



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 No.271/RJT/2024

निर्धारण वर्ष /Assessment Year : 2014-15

Nilesh Bipinchandra Mehta HUF Taj Prakash Society, P.N. Marg, Jamnagar-361 001	बनाम Vs.	Principal Commissioner of Income-tax, Jamnagar-361 008
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAHHN 0189 C		
(अपीलार्थी/ Appellant)	..	(प्रत्यर्थी/ Respondent)

निर्धारिती की ओर से/Assessee by : Shri Chetan Agarwal, AR

राजस्व की ओर से/Revenue by : Shri Sanjay Punglia, CIT- DR

सुनवाई की तारीख/**Date of Hearing** : 21/08/2025

घोषणा की तारीख/**Date of Pronouncement** : 17/11/2025

आदेश/**Order**

Per Dr. Arjun Lal Saini, A.M

By way of this appeal, the assessee has called into question correctness of impugned order passed by the Learned Principal Commissioner of Income Tax under section 263 of the Income tax Act, 1961, in the matter of assessment under section 147 of the Act for the assessment year 2014-15, 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. Succinctly, the factual panorama of the case is that assessee before us is Hindu Undivided Family. The assessee had filed original return of income on 31.07.2012, declaring total income of Rs.78,030/- for assessment year (AY) 2014-15. The assessee's case was reopened u/s 147 of the Act on the basis of information that the assessee has made transactions in penny stock of Fist Fin Services Ltd. (scrip code 511369) during the previous year relevant to assessment year (AY) 2014-15 and claimed the LTCG income thereon as exempt u/s 10(38) of the Act. Accordingly, order u/s 147 r.w.s. 144B of the Act has been passed on 28.03.2022, determining total income at Rs.10,83,203/-, after making addition of Rs.10,05,173/-, on account of cash credit u/s 68 of the Act.

3. Later on, Learned Principal Commissioner of Income Tax, (in brief "ld.PCIT") exercised his jurisdiction under section 263 of the Income tax Act, 1961. On perusal of case records for the assessment year under consideration, it was observed by the learned PCIT that during the previous year, the assessee has also made transactions in another penny stock scrip "Centron Ind" and sold 4500 shares at an amount of Rs.10,67,985/- and **claimed LTCG of Rs.9,57,333/-** (10,67,985 – 1,10,652) claimed as exempt u/s 10(38) of the Act. Therefore, the assessing officer has to verify the genuineness of the transactions made in the penny stock scrip "Centron Ind.". Therefore, the order passed by the assessing officer is prima facie erroneous and prejudicial to the interest of revenue within the meaning of the provisions of section 263 of the Act on his issue. Therefore, Ld.PCIT issued a show cause notice u/s 263 of the Act to the assessee to explain the transactions.

4. In response to above show cause notice, assessee submitted his reply before the ld.PCIT. The assessee explained that notice issued u/s 148 of the Act to reopen the assessment u/s 147 of the Act was itself illegal and when the order



u/s 148 r.w.s. 147 of the Act, is itself illegal and bad in law then the assessment order is going to be bad in law and no addition should be made in the hands of assessee. The assessee submitted before the learned PCIT that as soon as assessee became aware about his re-opening proceedings, he immediately filed return of income u/s 148 of the Act. Before, the assessing officer, the assessee submitted relevant documents and evidences, dated 29.01.2022, explaining the total sale of securities for value of Rs.20,68,615.29/- stating that assessee was claimed total LTCG of Rs.19,38,452.29/- during the year under consideration. Along with that contract notes for purchase of 3500 shares of First Financials and 4500 shares of Centron Ind was submitted by also submitting the confirmation from the Share Broker VINIT Enterpriss that they were holding the shares on behalf of the assessee. Detailed explanation of each and every point was submitted and explained before the assessing officer at the time of re-assessment proceedings with regard to all the share transactions entered into by the assessee during the year under consideration viz. contract notes, confirmation from share brokers, ledger account of share brokers, details of bank account through which such transactions were done, copy of cheque received for LTCG etc., were also submitted vide submission dated 11.02.2022. Lastly, de-mat account statement was also submitted before the assessing officer. Thereafter, after verifying all the details and explanation and submission submitted as above, the assessing officer had mad addition of Rs.10,05,173/- u/s 68 of the Act, as unexplained credit of sale consideration for First Financial Services by treating same as penny stock script. The assessee had submitted all details at the time of re-assessment proceedings u/s 147 of the Act and assessee had again submitted the same documents before the learned PCIT on dated 29.01.2022, 1102.2022 and 17.03.2022. Therefore, assessing officer having examined all the documents and evidences, took the plausible view, therefore, order passed by the assessing officer, is neither erroneous nor prejudicial to the interest of the revenue.



