

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E', NEW DELHI**

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.2624/Del/2024  
Assessment Year: 2014-15

<b>Neha Goel, H. No. 585 Sector 15 Faridabad 121007. PAN No.AHCPG6493Q</b>	<b>Vs.</b>	<b>PCIT, Faridabad.</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Dr. Kapil Goel, Adv.
Respondent by	Ms. Amisha S. Gupta, CIT DR

Date of hearing:	28/05/2025
Date of Pronouncement:	28/05/2025

**ORDER**

**PER SUDHIR KUMAR, JUDICIAL MEMBER:**

This appeal is preferred by the assessee against the order 28.03.2024 of the Principal Commissioner of Income Tax Faridabad [hereinafter referred to as "PCIT(A)"] passed in DIN & order No. ITBA/REV/ F/ REV5/ 2023-23/ 1063530055(1) for Assessment Year 2014-15.

2. The assessee has raised the following grounds of appeal :-

*“ 1. Order passed by the Ld. PCIT u/s 263 is without jurisdiction and barred by limitation.*

*2. Ld PCIT has erred in passing an order u/s 263 reopening the case by directing the AD to make fresh assessment against the provisions of law and natural justice.*

*3.Ld. PCIT has erred in initiating proceeding u/s 263 on the basis of audit objections against the provisions of law and natural justice.*

*4.Ld. PCT has erred in passing order u/s 263 brushing aside our explanations that the order passed is neither erroneous nor prejudice to the interest of the revenue.*

*5. The assessee craves right to add, amend or delete any ground of appeal.”*

2.1 Thereafter, during the hearing vide application under rule 11 of the Income Tax Appellate Tribunal Rules, additional grounds were taken by the assessee as under:

*“ 1. That impugned revision order passed u/s 263 of 1961 Act by PCIT Faridabad is non est and nullity because it is founded on underlying assessment order passed u/s 147/144B which itself is nullity and totally invalid and is passed without authority of law.*

*1.1 That impugned revision order u/s 263 is nullity and void ab initio because underlying assessment u/s 147/144B is based on invalid foundation "reopening" action u/s 147/148 as evident from admitted and undisputed facts of the case (namely: there is no valid "reasons to believe" u/s 148(2))*

*1.2 That impugned revision order u/s 263 is nullity and void ab initio because underlying assessment u/s 147/144B is based on invalid foundation "reopening" action u/s 147/148 as there is no valid "sanction" u/s 151 and*

*1.3 That impugned revision order u/s 263 is nullity and void ab initio because underlying assessment u/s 147/144B is based on invalid foundation "reopening" action u/s 147/148 as there is no valid*

*disposal of "objection" u/s 148 against reopening as per hon'ble apex court ruling in case of GKN Driveshaft case and*

- 1.4 That impugned revision order u/s 263 is nullity and void ab initio because it is making revision on impugned assessment order passed u/s 147/144B which itself is ultra vires to provisions of 1961 Act;*
- 1.5 That impugned revision order u/s 263 is nullity and void ab initio because underlying assessment u/s 147/144B is based on invalid foundation "reopening" action u/s 147/148 because there is admitted lack of confrontation of back material referred in impugned reasons recorded which is fatal to reopening u/s 148 of the 1961 Act*
- 1.6 That impugned revision order u/s 263 is nullity and void ab initio because underlying assessment is made totally contrary to provisions of 1961 Act and applicable binding CBDT instructions/guidelines*
- 2. That impugned revision order passed u/s 263 of the Act is invalid as no revision u/s 263 can take place qua assessment order passed in faceless mode u/s 144B of the Act as per very scheme of the 1961 Act."*

3. The brief facts of the case are that the assessee filed the return of income declaring total income of Rs. 4,08,630/-and income from the sale of share at Rs. 20, 95,569/- was claimed as exempted u/s 10(38) of the Act. The return was processed and thereafter, the case is reopened by way of issue of notice u/s 148 of the Act, on 29-03-2021 and after obtaining various details from the assessee and careful consideration of the same the Assessing officer has accepted the income declared by the assessee vide order dated 25-02-2022 passed u/s 147 r.w.s

