

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&**

SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

**ITA No.326/Mum/2021
(Assessment Year :2015-16)**

M/s. Adihemshree Financial 11-B, Wing, 5 th Floor Rockside Apartment Walkeshwar Road Mumbai – 400 006	Vs.	Pr. CIT-19, Room No.228, 2 nd Floor Matru Mandir Tardeo Road Mumbai – 400 007
PAN/GIR No.AAXFA8211E		
(Appellant)	..	(Respondent)

Assessee by	Shri Suchek Anchaliya
Revenue by	Ms. Shailaja Rai
Date of Hearing	11/11/2021
Date of Pronouncement	30/11/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.326/Mum/2021 for A.Y.2015-16 preferred by the order against the revision order of the Id. Principal Commissioner of Income Tax-19, Mumbai u/s.263 of the Act dated 08/03/2021 for the A.Y.2015-16.

2. The only issue to be decided in this appeal is as to whether the Id. Pr. Commissioner of Income Tax (PCIT) was justified in invoking revision jurisdiction u/s.263 of the Act in the facts and circumstances of the instant case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is in the business of share trading. The return of income for the A.Y.2015-16 was electronically filed by the assessee firm on 11/09/2015 declaring loss of Rs.21,37,669/-. During the course of assessment proceedings, the assessee was asked to submit the complete break-up of business loss on sale of shares, which was duly furnished by the assessee before the Id. AO. Since the assessee had claimed huge loss from sale of shares and had sought to set off the same from income from business, the Id. AO sought to examine in detail the veracity of the loss claimed by the assessee on sale of shares. In the course of such examination, the Id. AO found that assessee had dealt with penny stocks and had declared huge loss on those shares and had sought to set off the same with business income of the assessee. The Id. AO observed that assessee had shown loss on sale of 3 penny stock scrips i.e Cressenda Company Ltd., Pearl Electric Ltd., and Pine Animations Ltd. totaling to Rs.4,26,63,518. The Id. AO heavily placed reliance on the findings of Investigation Wing of Kolkata Income Tax department, and even reproduced the financials of those three companies apart from statement recorded from various entry operators and explaining the entire modus operandi on how certain people were involved in manipulation of prices of shares of certain scripts as a pre-planned activity. Finally, the Id. AO proceeded to disallow the loss on sale of shares of Rs.4,26,63,518/- arising from the aforesaid three scripts categorising them as tainted scrips. Against this assessment order, the assessee has preferred an appeal before the Id. CIT(A) and the same is pending. Meanwhile, the Id. PCIT sought to invoke revision jurisdiction u/s.263 of the Act on the ground that assessee had also traded in four more scrips and incurred loss and that these scrips were also part of the 84 penny stock companies investigated by Kolkata Income Tax

department. The four scrips which were sought to be treated as penny stock by the Id. PCIT are as under:-

Sr. No.	Name of the share	Purchase quantity	Purchase amount	Sale quantity	Sale amount	Profit/loss
1	MKEL (Matra Kaushal Enterprise Ltd.) :	2,21,000 V '	1,10,94,170	2,21,000	18,09,990	(-)92,84,180
2	Pearl Agriculture Ltd.	3,94,000	2,13,35,331	3,94,000	42,96,980	(-)1, 70,38,351
3	Rajlaxmi Ind	12,000	36,62,306	12,000	11,22,360	(-)25,39,946
4	Sunrise Asian	3,000	13,83,510	3,000	11, 97,324	(-)1,86,185
			-		Total Loss	(-)2,90,48,662

3.1. The Id. PCIT observed that the loss claimed by the assessee on the aforesaid four scrips ought to have been disallowed by the Id. AO in view of the findings of Kolkata Investigation Wing of Income Tax department. The Id. PCIT stated that since the assessment order was completed without making necessary enquiries and verification in respect of aforesaid four scrips, the order of the Id. AO is erroneous in so far as it is prejudicial to the interest of the Revenue. It was specifically pointed out by the assessee that proper enquiries were indeed made by the Id. AO during the course of assessment proceedings in as much as the details of total loss claimed by the assessee on sale of shares of all the scrips were

indeed submitted with supporting documents before the Id. AO by the assessee. Out of the said details, the Id. AO has chosen to disallow loss claimed on three scrips on the pretext that they are part of penny stocks being investigated by Investigation Wing of Kolkata Income Tax department. It was also specifically brought to the attention of the Id. PCIT that assessee during the year under consideration had traded in more than 160 scrips and had incurred loss in so many transactions thereon. These details were indeed submitted before the Id. AO also. Out of 160 scrips, the Id. AO has chosen only three scrips and proceeded to disallow the loss claimed thereon, after conducting detailed enquiries thereon. It was specifically submitted that the Id. AO had made the analysis of the scrip with respective information available with the Id. AO at the time of framing of assessment proceedings. The Id. PCIT however, disregarded all the contentions of the assessee and came to the conclusion that the loss claimed by the assessee on sale of shares of aforesaid four scrips totaling to Rs.2,90,48,662/- are in the list of penny stocks investigated by the DIT-Investigation, Kolkata and that without proper verification, the Id. AO had allowed the same. Accordingly, the Id. PCIT set aside the order of the Id. AO treating the order of Id. AO to be erroneous and prejudicial to the interest of the Revenue.

3.2. The preliminary facts stated hereinabove are undisputed and hence the same are not reiterated herein for the sake of brevity. It is a fact that assessee had traded in 160 scrips during the year and had incurred loss. It is a fact that assessee has incurred loss during the year on sale of shares in respect of the following scrips:-

Name	Op.Qty	Op. Amount	P.Qty	P.Amount	S.Qty	S. A mount	CL.Qty	Cl. Amount	Profit Loss
B.H.E.L. DM			4,50,000	11,36,84,482.95	4,50,000	10,11,69,034.10			(1,25,15,448.85)
BALAJI TELE DM			2,00,000	1,37,62,000.00	2,00,000	1,36,33,356.50			(1,28,643.50)

BALLRPUR IND DM			5,00,000	97,29,895.15	5,00,000	88,99,003.40			(8,30,891.75)
BOMBAYDY			50,000	41,53,883.40	50,000	33,97,820.95			(7,56,062.45)
BRITANNIA IN DM			2,000	44,33,464.85	2,000	43,87,542.74			(45,922.11)
CRESSANDACO DM			2,97,000	1,59,02,092.55	2,97,000	34,90,230.00			(1,24,11,862.55)
DBREALTY			1,00,000	83,97,789.25	37,500	27,20,204.75	62,500	52,54,375.00	(4,23,209.50)
DENA BANK DM			1,00,000	88,57,045.85	1,00,000	57,95,030.51			(30,62,015.34)
E.MERK PUB DM			10,000	86,86,618.70	10,000	84,14,519.89			(2,72,098.81)
ECONO TRADE INDIA LTD			10,000	21,01,700.00	10,000	6,27,500.00			(14,74,200.00)
ELECON ENG DM			1,00,000	54, i 0,299.98	1,00,000	53,95,767.57			(14,532.41)
ESSDEE	15,000	82,89,390.57			15,000	57,03,003.36			(25,86,387.21)
GREEMCREST FIN. SER.			80,000	51,45,800.00	80,000	48,93,500.00			(2,52,300.00)
HEG LTD, DM			2,39,129	7,92,59,372.67	2,39,129	5,82,09,560.75			(2,10,49,811.92)
HIND CONSTN DM			67,65,454	26,12,05,807.66	44,65,454	12,82,14,419.45	23,00,000	8,59,40,976.14	(4,70,50,412.07)
j & K BANK DM			6,50,000	10,63,41,885.65	6,50,000	8,19,08,415.23			(2,44,33,470.42)
JAI PRAKASH ASSOCIATE			16, i 0,000	10,47,40,900.92	14,10,000	6,95,89,895.22	2,00,000	65,05,350.22	(2,86,45,655.48)
JAJCORP	4,97,200	3,46,29,980.00	75,000	77,91,067.60	5,72,200	4,13,81,714.35			(10,39,333.25)
JAYPEE INFRATECH			2,50,000	81,48,~ ,982.00	2,50,000	53,43,819.75			(28,05,162.25)
JET AIRWAYS			3,55,000	12,96,26,151.96	20,000	45,00,966.52	3,35,000	12,45,87,943.70	(5,37,241.74)
JRt INDUST. & INFRA LTD.			2,82,000	5,45,26,263.85	2,82,000	1,87,09,985.19			(3,58,16,278.66)
KIRLOSKAR ELECTRIC CO LTD			2,30,425	75,90,583.00	2,30,425	62,21,104.80			(13,69,478.20)
LAKSHMI VILAS BANK LTD			1,00,000	87,13,149.30	1,00,000	82,04,313.25			(5,08,836.05)
LICHSGFIN			50,000	1,42,87,559.05	50,000	1,41,65,467.70			(1,22,091.35)
MAIADUSH1 INTERNATIONAL			1,50,000	44,14,150.00	1,50,000	18,16,500.00			(25,97,650.00)
MAN ALUMIN DM			26,000	21,52,466.20	26,000	20,17,237.75			(1,35,228.45)
MERCATORLIN DM	31,003	5,35,035.01	1,86,506	61,10,136.29	2,17,509	47,52,088.43			(18,93,082.87)

MKEL			2,21,000	1,10,94,170.10	2,21,000	18,09,990.00			(92,84,180.10)
MORARJEE DM			1,50,000	57,45,211.60	50,000	16,66,080.35	1,00,000	36,27,754.80	(4,51,376.45)
NUT DM			4,50,000	2,27,07,421.14	4,50,000	2,19,12,290.86			(7,95,130.28)
NYSSA CORPORATION LTD.			25,000	23,39,250.00	25,000	12,24,000.00			(11,15,250.00)
PEARL AGRICULTURE LTD			3,94,000	2,13,35,331.60	3,94,000	42,96,980.00			(1,70,38,351.60)
PEARL ELECTRIC DM			2,88,000	1,56,09,405.65	2,88,000	27,04,320.00			(1,29,05,085.65)
PINE ANIMATION LTD			4,28,000	3,37,12,230.00	4,28,000	1,63,65,660.00			(1,73,46,570.00)
RADICO KHAIT	9,16,528	11,70,86,640.53			9,16,528	10,00,18,009.83			(1,70,68,630.70)
RAJLAXMI IND DM			12,000	36,62,306.50	12,000	11,22,360.00			(25,39,946.50)
SAMLEPU DM			1 1,88,500	5,36,60,504.82	9,48,883	1,21, 83,657.72	2,39,617	1,02,25,448.01	(3,12,51,399.09)
SUNDRAM.FAS T DM			2,10,997	3,70,12,751.39	2,10,997	3,63,38,817.97			(6,73,933.42)
SUNRISE ASIAN L DM			3,000	13,83,510.00	3,000	11,97,324.81			(1,86,185.19)
SWADESHI IND DM			18,90,728	6,73,58,347.56	18,90,728	87,54,258.80			(5,86,04,088.76)
TORRONT POWER			15,000	25,68,112.80	15,000	23,24,578.05			(2,43,534.75)
UNITECH (P) DM			65,00,000	17,44,42^24.85	65,00,000	14,97,27,459.15			(2,47,14,865.70)
VANDANA KNITWEAR DM			3,64^31	1,11,78,287.28	3,64,331	26,24,379.36			(85,53,907.92)
WOKHARDD DM			85,000	7,21,98,779.21	85,000	7,12,81,572.00			(9,17,207.21)
ZEE MEDIA			5,00,000	1,10,47,401.15	5,00,000	95,09,181.75			(15,38,219.40)

3.3. We also find that the entire details of various shares traded by the assessee during the year which includes both profit earned by the assessee as well as the loss incurred by the assessee, were duly filed before the Id. AO during the course of assessment proceedings. This fact is confirmed and acknowledged by the Id. AO in para 5 of the assessment order. We also find from the notice issued u/s.142(1) of the Act on

04/08/2021 by the Id. AO during the course of original assessment proceedings, which is enclosed in page 1 of the paper book, that the Id. AO vide question Nos. 6 & 8 had specifically called for the copy of DEMAT account and details of share transactions. The assessee vide letter dated 22/08/2017 had duly furnished the reply which are enclosed in pages 3 & 4 of the paper book. Further the assessee has also furnished yet another reply dated 08/11/2017 reconciling the share transaction that are reflected in Annual Information Return (AIR). We find that assessee had duly furnished copies of contract notes for sales and purchase of the scrips that were called for by the Id. AO and that were also reflected in the Annual Information Return. The details of bank statement evidencing the source of payment for purchase of shares together with sale proceeds getting credited in the bank statement alongwith Demat statement reflecting the trading of share. We find that the Id. AO during the course of assessment proceedings examined the partner of the assessee firm Shri Hemal J Jhaveri and recorded a statement on oath from him on 15/12/2017. In response to the query raised by the Id. AO as to how the firm had dealt with the purchase and sale of certain scrips, the concerned partner had replied that the firm would trade only on the share market news received and that the investment in shares are made based on the information that the price of those shares are likely to be increased based on reliable news. It was also specifically stated by the partner that all the shares were purchased only through recognized stock exchange of NSE and BSE and all stocks were sold only through NSE and BSE through registered share broker. The decision to sell the shares were taken by the assessee as the prices of the scrips were going down and in order to restrict losses, the assessee had to sell shares. With regard to specific query pointed out to the partner vide Question No.12 about the Investigation carried out by the Kolkata Investigation carried out by the

Kolkata Income Tax department on scrips, broking firm and certain individuals involved in providing accommodation entries in the form of bogus long term capital gains by prices rigging of shares, the concerned partner replied that he does not know anything about it and that purchase and sale of shares had been done through recognized stock exchange. After this reply, the Id. AO did not pose any question to the concerned partner. He directly proceeded to disallow the losses claimed on three scrips i.e. Cressenda Company Ltd., Pearl Electric Ltd., and Pine Animations Ltd. totaling to Rs.4,26,63,518/- and completed the assessment.

3.4. Even before the Id. PCIT, in respect of specific four scrips i.e. MKEL (Matra Kaushal Enterprise Ltd.), Pearl Agriculture Ltd., Rajlaxmi Industries Ltd., and Sunrise Asian Ltd., the assessee furnished the following documents to justify its contention:-

- a) Copies of contract notes for sale and purchase of the above scrips evidencing that all buying & selling transactions in the all the scrips are carried out on a recognized stock exchange through authorized brokers who are duly registered with SEBI & BSE.
- b) Details of Sales & Purchase of the above script with source of payments made for purchase of the above script
- c) Copies of Ledger A/c. of the /Assessee in the books of the share broker wherein entries for purchase and sales of the above scrips are duly reflected.
- d) Copies of Demat transaction statement reflecting trades in the above
- e) Copies of Bank Statements duly marking payment made and received from the brokers for purchase, and sales of the above scrips respectively.

3.5. The Id. PCIT does not find fault with any of the documentary evidences submitted by the assessee. He merely placed reliance on the investigation report of DIT investigation Kolkata and concludes that the loss claimed on these four scrips are bogus on the fact that these four scrips figured in the 84 penny stocks investigated by Kolkata Investigation Wing of Income Tax department. Having said so, the Id. PCIT finally concluded that no enquiries were carried out by the Id. AO with regard to loss claimed on sale of shares of aforesaid scrips. We find that the Id. PCIT had not carried out any analysis of the documentary evidences submitted by the assessee and had not taken any effort to prove how the loss claimed on the aforesaid four scrips is ingenuine and how the assessee has not discharged its onus for claiming deduction on account of said loss. We find that the Id. PCIT nowhere in his order had stated that the documentary evidences furnished by the assessee are wrong. We hold that if there is some grievance for the Id. PCIT that the Id. AO has not carried out any enquiry with regard to certain facts, which in our concerned opinion is not the matter of fact in this case as enquiries were indeed carried out by the Id. AO in the assessment proceedings, when the documentary evidences supporting the said facts are furnished by the assessee before the Id. PCIT, then it becomes incumbent on the part of the Id. PCIT to examine the same and come to a conclusion that order of the Id. AO is erroneous and prejudicial to the interest of the Revenue. In the instant case, there is absolutely no examination carried out by the Id. PCIT to dispute the supporting documents furnished by the assessee. The Id. PCIT merely placed reliance on the investigation report of Kolkata Income Tax department to arrive at his conclusion. Reliance is heavily placed on the decision of the Hon'ble Jurisdictional High Court in the case of Nirav Modi reported in 390 ITR 292 in support of our aforesaid observations.

3.6. The Id. AR argued before us that the entire revision proceedings u/s.263 of the Act has been initiated based on revenue audit objection dated 21/02/2017 and hence, it is a clear case of borrowed satisfaction on the part of the Id. PCIT and hence, the assumption of jurisdiction u/s.263 is to be quashed. In support of this contention, he placed on record the copy of audit objection which are enclosed in pages 8-10 of the paper book. From the perusal of the pages 8-10 of the paper book filed before us we find that the letter written by the Id. AO on 17/05/2019 addressed to the Id. PCIT stating that audit objection has been received vide LAR No.MUM/CA/2018-19/0199 dated 21/02/2017. In the said letter dated 17/05/2019, the Id. AO says that the audit objection was raised by the audit party that losses claimed in respect of the aforesaid four scrips totaling to Rs.2,90,48,662/- should have been disallowed based on the findings of DIT Investigation, Kolkata and that the audit objection is found to be acceptable to him and accordingly, the Id. AO had sought remedial action and necessary direction to be issued by the Id. PCIT to him. Thereafter, the Id. PCIT in pursuance to the said audit objection sought to examine the record and at the time of such examination, the audit objection given by the audit party was part of such records and thereafter proceeded to take remedial action by invoking his revision jurisdiction u/s.263 of the Act. In our considered opinion, no error could be found on the said action and the Id. PCIT as admittedly the audit objection was part of the records of the Id. PCIT at the time of his examination. From the show-cause notice issued by the Id. PCIT and from the perusal of the orders of the Id. PCIT, we find that the Id. PCIT has independently applied his mind for invoking revision jurisdiction u/s.263 of the Act and not merely been driven by the audit objection, Hence, the legal objection raised by the Id. AR in this regard is hereby dismissed.

3.7. However, on the primary facts that no enquiries were carried out is the primary observation of the Id. PCIT with regard to the loss claimed on sale of shares by the assessee. We have already dealt in detail hereinabove that the entire details of profit earned from sale of shares and loss incurred on sale of shares were indeed submitted by the assessee before the Id. AO in the course of assessment proceedings. Moreover, we find that assessee during the year had dealt with 160 scrips and out of that, it had incurred losses in respect of 45 scrips during the year which had already been tabulated hereinabove. Out of the same, the Id. PCIT had identified four scrips and had decided to treat the said loss as bogus loss in the light of findings of the DIT Investigation Kolkata and not based on his independent analysis and undoubtedly the said details were indeed filed before the Id. AO. The Id. AO in examination of the details of all the scrips had chosen to disallow loss only in respect of three scrips. Hence, it could be safely concluded that the Id. AO had indeed taken a possible view on the matter. The Id. PCIT merely because he has got a different view on the same set of facts cannot try to substitute his view in place of the view already taken by the Id. AO by invoking his revision jurisdiction u/s.263 of the Act. Reliance in this regard is placed on the decisions of Hon'ble Jurisdictional High Court in the case of Gabriel India Ltd., reported in 203 ITR 108 and Nirav Modi reported in 390 ITR 292.

3.8. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we have no hesitation in quashing the revision order passed u/s 263 of the Act by the Id. PCIT. Accordingly, the ground raised by the assessee is allowed.

4. In the result, appeal of the assessee is allowed.

Order pronounced on 30/11/2021 by way of proper mentioning in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 30/ 11/2021
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai