

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 225 OF 2005

M/s. Jeevan Investment & Finance Pvt. Ltd.,]
1, Cheateau Windsor, 86, Veer Nariman Road,]
Churchgate, Mumbai 400 020.] .. Appellant.
v/s.
The Commissioner of Income Tax, City-I]
having office at Room No.387, 3rd Floor,]
Aayakar Bhavan, Mumbai 400 020.] .. Respondent.

Mr. K. Gopal, for the Appellant.
Mr. Abhay Ahuja, for the Respondent.

**CORAM : M.S.SANKLECHA, &
A.K.MENON, JJ.**

**RESERVED ON : 2nd DECEMBER, 2016.
PRONOUNCED ON : 7th DECEMBER, 2016.**

P.C:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 15th September, 2004 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 15th September, 2004 relates to the Assessment Year 1997-98.

2 This appeal was admitted on 12th July, 2005 on the following substantial question of law:-

“ Whether the Tribunal erred on facts and in law in upholding the validity of the order passed under section 263 of the Act?”

3 For the Assessment Year 1997-98, the Appellant filed its return of income, declaring a loss of Rs.27.46 lakhs. The details of this loss on account of dealing in shares were as under:-

Name	Opening Stock		Purchase		Sales		Profit/Loss
	Qty.	Value	Qty.	Value	Qty.	Value	
Nath Pulp & Paper Mills (quoted)	119757	62,14,080	780243	2,34,07,290	900000	3,60,00,000	63,78,630
Rama Pulp & Papers (quoted)	150000	75,93,750	464000	1,39,20,000	614000	2,45,60,000	30,46,250
Mayo (I) Ltd. (unquoted)	-	-	300000	1,50,00,000	300000	30,00,000	(-)1,20,00,000

The Assessing Officer after accepting the loss held that the same could be carried forward to be set off against speculation profits. The Assessing Officer thus by an Assessment Order dated 24th February, 2000 assessed that Appellant to 'Nil Income'.

4 Thereafter on 31st January, 2002, the Commissioner of Income Tax [CIT] issued a show cause notice under Section 263 of the Act. By the above notice, the Appellant was called upon to show cause why the order of Assessment dated 24th February, 2000 should not be Revised as it was erroneous and prejudicial to the interest of the Revenue. This to the extent the claim of loss on shares to the extent of Rs.1.20 Crores which arose out of purchase/ sale of 3 lakh shares in M/s. Mayo (I) Ltd., was allowed.

5 By a letter dated 22nd April, 2002 Appellant responded to the notice pointing out that the Assessing Officer had examined the issue of loss on sale of shares and accepted the claim of the Assessee. Therefore, the order dated 24th February, 2000 could not be a subject matter of Revision under Section 263 of the Act.

6 By an order dated 20th March, 2002, the CIT held that loss on account of sale of shares was shown at Rs.1.20 Crores. This arose as 3 lakh shares were purchased on 1st April, 1996 at Rs.50/- per share and also sold on the same date at a price of Rs.10/- per share. This without giving the Balance Sheet of M/s. Mayo (I) (P) Ltd. nor the valuation of the shares. This loss appeared to be contrived to set off the profits of Rs.96.24 lakhs made on trading in listed shares. Thus, the CIT opined that the transaction of shares in Mayo (I) (P) Ltd., was a sham transaction. Therefore, he directed the Assessing Officer to re-frame the assessment in accordance with the provisions of the Act.

7 Being aggrieved, the Appellant filed appeal to the Tribunal. The Tribunal by the impugned order dated 15th September, 2004 dismissed the Assessee's appeal. The impugned order held that the exercise of power by the CIT(A) under Section 263 of the Act to revise the Assessment Order dated 24th February, 2000 cannot be found fault with for the reasons that the Assessing Officer had not carried the necessary exercise to find out basis of valuation of shares for purchase of shares at Rs.50/- per share and for sale of shares at Rs.10/- per share on the same date making the Assessment Order erroneous in law. Further, the order is also prejudicial to the interest of Revenue to the extent it allow the said loss to the extent of Rs.1.20 Crores. Thus, the appeal of the Appellant-Assessee was dismissed.

8 In support of the Appeal, Mr. Gopal, learned Counsel appearing for the Appellant-Assessee submits that the exercise of power under Section 263 of the Act by the CIT(A) is without jurisdiction. This for the reason that the Assessing Officer had enquired into the aspect of

purchase of shares in M/s. Mayo (I) Ltd., at Rs.50/- per share on 1st April, 1996 and sale of the same on the same date at Rs.10/- per share. It is on examination of all the facts and making an enquiry that the Assessing Officer accepted the loss claimed by the Appellant in respect of shares of M/s. Mayo (I) Ltd. Thus, at the highest, the case of the Revenue would be of inadequate enquiry by the Assessing Officer. This i.e. inadequate enquiry does not give jurisdiction to the CIT to exercise jurisdiction under Section 263 of the Act. In support, reliance was placed upon the decision of this Court in *CIT v/s. Nirav Modi 241 Taxmann 255*.

9 Mr. Abhay Ahuja, learned Counsel appearing for the Revenue supports the impugned order of the Tribunal.

10 We have examined the rival submissions made before us. We find that during the course of assessment proceedings, the Assessing Officer had by a letter dated 12th January, 2000 for the subject Assessment Year sought various details along with documentary evidence, if any, to enable the Assessing Officer to complete the Assessment. One enquiry in the letter dated 12th January, 2000 mentioned at Serial No.8 thereof was the method of valuation in case of unquoted shares (i.e. listed shares) namely M/s. Mayo India Ltd. The Appellant responded to the above letter dated 12th January, 2000 by its letter dated 31st January, 2000. However, the letter dated 31st January, 2000 did not address the enquiry at Sr. No.8 in the letter dated 12th January, 2000 namely method of valuation of unlisted shares. The Appellant's response was only that the unquoted shares are valued at costs. This is begging the question. No method of valuation of the shares was submitted to the Assessing Officer during the proceedings, leading to the Assessment Order dated 24th

February, 2000. It is, therefore, to be noted that the Assessing Officer after having asked a pertinent question of the method of valuing unlisted shares in his letter dated 12th January, 2000 did not pursue that line of enquiry. The required information was not furnished by the Appellant nor any explanation offered for not furnishing the same. It is also not a case where the Assessing Officer was satisfied with regard to his query by some other explanation offered by the Appellant. In fact, merely asking a question which goes to the root of the matter and not carrying it further is a case of non-enquiry, if the query is not otherwise satisfied while responding to another query. In the present facts, the question raised has not been responded to by some explanation which would render the enquiry commenced, futile. In fact, the CIT in his order dated 20th March, 2002 specifically exercised powers under Section 263 of the Act on the basis that the necessary information was not furnished by the Appellant in support of its claim nor the Assessing Officer enquired into the same. Thus, this is a case of non-enquiry and not inadequate enquiry. Therefore, the order of the Assessing Officer is certainly erroneous. There is no dispute that the order of the Assessing Officer is prejudicial to the Revenue.

11 The decision of this Court in Nirav Modi (supra) which is relied upon by the Appellant does not assist the Appellant for the simple reason that in the facts of that case, the CIT in his order passed under Section 263 of the Act has recorded that it was the case of inadequate enquiry by the Assessing Officer. Therefore, it was an unequivocal position in that case of there being an inadequate enquiry. It was in the above facts, that the Court held that the power of Revision under Section 263 of the Act cannot be exercised as the conclusion of the Assessing Officer was

on the basis of enquiry conducted. In the present case, admittedly, no enquiry was conducted to find out the method of valuation of shares at Rs.50/- per share when purchased on 1st April, 1996 and sold at Rs.10/- per share on 1st April, 1996.

12 In the above view, the impugned order of the Tribunal cannot be found fault with.

13 Accordingly, substantial question of law admitted for our consideration is answered in the negative i.e. in favour of the Respondent-Revenue and against the Appellant-Assessee.

14 Accordingly, **Appeal dismissed.** No order as to costs.

(A.K.MENON,J.)

(M.S.SANKLECHA,J.)