

GAHC010122602021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3999/2021

KARAN JAIN
S/O SHRI ROHIT JAIN,
RESIDENT OF 402, 4TH FLOOR , RAHEJA HAVEN, PRANANJALI, 10TH
ROAD, JVPD JUHU, MUMBAI, 400049, MAHARASHTRA

VERSUS

THE UNION OF INDIA AND 3 ORS
THROUGH THE SECRETARY, MINISTRY OF FINANCE, NORTH BLOCK, NEW
DELHI 110001

2:THE PRINCIPAL COMMISSIONER

INCOME TAX GUWAHATI 1
AAYAKAR BHAWAN
G.S ROAD
GUWAHATI 781005
ASSAM

3:THE JOINT COMMISSIONER

INCOME TAX RANGE 1 GUWAHATI
AAYAKAR BHAWAN
G.S ROAD
GUWAHATI 781005
ASSAM

4:ASSISTANT COMMISSIONER

INCOME TAX
CIRLCE 1 GUWAHATI
AAYAKAR BHAWAN

G.S ROAD
GUWAHATI 781005
ASSA

Advocate for the Petitioner : DR. A SARAF

Advocate for the Respondent : SC, INCOME TAX

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 08-05-2024

JUDGMENT & ORDER (CAV)

Heard Dr. A. Saraf, learned Senior Counsel assisted by Mr. N. N. Dutta, learned counsel for the petitioner. Also heard Mr. S. Chetia, learned Standing counsel, Income Tax Department representing respondent Nos. 2 & 3.

2. The challenge made in this writ petition is the Show Cause Notice No. ITBA/REV/F/REV1/2020-2021/1031736689(1) dated 24.03.2021 issued by respondent No. 2 initiating proceedings under Section 263 of the Income Tax Act, 1961 (herein after referred as 'the Act') for the assessment year 2017-18, and subsequent ex-parte Order No. ITBA/REV/F/REV5/2020-21/1031849150(1) dated 28.03.2021 passed by the respondent No. 2 under Section 263 of the Act for the assessment year 2017-2018.

3. The brief facts of the case is that the petitioner has filed its original return under Section 139(1) of the Act for the assessment year 2017-18 on 01.08.2017 declaring a total income of Rs.43,95,310/- (Rupees Forty-three lakh ninety-five

thousand three hundred ten) only. Later, vide Notice No. ITBA/AST/S/143(2)/2018-19/1010911976(1) dated 09.08.2018 under Section 143(2) of the Act, the case of the petitioner was selected for "limited scrutiny" under Computer Assisted Scrutiny Selection ("CASS"). During the course of assessment proceedings, Show Cause Notice dated 29.09.2018 was issued by the then Assessing Officer (i.e. predecessor of respondent No. 4) and the same was duly replied to vide letter dated 19.12.2018 by the petitioner. Thereafter, the then Assessing Officer (i.e. predecessor of respondent No. 4) passed the final assessment under Section 153D/143(3) of the Act vide Assessment Order dated 28.12.2018, accepting the returned income of Rs.43,95,310/- (Rupees Forty-three ninety-five thousand three hundred ten) only.

4. However, later, after completion of Assessment, vide Show Cause Notice No. ITBA/REV/F/REV1/2020-21/1031736689(1) dated 24.03.2021 (received by the petitioner through Email at 20:14 PM) the respondent No. 2 directed the petitioner to show cause as to why order should not be passed under Section 263 of the Act for revision of the Assessment Order dated 28.12.2018 passed by then Assessing Officer (i.e. predecessor of respondent No. 4) for the assessment year 2017-18. The only allegation made in the Show Cause Notice dated 24.03.2021 was that an amount of Rs.5,30,257/- (Rupees Five lakh thirty thousand two hundred fifty-seven) only being the difference between long-term capital gains from sale of shares credit at Rs.36,89,039/-(Rupees Thirty-six lakh eighty-nine thousand thirty-nine) only shown in the computation of income at Rs.31,58,782/- (Rupees Thirty-one lakh fifty-eight thousand seven hundred eighty-two) only had not been brought to tax in the original assessment proceedings under Section 143(3) of the Act. Thereafter, by Show Cause Notice

dated 24.03.2021 the petitioner was directed to furnish reply thereto and appear for hearing on 26.03.2021 at 12 pm, thereby, giving only one day to the petitioner to respond to the said notice. Due to such short span of time, the petitioner could not attend the Show Cause Notice dated 24.03.2021. The respondent No. 2 thereafter vide his *ex-parte* Order No. ITBA/REV/F/REV5/2020-21/1031849150(1) dated 28.03.2021, held the Assessment Order dated 28.12.2018 passed by the respondent No.4 as erroneous and prejudicial to the interests of the revenue.

5. The aforesaid Assessment Order dated 28.12.2018 is challenged before this Court.

6. Dr. A. Saraf, learned Senior Counsel submits that the present writ petition is filed challenging inter-alia, Ex Parte Order dated 28.03.2021 passed by Principal Commissioner of Income Tax, Guwahati -1 under Section 263 of the Income Tax Act, 1961 for the assessment year 2017-2018 alongwith the Show Cause Notice dated 24.03.2021

7. He further submits that the power of suo moto revision under Section 263 of the Act is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exists. Two circumstances must exist to enable the Commissioner to exercise the power of suo moto revision under Section 263 of the Act, i.e (i) the order is erroneous and; (ii) by virtue of the order being erroneous prejudice has been caused to the interest of revenue.

8. He further submits that it is not sufficient to show that the order is erroneous. It must be erroneous and also prejudicial to the interest of the revenue. If an order is erroneous but not prejudicial to the revenue, the Commissioner cannot exercise power under section 263 of the Act. He

accordingly submits that an order can be said to be erroneous or prejudicial to the interest of revenue only in accordance with law.

9. He further submits that there must be material available on record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If the aforesaid two conditions are not present, the Commissioner shall have no authority to initiate proceedings under section 263 of the Act inasmuch as exercise of powers under section 263 for suo moto revision under such circumstances will amount to arbitrary exercise of powers.

10. He further submits that it is well settled that when exercise of statutory power is dependent upon the existence of certain objective facts, the authority before exercising such power must have materials on records to satisfy it in that regard.

11. He thus submits that both the twin conditions need to be satisfied before assumption of valid jurisdiction under Section 263 of the Act..

12. He further submits that the respondent No. 2 in his impugned order dated 28.03.2021 has undisputedly failed to establish as to how the Assessment Order dated 28.12.2018 is prejudicial to the interest of revenue and as such the impugned Show Cause Notice dated 24.03.2021 and order dated 28.03.2021 are absolutely illegal, arbitrary and not tenable in law..

13. Mr. S. Chetia, learned Standing Counsel, Income Tax Department on the other hand submits that the petitioner filed his return of income for the assessment year 2017-18 declaring the total income of Rs.43,95,310/- (Rupees Forty-three lakh ninety-five thousand three hundred ten) only, wherein in the capital account, an amount of Rs. 36,89,039/- (Rupees Thirty-six lakh eighty-

nine thousand thirty-nine) only was shown as long term profit on sale of shares and while in the computation sheet an amount of Rs.31,15,782/- (Rupees Thirty-one lakh fifteen thousand seven hundred eighty-two) only has been claimed as exempt under Section 10(38) leaving a discrepancy of Rs. 5,30,257/- (Rupees Five lakh thirty-thousand two hundred fifty-seven) only which was not offered to tax.

14. He further submits that in view of the said discrepancy, the Assessment Order dated 28.12.2018 passed under Section 153(D)/143(3) of the Act is erroneous insofar as it is prejudicial to the interest of the revenue. He accordingly submits that in view of the fact that the said order is erroneous and prejudicial to the interest of the revenue, the Principal Commissioner of Income Tax correctly invoked the powers conferred under the provision of Section 263 of the Act on 28.03.2024. He further submits that the said order dated 28.12.2018 is erroneous insofar as it is prejudicial to the interest of revenue because the said order was passed without making enquiries or verification which should have been made.

15. In support of his submissions, he relies upon the decision of the Hon'ble Division Bench of this Court in ***Commissioner of Income vs. Jawahar Bhattacharjee*** reported ***in (2012) 80 CCH 0026 GauHC.***

16. I have heard the submissions made at the bar and I have perused the materials available on record.

17. Pertaining, that though the allegation made in the Show Cause Notice dated 24.03.2021 was only with respect to the purported long-term capital gains of Rs.5,30,257/- (Rupees Five lakh thirty thousand two hundred fifty seven) only made by the petitioner from sale of shares, the respondent No. 2, in his ex-parte order dated 28.03.2021 directed the respondent No. 4 to make the assessment afresh after examining all the issues/aspects involved in the case properly and after making detailed enquiry and after affording a reasonable opportunity of being heard to the assessee.

18. The questions that falls for determination is as whether the Assessment Order dated 28.12.2018 can be said to be erroneous and prejudicial to the interest of the revenue for non disclosure of Rs. 5,30,257 as long term profit in the computation sheet though the same is shown in the capital account, warranting exercise of revisional jurisdiction under section 263 of the Act.

19. Pertinent to refer to Section 263 of the Act, which provides for revision of orders prejudicial to revenue. Section 263 is reproduced below for the sake of convenience-

"Revision of orders prejudicial to revenue.

***263.** (1) The [Principal Chief Commissioner or Chief Commissioner or 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."

20. A plain reading of Section 263 of the Act abundantly shows that in order to invoke powers under section 263, the mandatory pre-conditions and procedures laid down have to be followed-

1. *The Principal Commissioner of Income Tax or Chief Commissioner or Principal Commissioner has to call for and examine the records of any proceeding under the Act.*
2. *The said Revisional Authority must consider that any order passed therein by the Assessing officer is erroneous in so far as it is prejudicial to the interests of the revenue.*
3. *The assessee has to be given an opportunity of being heard.*
4. *The Revisional Authority after hearing the assessee may 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.*

21. From the aforesaid provisions of section 263 of the Act, it is clear that the suo moto revision proceedings under section 263 of the Act can be exercised only when the Revisional Authority considers the Assessment Order to be erroneous in so far as the same is prejudicial to the interest of revenue. Thus, merely if the Assessment Order is erroneously done is not sufficient for exercising revisional jurisdictional power unless and until the same is prejudicial to the interest of revenue. Therefore the twin conditions of the order being erroneous and prejudicial to the interest of revenue must exist before power under section 263 of the Act is involved.

22. The term "erroneous" has been defined by the Black's Law Dictionary as "involving error; deviating from the law". The Apex Court in ***Malabar Industrial Co. Ltd. Vs Commissioner of Income Tax, Kerala State, (2000) 2 SCC 718*** held that incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. This Hon'ble Court also had the occasion to examine the term "erroneous" in the context of Section 21 of the Tripura Sales Tax Act, 1976 in ***Rajendra Singh vs. Supt. of Taxes, (1990) 1 GLR 449*** wherein the Division Bench of this Hon'ble Court has been held that;

"We find that the expressions "erroneous", "erroneous assessment", and "erroneous judgment" have been defined in Black's Law Dictionary. According to definitions "Erroneous" means "involving error; deviating from the law". "Erroneous assessment" refers to an assessment that deviates from the law and is therefore invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the assessing officer in fixing the amount of valuation of the property. Similarly 'erroneous judgment' means: 'One rendered according to course and practice of court, but contrary to law, upon mistaken view of law, or upon erroneous application of legal principles' .

23. This Hon'ble Court in ***Rajendra Singh (supra)*** in paragraph 10 further held as under:

"From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an officer acting in accordance with law makes certain assessment and determines the turnover of a dealer, the same cannot be branded as erroneous by the Commissioner simply because according to him the order should have been written more elaborately."

24. Thereafter, another Division Bench of this Hon'ble Court in ***CIT vs Daga Entrade (P) Ltd., (2010) 327 ITR 467*** held that if the order of the Assessing

Officer was passed ignoring relevant materials causing prejudice to the interest of Revenue, suo-moto revisional jurisdiction could be exercised by the CIT even if it could be held that there was no jurisdictional error in the order of the Assessing Officer. This Hon'ble Court in ***Daga Entrade (supra)*** held as under:

"It is also submitted that suo motu revisional power by the Commissioner of Income-tax can only be exercised for assessment orders passed in error of jurisdiction. But on a reading of section 263(1), we do not find that the power of the Commissioner is hedged by any such additional conditions.

25. Since there was conflict in the decisions of the Division Bench of this Hon'ble Court in ***Rajendra Singh (supra)*** and ***Daga Entrade (supra)***, the matter was referred to a Larger Bench and the Full Bench of this Hon'ble Court in ***Commissioner of Income Tax Vs Jawahar Bhattacharjee, (2012) 2 GLR 495*** which held that the decision of the Division Bench of this Hon'ble Court in ***Daga Entrade (supra)*** is not in conflict with the earlier decision of this Hon'ble Court in ***Rajendra Singh (supra)***. This Hon'ble Court in ***Jawahar Bhattacharjee (Supra)*** held that jurisdiction under Section 263 of the Act could be exercised whenever it was found that Assessment Order was erroneous and prejudicial to the interest of revenue and cases of assessment order passed on wrong assumption of facts, on incorrect application of law, without due application of mind or without following principles of natural justice were not beyond the scope of section 263 of the Act. This Hon'ble Court in ***Jawahar Bhattacharjee (Supra)*** in paragraph 21, 22 and 23 held as under:

"21. Having referred to the earlier views of this court leading to the reference to this Bench, the, stage is now set to analyze the issue before this Bench.

22. We have already referred to judgments of this court in Rajendra Singh and

two Single Bench judgments following the said judgment in Bongaigaon Refinery and Petrochemicals Ltd. and Shyam Sunder Agarwal as also the second Division Bench judgment in Daga Entrade (P.) Ltd. No doubt, in Rajendra Singh, an observation was made that erroneous assessment referred to the defect which is jurisdictional in nature, as against substitution of one view for the other, merely on the ground that a different view was possible. If read as a whole, the judgment does not exclude error in assessment order, by ignoring relevant material. Not holding such inquiry as is normal and not applying mind to relevant material would certainly be 'erroneous' assessment warranting exercise of revisional jurisdiction. Judgment has to be read as a whole and an observation during the course of reasoning in the judgment should not be divorced from the context in which it was used. The judgment is neither to be interpreted as an Act of Parliament nor as a holy book. If this principle is kept in mind, we do not find any conflict in the view taken in Rajendra Singh and Daga Entrade (P.) Ltd. Disagreement in Daga Entrade (P.) Ltd. is only to the interpretation which limits the ratio of the judgment by relying only one sentence in isolation divorced from the entire judgment an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being 'erroneous' non-application of mind and omission to follow natural justice is in same category.

23. Accordingly, we hold that Daga Entrade (P.) Ltd. lays down correct law and the same is not in conflict with the earlier order of this court in Rajendra Singh. Jurisdiction under section 263 can be exercised whenever it is found that the order of assessment was erroneous and prejudicial to the interest of the Revenue. Cases of assessment order passed on wrong assumption of facts, on incorrect application of law, without due application of mind or without following principles of natural justice are not beyond the scope of section 263 of the Act."

26. In ***Commissioner of Income Tax vs. Amitabh Bachchan (2016) 11 SCC 748*** the Apex Court held that in the context of section 263 of the Act what has to be seen is that a satisfaction that an order passed by the authority under the Act is erroneous and prejudicial to the interest of the revenue is the basic pre condition for exercise of jurisdiction under section 263 of the Act. The Apex

Court held that both pre conditions have to be conjointly present and once such satisfaction is reached, jurisdiction to exercise the power would be available subject to observance of the principles of natural justice. The Apex Court in paragraph 10 of the said judgment observed as under:-

"Reverting to the specific provisions of Section 263 of the Act what has to be seen is that a satisfaction that an order passed by the authority under the Act is erroneous and prejudicial to the interest of the Revenue is the basic precondition for exercise of jurisdiction under section 263 of the Act. Both are twin conditions that have to be conjointly present. Once such satisfaction is reached, jurisdiction to exercise the power would be available subject to observance of the principles of natural justice which is implicit in the requirement cast by the section to give the assessee an opportunity of being heard."

27. The Bombay High Court in ***Commissioner of Income Tax vs Gabriel India Ltd (1993) SCC Online Bom 526*** held that the power under section 263 of the Act can be exercised only on fulfilment of the requirements laid down in sub-section (1) of the said Act. The High Court held that the consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the revenue must be based on materials on the record of the proceedings called for by him. If there are no materials on the basis of which it can be said that the Commissioner is acting in a reasonable manner could have come to such a conclusion. The very initiation of proceedings by him will be illegal and without jurisdiction. It was further held that the Commissioner cannot initiate proceedings with a view to start fishing and roving enquiries in matters or orders which are already concluded.

In the aforesaid case, the Bombay High Court held as under:

"From a reading of sub-section (1) of section 263, it is clear that the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the Income-tax Officer is "erroneous in so far as it is prejudicial to the interests of the Revenue". It is not an arbitrary or unchartered power. It can be exercised only on fulfilment of the requirements laid down in sub-section (1). The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity."

28. The Bombay High Court further held as under-

"The power of suo motu revision under sub-section (1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision under this subsection, viz., (i) the order is erroneous; (ii) by virtue of the order being erroneous prejudice has been caused to the interests of the Revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous. We find that the expressions "erroneous", "erroneous assessment" and "erroneous judgment"

have been defined in Black's Law Dictionary. According to the definition, "erroneous" means "involving error; deviating from the law", "Erroneous assessment" refers to an assessment that deviates from the law and is, therefore, invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, "erroneous judgment" means "one rendered according to course and practice of court, but contrary to law, upon mistaken view of law, or upon erroneous application of legal principles".

29. In paragraph 13 of the said judgment, the Bombay High Court held as under-

"If the action of the authority is challenged before the court it would be open to the courts to examine whether the relevant objective factors were available from the records called for and examined by such authority."

The Court further held that revisional authority cannot be allowed to initiate proceedings for revision in every case and start re-examination and fresh enquiries in matters which have already been concluded under the law. The power under Section 263 is a quasi-judicial power hedged with limitation and has to be exercised subject to the same and within its scope and ambit.

30. Section 263 of the Act would not be invoked merely to correct a mistake or error committed by the Assessing Officer unless it has caused prejudice to the interests of the revenue. If an order is based on incorrect assumption of facts or on incorrect application of law or without applying the principles of natural justice and without application of mind, it would be treated as erroneous. If due to an erroneous order of the Assessing Officer the Revenue is losing tax lawfully

payable by a person, it would be certainly prejudicial to the interests of the Revenue. Reference is made to the decision of Delhi High Court in ***CIT v. Leisure Wear Exports Ltd., (2012) 341 ITR 166 (Del).***

31. In the present case, the suo moto revisional proceeding was initiated on the basis of a proposal under section 263 of the Act dated 22.03.2021 submitted by the Assistant Commissioner of Income Tax which was duly forwarded by the Joint Commissioner of Income Tax. On the basis of the said proposal, the notice of hearing under section 263 of the Act dated 28.12.2018 was issued by the Revisional Authority. This will be evident from paragraph 3.0 of the order dated 28.12.2018 passed by the learned Principal Commissioner of Income Tax under section 263 of the Act, which reads as under-

"3.0. In view thereof a proposal under section 263 of the Income Tax Act 1961, dated 22.03.2021 was received from the ACIT, Circle 1, Guwahati duly forwarded by the JCIT, Range-1, Guwahati. In ORDER TO EXAMINE THE MATTER a notice for hearing was issued vide this office DIN & notice No. ITBA/REV/F/REV1/2020-21/1031736689(1) dated 24.03.2021 filing the case for hearing on 26.03.2021 at 12:00 PM."

32. From the aforesaid, it is clear that suo moto revisional proceeding was initiated simply on the basis of a proposal under section 263 of the Act and there was no independent application of mind by the Principal Commissioner of Income Tax. From a plain reading of section 263 of the Act, it is clear that proceeding under section 263 of the Act can be initiated only when the Commissioner on the basis of materials available on record called for by him,

comes to a conclusion that the order passed by the assessing authority is erroneous in so far as the same is prejudicial to the interest of Revenue. Thus, the order has to be firstly erroneous and by virtue of the order being erroneous prejudice has been caused to the interests of the revenue. Both the conditions has to be satisfied. The satisfaction must be on the material available on the record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present and that if the action of the authority is challenged before the Court it would be open to the Courts to examine whether the relevant objective factors were available from records called for and examined by such authority.

33. In ***Baijnath Biswanath vs. State of Assam (1998) 2 GLR 474*** this Hon'ble Court held that the suo moto power of revision conferred on the Commissioner cannot be exercised mechanically or at the behest of some other authority other than on the own discretion of the assigned Officer. The Commissioner cannot exercise his discretion on the dictation of some other authority. In the said judgment it was held as under-

"As indicated earlier, the suo moto power of revision conferred on the Commissioner is of wide amplitude. He can revise an assessment when the order of assessment passed is not in accordance with law in consequences of which the State is deprived of its lawful revenue. The power reposed on the Commissioner, no doubt, is a power of judicial nature and therefore such power is to be exercised lawfully and with due application of mind. The power cannot be exercised mechanically or at the behest of some other authority other than on the own discretion of the assigned officer. The Commissioner, therefore, is not to exercise his discretion on the dictation of some other authority."

34. It was further held that the Commissioner is authorized to take any decision as he deems fit and is free to draw any inference from the facts available. The Commissioner, however, is to act on factual material and not on conjectures, assumptions and presumptions, else the decision will suffer from the vice of perversity.

35. In the present case the learned Principal Commissioner of Income Tax has initiated the proceedings simply on the basis of the proposal of the subordinate authority and has not applied his mind after perusal of the records called for by him and thereby the very initiation of the proceeding in the instant case is illegal, without jurisdiction and not tenable in law. In the affidavit-in-opposition submitted by the respondents, paragraph 8 of the affidavit-in-opposition filed by the respondent No. 2 the deponent therein has stated as hereunder:

"During the assessment proceedings non enquiry or verification having been completed at to the amount of Rs.36,89,039/- shown in the capital account as Long-term profit on sale of shares and while in the computation sheet an amount of Rs.31, 15,782/- having been claimed as exempt under section 10(38) leaving a discrepancy of Rs. 5,30,257/-"

36. From the aforesaid it is very clear that the long-term capital gains are admittedly exempted from Income Tax and therefore, the non-disclosure of Rs.5,30,257/- (Rupees Five lakh thirty thousand two hundred fifty-seven) while computing the long-term capital gains cannot result in causing prejudice to the department. Pertinent, that the net long-term capital gain was shown in the

return after deduction of the long-term capital loss and both the long-term capital gains and long-term capital loss were duly shown in the return. In any case even if the said amount of Rs.5,30,257/- (Rupees Five lakh thirty thousand two hundred fifty-seven) only is further considered to be as long-term capital gain there would have been no further Income Tax Liability and thereby no prejudice would have been caused to the department and thereby the pre-conditions for the exercise of powers under Section 263 of the Act were wholly not fulfilled in view of the fact that the said amount of Rs.5,30,257/ (Rupees Five lakh thirty thousand two hundred fifty-seven) being long-term capital gain is exempted. Therefore, by no stretch of imagination, non-disclosure of the said amount in the computation sheet can be said to be prejudicial to the interest of revenue and no loss of revenue. Pertinent that, upon a pointed query being put to the learned counsel appearing on behalf of the Income Tax Department, as how non-disclosure of the aforesaid amount, which is, admittedly, long-term capital gain has caused prejudice to the revenue, he was unable to show that the same has caused prejudice to the revenue. The submission of the the learned counsel, appearing on behalf of the Income Tax Department that the order is erroneous in so far as it is prejudicial to the interest of revenue in as much as the order was passed without making enquiries or verification which should have been made is totally fallacious. Thus, in the absence of any prejudice being caused to the revenue, wherein, the impugned proceedings initiated under section 263 of the said act is wholly without jurisdiction, illegal and erroneous. Therefore, the same is bad-in-law. Hence the impugned ex-parte Order dated 28.03.2021 is unsustainable in law.

37. Resultantly, the Show Cause Notice No. ITBA/REV/F/REV1/2020-2021/1031736689(1) dated 24.03.2021 issued by respondent No. 2 initiating

proceedings under Section 263 of the Act for the assessment year 2017-18, and subsequent ex-parte Order No.ITBA/REV/F/REV5/2020-21/1031849150(1) dated 28.03.2021 passed by the respondent No. 2 under Section 263 of the Act for the assessment year 2017-2018 is set aside and quashed. As such the writ petition stands allowed.

Disposed of.

JUDGE

Comparing Assistant