

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 4948/DEL/2024  
Assessment Year: 2015-16

R.D.Vohra, HUF 5D/20A, NIT, Faridabad-121 001, HaryanaPAN No. <b>PAN: AADHR6037B</b>	Vs.	PCIT, Faridabad, Haryana-122 001
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri Rajkumar Gupta, CA & Shri J.P. Sharma, Adv.
Department by:	Ms. Monika Singh, CIT (DR)
Date of Hearing:	26.06.2025
Date of pronouncement:	09.07.2025

**ORDER**

**PER VIMAL KUMAR, JUDICIAL MEMBER:**

The Application for condonation of delay of 165 days in filing appeal and appeal are against order dated 14.03.2024 of Learned Principal Commissioner of Income-Tax, Faridabad (hereinafter referred as "Ld. CIT(A)") under Section 263 of the Income Tax Act, 1961 ( hereinafter referred as "the Act") arising out of order dated 30.03.2022 of the National Faceless Assessment Centre (NFAC) (hereinafter referred as "Ld. AO") under Section 147 r.w.s. 144 of the Act for assessment year 2015-16.

2. Brief facts of case are that assessee filed his return of income on 03.07.2015 declaring income of Rs.5,48,140/-. As per actionable information monitoring System available on Insight Portal, reason for reopening of the case was recorded and with the satisfaction of the Ld. PCIT on the above reasons recorded to issue notice under Section 148 of the Act as per provisions of section 151 of the Act. Proceedings for assessment under Section 147 of the Act was initiated by issuing notice under Section 148 dated 31.03.2021 of the Act. In response to the notice issued under Section 148 of the Act, assessee has filed its return declaring total income of Rs.5,48,140/- on 19.07.2021. Further, notices under Section 142(1) dated 24.11.2021, 17.12.2021, 08.02.2022 and 28.02.2022 along with questionnaire were issued to the assessee. In response to the notices, assessee furnished details which were verified carefully. The total income of assessee as per return was accepted by Ld. AO vide order dated 30.03.2022 under Section 147 r.w.s. 144B of the Act.

3. On perusal of information on record, it was found that assessee had obtained accommodation entries amounting to Rs.24,96,978/- in the form of bogus Long Term Capital Gain through penny stock form sale of script M/s. Aurbindo Pharma Ltd. during the year under consideration. As per record, assessee was one of the beneficiaries who had obtained accommodation entries in the form of bogus Long Term Capital Gain. Assessee failed to provide documentary evidence with regard to purchase of equity shares from the

company. Show-cause-notice under Section 263 of the Act dated 15.01.2024 and 05.02.2024 were issued to the assessee. Opportunity to explain was given. Ld. PCIT vide order dated 14.03.2024 set aside the assessment order dated 30.03.2022 and directed the Ld. AO to pass fresh assessment order and recomputed the assessee's income after making further inquiries.

4. Being aggrieved, appellant/assessee preferred present appeal by raising following grounds of appeal:

"1. That under the facts and circumstances, Ld. PCIT grossly erred in law as well as on merits in invoking the provisions of Sec.263 of the I.T. Act and consequently in setting aside the impugned asstt. order passed U/s. 147/144B with a direction to pass fresh asstt. order.

2. That without prejudice, since the order and findings of Ld. PCIT U/s.263 is based on wrong and non-existent facts, hence the said order has no legs to stand and survive, either in law and/or on facts.

3. That without prejudice, the issue for which proceedings U/s.263 have been initiated, since has already been examined and adjudicated as per law in earlier proceedings U/s.147 which were initiated only and specifically for the same issue, hence the relevant order U/s.147/144B is neither erroneous nor prejudicial to the interest of revenue, hence the impugned proceedings U/s.263 are illegal, unwarranted and deserves to be quashed".

5. Appellant/assessee through application dated 19.06.2025 requested for admission of additional following ground of appeal no.1:

"That in view of the fact that the related/primary asstt. order U/s.147/144B is illegal and without jurisdiction, therefore, no revision of such illegal and without jurisdiction order can be done U/s.263, consequentially impugned order U/s.263 is also illegal, without jurisdiction, invalid, a nullity, hence liable to be quashed."

6. Learned Authorised Representative for the appellant/assessee submitted that there is delay of 165 days in filing appeal due to 81 years age of assessee and unfortunate death of his only son Gagan Vohra due to COVID 2019 on 20.04.2020 and old aged ailment of the assessee. Assessee could not notice order dated 14.03.2024 but his CA Shri R.P. Gupta brought order dated 14.03.2024 to the notice of the assessee.

7. Learned Authorised Representative for the appellant/assessee submitted that additional ground of appeal no.1 has been taken as a matter of abundant pre-caution. Ground of appeal nos. 1 and 2 of the appeal already covered the issue raised in additional ground no.1. Additional ground no.1 raises pure legal issue which goes to the root of matter. The assessment order under Section 147 r.w.s. 144B, no addition was made. Initiation of proceedings under Section 147 of the Act was on incorrect facts. Reasons for issuance of notice under Section 148 of the Act at pages nos. 10 and 11 suffer from several incorrectness.

8. Learned Authorised Representative for the appellant/assessee submitted that assessee earned Long Term Capital Gain of Rs.24,96,978/- only on sale of shares of “**Aurbindo Pharma Ltd.**” on sales consideration of Rs.26,90,978/-.

- 147 Proceedings initiating assuming “**Lifeline Securities Ltd.**” as penny stock, hence to examine the chargeability of total sale consideration. The initiation U/s.147 is invalid on account of fatally defective approval U/s.151. PCIT gave approval U/s.151 only and only as “**considering the reasons recorded by A.O. as per Annexure**”. The reasons are factually incorrect. Hence approval given on incorrect facts is

also invalid, unsustainable, mechanical, without application of mind and on borrowed satisfaction. On the basis of such fatally defective approvals U/s.151 no legally valid asstt. order U/s.147 can be passed. Since in this case the initiation U/s.147 is clearly on the basis of wrong material facts, hence reopening invalid. It is a settled law that if the initiation U/s.147 is on wrong and incorrect facts, such reopening is illegal, invalid in law and without jurisdiction. Again, it is a settled law that in appellate proceedings against order of Ld. PCIT passed U/s.263 of the Act, the validity of the order passed U/s.147 can be examined and in case it is found that the order U/s.147 is illegal and without jurisdiction, the consequential proceedings U/s.263 will also be illegal and without jurisdiction.

9. Learned Authorised Representative for the appellant/assessed further relied on the following case laws:

- i) Sr. PCIT Vs. RMG Polyvinyl(I) Ltd., 393 ITR 5 (Del.);
- ii) DCIT Vs. KLA Foods (India) Ltd. – [2019] 108 taxmann.com 610 (Delhi-Trib);
- iii) Neha Goel Vs. PCIT – ITANo.2624/Del/2024 (Order Dtd. 28.05.2025);
- iv) Shobhit Goel HUF Vs. PCIT – ITA No. 2622/Del/2024 (Order Dtd. 27.02.2025);
- v) PCIT vs. Badal Prakash Jindal – [2023] 150 taxmann.com 483 (Orissa);
- vi) Westlife Development Ltd. Vs. PCIT – [2017] 88 taxmann.com 439 (Mumbai)/ [2016] 49 ITR(T) 406 (Mumbai) 24.06.2016).

10. Learned Authorised Representative for the appellant/assessed submitted that show-cause-notice under Section 263 of the Act was on wrong facts which as follows:

**“2. SCN U/s.263 on wrong facts**

- Main SCN Dtd.15.01.24. (mentioning the issue)
- Follow up SCN Dtd.05.02.24. (without mentioning any issue)
- As per SCN the issue of proceedings U/s.263 is as under:-

**"3 as per the information available on record the assessee is one of the beneficiary who has obtained accommodation entries amounting to Rs.24,96,978/- in the form of bogus long term capital gain through penny stock from sale of script M/s Lifeline Securities Limited...."**

- No transaction and no capital gain on this script of Lifeline Securities Ltd.
- Hence the issue of SCN U/s.263 is a non-existent and factually incorrect issue.
- The LTCG has been earned on script "**Aurbindo Pharma Ltd.**" only.
- The subject matter of order U/s.263 can be only such issues which emanates from SCN and not beyond SCN.
- In present case, the subject matter of order U/s.263 is the LTCG on sale of "**Aurbindo Pharma Ltd.**" and not on "**Lifeline Securities Ltd.**".
- Hence, the impugned order, since not on "Lifeline Securities Limited", hence without jurisdiction and illegal.

CASE LAW ON - Issues of order U/s.263 can be only out of SCN

PR. CIT VS. KRISHAK BHARATI CO-OP. LTD. (2017) 295 CTR (Del) 181

Validity-Issue not subject-matter of notice vis-à-vis erroneous and prejudicial order-

**CIT has no jurisdiction to issue any directions with regard to any issue on which no show-cause notice was issued-** Further, in fact the queries were specifically with respect to dividend income, the exemption etc. and AO had also considered the explanation of the

Omani authorities on the subject-CIT's order under s.263 was not therefore sustainable.

### **3. 147 only on this issue duly examined during 147 proceedings**

- 147 proceedings initiated only on the issue of alleged bogus LTCG.
- During asstt. U/s. 147, vide 142(1) Dtd. 17.12.21 (Q.5&6), A.O. specifically raised query for declared LTCG of Rs.24,96,678/- as well as for Rs.27,31,950/- (incorrect figure as per reasons), however in respect of sale of script "**M/s Lifeline Securities Ltd.**".
- The assessee vide reply Dtd. 17.03.22 explained the LTCG on sale of "**Aurbindo Pharma Ltd.**".
- A.O. duly examined the reply and specifically noted in the order that "**...assessee furnished details which were verify carefully w.r.t. issue under scrutiny**".
- Only thereafter the impugned order U/s.147/144B stood passed.
- Merely because assessing officer did not make any reference to issues in assessment order did not make order erroneous-commissioner exercising powers under section 263 not justified.
- The extent of examination of an issue is the sole prerogative of the A.O. and even if in view of PCIT, some more enquiries were needed, this thought of PCIT cannot make the order of A.O. as erroneous and prejudicial to the interest of revenue.

11. Learned Authorised Representative for the Revenue submitted that he has no objection to condone the delay of 165 days in filing appeal. Impugned order dated 14.03.2024 has been fairly passed by Ld. PCIT.

12. From appraisal of record in light of aforesaid rival contentions, it is amply clear that there is delay of 165 days in filing appeal due to 81 years of age of assessee, illness of assessee and illness and death of his only son on 20,04,2020 in COVID 2019. Explanation does not smack of mala fide as

appellant had not gained anything by not filing appeal within a period of limitation. Therefore, delay of 165 days in filing appeal is condoned.

13. From examination of record in light of aforesaid rival contentions, it is crystal clear that additional ground no.1 and grounds of appeal nos. 1 and 2 in Form 36 pretend to assessment order under Section 147/144B is illegal and without jurisdiction, therefore, no revision of the illegal order and without jurisdiction can be done under Section 263 of the Act. Assessee earned LTCG of Rs.24,96,978/- on sale of shares of Aurbindo Pharma Ltd. on sales consideration of Rs.26,90,978/- as is clear from computation of income at page nos. 19 to 21 of paper books. Proceedings initiated under Section 147 of the Act assuming **M/s. Lifeline Securities Ltd.** as penny stock. At pages 10 and 11, reasons suffer from factual incorrectness as under:

