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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 136/2024**

PR. COMMISSIONER OF INCOME

TAX, DELHI-12

..... Appellant

Through: **Mr. Sanjay Kumar, Ms. Easha
& Ms. Hemlata Rawat, Advs.**

versus

VINOD KUAMR MITTAL AND SONS HUF Respondent

Through: **None**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR

KAURAV

ORDER

26.02.2024

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CM APPL. 11474/2024 (105 Days Delay)

1. This is an application filed by the appellant seeking condonation of 105 days delay in filing the present appeal. For the reasons stated in the application, the delay of 105 days in filing the appeal is condoned.

2. Application is disposed of.

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3. The Principal Commissioner of Income Tax, Delhi-12 seeks to impugn the order of the Income Tax Appellate Tribunal ["ITAT"] dated 12 May 2023 and proposes the following questions for our consideration:

"A. Whether in the facts and in the circumstances of the case, the Ld. ITAT has erred not appreciating that the Ld. Pr. CIT has mentioned in the revisional order that the assessee has not



submitted D-mat account and the ITO has passed order even without examining the D-mat account?

- B. Whether in the facts and in the circumstances of the case, the Ld. ITAT has erred in not appreciating the Ld. P. CIT has brought on record that the assessee has no knowledge of investment and six of this family members including him has invested in the particular stock, i.e. Turbotech Engineering Ltd. on particular day, i.e. 23.11.2011 on the day on which the stock was trading at 20% price of the face value and sold at 14000 to 24600% appreciation after holding for identical period. The arrangements clearly establish that has made arrangements to generate bogus long term capital gain in order to evade tax?"

4. We note that in respect of a connected transaction, and insofar as it related to the assessee Vinod Kumar Mittal, we had by order dated 31 January 2024 while dismissing ITA No. 81/2024, held as follows:

"1. The Department assails the judgment rendered by the Income Tax Appellate Tribunal ["**ITAT**"] dated 12 May 2023 which has set aside an order passed by the Principal Commissioner of Income Tax ["**PCIT**"] in purported exercise of powers conferred by Section 263 of the Income Tax Act, 1961 ["**Act**"]. We note that the dispute itself pertains to Assessment Year ["**AY**"] 2014-2015 when the respondent / assessee is alleged to have traded in what is described as a "*penny stock*" of M/s. Turbotech Engineering Ltd. As has been noted by the PCIT, the shares were purchased at the rate of Rs.2/- per share and ultimately sold at Rs.450/- per share.

2. Taking into consideration the substantial and significant gain which was obtained in that transaction, the PCIT has observed as follows:

"3.2 From the chart it is observed that the above transactions, at least prima facie are not above board and required deeper investigations by the A.O. which he has failed to do. During the course of proceedings u/s 263 the authorized representative admitted that this was the only transaction in stock ever entered by the assessee. All the above assessments was with the same A.O. who has completed all the assessment proceedings without in any case insisting on the submission of the Demat Accounts or carrying out any independent verification of the details submitted. The A.O. has also not confronted the assessee with the evidence which the department had on manipulation in these penny stocks. She has not even tried



to examine the assessee as to how all of them suddenly decided to invest in a stock which was trading at 20% of the face value on a particular day (23.11.2011), when they had never ever invested or traded in shares; held these shares for almost the identical period and then sold them at 14000 to 24600% appreciation generating huge non-taxable Capital Gains. He did not think it fit to invoke principles of preponderance of probabilities. I am of the considered view that the assessing officer has not carried out investigations that he ought to have carried out in the cases and therefore Explanation- 2 below section 263 which states :

For the purpose of this section, it is hereby declared that an order passed by the Assessing Officer 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 Commissioner or Commissioner:-

The order is passed without making inquiries or verification which should have been made.

xxx

xxx

xxx”

It was on the aforesaid basis that the order of assessment was set aside and a direction framed for assessment been undertaken afresh.

3. The aforesaid order came to be assailed before the ITAT, which has on facts noticed as under:

“8.4 To appreciate the issues in perspective, we notice that specific queries were raised by the AO on both counts namely LTCG arising on sale of share of Turbotech as well as increase in building account by the assessee during the year. The assessee in compliance of the inquiries so made by the Assessing Officer is stated to have filed the details and the evidences such as the proof of acquisition of shares, share certificates, contract note towards sale of shares and the Demat account showing transfer of shares etc. giving rise to LTCG. It is also the case of the assessee that shares were transferred on the platform of the stock exchange through authorized brokers and no adverse report of the SEBI was confronted to the assessee either before the Assessing Officer or by the Pr.CIT in the revisional proceedings. The Assessing Officer did not find any reason to doubt such documents to launch further verifications which the Pr.CIT thinks, ought to have been done. Pertinently, the law does not



necessarily require to stretch enquiries and verifications to the extent which may, at times, tantamount to oppression and harassment of a tax payer. The Assessing Officer, in the instant case, has arrived at a conclusion after collecting requisite evidences of external nature and in the absence of any adverse material per se, came to a conclusion which is plausible for a reasonable person instructed in law. The object of revisional power is not to impinge upon the powers of the Assessing Officer to frame the assessment and interfere therewith in all cases merely on account of some inadequacy in manner and extent of enquiry”

4. Before us, it is not disputed that the documentation and details such as the proof of acquisition of shares, share certificates, contract notes pertaining to the sale of shares had been duly placed before the Assessing Officer [“AO”]. It was also not disputed that the sale of shares was effected over the Stock Exchange. Mr. Kumar, however, points out that the DEMAT Account details were not provided. According to learned counsel, it was this which had constrained the Revisional Authority to hold that the AO failed to undertake the requisite inquiry as contemplated.

5. We find ourselves unable to sustain the contentions so addressed bearing in mind the fact that the documentation and evidence which has been placed on the record was, in our considered opinion, sufficient for the purposes of examining the genuineness of the transaction. The ITAT has also taken note of the fact that the transaction itself was undertaken on the platform of the Stock Exchange through authorized brokers and that no adverse report had been drawn in respect of the subject transaction by SEBI. Mr. Kumar also could not apprise us of what significant impact the DEMAT Account details could have had on the subject transaction. Our attention was also not invited to any material which may have constrained us to doubt the credibility of M/s Turbotech Engineering Ltd.

6. We note that while Section 263 of the Act does place an order passed “*without making inquiries or verification which should have been made*” as being erroneous and prejudicial to the interest of the Revenue, it was not the opinion of the PCIT that an enquiry or exercise of verification had not been undertaken at all by the AO. The PCIT proceeded to invoke its revisional power solely on the ground that the enquiry, in its opinion, could have been more detailed and in-depth. That view would have been justified provided the PCIT had been able to allude to some material or angle of criticality which was not explored by the AO. In the absence of the above, the invocation of the revisional power was clearly not warranted.



7. More fundamentally, we find that the PCIT proceeded to interfere with the order of assessment observing that from the chart pertaining to the transactions which were undertaken “*at least prima facie*” the AO had failed to undertake a deeper investigation. In our considered opinion, the powers conferred under Section 263 of the Act could, in any case, have not been invoked on the basis of a mere *prima facie* opinion.

8. In light of the aforesaid, we find ourselves unable to sustain the challenge as raised.

9. Consequently, the appeals fail and shall stand dismissed.”

5. Since the aforesaid order would govern the issues which stand raised even in this appeal, it would meet a similar fate.

6. The appeal consequently fails and shall stand dismissed.

YASHWANT VARMA, J

PURUSHAINDRA KUMAR KAURAV, J

FEBRUARY 26, 2024/kk