



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

आयकर अपील सं./ITA No.185/RJT/2025
(निर्धारण वर्ष / Assessment Year: (2016-17)
(Physical Hearing)

Babubhai Kanjibhai Sakariya, legal heir of Late Smt. Ujiben Kanjibhai Sakariya, At Khajuri Gundala, Tal Jetpur, Gujarat-360370	बनाम/ Vs.	Income Tax Officer, Ward-1(2)(1), Rajkot
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: GDQPS7714N		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

अपीलार्थी ओर से/ Assessee by : Shri Rajendra Singhal, Ld. AR
प्रत्यर्थी की ओर से/Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR
सुनवाई की तारीख/Date of Hearing : 01/10/2025
घोषणा की तारीख /Date of Pronouncement : 04/11/2025

आदेश / ORDER

Per, Dr. Arjun Lal Saini, A.M

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2016-17, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the ld. CIT(A)”], National Faceless Appeal Centre (in short “NFAC”), Delhi dated 31.12.2024, which in turn arises out of an assessment order passed by Assessing Officer u/s 147 r.w.s. 144 r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 15.03.2022.



2. Grounds of appeal raised by the assessee are as follows:

“1.The order passed by the ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC) is bad in law and invalid.

2.The ld. CIT(A) has erred on facts as also in law in directing to make assessment in case of a deceased person.

3.Your Assessee prays that the order of the Commissioner (Appeals) and impugned assessment made in case of a deceased person may kindly be quashed.

4.Your Honour's assessee craves leave to add, to amend, alter, vary and / or withdraw any one or more grounds of appeal on/or before hearing of appeal.”

3. The appeal filed by the assessee, for assessment year 2016-17, is barred by limitation by 22 days. The assessee moved a petition requesting the Bench, to condone the delay. Learned Counsel for the assessee, has explained the delay in filing the appeal before this Tribunal stating that Late Smt. Ujiben Kanjibhai Sakariya left for heavenly abode on 26.11.2020, intestate. The assessee, including his two brothers reside in three different cities. The assessee, including his brother, have decided to get registered their name as legal heir of their mother in records of the Income Tax Department, to contest the impugned reassessment order passed on 15.03.2022. The appellate order has been passed on 31.12.2024 and the same was placed in assessee`s account only, on the e-portal of the Department. All the brothers had to decide the matter regarding filing of further appeal. And because of the communication gap between brothers, such minor delay of 22 days have occurred. The Ld. Counsel further submitted that the assessee did not receive the order of the Ld. CIT(A), on time, and the assessee along with his three brothers reside in different cities. When the physical copy was served on the assessee, the assessee immediately filed the appeal before this Tribunal, therefore, the delay in filing the appeal is not intentional, hence, delay should be condoned.



4. On the other hand, Ld. Sr. DR for the Revenue opposed the prayer of the assessee for condonation of delay. While deciding the prayer for condonation of delay, the court/appellate authority cannot ignore or give a go-by to the basic principle that the burden to prove the existence of sufficient cause is always on the assessee, and there is no presumption that the delay occasioned in the filing of the appeal is always bona fide and the condonation of delay is not the matter of right. The law of limitation envisages that there should have been a sufficient cause for not presenting the appeal within that period, as prescribed. Where the assessee has failed to show the sufficient cause for condonation of delay, the application for condonation of delay is liable to be rejected.

5. We have heard both the parties, on this preliminary issue. We note that Late Smt. Ujiben Kanjibhai Sakariya died on 26.11.2020. The deceased person has three sons, as a legal heirs, who resides in different cities, therefore, because of the communication gap among the brothers, the appeal was filed late by 22 days. We have gone through the petitions for condonation of delay and observed that reasons explained in the petition for condonation of delay are convincing in nature. The learned Counsel for the assessee, adverted our attention to the reasons for condonation of delay before this Tribunal and urged for a benign view and sought condonation of delay of 22 days in filing the appeal before this Tribunal. A perusal of the reasons and sufficient cause explained by the ld. Counsel for the assessee, gives us an impression of existence of mitigating circumstances to enable us to exercise our discretion in favour of the assessee. Accordingly, the delay is condoned in filing the appeal.



6. Brief facts, as discernible from the orders of lower authorities are that the assessee Ujiben Kanjibhai Sakariya (PAN-GDQPS7714N) being an individual filed its return of income for the assessment year (A.Y.) 2016-17, declaring total income of Rs.1,86,240/-. The assessing officer framed the assessment order under section 147 of the Act, on 15.03.2022. The assessee died on 26.11.2020. The proceeding u/s 147 of the Income Tax Act was initiated on dead person, after obtaining prior approval from the competent authority, and accordingly notice u/s 148 of the Income Tax Act was issued to the assessee on 31/03/2021. The assessment was reopened in this case for the reason that **assessee has received interest on enhanced compensation paid for compulsory acquisition of agricultural land, at Rs. 1,89,62,258/-**. Smt. Ujiben Kanjibhai Sakariya is the Co-owner of the said land and has 25% Shared in Property. Further, the assessee has claimed receipt of gift from the assessee i.e. Smt. Ujiben K. Sakariya of Rs. 23 lacs during FY 2015-16. To examine the issue, notices were issued to the assessee (dead person during the course of re-assessment proceedings. The assessing officer noticed that the assessee had received interest on enhanced compensation paid for compulsory acquisition of agricultural land, at Rs.1,89,62,258/-. The assessee was asked to provide the details and documents relating to the said transactions, but the assessee did not respond with the details as called for, therefore, assessing officer made addition to the tune of Rs. 1,89,62,258/- in the hands of the assessee. The assessing officer also made addition to the tune of Rs.23,00,000/-, on account of receipt of gift for the assessment year (AY) under consideration.

7. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Id.CIT(A), who has confirmed the action of the assessing officer. The appeal preferred by the assessee did not find favour with



the Commissioner of Income Tax (Appeals), who confirmed the order of the Assessing Officer in this regard. Calling into question the said order, the assessee preferred appeal before this Tribunal.

8. Learned Counsel for the assessee, at the outset vehemently argued that the assessee under consideration died on 26.11.2020. The information of the death of the assessee, was communicated to the Department on 24.11.2021, by way of a letter, before passing the assessment order. The assessee informed to the Department by way of the letter, which is placed in the paper book of the assessee, stating that assessee had died on 26.11.2020 and notice was not issued on the legal heirs of the assessee, but despite of information about the death of the assessee, the notice was issued on the dead person. The assessee had also produced the death certificate before the assessing officer on 24.11.2021. However, despite of this the assessing officer continued to have issued the notice under Section 148 of the Act and other notice on the dead person, which are placed in the Paper Book of the assessee. The notice under Section 148 of the Income Tax Act, 1961 was issued on 31.03.2021, on the deceased person, who has died on 26.11.2020. On the deceased person, the assessing officer cannot initiate the assessment proceedings, therefore, re-assessment proceedings should be quashed.

9. The Ld. Counsel further stated that not only notices were issued on the dead person but (despite of information given by the legal heirs to the Revenue Authorities to the fact that the assessee died on 26.11.2020,) the Assessing Officer had also framed the assessment order in the name of the dead person, vide assessment order dated 15.03.2022, for A.Y. 2016-17 which is in the name of the dead person.



10. The Ld. Counsel also argued on appeal by the assessee, before the Ld. CIT(A), the assessee intimated/informed to the Ld. CIT(A), this fact that the assessee had died and on the dead person, no notice under Section 148 of the Act can be issued and no assessment order should be framed. However, Ld. CIT(A) without hearing the assessee, remitted the entire issue back to the file of the Assessing Officer, which is not justifiable. The Ld. CIT(A) ought to have cancelled the order of the Assessing Officer, as the assessment order was framed on the dead person and notices were issued by the Assessing Officer on the dead person, inspite of fact that the legal heirs of the assessee had already informed to the Assessing Officer about the death of the assessee. Therefore, Ld. Counsel contended that assessment order should be quashed and for the Ld. Counsel relied on the judgment of the ITAT in the case of Babubhai Joitram Patel vs. DCIT in ITA No. 15&23/Rjt/2025 for A.Y. 2018-19 & 2019-20, order dated 05.08.2025, wherein it was held as follows:

“8. At the outset, Ld. Counsel for the assessee, submitted that notice u/s 143(2) of the Act, was issued in the name of the dead person, despite informing to the department that the assessee had died. The Ld. Counsel submitted that assessing officer framed assessment order u/s. 144 of the Act, on 01.03.2022. The assessee under consideration has died on 11.07.2019 and death certificate of the assessee is reproduced below:



0811161

મરણનું પ્રમાણ પત્ર
CERTIFICATE OF DEATH
ગુજરાત સરકાર
GOVERNMENT OF GUJARAT
આરોગ્ય અને કુટુંબ કલ્યાણ વિભાગ
Department of Health

(જન્મ અને મરણ નોંધણી અધિનિયમ ૧૯૬૯ ની કલમ ૧૨/૧૩ મુજબ અને ગુજરાત જન્મ અને મરણ નોંધણી નિયમો, ૨૦૦૪ના નિયમ - ૮ મુજબ)
 (Issued under Section 12/17 of the Registration of Births and Deaths Act, 1969 & under section 8 of Gujarat Births & Deaths Registration Rules, 2004)

અમદાવાદ મ્યુનિસિપલ કોર્પોરેશન
Amdavad Municipal Corporation

આથી પ્રમાણપત્ર આપવામાં આવે છે કે નીચેની માહિતી મરણના મુળ રેકોર્ડમાંથી લેવામાં આવી છે જે ગુજરાત રાજ્યના અમદાવાદ શહેરના રજીસ્ટરમાં નોંધાયેલ છે.
 This is to certify that the following information has been taken from the original record

જન્મ/ મરણ/ Death at Amdavad City of Gujarat State/ Ward નવરંગપુરા/NAVRANGPURA

માસ/ Month	સપ્ટેમ્બર/September	સને/ of	2019
(૧) નામ	: બાબુભાઈ		
(૨) જાતિ	: પુરુષ		
(૩) મરણની તારીખ	: 11/09/2019		
(૪) મરણ સ્થળ	: ઘર		
(૫) પિતા / માતા / મતિનું નામ	: જોધદાસ પટેલ		
(૬) મરણ સમયે વસવાટ સરનામું	: ૯ સુવાસ કોલોની, સેન્ટ ડેવિયસ હાઈસ્કૂલ રોડ, નવરંગપુરા, અમદાવાદ		
(૭) મરણ સમયે કાયમી સરનામું	: ૯ સુવાસ કોલોની, સેન્ટ ડેવિયસ હાઈસ્કૂલ રોડ, નવરંગપુરા, અમદાવાદ		
(૮) નોંધણી ક્રમાંક	: 2019-DW-0010-0000868		
(૯) નોંધણી તારીખ	: 23/09/2019		
(૧૦) ટીપ્પણી/ Remarks			

MOHAMMED
 તૈયાર કરનારની સહી
 Prepared By

મુકાબલ કરનારની સહી
 Checked By
 LAW GARDEN-CCC
 30/09/2019

DR. DIVYANG OZA
 સત્તાધિકારીની સહી
 Signature of Issuing Authority
 આરોગ્ય અને જન્મ મરણ વિભાગ
 Department of Health (Births & Deaths)
 અમદાવાદ મ્યુનિસિપલ કોર્પોરેશન
 Amdavad Municipal Corporation

C.B.C.
 A.M.C.
 LAW GARDEN

9. Learned Counsel further stated that during the proceeding before the DDIT Investigation, it was informed to the revenue authorities that the assessee had died and the said information was available before the Assessing Officer, during the assessment proceedings, that the assessee has died, however, in spite of this, the assessing officer issued the notices in the name of the dead person and also framed assessment, in the name of the dead person, therefore, the assessment order passed by the assessing officer on the dead person is invalid and may be quashed.

10. On the other hand, Ld. Sr. DR for the revenue, argued that, since the assessing officer has framed the assessment order u/s. 144 of the Act, therefore, the Ld. CIT(A), remitted the issue back to the file of the assessing officer for fresh adjudication. The Ld. DR also submitted that during the assessment proceeding, the further notices were issued in the name of the legal heirs, therefore, it is sufficient compliance and assessment order should not be quashed on this issue.

11. I have heard both the parties and noted that notice u/s 153C r.w.s. 143(3) of the Act was issued in the name of deceased person and notice u/s 142(1) of the Act, was also issued in the name of the deceased person. In fact, the order was framed in the name of the deceased person. Therefore, I find that the assessee under consideration had died on 11.07.2019 and the assessing officer was aware



about this fact that the assessee had died, despite of this fact, the notices were issued in the name of the deceased person and ultimately the assessing officer framed the assessment order in the name of the deceased person. Therefore, I find merit in the submission of the Ld. Counsel for the assessee, and hence assessment order needs to be quashed, and for that reliance is placed on the judgement of the Co-ordinate Bench of ITAT Rajkot in the case of Amrutlal Karsandas Samani in ITA No.463/Rjt/2024, order dated 25.04.2025. In this order, the Tribunal has inter alia observed as follows:

14. We have heard both the parties and perused the material available on record. We note that Late Shri Amrutlal Karshandas Samani (assessee) was running his business of Grain, Pulses, Jaggery, Sugar, etc, on wholesale, semi wholesale basis for more than 25 (Twenty five) years, that is, from the starting up his business until his sudden death. His unfortunate death occurred on 24/12/2018. Copy of the death certificate is enclosed on paper book page no. 31, which we have examined. Then after on the base of portal data Ld. ADIT (Inv), Jamnagar issued summons on 8-7-2019 and 23-02-2021 for the verification of cash deposited, during the demonetization period 09.11.2016 to 31.12.2016 in which SBN (old notes) cash deposit was at Rs. 19,00,000/-. In response to the summons, Legal heir of assessee filed reply and informed the income tax authorities that assessee had passed away on 24-12-2018 and requested to drop the proceedings. Thereafter, the case of the assessee was reopened u/s. 147 of the IT Act, 1961, after getting approval from the Ld. Add/Joint commissioner of Income Tax, Range-1, Jamnagar, a notice u/s. 148 of the IT Act, 1961 was uploaded at portal on 16-04-2021. However, Ld. AO continued proceedings, issued notice u/s 143(2) of the Act. The assessee again informed to the income tax officer about death of assessee. However, assessing officer framed the assessment order on the dead person which is bad in law. The learned PCIT also framed the revision order under section 263 of the Act on the dead person. That is, revision order under section 263 of the Act was framed on, non-existent assessee, hence, revision order framed by the ld. PCIT, under section 263 of the Act, is bad in law and needs to be quashed. We note that Co-ordinate Bench of ITAT Cuttack, in the case of Janardan Gupta, (2019) 75 ITR 64 (trib), on the identical and similar facts, has quashed the revision order under section 263 of the Act, observing as follows:

“6. After hearing both the sides and perusing the entire material available on record and the impugned order passed u/s 263 of the Act, we noticed from the death certificate submitted by the assessee that late Janardan Gupta died on 15.03.2015 which has duly been recorded by the AO in his assessment order and order has been passed in the name of legal heir also. We further noticed from the order of Pr.CIT that he has passed order in the name of deceased- assessee who was not in existence on the date of passing of the revisional order u/s. 263 of the Act. We also agree with the case law relied on by the ld. AR in the case of M. Hemanathan (supra), wherein the Hon'ble Madras High Court in para 12 has held as under



“12. But unfortunately, the said contention loses sight of the settled position that any proceeding initiated against a dead person is a nullity. The contention of the learned Standing Counsel for the Department loses sight of one important distinction between a case where the proceedings are initiated against a person, who is alive, but continued after his death and a case of proceedings initiated against a dead person himself. If the proceedings had been initiated against a person, who was alive, and they were continued after his death after putting his legal heirs on notice, those proceedings, under certain circumstances, may be saved. Such a situation is also contemplated in civil proceedings and a provision is made in the Civil Procedure Code itself under Order XXII Rule 4. Therefore, the cases where the very proceedings are initiated against a dead person stand apart from those proceedings where they are initiated against a live person, but continued after his death against the legal heirs. Hence, the first contention is rejected.”

7. Respectfully following the above decision of Hon'ble Madras High Court, we are of the considered view that the Pr. CIT is not justified in setting aside the assessment order invoking powers u/s.263 of the Act ignoring the fact that the assessee is already expired on 15.03.2015, which was already informed by legal heir Shri Jitendra Kumar Gupta, the son of the assessee during the course of assessment proceedings. The AO has also passed order u/s.143(3) of the Act in the name of legal heir of the assessee. Therefore, fresh assessment cannot be initiated against the deceased assessee. Accordingly, we quash the order passed by the Pr. CIT u/s.263 of the Act and allow the appeal of the assessee.8. In the result, appeal of the assessee is allowed.”

15. Hon`ble High Court of Madras, in the case of M.Hemanathan, 384 ITR 177 (Mad-HC), held that where notice issued in name of deceased-assessee was served upon legal heir, who, then, participated in proceedings, such proceedings was a nullity being initiated against a dead person. It was also held that where notice issued in name of deceased-assessee was served upon legal heir who, then, participated in proceedings, said legal heir could not be deprived of right to challenge service of notice. The Co-ordinate Bench of ITAT Delhi in the case of Sheela Devi, 64 CCH 186 (Del-trib), held that if show cause notice was addressed to deceased assessee instead of legal heirs, order was ab-initio void. Respectfully following the above binding precedent, we quash the order passed by the ld. PCIT under section 263 of the Act, dated 21.02.2024.



11. On the other hand, Ld. DR for the Revenue submitted that the Death Certificate submitted by the assessee, in the Paper Book, does not contain the seal, of the appropriate authority (Rajkot Municipal Corporation) and there is only digital signature. Therefore, the death certificate should be submitted by the assessee with the proper seal and signature.

12. In rejoinder, Learned Counsel for the assessee, as per the instructions of the Bench, produced the death certificate, containing seal of the appropriate authority.

13. We have heard the rival parties and have gone through the material placed on record. For the sake of clarity and also being pertinent, we reproduce death certificate, of the deceased assessee, which contain seal of the appropriate authority, as follows:



ગુજરાત સરકાર

GOVERNMENT OF GUJARAT
આરોગ્ય અને પરિવાર કલ્યાણ વિભાગ
DEPARTMENT OF HEALTH AND FAMILY WELFARE

મરણ પ્રમાણપત્ર
DEATH CERTIFICATE

(જન્મ અને મરણ નોંધણી અધિનિયમ, ૧૯૬૯ની કલમ ૧૨/૧૭ અને ગુજરાત જન્મ-મરણ નોંધણી નિયમો, ૨૦૧૮ના નિયમ-૮ મુજબ)
(Issued under Section 12/17 of the Registration of Births and Deaths Act, 1969 and Rule 8 of the Gujarat Registration of Births and Deaths Rules, 2018)

આથી પ્રમાણિત કરવામાં આવે છે કે, નીચેની માહિતી મરણના મૂળ રેકર્ડમાંથી લેવામાં આવી છે. જે ભારતના ગુજરાત રાજ્યના રાજકોટ જિલ્લા ના રાજકોટ તાલુકાના RAJKOT (CENTRAL ZONE) ગ્રામ/શહેરના રજિસ્ટરમાં છે.

This is to certify that the following information has been taken from the original record of death which is in the register for Village/City RAJKOT (CENTRAL ZONE) of Taluka Rajkot(C) of District Rajkot of Gujarat State, India.

નામ/Name : ઉજિબેન / UJIBEN

મરણ તારીખ/ Date of Death : 26/11/2020

Thursday, November 26, 2020

માતાનું નામ/ Name of Mother :

-/-

મરનારના મૃત્યુ સમયનું સરનામું/ Address of deceased at the time of Death :

ખજૂરી ગુંદાળા અમરનગર રાજકોટ/KHAJURI GUNDALA AMARNAGAR RAJKOT

નોંધણી ક્રમાંક/Registration No. : 15395

રીમાર્ક્સ (વિશેષ નોંધ)/Remarks (if any)

/ 0

આપ્યાની તારીખ/ Date of issue : 03/10/2025

જાતિ/Sex : સ્ત્રી / Female

મરણ સ્થળ/ Place of Death :

PARAM HOSPITAL-RAJKOT

પિતાનું-પતિનું નામ / Name of Father or Husband :

કાનજીભાઈ સાકરિયા / KANJIBHAI SAKARIYA

મરનારનું કાયમી સરનામું / Permanent address of Deceased :

ખજૂરી ગુંદાળા અમરનગર રાજકોટ/KHAJURI GUNDALA AMARNAGAR RAJKOT

નોંધણીની તારીખ/ Date of Registration : 01/12/2020

પ્રમાણપત્ર નંબર/ Certificate No : D202020508564

આપનાર સત્તાધિકારી/Issuing authority :

Registrar (Birth & Death)
રજીસ્ટ્રાર (જન્મ & મરણ)



hF18vOzf3dS/BK7WUE+A7TcqCivOgq37dSeD2F41hQQMWWIdQW79FP20xxP0zGaB

2024 /

067913



14. From the above death certificate of the deceased assessee, it is vivid that assessee under consideration died on 26.11.2020. Whereas, the assessing officer framed the assessment order under section 147 of the Act, on 15.03.2022, on dead person. As the assessee died on 26.11.2020, however, the proceeding u/s 147 of the Income Tax Act was initiated on dead person, after obtaining prior approval from the competent authority, and accordingly notice u/s 148 of the Income Tax Act was issued on dead assessee on 31/03/2021, which is illegal, hence, reassessment order framed by the assessing officer under section 147 of the Act, dated 15.03.2022, should be quashed.

15. We note that assessee had intimated to the Revenue Authorities by way of letter dated 24.11.2021, about the death of the assessee, the said letter of the assessee is placed in the Paper Book of the assessee. We note that the Assessing Officer was aware about the death of the assessee, as the assessee has submitted the information and the Death Certificate before the Assessing Officer, despite of this, the Assessing Officer issued notice under Section 148/147 of the Act on the dead person. Apart from this, the Assessing Officer has not issued the notice to the legal heirs and without issuing notice to the legal heirs, the assessing officer has passed the assessment order in the name of the dead person which is invalid in the eye of law.

16. On appeal by the assessee, before the Ld. CIT(A), the assessee has also intimated to the Ld. CIT(A) about the death of the assessee. However, despite of this, the Ld. CIT(A) did not quash the assessment order and passed the appellate order on dead person, therefore we find that both the lower authorities, that is, assessing officer, as well as learned CIT(A), both were erred in passing the order in the name of the dead person.



17. From the above facts, it is abundantly clear that since the notice under Section 148 of the Act was issued by the assessing officer on the dead person and assessment order was also framed in the name of the dead person. Moreover, the Ld. CIT(A) has also framed the appellate order in the name of the dead person, despite of the fact that information about the death of the assessee was communicated by the legal heirs before the Ld. CIT(A) also. Therefore, considering these facts we note that assessment order framed by the Assessing Officer should be quashed and for that we rely on the judgment of the Coordinate Bench of ITAT-Rajkot, in the case of Pari Anil Gandhi vs. PCIT in ITA No. 51&57/Rjt/2021 for A.Y. 2015-16 vide order dated 17.03.2025, wherein the Coordinate Bench held as follows:

“17. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. PCIT and other material brought on record. We note that show cause notice u/s 263 was issued by ld. PCIT, by raising four major issues, which were considered by ld. PCIT, as erroneous and prejudicial to the interest of the revenue. We shall take these four issues, one by one, as follows.

18. About long-term capital gain (Penny stock issue), we find that specific inquiries were conducted by the assessing officer vide Sr. nos. 2, 4, 5, of notice u/s 142(1) of the Act. We also find that the very reason for scrutiny was for share transactions. During the assessment proceedings, the assessee submitted its replies before the assessing officer, which is placed at paper book page No.-1 and Page 18-27. Details of purchases and holding period were submitted by the assessee, during the assessment proceedings, which were examined by the assessing officer (vide PB -1, Page 32-38, PB-2, Page 1-11). All Purchases were made by banking channel, and details of all purchases, are as follows:

<i>F.Y.</i>	<i>Dates of Purchase of shares</i>	<i>No. of Shares</i>	<i>Cost (in Rs.)</i>	<i>Evidence -PB Page Ref.</i>
<i>2012-13</i>	<i>27-01-2012 30-01-2012 31-01-2012</i>	<i>1,51,800</i>	<i>25,77,603/-</i>	<i>PB - 2, Page 1-13</i>
<i>2013-14</i>	<i>18-03-2013 22-03-2013</i>	<i>1,02,000</i>	<i>23,85,698/-</i>	<i>PB - 2, Page 1-13</i>
<i>Total</i>		<i>2,5,38,00</i>	<i>49,63,301/-</i>	<i>(after split, total shares 25,38,000)</i>



The details of sales of the shares were submitted by the assessee, which is placed at paper book page number 39-55. The Sale consideration was received through banking channel (videPB- 59-64). The average holding period is three years. We also find that purchases of shares were accepted in earlier year, by the Department and only capital gain is disbelieved by the department and not the sale price. The particulars of sale of shares are given below:

<i>F.Y.</i>	<i>Dates of Sale of Shares</i>	<i>No. of Shares</i>	<i>Sale Consideration (in Rs.)</i>	<i>Evidence-PB Page Ref.</i>
<i>2014-15</i>	<i>Nov-Dec., 2014</i>	<i>12,72,000</i>	<i>1,53,95,781/-</i>	<i>PB-1, Page 39-55</i>

19. *From the above facts, it is vivid that during the assessment proceedings, the assessing officer conducted sufficient enquiry in respect of long-term capital gain. According to us, the present order of assessing officer passed u/s 143(3) of the Act, dated 26.12.2017 of the Act cannot be termed as **erroneous** since enquiry was, in fact, carried out by him on the issue on which the ld PCIT has found fault with and has taken a plausible view. Thus, we note that the assessing officer enquired during assessment proceedings and the assessee had filed details before him. So, we find that the assessing officer's action cannot be termed "**erroneous**". Since not only enquiry was carried out by the assessing officer on the issue under consideration and based on the evidence gathered, assessing officer has taken a plausible view, which at any rate cannot be called as an un-sustainable view.*

20. *We note that Hon`ble Jurisdictional High Court of Gujarat in the case of Jagat Pravinbhai Sarabhai, [2022] 142 taxmann.com 247, held that where Assessing Officer noted that assessee had indulged in scrip of shell company and had claimed long term capital gain on sale of shares and made addition under section 68 holding that entire transaction was bogus and in the nature of penny stock, however, since genuineness of investment in shares by assessee was substantiated by him by producing copy of transaction statement for period from 1-6-2001 to 1-10-2010 and shares were retained for more than ten years and were sold after such long time, hence investment was not bogus therefore it cannot be treated that investment was made in penny stock. The findings of the Hon`ble Court is reproduced below:*

"2. As submitted by learned senior advocate Mr. M.R. Bhatt for M.R.Bhatt and Co., the assessee revenue proposes the following substantial questions of law, which according to the submission requires examination.

"Whether on the facts and circumstances of the case and in law, the decision of Appellate Tribunal is ex facie perverse because the Appellate tribunal deleted the addition of Rs. 2,10,474/- made on account of bogus long term capital gain, without appreciating the entire gamut of fact that the assessee transacted in penny stock namely M/s. Devika Proteins Ltd. thus earning bogus Long term Capital Gain and claiming it to be exempt under section 10(38) of the Income-tax Act?"



3. The assessee filed the return of income for the assessment year 2011-12 on 29-3-2012 declaring his total income Rs. 3,11,490/-. Subsequently the assessment was reopened as information was received that assessee has indulged into script of shell company and had claimed long term capital gain on sale of shares of Devika Proteins Limited to the tune of Rs. 2,10,474/- and that the amount was claimed as exemption under section 10(38) of the Income-tax Act, 1961 (hereafter referred to as 'the Act')

3.1 The Assessing Officer made addition of the said amount. The entire transaction was treated as bogus and in the nature of penny stock. By adding Rs. 2,10,474/- under section 68 of the Act, total income was assessed at Rs. 5,21,964/-.

3.2 In appeal by the assessee before the Commissioner of Income-tax (Appeals), the issue was re-examined. According to the appellate authority the assessee had furnished evidence to show that the shares were brought as genuine investment which was long back in the year 2000-01. As the shares were in the nature of old investment, they could not be treated as penny stock by any stretch of imagination.

4. The Income-tax Appellate Tribunal further examined the question in appeal preferred by the revenue and confirmed the view of the appellate authority noticing that the shares were purchased in the year 2001 and they were sold after long time in the year 2010-11.

5. The genuineness of investment in the shares by the assessee was substantiated by him by producing copy of transaction statement for the period from 1-6-2001 to 1-10-2010. The investment was made in the year 2000-01. The shares were retained for more than ten years and were sold after such long time. These circumstances suggested that the investment was not bogus or investment made in penny stock. The shares were purchased in order to invest and not for the purpose of earning exempted income by frequent trading in short span.

6. The finding recorded by the appellate authority and confirmed by the appellate tribunal is based on material before them. They are in the realm of findings of fact. No error could be noticed in the findings and conclusion that the investment was longstanding and genuine and was not penny stock on the basis of which the capital gain was wrongly claimed.

6.1 On the facts of case, no question of law much less substantial question of law arises.

7. Resultantly, appeal is dismissed”.

21. In the assessee's case under consideration, the average holding period is around three years. We note that findings of the Hon'ble Jurisdictional High Court of Gujarat in the case of Jagat Pravinbhai Sarabhai (supra) is applicable to the assessee's facts under consideration. The genuineness of investment in the shares by the assessee was substantiated by him by producing contract note, Transaction was through recognised Broker, transaction was done through banking channel on which STT was paid. The shares were held by assessee, as an Investor for a period of three years. These circumstances suggest that the investment was not bogus. The



shares were purchased in order to invest and not for the purpose of earning exempted income by frequent trading in short time. Therefore, we find that assessing officer made the addition based on the guess work. The Hon`ble Supreme Court in Umacharan Shah & brothers Vs CIT (37 ITR 271) held that suspicion howsoever strong, may be cannot substitute the place of evidence. Similarly the Hon`ble Supreme Court case of Omar Salav Mohammad Sait (37 ITR 151 SC) also held that no additions can be made on the basis of surmises, suspicion and conjecture.

22. *We find that in the following cases, the Hon`ble jurisdictional Gujarat High Court, has deleted the addition, on account of penny stock.*

(i) *Mamta Rajivkumar Agarwal, [2023] 155 taxmann.com 549 (Gujarat)*

“Where assessee had sold shares of SNCFL and earned long-term capital gains and Assessing Officer alleged that transaction was a penny stock deal aimed at illegitimately claiming long-term capital gain exemption under section 10(38), since there was no evidence available on record suggesting that assessee or his broker was involved in rigging up of price of script of SNCFL, addition on account of LTCG claimed as exempt under section 10(38) had rightly been deleted”

(ii) *Champalal Gopiram Agarwal, [2023] 155 taxmann.com 66 (Gujarat).*

“Where AO disallowed loss claimed by assessee on sale of shares on ground that assessee traded in shares of penny stock and claimed bogus loss, since shares were purchased online and payments were made through banking channel and AO had no evidence to show that there was an agreement between assessee and any other party to convert accounted money by taking fictitious loss, impugned addition made on account of bogus loss was to be deleted”

(iii) *Shri Ambalal Chimanlal Patel, [2024] 162 taxmann.com 892 (Gujarat)*

“Where assessee purchased shares of a company when trading of said company was suspended and sold same and claimed exemption under section 10(38), in absence of any material brought on record to suggest that purchase and sale of said shares was bogus, Assessing Officer was not justified in making addition of sale proceeds of shares under section 68”

24. *Our view is further fortified by the judgement of the Hon`ble High Court of Calcutta in the case of Kaushalya Dealers (P.) Ltd, [2023] 147 taxmann.com 526 (Calcutta), wherein, on identical facts, as that of assessee, the revision order passed by the ld. PCIT, under section 263 of the Act, was quashed, holding as follows:*

“Where Principal Commissioner invoked revisionary proceedings with respect to issue of loss on penny stock on ground that AO failed to do proper verification, since AO in notice under section 143(2) directed assessee to furnish documents with respect to issue and thereafter, assessee submitted an explanation in respect



of allowability of loss and also explained various queries raised by AO on said issue, revisionary order was to be quashed”

25. *In view of the facts of the case and judicial pronouncements relied upon, it is well established that the impugned order passed u/s. 143(3) of the Act dated 26.12.2017, was passed by assessing officer, after calling for relevant information and after detailed examination of the same. The case laws relied on by ld DR for the revenue do not applicable to the facts of the assessee`s case and distinguishable on facts. Since, the Assessing Officer has passed the assessment order after calling for details on the issue and after considering the reply and documents and after verification of the same and after due application of mind passed the assessment order, so it cannot be termed as erroneous and prejudicial to the interest of the revenue. So, the Ld. PCIT`s finding fault, with the order of the Assessing Officer is erroneous as well as prejudicial to the interest of revenue, on account of lack of inquiry, has to fail. Based on these facts and circumstances, we quash the order dated 24.03.2021 passed by the ld PCIT under section 263 of the Act, so far, first issue is concerned.*

26. *About claim of interest u/s 24 of the Act, in respect of House property in "J KLIF" which was shown in the balance sheet under the head "Loans and Advance as "Cliff Flat Booking Advance" (vide PB-69), as only Satakhat was executed and the purchase deed was not registered. This was replied to assessing officer vide PB1, Page 26, and also replied to the Ld.PCIT, during the revision proceedings. The ledger account of the same was filed to PCIT (vide PB-1, Page 69). Hence we find that during the assessment proceedings, assessing officer has applied his mind and examine the issue under consideration, therefore, order passed by the assessing officer is neither erroneous nor prejudicial to the interest of revenue, so far this second issue is concerned.*

27. *About deemed rent for two residential properties, ld. Counsel submitted that assessing officer has not examined the same, therefore, to that extent order passed by the assessing officer is erroneous. Therefore, so far, this third issue is concerned, order passed by the assessing officer, is erroneous and prejudicial to the interest of revenue.*

28. *About unsecured loans of Rs. 1,60,29,926/-, the specific inquiries was conducted by the assessing officer vide sr. nos. 6 of notice under section 142(1) of the Act (vide PB-1, Page 17). The details of said loans were filed before the PCIT (vide PB-1, Page 3-12, 70-71). About House hold expenses, the reply was filed before the PCIT (vide PB1, Page 3) stating that assessee's father, Mr. Anil Gandhi had made withdrawal towards house hold expenses. Therefore, so far, this fourth issue is concerned, the order passed by the assessing officer, is neither erroneous nor prejudicial to the interest of the revenue.*

29. *Therefore, out of the four issues raised by the ld. PCIT, three issues are allowed in favour of assessee and one issue (which is third issue), is not allowed (this is, dismissed). Hence, assessee`s appeal in ITA No.51/Rjt/2021, is partly allowed.*



30. *In the result, appeal filed by the assessee (in ITA No.51/Rjt/2021), is partly allowed, to the extent indicated above.*

31. *Now, we shall take ITA No.57/Rjt/2021, wherein the grounds of appeal raised by the assessee, are as follows:*

1. *The Hon'ble Principal Commissioner of Income Tax, Rajkot 1, Rajkot has erred in passing the order u/s 263 of the IT Act is unwarranted, unjustified and bad in law.*

2. *The Hon'ble Principal Commissioner of Income Tax, Rajkot- 1, Rajkot has erred in setting aside the issues of (a) Receipts as well as Re-payments of Unsecured Loans (b) Interest earned u/s.244A of the Income Tax Act during the year not offered to Tax, and (c) the assessee has not shown any house hold withdrawals, is unwarranted, unjustified and bad in law.*

3. *The Hon'ble Principal Commissioner of Income Tax, Rajkot- 1, Rajkot, has erred in Investment made in Penny Stock is treated as Bogus or treated as Cash Credit u/s.68 of the I.T. Act, 1961, is totally unwarranted, unjustified and bad in law.*

4. *The Hon'ble Principal Commissioner of Income Tax, Rajkot- 1, Rajkot, has erred in wrongly mentioned the facts in body of order and set aside the Speaking order passed by Assessing Officer, as treated as erroneous and prejudicial to interest of the revenue within the meaning of section 263 of the IT Act, it is totally wrong, unwarranted, unjustified and bad in law.*

5. *Your applicant reserves the right in addition or alteration in the grounds of appeal at the time of hearing.*

32. *At the outset, ld. Counsel for the assessee, begins by pointing out that revision order under section 263 of the Income tax Act 1961, dated 30.03.2021, was passed by the ld. PCIT, on dead person (dead assessee), despite the fact that during the revision proceedings, under section 263 of the Act, the legal heirs of the assessee has intimated about death of the assessee, to ld. PCIT, on 04.03.2019, however, ld. PCIT has framed the revision order under section 263 of the Act, dated 30.03.2021, on dead assessee, therefore, order passed by the ld. PCIT, does not survive in the eye of law, and should be quashed on this score only. The ld. Counsel for the assessee, narrated before the Bench, the following important events/dates, which are important to decide the issue under consideration:*

(1). Date of assessment order u/s 143(3)	:	26-12-2017
(2). Date of death of Assessee	:	16-05-2018
(3). Return for A.Y. 2018-19 filed by L.R.	:	26-09-2018
(4). Date of notice u/s 263 of the Act	:	29-11-2018
(5). Date of intimation of death to PCIT	:	04-03-2019
(6). Date of passing the order by ld. PCIT under section 263 of the Act	:	30.03.2021



33. *Learned Counsel for the assessee argued that ld. PCIT has passed the order in the name of the dead person, who was not alive, as on the date of passing of the order, under section 263 of the Act, therefore, fresh assessment cannot be initiated on the dead person, as per the direction of the ld. PCIT. Therefore, ld. Counsel for the assessee, contended that order passed by the learned PCIT, under section 263 of the Act, may be quashed.*

34. *On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the ld. PCIT, in his revision order under section 263 of the Act, which we have already noted in our earlier para and is not being repeated for the sake of brevity.*

35. *We have heard rival contentions and gone through facts and circumstances of the case. The factual position is that for assessment year 2015-16, the assessment was framed by the assessing officer u/s 143(3) of the Act, vide order dated 26.12.2017. The date of intimation of death was communicated to ld. PCIT, on 04.03.2019. However, the ld PCIT framed the revision order under section 263 of the Act, on dead person, on 30.03.2021. That is, revision order under section 263 of the Act was framed on, non-existent assessee, hence, revision order framed by the ld. PCIT, under section 263 of the Act, is bad in law and needs to be quashed. We note that Co-ordinate Bench of ITAT Cuttack, in the case of Janardan Gupta, (2019) 75 ITR 64 (trib), on the identical and similar facts, has quashed the revision order under section 263 of the Act, observing as follows:*

“6. After hearing both the sides and perusing the entire material available on record and the impugned order passed u/s 263 of the Act, we noticed from the death certificate submitted by the assessee that late Janardan Gupta died on 15.03.2015 which has duly been recorded by the AO in his assessment order and order has been passed in the name of legal heir also. We further noticed from the order of Pr.CIT that he has passed order in the name of deceased-assessee who was not in existence on the date of passing of the revisional order u/s.263 of the Act. We also agree with the case law relied on by the ld. AR in the case of M. Hemanathan (supra), wherein the Hon'ble Madras High Court in para 12 has held as under;

“12. But unfortunately, the said contention loses sight of the settled position that any proceeding initiated against a dead person is a nullity. The contention of the learned Standing Counsel for the Department loses sight of one important distinction between a case where the proceedings are initiated against a person, who is alive, but continued after his death and a case of proceedings initiated against a dead person himself. If the proceedings had been initiated against a person, who was alive, and they were continued after his death after putting his legal heirs on notice, those proceedings, under certain circumstances, may be saved. Such a situation is also contemplated in civil proceedings and a provision is made in the Civil Procedure Code itself under Order XXII Rule 4. Therefore, the cases where the very proceedings are initiated against a dead person stand apart from those proceedings where they are initiated against a live person, but



continued after his death against the legal heirs. Hence, the first contention is rejected.”

7. Respectfully following the above decision of Hon'ble Madras High Court, we are of the considered view that the Pr. CIT is not justified in setting aside the assessment order invoking powers u/s.263 of the Act ignoring the fact that the assessee is already expired on 15.03.2015, which was already informed by legal heir Shri Jitendra Kumar Gupta, the son of the assessee during the course of assessment proceedings. The AO has also passed order u/s.143(3) of the Act in the name of legal heir of the assessee. Therefore, fresh assessment cannot be initiated against the deceased assessee. Accordingly, we quash the order passed by the Pr. CIT u/s.263 of the Act and allow the appeal of the assessee.8. In the result, appeal of the assessee is allowed.”

36. Hon`ble High Court of Madras, in the case of M. Hemanathan, 384 ITR 177 (Mad-HC), held that where notice issued in name of deceased-assessee was served upon legal heir, who, then, participated in proceedings, such proceedings was a nullity being initiated against a dead person. It was also held that where notice issued in name of deceased-assessee was served upon legal heir who, then, participated in proceedings, said legal heir could not be deprived of right to challenge service of notice.

37. On identical facts, Hon`ble High Court of Rajasthan in the case of GVK Jaipur Kishangarh Expressway Limited,100 CCH 0428 held that there cannot be any estoppel against the statue, no tax shall be levied or collected except by authority of Law. Acquiescence cannot take away from a party the relief that he is entitled to where the tax is levied or collected without authority of law. The Coordinate Bench of ITAT Delhi in the case of Sheela Devi, 64 CCH 186 (Del-trib), held that if show cause notice was addressed to deceased assessee instead of legal heirs, order was ab-initio void. Respectfully following the above binding precedent, we quash the order passed by the ld. PCIT under section 263 of the Act, dated 30.03.2021.”

18. Therefore, we find that issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench, in the case of Pari Anil Gandhi (supra) and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings of the Coordinate Bench (supra). We find no reason to interfere in the said order of the Coordinate Bench, therefore, respectfully following the binding judgment of the Coordinate Bench (supra) , we quash the reassessment order framed by



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the assessing officer under section 147 of the Act, dated 15.03.2022, and allow the appeal of the assessee.

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

Order is pronounced in the open court on 04/11/2025.

**Sd/-
(Dinesh Mohan Sinha)
Judicial Member**

**Sd/-
(Dr. Arjun Lal Saini)
Accountant Member**

Rajkot
दिनांक/Date: 04/11/2025
Copy of the Order forwarded to

//True Copy//

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

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot