



आयकर अपीलिय 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 Nos. 319/RJT/2024
(Assessment Year: 2013-14)
(Hybrid Hearing)**

Mayurbhai Jaysukhlal Shah 601, Cross Way, P.N. Marg, Jamnagar, Gujarat-361001	Vs.	Principal Commissioner of Income Tax, Jamnagar Office of The Principal Commissioner of Income Tax.PCIT, Jamnagar
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFGPS1754J		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

निर्धारितकीओरसे/Assessee by : Shri Chetan Agarwal, Ld. AR
राजस्वकीओरसे/Revenue by : Shri Sanjay Punglia, Ld. CIT(DR)

मुनवाईकीतारीख/ Date of Hearing : 07/10/2025

घोषणाकीतारीख/Date of Pronouncement : 19/11/2025

आदेश/ORDER

Per, Dr. A. L. Saini, AM:

By way of this appeal, the assessee has called into question correctness of impugned order dated 19.12.2023 passed by the Learned Principal Commissioner of Income Tax, PCIT, Jamnagar (in short "Ld. PCIT") under section 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') in the matter of reassessment under section 147 of the Act for the assessment year 2013-14, on the following grounds:

- "1. Ld. Principal CIT erred in law as well as on fact in assuming jurisdiction under 263 of the Act.



2. *Ld. Principal CIT erred in law as well as on fact in holding that Assessment order passed u/s 143 (3) with r.w.s. 147 is erroneous and prejudicial to the interest of revenue.”*

2. The relevant material facts, as culled out from the material on record, are as follows. The assessee had filed return of income, declaring total income of Rs.33,48,920/-, on 31/03/2014 for the assessment year (AY) 2013-14. Therefore, the 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 Aricent Infra Ltd (Scrip Code 530967, known as Kyar Landscape Ltd) of Rs. 81,75,900/-, during the previous year relevant to assessment year (AY) 2013-14 and claimed exempt income u/s 10(38) of the Act to the tune of Rs. 75,85,100/- from the sale of shares of Aricent Infra Ltd. Accordingly, order u/s 147 rws 144B of the Act was passed on 31/03/2022, making an addition of Rs. 81,75,900/-, u/s. 68 of the Act to the total income of the assessee.

3. Later on, the Ld. PCIT exercised his jurisdiction under section 263 of the Income tax Act, 1961. On perusal of assessment records for assessment year (AY) 2013-14, it was observed by Ld. PCIT that the order passed by the assessing officer prima facie erroneous, and not as per the provision of the Income-tax Act and prejudicial to the interest of the revenue within the meaning of the provisions of section 263 of the Act. Accordingly, a show- cause notice for initiation of proceedings u/s 263 of Act, dated 28/11/2023 was issued to the assessee through ITBA as well as served through registered post with a request to submit the written submissions latest by 06/12/2023 before Ld. PCIT.

4. In response to the above notice, the assessee has submitted reply on 12/12/2023 before Ld. PCIT. The assessee submitted before Ld. PCIT that assessee is a regular investor in capital market and not a one-time adventurer and as such has done the investments in such shares as a pure investor only. The assessee had purchased shares of script Shree Leather Ltd, (83,000 shares) on



17.03.2010 and for the same, the payment was made of Rs. 1,25,240/- through Punjab National Bank, Ranjit Road Branch, Jamnagar cheque no. 461871 on dated 17.03.2010, and the Copy of bank statement was submitted in course of assessment proceedings. The shares were transferred from demat on 19.12.2012. Source of acquisition of shares of Sree Leathers Ltd is the amount of Rs. 1,70,000/-, received on 17.03.2010 from KDA Associates as Loans and Advances and for which details and evidences were also submitted before the lower authorities. The above said fact was duly confirmed and established by the banker of Sree Leather Ltd and so as to the revenue also for the respective assessment year under consideration. Also, shares were credited in the D-mat account of the assessee which the assessing officer could duly confirmed with the depository during course of assessment, which is not questioned, and out of 83,000 shares of script of Sree Leather Ltd., 7,750 shares were sold through online trading through a registered stock broker namely Care Growth Broking Pvt Ltd and payment for the sale price after deducting security transaction tax, brokerage and other incidental charges were received in assessee's bank account. No discrepancy whatsoever in any of the documents furnished by the assessee right from the purchase of shares to sale of shares has been pointed out by the Assessing Officer from investment in the issue of shares of Aricent Infra Ltd, and Sree Leather Limited., listed companies, for which payments were made through banking channel out of funds available with the assessee. Consequently, shares were allotted to the assessee and credited to his demat account with Care Growth Broking Pvt. Ltd. Thus, acquisition and holding of shares by the assessee is beyond any doubt.

5. However, Ld. PCIT rejected the above contention of the assessee and held that 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. Therefore, order passed by the Assessing Officer u/s 147 rws 144B of the Act dated 31/03/2022, is erroneous and



prejudicial to the interest of the revenue within the meaning of section 263 of the Act to that extent and therefore, Ld. PCIT 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.

