

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No.571 & 572/SRT/2024
Assessment Years: (2013-14 & 2014-15)
(Hybrid Hearing)

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|--------------------------------------------------------------------------|----------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| Naynaben Arunbhai Jain 255-257, Ahura Nagar Society Surat – 395009 | बनाम/ Vs. | Principal Commissioner of Income-tax, Surat-1, Income Tax Office, 123, 1stFloor, Aaykar Bhavan, Majura Gate, Surat- 395001 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ACNPJ 5784 D | | |
| (अपीलार्थी/ Appellant) | | (प्रत्यर्थी/ Respondent) |

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|-------------------------------------------------|------------------------------|
| निर्धारिती की ओर से / Appellant by | Shri Rasesh Shah, CA |
| राजस्व की ओर से / Respondent by | Shri Ravinder Sindhu, CIT-DR |
| सुनवाई की तारीख/ Date of Hearing | 23/07/2025 |
| उद्घोषणा की तारीख/ Date of Pronouncement | 19/09/2025 |

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

These two appeals by the assessee emanate from the separate orders passed under section 263 of the Income-tax Act, 1961 (in short, 'the Act'), all dated 23.02.2024, by the learned Principal Commissioner of Income-tax-1, Surat [in short Ld. PCIT'] for the assessment years (AY) 2013-14 and 2014-15, which in turn arose from the separate assessment orders passed by National-e Assessment Centre, Delhi/Assessing Officer u/s 147 r.w.s. 144 r.w.s. 144B of the Act on 31.03.2022 and 20.03.2022. Since the facts are similar and the grounds of both the appeals raised by the assessee are identical, with the consent of both parties, the appeals were heard together and a common order is passed for the sake of convenience and brevity.

2. Perusal of records show that delay of 21 days each in filing appeals before Tribunal. The assessee has filed application giving reasons for delay in filing of appeal before the Tribunal. In the affidavit, it has been stated that the delay occurred due to late checking of the e-mail Id. by the CA, who handling all matters relating to taxation. The Ld. AR submitted that the delay was neither intentional nor deliberate and requested to condone the delay in filing appeals in the interest of justice. On the other hand, Ld. CIT-DR did not oppose the delay and submitted that the Bench may take an appropriate view.

2.1. We have considered the reasons given by the Ld.AR and perused the accompanied documents along with the applications. We find that the delay of 21 days in filing the appeals were neither deliberate nor intentional on the part of assessee. Hence, the delays in filing the appeals are condoned and we proceed to decide the cases on merit.

3. Grounds of appeal raised by the assessee in ITA No.571/SRT/2024 (AY 2013-14) are as under:

“1. On the facts and in circumstances of the case as well as law on the subject, the learned Pr.CIT has erred in passing the order u/s 263 although the assessment order passed u/s 143(3) of the I.T. Act, 1961 was neither erroneous nor prejudicial to the interest of the Revenue.

2.On the facts and in circumstances of the case as well as law on the subject, the learned Pr.CIT has erred in setting aside the order passed u/s 143(3) r.w.s. 144B with a direction to the assessing officer as per para No.9 of the revision order to pass fresh assessment order after taking into consideration, the issues as maybe considered together with the issues discussed in order.

3. It is therefore prayed that above order passed by Pr.CIT u/s 263 may please be quashed or set aside as your honours deems it proper.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

3.1 Grounds of appeal raised by the assessee in ITA No.572/SRT/2024 (AY 2014-15) are as under:

“1. On the facts and in circumstances of the case as well as law on the subject, the learned Pr.CIT has erred in passing the order u/s.263 although the assessment order passed u/s 143(3) of the I.T. Act, 1961 was neither erroneous nor prejudicial to the interest of the Revenue.

2.On the facts and in circumstances of the case as well as law on the subject, the learned Pr.CIT has erred in setting aside the order passed u/s 143(3) r.w.s. 144B with a direction to the assessing officer as per para No.9 of the revision order to pass fresh assessment order after taking into consideration, the issues as may be considered together with the issues discussed in order.

3. It is therefore prayed that above order passed by Pr.CIT u/s 263 may please be quashed or set aside as your honours deems it proper.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

4. The assessee’s appeal in ITA No.571/SRT/2024 is taken as the “lead” case. Brief facts of the case are that the assessee filed her return of income for the AY 2013-14 on 31.03.2014 declaring total income at Rs.8,75,210/- after claiming exempt income of Rs.54,53,833/- u/s.10(38) of the Act. Subsequently, on the basis of information that the assessee is one of the beneficiary/crip holders of penny stock of Indian Infotech & Software Ltd. (INDINFO), which facilitates introduction of unaccounted income in the form of exempt LTCG/STCL, the case of the assessee was reopened u/s.147 of the Act. During the assessment proceedings, it was concluded by the AO that there were several infirmities in the reasons recorded and that evidences in support of reasons recorded/satisfaction derived had not be uploaded by the Jurisdictional Assessing Officer, as mandated in the judgement of the Hon’ble

Bombay High Court in the case of Tata Capital Financial Services Limited Vs. Assistant Commissioner of Income tax, Circle – 1(3)(1) and Ors. (W.P. No. 546 of 2022). Accordingly, after considering the contention of the assessee, assessment u/s.147 rws 144 of the Act was completed on 31.03.2022 by the AO by accepting the returned income as assessed income.

5. Subsequently, the Ld. PCIT called for the records and noticed that during the assessment proceedings the AO has not made any effort to dispose of the objections raised by the assessee on the basis of details available on record. The Ld. PCIT further observed that the AO has not made any communication with the AO concerned to obtain the details on the basis of which the assessment was re-opened. Neither efforts were made to obtain the details of approval obtained from the competent authorities, for reopening of the assessment. The Ld. PCIT also noticed that though the assessee made submission that she purchased the shares of the scrip in question from the off market from the third person, however, AO did not make any enquiries or verification in this regard. In addition to this, it was noticed by the Ld. PCIT that the AO instead of complying with the directions given by the Hon'ble High Court for handling the reopened assessment cases, completed the assessment by placing reliance on the judgement of the Hon'ble Bombay High Court which was not binding upon AO here as it was not the jurisdictional High Court. In view of the same, it was observed by Ld. PCIT that the AO has erroneously completed the assessment without following the due procedures, without

making proper enquiries and without making any addition on the issue on which the assessment was reopened. It was observed that there was an under assessment to the extent of Rs.54,53,833/- being the failure to disallow the deduction u/s.10(38) of the Act and consequential short levy of tax of Rs.16,85,234/-. Hence, the order was passed by AO without proper verification/inquiry on the issue during the course of re-assessment proceedings rendering the order erroneous in so far as prejudicial to the interest of Revenue u/s 263 of the Act. The Ld. PCIT issued a show cause on 09.11.2023 which is reproduced at pages 4 to 6 of the order u/s 263 of the Act. Reply of the assessee is at para- 5.1 at pages 6 to 14 of the above order. The assessee, in the aforesaid reply, discussed the chronology of events leading to reopening of the assessment of the assessee for the year under consideration. Ld. PCIT rejected all the issues/objections raised by the assessee against reopening by observing that aforesaid objections had been duly dealt in the proceedings u/s.148A of the Act for reopening the assessment and had been duly countered in the order u/s.148A(d) of the Act. The Ld. PCIT was not convinced with the reply of the assessee and held that impugned assessment order dated 31.03.2022 passed u/s.144 rws 147 of the act was erroneous in so far as it is prejudicial to the interest of revenue for want of proper verification and inquiries on the issue of bogus LTCG claimed by the assessee. He, therefore, set aside the assessment order with the directions to the AO to pass fresh assessment order after taking into consideration the aforesaid issue of

long term capital gain being claimed as exempt u/s.10(38) of the Act by the assessee.

6. Aggrieved by the said order of the Ld. PCIT u/s 263 of the Act, the assessee has come up in appeal before us, pleading that the Ld. PCIT has wrongly exercised his jurisdiction u/s.263 of the Act in setting aside the assessment order dated 31.03.2022 for de novo assessment. The Ld. AR of the assessee has filed 2 paper books inclosing therein the submissions and details filed before the AO and the Ld.PCIT. The 2nd paper book is a compilation of case laws on the subject issue favouring the appellant. He submitted that the case of the appellant is fully covered by the decision of the co-ordinate Bench of this Tribunal in case of Rekhaben Jitendrakumar Jain vs. PCIT in ITA No.592/SRT/2024 dated 03.06.2025. He further relied on the decision of ITAT Delhi Benches in case of Smt. Daya Rani vs. PCIT in ITA No.402/Del/2021 dated 20.02.2024 wherein it was held that once the re-assessment order *per se* framed by the AO is not sustainable in the eye of law, any consequential revision order passed thereon u/s 263 of the Act deserves to be quashed. In the present case, the AO has not made any addition in respect of the issue on which the case was re-opened. Hence, the question of setting aside the order passed u/s 147 r.w.s. 144 does not arise.

7. On the other hand, Ld. CIT-DR for the Revenue supported the order of Ld.PCIT.

8. We have heard both the parties and perused the materials available on record. We have also deliberated on the decisions relied upon by the Ld. AR. The Ld. AR invited our attention to the reasons recorded for reopening the assessment by the AO in this case. A perusal of the reasons recorded would show that the assessment in this case was reopened on the same issue with the observation that the assessee had claimed long-term capital gain on sale of shares of INDINFO; that as per the information available with the AO, the said scrip, in which the assessee had traded, was a penny stock, which was used by the brokers/entry providers to provide accommodation entries to the subscribers so as to convert their unexplained cash into long-term capital gains. The AO noted that the assessee was also beneficiary of the trading in the said penny stock, as the assessee had traded in the said script with the value of Rs.1,05,92,001/- and had claimed long-term capital gain of Rs.54,53,833/-. Therefore, the case of the assessee was reopened to verify the veracity of the aforesaid transaction of trading in INDINFO scrip and genuineness of the long-term capital gains claimed by the assessee. The Ld. AR, thereafter, carried us through the voluminous details filed in the paper book to show that the AO had made adequate inquiries and that the assessee had duly furnished all the requisite details and documents to prove that claim regarding exemption of long-term capital gains u/s.10(38) of the Act, was *bona fide* and the same was not result of accommodation entries. The Ld. AR in this respect, has relied on page no. 51-59 of the paper book, whereby the assessee had not only made

objections against the reopening of the assessment but also had furnished all the factual details and documents to the AO to prove the genuineness of the transaction. Ld. AR submitted that perusal of Page no. 57-58 of the paper book would make it amply clear that the assessee had filed detailed written submission and various supporting documents to the AO regarding the transaction in question. The Ld. AR submitted that the assessee had objected to the notice u/s.148 dated 31.03.2021 issued for reopening the assessment. She had also filed detailed submission along with evidences that the proposed addition is not liable to be made on merits as well. After considering the reply of the assessee, the AO has accepted the income returned by the assessee. It is, therefore, clear that the AO has not made any addition on the issue for which the case was re-opened. It is the very same issue on which the Ld.PCIT has passed the revisionary order u/s 263 of the Act. We find that an identical issue had come up for consideration before this co-ordinate Bench in the case of Ms. Rekhaben Jitendrakumar Jain (supra), where the revision order u/s 263 was quashed under similar facts and circumstances. In that case, the assessee had dealt in the same scrip namely INDINFO and claimed exempt long-term capital gain of Rs.96,42,734/-which was allowed by the Department. Subsequently, the Ld. PCIT passed order u/s 263 setting aside the order of AO and directing him for *de novo* assessment. It was held by the Tribunal that the Ld. PCIT cannot exercise revision jurisdiction by simply alleging absence of

inquiry without pointing out any defect or error in the AO's order. The relevant part of the decision is reproduced below for ready reference:

“8. In the case on hand, the Id.Pr.CIT has not made any such inquiry for concluding that the AO had not made adequate verification/inquiry. The assessee having demonstrated before the Id.Pr.CIT that the AO had made adequate inquiries and verifications on the same issue, a duty was cast upon the Id.Pr.CIT to point out any defect or infirmity in the information and details furnished by the assessee, and to further point out, as to why the Id.Commissioner was not satisfied with the details and evidences furnished by the assessee. The Explanation 2 to section 263 of the Act has been inserted vide Finance Act, 2015 w.e.f. 1.6.2015, and hence, the said explanation cannot be applied retrospectively in this case for the assessment year 2013-14. Moreover, as per the said Explanation 2, the order can be deemed to be erroneous and prejudicial to the interest of the Revenue, if in the opinion of Id.Pr.CIT/Commissioner the order is passed without making any inquiry or verification, which should have been made. Such opinion, in our view may not be a mere pretense of the Id.Pr.CIT without giving any reasoning or basis for the same. Such an opinion of the Id.Pr.CIT that the assessment order has been passed without making inquiry inquiry/verification which should have been made, must be based on the reasoning and findings arrived at by the Id.Pr.CIT after examination of records, and after considering the submissions and explanations, furnished by the assessee. The assessee having furnished the detailed reply and demonstrating that the AO had made adequate verification and inquiries on this issue, the Id.Pr.CIT, under the circumstances, was supposed to discuss the same, consider the reply of the assessee, and to point out what further inquiry was required to be made by the AO, which has not been made by him and what were the defects or infirmities in the explanation given by the assessee, which require further inquiries and verifications by the AO. All these ingredients, which are required for the exercise of revision jurisdiction under section 263 of the Act, are missing in this case. Therefore, the impugned order passed by the Id.Pr.CIT under section 263 of the Act, is a result of invalid jurisdiction exercised by the Id.Pr.CIT under section 263 of the Act, and hence, not sustainable and the same is, accordingly, quashed.”

8.1 The facts of the present case are similar to the facts of the above case.

Therefore, following the reasons given therein the order of Ld. PCIT passed u/s 263 of the Act is found to be unsustainable and is, accordingly, quashed.

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

ITA No.572/SRT/2024 (AY 2014-15)

10. The facts and the grounds in the above appeal are similar to those in ITA No.571/SRT/2024 decided above. Following the reasons given therein, the order of Ld.PCIT is quashed and the appeal filed by the assessee is allowed.

11. In the result, appeal filed by the assessee is allowed.

12. In combined result, both the appeals are allowed.

Order pronounced in open court on 19/09/2025.

Sd/-
(DINESH MOHAN SINHA)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/ ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 19/09/2025

Dkp Outsourcing Sr.P.S*

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

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- प्रत्यर्थी/ The Respondent
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- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
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By order/आदेश से,

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आयकर अपीलीय अधिकरण, सूरत