144B of the Act. Thereafter, the PCIT found the order so passed is erroneous in so far as prejudicial to the interest of Revenue and show cause notice was issued on 04-01-2024 to explain as why the order passed u/s 147 r.w.s 144(B) of the Act should not be set aside and fresh assessment be directed. After considering the submission submitted by the assessee, the Ld. PCIT is of the opinion that the order passed u/s 147 r.w.s. 144B of the Act on 29-03-2022 is erroneous in so far as the prejudicial to the interest of Revenue and by setting aside the same order, directed the AO to pass a fresh assessment and re-compute the assessee's income after making enquiries with respect to the issue of long term of capital gain of Rs.20,95,569/- received in term of accommodation entries of the companies Unno Industries Limited, which was claimed as exempt u/s 10(38) of the Act by the assessee. Being aggrieved the order of the Ld. PCIT, the assessee is in appeal before the Tribunal.

4. Ld. Counsel for the assessee submitted that the additional grounds raised by the assesses are purely legal in nature and requires no further verification, the same deserves to be admitted. Reliance has placed the judgments of the Hon'ble Supreme Court in the case of *NTPC Ltd. reported in 229 ITR 383 (SC)* and other various decisions of the Hon'ble High Court. The additional grounds taken by the assessee are purely legal in nature requires no verification, therefore, these grounds are admitted for adjudication. Since the legal grounds goes to the root of the matter they are taken up first.

5. With regard to the legal ground of appeal 1.1 to 1.6 wherein the assessee has challenged the initiation of proceedings u/s 148 of the Act and submitted that where the foundation of re-opening of assessment is invalid, the consequent revision order passed u/s 263 of the Act is nullity. The Ld. Counsel submitted that during the course of re-assessment proceedings also, assessee has raised reopening of the assessment. The case of the assessee was re-opened on

conjecture and surmises basis. The reasons recorded for reopening of the assessment shows that the same are vague and mentioned the wrong name of Blueprint Securities Ltd. whereas the assessee has never transacted the same. The reopening was passed without application of mind. The Ld. Counsel for assessee further drew our attention to the reasons where the AO observed that assessee has obtained bogus accommodation entries in the form of penny stock by M/s Blueprint Securities Ltd. during the F.Y. 2013-14 for Rs. 22,01,760/- which is not correct. The Assessee has earned long term capital from sale of the Unno Industries Ltd. He further submitted that all these facts were available before the AO in the return of income filed by the assessee and has not recorded the proper findings in the reasons so recorded. He, prayed that when the reasons are not clear and unambiguous and had not clarified as to how the AO has recorded the satisfaction for reopening the assessment, same is bad in law. If the reopening

is based on wrong appreciation of facts, the consequent order passed u/s 263 of the Act by the Ld. PCIT has no value.

6. Ld. CIT-DR has supported the order of the lower authorities and submitted that on the basis of typical mistake the reopening of the assessment could not be invalid. The AO has examined the issue at length and at the time of filing return of income the AO has not the all details of the long- term capital gain. She further submitted that the objection filed by the assessee was disposed by the speaking order. The assessee has obtained bogus long term capital gain by sale of shares of M/s Unno Industries Ltd.

7. We have heard the parties and perused the material available on record.

8. The assessee has raised the issue of validity of reassessment order we first decide the question as to whether or not such legality of the re-assessment framed could be examined in appellate proceedings challenging the order passed u/s 263 of the Act. The Coordinate Delhi Bench in ITA No.

2622/Del/2024 in the case of Shobhit Goel (HUF) vs. PCIT relying the judgment of the coordinate bench of Mumbai tribunal in the case of *Westlife Development Ltd. Reported in (2016) 491 ITR(T) 406* held that during the course of appellate proceedings against the order passed u/s 263 of the Act, the validity of the assessment order could be examined. The relevant observation as made by the coordinate bench are as under:

*“7. We have heard the rival submissions and perused the materials available on record. At the outset, the issue raised by the AR in additional ground of appeal is with regard to the validity of the reassessment proceedings and legality of consequent order passed u/s 147 r.w.s 144B of the Act dated 28/03/2022 from which the present revision proceedings u/s 263 of the Act originated.*