**Factual incorrectness in the reasons**

<b>S.N.</b>	<b>As per Reasons(10-11)</b>	<b>Correct Facts</b>	<b>Pg. No.</b>
1	Regular ITR not filed (Page 10, Para-1)	ITR stands filed u/s 139(1) in time on 03.07.15	18
2.	Amt. of alleged bogus LTCG Rs.27,31,950/- (Page 10, Para-2)	Rs.27,31,950/- is nowhere. Sale consideration is Rs.26,90,978/-, LTCG is Rs.24,96,978/-.	20, 21
3	Script Traded Lifeline Securities Limited (Page 10, Para-2, 3 & 4)	M/s Assessee traded scrip of Aurobindo Pharma Ltd. and not Lifeline Securities Limited.	20, 21

4.	Assessee traded in penny stock (Page 10, para-4)	Aurbindo Pharma Ltd. is not penny stock. Its turnover in F.Y.14-15 is 82,448.4 Millions (Rs.8244,84,00,000/- i.e. 8244.84 Cr.)	25
5.	Assessee has not given any details of receipts on account of sale of shares (Page 10, para-3)	These details duly given in ITR.	18, 20
6	Assessee has failed to disclose all material facts fully and truly during the course of asstt. (Page 10-11, Para 5)	All details disclosed in ITR truly and correctly  Since no regular asstt. took place, hence reasons wrong in giving reference as "during course of asstt."	18 & 20
7	The income declared does not reflect true and actual income generated account of on bogus accommodation entry of sale of penny stock. (Page 11, Para-6)	LTCG of Rs.24,96,978/- declared as exempted income.  On the one side in reasons, A.O. says no ITR filed, in this reason A.O. says that the income declared.....	18

14. During asstt. U/s. 147, vide 142(1) Dtd. 17.12.21 (Q.5&6), A.O. specifically raised query for declared LTCG of Rs.24,96,678/- as well as for Rs.27,31,950/- (incorrect figure as per reasons), however in respect of sale of script "**M/s Lifeline Securities Ltd.**". The assessee vide reply Dtd. 17.03.22 explained the LTCG on sale of "**Aurbindo Pharma Ltd.**". A.O. duly

examined the reply and specifically noted in the order that **"...assessee furnished details which were verify carefully w.r.t. issue under scrutiny"**. Only thereafter the impugned order U/s.147/144B stood passed. Merely because assessing officer did not make any reference to issues in assessment order did not make order erroneous-commissioner exercising powers under section 263 not justified.

15. As per ratio of judgment in PCIT vs. R.M.G. Polyvinyl (India) Ltd., 396 ITR 5 (Del.), it is well settled that re-assessment proceedings are to be quashed. In this case, Ld. AO reopened the case on the premises that the return was not filed as per database of the department, although it was already filed. The re-assessment proceedings are to be quashed.

16. As per ratio of DCIT vs. KLA Foods (India) Ltd. (supra), it is well-settled assumption of jurisdiction for re-assessment is illegal if the reasons were on wrong facts which clearly show that reopening of assessment was illegal and bad in law and, accordingly, impugned addition has to be deleted.

17. In Neha Goel Vs. PCIT, ITAT Delhi Bench "E" held as under:

"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 17 and his company M/s Kayan Securities Pvt Ltd and it was found that Shri Ashok Kumar Kayan was involved in providing accommodation enters 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 gain to the beneficiaries and the assessee is one such beneficiary who has received sale consideration of Rs 2204760 from sale 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 18 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 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.”

18. In view of above material facts and well settled principles of law, the initiation of proceedings under Section 147 of the Act is unsustainable in eyes of law and is set aside. Likewise, the impugned order under Section 263 of the Act is illegal and is set aside. Accordingly, additional ground of appeal no.1 and ground nos. 1 to 3 in Form 36, are allowed.

19. In the result, the application for condonation of delay of 165 days in filing appeal and appeal of assessee are allowed.

**Order pronounced in the open court on 9<sup>th</sup> July, 2025.**

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Sd/-  
(VIMAL KUMAR)  
JUDICIAL MEMBER

**Dated: 09/07/2025**  
*Mohan Lal*

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi