

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRIPRADIP KUMAR CHOUBEY, JM**

ITA No.17/PAT/2021

(Assessment Year:2015-16)

Shri Kant Mishra **Income Tax Officer**
Maha Laxmi Steel Ward-1(5)
Station Road, Buxar-802101 **Vs.** Buxar, Bihar
(Appellant) **(Respondent)**

PAN No. AFIPM0714N

ITA No. 18/PAT/2021

(Assessment Year:2015-16)

Brij Kumar Mishra **ITO, WARD-1(5)**
Plot No. 36, Gajadhar Ganj, Ram BUXAR, Buxar, Bihar
Bagh, Buxar, Buxar, Bihar, **Vs.** 802101
(Appellant) **(Respondent)**

PAN No.AFIPM0712L

ITA No. 20/PAT/2021

(Assessment Year:2015-16)

Ajeet Kumar Mishra **ITO, WARD-1(5)**
Buxar, Bihar, 802101 **Vs.** BUXAR, Buxar, Bihar
(Appellant) **(Respondent)**

PAN No. AFIPM0713M

ITA No. 21/PAT/2021

(Assessment Year:2015-16)

Arun Kumar Mishra **ITO, WARD-1(5)**
Opp. Mahatma Gandhi Magar, BUXAR, Buxar, Bihar
Bazar Samity, Rambagh, Buxar, **Vs.** Buxar, Bihar, 802101
(Appellant) **(Respondent)**

PAN No. AFIPM0716Q

Assessee by : Shri Sudipta Sannigrahi, AR
Revenue by : Shri Rajat Datta, DR

Date of hearing: 29.07.2025

Date of pronouncement: 15.10.2025

ORDER

Per Rajesh Kumar, AM:

These are the appeals preferred by different assessee against the revisionary orders of the Pr. Commissioner of Income Tax (hereinafter referred to as the "Ld. PCIT"] dated 14.01.2021, 27.01.2021 for the AY 2015-16.

02. Though the appeals relate to different assessee, as the facts, issues and circumstances in all these appeals are similar, hence, for the sake of convenience and brevity, we will take ITA no. 18/KOL/2021 as our lead case and facts, issues are discussed in the following paragraphs.

ITA No. 18/KOL/2021

03. The only issue raised is against the invalid exercise of revisionary jurisdiction u/s 263 of the Income-tax Act, 1961 (the Act) by Id. PCIT, thereby wrongly revising the assessment framed by the Id. AO u/s 143(3) of the Income-tax Act, 1961 (the Act), dated 08-9-2017.

04. The facts in brief are that the assessee filed the return of income on 27.09.2015, declaring total income at ₹4,31,550/-. The case of the assessee was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS) and accordingly, the notices u/s 143(2), 142(1) and questionnaire were duly issued and served upon the assessee. The learned AO after taking into consideration the submissions and replies of the assessee, framed the assessment u/s 143(3) of the Act, vide order dated 08-9-2017, assessing the total income at ₹4,60,010 as against the returned of income of ₹4,50,590/-.

05. The learned PCIT on perusal of the assessment records observed that the assessee claimed exemption u/s 10(38) of the Act in respect of long-

term capital gain of ₹36,60,028/- from sale of equity shares. The learned PCIT further noted that no documents or relevant papers were found /placed in the assessment records in respect of sale and purchase of the said shares. The learned PCIT noted that during the assessment proceedings, the learned AO has not called for the supporting evidences and papers in respect of purchase and sale of shares, sources of investments, bank statements showing relevant transactions and copies of contract notes etc.

06. It was further noted by the learned PCIT that third party verification with brokers and other parties were not done by the Id. AO and accordingly, genuineness of the transactions as well as the credentials of the stock brokers and veracity of the exemption u/s 10(38) of the Act could not be verified. Thus, the learned AO completed the assessment without making inquiries and verification in the matter. Accordingly, the assessment framed u/s 143(3) of the Act dated 08-09-2017 was held to be erroneous and prejudicial to the interest of the Revenue. Show cause notice was issued under section 263 of the Act, on 14.01.2021, which was replied by the assessee submitting that all the documents comprising audited balance sheet , profit and loss account, copy of purchase account, copy of sale account, indirect expenses, indirect income, bank statements were filed before the learned AO along with evidences of purchase and sale of shares and the AO, only after taking into account all these evidences and after due examination thereof, framed the assessment. Rejecting the submissions and contentions of the Id AR, the learned PCIT finally revised the assessment by passing the revisionary order u/s 263 of the Act dated 14-01-2021 directing the learned AO to call for the documents for purchase and sale of shares and examine the claim of exemption u/s 10(38) of the Act with proper verification and inquiry in accordance with the provisions of law after affording reasonable opportunity of being heard to the assessee.

07. The learned Authorized Representative vehemently submitted before us that the jurisdiction under section 263 of the Act has been invoked by the learned PCIT invalidly by ignoring the facts and documents /evidences available in the assessment folder. The learned AR submitted that during the assessment proceedings all these evidences were placed before the learned AO in reply to notice issued under section 142(1) of the Act, along with questionnaire wherein the AO raised a specific query in respect of sale and purchase of equity shares. The learned AR submitted that the assessee has filed all the evidences qua purchase and sale of equity shares which were alleged by the Id PCIT to be not available on the assessment record. The learned AR submitted that even the certified copies obtained from the learned AO by the assessee unequivocally proved that all these evidences qua with the purchase and sale of shares were before the learned AO in the assessment folders. The books of accounts were produced before the learned AO during the assessment proceedings and he examined and verified all the evidences. The learned AR submitted that this is not a case of no inquiry by the learned AO as the learned AO has called for the details/information specifically on the issue as is evident from the notice issued under Section 142(1) along with questionnaire and the reply furnished by the assessee and records available in the assessment folder. The learned AR therefore submitted that it is not a case of no inquiry but if at all it may be a case of inadequate inquiry. The learned AR submitted that in case of no inquiry, the PCIT has jurisdiction to invoke the revisionary provisions under the Act as contained under Section 263 of the Act but in case of inadequate inquiry by the learned AO, the jurisdiction under Section 263 of the Act is not available. The Learned AR submitted that in the above decision it has been held that jurisdiction u/s 263 of the Act cannot be invoked in case of inadequate inquiry. The Learned AR submitted that the order passed by the Learned AO has to be erroneous as well as prejudicial to the interest of the Revenue for invoking the provisions of Section 263 of

the Act, but neither the assessment framed is erroneous nor prejudicial to the interest of the revenue. The Learned AR submitted that simultaneous satisfaction of twin conditions is mandatory for invoking the provisions of Section 263 of the Act by the learned PCIT and even if one of the two conditions is satisfied, even then the jurisdiction is not available to the PCIT. The Id. AR, therefore, prayed that the twin conditions provided in section 263 of the Act are not satisfied and, therefore, the jurisdiction u/s. 263 of the Act has been invoked invalidly which is against the ratio laid down by the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC) and another decision of the Hon'ble Supreme Court in the case of CIT Vs. Max India Ltd. (2007) 295 ITR 282 (SC). The Ld. AR further submitted that once it is proved that the documents were called from the assessee by the Learned AR and assessee furnished the same, then it is to be presumed that the AO examined these evidences and only thereafter taken a possible view while framing the assessment. The Learned AR submitted that if the AO has taken a possible and plausible view after examination of the evidences with which the learned PCIT does not agree, even in that scenario the jurisdiction u/s 263 of the Act is not available to the learned PCIT to revise the assessment in order to substitute his view in place of AO's view for the reason that he does not agree with the view taken by the Learned AO. In defense of his argument, the Learned AR relied on the decisions of J. L. Morison (India) Ltd. Vs. ACIT (ITA No. 786/Kol/2010), PCIT Vs. Britannia Industries Ltd. 146 taxmann.com 246, CIT Vs. Sunbeam Auto Ltd. [2021] 332 ITR 1067 (Del.). The Ld. AR, therefore, prayed that the order passed u/s. 263 of the Act may kindly be quashed.

08. The Id. DR on the other hand strongly rebutted the arguments put forth by the Id. AR by submitting that no prejudice is going to be caused to the assessee with the exercise of jurisdiction u/s 263 of the Act as the assessee would be still heard in the set aside proceedings on all the issues.

The Id. DR submitted that the jurisdiction u/s 263 of the Act was rightly invoked by the Id. PCIT so that this can be examined and verified at the level of the AO and assessed accordingly.

09. We have heard the rival contentions and perused the materials available on record. We find that in this case, assessment was framed u/s 143(3) of the Act by the learned AO vide order dated 08-09-2017. We also find that the case of the assessee was selected for scrutiny under CASS and thereafter, notice u/s 143(2) dated 01-08-2016 and notice u/s 142(1) of the Act dated 28-04-2017 were issued to examine transactions in shares and claim qua exemptions from long-term capital gain showed in the return of income. The assessee replied the said notices and furnished all the details before the learned AO including the production of books of accounts. The learned AO accepted the plea of the assessee in the assessment framed vide order dated 08-09-2017. Now, the issue before us is whether the revision invoked by the learned PCIT u/s 263 of the Act is invalid or not. In this background, we note that even the allegation by the learned PCIT that no inquiry was conducted and evidences were called for qua these share transactions by the learned AO during the assessment proceedings. In our opinion the conclusion of the Id. PCIT appears to be not correct and is in fact contrary to the facts available in assessment records. We have been examined the documents furnished before us by the assessee and find that certified copies were obtained from the learned AO which comprised of the evidences qua the sale and purchase of shares and ledger copies of purchase and sale of equity shares. In other words, these evidences were part of the assessment folder. Thereafter, the conclusion drawn by the learned PCIT that the issue is not examined at all by the Learned AO is contrary to the facts available on record. We note that the Learned AO has examined this issue after calling for the information/details/evidences from the assessee, as this was the only reason for selection of scrutiny of

assessee's case under CASS. We have also examined the evidences such as the contract notes issued by the Steel Security Traders Ltd., Bombay Exchange broker, along with statement and bank Statements etc., which are also available in the paper book. Therefore, we find merit in the contention of the learned AR that it is not a case of no inquiry or absence of any inquiry, but the AO has conducted inquiry into the alleged issue and then framed the assessment. So, if at all, the learned PCIT cannot say that this is a case of inadequate inquiry. But in the case of inadequate inquiry the jurisdiction u/s 263 of the Act is not available to the learned PCIT to revise the assessment of the assessee.

010. Even there are the evidences on record that the learned AO has called for the evidences from the assessee and assessee has duly supplied the same. Then it is to be presumed that assessment is framed after taking into account all these evidences and it is not necessary that the learned AO to specifically mention in the assessment order about the correctness of these evidences as the learned AO cannot deal with each and every aspect in the assessment order.

011. Also, where two views are possible on the issues and AO has taken one of the possible views, then the jurisdiction u/s 263 of the Act is not available to the PCIT on the ground that he does not agree with the view taken by the learned AO and to substitute his own view by setting aside the assessment order. In our opinion, the Id PCIT can invoke the provisions of section 263 of the Act, if the view taken by the AO is not in accordance with the provisions of the Act or there is incorrect assumption of facts by the AO and not otherwise.

012. Considering the facts and circumstances of the assessee's case and in the light of ratio laid in the aforesaid decisions, we are inclined to hold that the revisionary jurisdiction u/s 263 of the Act has been invalidly invoked by

the learned PCIT. Accordingly, we quash the revisionary order passed u/s 263 of the Act by the learned PCIT. The appeal of the assessee is allowed.

ITA Nos. 17,20 &21/KOL/2021

013. The issue raised in these appeal is similar to one as decided by us in ITA No. 18/KOL/2021(supra). Accordingly, our decision in ITA No. 18/KOL/2021 would, mutatis mutandis, apply to these appeals of assessee as well in ITA Nos. 17,20 & 21/KOL/21. Hence, the appeals of assessee are allowed.

014. In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 15.10.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 15.10.2025

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata