

**आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**RAJKOT BENCH, RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**  
**AND**  
**SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

<b>Sr. No.</b>	<b>ITA No.</b>	<b>Assessment Year</b>	<b>Appellant By</b>	<b>Respondent By</b>
1.	03/Rjt/2024	2012-13	Mansukhlal Khimji Khimasiya HUF Mahavir, Nr. Jain Temple, 42- Digvijay Plot, Jamnagar – 361005  <b>PAN No.:</b> <b>AADHS2920Q</b>	Office of Principle Commissioner of Income Tax, Taranjali Building, Jamnagar - 361008
2.	04/Rjt/2024	2013-14	Mansukhlal Khimaji Khimasiya M/s. Metro Metal Corporation, 358/1, G.I.D.C., Shanker Tekri, Jamnagar – 361004  <b>PAN No.:</b> <b>AFNPS7410Q</b>	Office of Principle Commissioner of Income Tax, Taranjali Building, Jamnagar - 361008
3.	05/Rjt/2024	2012-13	Bhanuben Mansukhlal Khimasiya Mahavir, Nr. Jain Temple, 42- Digvijay Plot, Jamnagar – 361005  <b>PAN No.:</b> <b>AOZPS9722C</b>	Office of Principle Commissioner of Income Tax, Taranjali Building, Jamnagar - 361008
4.	06/Rjt/2024	2012-13	Jayesh Khimji Khimasiya HUF Vatsal, Summair Club Road, 3 – Oswal Colony,	Office of Principle Commissioner of Income Tax, Taranjali Building, Jamnagar - 361008



			Jamnagar – 361005	
			PAN No.:	
			AADHS2584L	

Assessee by	Shri Bhavin Shah, Ld. AR
Respondent by	Shri Sanjay Punglia, Ld. CIT (DR)
Date of Hearing	16/ 06 /2025
Date of Pronouncement	09/09/2025

### आदेश / ORDER

#### PER BENCH:

By way of these four appeals, the different assessees have challenged the correctness of the orders dated 06.11.2023 (in ITA Nos. 03, 05 and 06/Rjt/2024), and dated 18.12.2023 (in ITA No.04/Rjt/2024), passed by the Learned Principal Commissioner of Income-tax (in short “Ld PCIT”) under section 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), for the assessment years 2012-13, and 2013-14.

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. For the sake of convenience, the grounds as well as the facts narrated in ITA No. 03/Rjt/2024, for Assessment Year (AY) 2012-13, in the case of Mansukhlal Khimaji Khimasiya, have been taken into consideration for deciding the above appeals *en masse*.

3. Grievances raised by the assessee, in ITA No. 03/Rjt/2024 for Assessment Year (AY) 2012-13 ( lead case) which, being interconnected, will be taken up together, are as follows:

“(i) *The Ld. PCIT has grossly erred in law and on facts in assuming jurisdiction u/s. 263 of the Act on the erroneous ground that the impugned assessment order is erroneous in so far as it is prejudicial to the interest of the revenue.*



- (ii) *The Ld. PCIT has grossly erred in not appreciating that in order to invoke section 263, two conditions must be fulfilled viz. the impugned assessment order must be erroneous and that error must be prejudicial to the interest of the revenue. In the present case, Ld. assessing officer has passed the reasoned assessment order after analyzing all details and therefore, there was no error in the impugned assessment order so as to justify action u/s 263 of the Act. Under the circumstances, the very assumption of power u/s 263 of the Act is unjustified and bad in law and therefore, order u/s 263 of the Act deserves to be quashed.*
- (iii) *The subject order u/s 263 passed by Ld. PCIT is illegal and bad in law in the absence of any finding of the Ld. PCIT as to how the alleged error of the Ld. assessing officer has resulted in loss of revenue particularly when the conditions of section 10(38) of the Act have been fulfilled.*
- (iv) *The Ld. PCIT has further erred in law in not coming to any concrete conclusion and without conducting any inquiry or investigating the issue, merely directed the Ld. assessing officer to frame the assessment order afresh. Without there being any positive finding about order being erroneous and prejudicial to the interest of the revenue, the action of Ld. PCIT is without jurisdiction and illegal and hence deserves to be deleted.”*

4. The relevant material facts, as culled out from the material on record, are as follows. The assessee has filed original return of income showing, income of Rs.4,05,220/-, on 31/07/2012, for assessment year (AY) 2012-13. The same was processed by the Department. Then assessee`s case was reopened u/s. 147 of the Income-tax Act ('the Act' for short) on the basis of information that the assessee has made transactions in penny stock of Karma Ispat Limited, during the previous year relevant to assessment year (AY) 2012-13 and claimed the long-term capital gain (LTCG) income thereon, as exempt u/s 10(38) of the Act. Accordingly, order u/s 147 of the Act was passed on 07/05/2021, accepting the returned income.

