

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER  
& SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER**

I.T.A. No.1025/Ahd/2024  
(Assessment Year: 2016-17)

Suresh Kantilal Thakkar, Chitrakut Society, Thara, TA: Kanrej Banaskantha, Gujarat-385555	Vs.	Principal Commissioner of Income Tax, Ahmedabad-3
[PAN No.AGXPT2486N]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Bhavik Nagori, A.R.
<b>Respondent by:</b>	Shri Kamlesh Makwana, CIT DR
<b>Date of Hearing</b>	06.08.2024
<b>Date of Pronouncement</b>	07.08.2024

**ORDER**

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

The present appeal has been filed by the Assessee against the order passed by the Ld. Principal Commissioner of Income Tax-3, (in short “Ld. PCIT”), Ahmedabad under Section 263 of the Act, vide order dated 22.03.2024, passed for Assessment Year 2016-17.

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

- “1. The Ld. Principal Commissioner has erred in invoking jurisdiction u/s 263 without showing how the alleged lack of inquiry by AO has rendered the order prejudicial to revenue.
2. The Ld. Principal Commissioner has erred in directing AO to disallow the capital loss & make the addition u/s 69A as the final decision with regard to the same is to be done by Ld. AO while passing the order based on inquiry made by him while implementing the order passed Ld. PCIT.
3. The Ld. Principal Commissioner has erred in directing the invocation of 69A as the assessee is not found to be owner of money & source of the same has remained unexplained.
4. The Ld. PCIT out to have been appreciated that the investment in shares was in F.Y. 2013-14.

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5. *The Ld. PCIT has erred in hurriedly passing the order by giving short notice of hearing notice at the last movement which is against the principles of natural justice.*

6. *The appellant craves leave to add, alter or amend all the above grounds of appeals at or during the course of hearing.”*

3. The brief facts of the case are that the assessee is an individual and has filed return of income for A.Y. 2016-17 declaring total income at Rs. 2,87,000/-. The case of the assessee was reopened under Section 147 of the Act on information received from DDIT (Inv.) and the assessment under Section 147 of the Act was finalized on 29.03.2022, by accepting the returned income. Thereafter, the PCIT, Ahmedabad-3 (hereinafter referred to as “PCIT”) observed that the assessee has undertaken transaction of trading in shares of M/s. Excel Castronics Ltd., (ECL) during the impugned assessment year, which was found to be a company stock. The modus operandi of the whole business is to facilitate introduction of unaccounted income in the form of exempt capital gain or short term capital loss, over the years. The assessee was found to be one of the beneficiaries of such transaction by trading in the scrip of ECL. The PCIT observed that on perusal of the assessment records, it was observed that the assessee itself has accepted to have undertaken transaction in the shares of ECL and claimed loss of Rs. 3,75,14,478/- and had set off these loses against capital gain of Rs. 18,77,191/-. On perusal of the assessment records, PCIT observed that the Assessing Officer failed to analyze the documents to verify the genuineness of the transaction. The Assessing Officer completely failed to take into cognizance the fact of the assessee was involved in trading in penny / bogus stocks as per the information basis which case was reopened for scrutiny. Accordingly, the PCIT after taking the submissions of the assessee on record set-aside the assessment order as being

erroneous and prejudicial to the interest of the Revenue with the following observations:

*“13. In view of the detailed discussions above and the legal position laid down by various Courts, it is sufficient to draw a conclusion that the Order passed by the AO is erroneous and prejudicial to the interest of revenue. In this case, the assessee had claimed STCL of Rs. 3,75,14,478/- from sale of shares of ECL. **As discussed in foregoing paragraphs, the trading in the shares of ECL was rigged for the purpose of generating bogus LTCG and STCL for various beneficiaries and assessee is one of them.** The genuineness of such transactions was neither explained by the assessee during the assessment proceedings nor during these proceedings and therefore, such amount is liable to be taxed u/s 69A r.w.s. 115BBE of the Act. Assessee failed to comply with statutory notices and failed submit proper documents and evidences in order to show the genuineness of such transactions which therefore, remain unexplained.”*

4. The assessee is in appeal before us against the aforesaid order passed by Ld. PCIT setting-aside the assessment order as being erroneous and prejudicial to the interest of the Revenue. The first argument of the Counsel for the assessee is that the 263 proceedings have been initiated on an incorrect premise that the order passed is prejudicial to the interest of the Revenue. The Counsel for the assessee submitted that in order to initiate proceedings under Section 263 of the Act, one of the essential prerequisite condition is that some Revenue loss should have been caused of the Revenue. However, in this case, no loss has been caused to the Revenue so as to initiate proceedings under Section 263 of the Act. The Counsel for the assessee drew our attention to the Pages 136 - 137 of the 263 notice, wherein the PCIT initiated 263 proceedings on the ground that the assessee has claimed the bogus Long Term Capital Loss (LTCL) of Rs. 3,75,14,478/- and set off this LTCL against Long Term Capital Gains (LTCG) of Rs. 18,77,191/- from the sale of shares of Saya. However, the Counsel for the assessee drew our attention to return of income filed by the assessee and submitted that during the impugned year under consideration, the assessee had only earned Short Term Capital Gains (STCG) of Rs. 18,582/- on sale of shares of stock called Anaar industries on which due taxes have been

paid by the assessee @ 15%. Further, so far as set off of Long Term Capital Loss from sale of shares of ECL amounting to Rs. 3.75 crores is concerned, neither has such Long Term Capital Losses been carried forward by the assessee and neither have these losses being set off by the assessee against any other Long Term Capital Gains for the impugned assessment year. The Counsel for the assessee drew our attention to Page 140 of the Paper Book (Details of Returns filed by the assessee) and submitted that his was the last year when the return of income had been filed by the assessee and thereafter, neither did the assessee file any return of income, nor was the Long Term Capital Losses amounting to Rs. 3.75 crores carried forward and set off by the assessee against LTCG, in any of the future years.

5. The second contention of the assessee was that the proceedings under Section 263 of the Act was initiated on an incorrect statement of facts wherein the PCIT has alleged that the assessee has set off bogus LTCL of Rs. 3.75 crores against LTCG of Rs. 18.77 lakhs during the impugned year under consideration. The Counsel for the assessee submitted that from perusal of the Profit & Loss Account for the impugned year under consideration, it is evident that there was no set off of LTCL of Rs. 3.75 crores against any LTCG amounting to Rs. 18.77 lakhs from sale of shares of Saya, and it is evident from the return of income, that no such set off of LTCL had been claimed by the assessee in the return of income. Therefore, the initiation of 263 proceedings, being on an incorrect presumption of facts, is liable to be set-aside.

6. The third contention of the Counsel for the assessee was that during the impugned year under consideration, the PCIT erred in stating that the Assessing Officer failed to carry out the necessary verification during the

course of 147 proceedings. The Counsel for the assessee invited our attention to notices dated 30.03.2021, 27.07.2021 & 11.02.2022 and response filed by assessee thereto, in which the assessee has given a specific explanation vide reply dated 22.03.2022 wherein the assessee filed details regarding LTCL on sale of shares of ECL and it had been further submitted that this LTCL had neither been adjusted by the assessee against any other head of income nor was such LTCL carried forward. Therefore, in the instant case, the Assessing Officer had made due enquiries during the course of assessment proceedings on this issue and thereafter, after taking the assessee's submission on record, Assessing Officer had made no additions with respect to this issue. Hence, it is not a case where there was any lack of enquiries by the Assessing Officer and the Assessing Officer, after considering the submissions filed by the assessee, had taken a legally correct view.

7. In response, the Ld. D.R. relied on the observations made by the Ld. PCIT in the 263 order. The Ld. D.R. submitted that the assessee is engaged in trading in a penny stock by the name of ECL. The operation of this stock was suspended on the stock exchange due to certain non-compliance and subsequently, the stock was also delisted from the stock exchange. Therefore, since the assessee has been actively engaged in purchase and sale of penny stocks and hence the order of PCIT is liable to be upheld for this reason as well.

8. We have heard the rival contentions and perused the material on record. On going through the facts of the instant case at the outset, we observe that the 263 proceedings have apparently been initiated by Ld. PCIT on a incorrect presumption of fact that bogus LTCL on sale of shares of ECL amounting to Rs. 1,75,14,478/- have been set off against LTCG of Rs. 18,77,191/- from sale

of shares of “Saya”. Further, from perusal of facts placed on record before us, and from the perusal of the copy of return of income submitted before us by the assessee during the impugned year under consideration it is observed that the assessee has not set off these LTCL amounting to Rs. 3.75 crores against LTCG of Rs. 18.77 lakhs from sale of shares of Saya all alleged by PCIT. However, on going through the records of the case, there are certain noteworthy aspects which have come before us and require necessary consideration. On perusal of the return of income, we observe that the assessee has declared STCG amounting to Rs. 18,852/-. On being questioned, the Counsel for the assessee submitted that such STCG have been made on the sale of shares of Anaar Industries. Further, the Counsel for the assessee also submitted / admitted that the assessee had made Long Term Capital Losses on sale of shares of ECL amounting to Rs. 3.75 crores approximately. However, on perusal of return of income filed by the assessee such Long Term Capital Loss on sale of shares of ECL has not been declared by the assessee. Further, from the facts placed on record, we are of the considered view that ostensibly, ECL is a penny stock company (which was also delisted from stock exchange) and the shares of such company had also been delisted on the stock exchange subsequently. Further, another notable aspect which we have observed is that the assessee had also sold shares of Saya on which LTCG of Rs. 18,77,191/- had been gained by the assessee. However, in the return of income, such LTCG has also not been declared by the assessee. Therefore, evidently, from the facts placed on record we observe that the assessee apparently has dealt in shares relating to penny stock companies and further, the assessee has filed the correct return of income in which the assessee has neither declared Long Term Capital Losses of Rs. 3,75,14,478/- on sale of shares of ECL and neither has assessee declared LTCG on sale of shares of Saya. Therefore, clearly the

assessee has not filed its return of income correctly, wherein both Long Term Capital Losses as well as Long Term Capital Gains on sale of shares with respect to ECL and Saya have not been declared by the assessee in its return of income. It is not clear as to why such sale of shares these companies for substantial sums of money had not been reflected by the assessee in its return of income. There seems to have no justifiable reason as to why the assessee had not declared details regarding profit / loss on sale of shares of Saya and ECL respectively in the returns of income filed by the assessee for the impugned assessment year under consideration before us. From the facts placed on record it is not coming out clearly whether the assessee had effectively set off the Long Term Capital Losses on sale of shares of ECL against Long Term Capital Gains on sale of shares of Saya and therefore, did not declare the details of sale of shares of these two alleged penny stocks in its return of income. Therefore, on perusal of the case records, evidently, the assessee has not filed the correct return of income and has only declared part details regarding sale of shares in its return of income and hence the return filed by the assessee for the impugned year under consideration lacks for certain apparent inaccuracies. However, the Assessing Officer, in our considered view, has failed to inquire into this essential aspects during the course of assessment proceedings, which could be for the simple reason that both the details regarding sale of shares of Saya (on which the assessee had earned LTCG amount to Rs. 18,77,191/-) and details of sale of ECL (on which the assessee had earned LTCL amounting to Rs. 3,75,14,478/-) had not been declared by the assessee in its return of income and therefore, the Assessing Officer failed to analyze whether such LTCG on sale of shares of Saya had been set off against LTCG on sale of shares of ECL. At the same time, we also concur with the argument of Ld. Counsel for the assessee that Ld. PCIT has

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erred in giving a specific direction to the Ld. AO to assess the income under Section 69A r.w.s. 115BBe of the Act, since then the A.O. would be bound to assess income in a manner, as directed by the Ld. PCIT, without independent application of mind.

9. Accordingly, in view of the facts highlighted above, we are of the considered view that in the assessment order the Assessing Officer has failed to enquire into these important aspects regarding treatment of LTCL on sale of shares of ECL and LTCG on sale of shares of Saya which were both not reflecting in the return of income, and therefore, the assessment order passed by the Assessing Officer is erroneous in so far as prejudicial to the interest of Revenue. The Assessing Officer is, therefore, directed to carry out a de-novo assessment in accordance with law, after giving due opportunity of hearing to the assessee.

10. In the result, the appeal of the assessee is dismissed and the Assessing Officer is directed to conduct a fresh enquiry in light of the facts, as observed by us in the preceding paragraphs.

**This Order pronounced in Open Court on**

**07/08/2024**

**Sd/-**  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 07/08/2024  
TANMAY, Sr. PS

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**TRUE COPY**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad