

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"A" BENCH, MUMBAI**

**BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.3389/MUM/2025**  
**(Assessment Year 2022-23)**

**Agarwal Holdings Private Ltd.**

211, 2<sup>nd</sup> Floor Atlanta Arcade,  
Marol Church Road Marol,  
Andheri (East)  
Mumbai - 400059  
PAN: AAUCA5094K

..... Appellant

v/s

**Principal Commissioner of Income Tax,  
Mumbai-1**

Room No.330, 3<sup>rd</sup> Floor,  
Aayakar Bhavan, Maharishi Karve Road,  
Mumbai

..... Respondent

Assessee by : Shri Ashok Bansal

Revenue by : Shri Rajesh Kumar Yadav, CIT-DR

Date of Hearing – 01/09/2025

Date of Order - 28/11/2025

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The assessee has filed the present appeal against the impugned order dated 19/03/2025, passed under section 263 of the Income-tax Act, 1961 (*"the Act"*), by the learned Principal Commissioner of Income Tax – I, Mumbai [*"learned PCIT"*], for the assessment year 2022-23.

2. In this appeal, the assessee has raised the following grounds: -

*"1. The learned Commissioner of Income Tax has erred in passing an order u/s. 263 setting aside order passed u/s 143(3) as erroneous and prejudicial to the interests of revenue.*

*2. The learned Commissioner of Income Tax has erred in passing an order u/s 263 setting aside order passed u/s 143(3) as erroneous and prejudicial to the interests of revenue merely because the learned Assessing Officer had not made more enquiries with respect to Short Term Capital Gain earned by the appellant amounting to Rs. 8.16 Crore.*

*3. The learned Commissioner of Income Tax has erred in passing an order u/s 263 setting aside order passed u/s 143(3) as erroneous and prejudicial to the interests of revenue without having found any mistake at all and merely because, in his opinion, this income of Short Term Capital Gain could have been possibly assessed under the head "business income".*

*4. The learned Commissioner of Income Tax has erred in passing an order u/s 263 setting aside order passed u/s 143(3) as erroneous and prejudicial to the interests of revenue without appreciating the facts of the case, nature of business of the appellant, the process of formation of the appellant company through the process of demerger and the consistent stand adopted by the predecessor demerged entity which was continuously accepted by the department.*

*5. The learned Commissioner of Income Tax has erred in passing an order u/s 263 setting aside order passed u/s 143(3) as erroneous and prejudicial to the interests of revenue not appreciating that the appellant is a resultant company in the demerger process and the impugned transactions were already carried out by the demerged company and the appellant had merely carried on the same treatment which was adopted by the predecessor demerged entity.*

*6. The learned Commissioner of Income Tax has erred in passing an order u/s 263 setting aside order passed u/s 143(3) as erroneous and prejudicial to the interests of revenue not appreciating that this revision amounts to a review by him of orders passed by assessing officers subordinate to another Commissioner of Income-Tax and thus the impugned revision was beyond his powers."*

3. In the present appeal, the assessee is aggrieved against the invocation of revisionary proceedings under section 263 of the Act by the learned PCIT.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an investment company and has invested in equity shares, mutual funds, bonds and liquid funds. For the year under consideration, the return filed by the assessee was selected for complete scrutiny for the following reasons through CASS and statutory notices under

section 143(3) and section 142(1) of the Act were issued and served on the assessee: -

- "• *Large squared up loans during the year*
- *Large short -term capital gains declared u/s 111A*
- *Expenditure debited to P&L for earning Exempt Income is very less in comparison to the Investments made to earn exempt income*
- *Substantial payments shown to entities not registered under GST*
- *Claim of Large Value Refund*
- '• *Introduction/Addition of high value tangible asset during the year and claim of depreciation at full rate*
- *As per Schedule AL-1, the company has invested substantial part of its funds in assets like Residential House, Land or Building, Capital Contribution to other entities, Loans and Advances, Motor Vehicles, Aircrafts etc.*
- *High ratio of refund to TDS*
- *Non-compliance to Indian Accounting Standards Rules, 2015 (Ind-AS)"*

5. After considering the submissions of the assessee, the Assessing Officer ("AO") vide order dated 04.03.2024 passed under section 143(3) read with section 144B of the Act accepted the return of income filed by the assessee without any variation.