5. Later on, the Learned Principal Commissioner of Income-tax (in short “Ld PCIT”), has exercised his jurisdiction under section 263 of the Income-tax Act, 1961. The Ld.PCIT, as per the information, Director of Investigation, Kolkata conducted inquiries which unearthed some big syndicates involved in providing accommodation entries of long term capital gains and a total of 84 BSE listed penny stocks were identified. Thereafter, search and survey actions were



undertaken in the office premises of more than 32 share broking entities and such entities accepted that they were actively involved in the bogus long term capital gains and loss scam. It was mentioned in the investigation report that certain scrips which included scrip "Karma Ispat" were used and manipulated to provide bogus accommodation entries to the beneficiaries in the form of bogus long term capital gains (which is exempt u/s 10(38) of the Act or bogus long term /short term capital loss). The assessee has sold 3500 shares of Karma Ispat Ltd, for Rs.9,71,587/-, on 10/06/2011 and 13/06/2011, which was held to be a Penny Stock and hence it was required to be added to the income of the assessee. These shares were purchased by the assessee nearly 13 months back on 29/04/2010 for Rs.80,869/-, at a price of Rs.23/- per share. The long term capital gain of Rs.8,90,894/-, on this transaction was claimed exempt u/s 10(38) of the Act.

6. Accordingly, a show -cause notice for initiation of proceedings u/s 263 of Act, dated 19/10/2023, was issued to the assessee through ITBA, as well as sent through registered post, which is reproduced as under:

*"Please refer to the above.*

*2. On perusal of the case records for the AY 2012-13, it is observed that the assessment in your case has been finalized vide order u/s 147 of the I. T. Act dtd 07/05/21, by determining total income at Rs. 4,05,220/- accepting returned income.*

*3.1. On perusal of assessment records for AY 2012-13, it is seen that as per the information, Director of Investigation, Kolkata conducted inquiries which unearthed some big syndicates involved in providing accommodation entries of long term capital gains and a total of 84 BSE listed penny stocks were identified. Thereafter, search and survey actions were undertaken in the office premises of more than 32 share broking entities and such entities accepted that they were actively involved in the bogus long term capital gains and loss scam. It was mentioned in the investigation report that certain scrips which included scrip "Karma Ispat" were used and manipulated to provide bogus accommodation entries to the beneficiaries in the form of bogus long term capital gains (which is exempt u/s. 10(38) of the Act or bogus long term -short term capital loss.*

*3.2. During the year you have sold 3500 shares of Karma Ispat Ltd for Rs.9,71,587/- on 10/06/2021 and 13/06/2011. These shares were purchased by you nearly 13 months back on 29.04.2010 for Rs.80,869/-, at a price of Rs.23/- per share. The long*



*term capital gains of Rs.8,90,894/-, on this transaction was claimed exempt u/s.10(38) of the Act. The assessing officer has accepted the submission and no addition was made on this account and assessment finalized u/s. 147 of the Act vide order dated 07/05/2021.*

*3.3. On further verification, as per information from ITO (CIB)-1, Mumbai, it is noticed that out of nine assesseees, who had taken bogus long term capital gains from penny stock Karma Ispat, addition was made in six cases. No addition was made in three cases, out of which one case pertains to the assessee Smt. Mansukhlal Khimji Khimashiya (HUF) for AY 2012-13. The details of the same are as under:*

<i>Name of the assessee</i>	<i>PAN</i>	<i>AY</i>	<i>Date of Assessment</i>	<i>Addition made towards penny stock for Karma Ispat Ltd</i>
<i>Bhanuben Khimji Khimasia (HUF)</i>	<i>assessing officer ZPS9722C</i>	<i>2012-13</i>	<i>26/06/21</i>	<i>Nil</i>
<i>Dhirajlal Khimji Khimasia (HUF)</i>	<i>AADHS2921R</i>	<i>2012-13</i>	<i>27/09/21</i>	<i>9,82,440</i>
<i>Dhirajlal Khimji Khimasia (HUF)</i>	<i>AADHS2921R</i>	<i>2014-15</i>	<i>27/09/21</i>	<i>8,95,550</i>
<i>Jayesh Khimji Khimasiya (HUF)</i>	<i>AADHS2584L</i>	<i>2012-13</i>	<i>12/05/21</i>	<i>Nil</i>
<i>Jigna Jayesh Khimasiya</i>	<i>AOZPS9723D</i>	<i>2012-13</i>	<i>17/09/21</i>	<i>8,15,580</i>
<i>Mansukhlal Khimji Khimashiya (HUF)</i>	<i>AADHS2920Q</i>	<i>2012-13</i>	<i>07/05/21</i>	<i>Nil</i>
<i>Narmadaben Pravinchandra Khimashia</i>	<i>AFNPS7414L</i>	<i>2012-13</i>	<i>14/05/21</i>	<i>7,74,541</i>
<i>Pravinchandra Khimji Khimashia (HUF)</i>	<i>AADHS2922N</i>	<i>2012-13</i>	<i>07/05/21</i>	<i>9,34,490</i>
<i>Rekha Dhirajlal Khimasia</i>	<i>assessing officer ZPS9724E</i>	<i>2012-13</i>	<i>09/09/21</i>	<i>7,99,530</i>

*The assessing officer has required to make an addition of Rs.8,90,894/- on account of bogus LTCG, to your total for the following reasons as the additions were made in six cases after discussing the facts in the assessment orders.*

*(i) The SEBI as well as investigation wing Kolkata and Mumbai has already confirmed that the transactions of sale of shares of Karma Ispat were same in nature.*

*(ii) Assessee had purchased shares of Karma Inspat Ltd through broker Vijay Bhagvandas & Co. in physical form.*

*(iii) Assessee had purchased shares of Karma Inspat Ltd on 29.04.2010, when the share price was mere 23 per unit. The same sharply rose to about Rs.275/-per share on 02/07/11, at the time of sale of the share. This is 1195% increase in the shares price in short span of about 14 months.*

*(iv) The shares were sold within 14 months i.e. in June 2011, just after the assessee became eligible for exemption u/s.10(38) of the Act.*



*Hence, the modus operandi adopted by the assessee matches with modus operandi mentioned in the SOP issued by CBDT to decide any LTCG as bogus capital gain through penny stock.*

*4. Looking to the above facts, this office has verified the facts with the ITR filed and it is found that you have claimed LTCG of Rs.8,90,894/- under Schedule EI under the head of details of exempt income. Assessment u/s.147 of the Act was made and the assessment was finalized accepting returned income. As the scrip name "Karma Ispat Ltd is one of the Penny scrip established by SEBI as well as Investigation Wing Kolkata and Mumbai the amount of Rs 8,90,894/- is required to be added to your total income and should be taxed accordingly.*

*5. As such, the order passed by the assessing officer prima facie is erroneous and prejudicial to the interest of the revenue within the meaning of the provisions of section 263 of the I.T. Act 1961. Therefore, I intend to revise the order of the assessing officer passed u/s 147 of the I.T. Act dated 07/05/21 for the AY 2012-13.*

*6. Under the circumstances, you are requested to show cause as to why the order dated 07/05/21 should not be revised u/s 263 of the Income-tax Act. You may submit your written submissions to this office either through e-proceedings module of your e-filing account on the website <https://www.incometax.gov.in> or e-mail to [jamnagar.pcit@incometax.gov.in](mailto:jamnagar.pcit@incometax.gov.in) or by any other postal modes / personal appearance or through your authorized representative latest by **27/10/23 at 5:30 pm**, failing which it may be presumed that you have no submission to make and revision order will be passed, based on the details and materials available on record."*

7. In response to the above notice, the assessee has submitted reply on 27/10/2023 before the Id.PCIT stating that during the reassessment proceedings, the assessee filed complete details/documents in respect of the transaction to the satisfaction of the assessing officer (NFAC). Consequently, assessing officer, had passed assessment order dated 07.05.2021, u/s 143(3) r.w.s. 147 of the Act, accepting the returned income and has not made any additions /disallowance in the reassessment order. Therefore, during the assessment proceedings, the assessee was asked for various details/documents in respect of the transaction. All details/documents, such as, Contract Note for Purchase of shares, Broker Ledger (with broker details) from whom shares were purchased and Contract Note for Sale of shares etc. were filed before the assessing officer.

8. However, Id.PCIT rejected the above contention of the assessee and noted that the common pattern in penny stock transactions in assessee case are as follows :



- (1). Purchase of stock at rock bottom price generally in physical form.
- (2). No Financial credibility of the company, whose shares are purchased by the investor.
- (3). Bell Pattern in share price movement i.e. once price target is achieved price falls back to minimum.
- (4). No rhyme or reason for sudden spurt of share price, defying Index or similar share price movements.
- (5). Promoters of shares are also not from any established groups, in fact they are of people of no means.
- (6). Price escalation through synchronized trading within limited parties, mostly entities controlled by the entry operators.
- (7). Statement recorded during search or survey operations conducted by the investigation wing clearly established the facts that price of the shares are manipulated with the sole aim of providing bogus Capital Gain or Loss.

9. The Id.CIT(A) also observed that before drawing any conclusion, the assessing officer has to verify and make verification on account of bogus LTCG on the following points:

- (i) The SEBI as well as Investigation Wing of Kolkata has already confirmed that the transaction of sale of shares of *Karma Ispat Limited* was same in nature as penny stock.
- (ii) The assessing officer has to verify the mode of transactions (Physical / online through stock exchange) made by the assessee at the time of purchase and sale of shares of *Karma Ispat Limited*.
- (iii) Dematerialization of the share purchased by the assessee.
- (iv) Debit and credit of shares in the Demat account of the assessee with reference to date of purchase and sale made.
- (v) The assessing officer has to verify about the fact that whether the assessee is a regular investor in shares or not.



However, learned PCIT noticed that the assessing officer has failed to examine, above, various aspects of penny stock cases, as per the SOP issued by CBDT to decide any LTCG as bogus capital gain through penny stock even though the modus operandi adopted by the assessee matches with modus operandi mentioned in the said SOP.

10. The learned PCIT, therefore noted that during the assessment proceedings, the assessing officer has not verified the transactions of sale and purchase of shares. The assessee has not been able to explain the reason for making investment in the shares of penny stock companies and the reason for abnormal rise in the sale price within a short span of time. He has merely taken care to manage paper work to give the colour of genuineness to otherwise sham transactions. In such transactions the theory of probability comes into play.

11. The ld.PCIT noticed that with effect from 01/06/2015, Explanation 2 to the section 263(1) has been inserted which reads as under:

*"Explanation 2.- For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner, -*

*(a) The order is passed without making inquiries or verification which should have been made;*

*(b) The order is passed allowing any relief without inquiring into the claim;*

*(c) The order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*

*(d) The order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."*

The ld.PCIT noticed that as per the above Explanation (2) of section 263 of the Act, the order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if the order is passed



without making inquiries or verification of the information available on record. In view of the above facts and on perusal of reasons recorded for reopening vis-a-vis the order passed by the assessing officer u/s 147 of the Act dated 07/05/2021, it clearly appears that the assessing officer has altogether not considered the issue under discussion and has not made any enquiries as regards the issues raised in the Investigation report. Therefore, in the facts and circumstances of the case, it clearly appears that the assessing officer has failed to make enquiry / verification while finalizing the assessment and such failure on the part of the Assessing Officer to allow the claim of the assessee u/s 10(38) of the Act of Rs.8,90,894/- has rendered the order passed by the assessing officer u/s 147 of the Act, dated 07/05/2021, as erroneous and prejudicial to the interest of the revenue within the meaning of section 263 of the Act to that extent, it is also to be mentioned that Assessing Officer is duty bound to assess the correct income of the assessee. Since this income remained to be added / disallowed, therefore, action u/s. 263 of the Act is justified. The Id.PCIT also relied on may judgements which are mentioned in the revision order, including the case reported in (2022)139 taxmann.com 352 (Calcutta), Pr. / Commissioner of Income tax Vs. Swati Bajaj.

12. Therefore, learned PCIT held that these above facts were glaring and apparent from the records available with the Assessing Officer but the assessing officer has not taken any cognizance of these facts during the course of assessment proceedings and has not taken them into account in the order u/s. 147 of the Act, dated 07/05/2021 to prevent the loss of revenue on account of not adding / disallowing the issue as discussed above. Therefore, the assessment order passed by the Assessing Officer u/s 147 of the Act dated 07/05/2021 in the case of the assessee for the assessment year (AY) 2012-13 is erroneous in so far as it is prejudicial to the interest of revenue within the meaning of section 263 of the Act, therefore, ld.PCIT set aside the assessment order to the extent of



the issue mentioned above and directed the assessing officer to pass the assessment order afresh in respect of the above issue after giving reasonable opportunity of being heard to the assessee.

13. Aggrieved by the order of the learned PCIT, the assessee is in appeal before us.

14. Learner Counsel for the assessee argued that during the assessment proceedings, the assessee was asked for various details/documents in respect of the transaction and all details/documents, such as, Contract Note for Purchase of shares, Broker Ledger (with broker details) from whom shares were purchased and Contract Note for Sale of shares etc. were filed before the assessing officer. Therefore, order passed by the assessing officer is neither erroneous nor prejudicial to the interest of the revenue.

15. On the other hand, learned DR for the revenue submitted that there is no enquiry conducted by the assessing officer during the assessment proceedings, so far, the issue raised by the learned PCIT in his order, is concerned. The Learned DR took us through, the assessment order and the findings of the assessing officer and stated that assessment order is very cryptic and non-speaking order, there is no any discussion in the assessment order about the issue raised by the learned PCIT, therefore, it is a case of complete non-enquiry on the part of the assessing officer and not only that it is non-application of mind on the part of the assessing officer, these all facts are proved by the findings of the assessing officer, vide order dated 07.05.2021, which are reproduced below:

*“Notice u/s 148 was issued in this case on 28.03.2019 after recording reason and obtaining necessary approval. The assessee has made sale transaction of shares of Karma Ispat Ltd. Trade quantity 3600 Share for Rs. 9,77,265/-.*



*The return in this case was filed on 19.04.2019 declaring an income of Rs. 4,05,220/- Notice u/s 143(2) dated 21.05.2019 was issued to the assessee and served electronically. Subsequently, under faceless assessment scheme notice u/s 142(1) dated 25.03.2021 & 29.04.2021 were issued seeking clarification on certain issue. In response to the notices issued from time to time, the assessee submitted its submissions/ information/documents online. After considering the reply given, the return income in this case is accepted.*

*Assessed u/s 143(3) r.w.s. 147 r.w.s. 144B of the Income Tax Act, 1961 on a total income of Rs. 4,05,220/-."*

From the above assessment order, which is written in 10 lines, it is clear that assessing officer has not conducted any enquiry during the assessment proceedings.

