.O. called for various informations by issuing a notice u/s. 142(1) dated 11-08-2021 and notice u/s. 143(2) dated 12-11-2021 against which the assessee given various details and evidences. The reply dated 15-12-2021 filed by the assessee is already extracted in Paragraph No. 3 of this order.
- 8.1. After considering the above replies filed by the assessee, the Ld. A.O. held that there is no specific amount of Rs.23,30,537/- invested in M/s. Pradip Overseas Ltd. as held that in the reasons recorded for reopening of assessment, whereas the assessee earned intraday profit of Rs.1839 and Short Term loss of Rs. 10,53,688/- on the purchase and sale of Pradip Overseas Ltd. scripts. Thereby the A.O. has not dropped with the reassessment proceedings but assessed the Returned Income filed by the assessee.
9. For the very same reasons recorded for escapement of income, Ld. PCIT reopened the assessment by invoking Section 263 of the Act on the ground that the A.O. has not made necessary enquiries

and ought to have taxed the investment of Rs.5.9 crores made by the assessee in share and securities. Thus Ld. PCIT is trying to enlarge the reassessment in his Revision proceeding which is not permissible in law. Further, It is clearly seen from the assessment records, the Assessing Officer called for various details by issuing notices on 11-08-2021 and 15-12-2021 wherein the assessee filed detailed reply including the bank statement of Kotak Mahindra Bank and transactions statement of M/s. Pradip Overseas Ltd. made through authorized broker namely M/s. Progressive Share Brokers Pvt. Ltd. Thus the view taken by the Assessing Officer is one of the plausible view after considering the materials evidences produced before him. However on the same materials, Ld. PCIT is now taking different view in revisional proceedings which is not permissible in law as held by the Supreme Court and Jurisdictional High Court, more particularly in the case of CIT Vs. R.K. Constructions reported in (2008) 175 taxmann.com 165 (Guj.) wherein it is held as follows:

“Section 263 of the Income-tax Act, 1961 Revision Of orders prejudicial to interest of revenue-Whether where Assessing Officer has taken a particular view on basis of evidence produced before him, it is open for Commissioner, in revisional proceedings under section 263, to take a different view on same material Held, no Whether on facts stated under heading 'Business disallowance Excessive or unreasonable payments' when Assessing Officer had duly verified all details from books and records, and had made no addition in regular assessment, Commissioner was justified in invoking revisional jurisdiction under section 263- Held, no”

10. Further when the A.O. having recorded the reasons for reopening the assessment and having formed a belief that income of the assessee had escaped assessment, but not made any

addition in the reassessment proceedings, in respect of the issue that is the subject matter of reopening. Thus the very basis of formation of belief by the A.O. vanishes. Thus the Ld. A.O. could not have framed any reassessment per se. Logically the Ld. A.O. ought to have dropped the reassessment proceedings instead of passing a separate reassessment order. Thus the reassessment order per se framed by the A.O. is not sustainable in the eyes of law. Therefore any consequential Revision proceedings thereon to revise the assessment is unsustainable in law and deserves to be quashed as held by the Delhi High Court in the case of CIT Vs. Software Consultants reported in [2012] 21 taxmann.com 155 wherein it was held as follows:

"Section 263, read with sections 147 and 148, of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interest of revenue - Assessment year 1993-94-Assessee did not file its return. Later on it was discovered that assessee had made certain undisclosed investments in FDRS In compliance of notice under section 148 assessee filed its return declaring a loss - In course of proceedings under section 147, it was noted that assessee had shown in its profit and loss account a substantial increase in share application money In order to confirm genuineness of share application money summons were issued to alleged share applicants Finally assessment order was passed by accepting return of loss and holding that assessee was able to establish and prove source and capacity to invest in FDRs Commissioner, however, exercising its revisionary jurisdiction held assessment order to be erroneous on ground that Assessing Officer had passed order without making necessary enquiries and verifications with regard to share application money Whether since Assessing Officer did not make any addition on issues reasons recorded at time of issuance of notice under section 148, sequitur was that he could not have made an addition on account of share application in assessment proceedings under section 147 and, therefore, assessment order was not erroneous - Held, yes Whether, therefore, Commissioner could not have exercised its revisionary jurisdiction - Held, yes [In favour of assessee]"

10.1 The Hon'ble Jurisdictional High Court in the case of CIT Vs. Mohammed Juned Dadani reported in (2013) 30 taxmann.com 1 (Guj.) wherein it was held that the ground on which reopening of assessment was based and no addition was made by the Assessing Officer in the order of reassessment, he could not make additions on some other grounds which did not form part of the reasons recorded by him.

11. Respectfully following the above judicial precedents, we have no hesitation in quashing the Revision order passed by Ld. PCIT.

12. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 31 -12-2024

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

Ahmedabad : Dated 31/12/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद