

**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकरअपीलसं./ITA Nos.51/RJT/2021

(निर्धारणवर्ष / Assessment Year: (2015-16)

(Physical Hearing)

Pari Anil Gandhi, “Gandhi House”, Shanti Niketan Society, Kalawad Road, Rajkot – 360001	Vs.	The Pr. CIT, Rajkot - 1
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BAHPG7804E		
(Appellant)		(Respondent)

आयकरअपीलसं./ITA Nos.57/RJT/2021

(निर्धारणवर्ष / Assessment Year: (2015-16)

Late Smt. Priti Anil Gandhi, L/h. Shri Anilbhai A. Gandhi, “Gandhi House”, Shanti Niketan Society, Kalawad Road, Rajkot – 360001	Vs.	The Pr. CIT, Rajkot - 1
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACIPG8956D		
(Appellant)		(Respondent)

Appellant by : Shri D. M. Rindani, AR
Respondent by : Shri Shramdeep Sinha, CIT-DR
**Date of Hearing : 31/07/2024-Re-fixed for hearing on
23.12.2024**
Date of Pronouncement : 17/03/2025

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

By way of these two appeals, the different assesseees, have challenged the correctness of the order passed by the Learned Principal Commissioner of Income Tax, Rajkot - 1 [in short ‘the Ld. PCIT’], dated 24.03.2021 and 30.03.2021, respectively, under section 263 of the Income

Tax Act, 1961 [hereinafter referred to as ‘the Act’] for the assessment year 2015-16.

2. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order.

3. First, we shall take, assessee`s appeal in ITA No.51/Rjt/2022 (Pari Anil Gandhi).In this appeal, the grounds of appeal raised by the assessee, are as follows:

1. The Hon'ble Principal Commissioner of Income Tax, Rajkot- 1, Rajkot has erred in passing the order u/s. 263 of the IT Act is unwarranted, unjustified and bad in law.

2. The Hon'ble Principal Commissioner of Income Tax, Rajkot -1 Rajkot, has erred in setting aside the issues of (a) Receipts as well as Re-payments of Unsecured Loans (b) Interest earned u/s.244A of the Income Tax Act during the year not offered to Tax, and (c) the assessee has not shown any house hold withdrawals, isunwarranted, unjustified and bad in law.

3. The Hon'ble Principal Commissioner of Income Tax, Rajkot-1, Rajkot has erred in Investment made in Penny Stock is treated as Bogus or treated as Cash Credit u/s.68 of the IT Act, 1961, is totally unwarranted, unjustified and bad in law.

4. The Hon'ble Principal Commissioner of Income Tax, Rajkot -1, Rajkot has erred in wrongly mentioned the facts in body of order and set aside the Speaking order passed by Assessing Officer as treated as erroneous and prejudicial to interest of the revenue within the meaning of section 263 of the IT Act, it is totally wrong, unwarranted, unjustified and bad in law.

5. Your applicant reserves the right in addition or alteration in the grounds of appeal at the time of hearing.”

4.The relevant material facts, as culled out from the material on record, are as follows. The assessee, before us, is an Individual, and filed return of income, for assessment year (AY) 2015-16, on 24/09/2015, declaring total income of Rs.1,91,140/- and exempt income of Rs.1,32,63,709/-. The assessee`s case was selected for complete scrutiny with a reason to verify

suspicious sale transaction in shares. The Assessment was completed u/s 143(3) of the Income-tax Act, on 26/12/2017, accepting the returned income.

5. Later on, Learned Principal Commissioner of Income Tax, [in short 'the Ld. PCIT'], has exercised his jurisdiction, under section 263 of the Income Tax Act, 1961. On examination of the records, it was noticed by Ld. PCIT that long term capital gain of Rs.1,32,35,925/-, has been shown from sale of 12,72,000 shares of Atlanta Infra& Finance Limited, with script code 530479 (formerly known as Kadavani Securities Limited) and the same has been claimed as exempt from tax u/s 10(38) of the Income-tax Act. This claim of the assessee has been allowed by the assessing officer, without going into genuineness of the transaction based on the circumstantial evidences available on record.

6. Further, Ld. PCIT noticed that one house property in the building "JCLIFF", B/h Bahumali Bhavan, Near, Race course, Rajkot, has been shown, as self-occupied property and deduction of housing loan interest restricted to Rs. 2 lakhs (actual Rs.2,20,257/-) has been claimed u/s 24 of the Act, on the said property. However, the said property is not shown in the Balance-sheet.

7. The Ld PCIT also noticed that the assessee has also not shown deemed rent income on one residential flat at Krishna Niwas-1, JVPD, Ville Parle, Mumbai.

8. The Ld PCIT also noticed that the following transactions, have also remained unattended by the assessing officer, during the assessment proceedings:

(a) Receipts as well as re-payments of unsecured loans.

- (b) Interest earned u/s 244A of the Income tax Act, during the year not offered to tax.
- (c) The assessee has not shown any house-hold withdrawals.

9. The ld. PCIT was of the view that the assessing officer accepted the aforementioned transactions without making inquiries or verification which should have been made. Accordingly, the impugned assessment order is left erroneous and prejudicial to the interest of revenue, as income was under assessed to that extent. In view of the above, a show cause notice dated 28/02/2019, was issued by ld. PCIT, proposing to subject the assessment order, passed by the assessing officer under section 143(3) of the Act, dated 26/12/2017, for revision u/s 263 of the Income tax Act. In response to the said notice, the assessee made written submissions on 13/03/2019. The gist of the assessee's submission is as under:

*“1. With respect to the claim of exempt Capital Gain, the assessee has contended that it is not necessary that all the investment made in penny stock is treated as bogus or treated as cash credit u/s 68 of the Income tax Act 1961 (Para 3 of submission). The assessee has further stated that there no iota of deficiencies of any kind found with regard to the documentation (Para 4 of submission). At para 1.5 of the submission, the assessee has emphasized that every transaction has been accounted, documented and supported. The payments are made through banking channels and transfer of shares took place through D-mat account. **Further, it has been mentioned that all details regarding the purchase/sale of shares i.e. evidence of purchase of shares, evidence of payment for purchase of shares made by way of account payee cheque, copy of bank statement, copy of balance sheet disclosing investments, copy of demat account statement reflecting purchases, evidence of sale of shares through stock exchange, copy of demat statement showing the sale of shares and STT paid, etc. All transaction made through proper banking channel. Sale of shares are made through member of Bombay Stock Exchange.***

(The details regarding payment for purchase of shares and acquisition of shares in demat account have neither been furnished at the time of assessment proceedings nor at the time of the present submission in revision proceedings.)

Moreover, the assessee has relied upon the following case laws:-

- (1). Mahavir Jhanwar Vs. Ito Ward 35(4) Kolkata (ITA No. 2474/Kol/2018 AY 2014- 15)*

- (2). *CIT-I Vs. Maheshchandra G. Vakil [2013] 40 taxmann.com 326 (Gujarat High Court).*
- (3). *CIT-I Vs. Himani M. Vakil [2013] 10 taxmann.com 326 (Gujarat High Court)*
- (4). *DCIT Vs Sunita Khema [ITAT, Kol] ITA nos 714 to 718/Kol/2011.*
- (5). *CIT Vs Smt Sumitra Devi [ITA 54/2012] (Rajasthan High Court)*
- (6). *CIT Vs Udit Narayan Agarwal [ITA 560 of 2009] (Allahabad High Court)*
- (7). *ACIT Vs RavindrakumarToshiwal [ITA nos 5302/Mum/2008]*

2. *Regarding not showing the residential property at 'J Cliff', Nr Race course, Rajkot in Balance sheet, it has been submitted that the said flat not been shown in the Balance Sheet because only satakhat has been executed and the documents were not registered.*

3. *Regarding deemed rent income on the residential property at JVPD, Ville Parle, Mumbai, it is stated that the said property has not been given on rent and during the year under consideration the said properties were lying vacant.*

4. *Regarding unsecured loans, it is stated that the details like ledger copies of accounts and copy of return acknowledgement receipt have already been submitted before the Assessing Officer. The same are submitted again in revision proceedings.*

5. *Regarding interest earned u/s 244A of the Income-tax Act, the assessee has stated that the same has remained to be offered for tax through oversight.*

6. *Regarding house hold expenses, it is submitted that Shri Anil Amrutlal Gandhi i.e. father of the assessee has made withdrawal towards house hold expenses to the tune of Rs. 1,80,000/-.*

10. However, the Id PCIT has rejected the contention of the assessee, and observed, issue-wise, as follows:

(1). Issue No.1: Regarding Long Term Capital Gain of Rs. 1,32,35,925/-.

The Id PCIT observed that the assessee is only emphasizing on the documentation, banking channels and having satisfied the conditions for claiming the exemption under section 10(38) of the Income tax Act, 1961.

The Id PCIT divided the transactions in three parts, viz:(1) Purchase, (2) Holding period, and (3) Sale and then after held that in the present case, even the requisite documentary evidences are found lacking which left the

assessment not only erroneous but also prejudicial to the interest of revenue. Moreover, as per the report of investigation wing, if any connivance with any commission agent or entry operator is found then the appropriate amount of commission paid to arrange the accommodation entry in the name of bogus LTCG should also be added as unexplained expenses. However, no such enquiry in this direction is apparent from the assessment record. The assessing officer should have inquired into this aspect especially when a comprehensive report of investigation wing was available at the time of assessment. However, the assessment is finalized accepting whatever details and documents are submitted by the assessee without going into the sufficiency of details so submitted in support of the claim. Therefore, order passed by the assessing officer, is erroneous and prejudicial to the interest of revenue. Such erroneous order deserves to be set-aside in the interest of Revenue.

(2). Issue No.2, the Id PCIT noticed that not recording the said residential property on balance sheet, if the assessee's contention that only the satakhat was made and the document was not registered in respect of this property is true, then the claim of deduction of housing loan interest u/s 24 of the Act, on the said property requires to be disallowed in view of the Explanation to the second proviso of section 24 of the Act which states that -*"Where the property has been acquired or constructed with borrowed capital, the interest, if any, payable on such capital borrowed for the period prior to the previous year in which the property has been acquired or constructed shall be deducted under this clause in equal installments for the said previous year and for each of the four immediately succeeding previous years"* Thus, if the property was not acquired by the assessee, during the year under consideration, then the interest paid on the housing loan taken for the property can be claimed in

five installments from the year in which the assessee gets the possession of the property. This aspect also has not been inquired into by the assessing officer during the assessment proceeding, which left the assessment order erroneous and prejudicial to the interest of the revenue.

(3). Issue No. 3, the Id PCIT noticed that in the statement of computation of income; the assessee has offered the residential flat at 'JCLIFF', Nr. Race Course, Rajkot as Self -occupied property. However, during the revision proceedings, it has been admitted that only SATAKHAT (without possession) of the said property was made during the year under consideration. Thus, the possession of the said property was not with the assessee, during the year under consideration. Therefore, the same cannot be claimed as self-occupied property. The Id PCIT also noticed that assessee has reported three more residential properties on her balance sheet, Viz: (1) Flat at Krishna Niwas-IIVPD, vile Parle Mumbai, (2) Sadguru Colony Flat No.101 and (3) Sadguru Colony Flat No.202. As per the provisions of sub-section (4) of section 23 of the Act, if a person hold more than one house property then only one house property can be claimed as self-occupied at his/her option and for remaining properties the annual value of the house or houses, other than the self-occupied one shall be determined under sub-section (1), as if such house or houses had been let out. However, the assessing officer has not gone into this aspect of the residential units reported in the balance sheet of the assessee, which rendered the assessment order erroneous and prejudicial to the interest of revenue.

(4). Issue No.4, the Id PCIT noticed that the unsecured loans reported by the assessee at the beginning and at the end of the financial year are as under:

<i>Name of the loan provider</i>	<i>Opening</i>	<i>Receipt</i>	<i>Repayment</i>	<i>Closing</i>	<i>Supporting documents</i>
<i>Anil Gandhi HUF</i>	<i>78,19,500</i>	<i>7,00,000</i>	<i>12,31,000</i>	<i>72,88,500</i>	<i>Contra ledger; ITR (TI-246610& EL-46040);</i>
<i>Priti A Gandhi</i>	<i>(-) 55,736</i>	<i>98,95,994</i>	<i>10,98,832</i>	<i>87,41,426</i>	<i>Contra ledger; ITR (TI-51 0440 & EL-14443862);</i>
<i>Amrutlal Gandhi</i>	<i>1,43,91,000</i>	<i>NA</i>	<i>NA</i>	<i>0</i>	<i>No details regarding re-payment submitted</i>

From the above table, it is clear that copy of confirmations and ITR acknowledgements are submitted in respect of (1) Anil Gandhi HUF and (2) Priti A Gandhi only. However, **NO** details are submitted in respect of Shri Amrutlal Gandhi, having opening balance of unsecured loan of Rs.1,43,91,000/-. Besides, bank statements of **NONE** of the three persons are submitted. The assessing officer should have inquired into the sources for repayment of the opening outstanding loan in the name of Shri Amrutlal Gandhi. However, no such inquiries are made during the assessment proceedings, rendering the assessment order erroneous and prejudicial to the interest of the revenue. It is evident from the details furnished by the assessee before the assessing officer and acceptance of the same by the assessing officer that the assessment order has been passed without making inquiries or verification that should have been made. Assessment made without proper enquiry is held as erroneous and prejudicial to the interest of the revenue. It is the bounden duty of the Assessing Officer to collect and appreciate the facts collected and proper application of law is to be made while making the assessment. Therefore, Id. PCIT held that the assessment order, dated 26/12/2017, for the assessment year(A.Y.) 2015-16, finalized by the assessing officer, is erroneous and prejudicial to the interest of revenue within the meaning of

sec 263 of the Act and hence order passed by the assessing officer was hereby set aside by Id PCIT and Id PCIT directed the assessing officer to frame the assessment order afresh after conducting in depth inquiries in respect of the issue discussed above.

11. Aggrieved by the order of Ld. PCIT, the assessee is in appeal before us.

12. The Ld. Counsel for the assessee submitted that so far, the first issue raised by the Ld. PCIT is concerned, the reply was made by the assessee, before the assessing officer, in response to notice issued by the assessing officer, which is placed at paper book page nos. 3 to 4. The Ld. Counsel also submitted that even in assessment order, there is a reference of long-term capital gain (LTCG), it means that the assessing officer has examined the same and applied his mind. The assessing officer issued notice u/s 142(1) of the Act, which is placed at paper book page no.9 and reply of the assessee is stated on paper book page no.18, about the long-term capital gain, therefore, learned Counsel, submitted that sufficient enquiry was made by the assessing officer, during the assessment proceedings, and not only that the assessing officer has applied his mind and took the plausible view.

13. About the residential property at 'J Cliff', Nr Race course, Rajkot, the Id Counsel stated that it has not been shown in the Balance sheet, as the said flat had not been shown in the Balance Sheet by the assessee, because in case of said property, only satakhat has been executed and the documents were not registered in the name of the assessee.

14. About deemed rent income on the residential property at JVPD, Ville Parle, Mumbai, it was stated by the Id. Counsel that said property has not

been given on rent and during the year under consideration the said property was lying vacant. Thus, for Vilay Parle, property, the Ld. Counsel for the assessee, fairly agreed that this issue raised by the Ld. PCIT was correct. However, for other properties, like i) Satguru colony, flat number 101 and ii) Sadguru colony, flat number 202, the assessing officer has information and documents with him, which was examined by the assessing officer and taken the plausible view.

15. About unsecured loans, it was stated that the details like ledger copies of accounts and copy of return of acknowledgement and receipts have already been submitted before the Assessing Officer, during the assessment proceedings, and the assessing officer has applied his mind and passed the assessment order, therefore, order passed by the assessing officer should not be erroneous.

16. About the issue of long- term capital gain (LTCG), the Learned Commissioner of Income-tax - Departmental Representative (Ld. CIT-DR) for the Revenue, by way of rejoinder submitted that the order passed by the Security Exchange Board of India (SEBI) clearly stated that the assessee is engaged in manipulation of price rigging, vide order of the SEBI, in the matter of Atlanta Infraand Finance Limited. Therefore, Ld. CIT-DR stated that order passed by the assessing officer is erroneous or prejudicial to the interest of Revenue and for that, Ld. CIT-DR for the Revenue relied on the following judgments:

- (i) Abhishek Ashok Lohade vs. ITO, ITA No. 816/Pun/2018, dated 22.11.2022
- (ii) Atmiben Alipitkumar Doshi vs. ITO, 149 taxmann.com 104 (Ahd – Trib.)
- (iii) PCIT vs. Swati Bajaj, 139 taxmann.com 352 (Cal.)

- (iv) Sumati Dayal vs. CIT, 80 Taxman 89 (SC)
- (v) Smt. Swaram Kanta vs. CIT, 44 Taxman 68 (P & H – HC)
- (vi) CIT vs. Hukam Singh, 276 ITR 347 (P& H – HC)

17. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. PCIT and other material brought on record. We note that show cause notice u/s 263 was issued by Id PCIT, by raising four major issues, which were considered by Id PCIT, as erroneous and prejudicial to the interest of the revenue. We shall take these four issues, one by one, as follows.

18. About long-term capital gain (Penny stock issue), we find that specific inquiries were conducted by the assessing officer vide Sr. nos. 2, 4, 5, of notice u/s 142(1) of the Act. We also find that the very reason for scrutiny was for share transactions. During the assessment proceedings, the assessee submitted its replies before the assessing officer, which is placed at paper book page No.-1 and Page 18-27. Details of purchases and holding period were submitted by the assessee, during the assessment proceedings, which were examined by the assessing officer(vide PB -1, Page 32-38, PB-2, Page 1-11). All Purchases were made by banking channel, and details of all purchases, are as follows:

<i>F.Y.</i>	<i>Dates of Purchase of shares</i>	<i>No. of Shares</i>	<i>Cost (in Rs.)</i>	<i>Evidence -PB Page Ref.</i>
2012-13	27-01-2012 30-01-2012 31-01-2012	1,51,800	25,77,603/-	PB - 2, Page 1-13
2013-14	18-03-2013 22-03-2013	1,02,000	23,85,698/-	PB - 2, Page 1-13
<i>Total</i>		2,5,38,00	49,63,301/-	<i>(after split, total shares 25,38,000)</i>

The details of sales of the shares were submitted by the assessee, which is placed at paper book page number 39-55. The Sale consideration was received through banking channel (videPB- 59-64). The average holding period is three years. We also find that purchases of shares were accepted in earlier year, by the Department and only capital gain is disbelieved by the department and not the sale price. The particulars of sale of shares are given below:

F.Y.	Dates of Sale of shares	No. of Shares	Sale Consideration (in Rs.)	Evidence-PB Page Ref.
2014-15	Nov-Dec., 2014	12,72,000	1,53,95,781/-	PB-1, Page 39-55

19. From the above facts, it is vivid that during the assessment proceedings, the assessing officer conducted sufficient enquiry in respect of long-term capital gain. According to us, the present order of assessing officer passed u/s 143(3) of the Act, dated 26.12.2017 of the Act cannot be termed as **erroneous** since enquiry was, in fact, carried out by him on the issue on which the Id PCIT has found fault with and has taken a plausible view. Thus, we note that the assessing officer enquired during assessment proceedings and the assessee had filed details before him. So, we find that the assessing officer's action cannot be termed "**erroneous**". Since not only enquiry was carried out by the assessing officer on the issue under consideration and based on the evidence gathered, assessing officer has taken a plausible view, which at any rate cannot be called as an un-sustainable view.

20. We note that Hon`ble Jurisdictional High Court of Gujarat in the case of Jagat Pravinbhai Sarabhai, [2022] 142 taxmann.com 247, held that where Assessing Officer noted that assessee had indulged in scrip of shell company and had claimed long term capital gain on sale of shares and made addition under section 68 holding that entire transaction was bogus and in the nature of penny stock, however, since genuineness of investment in shares by assessee was substantiated by him by producing copy of transaction statement for period from 1-6- 2001 to 1-10-2010 and shares were retained for more than ten years and were sold after such long time, hence investment was not bogus therefore it cannot be treated that investment was made in penny stock. The findings of the Hon`ble Court is reproduced below:

"2. As submitted by learned senior advocate Mr. M.R. Bhatt for M.R.Bhatt and Co., the appellant revenue proposes the following substantial questions of law, which according to the submission requires examination.

"Whether on the facts and circumstances of the case and in law, the decision of Appellate Tribunal is ex facie perverse because the Appellate tribunal deleted the addition of Rs. 2,10,474/- made on account of bogus long term capital gain, without appreciating the entire gamut of fact that the assessee transacted in penny stock namely M/s. Devika Proteins Ltd. thus earning bogus Long term Capital Gain and claiming it to be exempt under section 10(38) of the Income-tax Act?"

3. The assessee filed the return of income for the assessment year 2011-12 on 29-3-2012 declaring his total income Rs. 3,11,490/-. Subsequently the assessment was reopened as information was received that assessee has indulged into script of shell company and had claimed long term capital gain on sale of shares of Devika Proteins Limited to the tune of Rs. 2,10,474/- and that the amount was claimed as exemption under section 10(38) of the Income-tax Act, 1961 (hereafter referred to as 'the Act')

3.1 The Assessing Officer made addition of the said amount. The entire transaction was treated as bogus and in the nature of penny stock. By adding Rs. 2,10,474/- under section 68 of the Act, total income was assessed at Rs. 5,21,964/-.

3.2 In appeal by the assessee before the Commissioner of Income-tax (Appeals), the issue was re-examined. According to the appellate authority the appellant assessee had furnished evidence to show that the shares were brought as genuine investment which was long back in the year 2000-01. As the shares were in the nature of old investment, they could not be treated as penny stock by any stretch of imagination.

4. The Income-tax Appellate Tribunal further examined the question in appeal preferred by the revenue and confirmed the view of the appellate authority

noticing that the shares were purchased in the year 2001 and they were sold after long time in the year 2010-11.

5. The genuineness of investment in the shares by the assessee was substantiated by him by producing copy of transaction statement for the period from 1-6-2001 to 1-10-2010. The investment was made in the year 2000-01. The shares were retained for more than ten years and were sold after such long time. These circumstances suggested that the investment was not bogus or investment made in penny stock. The shares were purchased in order to invest and not for the purpose of earning exempted income by frequent trading in short span.

6. The finding recorded by the appellate authority and confirmed by the appellate tribunal is based on material before them. They are in the realm of findings of fact. No error could be noticed in the findings and conclusion that the investment was longstanding and genuine and was not penny stock on the basis of which the capital gain was wrongly claimed.

6.1 On the facts of case, no question of law much less substantial question of law arises.

7. Resultantly, appeal is dismissed”.

21. In the assessee`s case under consideration, the average holding period is around three years. We note that findings of the Hon`ble Jurisdictional High Court of Gujarat in the case of Jagat Pravinbhai Sarabhai(supra) is applicable to the assessee`s facts under consideration. The genuineness of investment in the shares by the assessee was substantiated by him by producing contract note, Transaction was through recognised Broker, transaction was done through banking channel on which STT was paid. The shares were held by assessee, as an Investor for a period of three years. These circumstances suggest that the investment was not bogus. The shares were purchased in order to invest and not for the purpose of earning exempted income by frequent trading in short time. Therefore, we find that assessing officer made the addition based on the guess work. The Hon`ble Supreme Court in Umacharan Shah & brothers Vs CIT (37 ITR 271) held that suspicion howsoever strong, may be cannot substitute the place of evidence. Similarly the Hon`ble Supreme Court case of Omar

Salav Mohammad Sait (37 ITR 151 SC) also held that no additions can be made on the basis of surmises, suspicion and conjecture.

22. We find that in the following cases, the Hon`ble jurisdictional Gujarat High Court, has deleted the addition, on account of penny stock.

(i) Mamta Rajivkumar Agarwal, [2023] 155 taxmann.com 549 (Gujarat)

“Where assessee had sold shares of SNCFL and earned long-term capital gains and Assessing Officer alleged that transaction was a penny stock deal aimed at illegitimately claiming long-term capital gain exemption under section 10(38), since there was no evidence available on record suggesting that assessee or his broker was involved in rigging up of price of script of SNCFL, addition on account of LTCG claimed as exempt under section 10(38) had rightly been deleted”

(ii) Champalal Gopiram Agarwal, [2023] 155 taxmann.com 66 (Gujarat).

“Where AO disallowed loss claimed by assessee on sale of shares on ground that assessee traded in shares of penny stock and claimed bogus loss, since shares were purchased online and payments were made through banking channel and AO had no evidence to show that there was an agreement between assessee and any other party to convert accounted money by taking fictitious loss, impugned addition made on account of bogus loss was to be deleted”

(iii) Shri Ambalal Chimanlal Patel, [2024] 162 taxmann.com 892 (Gujarat)

“Where assessee purchased shares of a company when trading of said company was suspended and sold same and claimed exemption under section 10(38), in absence of any material brought on record to suggest that purchase and sale of said shares was bogus, Assessing Officer was not justified in making addition of sale proceeds of shares under section 68”

24. Our view is further fortified by the judgement of the Hon`ble High Court of Calcutta in the case of Kaushalya Dealers (P.) Ltd, [2023] 147 taxmann.com 526 (Calcutta), wherein, on identical facts, as that of assessee, the revision order passed by the Id. PCIT, under section 263 of the Act, was quashed, holding as follows:

“Where Principal Commissioner invoked revisionary proceedings with respect to issue of loss on penny stock on ground that AO failed to do proper verification, since AO in notice under section 143(2) directed assessee to furnish documents with respect to issue and thereafter, assessee submitted an explanation in respect of allowability of loss and also explained various queries raised by AO on said issue, revisionary order was to be quashed”

25. In view of the facts of the case and judicial pronouncements relied upon, it is well established that the impugned order passed u/s. 143(3) of the Act dated 26.12.2017, was passed by assessing officer, after calling for relevant information and after detailed examination of the same. The case laws relied on by Id DR for the revenue do not applicable to the facts of the assessee's case and distinguishable on facts. Since, the Assessing Officer has passed the assessment order after calling for details on the issue and after considering the reply and documents and after verification of the same and after due application of mind passed the assessment order, so it cannot be termed as erroneous and prejudicial to the interest of the revenue. So, the Ld. PCIT's finding fault, with the order of the Assessing Officer is erroneous as well as prejudicial to the interest of revenue, on account of lack of inquiry, has to fail. Based on these facts and circumstances, we quash the order dated 24.03.2021 passed by the Id PCIT under section 263 of the Act, so far, first issue is concerned.

26 About claim of interest u/s 24 of the Act, in respect of House property in "J KLIF" which was shown in the balance sheet under the head "Loans and Advance as "Cliff Flat Booking Advance" (vide PB-69), as only Satakhat was executed and the purchase deed was not registered. This was replied to assessing officer vide PB1, Page 26, and also replied to the Ld. PCIT, during the revision proceedings. The ledger account of the same was filed to PCIT (vide PB-1, Page 69). Hence we find that during the assessment proceedings, assessing officer has applied his mind and

examine the issue under consideration, therefore, order passed by the assessing officer is neither erroneous nor prejudicial to the interest of revenue, so far this second issue is concerned.

27. About deemed rent for two residential properties, ld. Counsel submitted that assessing officer has not examined the same, therefore, to that extent order passed by the assessing officer is erroneous. Therefore, so far, this third issue is concerned, order passed by the assessing officer, is erroneous and prejudicial to the interest of revenue.

28. About unsecured loans of Rs. 1,60,29,926/-, the specific inquiries was conducted by the assessing officer vide sr. nos. 6 of notice under section 142(1) of the Act (vide PB-1, Page 17). The details of said loans were filed before the PCIT (videPB-1, Page 3-12, 70-71).About House hold expenses, the reply was filed before the PCIT (vide PB1, Page 3) stating that appellant's father, Mr. Anil Gandhi had made withdrawal towards house hold expenses. Therefore, so far, this fourth issue is concerned, the order passed by the assessing officer, is neither erroneous nor prejudicial to the interest of the revenue.

29. Therefore, out of the four issues raised by the ld. PCIT, three issues are allowed in favour of assessee and one issue (which is third issue), is not allowed (this is, dismissed). Hence, assessee`s appeal in ITA No.51/Rjt/2021, is partly allowed.

30. In the result, appeal filed by the assessee(in ITA No.51/Rjt/2021), is partly allowed, to the extent indicated above.

31. Now, we shall take ITA No.57/Rjt/2021, wherein the grounds of appeal raised by the assessee, are as follows:

- 1. The Hon'ble Principal Commissioner of Income Tax, Rajkot 1, Rajkot has erred in passing the order u/s 263 of the IT Act is unwarranted, unjustified and bad in law.*
- 2. The Hon'ble Principal Commissioner of Income Tax, Rajkot- 1, Rajkot has erred in setting aside the issues of (a) Receipts as well as Re-payments of Unsecured Loans (b) Interest earned u/s.244A of the Income Tax Act during the year not offered to Tax, and (c) the assessee has not shown any house hold withdrawals, is unwarranted, unjustified and bad in law.*
- 3. The Hon'ble Principal Commissioner of Income Tax, Rajkot- 1, Rajkot, has erred in Investment made in Penny Stock is treated as Bogus or treated as Cash Credit u/s.68 of the I.T. Act, 1961, is totally unwarranted, unjustified and bad in law.*
- 4. The Hon'ble Principal Commissioner of Income Tax, Rajkot- 1, Rajkot, has erred in wrongly mentioned the facts in body of order and set aside the Speaking order passed by Assessing Officer,as treated as erroneous and prejudicial to interest of the revenue within the meaning of section 263 of the IT Act, it is totally wrong, unwarranted, unjustified and bad in law.*
- 5. Your applicant reserves the right in addition or alteration in the grounds of appeal at the time of hearing.*

32. At the outset, ld. Counsel for the assessee, begins by pointing out that revision order under section 263 of the Income tax Act 1961, dated 30.03.2021, was passed by the ld. PCIT, on dead person (dead assessee), despite the fact that during the revision proceedings, under section 263 of the Act, the legal heirs of the assessee has intimated about death of the assessee, to ld. PCIT, on 04.03.2019, however, ld. PCIT has framed the revision order under section 263 of the Act, dated 30.03.2021, on dead assessee, therefore, order passed by the ld. PCIT, does not survive in the eye of law, and should be quashed on this score only. The ld. Counsel for the assessee, narrated before the Bench, the following important events/dates, which are important to decide the issue under consideration:

- (1). Date of assessment order u/s 143(3) : 26-12-2017
- (2). Date of death of Assessee : 16-05-2018

- (3). Return for A.Y. 2018-19 filed by L.R. : 26-09-2018
(4). Date of notice u/s 263 of the Act : 29-11-2018
(5). Date of intimation of death to PCIT : 04-03-2019
(6). Date of passing the order by ld. PCIT
under section 263 of the Act : 30.03.2021

33. Learned Counsel for the assessee argued that ld. PCIT has passed the order in the name of the dead person, who was not alive, as on the date of passing of the order, under section 263 of the Act, therefore, fresh assessment cannot be initiated on the dead person, as per the direction of the ld. PCIT. Therefore, ld. Counsel for the assessee, contended that order passed by the learned PCIT, under section 263 of the Act, may be quashed.

34. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the ld. PCIT, in his revision order under section 263 of the Act, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

35. We have heard rival contentions and gone through facts and circumstances of the case. The factual position is that for assessment year 2015-16, the assessment was framed by the assessing officer u/s 143(3) of the Act, vide order dated 26.12.2017. The date of intimation of death was communicated to ld. PCIT, on 04.03.2019. However, the ld PCIT framed the revision order under section 263 of the Act, on dead person, on 30.03.2021. That is, revision order under section 263 of the Act was framed on, non-existent assessee, hence, revision order framed by the ld. PCIT, under section 263 of the Act, is bad in law and needs to be quashed. We note that Co-ordinate Bench of ITAT Cuttack, in the case of Janardan

Gupta, (2019) 75 ITR 64 (trib), on the identical and similar facts, has quashed the revision order under section 263 of the Act, observing as follows:

“6. After hearing both the sides and perusing the entire material available on record and the impugned order passed u/s.263 of the Act, we noticed from the death certificate submitted by the assessee that late Janardan Gupta died on 15.03.2015 which has duly been recorded by the AO in his assessment order and order has been passed in the name of legal heir also. We further noticed from the order of Pr.CIT that he has passed order in the name of deceased-assessee who was not in existence on the date of passing of the revisional order u/s.263 of the Act. We also agree with the case law relied on by the ld. AR in the case of M. Hemanathan (supra), wherein the Hon'ble Madras High Court in para 12 has held as under

“12. But unfortunately, the said contention loses sight of the settled position that any proceeding initiated against a dead person is a nullity. The contention of the learned Standing Counsel for the Department loses sight of one important distinction between a case where the proceedings are initiated against a person, who is alive, but continued after his death and a case of proceedings initiated against a dead person himself. If the proceedings had been initiated against a person, who was alive, and they were continued after his death after putting his legal heirs on notice, those proceedings, under certain circumstances, may be saved. Such a situation is also contemplated in civil proceedings and a provision is made in the Civil Procedure Code itself under Order XXII Rule 4. Therefore, the cases where the very proceedings are initiated against a dead person stand apart from those proceedings where they are initiated against a live person, but continued after his death against the legal heirs. Hence, the first contention is rejected.”

7. Respectfully following the above decision of Hon'ble Madras High Court, we are of the considered view that the Pr. CIT is not justified in setting aside the assessment order invoking powers u/s.263 of the Act ignoring the fact that the assessee is already expired on 15.03.2015, which was already informed by legal heir Shri Jitendra Kumar Gupta, the son of the assessee during the course of assessment proceedings. The AO has also passed order u/s.143(3) of the Act in the name of legal heir of the assessee. Therefore, fresh assessment cannot be initiated against the deceased assessee. Accordingly, we quash the order passed by the Pr. CIT u/s.263 of the Act and allow the appeal of the assessee.8. In the result, appeal of the assessee is allowed.”

36. Hon`ble High Court of Madras, in the case of M. Hemanathan, 384 ITR 177 (Mad-HC), held that where notice issued in name of deceased-assessee was served upon legal heir,who, then, participated in proceedings, such proceedings was a nullity being initiated against a dead

person. It was also held that where notice issued in name of deceased- assessee was served upon legal heir who, then, participated in proceedings, said legal heir could not be deprived of right to challenge service of notice.

37. On identical facts, Hon`ble High Court of Rajasthan in the case of GVK Jaipur Kishangarh Expressway Limited,100 CCH 0428 held that there cannot be any estoppel against the statue,no tax shall be levied or collected except by authority of Law. Acquiescence cannot take away from a party the relief that he is entitled to where the tax is levied or collected without authority of law. The Co-ordinate Bench of ITAT Delhi in the case of Sheela Devi, 64 CCH 186 (Del-trib), held that if show cause notice was addressed to deceased assessee instead of legal heirs, order was *ab-initio* void. Respectfully following the above binding precedent, we quash the order passed by the ld. PCIT under section 263 of the Act, dated 30.03.2021.

38. In the combined result, appeal of the assessee in ITA No. 51/Rjt/2021, is partly allowed, whereas appeal of the assessee in ITA No. 57/Rjt/2021, is allowed.

Order is pronounced in the open court on 17/03/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Rajkot (True Copy)

दिनांक/ Date: 17/03/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot