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

\+ ITA 740/2023, CM APPL. 5205/2024

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

.....Appellant

Through: Mr. Sanjay Kumar, SSC with Ms. Esha, Adv.

versus

NARENDRA AGGARWAL DECEASED THROUGH LRS

.....Respondent

Through: Dr. Rakesh Gupta, Mr. Somil Agarwal, Mr. Dushyant Aggarwal & Mr. S. Maurya, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% 17.09.2024

CM APPL. 63834/2023(410 Days Delay in Refiling)

Bearing in mind the disclosures made, the delay in refiling the appeal is condoned.

The applications shall stand disposed of. Delay.

ITA 740/2023, CM APPL. 5205/2024

1. The Principal Commissioner impugns the order of the **Income Tax Appellate Tribunal**[1] dated 04 April 2022 and posits the following questions of law for our consideration: -

> "A. Whether on the facts and circumstances of the case and in law, the Ld. ITAT is correct in allowing the appeal of the assessee by holding that the exercise of power under Section 263 of the Act by Ld. PCIT was not justified even though the AO passed the assessment order without making necessary inquiries or verification which should have been made?

[1] Tribunal

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B. Whether on the facts and circumstances of the case and in law, Ld. ITAT is correct in deleting the appeal in favour of the assessee ignoring the provisions of Explanation 2 to Section 263 of the Act which empowers the Pr. CIT to hold the assessment order as prejudicial to the interests of the Revenue, where it is passed without enquiry or verification which should have been made?

C. Whether on the facts and circumstances of the case and in law, the Ld. ITAT is correct in deciding the appeal in favour of the assessee ignoring the decisions of Hon'ble High Court of Himanchal Pradesh in the case of Virbhadra Singh (HUF) Vs. PCIT (2017) 86 taxmann.com 113 (Himanchal Pradesh) and Hon'ble Delhi High Court in the case of BSES Rajdhani Power Ltd. Vs. PCIT (2017) 88 taxmann.com 25 (Delhi) where Hon'ble High Court have held the proceedings under Section 263 of the Act as valid on identical issue?"

2. We had in terms of our order of 04 March 2024 observed as under:-

"1. We note that while interfering with and setting aside the order passed in revision by the Principal Commissioner of Income Tax ["**Commissioner**"] the Income Tax Appellate Tribunal ["**ITAT**"] has in paragraph 22 of its order dated 04 April 2022 observed thus:

"**22.** In the present case it is an undisputed fact that the return of <u>income for the year under consideration was selected for limited scrutiny under CASS for making inquiries on four issues including the Short Term Capital Gain u/s 111 of the Act. We find that to examine the issues for which the case of the asesee was selected for limited scrutiny, notice u/s 143(2) and 142(1) of the Act was issued by AO along with questionnaire and the assessee was also asked to submit the various details contained therein. The paper book filed by the assessee reveals that in response to the notice issued by AO assessee had made submissions on various dates namely on ____.2017 *(illegible)* 5.12.2017, 13.12.2017, 18.12.2017 and on 21.12.2017. On the aforesaid dates, assessee had inter alia filed the computation of capital gains, details from whom the shares were purchased their PAN numbers, copies of purchase bills, copies of bank account evidencing payment to sellers, contract note for sale of shares, PAN number and SEBI registration under of the broker, copy of the DMAT account, copy of notice for listing of shares by BSE ledge account in the books of sellers, bank account evidencing payment to sellers, contract note for sale of shares. It is also a fact that the purchasing of shares being off market was also informed to the AO and the complete details from whom they</u>

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were purchased by the Assessee was also furnished to the AO. The AO after examining the aforesaid details and on being satisfied with the queries raised, had accepted the contentions of the assessee and had made no addition on that count. In view of the aforesaid facts, we are of the view that AO had applied his mind to the information and details furnished by the assessee and after considering the information, he was of the view that the short terms capital gains has been correctly computed by the assessee and accordingly accepted the claim, and, which according to us is a possible view. Before us, no material has been placed by the Revenue to demonstrate that the view taken by the AO was wholly unsustainable in law. Further, it is a settled law that the order of the AO cannot be branded as erroneous if the Commissioner is not satisfied with the conclusion arrived by the Assessing Officer. The order can be brought within the purview of an erroneous order only if it involves an error by deviating from law or upon erroneous application of the legal principle. We also find that PCIT has observed that the present case was a case where it was a clear case of lack of inquiry. It is a settled law that the power of revision can be exercised only where no inquiry as required under the law is done. It is not open to enquire in cases of inadequate inquiry. In the present case, as noted above, the AO had raised various queries and the same were also replied by the assessee. In such a situation it cannot be said that there was lack of inquiry from the end of AO. We further find that PCIT at the end of para 8 of the order has also not given any conclusive finding about the shares of K.D. Trendwear Ltd. that it is a penny stock as his observation is "apparently K.D. Trendwear Ltd. is a penny stock" which shows that he is not sure about the shares of K.D. Trendwear Ltd., being a penny stock."

2. However, we find that the Commissioner while passing the order in revision on 31 March 2021 had recorded the following findings:

"**10.** I have seen the assessment record. I find that similar replies and documents were filed by the assessee before the AO as filed before me, and the AO also sent a letter to BSE to get the details of the transactions. However, the AO did not make any independent enquiry in respect of the parties to whom the shares were allegedly sold. As it turns out, most of such parties were found to be non-existent, raising serious doubts on the genuineness of the share transactions, especially in the case of K D Trendwear Ltd."

3. Prima facie there appears to be a clear inconsistency in the recordal of facts. We, accordingly, request Mr. Kumar to examine

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> the original assessment record and address submissions.
>
> 4. Let the appeal be called again on 28.05.2024."

3. Having heard learned counsels for respective sides at greater length, we find that the view as ultimately taken by the Tribunal merits no interference.

4. As is apparent from the findings which stand recorded in paragraph 22 of the order, the Tribunal had taken note of the detailed inquiry that was undertaken by the **Assessing Officer**[2] as well as the nature of queries which were addressed to the assessee and the material collected in connection therewith.

5. In view of the aforesaid and bearing in mind the undisputed fact that the share transfer was a transaction which was undertaken on the **Bombay Stock Exchange**[3], we find no justification to interfere with the order impugned on an overall conspectus of the aforesaid.

6. The appeal fails and shall consequently stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 17, 2024/*neha*

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[2] AO
[3] BSE

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