5. However, Ld. PCIT rejected the contention of the assessee and held that assessment order framed by the Assessing Officer u/s 147 r.w.s. 144B of the Act, dated 28.03.2022 is erroneous and prejudicial to the interest of revenue. Therefore, Ld.PCIT had set-aside the assessment order and directed the Assessing Officer to pass fresh assessment order.

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

7. Learned Counsel for the assessee, argued on technical issue that notice issued u/s 148 of the Act, to reopen the assessment u/s 147 of the Act, was itself illegal when the order u/s 148 r.w.s. 147 of the Act, is itself illegal and bad in law then the assessment order is going to be bad in law and no addition should be made in the hands of assessee. The Ld. Counsel, in this regard, has also relied on plethora of judgments, which is submitted in the paper book. The Ld. Counsel for the assessee also took us through paper book page-8 and invited our attention towards notice issued u/s 148 of the Act and stated that the notice issued u/s 148 of the Act was dated 31.03.2021, which was actually issued on 15.04.2021 to the assessee. Therefore, the date which is written on the notice is different and delivery date of the notice u/s 148 of the Act, is different, which is given on page-11 of the paper book. Therefore, Ld. Counsel stated that when the assessment order framed u/s 147 r.w.s 143(3) of the Act is itself invalid then Ld.PCIT does not have his revisional power to issue notice u/s 263 of the Act to make re-assessment.

8. The Ld. Counsel for the assessee also argued on another technical issue that while re-opening assessment u/s 147 r.w.s. 148 of the Act, the Assessing Officer recorded reasons and noted the conclusion that assessee had received accommodation entries. However, the approval granted by the appropriate authority u/s 151 of the Act, was in a mechanical manner. Therefore, entire



assessment/re-assessment proceeding should be quashed and therefore, Ld.PCIT cannot exercise his jurisdiction u/s 263 of the Act. The judgments relied on by the Ld. Counsel for the assessee are also follows:

- (i) Anil Nachrani vs. PCIT [2024 TaxPub(DT) 765 (Raip-Trib)]
- (ii) Aruna Tiwari vs. PCIT [2023 TaxPub(DT) 4583 (Raip-Trib) (2023) 108 ITR (Trib) 40]
- (iii) Charbhujia Marmo (India)(P) Ltd. vs. PCIT [2020 TaxPub(DT) 0302 (Del-Trib)]
- (iv) Maloo Construction (P) Ltd. vs. PCIT [2022 TaxPub(DT) 0763 (Sur-Trib)]
- (v) Mikado Reltors (P) Ltd. vs. PCIT [2021 TaxPub(DT) 2899 (Del-Trib)]
- (vi) Supersonic Technologies (P) Ltd. vs. PCIT [2019 TaxPub(DT) 1030 (Del-Trib): (2019) 069 ITR (Trib) 0585]
- (vii) Suraj Pulses (P) Ltd. vs. PCIT [2021 TaxPub(DT) 4574 (Del-Trib)]
- (viii) Twine Steel (P) Ltd. vs. CIT [2019 TaxPub(DT) 5180 (Kol-Trib)]

9. On merit, Learned Counsel for the assessee submitted that before, the assessing officer, the assessee submitted relevant documents and evidences, during the assessment proceedings, vide written submission dated 29.01.2022, explaining the total sale of securities for value of Rs.20,68,615.29/- stating that assessee had claimed total LTCG of Rs.19,38,452.29/- during the year under consideration. The assessee also submitted the contract notes for purchase of 3500 shares of First Financials and 4500 shares of Centron Ind. The assessee also submitted the confirmation from the Share Broker VINIT Enterprises that they were holding the shares on behalf of the assessee. The detailed explanation of each and every point was submitted and explained before the assessing officer at the time of re-assessment proceedings with regard to all the share transactions entered into by the assessee during the year under consideration viz. contract notes, confirmation from share brokers, ledger account of share brokers, details of bank account through which such transactions were done,



copy of cheque received for LTCG etc., were also submitted vide submission dated 11.02.2022. The de-mat account statement was also submitted before the assessing officer. The assessing officer having examined all the relevant facts and evidences, allowed the claim of the assessee. Therefore, order passed by the assessing officer, is neither erroneous nor prejudicial to the interest of the revenue, hence jurisdiction exercised by the Id.PCIT under section 263 of the Act, may be quashed.

10. On the other hand, Ld. CIT- DR for the Revenue supported the order of Ld.PCIT and submitted that reassessment and issuance of notice u/s 148 of the Act, although not valid, as per the provisions of section 148 of the Act, however, for that separate remedy is available to the assessee. That is, the assessee can file the appeal against the impugned order before appropriate authority. However, the jurisdiction exercised by Ld.PCIT u/s 263 does not get impeded even if the notice issued u/s 148 rws 147 of the Act is bad in law and even if the assessment order is bad in law.

11. On merit, Id Counsel for the assessee, submitted that assessee has failed to prove his claim with cogent, evidences and transaction through banking channel and submission of Debit- note/ bills and demat account etc, are not sufficient to prove the transactions.

12. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. On merit, of the case, we find that 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 Centron -Ind, for which payment 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 SVV Shares and Stock Brokers Pvt. Ltd. Thus, acquisition and holding of shares by the assessee is beyond any doubt. In relation to revenue's observation that shares purchased at a nominal price have been sold at a very high price, it is a matter of record that share have been sold at the rates, as were prevailing on the stock exchange at the time of sale; secondly price of shares in the share market are sentiment driven; 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) there is no material to hold that assessee was involved therein. Therefore, the source of the sums received and identity of the person from whom such sums were received stood duly discharged. Moreover, all details of Centron-Ind were also submitted at the time of assessment Proceedings as well. Hence, we find that revision of section 263 of the Act does not give any power whatsoever to the Ld.PCIT to remit the issue back 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). When the Assessing Office has specifically mentioned in the order that books of accounts along with purchase/sales, invoices, ledgers, bank accounts were examined, verified and test checked, setting aside by Commissioner, in absence of any finding that Assessing Officer's order is factually incorrect, and not justified. – Vijay Kumr Megotia vs. CIT [2010] 3 ITR (T) 760 (Pat.)(Trib.).

13. For the sake of repetition, we find that before, the assessing officer, the assessee submitted relevant documents and evidences, on dated 29.01.2022, explaining the total sale of securities for value of Rs.20,68,615.29/- stating that assessee was claimed total LTCG of Rs.19,38,452.29/- during the year under consideration. The assessee submitted contract notes for purchase of 3500 shares of First Financials and 4500 shares of Centron Ind and also submitted the



confirmation from the Share Broker VINIT Enterprises that they were holding the shares on behalf of the assessee. The detailed explanation of each and every point was submitted and explained before the assessing officer at the time of re-assessment proceedings with regard to all the share transactions entered into by the assessee, during the year under consideration viz. contract notes, confirmation from share brokers, ledger account of share brokers, details of bank account through which such transactions were done, copy of cheque received for LTCG etc., were also submitted vide submission dated 11.02.2022. The de-mat account statement was also submitted before the assessing officer. The relevant STT was paid. The assessee had submitted all details at the time of re-assessment proceedings u/s 147 of the Act and assessee had again submitted the same documents before the learned PCIT. Therefore, assessing officer having examined all the documents and evidences, took the plausible view, and hence, order passed by the assessing officer, is neither erroneous nor prejudicial to the interest of the revenue.

14. We note that it is a well settled legal position that in order to exercise the jurisdiction under section 263 of the Act, both conditions viz: order of the assessing officer should be erroneous and assessment order should be prejudicial to the interest of revenue, should be cumulatively satisfied by the Id. PCIT. The reliance is placed on the decision of Hon'ble Gujarat High Court in case of CIT v/s. Minalben S. Parikh – 215 ITR 81 (Guj.) and the decision of Hon'ble Bombay High Court in case of CIT v/s Gabriel India Ltd. – 203 ITR 108 (Bom.). In this case it was held that *“there must be material before commissioner to satisfy him, prima facie, that the two requisites are present. Power cannot be exercised at the whims and caprice of the commissioner”*. It has been held in the case of CIT v/s Amit Corporation – Tax Appeal No. 2583 of 2010 (Guj.) that *“When, during the course of framing of the assessment, the Assessing Officer had access to all the records of the assessee, after pursuing such record the Assessing*



Officer framed the assessment, such assessment could not have been re-opened in exercise of revision power under Section 263 of the Act for making further inquiries.”