*It is true that before us, assessee has challenged the order passed by the Id. Pr. CIT u/s.263 of the Act, however, since the assessee has raised the issue of validity of reassessment order, we first answer the question as to whether or not such legality of the re-assessment framed could be examined in appellate proceedings challenging the order passed u/s.263 of the Act. The coordinate bench of Mumbai Tribunal in the case of *Westlife Development Ltd. reported in (2016) 49ITR (T) 406 (Mumbai)* held that during the course of appellate proceedings against the order passed u/s.263 of the Act, the validity of the assessment order from which such proceedings have been originated could be examined. The relevant observations as made in the above decision of the Tribunal are as under:-*

*8. Challenging the jurisdictional defects of assessment order for assailing the jurisdictional validity of the revision order passed under s. 263: The first issue that arises for our consideration is whether the assessee can challenge the jurisdictional validity of order passed under s. 143(3) in the appellate proceedings taken up for challenging the order passed under s. 263? If we analyse*

*the nature of both of these proceedings, which are under consideration before us, we find that the original assessment proceedings can be classified in a way as 'primary proceedings'. These are, in effect, basic/foundational proceedings and akin to a platform upon which any subsequent proceedings connected therewith can rest upon. The proceedings initiated under s. 263 seeking to revise the original assessment order is off shoot of the primary proceedings and therefore, these may be termed as 'collateral proceedings' in the legal framework. The issue that arises here is whether any illegality/invalidity in the order passed in the 'primary proceedings' can be set up in the 'collateral proceedings' and if yes, then of what nature?*

*8.1. We have analysed this issue carefully. There is no doubt that after passing of the original assessment order, the primary (i.e., original proceedings) had come to an end and attained finality and, therefore, outcome of the same cannot be disturbed, and therefore, the original assessment order framed to conclude the primary proceedings had also attained finality and it also cannot be disturbed at the instance of the assessee, except as permitted under the law and by following the due process of law. Under these circumstances, it can be said that effect of the original assessment order can not be erased or modified subsequently. In other words, whatever tax liability had been determined in the original assessment order that had already become final and that cannot be sought to be disturbed by the assessee. But the issue that arises here is that if the original assessment order is illegal in terms of its jurisdiction or if the same is null & void in the eyes of law on any jurisdictional grounds, then, whether it can give rise to initiation of further proceedings and whether such subsequent proceedings would be valid under the law as contained in IT Act? It has been vehemently argued before us that the subsequent proceedings (i.e. collateral proceedings) derive strength only from the order passed in the original proceedings (i.e. primary proceedings). Thus, if order passed in the original proceedings is itself illegal, then that cannot give rise to valid revision proceedings. Therefore, as per law, the validity of the order passed in the primary (original) proceedings should be allowed to be examined even at the subsequent stages, only for the limited purpose of examining whether the collateral (subsequent) proceedings have been initiated on a valid legal platform or not and for examining the validity of assumption of jurisdiction to initiate the collateral proceedings. If it is not so allowed, then, it may so happen that though order passed in the original proceedings was illegal and thus order passed in the subsequent proceedings in turn would*

*also be illegal, but in absence of a remedy to contest the same, it may give rise to an 'enforceable' tax liability without authority of law. Therefore, the Courts have taken this view that jurisdictional aspects of the order passed in the primary proceedings can be examined in the collateral proceedings also. This issue is not res integra. This issue has been decided in many judgments by various courts, and some of them have been discussed by us in followings paragraphs.*

*8.2. In a matter that came up before Hon'ble Supreme Court in the case of Kiran Singh & Ors. vs. Chaman Paswan & Ors. [1955] 1 5CR 117 the facts were that the appellant in that case had undervalued the suit at Rs. 2,950 and laid it in the Court of the Subordinate Judge, Monghyr for recovery of possession of the suit lands and mesne profits. The suit was dismissed and on appeal it was confirmed. In the second appeal in the High Court the Registry raised the objection as to valuation under s. 11. The value of the appeal was fixed at Rs. 9,980. A contention then was raised by the plaintiff in the High Court that on account of the valuation fixed by the High Court the appeal against the decree of the Court of the Subordinate Judge did not lie to the District Court, but to the High Court and on that account the decree of the District Court was a nullity. Alternatively, it was contended that it caused prejudice to the appellant. In considering that contention at p. 121, a four Judge Bench of Hon'ble Supreme Court speaking through Vankatarama Ayyar, J. held that: "It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a invalidity could be set up whenever and wherever it is sought to be enforced nullity, and that its or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties."*

*8.3. This judgment was subsequently followed by Hon'ble Supreme Court in the landmark case of Sushil Kumar Mehta vs. Gobind Ram Bohra, (1990) 1 SCC 193, wherein an issue arose whether a decree can be challenged at the stage of execution and whether a decree which remained uncontested operates as res-judicata qua the parties affected by it. Hon'ble apex court. taking support from aforesaid judgment, observed as under: "In the light of this position in law the quest ion for determination is whether the impugned decree of the Civil Court can be assailed by the appellant in execution. It is already held that it is the*

*Controller under the Act that has exclusive jurisdiction to order ejectment of a tenant from a building in the urban area leased out by the landlord. Thereby the Civil Court inherently lacks jurisdiction to entertain the suit and pass a decree of ejectment. Therefore, though the decree was passed and the jurisdiction of the Court was gone into in issue Nos. 4 and 5 at the ex-parte trial, the decree there-under is a nullity, and does not bind the appellant. Therefore, it does not operate as a res judicata. The Courts below have committed grave error of law in holding that the decree in the suit operated as res judicata and the appellant cannot raise the same point once again at the execution."*

*8.4. Similar view has been taken by Hon'ble Supreme Court by following aforesaid judgments recently in the case of Indian Bank vs. Manual Govindji Khona reported in 2015 (3) SCC 712. Further, similar view was emphasized by Hon'ble Bombay High Court (GOA Bench) in the case of Mavany Brothers vs. CIT (Tax Appeal No. 8 of 2007) [reported at (2015) 120 DTR (Bom) 286-Ed.] in its order dt. 17th April, 2015 wherein it was held that an issue of jurisdiction can be raised at any time even in appeal or execution.*

*8.5. The aforesaid principles, enunciated by the Apex Court in the case of Kiran Singh & Ors. vs. Chaman Paswan & Ors, supra were reiterated by the apex Court in the cases of Superintendent of Taxes vs. Onkarmal Nathmal Trust (AIR 1975 SC 2065) and Dasa Muni Reddy vs. Appa Rao (AIR 1974 SC 2089). In the first of these decisions it was pointed out that revenue statutes protect the public on the one hand and confer power upon the State on the other, and the fetter on the jurisdiction is one meant to protect the public on the broader ground of public policy and, therefore, jurisdiction to assess or reassess a person can never be waived or created by consent. This decision shows that the basic principle recognized in Kiran Singh (supra) is applicable even to revenue statutes such as the IT Act. Dasa Muni Reddy (supra) is a judgment where the principle of 'coram non judice' was applied to rent control law. It was held that neither the rule of estoppel nor the principle of res judicata can confer the Court jurisdiction where none exists. Here also the principle that was put into operation was that jurisdiction cannot be conferred by consent or agreement where it did not exist, nor can the lack of jurisdiction be waived.*

*8.6. These judgments were subsequently noticed by Hon'ble Gujarat High Court in the case of P.V. Doshi vs. CIT (1978) 113 ITR 22 (Guj). This case arose under the IT Act with reference to*

*the provisions of s. 147 dealing with re-assessment. The facts were that the assessment was sought to be reopened under s. 147 and notice under s. 148 was issued. Validity of reopening was not challenged upto Tribunal and additions were challenged on merits only. The Tribunal restored the matter to the AO with some directions to reexamine the issue on merits. When the matter came back to the AO the assessee specifically raised the point of jurisdiction to reopen the assessment, contending that the notice of reopening was prompted by a mere change of opinion. The AO rejected plea of the assessee but the AAC accepted this ground and also held the reassessment to be bad in law on jurisdictional ground. Against the order of the AAC the Revenue went in appeal before the Tribunal and specifically raised the plea that the question of jurisdiction to reopen the assessment having been expressly given up by the assessee in the appeal against the reassessment order in the first round, the assessee was debarred from raising that point again before the AAC and the AAC was equally wrong in permitting the assessee to raise that point which had become final in the first round and in adjudicating upon the same. The plea of the Revenue impressed the Tribunal which took the view that after its earlier order in the first round of proceedings the matter attained finality with regard to the point of jurisdiction which was given up before the AAC and not agitated further and that in the remand proceedings what was open before the AO was only the question whether the addition was justified on merits and the point regarding the jurisdictional aspect was not open before the AO According to the Tribunal, the assessee having raised the point in the first round and having given it up could not revive it in the second round of proceedings where the issue was limited to the merits of the additions. In this view, the Tribunal accepted the Revenues plea. The assessee thereafter carried order of the Tribunal in reference before the Gujarat High Court. The High Court after considering various judgments of the Supreme Court on the point of jurisdiction to reopen the assessment and also after specifically discussing the judgment of the Supreme Court in Onkarmal Nathmal Trust (supra) and Dasa Muni Reddy (supra) held that the Tribunal was in error in holding that the question of jurisdiction became final when it passed the earlier remand order. It was held that neither the question of res judicata nor the rule of estoppel could be invoked where the jurisdiction of an authority was under challenge. According to Hon'ble Gujarat High Court, the rule of res judicata cannot be invoked where the question involved is the competence of the Court to assume jurisdiction, either pecuniary or territorial or over the subject-matter of the dispute. Hon'ble High Court further*

*held that since neither consent nor waiver can confer jurisdiction upon the AO where it did not exist, no importance could be attached to the fact that the assessee, in the first round of proceedings, expressly gave up the plea against the erroneous assumption of jurisdiction by the assessing authority. According to the Hon'ble Court, the "finality or conclusiveness could only arise in respect of orders which are competent orders with jurisdiction and if the proceedings of reassessment are not validly initiated at all, the order would be a void order as per the settled legal position which could never have any finality or conclusiveness. If the original order is without jurisdiction, it would be only a nullity confirmed in further appeals". In this view of the matter. Hon'ble High Court finally answered the reference in favour of the assessee.*

*8.7. It is further noted that many of these judgments were discussed and followed by the Co-ordinate Bench of the Tribunal in the case of Indian Farmers Fertilizers Co-operative Ltd. vs. Jt. CIT (2007) 107 TTJ (Del) 98: (2007) 105 ITD 33 (Del), wherein a similar issue had arisen. In this case, the issue raised before the bench was whether it is open to the assessee, not having appealed against the reassessment order, to set up or canvass its correctness in collateral proceedings taken for rectification thereof under s. 154. The bench minutely analysed law in this regard and applying the principle of 'coram non judice and following aforesaid judgments of the supreme court, it was held that if an assessee seeks to challenge the reassessment proceedings as being without jurisdiction, when action for rectification is sought to be taken on the assumption of the validity of the reassessment order, then the assessee has to step in and protect its interests and the liberty to question even the validity of the reassessment proceedings ought to be given to it." (emphasis, italicized in print, supplied).*

*8.8. Similar view was taken in another decision of the Tribunal in the case of Dhiraj Suri vs. Addl. CIT (2006) 99 TTJ (Del) 525: (2006) 98 ITD 87 (Del). In the said case, appeal was filed by the assessee before the Tribunal against the levy of penalty. In the appeal challenging the penalty order, the assessee challenged the validity of block assessment order which had determined the tax liability of the assessee on the basis of which penalty was levied subsequently. The revenue objected with respect to the ground of the assessee raising jurisdictional issues of assessment proceedings in the appeal against the penalty order. After analysing the legal position, as clarified by Hon'ble Gujrat High Court in the case of P.V. Doshi, supra and Hon'ble Bombay*

*High Court in the case of Jainaravan Babulal vs. CIT (1988) 69 CTR (Bom) 201: (1988) 170 ITR 399 (Bom) the bench held as that if the block assessment itself is without jurisdiction then there is no question of levy of any penalty under s. 158BFA(2) and therefore it is open to the assessee to set up the question of validity of the assessment in the appeal against the levy of penalty.*

*8.9. We also derive support from another judgement of Hon'ble Bombay High Court in the case of Inventors Industrial Corporation Ltd vs. CIT (1991) 96 CTR (Bom) 206: (1992) 194 ITR 548 (Bom) wherein it was held that assessee was entitled to challenge the jurisdiction of the AO to initiate re-assessment proceedings before the CIT(A) in the second round of proceedings, even though he had not raised it in earlier proceedings before the AO or in the earlier appeal.*

*8.10. Thus, on the basis of aforesaid discussion we can safely hold that as per law, the assessee should be permitted to challenge the validity of order passed under s. 263 on the ground that the impugned assessment order was nonest and we hold accordingly.*

*Further, the coordinate bench of Mumbai Tribunal in the case of Aishwarya Rai Bachchan (Supra), has held as under:-*

*4.1. One more excruciating fact that needs to be addressed in the instant case is that the learned Principal CIT herein is only seeking to revise the order passed by the learned AO under s. 143(3) r/w 3. 147 of the Act dt. 12th Dec., 2018. In the said reassessment proceedings, the learned AO had not even made any addition despite the fact that he had reason to believe that income of Rs. 11.55.330 had escaped assessment in the hands of the assessee which was sought to be taxed under s. 56 of the Act as per the reasons recorded Hence, when the very basis of reasons recorded by the learned AO was ultimately not added by the learned AO in the reassessment proceedings, then the primary reason to believe that income of the assessee had escaped assessment fails and such re-assessment cannot be treated as a valid order in the eyes of law. The same is to be declared as void ab initio. Reliance in this regard was rightly placed on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Jet Airways (1) Ltd. (2011) 239 CTR (Bom) 183: (2011) 52 DTR (Bom) 71: (2011) 331 ITR 236 (Bom). When an assessment framed by the learned AO is unsustainable in the eyes of law, the said invalid and illegal order cannot be subject matter of s. 263 proceedings. On this count also, the*

*revision order passed by the learned Principal CIT under s. 263 of the Act deserves to be quashed.*

*The coordinate bench of Ahmedabad Tribunal in the case of Shri Jignesh Lilachand Shah (supra), had an occasion to deal with this issue where the Tribunal in para 6 has observed as under:-*

*6. The next issue for consideration before us is that once it is held that the assessment order itself is null and void, can such assessment order be the subject matter of revision under section 263 of the Act. In our view, it is a well-settled principle of law that once the assessment order passed itself is null and void, the same cannot be the subject matter revision under section 263 of the Act. In the case of Pioneer Distilleries Limited Vs Pr. CIT ITA No. 479/PUN/2017(ITAT Pune) the ITAT held that revisionary jurisdiction cannot be exercised against Void order. In this case, the ITAT held that when the said order is void and did not stand in eyes of law, it cannot be held to be erroneous and prejudicial to the interest of revenue by the Commissioner. Again in the case of Westlife Development Ltd. v. PCIT vide order dated 24.06.2016 (ITAT Mumbai), the ITAT held that when an Assessment order passed under section 147 of the Act was illegal the CIT cannot invoke the jurisdiction under section 263 of the Act against such void or non-est order. In the case of Inder Kumar Bachani (HUF) v. ITO (2006) 101 TTJ 450 (ITAT Lucknow), the ITAT held that as the order of the Assessing Officer passed under section 147/143(3) was itself void, the order of PCIT passed under section 263 for quashing this order was without jurisdiction. In view of the above observations, we are of the considered view that since the assessment order passed by ITO Ward 3(3)(2). Ahmedabad itself was null and void, the same could not be the subject matter of revision under section 263 of the Act. In the result, we are Shri Jignesh Lilachand Shah vs. Pr. CIT allowing the appeal of the assessee on the ground of jurisdiction itself. We are accordingly not separately adjudicating into the merits of the case.*

*On careful reading of the observations made by the coordinate benches of the Tribunal in aforesaid cases, we are of the view that the validity of order passed u/s.263 of the Act on the ground that the re-assessment order from which the said proceedings emerged out was nonest, can be challenged in appellate proceedings against u/s.263 of the Act. Thus, respectfully following the above decisions of the coordinate benches of the Tribunal, we are of the considered view that in the present appellate proceedings against the order of the ld. Pr. CIT*

*u/s.263 of the Act, the validity of the order passed u/s.147/143(3) of the Act can be examined.”*

In the case of *PCIT vs Badal Prakash Jindal (HUF) [2023] 457 ITR 345* the Hon'ble Orissa High Court held that if the original reassessment order itself was not validly passed the subsequent revisional order by the Principal Commissioner of Income -Tax was required to be held invalid. Against this order the SLP filed by the Department has been dismissed by the Hon'ble Supreme Court.

