

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

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.839/Ahd/2024  
(Assessment Year: 2013-14)

Nrupal Nareshchandra Raja, 15, Sandipani Bunglows, Below Shilaj Bridger, Thaltej, Ahmedabad-380059	Vs.	Principal Commissioner of Income Tax, Ahmedabad-1,
[PAN No. AJZPR2609A]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Sanjay R Shah, A.R.
<b>Respondent by:</b>	Shri Arvind Kumar, CIT DR

<b>Date of Hearing</b>	22.08.2024
<b>Date of Pronouncement</b>	29.08.2024

**ORDER**

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Principal Commissioner of Income Tax, (in short “Ld. PCIT”), Ahmedabad-1 vide order dated 29.02.2024 for Assessment Year 2013-14.

2. The Assessee has taken the following grounds of appeal:-

“1. The learned Principal Commissioner of Income Tax, Ahmedabad-1 (PCIT) erred in law and on facts in assuming jurisdiction u/s.263 and in passing order u/s.263 setting aside the assessment order passed by the learned Assessing Officer u/s.147 r.w.s. 144B of the Act. It is submitted that it be so held now and the order passed by the learned PCIT u/s.263 be quashed.

2(i). The learned PCIT grossly erred in law and on facts in setting aside the order u/s.147 r.w.s. 144B passed by learned Assessing Officer inspite of the fact that full inquiry was made by the learned Assessing Officer during the course of reassessment proceeding, and thereafter, the assessment order was passed. It is submitted that what the learned Assessing Officer had done in the reassessment order was taking a plausible view of the matter, and therefore, the said reassessment order was neither erroneous nor prejudicial to the interest of revenue, and hence, the order passed by the learned PCIT u/s.263 is bad in law and liable to be quashed. It be so held now.

(ii) *The learned PCIT erred in law and on facts in applying Explanation 2 inserted w.e.f. 01.06.2015 in section 263 to the year under consideration i.e. Asst. Year 2013-14.*

3. *The learned PCIT grossly erred in observing in para 7.1 of his order that the Assessing Officer has failed to make addition in accordance with the provisions of the Act, and thus, came to the conclusion by himself that the matter in dispute requires addition to be made to the income of the Appellant without the learned PCIT himself carrying out any verification in respect of the written submissions as well as supporting documents and evidences filed before him. It is submitted that it be so held now and the order passed by the learned PCIT u/s.263 be quashed on this ground also.*

4. *Even on merits of the case, the learned PCIT erred in law and on facts in relying solely upon the statement of searched assessee viz. Shri Sanjay Shah and Shri Jignesh Shah, who were alleged to be involved in providing accommodation entries; whereas in the case of the Appellant, the Appellant had dealt in listed equity share of Dhvanil Chemicals Ltd and offered whatever short term capital gain he had earned during the year under consideration in his return of income, and thus, there was neither any income escaping assessment nor the order passed by the learned Assessing Officer has caused prejudice to the interest of the revenue. It is submitted that in the facts and circumstances of the case, it be so held that the order passed by the learned Assessing Officer was neither erroneous nor prejudicial to the interest of the Department, and hence, the order passed by the learned PCIT u/s.263 be quashed.*

*Your Appellant reserves the right to add, alter, amend and / or withdraw any of the above Grounds of Appeal.”*

3. The brief facts of the case are that return of income for the Assessment Year (AY) 2013-14 was filed on 31st July 2013, declaring a total income of ₹2,07,760/-. Assessment order under Section 147 read with Section 144B of the Income-tax Act, 1961, was passed on 28th March 2022, assessing the income at ₹2,07,760/-, as declared in the return of income filed by the assessee. The Assessing Officer (A.O.) accepted the income declared in the return without any additions or adjustments. The Principal CIT, on review of the records, observed that the assessee had obtained accommodation entries amounting to ₹50,74,375/- from an entry operator namely Jignesh Shah and his associates. Principal CIT observed that the case of the assessee was reopened u/s 147 of the Act based on this information only. However, during the re-assessment proceedings u/s 147 of the Act, the A.O. accepted the income declared in the return of income with the following remarks: *"With the details available on record, considering the facts and circumstances of the case and*

*keeping in view the fast approaching time-barring date, the assessment proceedings in this case are completed by accepting the returned income."*

Therefore, Principal CIT noted that the A.O. accepted the income solely due to the impending time-barring date and did not thoroughly consider the issue of accommodation entries. This omission rendered the A.O.'s order erroneous and prejudicial to the interests of the Revenue. Consequently, a notice under Section 263 of the Income-tax Act was issued to the assessee. In response, the contention of the assessee was that the A.O. had passed the assessment order after considering the objections raised by the assessee and requested that the current proceedings under Section 263 of the Act be dropped. Principal CIT noted that upon perusal of available data, it is seen that during the search at the premises of Shri Sanjay Shah and Jignesh Shah, various incriminating documents and soft data were found and seized. Among this data, it was seen that the assessee had engaged in trading of scrips managed by the Jignesh Shah Group for the purpose of accommodation entries, specifically trading in the scrip named Dhvanil Chemicals Ltd. During post-search proceedings, Shri Sanjay Shah, an entry operator associated with Jignesh Shah and Sanjay Shah Group, admitted to providing accommodation entries and other services. The investigation confirmed that the total value of accommodation entries related to the assessee amounted to ₹50,74,375/-. In light of these findings, Principal CIT concluded that the A.O. erred in not making an addition of ₹50,74,375/- on account of accommodation entries and that the A.O. failed in conducting proper examination of the issues, leading to an error in the assessment order that resulted in a loss of Revenue. Consequently, the order passed by the A.O. was deemed erroneous and prejudicial to the interests of the revenue and Principal CIT directed a fresh assessment on the assessee in light of these facts.

4. The assessee is in appeal before us against the aforesaid order passed by principal CIT. The contention of the counsel for the assessee before us are three-fold: firstly, the assessing officer, during the course of assessment proceedings had duly enquired into this aspect and therefore, there is no lack of enquiry on part of the assessing officer, during the course of assessment proceedings. This is also evident from the fact that the case of the assessee was reopened under section 147 of the Act, only on the basis of information that the assessee had obtained accommodation entries from the entry operator Jignesh Shah and group. Therefore, it is evident that since the very basis of reopening the case of the assessee under section 147 of the Act was examination of accommodation entries obtained by the assessee from Jignesh Shah and group, this issue was examined during the course of reassessment proceedings. Secondly, the counsel for the assessee submitted that during the course of reassessment proceedings, the assessee had specifically submitted that during the impugned year under consideration, the assessee had not earned any exempt Long term capital gains, but in fact the assessee had earned the short-term capital gains amounting to ₹ 2,01,125/-, on which taxes have been paid by the assessee. In this connection the counsel for the assessee drew our attention to page 30 of the paper book, reply dated February 22, 2022 submitted to the assessing officer, in which it was specifically submitted that no long-term capital gains was earned by the assessee during the impugned year under consideration. Accordingly, the counsel for the assessee submitted that there is no loss to the Revenue, since during the year under consideration no exempt Long term capital gains was earned by the assessee in the first instance. Thirdly, the counsel for the assessee submitted that there is no specific finding in the order of Principal CIT as to how the assessing officer has passed an erroneous order. The only reason why the assessment order passed under

section 147 of the Act was sought to be revised was for the reason that since the case was getting time-barred, therefore, the assessing officer did not get adequate opportunity of examining the issue. The counsel for the assessee submitted that it is a well settled law that the principal CIT cannot resort to proceedings under section 263 of the Act only to extend the time of completion of assessment under section 143(3) of the Act.

5. In response, Ld. DR placed reliance on the observations made by the principal CIT in the 263 order.

6. We have heard the rival contentions and perused the material on record. First , we shall deal with a legal contention put forth by the counsel for the assessee that principal CIT is precluded from resorting to proceedings under section 263 of the Act, only with a view to extend the timelines for completing the assessment under section 143(3) of the Act. In the case of **Sir Ratan Tata Trust v. DCIT 122 taxmann.com 273 (Mumbai - Trib.)**, the ITAT held that if receipt of some inputs at last minute from a third party cannot result in an extension of time for completion of assessment under section 143(3) directly, it cannot be done by way of invoking Section 263 either. The Tribunal made the following observations while passing the order on this aspect:

*47. As we have seen above, one of the allegations that the learned Commissioner has made is against the Assessing Officer's "not using the material available with him to take the matter to the logical conclusion," and it is also observed by the learned Commissioner that "this note itself makes the order of Assessing Officer on this issue erroneous and prejudicial to the interests of the assessee." What is being done now is to send the matter back to the Assessing Officer for examination de novo so as to inquire into the allegations so made by Cyrus Mistry. **What this approach overlooks is that it is only elementary that what can not be done directly cannot be done indirectly either. If receipt of some inputs at the last minute from a third party cannot result in an extension of time for completion of assessment under section 143(3) directly, it cannot be done by way of invoking Section 263 either.***

7. Secondly, in the instant facts, we observe that the principal CIT has not given any independent finding as to how the assessment order is erroneous and hence unsustainable in law. In our considered view, it is a well-settled principle that in order to hold that the assessment order is erroneous insofar as prejudicial to the interests of the revenue, the principal CIT has to give an independent finding as to how on the basis of information available on record, the assessing officer has taken a legally “unsustainable” view, which is liable to be set aside. However, in the instant facts, no such finding has been given by the principal CIT. The ITAT in the case of **Vinod Bhandari 116 Taxmann.com 264 (Indore ITAT)** held that Commissioner before holding order of Assessing Officer as erroneous and prejudicial to interest of revenue should have to conduct necessary enquiries or verification in order to show that findings given by Assessing Officer are unsustainable in law. The Hon'ble Mumbai ITAT has dealt with *Explanation 2* as inserted by the Finance Act, 2015 in the case of **Narayan Tatu Rane v. ITO [2016]70 taxmann.com 227** to hold that the said *Explanation* cannot be said to have overridden the law as interpreted by the Hon'ble Delhi High Court, according to which the Ld. PCIT **has to conduct an enquiry and verification to establish and show that the assessment order is unsustainable in law.** The Tribunal has further held that the intention of the legislature could not have been to enable the Ld. PCIT to find fault with each and every assessment order, **without conducting any enquiry or verification in order to establish that the assessment order is not sustainable in law**, since such an interpretation will lead to unending litigation and there would not be any point of finality in the legal proceedings. The opinion of the Ld. PCIT referred to in section 263 of the Act has to be understood as legal and judicious opinion and not arbitrary opinion. The law interpreted by the Hon'ble courts makes it clear that Ld. PCIT before holding

the order of the Ld. A.O as erroneous in so far as prejudicial to the interest of revenue should have to conduct necessary enquiries or verification in order to show that the findings given by Ld. A.O is unsustainable in law. Similar view was taken by the Hon'ble Delhi High Court in the case of **D.G. Housing Projects Ltd.** wherein the Hon'ble Court after referring to judgments of Hon'ble High Court in the case of **Addl. CIT v. Gee Vee Enterprise [1975] 99 ITR 375 (Delhi)**, **Sunbean Auto Ltd. (supra)**, **Malabar Industries** held in favour of the assessee confirming the order of the Tribunal observing as follows:-

*19. In the present case, the findings recorded by the Tribunal are correct as the CIT has not gone into and has not given any reason for observing that the order passed by the Assessing Officer was erroneous. The finding recorded by the CIT is that "order passed by the Assessing Officer may be erroneous". **The CIT had doubts about the valuation and sale consideration received but the CIT should have examined the said aspect himself and given a finding that the order passed by the Assessing Officer was erroneous.** He came to the conclusion and finding that the Assessing Officer had examined the said aspect and accepted the respondent's computation figures but he had reservations. The CIT in the order has recorded that the consideration receivable was examined by the Assessing Officer but was not properly examined and therefore the assessment order is "erroneous". The said finding will be correct, **if the CIT had examined and verified the said transaction himself and given a finding on merits.** As held above, a distinction must be drawn in the cases where the Assessing Officer does not conduct an enquiry; as lack of enquiry by itself renders the order being erroneous and prejudicial to the interest of the Revenue and cases where the Assessing Officer conducts enquiry but finding recorded is erroneous and which is also prejudicial to the interest of the Revenue. In latter cases, the CIT has to examine the order of the Assessing Officer on merits or the decision taken by the Assessing Officer on merits and then hold and form an opinion on merits that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. In the second set of cases, CIT cannot direct the Assessing Officer to conduct further enquiry to verify and find out whether the order passed is erroneous or not. The CIT is patently wrong in mentioning and stating that Schedule III to the Wealth Tax Act, 1957 was not applicable but, the Assessing Officer should have adopted the said formula/method. The aforesaid reasoning cannot be accepted and does not show or establish that the assessment order was erroneous. In view of the aforesaid reasoning, the question of law is answered in favour of respondent assessee and against the Revenue and the appeal is accordingly dismissed. No costs.*

8. Thirdly, we observe that vide reply dated February 22, 2022 in response to notice under section 143(2) of the Act issued by the assessing officer dated 21-10-2021, the assessee had given a specific reply to the issue under consideration, which is reproduced for ready reference:

*(iii) I may further state that even factual information of my having 30 any transaction with Mr. Jigar Shah and Sanjay Shah is absolutely wrong. For this purpose, I am enclosing herewith my statement of total income along with the acknowledgement of the return filed for Asst. Year 2013-14 at Annexure-A (Pages 1 to 3) and copy of my balance sheet and profit and loss account for the said year at Annexure-B (Pages 4 to 5). While going through Annexure-A, page 2, your goodself would find that there is no claim made by me in respect of any long term capital gain in my return of income. On the contrary, I have offered short term capital gain of Rs.2,01,125/- earned by me during the year under consideration for taxation. Even in my profit and loss account at Annexure-B, your goodself will find that there is no amount of long term capital gain and only short term capital gain of Rs.2,01,125/- is earned by me.*

*(iv) I may also inform that during the year under consideration I had purchased and sold shares through one SEBI registered broker, M/s. B.P. Equities Pvt. Ltd. of Mumbai, whose copy of account from my books as well as the contra account given by the said broker from his books are attached herewith at Annexure-C-coll. (Pages 6 to 8) to show that whatever transaction I had undertaken with them were through bank accounts and were in respect of shares and securities on which I earned short term capital gain, which has been offered for taxation. Under the circumstances, even the factual basis mentioned by you in your reasons that I had claimed bogus long term capital gain or contrived loss is absolutely against facts of records and has no legs to stand.*

9. Accordingly, from the facts placed on record, it is evident that during the course of 147 proceedings, the assessing officer had duly enquired into this aspect regarding the claim of accommodation entry. Further, from the facts placed on record before us, the principal CIT has not given any specific finding as to how the assessment order was erroneous and it is evident that the principal CIT had taken recourse to 263 proceedings only with a view to extend the timelines for completing/framing of assessment under section 147 of the Act, which is not permissible in law. We observe that the assessee had given a specific submission to the effect that during the impugned year under consideration, the assessee had not earned any exempt Long term capital gains,

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but in fact had earned short term capital gains amounting to ₹ 2,01,125/- on which due taxes had also been paid, and therefore, there is no basis of assuming that during the impugned year under consideration the assessee had earn any long term capital gains on which no tax had been paid.

10. Accordingly, looking into the instant facts, we are of the considered view that the order passed by the principal CIT under 263 of the Act, is liable to be set aside.

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

<b>This Order pronounced in Open Court on</b>	<b>29/08/2024</b>
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**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 29/08/2024

TANMAY, Sr. PS

**TRUE COPY**

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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,

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad