

**THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH**

**Before Ms. Suchitra Kamble, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 670/Ahd/2024
Assessment Year 2016-17**

Ramanbhai Jethabhai Jadav, C/o. M S Chhaajed & Co. CA, "Kamal Shanti", Nr. Sardar Patel Statue, Ahmedabad PAN: AUYPJ7348E (Appellant)	Vs	Pr. Commissioner of Income Tax-3, Ahmedabad (Respondent)
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**Assessee by: Shri Hem Chhajed, A.R.
Shri Praveen Verma, CIT-DR &
Revenue by: Shri Rameshwar P Meena, Sr. D.R.**

Date of hearing : 25-11-2025
Clarification dated
05.02.2026
Date of pronouncement : 06-02-2026

आदेश/ORDER

Per Suchitra Kamble, Judicial Member:

This is an appeal filed against the order dated 22-03-2024 passed by Principal Commissioner of Income Tax, PCIT, Ahmedabad-3 for assessment year 2016-17.

2. The grounds of appeal are as under:-

*"1. The order passed by the Ld. Pr. C.IT. is against law, equity & justice.
2. The Ld. PCIT has erred in law and on facts on various grounds in passing order U/S 263 of the Act to set aside order passed by the Ld. A.O.*

3. The Ld. Pr. CIT has erred in law and on facts in initiating and passing the order U/S 263 of the Act is bad and illegal, as

conclusion drawn by the Income Tax Officer cannot be termed as erroneous.

4. The Ld. Pr. CIT has erred in law and on facts in setting aside the assessment order passed by the Ld. A.O. U/S 147 r.w.s 144B directing AO for making addition for the bogus long term capital loss claimed of Rs 1,43,93,973/-

5. The appellant craves liberty to add, amend, alter or modify all or any grounds of appeal before final appeal.”

3. The assessee had not filed the return of income for assessment year 2016-17. Accordingly, case of the assessee was reopened u/s. 147 and notice u/s. 148 was issued on 31-03-2021 to examine the profit of Rs.1,76,05,789/- derived in equity derivatives trading. In response to the notice u/s. 148, the assessee filed return of income on 07-12-2021 declaring total income of Rs. 3,00,000/-. Subsequently, notice u/s. 143(2) issued to the assessee on 24-12-2021. The assessee furnished reply of the questionnaire on 21-01-2022, 09-02--2022 and 24-02-2021. All the replies was related to the objections to reopening and discrepancies relating to reasons recorded for reopening. The Assessing Officer accepted the total income of the assessee at Rs. 3,00,000/-. The Pr. CIT observed that the assessee had made fictitious profits in equity/derivatives trading of Rs. 1,76,05,789/- and availed accommodation entries by way of bogus/fictitious loan. The Pr. CIT further observed that the ITR filed on 07-12-2021 declaring total income of Rs. 3,00,000/- for assessment year 2016-17 was filed belatedly. The Pr. CIT further observed that during the year the assessee has undertaken transaction on sale of shares of M/s. Excel Castronics Pvt.

Ltd. and incurred loss of Rs. 1,43,93,973/-. Thus, necessary inquiries should have been done by the Assessing Officer. The PCIT observed that the Assessing Officer without appreciating the whole claim of generating bogus losses by the assessee has accepted the assessee's income as per the response to notice u/s. 148. In fact, this bogus loss was required to be added back to the income of the assessee u/s. 69A of the Act as unexplained money. Notice u/s. 263 was issued on 07-03-2025 which was replied by the assessee on 15-03-2024. After taking cognizance of the assessee's submissions, the Pr. CIT directed the Assessing Officer to pass a fresh assessment order and also directed to apply correct provisions of Act i.e. section 69A and taxed to be chargeable at special rate u/s. 115BBE. Thus, the Pr. CIT set aside the order passed by the Assessing Officer u/s. 147 of the Act dated 12-03-2024.

4. Being aggrieved by the order u/s. 263 of the Act, the assessee is before us. At the time of hearing, the assessee ha filed additional grounds of appeal which are as follows:

“(1) The assumption of jurisdiction by Ld. PCIT U/S 263 of the Act is on "borrowed" and "dictated" satisfaction of A.O. instead of independent satisfaction.

(2) Assessment order passed U/S 147 r.w.s. 144B is void & illegal, So Pr.CIT did not assume valid jurisdiction u/s 263 of the Act on void assessment order.

(3) The order passed by the Ld. Pr.C.IT. u/s 263 of the Act is bad and illegal as it is on the basis of Audit Objection.”

5. The ld. A.R. as per additional ground no. 2 stated that assessment order passed u/s. 147 r.w.s. 144B is void and

illegal. When categorically asked by the Bench to the ld. A.R. whether the said order passed u/s. 147 r.w.s. 144B dated 22-03-2024 were challenged before the CIT(A) which was the correct remedy available to the assessee. The ld. A.R. answered this query in negative. The plea taken by the assessee through additional ground does not sustain as the assessee has valid remedy at the particular time to challenge the said order stating therein that the assessment order passed u/s. 147 r.w.s. 144B is void ab-initio before the CIT(A). The assessee cannot take the challenge of the validity of assessment order in the proceedings which are derived u/s. 263 of the Income Tax Act. Thus, the additional ground No. 2 of appeal taken by the assessee is dismissed.

6. As regards additional ground nos. 1 and 2 relating to assumption of jurisdiction by Pr. CIT u/s. 263 of the Act is “borrowed” and “dictated” satisfaction of the Assessing Officer instead of “independent satisfaction” while passing the order u/s 263 of the Act by the Pr. CIT. It is pertinent to note that the Pr. CIT has invoked the said provisions as the PCIT considered that the Assessing Officer has not made inquiry relating to the issue of purchase and sale of share i.e. Excel Castronics Pvt. Ltd. Thus, it will not amount to borrowed and dictated satisfaction. Besides this, as per Sec. 263 of the Income Tax Act, provisions of Sec. 263 can be invoked only when it is erroneous in so far as prejudicial to the interest of revenue, secondly, if the assessment order is passed without making inquiries or verification and if the

order has not been made in accordance with any order , direction or instruction issued by the Board u/s 119 or the assessment order is not in accordance with the decisions of the jurisdictional High Court or Supreme Court. But in the present case, the submissions made by the Ld. AR that it is solely based on audit objections appears to be incorrect, as the Pr. CIT is invoking the provisions of Section 263 of the Act on the basis that the Assessing Officer passed assessment order without inquiry and without any evidence produced by the Assessee. Thus, additional ground nos. 1 and 3 are dismissed.

7. The ld. A.R. submitted that the Assessing Officer has taken a cognizance of the submission and the details filed by the assessee during the reassessment proceedings u/s. 147 of the Act. The Ld. AR submitted that the Assessing Officer has made proper inquiry and considered all the facts available on record including that of the transaction related to sale of shares of M/s. Excel Castronics Pvt. Ltd. and loss of Rs. 1,43,93,973/- incurred thereon. The assessee has submitted the summary of purchase and sale of share of M/s. Excel Castronics Pvt. Ltd. for the relevant assessment year along with contract notes, computation of income, statement summary from broker, during the year etc. and also has given the details of the trading activities before the Pr.CIT. The ld. A.R. submitted that the assessee has filed the income tax return for assessment year 2016-17 on 07-12-2021 and the same was verified on 09-12-2021 by the Department. In fact, the assessee has filed the return in

response to the notice u/s. 148 of the Act and also disclosed all the relevant material related to the queries asked by the Assessing Officer through various notices issued u/s. 142(1) of the Act. The Ld. AR submitted that the PCIT cannot direct the Assessing Officer to invoke particular Section for addition or disallowance u/s 263 of the Act.

8. We have heard both the parties and perused all the material available on record. It is pertinent to note that the Pr. CIT directed the Assessing Officer to pass fresh assessment order, as the Assessing Officer has not taken into account the fact that the assessee has not filed any details regarding the loss or profit derived in equity/derivative trading especially relating to sale transaction of shares of M/s Excel Castronics Pvt. Ltd. before the Assessing Officer. The replies filed by the assessee during the course of the reassessment proceedings under Section 147 of the Act are only related to the reasons recorded during the reopening. Merely filing the Income Tax Return and stating therein the figures in number for loss cannot demonstrate on part of the assessee that the claim of loss in share transactions/derivative trading was genuine. The contention of the Ld. AR that the assessee has submitted the summary of purchase and sale of share of M/s. Excel Castronics Pvt. Ltd. for the relevant assessment year along with contract notes, computation of income, statement summary from broker, during the year etc. and also has given the details of the trading activities before the Pr.CIT, will not suffice to say that the said documents were

before the Assessing Officer. No such evidence for filing of these documents before the Assessing Officer has been brought on record, inspite of the specific requisition in this respect. The replies of the assessee pertained only to the reopening of the case and reasons recorded by the Assessing Officer. Since, no submission was made by the assessee on merit, the Assessing Officer could not have examined the issue for which the case was reopened. Thus, the PCIT had rightly concluded that the assessment was completed without making any enquiries which were required to be made in the facts of the present case and therefore, the order of the Assessing Officer was erroneous and prejudicial to the interest of revenue. Therefore, the Pr. CIT has rightly invoked revisionary power as the Assessment Order is found to be erroneous and prejudicial to the interest of revenue. The case laws relied upon by the Ld. AR also will not come to support the assessee's case as the Assessing Officer failed to take the cognizance that the assessee did not file any details during the reassessment proceedings. Thus, the order passed u/s. 263 of the Act passed by the Pr. CIT, thereby invoking revisionary powers is just.

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

Order pronounced in the open court on 06-02-2026

Sd/-
(Narendra Prasad Sinha)
Accountant Member
Ahmedabad : Dated 06/02/2026
a.k.

Sd/-
(Suchitra Kamble)
Judicial Member

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद