

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SURAT" BENCH, SURAT**

**BEFORE S/SHRI SANJAY GARG, JUDICIAL MEMBER
AND
BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**ITA No.592/SRT/2024
Assessment Year : 2013-14**

Rekhaben Jitendrakumar Jain, 255-257, Ahura Nagar Society Adajan. PAN : ADYPJ 6066 G	Vs	The Pr.Commissioner of Income Tax-1 Surat.
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(Applicant)		(Responent)
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Assessee by :	Shri Rasesh Shah, CA
Revenue by :	Shri Ashish Pophara, CIT-DR

सुनवाई की तारीख/Date of Hearing : 05/03/2025
घोषणा की तारीख /Date of Pronouncement: 03/06/2025

आदेश/O R D E R

Per Sanjay Garg, Judicial Member

The above appeal has been filed by the assessee against order passed by the Ld.Pr.Commissioner of Income Tax-1, Surat [hereinafter referred to as "ld.Pr.CIT" dated 26.3.2024 in exercise of power under section 263 of the Income Tax Act, 1961 ("the Act" for short) arising out of the order of passed by the Assessing Officer, National Faceless Assessment Centre, Delhi (in short "the AO") under section 143(3) of the Act pertaining to Assessment Year 2013-14.

2. The assessee has raised 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 by invoking Explanation 2 of Section 263 of the Act, although the assessment

order passed u/s. 143(3) of the I. T. Act, 1961 was neither erroneous nor prejudicial to the interest of the revenue.

2. On the facts and circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in setting aside the order passed u/s. 143(3) r.w.s. 144B with a direction to the assessing officer as per para no. 8 of the revision order to pass fresh assessment order after taking into consideration, the issues as may be considered together with the issues discussed in order.

3. It is therefore prayed that above order passed by Pr. CIT u/s. 263 may please be quashed or set aside as your honours deems it proper.

3. Brief facts of the case are that the ld.Pr.CIT noted from the assessment records that the case of the assessee was reopened under section 147 of the Act. The reassessment order was passed on 23.3.2022 by the AO, assessing the income of the assessee at Rs.9,03,830/-. The ld.Pr.CIT noted that assessee had traded in the scrip INDINFO with the trade value of Rs.1,08,44,623/- and claimed exempted LTCG of Rs.96,42,734/- from share trading and the same was allowed by the department. In the search action conducted on 13.01.2016 u/s.132(1) of the Act by the Directorate of Investigation Patna in the case of Penny Stock Indian Infotech & Software Ltd, (INDINFO) which is a BSE listed company, it was found that share of the said company had been rigged in synchronized way to provide accommodation entry of bogus long term capital gain to various beneficiaries. The ld.Pr.CIT observed that Indian Infotech & Software limited (INDINFO) was a Shell Company, having no financial credentials and has already been established as penny scrip by the Investigation Directorate of Income tax Department on the basis of findings/documents unearthed during the course of Investigation. The ld.Pr.CIT further observed that the said scrip INDINFO was used by the assessee to introduce his unaccounted income, and that the transactions carried through the said scrip were in the nature mere accommodation entries in the form of bogus long term capital gains (LTCG) which was claimed tax exempt under section 10(38) of the Act.

He observed that the AO in the assessment proceedings, reopened under section 147 of the Income Tax Act, had failed to properly verify and inquire about the said transaction resulting into acceptance of bogus tax exempt long term capital gain of Rs.96,42,734/-. He show caused the assessee, as to why the assessment order be not set aside for want of proper verification of the issue of bogus LTCG by the AO. In response, the assessee filed a detailed reply along with documents before the Id.Pr.CIT and explained that the assessee had filed all the details and evidences before the AO to show that LTCG claimed by the assessee were genuine. The assessee further submitted that the AO had called for the requisite information on the said issue, and the assessee had furnished all the details and evidences which were duly examined by the AO/NFAC, and thereafter, the claim of the assessee was found genuine, and accepted as such by the NFAC. However, the Id.Pr.CIT was not convinced with the above reply of the assessee, and held that the impugned assessment order dated 23.3.2022 passed under section 147 of the Act was erroneous and prejudicial to the interest of the Revenue for want of proper verification and inquiries on the issue of bogus LTCG claimed by the assessee. He, therefore, set aside the assessment order with the directions to the AO to pass fresh assessment after duly examining the aforesaid issue of long term capital gains.

4. Aggrieved by the said order of the Id.Pr.CIT, the assessee has come up in appeal before us, pleading that the Id.Pr.CIT has wrongly exercised his jurisdiction under section 263 of the Act in setting aside the assessment order dated 23.3.2022 for *de novo* assessment.

5. We have heard rival contentions and gone through the record. At the outset, the Id.counsel for the assessee has invited our attention

to the reasons recorded for reopening the assessment by the AO in this case. A perusal of the reasons recorded would show that the assessment in this case was reopened on the same issue with the observation that the assessee had claimed long term capital gain on sale of shares/scrips of INDINFO; that as per the information available with the AO, the said scrip, in which the assessee had traded, was a penny stock, which was used by the brokers/entry providers to provide accommodation entries to the subscribers so as to convert their unexplained cash into long term capital gains. The AO noted that the assessee was also beneficiary of the trading in the said penny stock, as the assessee had traded in the said scrips with the value of Rs.1,08,44,623/- and had claimed long term capital gain of Rs.96,42,734/-. Therefore, the case of the assessee was reopened to verify the veracity of the aforesaid transaction of trading in INDINFO scrip and genuineness of the long term capital gains claimed by the assessee.

6. The ld.counsel for the assessee, thereafter, carried us through the voluminous details filed in the paper book to show that the AO had made adequate inquiries and called for information and documents relating to the trading in the aforesaid scrip of INDINFO; that the assessee had duly furnished all the requisite details and documents to prove that the claim of the assessee was *bona fide* and the same was not result of accommodation entries. The ld.counsel for the assessee, in this respect, has relied on page no.41 of the paper book, whereby the assessee had not only made objections against the reopening of the assessment, but also had furnished all the factual details and documents to the AO to prove the genuineness of the transaction. The ld.counsel for the assessee has further invited our attention to page no.49 of the PB to show that the assessee had

furnished the submissions and the following requisite documents to the AO regarding the transaction in question:

- A) Copy of the share certificate of the scrip purchased in soft copy in pdf format. File name is SHARE_PURCHASE_DOCUMENTS.PDF
- B) Copy of the share certificate after splitting up the face value in soft copy in pdf format. File name is SHARE_CERTI_SPLIT.PDF
- C) I have purchased the said shares from M/S. Rockstar Traders Pvt. Ltd. And paid the purchase price by account payee cheque on 25.05.2011. Copy of the bank book and bank passbook for F.Y. 2011-2012 is attached herewith in soft copy in pdf format. File name is BANK_BOOK_PASSBOOK_BOI_2011-12.PDF
- D) Copy of the demat account statement wherein the shares were dematerialized in soft copy in pdf format. File name is DEMAT_STATEMENT.PDF
- E) Copy of the Contract Notes issued by the SEBI registered Stock Broker M/S. A.C. Choksi Share Brokers Pvt. Ltd. In soft copy in pdf format. File names are CONTRACT_NOTES_1.PDF, CONTRACT_NOTES_2.PDF, CONTRACT_NOTES_3.PDF AND CONTRACT_NOTES_4.PDF
- F) Copy of the bank pass book and bank book wherein all the sale proceeds from the stock broker were received on sale of shares in soft copy in pdf format. File name is BANK_BOOK_PASSBOOK_BOI_201213.PDF
- G) Copy of my ledger account from my broker A.C. Choksi is attached herewith in soft copy in pdf format. File name is AC_CHOKSI_LEDGER.PDF)

7. The Id.counsel for the assessee has further invited our attention to page no.51 of the PB, whereby, the assessee had objected to show cause notice dated 5.2.2022 issued by the AO/NFAC proposing variation into the income of the assessee by rejecting the claim of long term capital gains. The assessee vide its reply dated 24.2.2022 had strongly objected to proposed variation and submitted factual details as well as submissions to the AO. The AO, thereafter, considering the details, documents and submissions of the assessee, did not propose

any variation in the income in the assessment order passed under section 147 of the Act and accepted the returned income of the assessee. However, a perusal of the impugned revision order passed by the Id.Pr.CIT under section 263 of the Act reveals that, the Id.Pr.CIT has not discussed a word in the impugned order, about the various details and evidences and explanations furnished by the assessee before the AO. The Id.Pr.CIT, without pointing out any defect, lacunae or infirmity in the documents and explanation furnished by the assessee during the re-assessment proceedings, which was reopened on the same issue, has simply held that the AO has not made proper inquiries and verifications before passing the impugned assessment order. The above action of the Id.Pr.CIT, in holding, the assessment order as erroneous and prejudicial to the interest of Revenue, without pointing out any error or infirmity, defect or lacuna, in the voluminous details and evidences furnished by the assessee before the AO, cannot be held to be justified.

7.1 As per the provisions of section 263 of the Act, the Id.Pr.CIT/ Commissioner may call for and examine the record of any proceeding under the Income Tax Act, and if he considers that, any order passed therein by the AO is erroneous and prejudicial to the interest 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 an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

As per the *Explanation 2* to section 263, inserted by Finance Act, 2015 w.e.f. 1.6.2015, an order passed by the AO shall be deemed to be erroneous and prejudicial to the interest of the Revenue, if in the

opinion of the Pr.CIT or Commissioner, the order is passed without making inquiries or verification, which should have been made.

7.2 Now, in this case, as per the provisions of section 263 of the Act, though the ld.Pr.CIT or Commissioner has been given wide powers to revise an assessment order if the same is considered by him to be erroneous and prejudicial to the interest of the Revenue, however, such the revision jurisdiction can be exercised after giving an opportunity to the assessee of being heard and after making or causing to make such inquiry as deemed necessary.

8. In the case on hand, the ld.Pr.CIT has not made any such inquiry for concluding that the AO had not made adequate verification/inquiry. The assessee having demonstrated before the ld.Pr.CIT that the AO had made adequate inquiries and verifications on the same issue, a duty was cast upon the ld.Pr.CIT to point out any defect or infirmity in the information and details furnished by the assessee, and to further point out, as to why the ld.Commissioner was not satisfied with the details and evidences furnished by the assessee. The *Explanation 2* to section 263 of the Act has been inserted vide Finance Act, 2015 w.e.f. 1.6.2015, and hence, the said explanation cannot be applied retrospectively in this case for the assessment year 2013-14. Moreover, as per the said *Explanation 2*, the order can be deemed to be erroneous and prejudicial to the interest of the Revenue, if in the opinion of ld.Pr.CIT/Commissioner the order is passed without making any inquiry or verification, which should have been made. Such opinion, in our view may not be a mere pretense of the ld.Pr.CIT without giving any reasoning or basis for the same. Such an opinion of the ld.Pr.CIT that the assessment order has been passed without making inquiry inquiry/verification which should have been

made, must be based on the reasoning and findings arrived at by the ld.Pr.CIT after examination of records, and after considering the submissions and explanations, furnished by the assessee. The assessee having furnished the detailed reply and demonstrating that the AO had made adequate verification and inquiries on this issue, the ld.Pr.CIT, under the circumstances, was supposed to discuss the same, consider the reply of the assessee, and to point out what further inquiry was required to be made by the AO, which has not be made by him and what were the defects or infirmities in the explanation given by the assessee, which require further inquiries and verifications by the AO. All these ingredients, which are required for the exercise of revision jurisdiction under section 263 of the Act, are missing in this case. Therefore, the impugned order passed by the ld.Pr.CIT under section 263 of the Act, is a result of invalid jurisdiction exercised by the ld.Pr.CIT under section 263 of the Act, and hence, not sustainable and the same is, accordingly, quashed.

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

Order pronounced on 3rd June, 2025

Sd/-
(Bijayananda Pruseth)
Accountant Member

Sd/-
(Sanjay Garg)
Judicial Member

Ahmedabad, dated 03/06/2025
*vk**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad