

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1448/MUM/2024

(Assessment Year : 2016-17)

Shummy Poulouse Puthanangady,

38 Shah Industrial Estate, Govandi

Station Road, Govandi,

Mumbai - 400088

Maharashtra

PAN: AAKPP9320L

..... Appellant

v/s

Principal Commissioner of Income Tax-27,

Room No. 401, 4th Floor, Tower No.6,

Vashi Railway Station,

Commercial Complex, Vashi,

Navi Mumbai - 400703

Maharashtra

..... Respondent

Assessee by : Shri Jigar Mehta

Revenue by : Shri Kishor Dhule – CIT-DR

Shri Himanshu Joshi – Sr. DR

Date of Hearing – 24/01/2025

Date of Order – 28/01/2025

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal challenging the impugned order dated 28.02.2024 passed under section 263 of the Income Tax Act, 1961 ("*the Act*") by the learned Principal Commissioner of Income Tax – 27, Mumbai [*"learned PCIT"*], for the Assessment Year 2016-17.

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

"1) (a) *The Ld. PCIT erred in law and facts in invoking jurisdiction u/s.263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") without*

appreciating that the order passed by National Faceless Assessment Centre (NFAC) u/s.147 r.w.s. 144B of the Act dated 28.03.2022 was neither erroneous nor prejudicial to the interest of the revenue.

(b) The Ld. PCIT erred in law and facts by treating the order u/s. 147 r.w.s. 144B of the Act dated 28.03.2022 as erroneous and prejudicial to interest of revenue without appreciating the fact that there was no failure on the part of Ld. Assessing Officer for properly examining the issue and the order was passed after making requisite enquiries and verification on all issues.

(c) The Ld. PCIT erred in law and facts in setting aside the assessment order u/s. 147 r.w.s. 144B of the Act and restoring the file to the Ld. Assessing Officer for passing a fresh assessment order without making any inquiry or causing to be made any inquiry."

3. The solitary grievance of the assessee is against the invocation of revisionary proceedings under section 263 of the Act.

4. The brief facts of the case are that the assessee is an individual and for the year under consideration filed its return of income on 15.10.2017 declaring a total income of Rs.20,17,690/-. Subsequently, on the basis of the information received from the Investigation Wing that the assessee is one of the beneficiaries of penny scrip "Ojas Asset Reconstruction Company Ltd." traded through M/s. Durable Vinimay Pvt. Ltd., proceedings under section 147 were initiated and notice under section 148 of the Act was issued on 28.03.2021. In response to the aforesaid notice, the assessee did not make any compliance. Subsequently, notice under section 142(1) of the Act was issued informing the assessee that it had made a transaction of Rs.1,14,25,904/- in penny scrip of "Ojas Asset Reconstruction Company Ltd." traded through M/s. Durable Vinimay Pvt. Ltd. during the year under consideration and the assessee had failed to disclose/explain the transaction in its return of income for the year under consideration. Accordingly, the assessee was asked to furnish information/details. After considering the

submission of the assessee, the Assessing Officer ("AO") vide order dated 28.03.2022 passed under section 147 r.w.s. 144B allowed the exemption claimed by the assessee under section 10(38) of the Act in respect of gains arising from the sale of shares and accepted the return of income filed by the assessee.

5. Subsequently, the learned PCIT issued a notice dated 03.11.2023 under section 263 of the Act observing as follows: -

"On perusal of records, it is seen that you have filed your original return of income for A.Y. 2016-17 on 15.10.2017 declaring a total income at Rs. 20,17,690/-. Subsequently, your case was re-opened by issuance of notice u/s. 148 of the I.T. Act for filing your return of income within 30 days from the date of service of notice u/s. 148 of the Act. However, you have failed to comply to the said notice.

2. As per information available, you had made transaction of Rs. 1,14,25,904/- in penny scrips of "OJAASSET traded through M/s. Durable Vinimay Pvt. Ltd. during the year under consideration. However, it was noticed by the AO that you had failed to disclose the relevant to A.Y. 2016-17, you had a net gain of Rs. 1,77,89,293/- on sale of scrips and had claimed the same as exempt u/s. 10(38) of the I.T. Act. Accordingly, order u/s. 147 r.w.s. 144B of the I.T. Act was passed by the AO on 28.03.2022 accepting the returned income at Rs. 20,17,690/-.

3. On verification of the case records, it is seen from the statement on oath of the Directors of Durable Vinimay Pvt. Ltd. that the Directors have admitted that the company M/s. Durable Vinimay Pvt. Ltd. are paper/shell companies having no business activities and engaged in the business of providing accommodation entries in the form of bogus LTCG/share capital/share premium/bogus unsecured loans. It is further seen from the case history notings that the AO has not called for any details with regard to the above facts and allowed the LTCG claimed by you as exempt u/s. 10(38) of the I.T. Act, which is not in order.

4. Therefore, it is considered that the order passed by the Assessing Officer for A.Y. 2016-17 is erroneous in so far as it is prejudicial to the interest of revenue within the meaning of section 263 of the I.T. Act, 1961.

5. You are therefore, allowed an opportunity of being heard and show-cause as to why an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment within the meaning of section 263 of the I.T. Act, may not be passed in your case.

6. In this connection, you are required to furnish your explanation on or before

16.11.2023 through e-proceeding in e-filing portal/e-mail alongwith complete details and documentary evidences. In case of non-compliance to this notice, it will be presumed that you have no objection to the proposed revision of the assessment order passed by the Assessing officer as discussed above."

6. Thus, vide notice issued under section 263 of the Act, the learned PCIT alleged that the AO did not call for any details regarding the fact that the assessee has made a transaction in penny scrips of "*Ojas Asset Reconstruction Company Ltd.*" traded through M/s. Durable Vinimay Pvt. Ltd., which is a paper/shell company having no business activities and allowed the Long-Term Capital Gains claimed by the assessee under section 10(38) of the Act. Accordingly, the learned PCIT alleged that the assessment order passed under section 147 r.w.s. 144B of the Act is erroneous insofar as it is prejudicial to the interest of the Revenue within the meaning of section 263 of the Act.

7. In response to the notice issued under section 263 of the Act, the assessee submitted that he had purchased the shares from M/s. Kamalakshi Finance Corporation Ltd. and he had not entered into any transaction with M/s. Durable Vinimay Pvt Ltd. during the year under consideration. The assessee also submitted that the AO has conducted all the necessary inquiries and verification to verify the genuineness of the Long-Term Capital Gains earned by the assessee on sale of shares of "*Ojas Asset Reconstruction Company Ltd.*" and thus the contention that the AO had not called for any details with regard to the aforesaid sale transaction and the assessment order is erroneous and prejudicial to the interest of the Revenue lacks merit.

8. The learned PCIT, vide impugned order, disagreed with the submissions of the assessee and held that the Investigation Directorate, Delhi, conducted

an in-depth analysis of dealing in the shares of "*Ojas Asset Reconstruction Company Ltd.*" vis-à-vis trade patterns due to high volatility in the price of the aforesaid company and found that it is a penny scrip. The learned PCIT further held that the shares of "*Ojas Asset Reconstruction Company Ltd.*" were manipulated and rigged to provide bogus accommodation entries in the form of bogus Long-Term Capital Gains to its beneficiaries. Further, it was held that the claim of the assessee that it had traded in the shares of "*Ojas Asset Reconstruction Company Ltd.*" through M/s. Kamalakshi Finance Corporation Ltd and not through M/s Durable Vinimay Pvt Ltd. holds no ground when it has been established that this scrip is artificially rigged and has been utilized as a vehicle for providing accommodation entry to its beneficiaries in the form of bogus Long-Term Capital Gains/share capital etc. as this is sham transaction entered with a similar purpose and intent. Thus, it was held that the AO has failed to understand the nature of transactions in the scrip of "*Ojas Asset Reconstruction Company Ltd.*" and inquiry made by him is erroneous in the assessment proceedings, despite the fact that the reason for reopening the case was a transaction made in penny scrips of "*Ojas Asset Reconstruction Company Ltd.*". The learned PCIT held that the AO has failed to properly examine the issue, which has rendered the assessment order erroneous insofar as it is prejudicial to the interest of Revenue. Accordingly, the learned PCIT set aside the assessment order passed under section 147 r.w.s. 144B of the Act and directed the AO to pass a fresh assessment order considering the issues raised in the notice issued under section 263 of the Act in accordance with the law. Being aggrieved, the assessee is in appeal before us.

9. During the hearing, the learned Authorized Representative (*"learned AR"*) submitted that both re-assessment proceedings initiated under section 147 and revisionary proceedings initiated under section 263 of the Act are based on the fact that the scrip of *"Ojas Asset Reconstruction Company Ltd."* is a penny stock. The learned AR by referring to the submissions forming part of the paper book submitted that the AO during the re-assessment proceedings made a detailed inquiry and all the information as sought by the AO was duly furnished by the assessee. The learned AR submitted that the learned PCIT just observed that all the inquiry was not done by the AO without pointing out which inquiry the AO has failed to make.

10. On the other hand, the learned Departmental Representative (*"learned DR"*) by referring to the provisions of the Explanation - 2 to section 263 of the Act submitted that the assessment order is erroneous insofar as it is prejudicial to the interest of the Revenue as the same has been based without making inquiries or verification which should have been made. The learned DR further submitted that the assessment order was passed simply accepting the submissions of the assessee without making any further inquiry and thus the AO has not done the proper inquiry into the facts highlighted by the learned PCIT in its order passed under section 263 of the Act.

11. We have considered the submissions of both sides and perused the material available on record. In the present case, it is evident from the record that the initial proceedings initiated under section 147 and subsequent proceedings initiated under section 263 of the Act are based upon the information received from the Investigation Wing that *"Ojas Asset*

Reconstruction Company Ltd." is a penny scrip and the assessee had traded in same through M/s. Durable Vinimay Pvt. Ltd., during the year under consideration, but has not disclosed/explained the same in its return of income filed for the year under consideration. We find that in both the notices issued under section 148 as well as issued under section 263 of the Act, it was alleged that since the assessee has transacted in shares of "*Ojas Asset Reconstruction Company Ltd."* which is penny stock, the Long-Term Capital Gains earned by the assessee is bogus.

12. From the perusal of the notice dated 20.12.2021 issued under section 142(1) of the Act, forming part of the paper book from pages 8-9, we find that during the re-assessment proceedings, the AO sought the following details/information along with supporting documents from the assessee: -

"As per information received, you had made transaction of Rs. 1,14,25,904/- in shares of a penny scrip viz. "OJAASSET traded through M/s Durable Vinimay Pvt. Ltd. during the F.Y. 2015-16 relevant to A.Y. 2016-17 but you have failed to disclose/explain in ITR for A.Y. 2016-17. The case has been selected for scrutiny u/s. 147 of I.T. Act. 1961. Accordingly, a notice u/s 148 of the I.T. Act. 1961 was issued to you on 28.03.2021 requesting to file ITR for the above referred A.Y.

In connection with the above and completion of assessment proceedings under faceless scheme, you are requested to furnish point wise submission along following details/information produce supporting records for verification/examination:-

1. Please furnish details of all the demat/trading accounts held/closed by you during the year.

2. Please furnish copy of transaction statement of all demat/trading accounts showing net gain/loss for the year.

3. Please furnish the following details of investment held by you during the year:

1. Name of equity shares/bonds/debentures.

2. Date of purchase, Number of units purchased, purchase price per unit and total purchase consideration.

3. Date of sale, number of units sold, sale price per unit and total sale consideration with rate.

*4. Detailed calculation of Capital gains/loss on sale of equity shares/bonds/
5. Copies of bill issued by broker, copy of account with the broker.*

6. Details of source of investment with evidence.

7. Details of other investment in shares.

8. Copy of contract note and settlement note.

1. Nature & sources of income alongwith computation of income during the year.

2. Please furnish nature of business and modus operandi of the same, if any.

3. Please furnish Audit Report alongwith audited statement of Account and schedules for the last three years, if any.

4. Complete details of all transaction made with M/s Durable Vinimay Pvt. Ltd. during the year.

5. Please provide the details of all bank accounts and copy/ies of all the bank a/c statement during the year.

6. Please furnish the copy of income tax return along with computation sheet filed in response to notice under section 148 of IT Act, 1961."

13. We find that in response to the aforesaid notice, the assessee filed its submissions on 03.01.2022 and 04.01.2022 submitting his bank account statement, balance sheet with detailed schedule, share certificate, allotment letter and transaction statement. We find that on 10.01.2022, the AO granted additional time to the assessee to submit the reply and necessary documents as requested vide notice issued under section 142(1) of the Act. Accordingly, in response thereto, the assessee vide its submission dated 13.01.2022 submitted capital account statement, fixed asset schedule with details, income computation statement, ledger account of the assessee in books of its

broker, transaction statement, capital gains or loss computation statement, Demat account statement and profit and loss account along with detail schedule. The assessee also furnished the share sale bill and contract notes for the sale of shares made during the year. From the perusal of the submissions filed by the assessee during the assessment proceedings, we find that the assessee has specifically submitted that he had purchased shares of of "*Ojas Asset Reconstruction Company Ltd.*" through M/s. Kamalakshi Finance Corporation Ltd and there was no transaction with M/s Durable Vinimay Pvt Ltd. as alleged in the notice issued under section 148 of the Act. We find that in this regard, the assessee submitted the debit notes of M/s. Kamalakshi Finance Corporation Ltd. and share allotment/share certificate. After considering the various details as filed by the assessee in response to the notice issued during the re-assessment proceedings, the AO assessed the total income of the assessee at returned income and allowed the exemption claimed under section 10(38) vide order passed under section 147 r.w.s. 144B of the Act.

14. It is evident from the record that again on similar information as received from the Investigation Wing, the learned PCIT vide notice issued under section 263 of the Act alleged that the transaction of Rs.1,14,25,904/- made by the assessee in the scrip of "*Ojas Asset Reconstruction Company Ltd.*" traded through M/s Durable Vinimay Pvt Ltd. was for the purpose of claiming bogus Long-Term Capital Gains. From the perusal of the aforesaid notice, as noted in the foregoing paragraphs, it is evident that in order to make the aforesaid allegation the learned PCIT referred to the statement on

oath of Directors of M/s Durable Vinimay Pvt Ltd., Sunshine Vintrade Pvt. Ltd., Shallot Vincom Pvt. Ltd. and M/s. Nextel Vinimay Pvt. Ltd., wherein they admitted that these companies are paper/shell companies having no actual business activities and engaged in the business of providing accommodation entries in the form of bogus Long Term Capital Gains/share capital/share premium/bogus unsecured loans, etc.

15. It is evident from the record that in response to the show cause notice issued under section 263 of the Act, the assessee filed its detailed submission vide letter dated 20.12.2023, forming part of the paper book from pages 74-171, wherein the assessee reiterated that the shares of "*Ojas Asset Reconstruction Company Ltd.*" were purchased through M/s. Kamalakshi Finance Corporation Ltd. and he had not entered into any transaction with M/s. Durable Vinimay Pvt Ltd. In order to support its submission, we find that the assessee again furnished the following documents before the learned PCIT, as noted on page 78 of the paper book:

<i>Sr. No.</i>	<i>Particulars</i>	<i>Annexure</i>
1.	<i>All share sale bills for F.Y. 2015-16</i>	<i>B1</i>
2.	<i>Purchase invoice in respect of shares of Ojas Asset, Official receipt cum delivery note in respect of purchase of shares of Ojas Asset specifying the mode of payment being RTGS</i>	<i>B2</i>
3.	<i>Bank Statement evidencing payment for purchase via banking channels</i>	<i>C</i>
4.	<i>Broker ledger for F.Y. 2015-16</i>	<i>D</i>
5.	<i>Contract notes of sale evidencing sale of shares on stock exchange</i>	<i>E</i>
6.	<i>Global Report for F.Y. 2015-16</i>	<i>F</i>
7.	<i>All bank statements for F.Y. 2015-16</i>	<i>G</i>
8.	<i>Computation of Capital Gains on sale of shares of Ojas Assets</i>	<i>H</i>

16. Thus, even during the proceedings before the learned PCIT under section 263 of the Act, the assessee in response to the notice provided a detailed explanation along with all the relevant documents regarding its transaction in shares of "*Ojas Asset Reconstruction Company Ltd.*". However, without addressing/dealing with any of the details filed by the assessee, the learned PCIT came to the conclusion that the transaction by the assessee in shares of "*Ojas Asset Reconstruction Company Ltd.*" is a sham transaction entered for earning bogus Long-Term Capital Gains. The learned PCIT, vide impugned order, passed under section 263 of the Act further alleged that the AO has failed to conduct a proper examination and also failed to understand the nature of the transaction in the shares of "*Ojas Asset Reconstruction Company Ltd.*". However, the learned PCIT did not mention as to how the issue of earning bogus Long-Term Capital Gains is proved in the present case vis-à-vis the details filed by the assessee during the re-assessment proceedings and also produced before the learned PCIT. It is pertinent to note that it is also not the claim of the learned PCIT that the details filed before the AO during the re-assessment proceedings were not sufficient to decide the issue of whether the Long-Term Capital Gains earned by the assessee are genuine. Thus, neither in the revisionary proceedings under section 263 of the Act nor during the hearing before us it has been pointed out as to what inquiry was not conducted by the AO with regard to the issue of bogus Long-Term Capital Gains, which can lead to the conclusion that the assessment order is erroneous insofar it is prejudicial to the interest of the Revenue. Therefore, we do not find any merits in the submission of the Revenue that the provisions of Explanation – 2 to Section 263 of the Act are applicable to

the facts of the present case. Thus, the revision order passed by the learned PCIT under section 263 is set aside. As a result, the grounds raised by the assessee are allowed.

17. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 28/01/2025

Sd/-

**AMARJIT SINGH
ACCOUNTANT MEMBER**

MUMBAI, DATED: 28/01/2025

prabhat

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

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