

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Shri Siddhartha Nautiyal, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 623/Ahd/2025
Assessment Year: 2018-19**

Mohammedsaqib Aiyub Puthawala 16-B, Kashmira Society, Narayannagar Road, Paldi, Ahmedabad- 380007, Gujarat PAN: AQZPP3371L (Appellant)	Vs	The PCIT-1, Ahmedabad (Respondent)
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**Assessee Represented: Shri S.N. Divatia & Shri
Samir Vora, A.Rs.
Revenue Represented: Shri Sher Singh, CIT-DR &
Shri Abhijit, Sr. D.R.**

Date of hearing : 10-09-2025
Date of pronouncement : 10-10-2025

आदेश/ORDER

PER : NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:-

This appeal filed by the Assessee is directed against the order dated 06.03.2025 passed by the Principal Commissioner of Income Tax, Ahmedabad-1 (in short the "PCIT") in the capacity of his revisional jurisdiction under section 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2018-19.

2. The brief facts of the case are that the assessee had filed his return for A.Y. 2018-19 on 23-10-2018 declaring total income of Rs.25,79,820/-. Subsequently, the A.O. had received an information that the assessee was one of the beneficiary of transaction in penny stock company namely M/s. Kushal Tradelink Ltd. which was used to facilitate introduction of unaccounted income in the form of exempt Long Term Capital Gain and also in the form of Short Term Capital Gain and it transpired that the assessee had claimed exempt LTCG of Rs. 16,35,050/- in his return of income. On the basis of this information, the case of the assessee was reopened u/s 147 of the Act after recording the reason. The assessee was completed u/s. 147 r.w.s. 144B of the Act on 25-03-2023 at total income of Rs.25,79,820/- as per original return. Subsequently, the case record was called for examined by the Ld. PCIT who found that since no addition was made in respect of bogus accommodation entry of Rs.12,18,543/- in the form of exempt LTCG, the order of the A.O. was erroneous and prejudicial to the interest of revenue. Therefore, the Ld. PCIT set-aside the assessment order passed by the A.O. with a direction to pass a fresh assessment order.

3. Aggrieved with the order of Ld. PCIT, the assessee is in appeal before us. The following grounds have been taken in this appeal:

1.1 The Order passed u/s.263 on 06.03.2025 for AY 2018-19 by Pr.CIT Ahmedabad-1, A'bad (for short Pr.CIT) holding that the order of assessment u/s 147 r.w.s 144B passed on 25.03.2023 by AO accepting the LTCG on sale of shares of Kushal Tradelink Ltd. (short

'KTL') was genuine and the appellant was entitled to exemption u/s 10(38) of the Act was erroneous and prejudicial to the interest of the revenue is wholly illegal, unlawful and against the principles of natural justice.

2.1 The Id. Pr. CIT has grievously erred in law and or on facts in holding that the order of assessment u/s 147 r.w.s 144B passed on 25.03.2023 by AO accepting the LTCG on sale of shares of KTL Rs. 12,18,543/- as genuine and the appellant was entitled to exemption u/s 10(38) of the Act was erroneous and prejudicial to the interest of the revenue.

2.2 That the in the facts and circumstances of the Id. Pr. CIT ought not to have invoked the powers of revision u/s 263 and thereby holding that LTCG on sale of shares of KTL of Rs. 12,18,543/- was not genuine and the appellant was not entitled to exemption u/s 10(38) of the Act so that the AO should have made addition,

3.1 The Id. Pr.CIT has grievously erred in law and or on facts in holding that the provision of Explanation-2 to sec.263 was attracted in the facts of the case.

3.2 That the in the facts and circumstances of the Id. Pr. CIT ought not to have directed AO to pass a fresh order of fresh assessment order in respect of LTCG on sale of shares of KTL claimed exempt u/s 10(38) of the Act as per the observations made in the impugned order by him.

It is, therefore, prayed that the order of revision passed u/s 263 by the respondent should be quashed and set aside.

4. Shri S.N. Divatia Ld. A.R. of the assessee submitted that this was not the case of no/inadequate inquiry by the assessing officer. He explained that the case was reopened in order to examine the exempt LTCG and the A.O. had made due enquiries in the course of assessment proceeding and the assessee had submitted all the

evidences in support of the purchase and sale of shares. The A.O. after considering the reply of the assessee and going through the materials brought on record had concluded that the LTCG claim of the assessee was genuine and no addition was called for and accordingly the returned income of the assessee was accepted. The Ld. A.R. submitted that since the A.O. had duly verified the transactions and thereafter taken a plausible view that the transaction of trading in shares of M/s. Kushal Tradelink Ltd. was genuine, the Ld. PCIT was not correct in holding that the order of the A.O. was erroneous and prejudicial to the interest of revenue. He submitted that the assessee was a regular trader in shares and the transactions carried out by the assessee were through a registered broker and the purchase as well as sale transactions were duly reflected in the de-mat account of the assessee. Further, that there was no material available with the A.O. to treat the transaction of the assessee as accommodation entry and the A.O. had given a specific finding in this regard in the assessment order. Therefore, the Ld. PCIT was not correct in revising the order u/s 263 of the Act.

5. Per contra, Ld. CIT-DR Shri Sher Singh supported the order of the Ld. PCIT.

6. We have considered the rival submissions and carefully gone through the materials brought on record in the paper-book filed by the assessee. It is found that the only issue for which the case was reopened was to examine the share transactions in M/s. Kushal Tradelink Ltd. In the course of assessment, the A.O. had made

detailed enquiry in respect of LTCG claimed as an exempt u/s 10(38) of the Act by the assessee. The A.O. vide show cause notice dated 11-03-2023 had also required the assessee to explain as to why addition should not be made in respect of LTCG of Rs. 17,50,190/- in respect of penny scrip transaction of M/s. Kushal Tradelink Ltd. It is found that the assessee had produced evidences in respect of purchase and sale of shares of M/s. Kushal Tradelink Ltd., copy of contract notes, details of payment made, details of brokerage and STT paid, copy of ledger account of the broker and other relevant information in respect of the share trading transactions. The relevant submission of the assessee in respect of these transactions as made vide letter dated 20-03-2023 is found to be as under:

“i) Initially I pray to your goodself that I have genuinely invested alongwith many other shares into scrip of Kushal Ltd. on genuine basis which has given rise to capital gain / loss that does not mean transaction is bogus when I am producing details of transactions and evidence in the following paras it may please be appreciated that I have no connection with the Kushal group or any official or directors or intermediaries and therefore only because of Kushal group indulging into such activities.it cannot be presumed that I have also taken bogus capital gain / loss though my transactions are legitimate.

ii) Firstly, in the reasons it is mentioned by your goodself in the notice U/s.148A that share price of Kushal Ltd. was rigged and group was engaged in providing bogus accommodation entry in the form of capital gain / loss. Further, as a crucial part your goodself has mentioned that I have traded in the scrip and is one of the beneficiaries who has sold shares of Kushal Ltd during FY 2017-18 and earned capital gain of Rs. 12,18,543/ hence transactions carried out by me is non-genuine and in the guise of bogus capital gain / loss is proposed to be taxed in my hand. I strongly object to your statement that i am one of the beneficiaries of manipulation in

shares of Kushal Ltd, which is totally incorrect since I have no connection with Kushal group or any office, directors intermediaries and therefore i request you to provide me list of beneficiaries wherein my name is included. Il my name is not found in that list it proves that the information on which you are relying is not correct.

iii) I confirm that alongwith other shares, I have also purchased and sold shares of Kushal Ltd, during the F.Y. 2017-18 and gain / loss for the same is duly reflected in my Return of Income. I am enclosing herewith details of total long term capital and short term capital scripwise earned lost during the F.Y. for your ready reference (Annexure-B) The said information is also reflected in the Return of Income filed by me. I am enclosing herewith statement of Income and Income Tax Return Acknowledgement for your ready reference. (Annexure-C).

iv) Please, kindly note that I have purchased shares through my share broker Innovate Securities Pvt Ltd, who is duly registered with SEBI registration No. INB/INF 010700236. I am enclosing herewith copy of Contract note cum bill issued by my broker for your ready reference. (Annexure-D) have purchased shares through above Contract Nos. 6728, settlement No. on the date mentioned on contract note and order No. Ordered time, trade No. trade dale are clearly given in the contract Note which proves that I have genuinely purchased shares through recognised stock exchange. Total value of the purchase of shares of Kushal Ltd for which payment was made through A/c, payee cheque from my account No. 08120010010290 with Kotak Mahindra Bank Ltd. Navrangpura branch. Copy of the bank statement is enclosed herewith wherein payments have been highlighted for your ready reference. (Annexure-E) I have duly paid brokerage and other charges on brokerage and STT which itself proves genuineness of purchase. It may also be noted that I have purchased shares al the prevailing market rates as quoted by recognised stock exchange for which I am enclosing herewith copy of relevant quotation from BSE (Annexure-F)Please, kindly note that source of such payment was repayment of loans and advances given to the firm M/s. Paperpack Agencies (PAN AABFP1521C) Copy of my account from the books of Paperpack Agencies and audited

financial statements and return of income filed by Paperpack Agencies are also enclosed herewith. (Annexure-G).

v) I am enclosing herewith copy of Contract Note for the sale of shares wherein the name of script quantity, price at which sold, total sales consideration, brokerage, contract cum bill of broker and settlement No trade date and trade No, and amount of Security Transaction Tax etc. are given in the said contract note cum bill Nos. C/R/109400, C/R/137643, C/R/838869. C/R/874300 C/R/888893 & C/R/1181475 (Annexure-H) am enclosing herewith relevant quotation from BSE showing that sales are affected of prevailing rates as quoted by recognised stock exchange i.e. BSE (Annexure-I) The shares were sold and the sales consideration was received through RTGS NEFT to my account No. 08120010010290 with Kotak Mahindra bank Navrangpura branch. Copy of the bank statement is enclosed herewith wherein receipts have been highlighted for your ready reference (Annexure-J) The said purchase and sales transactions are duly reflected in brokers ledger account.

vi) I am also enclosing herewith ledger account from the books of accounts of my broker where the above transactions of purchase and sales payment made/received are duly reflected. (Annexure-K)I have also submitted Contract Nate wherein my broker's registration details are duly reflected. It may also be noted that Security Transaction Tax(STT), have also been paid on the value of the shares purchased and sold by me, I have also submitted computation of income wherein capital gain/capital loss from Kushal Limited is duly reflected. I have already enclosed computation of income in reference to paint no. 3 above.

vii) It may please be noted that I have entered into such transactions genuinely with intention to earn profit out of that and I have no connection with any operator and I am not party to alleged price rigging. I have no nexus with the company, its directors or operators and I am not connected with the activity of the price rigging and have no control over the same. I may have got only incidental benefit of the price rise or fall. All the evidence of the sales and purchase of shares including contract cum bill are submitted above and no fault with these documents can be found. Payments are also made

/received through the A/c. payee cheque, transactions of sale is done through the recognised stock exchange and STT is duly paid and there are no evidence that I have paid any cash for the purchase of bogus long term capital gain, it is not clear that based on what information your goodself have considered my transactions as bogus. If you have any that I can counter information. please let me know those information.

viii) No evidence has been collected with the fact that any cash has been deposited in the account before issue of cheque to me / by The truthfulness of the documents submitted by me are If as per genuine and I request you to examine the same. Information available with you it has been relied upon statement of any person for making addition I request you to allow cross examination of such person. If certain document/information (such as information received from Investigation Wing is relied upon the same should be provided to me and should not be straightway used against me). I should be given opportunity to counter such Information. I request you to establish based on the information available with your goodself my nexus and my involvement if any with directors/Principal/officers of the company whose share price are jacked up.

ix) I request you that the principles of natural justice should not be violated in my case.”

7. The Assessing Officer after going through the explanation and the evidences brought on record by the assessee had taken a conscious decision that the transactions of the assessee in respect of trading in the scrip of M/s. Kushal Tradelink Ltd. were genuine and no addition was called for. The Assessing Officer after considering the reply of the assessee had recorded his findings in the assessment order as under:

“The assessee furnished all details (Annexure A to J) in support of his above submission. The explanation of the assessee has been considered. The requisite documents which is required to prove that

the assessee was one of the beneficiaries, involved in the fraudulent transaction of penny script M/s. Kushal Tradelink Ltd., couldn't be provided to the assessee as the same has not been received from the Investigation Wing. As such, it may be concluded that having no specific document in possession, it gets difficult to prove that there was nexus between the Kushal group, Ahmedabad and the assessee and also to establish that the assessee was one of the beneficiaries who had earned bogus long term capital gain through transaction of penny script M/s. Kushal Tradelink Ltd.

In view of the above discussion, on the sake of natural justice, no variation is proposed with regard to claim of the assessee of exempt income u/s. 10(38) on account of LTCG for the financial year 2017-18.”

8. It is thus evident that the Assessing Officer did enquire from the assessee regarding trading in the shares of M/s. Kushal Tradelink Ltd and it was not a case of no or inadequate enquiry. Further, from the materials brought on record, it is evident that the assessee had duly explained the genuineness of the transactions, as the purchase and sale transactions were made through registered broker and all the transactions were duly reflected in the de-mat account of the assessee. It is further found that the assessee was a regular trader in shares and the trading in the shares of M/s. Kushal Tradelink Ltd. was not an isolated one-off transaction. Therefore, the finding of the Ld. PCIT that the AO did not make proper enquiries in the matter cannot be held as correct. The Ld. PCIT did not point out any infirmity in the explanation of the assessee and the conclusion derived by the A.O. thereon. In fact, the A.O. had categorically recorded that he had no evidence on record to establish that the transactions undertaken by the assessee were fraudulent and in the nature of accommodation

entries. In the proceedings u/s 263 of the Act as well, the Ld. PCIT has not referred to any such information or evidence which could establish that the transactions of the assessee were ingenuine. In the absence of any such evidence, the conclusion as drawn by the A.O. cannot be held as incorrect. The A.O. had taken a plausible view in the matter after considering the explanation of the assessee and going through the evidences brought on record in support of the transactions. In view of these facts, the finding of the Ld. PCIT that the order of the A.O. was erroneous is not found sustainable. Accordingly, the order passed u/s 263 of the Act is set-aside.

9. In the result, the appeal of the Assessee is allowed.

Order pronounced in the open court on 10 -10-2025

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad : Dated 10/10/2025

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद