

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1125/Del/2022
Assessment Year: 2017-18**

Kaustubh Gupta, 412/3,
Mangal Pandey Nagar,
Meerut.

PAN: AABCS3651B
(Appellant)

Versus Pr. C.I.T.,
Ghaziabad.

(Respondent)

Assessee by: Sh. Sanjeev Sapra, C.A.
Revenue by: Sh. Waseem Arshad, CIT/DR

Date of hearing : 28.11.2023
Date of pronouncement: 07.12.2023

ORDER

PER SAKTIJIT DEY, VICE-PRESIDENT

Present appeal by the assessee arises out of order dated 12.03.2022 passed by learned Principal Commissioner of Income-tax (PCIT), Ghaziabad under section 263 of the Income-tax Act, 1961 for the assessment year 2017-18.

2. Grounds raised by the assessee are as under :

“1. That the Ld. Pr. CIT has erred in assuming jurisdiction and passing the revision order u/s 263, which being untenable in law and on facts of the case be kindly quashed/vacated.

2. That the Ld. Pr. CIT after initiating the proceedings by issuing notice u/s 263 on the basis of enquiries stated to have been made subsequent to assessment, is not justified and has erred in setting-aside the order of assessment and directing the AO to conduct due verification of the claims made in the return on the issues discussed above, and make the assessment afresh as per provisions of the Income Tax Act, 1.961, instead of passing a decisive order on merits of the case herself.

3. That the Ld. Pr. CIT has erred in giving the finding that the AO has made the assessment without making due inquiries or verification, which is factually, incorrect. The AO has made the assessment and has accepted the assessee’s claim after making detailed inquiries u/s 142(1) / 143(3) and after considering the assessee’s explanations submitted in compliance thereof.

4. That the Ld. Pr. CIT has discarded / rejected the assessee’s substantive contentions without controverting them, arbitrarily in a casual/routine manner.

The assessment order passed by the AO is neither erroneous nor pre judicial to the interest of revenue.

5. That the several findings given by the Ld. Pr. CIT in her notice u/s 263 and the subsequent order passed u/s 263, are even contradictors and of self-serving nature.”

3. Briefly, the facts are, the assessee is a resident individual. For the assessment year under dispute, the assessee filed her return of income on 13.02.2018 declaring income of Rs.14,10,790/-. Assessee’s case was selected for complete scrutiny to examine, *inter alia*, “large cash deposits compared to returned income and claim of large exempt income”. In course of assessment proceedings, the Assessing Officer

issued statutory notices under section 142(1) and 143(2) of the Act seeking various information/details from the assessee. In compliance to the statutory notices, the assessee furnished requisite details. After examining the details furnished by the assessee, the Assessing Officer ultimately completed the assessment under section 143(3) of the Act vide order dated 28.12.2019 accepting the returned income.

4. Post completion of assessment, learned PCIT called for and examined the assessment record of the assessee. While doing so, she was of the view that while completing the assessment, the Assessing Officer has not made proper enquiry with regard to the exempt income of Rs.73,34,775/- earned by the assessee from sale of equity shares of Eicher Motors Ltd. She observed that after completion of assessment, deep enquiries revealed that the share transactions are not genuine, as the shares were purchased from the stock market by entry operator. She observed that the assessee never purchased the shares and such shares were received in the de-mat account of the beneficiary by way of off market transfers using account controlled and managed by entry operator. Based upon aforesaid analysis of facts, learned PCIT formed an opinion that the assessment order is erroneous and prejudicial to the

interest of the Revenue requiring exercise of revisionary jurisdiction under section 263 of the Act. Accordingly, she issued a show cause to the assessee. In response, the assessee furnished his reply objecting to the initiation of revisionary proceeding and contended that the assessment order cannot be treated as erroneous and prejudicial to the interest of Revenue. However, learned PCIT did not find merit in the submissions of the assessee. Ultimately, she set aside the assessment order with a direction to make a fresh assessment after conducting due verification.

5. Before us, learned counsel appearing for the assessee submitted that in course of assessment proceedings, the Assessing Officer has conducted thorough enquiry on all issues and particularly on the issue of exempt income earned from sale of equity shares. In this context, he drew our attention to notice dated 05.03.2019 issued under section 142(1) of the Act. He submitted, the Assessing Officer again issued one more notice under section 142(1) of the Act on 18.07.2019 seeking further information. He submitted, the queries raised by the Assessing Officer in these notices were duly complied by the assessee. He submitted, a third notice under section 142(1) of the Act was issued by

the Assessing Officer on 11.12.2019 specifically seeking information regarding purchase and sale of shares by the assessee. Thus, he submitted, it is not a case where the Assessing Officer has passed the assessment order without making any enquiry or inadequate enquiry. He submitted, not only the Assessing Officer has enquired about the purchase of shares by the assessee, but also the sale of such shares. He submitted, even, the revisionary authority has accepted the fact that the Assessing Officer has examined all the facts available at the time of assessment proceedings. He submitted, after completion of assessment, certain investigation was carried out based on which, the proceedings under section 263 of the Act has been initiated. However, he submitted, the material arising from such investigation has never been confronted to the assessee either by the revisionary authority or any other departmental officer. He submitted, even, neither in the show cause notice nor in the order passed under section 263 of the Act, the revisionary authority has made any reference to the nature of the material available before the department after investigation conducted post assessment proceedings. Thus, he submitted, there is no material before the revisionary authority to conclude that prejudice has been

caused to the department. Thus, he submitted, the conditions of section 263 of the Act are not satisfied. Therefore, he submitted, the order passed under section 263 of the Act is unsustainable. In support of such contention, learned counsel relied upon the following decisions :

- (i). CIT vs. Anil Kumar Sharma, 335 ITR 83 (Del).
- (ii). CIT vs. Sunbeam Auto Ltd., 332 ITR 167 (Del.)
- (iii). Virtusa Consulting Services Pvt. Ltd. vs. DCIT, 442 ITR 385 (Mad).
- (iv). CIT vs. Neerav Modi, 390 ITR 292 (Bom)
- (v). ITO vs. DG Housing Projects Ltd., 343 ITR 329 (Del)
- (vi) Eicher Motor Ltd. vs. CIT, 125 taxmann.com 432 (ITAT Delhi)
- (vii). CIT vs. Honda Siel Power Products Ltd., 333 ITR 547 (Del).
- (viii). Meerut Roller flour Mills Pvt. Ltd. vs. CIT, 420 ITR 216 (All)
- (ix). CIT vs. Smt. D. Valliammal, 230 ITR 695 (Mad.)
- (x). CIT vs. Gabriel India Ltd. 203 ITR 108 (Bom)

6. Learned Departmental Representative submitted, in course of assessment proceedings, the Assessing Officer has not at all enquired into the genuineness of purchase and sale of shares by the assessee. He submitted, subsequent investigations reveal that the assessee has purchased the shares from entry operator through off line transactions.

Thus, it was established that the purchase of shares was not genuine. He submitted, had the Assessing Officer made adequate enquiry, these facts could have come on record and assessee's claim of exemption in respect of long term capital gain from share transactions would not have been accepted. Thus, he submitted, lack of adequate enquiry by the Assessing Officer has resulted in prejudice to the Revenue, hence, the assessment order is erroneous.

7. We have considered rival submissions in the light of decisions relied upon and perused materials on record. Undisputedly, learned PCIT has invoked his jurisdiction under section 263 of the Act for the reason that the Assessing Officer while completing the assessment has accepted assessee's claim of exemption in respect of long term capital gain on sale of shares. Thus, it is required to see the nature of enquiry conducted by the Assessing Officer in course of assessment proceedings. Undisputedly, assessee's case was selected for complete scrutiny and for specifically examining the issue of "large cash deposits compared to returned income and claim of large exempt income". In course of assessment proceedings, the Assessing Officer on

15.03.2019 had issued a notice under section 142(1) of the Act seeking the following information/details:

- (i). Copy of computation of income.
- (ii). Details of income from other sources.
- (iii). Complete details of exempt income along with documentary evidences.
- (iv). Copy of all bank accounts.
- (v). Source of cash deposit in ICICI Bank Ltd.
- (vi). Complete details of investment made in mutual funds and deposits alongwith source of investment thereof.
- (vii). Copy of form 26AS.

8. In compliance to the queries raised, the assessee furnished the requisite details. Again on 18.07.2019, the Assessing Officer issued one more notice under section 142(1) of the Act seeking further details. The assessee complied with the said notice as well. On 28.11.2019, the Assessing Officer again issued one more notice under section 142(1) of the Act seeking more information on various issues including long term capital gain on sale of shares. Finally, on 11.12.2019, the Assessing Officer issued another notice under section 142(1) of the Act specifically seeking information regarding sale of shares of Eicher Motors Ltd. and called upon the assessee to furnish purchase & sale details of such

shares. Undisputedly, in response to the queries raised the assessee furnished contract notes, bank statements etc. After verifying the details furnished by the assessee including the contract notes issued by the broker who undisputedly is a registered broker with BSE and having noted that security transaction tax (STT) has been paid on the sale of shares, the Assessing Officer accepted assessee's claim in respect of exempted long term capital gain. The aforesaid facts clearly establish that in course of assessment proceedings, the Assessing Officer has made a thorough enquiry regarding the purchase and sale of shares of Eicher Motors Ltd. and being satisfied with the documentary evidences furnished by the assessee, accepted assessee's claim. Thus, this cannot be treated as a case of lack of enquiry or inadequate enquiry by the Assessing Officer. In fact, in the show cause notice as well as in the body of the order passed under section 263 of the Act, learned PCIT has himself made the following observations :

“During assessment proceedings in the case of the assessee, although the contract notes were before the A.O. but the same were issued by the broker who was registered member of BSE and STT was paid on them, hence, the same were not doubted. However, new enquiries have revealed that these contract notes are bogus and fabricated.”

9. Thus, from these observations of learned PCIT, it is clear that there was no occasion for the Assessing Officer to doubt purchase and sale of shares. Only after completion of assessment, some investigation was carried out by the department, which allegedly revealed that share transaction was through an entry operator, hence, non-genuine. However, what is nature of such investigation and what exactly is the material brought on record through such investigation is not forthcoming either from the show cause notice issued under section 263 of the Act or from the revision order. Though, learned PCIT has referred to the investigation conducted by the Investigation Wing, however, what is the result of such investigation, and to what extent the assessee or the concerned broker is involved in non-genuine share transactions, has not at all been discussed by learned PCIT. Even, it is the specific submission before us by learned counsel for the assessee that in spite of repeated request being made before the revisionary authority to confront the adverse materials/investigation report, such material was never confronted to the assessee. In fact, except making allegation that the purchase and sale of shares by the assessee are non-genuine,

nothing of substance has been brought on record by learned PCIT to back such allegations.

10. Thus, when learned PCIT admits that based on evidence available on record, the Assessing Officer could not doubt the purchase and sale of shares, the decision of the Assessing Officer to accept the share transaction cannot make the assessment order erroneous and prejudicial to the interests of revenue. Moreover, learned PCIT has failed to establish how the assessment order could be prejudicial to the interest of revenue. This is so because, there is no clear cut finding of learned PCIT that the share transaction is non-genuine. He has simply directed the Assessing Officer to make fresh verification. This, in our view, cannot be the proper course of action to invoke jurisdiction under section 263 of the Act. On the contrary, the facts and material on record reveal that after making enquiry and considering materials available on record, the Assessing Officer has taken a particular view, which though, may not be the only view, but certainly can be a possible view. In such circumstances, the assessment order cannot be considered to be erroneous and prejudicial to the interest of revenue. Therefore, we hold that in the given facts and circumstances of the case, exercise of

jurisdiction under section 263 of the Act is invalid. Accordingly, we quash the order passed under section 263 of the Act and restore the assessment order.

11. In the result, appeal is allowed.

Order pronounced in the open court on 07.12.2023.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 07.12.2023

*aks/-