

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE MS. SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.343 & 344/SRT/2025**

**Assessment Year: (2018-19)**

Kanchanben Pravinbhai Sheth 3/A, 1 <sup>st</sup> Floor, Royal Vila Apts., Ghoddod Road, Surat	Vs.	PCIT - 1, Surat Surat (JAO: ITO, Ward – 1(3)(1), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: <b>ADOPS2971D</b>		
(Appellant)		(Respondent)

Gautam Pravinbhai Sheth (HUF) 3/A, 1 <sup>st</sup> Floor, Royal Vila Apts., Ghoddod Road, Surat	Vs.	PCIT - 1, Surat (JAO: ITO, Ward – 1(3)(1), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: <b>AAFHG1435A</b>		
(Appellant)		(Respondent)

<b>Appellant by</b>	Shri Sapnesh Sheth, Advocate
<b>Respondent by</b>	Ms. Namita Patel, Sr. DR
<b>Date of Hearing</b>	25/08/2025
<b>Date of Pronouncement</b>	18/11/2025

**आदेश / ORDER**

**PER SHRI BIJAYANANDA PRUSETH, AM:**

These two appeals by the appellants pertain to AY 2018-19 and emanate from the separate orders passed u/s.263 of the Act by the Learned Principal Commission of Income tax, Surat -1, Surat (in short 'PCIT'), dated 17.02.2025. In both the appeals, facts are common and grounds of appeal are similar. With the

consent of both the parties, all appeals were clubbed, heard together and are decided by a common order for the sake of brevity and convenience. For appreciation of facts appeal in ITA No.344/SRT/2025 for AY 2018-19 is treated as 'Lead case'.

2. The grounds of appeal raised by the appellant in ITA No.344/SRT/2025, are as follows:

- (1) *On the facts and in the circumstances of the case as well as law on the subject, the Ld. PCIT-1, Surat has erred in passing revisionary order u/s.263 of the I.T. Act,1961 setting aside the order of the Ld. AO passed u/s.147 r.w.s. 144B of the I.T. Act, 1961 dated 18.03.2023 for the year under consideration although said order is neither erroneous nor prejudicial to the interest of revenue.*
- (2) *On the facts and circumstances of the case as well as law on the subject, the Ld. PCIT has erred in holding that the assessee has claimed bogus capital gain u/s.10(38) of the I.T. Act, 1961 to the tune of Rs.37,45,935/- and the same is not considered by the AO during the assessment proceedings.*
- (3) *It is, therefore, prayed that the order passed by PCIT u/s.263 of the I.T. Act, 1961 setting aside the order of AO and directing AO to pass fresh assessment order may please be quashed.*
- (4) *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.*

3. The grounds of appeal raised by the appellant in ITA No. 343/SRT/2025, are as follows:

- (1) *On the facts and in the circumstances of the case as well as law on the subject, the Ld. PCIT-1, Surat has erred in passing revisionary order u/s.263 of the I.T. Act,1961 setting aside the order of the Ld. AO passed u/s.147 r.w.s. 144B of the I.T. Act, 1961 dated 14.03.2023 for the year under consideration although said order is neither erroneous nor prejudicial to the interest of revenue.*

- (2) *On the facts and circumstances of the case as well as law on the subject, the Ld. PCIT has erred in holding that the assessee has claimed bogus capital gain u/s.10(38) of the I.T. Act, 1961 to the tune of Rs.38,53,500/- and the same is not considered by the AO during the assessment proceedings.*
- (3) *It is, therefore, prayed that the order passed by PCIT u/s.263 of the I.T. Act, 1961 setting aside the order of AO and directing AO to pass fresh assessment order may please be quashed.*
- (4) *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.*

**ITA No.344/SRT/2025 (AY 2018-19):**

4. Brief facts of the case are that the assessee filed her return of income on 17.01.2019 declaring the total income at Rs.19,65,140/- and exempt income of Rs.37,45,935/- u/s.10(38) of the Act. In this case, information regarding the assessee was received from the DCIT, Central Circle – 2(1), Mumbai that a survey action was conducted on a syndicate of persons led by Shri Naresh Jain on 19.03.2019 by DDIT (Inv), Unit – 7(1) & 7(3), Mumbai. The focus of this action was on Shri Naresh Jain and his associates who were involved in providing accommodation entries in the form of long-term capital gains/losses in several scrips to various beneficiaries across the country. The tentacles of this network are spread across the country and, inter alia, include various participants such as the operators and intermediaries who would arrange for beneficiaries, exit providers, share broking firms, hawala operators, jamakharchi companies, etc. Premises of the entities in the syndicate were identified across Mumbai, Lucknow, Kolkata and Chennai. To unearth the same, a search and seizure action was mounted on Shri

Naresh Jain and associates. During the search and seizure action, several incriminating documents, communications and digital data had been found, establishing clearly the modus operandi of providing exempt bogus long term capital gain/loss and rigging the prices of various scrips on stock exchange. Therefore, the case of the assessee was reopened u/s.147 and notice u/s.148 of the Act was issued on 31.03.2022.

5. During the assessment proceedings, notices u/s.142(1) were issued requesting assessee to furnish details on the relevant issues. In compliance, the assessee filed her written submissions, bank statements, share certificate, demat account, contract note including sale of shares, ledger account and computation of income for the AY 2018-19 with annexure. After perusing the same, no adverse inference was drawn by the AO and the returned income of the assessee was accepted as assessed income. Accordingly, assessment order u/s.143(3) r.w.s. 144B of the Income tax Act was passed by the AO on 18.03.2023.

6. Subsequently, on perusal of the case records, the Ld. PCIT observed that once it was established by the Investigation Wing, after analyzing the several incriminating documents, communications and digital data seized in the search operations, that the impugned scrip was penny in nature and same was being used for providing bogus long term capital gain to various beneficiaries; the LTCG exemption of Rs.37,45,935/- claimed u/s.10(38) of the Act by the assessee in her

return of income was required to be disallowed and added back to the total income of the assessee by invoking provisions of section 68 r.w.s. 115BBE of the Act.

6.1 The Ld. PCIT observed that the AO had passed the assessment order without proper verification, application of mind and law on the relevant issues, which should have been made during the course of assessment proceedings. Accordingly, Ld. PCIT initiated proceedings for revision of order u/s.263 of the Act by issuing show cause notice dated 11.12.2024. In its compliance, assessee furnished her reply on 27.12.2024, which is reproduced at para 4 of the revision order u/s.263 of the Act. However, the same was not found acceptable. Therefore, Ld. PCIT held the assessment order passed by the AO on 18.03.2023, as erroneous in so far as it is prejudicial to the interests of revenue within the meaning of section 263 of the Act. Accordingly, order u/s.263 of the Act was passed on 17.02.2015 wherein the impugned assessment order passed u/s.147 rws 144B of the Act was set aside with a direction to the AO pass fresh assessment order.

7. Being aggrieved with the aforesaid order u/s.263, the appellant filed appeal before this Tribunal. The Ld. AR of the assessee submitted that the share transactions carried out by the assessee were genuine and the long-term capital gain derived from these transactions was legitimate and supported by documentary evidence. The allegation that Shri Naresh Jain had been instrumental

in manipulating the prices of several penny scrip cannot be the ground for arriving at the belief that any income escaped assessment in case of assessee. Ld. AR also stated that assessee owned 60,000 shares of Oasis Tradelink Ltd. He had purchased 45,000 shares of Oasis Tradelink Ltd. for Rs.4,50,000/- (face value Rs.10/- per share) and the payment was channeled through bank account via RTGS and the remaining 15,000 shares were bonus shares issued in the ratio of 1 share for every 3 original shares. Ld. AR further submitted that at the time of purchase of impugned shares, the same were not listed on stock exchange. Subsequently, the said company was listed on Bombay Stock Exchange (BSE) on 14.07.2014 after making IPO on 23.06.2014. Ld. AR also stated that the shares of Oasis Tradelink Ltd. were duly reflected in demat account of assessee and were recorded in her ledger account maintained by his SEBI registered broker, Arham Share Consultant Pvt. Ltd. Ld. AR contended that since securities transaction tax (STT) was duly paid at the time of sale, as evidenced by the details mentioned in the broker's contract notes, hence the observation of Ld. PCIT that these transactions were not genuine or were bogus lacks validity and was not supported by the evidence. Ld. AR further contended that there are no incriminating evidence which indicate that the assessee had obtained entry from the Naresh Jain. The search action in the case of Naresh Jain has no relevance to the transactions carried out by her and any manipulation of share price carried out by him does not affect the genuineness of

transactions carried out by the assessee. Ld. AR, therefore, requested to quash the order u/s.263 of the Act passed by Ld. PCIT in the case of assessee.

8. On the other hand, Ld. Sr. DR of the revenue supported the order of the PCIT. He submitted that assessee was identified as one of the beneficiaries who had availed the benefit of LTCG through Naresh Jain and his associate concerns. The assessee had claimed exemption of Rs.37,45,935/- u/s. 10(38) of the Act. The penny stock in which assessee traded was 'Oasis Tradelink Ltd.' and consequent to analysis of several incriminating documents, communication and digital data seized in the search operations, it was established by the Investigation Wing that the impugned scrip was penny in nature and same was being used for providing bogus long term capital gain to various beneficiaries. Ld. Sr. DR, therefore, contended that the LTCG exemption of Rs.37,45,935/- claimed u/s.10(38) of the Act by the assessee in her return of income was required to be disallowed and added back to the total income of the assessee; however, the same remained to be done thereby rendering the assessment order passed by the AO as erroneous in so far as it was prejudicial to the interests of revenue. In view of the same, Ld. Sr. DR requested to uphold the order u/s.263 of the Act of the Ld. PCIT.

9. We have heard both the parties and perused the materials available on record. We have also deliberated on the decisions relied upon by the parties. Section 263 of the Act empowers the PCIT/CIT to revise any order passed by the

AO. if it is deemed erroneous and prejudicial to the interests of the revenue. At this juncture, it would be worthwhile to refer to Explanation - 2 to section 263 of the Act (w.e.f. 01.06.2015), which is as under:

*“Explanation 2.-For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer or the Transfer Pricing Officer, as the case may be, shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,-*

- (a) the order is passed without making inquiries or verification which should have been made 48;*
- (b) the order is passed allowing any relief without inquiring into the claim;*
- (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*
- (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.”*

9.1 It is an undisputed fact that the Investigation Wing, Mumbai, during search and survey operations on Shri Naresh Jain and his syndicate, unearthed a country-wide network engaged in providing accommodation entries of bogus long-term capital gains through manipulation of prices of penny-stock companies. Oasis Tradelink Ltd., the scrip involved in the assessee’s LTCG claim, is one of the companies identified by the Investigation Wing as being used for providing artificial gains. The Investigation Wing findings were specific, concrete and based on seized digital data, communications and statements. These findings were duly communicated to the jurisdictional AO. The assessee was identified as a beneficiary who had derived exempt LTCG in the trading of penny scrip allegedly

manipulated by the syndicate. Once such information was available, the AO was under a statutory obligation to conduct a thorough, meaningful and logical inquiry into genuineness of the purchase of shares, source of funds and identity of transferor, manner of allotment and the subsequent bonus issue, dematerialisation process and trail, price movement of the scrip, role of the alleged operators and linkage, if any, between the assessee's transactions and the syndicate.

9.2 On perusal of the assessment record, it is evident that the AO merely called for basic details such as contract notes, demat a/c, bank statements etc., which were furnished by the assessee. However, the AO did not conduct even a single inquiry on the abnormal price rise of the scrip Oasis Tradelink Ltd., the findings of the Investigation Wing and the material therein, the role of Shri Naresh Jain and linkages to beneficiaries, cash trail behind the corresponding exit providers, verification of purchase entries prior to IPO and bonus issuance, genuineness of counterparty identity or the operators' role. The assessment order is a one-page acceptance of the returned income without any discussion, without any analysis of the material on record and without application of mind to the highly make believe LTCG claim flagged by the Investigation Wing. Mere production of documents by the assessee does not absolve the AO of the responsibility to verify their

genuineness. Hence, the order was erroneous and is duly covered by the Explanation 2 below sub section (1) of Section 263 of the Act.

9.3 The AO had before him credible, specific and detailed information from the Investigation Wing which concluded that Oasis Tradelink Ltd. was a penny stock used for providing artificial LTCG. The failure of the AO to examine this crucial information or even discuss it in the assessment order makes the order *per se* erroneous. When the AO is armed with such adverse material and still accepts the claim without inquiry, the assessment order becomes one passed in complete non-application of mind, a clear ground for revision u/s 263 of the Act. It is fully covered under the substantive part as well as the Explanation - 2 of section 263 of the Act.

9.4 The assessee claimed exemption of Rs.37,45,935/- u/s.10(38) of the Act. Had the AO conducted appropriate inquiry, he would have been in a position to verify whether the LTCG was genuine or the same was accommodation entry liable to addition u/s.68 r.w.s. 115BBE of the Act. Omission to examine a claim of this magnitude, especially when it arises from a scrip tainted by Investigation Wing reports, undeniably causes prejudice to the interests of the revenue.

9.5 The assessee argued that Oasis Tradelink Ltd. was listed after IPO, bonus shares were issued lawfully and the demat entries and STT payment demonstrate genuineness. However, it is well settled that payment of STT or existence of demat

entries does not *ipso facto* establish genuineness, if the underlying transaction is part of a manipulative chain and the fact that shares were listed on BSE does not negate the possibility of price rigging, which is precisely what the Investigation Wing unearthed. Most importantly, the assessee's submissions do not cure the fundamental defect that the AO failed to investigate these very aspects.

9.6 The Ld. PCIT has examined the assessment record, identified lack of inquiry and non-application of mind and gave adequate opportunity to the assessee. He also recorded clear reasons why the AO's order was erroneous and prejudicial. The Ld. PCIT has not set aside the assessment for a fishing inquiry; rather, for conducting specific, meaningful verification of the suspicious LTCG claim, which the AO ought to have undertaken. Thus, the jurisdiction u/s.263 of the Act was correctly and lawfully invoked.

9.7 Reliance may be placed on the decision of Hon'ble Supreme Court in the case of Suman Poddar vs. ITO, (2020) 420 ITR (St) 7 (SC) wherein the order passed by the Tribunal was upheld holding that the claim of the assessee therein for exemption u/s 10(38) of the Act should not be allowed because share transactions were bogus as company "C" whose shares were allegedly purchased was a penny stock. Useful reference may also be made to the decision of Hon'ble High Court of Calcutta in the case of PCIT vs. Swati Bajaj, 446 ITR 56 (Cal.) wherein it was held that where assessee earned LTCG on sale of shares and AO denied said claim and

made additions u/s 68 of the Act on ground that assessee invested in shares of penny stock companies which provided bogus LTCG, since assessee failed to establish genuineness of rise of price of shares within a short period of time that too when general market trend was recessive, additions made u/s 68 of the Act were justified. It was further held by Hon'ble High Court that where AO was fully aware of investigation which was being done on penny stock companies and failed to take note of such report to put assessee on notice and commence an enquiry by calling upon assessee to justify genuineness of claim of LTCG/STCL and merely accepted submission that stock broker was a public sector company in such case assumption of jurisdiction u/s 263 of the Act by the CIT was fully justified.

10. In view of the above discussion and the decisions cited supra, we hold that the assessment order u/s 147 r.w.s. 144B dated 18.03.2023 was passed by the AO without making inquiries or verification which should have been made. The AO allowed relief without inquiring into the claim u/s 10(38) of the Act. The order is, therefore, erroneous in so far as it is prejudicial to the interests of the revenue within the meaning of section 263 of the Act. Hence, the revisional order u/s 263 of the Act dated 17.02.2024 passed by the Ld. PCIT is valid, lawful and calls for no interference. The grounds are, accordingly, dismissed.

11. In the result, the appeal of the assessee is dismissed.

**ITA No.343/SRT/2025 (AY 2018-19):**

12. The facts of the case and the grounds of appeal raised by the appellant are similar to those in ITA No.344/SRT/2025 (supra). Hence, following the reasons given in ITA No.344/SRT/2025 (supra), the appeal of the assessee is also dismissed.

13. In the result, the appeal of the assessee is dismissed.

14. In the combined result, the appeals of the assessee are dismissed.

Order pronounced in terms of provisions of Rule 34 of ITAT Rules, 1963 on 18/11/2025 in the open court.

**Sd/-**  
**(SUCHITRA R. KAMBLE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

Surat

दिनांक/ Date: 18/11/2025

SAMANTA

**Copy of the Order forwarded to:**

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

By Order

**// TREU COPY //**

Assistant Registrar/Sr. PS/PS  
ITAT, Surat