16. Apart from this, learned DR for the revenue, filed the common written submission before the Bench, which are applicable to all these four appeals, which are reproduced below:

*"The PCIT has passed a speaking order u/s 263 after considering the submission of the assessee made during 263 proceedings. In the order he has given elaborate findings regarding the failure made on the part of assessing officer leading to an erroneous and prejudicial order, the inquiries and verification which should have been made by the assessing officer; failure on the part of the assessing officer to examine various aspects of penny stock as per the SOP issued by the CBDT on verification of penny stock cases even though the modus operandi adopted by the assessee matches with modus operandi mentioned in the said SOP; the judicial decisions in favour of the Department. Finally, it was correctly held by him "that the assessment order passed by the assessing officer is erroneous in so far as it is prejudicial to the interest of revenue within the meaning of section 263 of the Act."*

*ii. On April 28, 2011, the assessee acquired shares of Kyra Landscapes Limited (formerly known as Aricent Infra Limited) via an off-market transaction facilitated by a brokerage firm. No monetary payment was rendered by the assessee towards the acquisition of the shares as the purchase was financed through the credit balance maintained/created with the broker. There is no proof or underlying evidence in the form of third-party documents to show that the broker has in fact entered into genuine transactions of buy/sell of shares on behalf of the assessee. The aforementioned shares remained under the custody of the broker until April, 2012 i.e. for almost a year after the alleged purchase by way of an off-market deal. The shares were subsequently transferred to the assessee's d-mat account immediately prior to their sale through stock exchange. All these facts clearly indicate that the transaction was not genuine. They could do back-dating of most of the transactions but could not manage the banking transactions and demat of the shares. At this juncture, it is critical to consider that the assessee has not provided any evidence substantiating the source of the credit balance accrued into broker's account which was subsequently*



used to acquire the shares. The outlined scenario raises significant doubts regarding the authenticity of the transaction executed by the assessee. It is highly irregular and raises suspicion regarding the genuineness on purchase the shares. It appears that the assessee has claimed bogus Long-Term Capital Gains, and the purchase narrative is merely an afterthought intended to legitimize the transaction for which all the paper work was done by the assessee in collusion with the broker.

iii. The PCIT relied upon the judgement of ITAT Pune in the case of Rajkumar B Aggarwal [ITA Nos. 1648/1649/Pun/15-AY 2015-16 and 2007-08] wherein reliance was placed on the Hon'ble SC judgement in the case of CIT Vs. Durgaprasad More [1971] 82 ITR 540(SC) and Sumati Dayal Vs CIT[1995] 214 ITR BO1(SC) and it was held that the so called evidence, in the form of mere paper work cannot vitiate the decision made on the attending circumstances and human probabilities and accordingly the ITAT disallowed the claim of capital gains on a penny stock company.

IV. The PCIT also relied upon the ITAT Delhi bench in the case of Anip Rastogi [ITA No. 3809/DEL/2018 AV 2015-16 and ITAT Nagpur in the case of Shri Sanjay Bimalchand Jain ITA No. 61/Nag/2013 dated 18/07/2016 | appeal of the assessee dismissed in Bombay High Court] where in the similar circumstances the LTCG claimed by the assessee was held as bogus.

V. The most important case which is on the identical facts and on which reliance was also placed by the PCIT is that of PCIT Vs. Swati Bajaj (2022) 139 taxmann.com 352(Calcutta) where the Hon'ble HC has upheld the jurisdiction of PCIT u/s 263 where the assessing officer being fully aware of the investigation which was being done in penny stock companies failed to take note of such report and make enquiry by calling upon the assessee to justify the genuineness of claim of LTCG and the reason for such abnormal rise in price of shares within a short period of time. This decision of the Hon'ble HC is very relevant for the case under consideration. In the succeeding para it has been proved beyond doubt that despite having information about penny stock in this case, the assessing officer failed to conduct enquiry and verification which he should have done. Therefore, the PCIT has rightly exercised his jurisdiction u/s 263 of the Act.

VI. The assessee contended that the assessing officer made proper inquiries regarding the issue under consideration, But the case records nothings shows that no such enquiries or verification were made by the assessing officer at any stage of assessment proceedings. Even the notices including show cause notice issued during assessment proceedings show that neither the assessing officer had asked any relevant questions for enquiring about the genuineness of the claim of LTCG nor analysed the data available in public domain which he should have done. He simply asked general questions in his notices on which the assessee is wrongly placing reliance in his submission and contending that the assessing officer has made enquiry in the matter. For e.g. Financial Statements of the company were not examined: - As per the financial statement of Aricent Infra Limited for the year ended 31" March, 2013: the Earning Per Share (EPS) was Rs. 0.30 only and the Price Earnings Ratio(P/E) at the price of Rs. 153 at which assessee sold her shares was an astronomical and unimaginable figure of 510 which is unthinkable for any genuine company in the Indian stock market; there were fixed assets of Rs. 12,617 only; negligible employee cost of Rs. 2.23 lakh suggest that there are hardly any skilled manpower in the company. All these facts clearly shows that the prices of the shares



were artificially raised by 76 times in a year with a PE ratio of 510 to provide accommodation entry to assessee and others. assessing officer should have asked the assessee to produce an example of any one case of a genuine company having genuine business and having PE greater than 500 or any one case of a genuine company having genuine business and whose prices have increased by 76 times in a year, a most relevant enquiry which assessing officer failed to do so. Had the assessing officer examined these financials or raised these pertinent questions, he would have clearly concluded the LTCG to be an accommodation entry. Further, neither the assessee has given the source of purchase nor the assessing officer has enquired about the source of purchase, with which bank account the payment for purchases was made by the assessee. There is no proof available on record to show that purchase of shares have been made through the banking channel though this is specifically mentioned at para 5.3 of the SOP. Similarly, many such enquiries were never made by the assessing officer like why the shares were not transferred in demat account even after one year of the purchase, what was the source of funding of the purchase of shares and whether any third party evidence exists to prove the genuineness of purchase transaction, etc.

VII. Further, in the most recent judgement the Hon'ble Supreme Court dismissed the SLP filed by the assessee in the case of Manoj Jain HUF Vs ITO[TS-707-SC-2024] dated 20.09.2024 against Calcutta High Court ruling relating to issue of dealing in penny stock transactions. In the instant case, High Court affirmed ITAT ruling wherein the Tribunal upheld CIT(A)'s addition u/s 68 in respect of share sale receipts from a penny stock treating the same as Income from Other Sources and thereby rejecting assessee's claim of LTCG. Tribunal observed that the assessee had made huge gain due to price increase, in comparison to purchase price, but the increase in price is not commensurate to the financials of the company.

VIII.Ld. AR has submitted various judgements during the court proceedings, which are distinguishable as under;

Sr. No	Citation	Facts of the case	Facts in the case of assessee
1.	Vipul Modi v PCIT [2022] 139 taxmann.com 89 (Mumbai – Trib.)	❖ The Assessee has provided complete history of the purchase and sale of shares, copies of D-mat account, contract notes, Bank account, details of sale and purchase etc. and after taking into account all these details and written submission of the assessee, the AO accepted the LTCG as exempt u/s 10(38)	❖ Assessee has not provided complete history of purchase and sale of shares, making it difficult to establish that he maintained a credit balance in the account with the broker from which he purchased shares of Aricent Infra Ltd. through an off-market transaction. . In this case following suspicious facts - that the shares were purchased by way of an off-market deal, shares were not transferred in demat account of the assessee till their sale, no payment was made through banking channel, indicate that the transaction was prima-facie not genuine and only paper-work done to give colour of genuineness to the transaction.



2.	Tejalben Samirbhai Shah v PCIT [ITA no. 78/AHD/2021]	<ul style="list-style-type: none"> <li>❖ Here, assessee had made an application for the allotment of the shares in an issue being lodged by the company.</li> <li>❖ Shares purchased in D-mat mode</li> <li>❖ According to the office note of the AO, Assessee has not engaged in any offline share purchased transaction, nor does the documentary evidence reflect any purchase in cash.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Assessee purchased shares from the broker through an off market transaction</li> <li>❖ There is no office note or any other document available to establish that Assessee has not engaged in any offline share purchased transaction, nor does the documentary evidence reflect any purchase in cash.</li> </ul>
3.	Parashuram Pottery Works Co. Ltd. V ITO [1977] 106 ITR 1 (SC)	<ul style="list-style-type: none"> <li>❖ The case should not be re-open u/s 147 after the expiry of four years from the end of the assessment year unless there be omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment</li> </ul>	<ul style="list-style-type: none"> <li>❖ In other group cases, Jurisdictional high court has rejected the writ petition filed by the assessee against the reopening made u/s 147</li> </ul>
4.	Kunal Tejesh Gandhi V ITO [ITA no. 3913/Mum/2013]	<ul style="list-style-type: none"> <li>❖ Assessee had purchased the shares through D-mat account</li> </ul>	<ul style="list-style-type: none"> <li>❖ Assessee had purchased shares through off market transaction.</li> </ul>
5.	Shri Kishore Hargovind Patel v ITO [ITA no. 4631/M/2023]	<ul style="list-style-type: none"> <li>❖ Assessee had purchased the shares through online platform of recognized stock exchange and paid the amount by bank cheque. Further, D-mat the same and kept it for more than a year then sold them through online platform itself.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Assessee had purchased shares through off market transaction.</li> <li>❖ No payment made to the broker for the purchase of shares</li> <li>❖ The shares were held in the broker's account and were only transferred to the assessee's account immediately prior to the sale</li> <li>❖ In this case following suspicious facts - that the shares were purchased by way of an off-market deal, shares were not transferred in demat account of the assessee till their sale, no payment was made through banking channel, indicate that the transaction was prima-facie not genuine and only paper-work done to give colour of genuineness to the transaction.</li> </ul>

6. In view of tshe above, it is earnestly requested to the Hon'ble Bench that the appeal of the assessee must be dismissed and the PCIT's order must be sustained.”

17. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id PCIT and other materials brought on record. We note that assessee`s appeals in ITA Nos. 03, 05 and 06/RJT/ 2024, pertain to Penny stock scrip, of Karma Ispat Limited, and assessee`s appeal in ITA No.04/RJT/2024 pertains to Penny stock scrip of Aricent Infra Limited. In all these four appeals of different assessee`s common, and identical issues are involved, as the assessing officer in these four cases/appeals, did not conduct enquiry, about the issues, noted by the learned PCIT. In appeal effect order



passed by the assessing officer under section 143(3) read with section 263 of the Act, the assessing officer made the addition in the hands of these four assesseees` as these assesseees` failed to prove their claim with documentary evidences. We also find that facts and grounds of appeals of these assesseees are same and identical.

18. We note that there is a discrimination on the part of the assessing officer that as per the information from ITO (CIB)-1, Mumbai, it is noticed that out of nine assesseees, ( where same scrip/share in involved) who had taken bogus long term capital gains from penny stock, Karma Ispat, addition was made in six cases, however, no addition was made in three cases, out of which one case pertains to assessee, under consideration, that is, Mansukhlal Khimji Khimashiya (HUF) for assessment year (AY) 2012-13. Considering these facts and discrimination on the part of the assessing officer, ld DR for the revenue, has rightly pointed out that assessing officer, cannot take a plausible view which can be sustainable in the eye of law, as the orders passed by the assessing officer in these four cases, are based on arbitrariness. Therefore, order passed by the assessing officer is erroneous and prejudicial to the interest of the revenue.

19. The assessee, even in appeal effect proceedings, under section 143(3) read with section 263 of the Act, (these four different assesseees) have not proved the genuineness of the transactions. A sample assessment order (appeal effect) in ITA No.03/RJT/2024, in the case of Mansukhlal Khimji K HUF, for assessment year 2012–13, is reproduced below:

*“4.6 Conclusion drawn-As the assessee has claimed income from capital gain to the tune of Rs. 8,90,894/-, from Karma Ispat Ltd. (Now the name of the company has changed to Karma Industries Ltd from the year 2011) which was nothing but bogus transaction and has also claimed deduction u/s 10(38) of the Act. This was also held by the Ld. CIT during the course of proceedings u/s. 263 of the IT Act dated 06.11.2023. In view of the above fact circumstances and after examining the submissions made by the assessee, the amount of Rs 8,90,894/- claimed as deduction u/s 10(38) of the Act, is treated as bogus long term capital gain u/s 45 of the Act and*



*is added back to the total income for the year consideration. Penalty proceedings u/s. 270A(9)(a) r.w.s. 270A(8) for underreporting in consequence of misreporting of income of the Act are initiated separately.”*

We note that assessing officer framed the appeal effect order under section 143(3) r.w.s. 263 of the Act, in case of other assessee's on the same line. From the above appeal effect order, it is vivid that assessee was not able to prove his stand in the appeal effect proceedings, under section 143(3) r.w.s 263 of the Act, as the assessing officer made the addition in the hands of the assessee, in appeal effect proceedings also, as noted above.

20. We note that assessing officer has not examined financials of these respective companies. During the assessment proceedings, we note that assessing officer did not raise pertinent questions, and did not examine the various issues raised by the learned PCIT. We also note that neither the assessee has given the source of purchase nor the assessing officer has enquired about the source of purchases, that is, with which bank account the payment for purchases was made by the assessee, in these four cases. There is no proof available on record to show that purchase of shares have been made through the banking channel in these four assessee's cases. Similarly, in these four cases many such enquiries were never made by the assessing officer, like why the shares were not transferred in demat account even after one year of the purchase, what was the source of funding of the purchase of shares and whether any third party evidence exists to prove the genuineness of purchase transaction, etc. Therefore, based on these facts, we note that assessment orders passed by the assessing officer in these four assessee's case, are erroneous as well as prejudicial to the interest of the revenue, therefore, learned PCIT has rightly exercised his jurisdiction under section 263 of the Act.

21. We also find merit in the submissions of learned DR for the revenue that aforementioned shares remained under the custody of the broker until April,



2012, that is, for almost a year after the alleged purchase by way of an off-market deal. The shares were subsequently transferred to the assessee's demat account immediately prior to their sale through stock exchange. All these facts clearly indicate that the transaction was not genuine. They could do back-dating of most of the transactions but could not manage the banking transactions and demat of the shares. At this juncture, it is critical to consider that the assessee has not provided any evidence substantiating the source of the credit balance accrued into broker's account which was subsequently used to acquire the shares. All these facts were not examined by the assessing officer. We note that assessing officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word 'erroneous' in section 263 emerges out of this context. It is because it is incumbent on the assessing officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word 'erroneous' in the section 263 includes the failure to make such an inquiry becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct. Hence, going by the facts narrated above, the language of the Provisions of Section 263 and the interpretation placed on these provisions by the various Courts, the order of the assessing officer falls within the category of being an order which is erroneous as well as prejudicial to the interest of the revenue. In this interpretation of the provisions of the section 263, we are supported by the decision of the Hon'ble Delhi High Court delivered in the case of Gee Vee Enterprises Vs Add.CIT (1975) 99 ITR 375 (Delhi). The same view has also been held by the Hon'ble Supreme Court in the case of Malabar Industrial Company Ltd Vs. CIT 243 ITR



83 (SC). The relevant portion of this judgment which supports our view made in this paragraph above, is reproduced as under:

*"An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind."*

22. We note that assessing officer has not examined the mode of transactions (Physical / online through stock exchange) made by the assessee at the time of purchase and sale of shares of Karma Ispat Limited and also not verified dematerialization of the share purchased by the assessee. The Debit and credit of shares in the Demat account of the assessee with reference to date of purchase and sale made, were also not examined by the assessing officer. Therefore, we note that the order u/s. 263 of the I.T. Act, 1961 is valid even if one of the several items dealt with therein is found prejudicial to the interest of revenue and for this proposition of law, we place reliance on the decision of Hon'ble Madras High Court in the case of Indian Textiles Vs. CIT, 157 ITR 112 (Madras)". Further, it is also important to mention here that the provisions of section 263 can be invoked even where full facts are disclosed but the assessing officer has not examined these details as per correct provisions of law. In support of this proposition, we place reliance on the decision of the Hon'ble Rajasthan High Court delivered in the case of CIT Vs. Emery Stone Manufacturing Company, 213 ITR 843 (Rajasthan). Further, the provisions of section 263 can be invoked even where the issue is debatable. For this proposition, we place reliance on the decision of Hon'ble Jurisdictional Gujarat High Court delivered in the case of CIT Vs. M. M. Khambhatwala, 198 ITR 144 (Gujarat).

23. The Hon'ble Delhi High Court has also considered the ratio laid down in earlier decisions of the Hon'ble Supreme Court in Rampyari Devi Sarogi v. CIT (1968) 67 ITR 84 (SC) and Tara Devi Aggarwal v. CIT (1973) 88 ITR 323



(SC), wherein it was held that “where Assessing Officer has accepted a particular contention/issue without any enquiry or evidence whatsoever, the order is erroneous and prejudicial to the interest of the Revenue.” In view of the above facts of the case and supporting decisions of jurisdictional High Court, we are of the view that Ld. Pr. C.I.T. has rightly exercised his jurisdiction under section 263 of the Act in case of these four assessee`s case. Therefore, we dismiss the appeal ( in ITA No.03/RJT/2024) of assessee.

24. Since we have adjudicated the common issue by taking the lead case in ITA No.03/RJT/2024, in other appeals of the assesseees, the similar and identical issues are involved, accordingly, our observations made in ITA No.03/RJT/2024, for AY 2012-13, shall apply *mutatis mutandis* to the aforesaid other appeals of different assesseees, namely, ITA No.04, 05 and 06 /RJT /2024. For the parity of reasons, we dismiss the abovementioned appeals of the assesseees in terms of directions noted in ITA No.03/RJT/2024.

25. In the combined result, appeals filed by the assesseees ( in ITA Nos. 03, 04, 05, and 06/RJT/2024) are dismissed.

**Order pronounced in the Open Court on 09/09/2025 at Rajkot.**

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**JUDICIAL MEMBER**

Rajkot

दिनांक/ Date: 09/09/2025

**Copy of the Order forwarded to**

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

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

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot