

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 ACHINTYA MALLA BUJOR BARUA**

**ORDER**

**19.08.2021**

Heard Dr. A Saraf, learned senior counsel for the petitioner. Also heard Mr. S Sarma, learned standing counsel for the Income Tax Department.

2. Issue notice, returnable by six weeks.
3. Extra copies of the writ petition be served on the learned counsel for the respondents within three days.
4. The petitioner was served with the notice dated 24.03.2021 for hearing in respect of a revision proceeding under Section 263 of the Income Tax Act 1961 (for short, the IT Act). In the notice dated 24.03.2021 at Clause 3 it was stated that while the assessment was completed by allowing an amount of Rs.5,30,257/- being the difference between LTCG from sale of shares credited at Rs.36,89,039/- and such LTCG shown in computation of income at Rs.31,58,782/- which was not brought to tax. Accordingly, in clause 4 of the

notice dated 24.03.2021, a satisfaction was arrived at that the assessment made 28.12.2018 was erroneous and prejudicial to the interest of revenue.

5. Dr. A Saraf, learned senior counsel for the petitioner takes the Court to the return submitted by the petitioner. The relevant portion of which is available at page 34 and 35 of the writ petition regarding the statement of long term capital gain under Section 10(38) of the IT Act and in such statement, it is shown that in respect of certain shares there was a loss amounting to Rs.5,30,257/-. According to Dr. Saraf, learned senior counsel once the amount of Rs.5,30,257/- being the loss is taken out from the figure of Rs.36,89,039/-, the balance would be Rs.31,58,782/-. According to the learned senior counsel the aforesaid amount referred in clause 3 of the notice dated 24.03.2021 was clearly stated in the income tax return submitted by the petitioner assessee.

6. In the aforesaid background, Dr. Saraf also refers to the order dated 28.03.2021 under Section 263 of the IT Act wherein in clause 5.0 a conclusion was arrived at that since there was no explanation from the assessee as regards the aforesaid discrepancies, the Principal Commissioner of Income Tax provided that the matter shall be decided on the basis of the materials available on record and came to the conclusion that there is merit in the claim that the Assessing Officer had failed to examine and consider the fact that the assessee had omitted to disclose the long term capital gains amounting to Rs.5,30,257/-, while computing his income. By referring to the returns submitted by the assessee available at page 34 and 35 respectively, a submission is made that the aforesaid conclusion is arrived at by the Principal Commissioner that there is merit in the claim that the Assessing Officer failed to examine and consider that

the assessee had omitted to disclose the long term capital gains amounting to Rs.5,30,257/-. Accordingly a submission is made that the conclusion of there being an erroneous assessment is absent.

7. Dr. Saraf, learned senior counsel also raises the submission that the aforesaid items are covered under the provisions of Section 10(38) of the IT Act wherein itself there is a provision that the aforesaid items are exempted from payment of income tax and even if there is any discrepancy in the return submitted by the assessee, the same would not be prejudicial to the interest of revenue.

8. In view of above aspects, we find that a prima facie case has been made out by the petitioner. Considering the balance of convenience and irreparable loss that the petitioner may suffer, further process pursuant to the order dated 24.03.2021 under Section 263 of the IT Act shall remain stayed until further order(s).

9. List after six weeks. In the meantime, the respondents may file their affidavit explaining the submissions made by the learned senior counsel for the petitioner.

**JUDGE**

**Comparing Assistant**