

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR
BEFORE SH. KUL BHARAT, VICE PRESIDENT
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.120/JAB/2023
A.Y. 2012-13

Renu Anandani, 658, Narsingh Ward, Madan Mahal, Jabalpur, Madhya Pradesh	vs.	National Faceless Appeal Centre
PAN: AEEPA0198P		
(Appellant)		(Respondent)

Assessee by:	Sh. Neeraj Agarwal, C.A.
Revenue by:	Sh. Alok Bhura, Sr. DR
Date of hearing:	17.09.2025
Date of pronouncement:	28.11.2025

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the assessee against the orders of the Id. CIT(A), NFAC dismissing the appeal of the assessee against the order of the Id. AO passed under section 147 r.w.s. 263 r.w.s. 144B of the Income Tax Act. The grounds of appeal are as under: -

"1. The Learned CIT(A) confirmed an addition of Rs. 28,89,599/- stating that the since the specific direction of the PCIT was binding on the AO, the assessment order u/s 143(3) rws 263 was passed on the directions of PCIT is as per law. However, the AO has not made proper enquiries and applied application of mind and blindly acted on the orders of PCIT without verification of facts and information.

2. The Learned CIT(A) given opportunity for Video Conferencing vide Notice dated 10.07.2023 and request for the same can be submitted by the assessee was 25.07.2023 but CIT(A) has passed order on 12.07.2023 without giving the opportunity for submission of request for Video Conferencing which is against the law of Natural Justice.

3. The addition of Rs.21,72,628/- and Rs.3,60,291/- tantamount to double taxation of single transaction causing hardship to the genuine taxpayer. The Learned CIT(A) has grossly erred in facts and circumstance of the case in confirming addition and arbitrarily confirmed the addition which is bad in law and should be deleted.

4. The Learned CIT confirmed the addition of Rs 3,56,680/on account of online investment when there is no contrary evidence available with him that payment has been made for such investment.AO had considered market rate on the date of transfer to Demat account from physical form and considered it as unexplained investment. Findings as ultimately recorded by AO had been based more on presumptions rather than on cogent proof and is bad in law and should be deleted.

5. The act of Learned CIT(A) in confirming the order of Learned AO as correct is not justified as the as the additions are not justifiable.

6. The assessee craves leave to raise any other ground/s on or before the date of hearing to prove that the order of CIT(A) is bad in law.”

2. The facts of the case are that there was an information related to the assessee that she was involved in obtaining bogus short term capital loss by furnishing fabricated anti dated contract note of shares of Ashutosh Paper Mills Limited. On this basis, the case was taken up under section 147 r.w.s. 143(3) and an addition of Rs. 22,16,080/- was made, which included an addition of Rs. 21,72,628/- on account of bogus short term capital loss on sale of shares. Subsequently, this assessment order was set aside by the ld. PCIT-1, Jabalpur under section 263 of the Act on the grounds that the assessee had transferred certain shares to her demat account on 26.03.2012 with a value of Rs. 3,56,680/- @ 24.10 per share but had failed to substantiate her claim that these shares that were credited in her demat account were the same shares that had earlier been purchased on 6.10.2011 for Rs. 25,32,920/-. The ld. CIT concluded that these were over and above the original shares purchased and resultantly there was total investment for purchase amounting to Rs. 28,89,600/- during the financial year in question. The ld. PCIT, further noted that no payments of these amounts was reflecting in the books of accounts on 6.10.2011 or any nearby dates. Hence, both these investments were separate. One was through offline mode and the other through online mode. The ld. AO had only disallowed the bogus short term capital loss of Rs. 21,72,628/- whereas the whole investment was suspicious and therefore, the difference amount of Rs. 7,16,972/- (28,89,600 – 21,72,628) was to be taxed in the hands of the assessee. The ld. PCIT also observed that the assessee had short term capital gains of Rs. 25,41,667/- on account of sale of immovable

property but only net short term capital gain of Rs. 3,69,039/- had been shown in the return of income filed for the year under consideration. At the time of passing of the assessment order, the ld. AO had not added the full amount of short term capital gain on the sale of immovable property and therefore, the same was required to be added. Accordingly, in consideration of the PCIT's order, the ld. AO asked the assessee to show cause as to why aforesaid addition should not be made. In response, the assessee submitted that there were only 14,800 shares and no double purchase. However, the ld. AO was not convinced. He observed that no payment was evident in the books of accounts on 6.10.2011 and therefore, not just the bogus short term capital loss of Rs. 21,72,628/- should be disallowed but the entire investment of Rs. 28,89,600/-. Therefore, he added back the balance of Rs. 7,16,972/- in the hands of the assessee as unexplained investment under section 69B of the I.T. Act. Furthermore, the ld. AO noted that short term capital gain of Rs. 3,69,039/- only had been added inadvertently instead of Rs. 25,41,667/- during the assessment proceedings by the erstwhile AO. Therefore, the difference amount of Rs. 21,72,628/- was also added back. Furthermore, the ld. AO noted that the assessee had purchased 14,800 shares of Ashutosh Paper Mills for Rs. 25,32,921/- and booked bogus short term capital loss of Rs. 21,72,628/-, this loss had been disallowed by the AO in the assessment order dated 29.12.2019 and this had been accepted by the assessee and surrendered under the VSVS and taxes paid on the same. But the whole of the investment was suspicious and bogus and the assessee had herself accepted the same in response to his queries. Therefore, he held that the balance of Rs. 3,60,291/- that was invested should also be added back as unexplained in the hands of the assessee. Accordingly, as a result of these additions, the total taxable income of the assessee was computed at Rs. 57,05,869/-.

3. Aggrieved, the assessee went before the ld. CIT(A). It was submitted that the ld. AO wrongly invoked the provisions of section 69B and made the addition as unexplained investment whereas the investment had already been recorded. Therefore, the additions made were bad in law and should be deleted.

Furthermore, the ld. AO had made addition of Rs. 3,56,680/- on account of online investment, when there was no evidence available with him that any payment has been made for such investment. The AO had considered the market rate on the date of transfer to the demat account from physical form and considered it as unexplained investment. This finding was based more on presumption rather than of cogent proof and was therefore, bad in law. Furthermore, the addition of Rs. 21,72,628/- and Rs. 3,69,039/- amounted to double taxation of a single transaction which caused hardship to the taxpayer. It was submitted that the assessee had already opted for the VSVS and paid taxes on the same and was unnecessarily being harassed. The ld. CIT(A) considered the matter and recounted the orders of the PCIT under section 263. He held that since the directions of the PCIT were binding on the AO and the assessment order under section 143(3) r.w.s. 263 dated 2.03.2022 was passed based on the directions above, the order of the AO was as per law and therefore, he declined to interfere with the same, while noting that no appeal had been preferred against the order under section 263. Accordingly, he came to dismiss the appeal of the assessee.

4. Aggrieved by this summary disposal of her appeal by the ld. CIT(A), the assessee has come in appeal before us. Sh. Neeraj Agrawal, C.A. represented the case before us and argued the matter. It was submitted that in the first assessment proceedings, the ld. AO had disallowed the claim of short term capital loss of Rs. 21,72,628/- and also added Rs. 43,452/- as unexplained expenditure and passed an order under section 147 of the Income Tax Act on 30.12.2019. The assessee had opted for the VSVS and paid the tax thereon. Subsequently, 263 proceedings were initiated and the AO was directed to frame a fresh assessment. The ld. AO again added the investment of Rs. 28,89,599/- and raised a demand of Rs. 14,98,890/- vide his order dated 25.03.2023. The assessee had preferred an appeal with the ld. CIT(A) but the ld. CIT(A) had dismissed the appeal stating that the directions of the PCIT were binding of the AO and since the assessee had not filed an appeal against the PCIT's order under section 263, the action of the AO was as per law. It was submitted that the ld. AO had not made any enquiries and had blindly acted

on the orders of the PCIT without verification of facts and information. The ld. CIT(A), vide his notice dated 10.07.2023 had stated, that a request for video conference could be submitted by the assessee by 25.07.2022 but had subsequently passed his order on 12.07.2023 without giving the assessee the opportunity for video conferencing. It was submitted that the addition of Rs. 21,72,628/- and Rs. 3,60,291/- tantamount to a double taxation of a single transaction causing hardship to the genuine taxpayer. It was also submitted that and addition of Rs. 3,56,680/- had been admitted on account of online investment when there was no proof that such investment had actually been made and only the market rate on the date of transfer to demat account had been considered as unexplained investment. It was submitted that the action of the ld. CIT(A) was not as per law. The detailed written submissions were filed in support of the grounds of appeal.

5. On the other hand, Sh. Alok Bhura, Sr. DR placed reliance upon the orders of the PCIT under section 263, the orders of the AO under section 143(3) r.w.s. 263 and the orders of the ld. CIT(A) and argued that since the entire investment was unexplained and since there was no proof that the shares that were transferred to demat account were the same shares that were purchased earlier, the additions made in this regard were justified. Furthermore, as the short term capital loss had been held to be bogus, even the balance spent on purchase of the shares should be held to be a bogus purchase. He, therefore, prayed that the additions may be confirmed.

6. We have duly considered the facts and circumstances of the case. We find that the ld. CIT(A) was completely misdirected in his approach in refusing to consider the appeal of the assessee on account of the fact that the ld. AO had acted as per the directions of the PCIT under section 263. We note that the ld. PCIT had, after recording his satisfaction on certain grounds of addition, set aside the order for *de novo* consideration with a direction to the AO to pass an order after making a proper investigation and after giving adequate opportunities of being heard to the assessee. Thus the AO was expected to independently apply his mind after

considering the issues pointed out by the ld. PCIT and obtaining the response of the assessee to those observations. It is, therefore, the order passed by the ld. AO under section 143(3) subsequent to the restoration of the matter to his file by the PCIT that is the subject matter for the consideration of the appellate jurisdiction of the ld. CIT(A). The ld. CIT(A) is obliged to apply his mind independently to the additions made by the ld. AO and the objections to the same raised by the assessee. He could not abdicate his responsibility to do so on the grounds that the AO was following the dictates of the PCIT. Thus, we hold that this action of the ld. CIT(A) in refusing to consider the assessee's grounds of appeal and objections to the various additions made in the order under section 143(3) r.w.s. 263, was completely erroneous and renders the order of the ld. CIT(A) to be vitiated. Furthermore, we observe that the ld. CIT(A) had issued a notice to the assessee for availing the option of a video conference, but before the assessee could avail such option, he went on to pass the order. This amounts to denial of proper opportunities to the assessee to represent his case. Accordingly, the order of the ld. CIT(A) is also violative of the principles of natural justice and bad in law on this account. In view of these two observations, we deem it appropriate to restore the matter to the file of the ld. CIT(A) with a direction to the ld. CIT(A) to afford proper opportunity to the assessee to present his case and to hear the case and decide the same on merits without being influenced by the directions of the ld. PCIT in his order under section 263. As the matter stands restored to the file of the ld. CIT(A) for a fresh decision in accordance with law, the appeal of the assessee is held to be allowed for statistical purposes.

7. In the result, the appeal is allowed for statistical purposes.

Order pronounced on 28.11.2025 in the Open Court.

Sd/-

[KUL BHARAT]
VICE PRESIDENT

DATED: 28/11/2025

Sh

Sd/-

[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant -
2. Respondent -
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.