6. Subsequently, the learned PCIT issued show cause notice under section 263 of the Act on the basis that the AO has allowed the short term capital gains claimed by the assessee without making adequate inquiries. The learned PCIT further alleged that, once the assessee claimed to be in the business of investment, the income from securities could also be taxed under the head '*business income*'. Accordingly, the learned PCIT, vide aforesaid show cause notice alleged that the aspect whether the income from sale of securities held for a period not more than 12 months is taxable in the hands of the assessee as short term capital gains or business income was not examined by the AO while passing the assessment order under section 143(3) read with section 144B of the Act and failed to examine the aforesaid aspect rendering the order

to that extent to be erroneous and prejudicial to the interest of the Revenue, which is a fit case for revision under section 263 of the Act.

7. After considering the submissions of the assessee, the learned PCIT vide impugned order, passed under section 263 of the Act, held that the AO vide assessment order did not examine the real nature of the income of the assessee, even when the assessee had shown the income to an extent of Rs.1.86 crore as short-term capital gains. Accordingly, the learned PCIT held that to the extent of non-examination of income from shares held for less than 12 months, the assessment order is erroneous and prejudicial to the interest of the Revenue as per the provisions of section 263 of the Act. In this regard, the learned PCIT also placed reliance on the CBDT Circular No. 6 of 2016 dated 29.02.2016. Being aggrieved, the assessee is in appeal before us.

8. We have considered the submission of both sides and perused the material available on record. The assessee was formed pursuant to the Scheme of Demerger entered into between Macleods Pharmaceuticals Ltd. and the assessee, which was approved by the Hon'ble National Company Law Tribunal, vide appointed date 01.01.2021. The main objects of the assessee, as per the Memorandum of Association, are as follows: -

*"The main object clauses of the Memorandum of Association of the Resulting Company are as under:*

*1. To carry on the business of an investment company and to acquire, hold, sell, buy or otherwise deal in shares, debentures, units, funds, Mutual funds, Exchange traded funds, bonds, Gold bonds, debenture-stock, stocks, ownership interests, annuities, notes, mortgages, obligations and other securities by original subscription or otherwise and to tender, purchase, charge, gift or otherwise subscribe for the same, either conditionally or otherwise, and to underwrite, sub-underwrite or guarantee the subscription thereof, issued or guaranteed by any Company, wherever incorporated, or by*

*any Body Corporate, Trust, Government, Municipal or Local Authority, Sovereign, Commissioners, Public Body, Government Corporation.*

*2. To securitise, purchase, acquire, sell, dispose of or trade in any financial asset whatsoever, receivables, debts, whether unsecured or secured by mortgage of immovables or charge on movables or otherwise, securitized debts, asset or mortgage backed securities or securitized debts and to manage, service or collect the same, and to promote, establish, undertake, organize, manage, hold or dispose of any special purpose entity, body corporate or vehicle for carrying on all or any such activities.*

*3. To takeover and continue the demerged non-pharmaceutical business of Macleods Pharmaceuticals Ltd.*

*4. To undertake asset management, portfolio management, lending and borrowing of securities.*

*5. To place fixed deposits, Corporate deposits, recurring deposits or any other type of deposits or keeping money with any person, company, bodies corporate, scheduled Banks, financial and other institutions, trusts, corporations, local authorities and Government;*

*6. To carry on the business of granting properties, whether movable or immovable, on lease - or hire-purchase with or without security against it."*

9. Accordingly, the assessee was formed by the demerger of the investment unit of Macleods Pharmaceuticals Ltd. As per the assessee, the investment including shares and securities, fixed deposits, etc., which were made by Macleods Pharmaceuticals in the past, were transferred to the assessee pursuant to the demerger and the assessee followed the same practice as followed by the parent company and treated the securities as investments in its books of account and offered the gains/losses to tax under the head "*capital gain*". We find that during the scrutiny proceedings, the return filed by the assessee was selected for complete scrutiny, inter alia, for the reason "*large short-term capital gains declared under section 111A*". Vide notice dated 20.01.2024 issued under section 142(1) of the Act, the AO asked queries, which were duly responded to by the assessee as follows: -

"19. With regard to capital gains on assets sold during the year, if any. Please furnish the details of investment made to claim deduction with documentary evidence. Also furnish the documents of purchase of assets and sale documents of assets to calculate the period to calculate short or long term capital gain, to calculate purchase and sale amount of capital assets.

**Response: As informed in forgoing, the company have received assets in lieu of de-merger order approved by NCLT. The capital gains were accrued to the de-merged company which have been transferred to company from the appointed date. The details of such gain as disclosed in its computation is enclosed in Exhibit E**

20. The assessee made substantial purchases of equities /mutual funds during the years. The details to be filed for trading and investment of shares separately. Please furnish details in format given below:

**Response: As informed in forgoing, the company have received assets in lieu of de-merger order approved by NCLT. However details of equity shares outstanding as on 31 March 2022 is enclosed in Exhibit F to I"**

10. From the perusal of the record, we find that no other query was raised by the AO regarding the income earned from shares held for less than 12 months, and after being satisfied with the response of the assessee, as noted in the foregoing paragraph, the AO made no addition on this issue.

11. During the hearing, the learned Authorised Representative ("learned AR"), by referring to the financial statement of the assessee, submitted that the investments of the assessee also constitute 2/3 of the total assets of the assessee. It was further submitted that the assessee treats only interest income and dividend income as business income. Reiterating the submissions made before the lower authorities, the learned AR submitted that the assessee has followed the same practice as adopted by the parent company of continuing to reflect the securities as investment. Further, the learned AR submitted that only short-term capital gains have been disputed, and long-term capital gains offered by the assessee have been accepted.

12. On the other hand, the learned Departmental Representative ("*learned DR*") by referring to the order passed by the Hon'ble National Company Law Tribunal, forming part of the paper book from pages 20-37, submitted that the only purpose of forming the assessee company was to conduct business of investment activity, which was earlier conducted by the parent company. Further, by referring to the Scheme of Demerger, which also forms part of the paper book, the learned DR submitted that the entire purpose of the demerger was to constitute the assessee as a separate entity to focus on investment entirely. The learned DR further submitted that despite the aforesaid facts the issue whether the income arising from sale of shares held for less than 12 months is a business income or capital gains in the hands of the assessee was not examined by the AO and the reasons recorded for the complete scrutiny as well as the notice issued under section 142(1) of the Act are also not on this issue. Thus, the learned DR submitted that despite a case of complete scrutiny, the AO failed to make an enquiry on this aspect.

13. Having considered the submission of both sides and perused the material available on record. We are of the considered view that the issue of nature of the income arising from the sale of securities which were held for less than 12 months was not examined by the AO and the scope of investment by the AO during the assessment proceedings, *inter alia*, was only limited to the aspect of any exemption claimed by the assessee on the short-term capital gains of Rs.8.16 crore. Further, various queries raised by the AO and information sought vide notice issued under section 142(1) were also confined to the examination of the latter aspect. Though the issue of taxability of short-

term capital gains under section 111A of the Act was a matter of enquiry, the aspect whether the income can also be taxed under the head “*business income*” as the assessee was formed explicitly for conducting the investment activity was not examined. Once there was no inquiry or examination by the AO on this issue, we find merit in the submissions of the learned DR. In this regard, gainful reference can be made to the provisions of Explanation - 2 to section 263(1) of the Act, which reads as follows: -

*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.”*

14. We further find that in support of its conclusion, the learned PCIT has placed reliance upon the CBDT Circular No.6 of 2016 dated 29.02.2016, which reads as follows: -

*"a) Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-in-trade, the income arising from transfer of such share/securities would be treated as its business income,*

*b) In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of his transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular assessment year, shall remain applicable in subsequent assessment years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;*

*c) In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid Circulars issued by the CBDT."*

15. Thus, from the perusal of the provisions of the aforesaid Circular issued by the CBDT, it is clearly evident that in respect of listed shares and securities held for a period of more than 12 months, if the income is treated as capital gain by the assessee, the same shall not be put to dispute by the AO. Thus, we are of the considered view that the provisions of CBDT Circular No.6 of 2016 clearly justify the stand of the Revenue in not questioning the long-term capital gains declared by the assessee, as such securities were held for more than 12 months. However, for securities held for less than 12 months, as per the aforesaid Circular, there is no impediment for the Revenue to examine the claim of the assessee. Therefore, we do not find any infirmity in the findings of the learned PCIT in directing the AO to examine this limited issue in respect of all the shares held for less than 12 months. Accordingly, we upheld the invocation of revisionary proceedings under section 263 of the Act by the learned PCIT. Accordingly, the grounds raised by the assessee are dismissed.

16. In the result, the appeal by the assessee is dismissed.

Order pronounced in the open Court on 28/11/2025

**Sd/-**  
**GIRISH AGRAWAL**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 28/11/2025**

*Prabhat*

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai.