

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "D" BENCH

**Before: DR. BRR Kumar, Vice President  
And Shri T. R. Senthil Kumar, Judicial Member**

**ITA No: 1140/Ahd/2025  
Assessment Year: 2018-19**

Jignasa Atulkumar Shah 4 Somalay Bunglows, Sarasvati Soc., Jain Merchant, Paldi, Ahmedabad, Gujarat  <b>PAN: APZPS1602N (Appellant)</b>	Vs	The PR.CIT-1, Ahmedabad  <b>(Respondent)</b>
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**Assessee Represented: Shri M.S. Chhajer, A.R.  
Revenue Represented: Shri Prathvi Raj Meena, CIT-DR**

Date of hearing : 11-02-2026  
Date of pronouncement : 24-02-2026

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee as against the Revision order dated 07-11-2025 passed by the Principal Commissioner of Income Tax-1, Ahmedabad arising out of the assessment order passed under section 147 r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2018-19.

2. Brief facts of the case is that the assessee is an individual filed his original Return of Income for the Asst. Year 2018-19 on 17-07-2018

declaring total income of Rs.15,53,920/-. Information received from the department that assessee is one of the beneficiaries of bogus accommodation entries operated and managed by entry operator Shri Naresh Jain. The information also suggests that the assessee is one of the beneficiaries in manipulation of share price of M/s. Oasis Tradelink Ltd. amounting to Rs.40,95,442/- and assessee claimed Long Term Capital Gain exempt u/s. 10(38) of the Act amounting to Rs.37,24,755/-. Therefore a show cause notice u/s. 148 of the Act issued on 29-03-2022.

2.1. In response, the assessee filed Return of Income on 12-04-2022. Since the Return of Income was electronically not verified, the same was treated as invalid. However notices 142(1) and show cause notice dated 02-03-2023 issued which was replied by the assessee which has resulted in making addition of sale of shares of M/s. Oasis Trade Link Ltd as penny stock and assessed to tax.

3. Aggrieved against the same, the assessee filed an appeal, which is pending before Ld. CIT(A). In the meantime, PCIT issued a show cause notice dated 29-10-2024 stating that perusal of the assessment order shows that the assessing officer should have disallowed assessee's claim of exemption amounting to Rs.48,17,533/- under section 69 of the Act, when the assessee has not maintained books of account and source of unaccounted income of Rs.40,95,442/- has not been explained. The A.O. ought to have made addition u/s. 69A of the Act r.w.s. 115BBE of the Act. Thus the reassessment order passed by the Ld. A.O. is erroneous and prejudicial to the interest of

Revenue. Therefore assessee was given opportunity to reply to the above proposal.

3.1. Assessee made a detailed reply to the above show cause notice as follows:

*“Assessee has purchased 1,15,000 shares of face value of Rs.10/- amounting to Rs.11,50,000/- of M/s Oasis Tradelink Limited on 07-07-2014, Assessee has made payment through banking channel. Assessee has made request for Demat and shares were credited into Demat account of assessee on 07.07.2014.*

Asst. Year	Opening Bal (A)	Purchase (B)		Sale (c)		Closing Bal D=(A+B+C)
		Date of purchase	Qty	Date of sale	Qty	
2015-16		07-07-2014	115000	-	-	
	-	01-10-2014	12000			
<b>Total</b>	-		127000		-	12700
2016-17	12700					
				15-07-2015	12000	
				06-08-2015	12000	
				10-08-2015	16000	
				11-08-2015	16000	
		05-09-2015	20000			
	12700		2000	05-10-2015	4000	
					6000	87000
2017-18	87000					
				13-06-2016	4000	
				14-06-2016	4000	
				21-06-2016	6000	
		15-09-2016 (Bonus issue in ratio of 1.3)				
				16-11-2016	364000	
				21-03-2017	2500	
	87000		24334		52900	58434
2018-19	58434					
				29-05-2017	27000	
				30-05-2017	14000	
				31-05-2017	5310	
				13-06-2017	12090	
				14-06-2017	3534	
				15-06-2017	1500	
	58434		0		58434	0

*Assessee has been holding the shares of M/s Oasis Tradelink Lid since 2014 e for more than 3 years. Assessee submits that the department has not disputed any purchase or sale of shares of M/s Oasis Tradelink Ltd in earlier years and has been accepted in case of assessee which was done through registered share broker namely ACML Capital Markets Limited on online platform of ASE*

*The sales were as per the rates of prevailing market share price on that day.*

*The Summary of sale of shares of M/s Oasis Tradelink Limited during the captioned assessment year is as under:*

Sr. No.	Date of Sale (A)	Qty (B)	Rate (c)	Sale amount (D=B+C)	Brokerage	Other charges (like STT, BSE trf Tax, SEBI chg. Etc.)(E)	Ne Amount receipt (F=D-E)
Opening balance		58434					
1	29/05/2017	22000	70	1540000	3960	2317	1533723
2	30/05/2017	14000	69.8	976500	2380	1460	972660
3	31/05/2017	5310	70	371700	955.8	574.2	370170
4	13/06/2017	12090	70.5	852345	2176	1311.8	848857.2
5	14/06/2017	3534	70.5	249147	636	390.88	2481201
6	15/06/2017	1500	70.5	105750	270	179	105301
	Total	58434		40,95,442	10,378	6,233	40,78,831
Closing Balance		0					

*Assessee has already shown profit earned on sale of shares in return of income filed U/s. 148 of the Act as it being exempted U/s. 10(38) of the Act and no tax was payable on such profit.*

*Assessee did all the transaction of purchase & sale of shares through brokers and all the payment received through bank account only. Amount received from brokers credited to bank account of assessee*

*Assessee is making investment in shares since long and assessee has earned capita gain in various previous years and had shown same in return of income. It is not disputed fact that shares of M/s Oasis Tradelink Limited Ltd are held by assessee since 2014-15 which has not been disputed by department in earlier years. Assessee has undertaking the transactions in the share market through registered broker namely ACML Capital Markets Limited since so many years. Not a single authority has doubted the genuineness of transaction undertaken through ACML Capital Markets Limited*

*Considering the facts of the case and above cited judicial decisions your goodself is requested to drop the revisional proceedings-initiated U/S 263 of the Act.*

3.2. The above reply was considered by Ld. PCIT and held that the reassessment order passed is erroneous and prejudicial to the interest of Revenue thereby set-aside the reassessment order with a direction to the A.O. to pass fresh assessment order in accordance

with the provisions of law after duly examining the facts of the case by giving reasonable opportunity of hearing to the assessee.

4. Aggrieved against the Revision order, the assessee is in appeal before us raising the following Grounds of Appeal:

1. *The order passed by the Ld. PCIT is against the law, equity and principle of natural justice.*
2. *The Ld. PCIT has erred in law in assuming jurisdiction U/s. 263 of the Act as no assessment order passed by the Ld. A.O. is void, illegal and not tenable in eyes of law.*
3. *The Ld. PCIT has erred in law and on facts in initiating proceedings U/s. 263 relying on Audit objection and without independent application of mind*
4. *The Ld. PCIT has erred in law and on facts assuming jurisdiction U/s. 263 of the Act when issue is pending before CIT (A).*
5. *The Ld. PCIT has erred in law and on facts in assuming of jurisdiction U/s. 263 on incorrect facts.*
6. *The Ld. PCIT has erred in law and on facts in alleging sales consideration as unaccounted income.*
7. *The Ld. PCIT has erred in law and on facts in considering assessment order as erroneous and prejudicial to interest of revenue.*
8. *The appellant craves liberty to add, amend, alter or modify all or any grounds of appeal before final appeal.*

5. Heard rival submissions and perused the materials available on record. First let us adjudicate the assumption of jurisdiction u/s. 263 by Ld. PCIT when assessee's appeal on the very same issue pending before Ld. CIT(A) which is raised as Ground No. 4 before us.

5.1. Explanation 1(c) to Sub-section (1) of Section 263 provides as follows:

*“Revision of orders prejudicial to revenue*

*263: (1) The [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record at any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer for the Transfer Pricing Officer, as the case may be erroneous in so far as it is prejudicial to the interests of the revenue, he may after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary pass such order thereon as the circumstances of the case justify (including*

- (i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment, or*
- (ii) an order modifying the order under section 92CA or*
- (iii) an order cancelling the order under section 9204 and directing a fresh order under the said section]*

*Explanation -For the removal of doubts it is hereby declared that for the purposes of this sub-section-*

- (a)*
- (b)*
- (c) where any order referred to in this sub-section and passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be] had been the subject matter of any appeal filed on or before or after the 1<sup>st</sup> day of June 1988 the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as hail not been considered and decided in such appeal.*

5.2. It is undisputed fact that as against the reassessment order, assessee filed an appeal before Ld. CIT(A) on 28-04-2023 which is pending when Ld. PCIT initiated the proceedings u/s. 263 of the Act. In fact on the very same issue on sale of shares of M/s. Oasis Tradelink Ltd. which is the subject matter of appeal pending before Ld. CIT(A). Therefore as per Clause (c) of Explanation 1 to Section 263(1), Ld. PCIT is not correct in invoking u/s. 263 on the very same issue pending before Ld. CIT(A). Thus the assumption of jurisdiction

itself is against the provisions of law. Therefore the entire Revision order is liable to be quashed.

6. Ld. Counsel reliance on Madras High Court in the case of Smt. Renuka Philip vs. ITO [2019] 101 taxmann.com 119 (Madras) held as follows:

*“The Explanation to section 263(1)(c) makes it clear that when the appeal is pending before the Commissioner, the exercise of jurisdiction under section 263 is barred. The Commissioner in the order states that the appeal pertains to the claim made by the assessee under section 54 and it has got nothing to do with the order passed by the Assessing Officer under section 54F. The said finding rendered by the Commissioner is wholly unsustainable, since the assessee went on appeal against the re-assessment order stating that his claim for deduction under section 54 should be accepted (Para 22)*

*Therefore, in the process of considering as to what relief the assessee is entitled to, the Assessing Officer held that the assessee is entitled to claim deduction under section 54F and assigned certain reasons for that. Therefore, the larger issue was pending before the Commissioner Appeals, and in such circumstances, the Commissioner could not exercise power under section 263 on account of the statutory bar. Therefore, on this ground also, the assumption of jurisdiction under section 263 was wholly erroneous. (Para 23)”*

7. Allahabad High Court in the case of CIT vs. Vam Resorts & Hotels (P.) Ltd. [2019] 111 taxmann.com 62 (Allahabad) held as follows:

*“25. As. Clause (c) of Explanation 1 to Section 263 of the Act provides that when an appeal is pending before the Commissioner, the exercise of jurisdiction under Section 263 of the Act by CIT is barred. Thus, in the present case, the CIT wrongly exercised jurisdiction under Section 263 of the Act by remanding back the matter to assessing authority on 25.3.2013, while the appeal was decided by CIT (A) on 5.6.2013. Thus, the order passed by the ITAT does not suffer from any irregularity and needs no interference.”*

8. Respectfully following the above judicial precedents, we have no hesitation in holding that the assumption of jurisdiction by Ld. PCIT

u/s. 263 itself is invalid in law. Therefore the Revision order passed by ld. PCIT is hereby quashed.

9. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 24-02-2026

**Sd/-**  
**(DR. BRR KUMAR)**  
**VICE PRESIDENT** *True Copy*  
**Ahmedabad : Dated 24/02/2026**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**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