15. In this regard reliance is also placed upon decision of Hon`ble Rajasthan High Court in case of CIT vs. Ganpat Ram, Bishnoi [296 ITR 0292] wherein it was held that “no presumption can be drawn that the Assessing Officer had not applied his mind to various aspects of the matter. Once enquiry in fact has been conducted and the Assessing Officer has reached a particular conclusion, though reference to such enquiries has not been made in the order of the assessment, the invocation of jurisdiction by CIT is not sustainable. 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, this would not by itself lead to the conclusion that the order of the assessing officer called for interference and revision”. On the similar facts, the reliance is placed on the decision of Hon`ble Delhi High Court in case of CIT vs. Vikas Polymers [341 ITR 537] (Delhi HC). The assessing officer has made the proper inquiry which was adequate. If there was any inquiry even inadequate that by itself would give no occasion to the CIT to pass orders u/s 263 of the Act, merely because he has a different opinion in the matter.

16. We note that Hon`ble Rajasthan High Court in the case of CIT v/s Jain Construction Co. – 257 CTR 336 (Raj.) Held, that: *“safeguard provided to assessee in section 263 is that mere erroneous orders are not revisable but revisional authority has to further establish with material on record that such erroneous order is also prejudicial to the interest of revenue-twin conditions of assessment order being erroneous and it also being prejudicial to the interest of revenue, keeps initial burden on Commissioner, who invokes such jurisdiction. Premises for invoking the revisional jurisdiction on the ground that the Assessing Authority made insufficient inquiry or*



improper enquiry and fail to verify closing stock in record of the assessee, before passing assessment order, falls flat by a bare perusal of assessment order itself. Thus, Tribunal was justified in holding that Commissioner was in error invoking revisional jurisdiction u/s 263. Mere alleged insufficiency of inquiry in of opinion of Commissioner by Assessing Authority, would not permit him to in walk revisional jurisdiction u/s 263. Therefore, essential twin condition for invoking revisional jurisdiction, were not satisfied.”

17. Hon`ble Delhi High Court in the case of PCIT v. Delhi Airport Metro Express Pvt. Ltd. [ITA No. 705/2017] has categorically held that for the purpose of exercising jurisdiction u/s 263 and reaching a conclusion that the order is erroneous and prejudicial to the interest of revenue, the ld. PCIT has to undertake some minimal inquiry and in fact where the ld. PCIT is of the view that AO had not undertaken any inquiry, it becomes incumbent on the ld PCIT to conduct such enquiry. We note that assessee has been maintaining books of accounts regularly in the same fashion as maintained in the past and the nature of the business also remained the same. For assessment year 2014-15 also the assessment was made under scrutiny on 20.03.2022 and only addition of Rs. 10,05,173/- was made. The assessee filed voluminous submission before ld PCIT, however, ld PCIT has not given any reasons in the order passed u/s 263 for holding that assessment order is erroneous as well as prejudicial to the interest of revenue. In case of CIT v/s. G. M. Mittal Stainless Steel P. Ltd. - 130 taxman 67 (SC) it was held by the Hon`ble Apex Court that power of Commissioner u/s 263 must be exercised on the basis of material that is available to him when he has exercised power. It was further held by Apex Court that PCIT should give the proper reasons.

18. In any event, we note that the Assessing Officer has adopted one of the courses permissible in law and even if it has resulted in loss to the revenue, the



said decision of the Assessing Officer cannot be treated as erroneous and prejudicial to the interest of the revenue as held by Hon'ble Supreme Court in Malabar Industries Ltd. vs. CIT,243 ITR 83(SC). Since the order of the Assessing Officer cannot be held to be erroneous as well as prejudicial to the interest of the revenue, in the facts and circumstances narrated above, the usurpation of jurisdiction exercising revisional jurisdiction by the Principal CIT is 'null' in the eyes of law and, therefore, we are inclined to quash the very assumption of jurisdiction to invoke revisional jurisdiction u/s 263 by the Learned Principal CIT. Therefore, we quash the revision order of the 1d Principal CIT dated 23.03.2017 being *ab initio* void.

19. Since, we have adjudicated the issue on merit, therefore, arguments made by the assessee on technical grounds are rendered academic and infructuous.

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

Order pronounced in the open court on 17/11/2025.

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

Sd/-
(DR. ARJUN LAL SAINI)
लेखा सदस्य/**ACCOUNTANT MEMBER**

राजकोट /Rajkot

दिनांक/ Date: 17/11/2025

True Copy

DKP Outsourcing Sr.P.S

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
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By order/आदेश से,

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