

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

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 3463/DEL/2024 [A.Y. 2015-16]

Sanjay Singh Rana
S-222, School Block
Shakarpur, Delhi

Vs.

The P.C.I.T
Delhi - 20

PAN - AAKPR 6259 E

(Applicant)

(Respondent)

Assessee By : Dr. Rakesh Gupta, Adv
Shri Somil Aggarwal, Adv
Shri Shilpa Gupta, CA

Department By : Shri Mahesh Kumar, CIT-DR

Date of Hearing : 12.08.2025
Date of Pronouncement : 10.11.2025

ORDER

PER NAVEEN CHANDRA, A.M:-

This appeal by the assessee is preferred against the order of Id.
PCIT, Delhi-20 dated 31.03.2024 for A.Y 2015-1

2. The assessee has raised the following grounds of appeal:

"1. That having regard to facts & circumstances of the case, Ld. PCIT has erred in law and on facts in assuming jurisdiction u/s 263 of Income Tax Act, 1961 and has erred in holding the reassessment order dated 28-03-2022 passed by Ld. AO as erroneous as well as prejudicial to the interest of revenue and further erred in enhancing the assessment made to the extent of Rs.1,65,03,478/- and that too by recording incorrect facts and findings and in violation of principles of natural justice.

2. That in any case and in any view of the matter, action of Ld. PCIT in passing the impugned order u/s 263 is bad in law and against the facts and circumstances of the case and is in violation of principles of natural justice.

3. That having regard to facts & circumstances of the case, Ld. PCIT has erred in law and on facts in holding as under: -

- That AO should have brought the entire sale consideration of Rs. 1,65,03,478/- to tax in the year under consideration instead of net LTCG.
- That AO should have also calculated alleged commission @2% on the total sale consideration of Rs. 1,65,03,478/-.

4. Without prejudice to the above grounds, that in any case and in any view of the matter, Ld. PCIT has erred in law and on facts in assuming jurisdiction u/s 263 which is bad in law inter alia for this reason that the reassessment order passed u/s 147/144B dated 28.03.2022 which is sought to be revised u/s 263 itself was invalid on various legal and factual grounds and thus proceeding initiated

u/s 263 against the invalid reassessment order is clearly bad in law.”

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

4. At the very outset, the ld counsel of the assessee submitted an application for condonation of delay in filing the appeal on the ground that the assessee was under a bonafide belief that remedy would lie when the order pursuant to the direction u/s 263 of the Act would be passed. The ld. counsel for the assessee prayed to condone the delay.

5. Per contra, the ld. DR raised no serious objection to the same.

6. We have heard the rival submissions and have perused the relevant material on record. We find that there is a delay of 57 days for filing the appeal before the Tribunal. After perusing the application for condonation of delay, we find that the reasons stated by the ld. counsel for the assessee seem to be reasonable. We, therefore, condone the delay and admit the appeal.

7. Briefly stated, the facts of the case as emanating from the statement of facts submitted by the assessee are that the assessee is an individual having income from salary and also engaged in the proprietorship business of trading Fabrics and Readymade Garments in

the name of M/s J.M. Knits. In addition to this, the assessee has long term capital gain from sale of shares as well. The assessee had filed his return of income declaring a total income of Rs. 24,93,630/- for the A.Y 2015-16 on 30.09.2015.

8. The case of the assessee was reopened by issuance of notice u/s 148 of the Act dated 31.03.2021, issued through email on 01.04.2021 on the basis on the information received by Assessing Officer's office from ITO(Inv), Unit 7 Delhi and DDIT(Inv), Rohtak.

9. On filing of ITR in compliance with notice issued u/s 148 r.w.s 147 of the Act, the reason for initiating reassessment proceedings were shared. The reasons, in brief, was regarding bogus long term share capital gain received by the assessee. As per the report the assessee was in receipt of bogus capital gain of Rs. 3,31,33,890/- (Rs. 1,65,60,790/- + Rs. 165,73,100/-).

10. Brief facts of the case is that from the Information as well as the enquiry made by the AO, it was found had claimed long term capital gains exempt from tax u/s 10(38) on sales of shares of Indus Ind Bank during the F.Y.2014-15 relevant to A.Y.2015-16. The assessee claimed to have purchased the said shares in year 2009 and as an evidence had produced a contract note of M/s Life Line Securities Ltd.

11. The investigations carried out by the investigation unit revealed the modus operandi in the case of this assessee that the shares were purchased through the stock market, by entry-operator controlled entity M/s Life Line Securities Ltd., in the same F.Y. itself, transferred to the assessee demat account within a few days of purchase by way of off-market transfers, using accounts controlled and managed by entry providers, from where it was sold within a few days. For the evidence for purchase of shares in 2009, a contract note from the same M/s Life Line Securities Ltd is fabricated. In the manner, the assessee's own unaccounted money was camouflaged as exempt long-term capital gain and no tax was paid on the transaction.

12. The investigation and enquiry showed that the assessee has actually purchased these shares during the F.Y.2014-15 and has obtained the bogus contract notes reflecting that the shares were purchased in 2009 to claim the benefit of LTCG. Accordingly, the AO reduced the cost of acquisition of Rs.7,78,156/- from the sale consideration of Rs.1,65,03,478/- on sale of shares of and taxed the entire income amounting to Rs.1,57,25,322/- as unexplained credit u/s 68 r.w section 115BBE of the IT Act. for the A.Y.2015-16. In addition to this, for getting the bogus LTCG, the AO added 2% percentage of total sale consideration

amounting to Rs.3,30,069/- as unexplained expenditure u/s 69C of the IT Act.

13. This assessment order was revised u/s 263 of the Act by the PCIT, Delhi-20 wherein she held that the assessment made is erroneous and prejudicial to the interest of the Revenue in so far as the AO, on the one hand held that the entire transaction of purchase/sale of share is bogus and yet he allowed the benefit of cost of purchase of shares of Rs.7,78,156/- to the assessee instead of treating the entire sales consideration of Rs.1,65,03,478/- as unexplained credit and enhanced the assessment made by the Assessing Officer at Rs. 1,57,25,322/- to Rs. 1,65,03,478/-

14. Aggrieved, the assessee has come in appeal before us.

15. Before us, the ld. counsel for the assessee vehemently stated that the reassessment made u/s 147/144B has several inconsistencies in law as being based on investigation report of the INV Wing which is general in nature and is based on wrong data. The ld. counsel for the assessee further argued that the bank statement could not be furnished as payment was made in cash in the year 2009 and old records were made available.

16. The ld. counsel for the assessee strongly contested the assessment made u/s 147 of the Act. The ld. counsel for the assessee further stated that the assessment made u/s 147/144B has been contested before the ld. CIT(A) and furnished before us the grounds taken before the ld. CIT(A). The ld. counsel for the assessee submitted that the PCIT has erroneously assumed jurisdiction u/s 263 of the Act as the issue of capital gains is pending before the ld. CIT(A) and once the issue is pending before the ld. CIT(A), the PCIT cannot exercise power u/s 263 of the Act.

17. The ld. counsel for the assessee relied upon the decision of the Hon'ble Madras High Court in the case of *Smt. Renuka Phillip Vs. ITO* 101 taxmann.com 119 and the order of the co-ordinate bench in the case of the *M/s Corporate International Financial Services Vs. PCIT* ITA Nos. 218/DEL/2024 and others order dated 27.06.2025 wherein it has been held that once the issue is pending before the ld. CIT(A), the ld. CIT(A) cannot assume jurisdiction u/s 263 of the Act on the same issue. The ld. counsel for the assessee also relied on the decision in the case of *Jaishree Ravi Sancheti vs PCIT* ITA No. 2269/Mum/2024 27.09.2024

18. It is the say of the ld. counsel for the assessee that the issue of purchase and sale of shares of IndusInd Bank and resultant capital gain

is pending for adjudication before the ld. CIT(A) and on the same issue, and therefore the PCIT cannot pass an order u/s 263 of the Act considering the sale consideration as unexplained u/s 68 of the Act. In effect, the ld. counsel for the assessee challenged the assumption of jurisdiction by the PCIT u/s 263 of the Act.

19. Per contra, the ld. DR relied upon the orders of the authorities below. The ld. DR vehemently opposed the contentions of the ld. counsel for the assessee and stated that the PCIT is well within its power to assume jurisdiction u/s 263 of the Act even when the issue is under consideration in appeal before the ld. CIT(A). For this proposition, the ld. DR relied upon the decision of the Hon'ble Kerala High Court in the case of *Prestige Marketing Division vs PCIT* 155 taxmann.com 410 wherein their Lordships had held that the PCIT can interfere with the order of the ITO on a point which was directly in appeal before the ld. CIT(A).

20. The ld. DR pointed out to Clause (c) of Explanation 1 to section 263(1) of the Act and stated that the powers of the PCIT “shall extend” and shall be deemed to always to have extended to such matters as had not been considered and decided in such appeal. The ld. DR argued that since in the instant case the appeal has not been considered and decided

by the ld. CIT(A), the PCIT was legally empowered to assume jurisdiction u/s 263 of the Act.

21. We have heard the rival submissions and have perused the relevant material on record. At this point of time, we find it appropriate to narrate the provisions of Clause (c) of Explanation 1 to section 263(1) of the Act which is as under:

Revision of orders prejudicial to revenue.

263. (1) The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

*(a) ******

*(b) ******

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

22. From a plain reading of the above statutory provision, it is apparent that when the issue is under consideration and undecided by the Id. CIT(A), till such time, the PCIT is entitled to assume jurisdiction u/s 263 of the Act. This proposition was elaborated and affirmed by the by the Hon'ble Supreme Court in the case of ***Eimco K.C.P. Ltd. v. Commissioner of Income Tax 242 ITR 659*** which, after referring to the decision of the Hon'ble Kerala High Court in the case of ***Kelpunj Enterprises, (1977)108 ITR 294 (Ker)*** has reiterated the legal proposition that the Commissioner can interfere with the order of the Income Tax Officer on a point which was directly in appeal before the Id. CIT(A) under Sec.263 of the Act. The Hon'ble Kerala High Court in the case of ***Prestige Marketing*** [supra] while discussing the history of the decisions taken on the instant issue, has followed the decisions of the hon'ble Supreme Court in the aforesaid cases.

23. The Hon'ble Kerala High Court has referred to the earliest decision of the Hon'ble Supreme Court in the case in ***Commissioner of Income Tax vs. Shri Arbuda Mills Ltd*** 231 ITR 50 wherein the hon'ble Supreme Court interpreted the explanation (c) of section 263(1) as under:

"The consequence of the said amendment made with retrospective effect is that the powers under Section 263 of the Commissioner shall extend and shall be deemed always to have extended to such

matters as had not been considered and decided in an appeal. Accordingly, even in respect of the aforesaid three items, the powers of the Commissioner under Section 263 shall extend and shall be deemed always to have extended to them because the same had not been considered and decided in the appeal filed by the assessee. This is sufficient to answer the question which has been referred."

24. Coming to the decision in the case of the co-ordinate bench in case of *Corporate International Financial Services* and *Jaishree Ravi Sancheti Jaishree Ravi Sancheti* [supra], we find that they have followed the decision of the Hon'ble Madras High Court in the case of *Renuka Phillip* [supra]. On going through the decision of the Hon'ble Madras High Court in the case of *Renuka Phillip* [supra], we find that the decision of the Hon'ble Supreme Court in the case of *Shri Arbuda Mills Ltd [supra]* and *Eimco K.C.P. Ltd [supra]* have not been brought to the notice of the Hon'ble Madras High Court.

25. We are, therefore, of the considered view that the decision of the Hon'ble Supreme Court in the case *Shri Arbuda Mills* [supra] and *Eimco K.C.P. Ltd. v. Commissioner of Income Tax* (supra) shall prevail. In the instant case, as the issue of bogus capital gain is still pending before the Id. CIT(A), it essentially means that the issue of bogus capital gains is still to be considered and decided by the Id. CIT(A). In such a factual

matrix, the legal mandate of provisions of law given in clause (c) of Explanation 1 to section 263(1) of the Act empowers the PCIT to assume jurisdiction u/s 263(1) of the Act. Accordingly, Grounds 1, 2 and 3 of the assessee are dismissed.

26. Ground No. 4 taken by the assessee without prejudice to other ground relates to assessment order passed u/s 147/144B of the Act which cannot be entertained in the present lis. We are of the considered view that before us, the subject matter is order u/s 263 and the validity of the assessment order u/s 147/144B on legal and factual ground is before the ld. CIT(A) and, therefore, the same cannot be adjudicated at this point of time. Accordingly, this ground is also dismissed.

27. In the result, the appeal of the assessee in ITA No. 3463/DEL/2024 is dismissed.

The order is pronounced in the open court on 10.11.2025.

Sd/-

**[MADHUMITA ROY]
JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 10th NOVEMBER, 2025.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Sl No.	PARTICULARS	DATES
1.	<i>Date of dictation of Tribunal Order</i>	
2.	<i>Date on which the typed draft order is placed before the Dictating Member</i>	
3.	<i>Date on which the typed draft order is placed before the other Member [in case of DB]</i>	
4.	<i>Date on which the approved draft order comes to the Sr. P.S./P.S.</i>	
5.	<i>Date on which the fair Order is placed before the Dictating Member for sign</i>	
6.	<i>Date on which the fair order is placed before the other Member for sign [in case of DB]</i>	
7.	<i>Date on which the Order comes back to the Sr. P.S./P.S for uploading on ITAT website</i>	
8.	<i>Date of uploading, inf not, reason for not uploading</i>	
9.	<i>Date on which the file goes to the Bench Clerk</i>	
10.	<i>Date on which the file goes for Xerox</i>	
11.	<i>Date on which the file goes for endorsement</i>	
12.	<i>The date on which the file goes to the Superintendent for checking</i>	
13.	<i>Date on which the file goes to the Assistant Registrar for signature on the order</i>	
14.	<i>Date on which the file goes to the dispatch section for dispatch the Tribunal order</i>	
15.	<i>Date of Dispatch of the Order</i>	
16.	<i>Date on which the file goes to the Record Room after dispatch the order</i>	