6. Aggrieved by the order of the Ld. PCIT, the assessee is in appeal before us.

7. At the outset, on merit, the Ld. Counsel for the assessee submitted that assessee purchased the scrip of Aricent Infra Ltd and the financial position of the said company is very good, the company has turnover in crores and such turnover has been increasing since the company had started its production. The company is earning profit, besides, the assessee has submitted necessary documents before the assessing officer, such as, Contract details, NOC, Security transaction tax was also paid on the transaction through banking channel, therefore, genuineness of the transaction should not be doubted.

8. On the other hand, the Ld. DR for the revenue, on merit argued that the assessee under consideration, failed to prove the genuineness of the transaction. The assessee did not file evidence to the effect that why the price of the share was rising. Besides, the PE ratio of the company, is not good, therefore, the assessee failed to prove the genuineness of the transaction.

9. On technical issue, the Ld. Counsel for the assessee submitted that reassessment proceedings initiated by the assessing officer is bad in law. It is borrowed satisfaction and the reasons of reopening as furnished by the assessing officer, contain lot of mistakes. The reasons recorded were not spell out the belief of the assessing officer that the Income of the assessee escaped assessment. For that Ld. Counsel relied on the various judgements of High Courts and Tribunal, which are reproduced below:



- i. Hon'ble Gujarat High Court decision in the case of Kantibhai Dharamshibhai Narola vs. ACIT in R/Special Civil Application No.19549 of 2018 & Ors.
 - ii. Hon'ble Gujarat High Court decision in the case of Harikishan Sundar Lal Virmani vs. DCIT in Special Civil Application No.16204 of 2016
 - iii. Hon'ble Gujarat High Court decision in the case of Varshaben Sanatbhai Patel vs. ITO & 1 in Special Civil Application No.12873 of 2014 & Ors.
 - iv. Anil Nachrani v. Pr. CIT [2024 TaxPub (DT) 765 (Raip-Trib)]
 - v. Aruna Tiwari v. Pr. CIT [2023 TaxPub (DT) 4583 (Raip-Trib): (2023) 108 ITR (Trib) 0040]
 - vi. Charbhujia Marmo (India) (P) Ltd. v. Pr. CIT [2020 TaxPub(DT) 0302 (Del-Trib)]
 - vii. Maloo Construction (P) Ltd. v. Pr. CIT [2022 TaxPub(DT) 0763 (Sur-Trib)]
 - viii. Mikado Realtors (P) Ltd. v. Pr. CIT [2021 TaxPub(DT) 2899 (Del-Trib)]
10. On technical issue, the Ld. DR for the revenue argued that during the proceedings under section 263 of the Act, the assessee cannot raise the technical issue about reopening of assessment.
11. 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 in relation to observation of Ld. PCIT to the effect that shares purchased at a nominal price, have been sold at a very high price, however, we note that it is a matter of record that shares have been sold at the rates, which were prevailing on the stock exchange at the time of sale; and secondly price of shares in the share market are sentiment driven; and thirdly share prices of all the scripts are closely monitored by the Stock Exchange and SEBI; and lastly even if prices have gone up



artificially (as alleged by Id PCIT), there is no material to hold that assessee was involved therein bogus transactions. We note that the onus which lay upon the assessee under section 68 of the Act to prove the genuineness of the transaction, the source of the sums received and identity of the person from whom such sums were received stood duly discharged by the assessee. Moreover, all details of Sree Leather Ltd were also submitted at the time of assessment proceedings, as well. Moreover, revision of section 263 of the Act does not give any power whatsoever to the Ld. PCIT to remit the issue to the file of assessing officer without finding that the order of assessing officer is erroneous in so far as prejudicial to the interest of revenue as held by Hon'ble Delhi High Court in the case of CIT vs. Sunbeam Auto Limited reported in 332 ITR 167 (Del).

12. From the facts of the assessee's case we find that assessee is a regular investor in capital market and not a one-time adventurer and as such has done the investments in such shares as a pure investor only. The assessee had purchased 83,000 shares of Shree Leather Ltd, on 17.03.2010 and for the same, the payment was made of Rs. 1,25,240/- through Punjab National Bank, Ranjit Road Branch, Jamnagar cheque no. 461871 on dated 17.03.2010, and the Copy of bank statement was submitted in course of assessment proceedings. The shares were transferred from demat on 19.12.2012. Source of acquisition of shares of Sree Leathers Ltd is the amount of Rs. 1,70,000/-, received on 17.03.2010 from KDA Associates as Loans and Advances and for which details and evidences were also submitted before the assessing officer. The above said fact was duly confirmed and established by the banker of Sree Leather Ltd. The shares were credited in the D-mat account of the assessee which the assessing officer could duly confirmed with the depository during course of assessment proceedings. The assessing officer conducted sufficient enquiry by issuing notices and assessee has also submitted its reply before the assessing officer.



13. At the cost of repetition, we state that out of 83,000 shares of Sree Leather Ltd., 7,750 shares were sold through online trading through a registered stock broker namely Care Growth Broking Pvt Ltd and payment for the sale price after deducting security transaction tax (STT), brokerage and other incidental charges were received in assessee's bank account. No discrepancy whatsoever in any of the documents furnished by the assessee right from the purchase of shares to sale of shares has been pointed out by the Assessing Officer from investment in the issue of shares of Aricent Infra Ltd, and Sree Leather Limited., listed companies, for which payments were made through banking channel out of funds available with the assessee. Consequently, shares were allotted to the assessee and credited to his demat account with Care Growth Broking Pvt. Ltd. Thus, acquisition and holding of shares by the assessee is beyond any doubt. During the assessment proceedings, the assessing officer examined these evidences and facts of the assessee and took plausible view, therefore order passed by the assessing officer is neither erroneous nor prejudicial to the interest of the revenue.

14. Since in the present case, Id. PCIT has exercised jurisdiction u/s.263 of the Act on the ground that the assessing officer while completing the assessment proceeding did not make enquiries which he ought to have made, therefore, it is necessary to look into what enquiries the assessing officer made on the issues raised in the order u/s.263 of the Act. It is clear from the submissions and material available on record with regard to the shares, that assessee submitted debit note, bank statement to prove the transaction that purchase and sale were conducted through bank, invoices, evidence regarding payment of STT, confirmation from the respective party and other details and documents were also submitted by the assessee before the assessing officer, during the assessment proceedings. Therefore, we note that the assessing officer made the required inquiries. As pointed out by the learned counsel for the assessee similar addition on similar facts were deleted by the jurisdictional ITAT-Rajkot. Besides the above, as rightly pointed out by the learned counsel for the assessee that the PCIT has not



set out as to why this item/issue need to be investigated and as to what type of inquiry ought to have conducted by the assessing officer. A mere observation that no proper details have been obtained, cannot be sufficient to come to a conclusion that the assessing officer did not make proper and adequate inquiries which he ought to have made in the given facts and circumstances of this case.

15. It is a settled position in law that provisions of sec. 263 of the Act do not permit substituting one opinion by another opinion. Therefore, the order of the Ld. Pr. C.I.T. cannot be sustained on the principle of ‘erroneous’ nature of the order of the A.O., as it is not erroneous. Further, in the instant case, to reiterate, there was no allegation by the Ld. revenue authorities that the evidences produced were fictitious or invented, thus accepted the authenticity of the same. Such an order cannot be called erroneous and prejudicial to interests of revenue only because the A.O. made the assessment without discussing such details therein, as held by the Coordinate Bench of ITAT Kolkata in the case of Chroma Business Ltd. vs. DCIT (2004) 82 TTJ 540 (Cal). Further support in this connection is taken from the decision of Hon’ble Delhi High Court in the case of **CIT vs. Vikas Polymers (2012) 341 ITR 537 (Del)**. Relevant part of the observation in this regard reads as under :

" This is for the reason that if a query is raised during the course of scrutiny by the Assessing Officer, which was answered to the satisfaction of the Assessing Officer, but neither the query nor the answer was reflected in the assessment order, that would not by itself lead to the conclusion that the order of the Assessing Officer called for interference and revision."
[Emphasis supplied]

16. Further, according to the decision of Coordinate Bench of I.T.A.T., Hyderabad in the case of Manisha Agri Biotech P. Ltd. vs. CIT (2014) 36 ITR (Trib.) 42 -, wherein it was held as follows:

"The respondent had no different or new material to take a different view from the one taken by the Assessing Officer and the reasons given by him to reopen the assessment and sustain the revision are totally unacceptable. The respondent is not vested with any power under section 263 to initiate proceedings for revision in every case and start re-examination and fresh enquiries in matters which have already been concluded under the law."



17. We also find that issue under consideration is also covered in favour of assessee by the order of Co-ordinate Bench of ITAT, Rajkot in the case of Shah Parag Gulabchand, vide ITA No.272/Rjt/2023 for assessment year 2013-14, on identical facts.

18. Based on the above discussion on assessee's facts as well as on various precedents applicable to assessee's facts, we are of the view that revisionary jurisdiction exercised by the Ld. Pr. C.I.T. u/s. 263 of the Act was not in tune with the facts and evidences on record duly explained to the Ld. A.O. and verified by him and that being so the order passed u/s. 263 of the Act on such erroneous stand is liable to be quashed. Therefore, based on these facts and precedents narrated above, we quash the order of ld. PCIT u/s 263 of the Act.

19. Since, we have adjudicated the issue on merit, therefore, technical arguments advanced by Ld. Counsel for the assessee and Ld. DR for the Revenue are rendered academic and infructuous.

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

Order is pronounced in the open court on 19/11/2025

Sd/-

(DINESH MOHAN SINHA)

न्यायिक सदस्य/**JUDICIAL MEMBER**

राजकोट /Rajkot

दिनांक/ Date: 19/11/2025

True Copy

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

- अपीलार्थी/ The Assessee
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्ड फाईल/ Guard File

Sd/-

(DR.ARJUNLAL SAINI)

लेखा सदस्य/**ACCOUNTANT MEMBER**

By order/आदेश से,

सहायक पंजीकार/Sr. PS/PS
आयकर अपीलीय अधिकरण ,राजकोट