9. Respectfully following the above decisions of the Hon'ble Courts and coordinate benches of the Tribunal, we are the considered view that in the appellate proceedings against the order of the Ld. PCIT passed u/s 263 of the Act the validity of the order passed u/s 147/143(3) of the Act can be examined.

10. Now, coming to the issue of validity of reopening u/s 148 of the Act. The reasons recorded before the assessment are mentioned in the assessment order as under:

*“ As per information received from the office of the Pr. Director of Income Tax (Inv.) Faridabad vide his letter no. 5062 dated 27.02.2018, it has been found that a survey under section 133A was conducted by the investigation Wing, Kolkata on the premises of Shri Ashok Kayan*

*and his company M/s Kayan Securities Pvt Ltd and it was found that Shri Ashok Kumar Kayan was involved in providing accommodation entries in the form of long Term Capital Gain through penny stock in connivance with entry operators and promoters of script at Kolkata Stock Exchange Smit Neha Goel is one of Beneficiary who has obtained accommodation entries the form of bogus Long Term Capital Gain at the CSE of penny stock of M/s Blueprint securities ltd.*

*On analyzing of track data taken from the Kolkata Stock Exchange, it was found that Shri Ashok Kayan, broker traded in 9 penny stacks at the platform of CSE for providing bogus LTCG to clients which included the script of M/s Blueprint Securities Ltd. in which the assessee has claimed to have traded. On the direction of SEBI, has stopped trading on C-Star (the fully computerized online system) since 2013 yet trading in all penny stacks prior to that period have yielded huge long term capital garis to the beneficiaries and the assessee is one such beneficiary who has received sale consideration of Rs 2204760 from sate of script M/s Blueprint Securities Limited during the year under consideration.*

*Above information information available with department to the knowledge of assessee, a letter was issued to the assessee on 19.02.2019 u/s 133(6) of the income Tax Act, 1961 with the prior approval of the Pr. Commissioner of Income Tax Faridabad, requiring thereby furnishing response in this regard it was specifically mentioned that if no response is received, appropriate proceedings under the income Tax Act, 1961 may be initiated. The assessee has not given any details of receipts on account of sale of shares of script M/s Blueprint Securities Limited*

*In absence of any response, prima-facie it is clear that the assessee has obtained bogus accommodation entry in the form of penny stock of M/s Blueprint Securities Limited which has been unravelled by the investigation wing of department to be engaged in providing bogus entry of sale of shares and the same is liable to be treated as unexplained credits received on account of sale of share of M/s Blueprint Securities Limited during the F.Y. 2013-14 relevant to AY 2014-15, Furthermore, it is evident that there is a "Live Link" between the material available on record and the escaped Income, as mentioned above.*

*In this case the income declared by the assessee is not the true income of the assessee for the year under consideration and the only requirement to initiate proceeding u/s 147 is reason to believe which has been recorded to this case.*

*In view of the above, the provisions of clause (b) of Explanation 2 of section 147 are applicable to facts of the case and the assessment year*

*under consideration is deemed to be a case where income chargeable to tax has escaped assessment on the failure on the part of assessee to not disclose all material facts fully and truly during the course of assessment.*

*Keeping in view the statutory provisions, legal principles, and factual matrix that the nature of income declared does not reflect the true and actual income generated by the assessee on account of bogus accommodation entry of sale of penny stock Therefore have reason to believe that the income to the extent of Rs. 22,01,760/- chargeable to tax, has escaped assessment for the assessment year 2014-15 within the meaning of section 147 of the Income Tax Act 1961 in order to assess the above income or any other income which comes to my notice subsequently in the course of assessment proceedings us 147 proceed to initiate proceedings u/s 147 of the il Act 1961 in the case for AY 2014-15.*

*in this case more than four years have lapsed from the end of assessment year under consideration Hence necessary sanction to issue notice us 148 is being obtained separately from Principal Commissioner of Income Tax is the provisions of section 151 of the Act.”*

10.1 Perusal the reasons recorded by the AO reveals that the AO has observed that assessee has obtained bogus entries of M/s Blueprint Securities Ltd. of Rs 22,01,760/-whereas the assessee has declared long term capital gain from the sale of M/s Unno Industries Ltd. The assessee has provided the relevant details of the capital gains from the script at the time of filing the return of income. It appears that AO has recorded the reasons in mechanical manner without any independent application of mind and without making any enquiry nor

making any other verification the information received by him with the information available on record. The notice issued u/s 148 of the Act to the assessee is bad in law and consequently order passed u/s 147 r.w.s 144B is invalid. The coordinate bench in the case of ITA No. 2622/Del/2024 Shobit Goel (HUF) vs PCIT relying the Judgment of Mumbai Bench of the Tribunal In the case Of Westlife Development Ltd. (Supra), held as under:

*“ 10.1. We have discussed in detail in earlier part of our order that an invalid order cannot give birth to legally valid proceedings. It is further noticed by us that some of the judgments relied upon by the learned counsel have already addressed this issue. This issue has also been decided by the co-ordinate bench (Delhi Bench of Tribunal) in the case of Krishna Kumar Saraf vs. CIT (supra). The relevant part of the order is reproduced below:*

*"17. There is no quarrel with the proposition advanced by learned Departmental Representative that the proceedings under s. 263 are for the benefit of revenue and not for assessee.*

*18. However, under s. 263 the learned Commissioner cannot revise a non est order in the eye of law. Since the assessment order was passed in pursuance to the notice under s. 143(2), which was beyond time, therefore, the assessment order passed in pursuance to the barred notice had no legs to stand as the same was non est in the eyes of law. All proceedings subsequent to the said notice are of no consequence. Further, the decision of Hon'ble Madras High Court in the case of CIT vs. Gitsons Engineering Co. 370 ITR 87 (Mad) clearly holds that the objection in relation to non service of notice could be raised for the first time before the Tribunal as the same was legal, which went to the root of the matter. 19. While exercising powers under s. 263 learned Commissioner cannot revise an assessment order which is non est in the eye of law because it would prejudice the right of assessee which has accrued in favour of assessee on account of its income being determined. If learned CIT revises such an assessment order, then it would imply extending/granting fresh limitation for passing fresh assessment order. It is settled law that by the action of the authorities the*

*limitation cannot be extended, because the provisions of limitation are provided in the same. 20. In view of above discussion, ground No. 3 is allowed and revision order passed under s. 263 is quashed."*

*10.2. It is further noticed by us that similar view has been taken by Chandigarh Bench of the Tribunal in the case of Steel Strips Ltd. (supra).*

*11. Thus, after taking into account all the facts and circumstances of the case, we find that in this case, the original assessment order passed under s. 143(3) dt 24th Oct., 2013 was null & void in the eyes of law as the same was passed upon a non-existing entity and, therefore, the learned CIT could not have assumed jurisdiction under the law to make revision of a non est order and, therefore, the impugned order passed under s. 263 by the learned CIT is also nullity in the eyes of law and therefore the same is hereby quashed."*

In the instant case the assessment passed by the AO is not valid then any further proceedings originated from the said order cannot be held as valid proceedings which includes the revisionary proceedings initiated by the Ld. PCIT Faridabad u/s 263 of the Act. Respectfully following the decision of co-ordinate Bench of ITAT, Delhi in the case of Shobhit Goel (HUF)vs PCIT ITA NO.2622/Del/2024, we quash the revisionary order passed u/s 263 of the Act. Thus, additional grounds raised by the assessee are allowed. Since we have decided the legal grounds in favour of the assessee the other grounds have become academic and keep them open for adjudication.

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

Order pronounced in the open court on 28.05.2025.

**Sd/-**  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SUDHIR KUMAR)**  
**JUDICIAL MEMBER**

Date: 28.05.2025

*Neha & Pooja, Sr. PS*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI