

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.1343/Ahd/2024
(Assessment Year: 2015-16)

Aditya Shah, A-203, Samudra Annexe, Nr. Hotel Klassic Gold, Ellisbridge, Ahmedabad-380006	Vs.	Principal Commissioner of Income Tax, Ahmedabad-1
[PAN No. ALTPS6488G]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Tushar Hemani, Sr. Adv. & Shri Parimalsinh B. Parmar, A.R.
Respondent by:	Shri R. N. Dsouza, CIT DR

Date of Hearing	16.01.2025
Date of Pronouncement	27.02.2025

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Principal Commissioner of Income Tax, (in short “Ld. PCIT”), Ahmedabad-1, vide order dated 14.03.2024 passed for A.Y. 2015-16.

2. The assessee has raised the following grounds of appeal:

“1. The Ld. PCIT has grossly erred in law and on facts in assuming jurisdiction u/s.263 of the Act on the erroneous ground that the impugned assessment order is erroneous in so far as it is prejudicial to the interest of the revenue.

2. The Ld. PCIT has grossly erred in not appreciating that in order to invoke s.263, two conditions must be fulfilled viz. the impugned assessment order must be erroneous and that error must be prejudicial to the interest of the revenue. In the present case, Id. AO has passed the reasoned assessment order after analyzing all details and therefore there was no error in the impugned assessment order so as to justify action u/s.263 of the Act. Under the circumstances, the very assumption of power u/s.263 of the Act is unjustified and bad in law and therefore, order u/s.263 of the Act deserved to be quashed.

3. *The subject order u/s. 263 passed by the Ld. PCIT is illegal and bad in law in absence of any finding of Ld. PCIT how the alleged error of AO has resulted in loss of revenue particularly when the loan received by the appellant is a genuine transaction and not an accommodation entry.*

4. *The Ld. PCIT has further erred in law and on facts in not appreciating that the view taken by the AO is a possible view and hence the proceedings are illegal and bad in law.*

5. *The ld. PCIT has further erred in law in not coming to any concrete conclusion and without conducting any inquiry or investigating the issue, merely directed the AO to frame the assessment order afresh. Without there being any positive finding about order being erroneous and prejudicial to the interest of the revenue, the action of Id. PCIT is without jurisdiction and illegal and hence deserves to be deleted.*

6. *Ld. PCIT has erred in not considering various facts, submissions, explanations and clarifications as given by the appellant and further erred in not appreciating the facts and law in their proper perspective.*

7. *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal."*

3. The brief facts of the case are that the assessee during the impugned assessment year under consideration was conducting business under the name and style of "Siddhi Corporation" The case of the assessee was reopened under section 147 of the Act, on the ground that the assessee had obtained a "fictitious" loan by way of an accommodation entry from M/s Jalaram Finvest Limited, which was operated by Shri Dahyabhai I Thakkar, a known professional entry provider associated with the Dishman Group (M/s Dishman Carbogen Amics Ltd.). However, despite the reopening of the case, no addition was made by the Assessing Officer (A.O.) regarding the fictitious loan during the assessment proceedings. Subsequently, Principal CIT initiated proceedings u/s 263 of the Act on the ground that not making of any additions in the above set of facts constitutes a 'mistake apparent from the record'. In the 263 proceedings, the assessee submitted that

the A.O. had already examined this issue in detail during the course of 147 proceedings and had not made any additions after reopening the case. Upon review of the submissions and the case details, Principal CIT was of the view that the assessee was a beneficiary for an accommodation entry transaction amounting to Rs. 52,02,531/-, in the form of a fictitious loan from M/s Jalaram Finvest Limited during the relevant period. The loan was linked to the Dishman Group, which was connected to the entry provider. Principal CIT observed that the information verified by the DGIT (Sys.) New Delhi confirmed that the transaction of accommodation entry had taken place between the assessee and Dishman Group and that the total accommodation entry amounted to Rs. 52,02,531/-. Principal CIT held that the A.O.'s failure to address this transaction in the assessment order rendered the original assessment order erroneous and prejudicial to the interests of the Revenue.

4. The assessee is in appeal before us against the order passed u/s 263 of the Act by Principal Ld. CIT(Appeals).

5. Before us, the Counsel for the assessee submitted that firstly, that no loan was received from Dishman during the relevant assessment year. Rather, the assessee repaid back a loan amount of Rs. 37,41,557/- along with interest. It was submitted the case was previously reopened under Section 147 of the Act based on the same ground, and finally, the assessment was passed without any additions being made. The Counsel for the assessee placed reliance on several documents including the confirmation from Dishman Group, relevant extracts of bank statements, approval under Section 151, notices issued under Sections

143(2) and 142(1) by the Assessing Officer, the order passed by the Assessing Officer disposing of objections etc. to substantiate its position that no loan was received from Dishman Group during the year in question, and in fact loan was repaid by the assessee, which had been properly accounted for. It was argued that the order passed by the AO is neither erroneous nor prejudicial to the interests of the Revenue. It was submitted that the issue at hand was thoroughly examined during the original assessment stage and once an issue has been examined in the original assessment, the Department cannot invoke revisionary jurisdiction under Section 263. If an issue is considered but not reflected in the final assessment order, it does not automatically imply that the AO's order should be interfered with by the CIT under Section 263. Reliance is placed on various judicial precedents, such as CIT v. Nirma Chemicals Works (P.) Ltd., Gujarat Power Corporation v. ACIT, and Rayon Silk Mills v. CIT, in support of the argument that once an issue has been examined, it is not open for the Department to revisit the matter under Section 263. Further, the Counsel for the assessee argued that if two views are possible, and the AO adopts one view, the CIT cannot invoke jurisdiction under Section 263 merely because a different view could have been taken. This principle is well-supported by decisions in cases like Malabar Industrial Co. Ltd. v. CIT, Kwaliti Steel Suppliers v. CIT, and Mehsana Dist. Co-op. Milk Producers Union v. CIT. Further, it was submitted that the inadequacy of inquiry by the AO cannot be a valid ground for invoking revision under Section 263, as established in cases such as CIT v. Sunbeam Auto Ltd. and CIT v. Anil Kumar Sharma.

6. In response, the Ld. DR placed reliance on observations made by Principal CIT in the 263 order.

7. We have heard the rival contentions and perused the material on record. On going to the case records, the first thing that comes to the notice that the Department has not brought anything on record in the form of any evidence etc. that the assessee had taken loan of the amount which was mentioned in the 263 notice viz. for a sum of ₹52,02,531/- from the Dishman Group. We observe that in the reply to the assessing officer during the course of re-assessment proceedings, similar issue came up for consideration, wherein the assessee had submitted that the assessee had not received any loan from Dishman group during the year under consideration and therefore, 147 proceedings were initiated on an incorrect premise that the assessee had taken loan of the aforesaid amount from Dishman group. We observe that at page 25 of the paper book, the assessee had submitted before the assessing officer that assessee had taken a loan of ₹35 lakhs from the Dishman group in an earlier year and in this year, in fact the assessee had made repayment of the aforesaid amount. The counsel for the assessee has drawn attention to certificate issued by the assessee to Dishman group stating that it had made repayment of ₹35 lakhs to the said group, along with interest on such loan, taken during an earlier assessment year, after deduction of taxes at source. The counsel for the assessee drew our attention to page 47 of the paper book (reply of the assessee to the assessing officer dated 22 February 2022) in which it was submitted that as per the copy of account of the Dishman group and also from the copies of bank statements produced before the assessing officer for the impugned year under consideration, no loan for a sum of ₹52,02,531/- was taken by the

assessee from the Dishman group, by way of accommodation entry. Further, we observe that the 263 proceedings have been initiated on the basis that as per information, the assessee is a beneficiary who had availed accommodation entry transaction of ₹52,02,531/- in the form of fictitious loan taken by the assessee from the Dishman group. However, we observe that firstly this aspect was enquired during the course of 147 proceedings in detail, in which the assessee had submitted that the assessee had not taken any accommodation entry of ₹52,02,531/- in the form of fictitious loan during the impugned assessment year under consideration from Dishman group. It was on the basis of submissions filed by the assessee that no additions were made during the course of original assessment proceedings. Therefore, we observe that firstly the 263 proceedings were initiated on an incorrect presumption of fact that the assessee had received accommodation transaction of ₹52,02,531/- from Dishman group during the relevant period, whereas there is nothing on record to demonstrate that the assessee had taken any accommodation entry by way of loan during the impugned year under consideration for the aforesaid amount. Secondly, this aspect was specifically enquired by the assessing officer during the course of reassessment proceedings, wherein the assessee had submitted that the assessee had not taken any loan from the Dishman group for the aforesaid amount and in fact, the assessee had repaid a loan of ₹35 lakhs, along with interest during the impugned year under consideration to the Dishman group. Accordingly, no additions were made in the hands of the assessee. In light of the above facts, we are of the considered view that since the 263 order itself has been passed on an incorrect assumption of facts, the same is liable to be set aside. Also,

- 7-

the aforesaid aspect was specifically enquired in the course of reassessment proceedings and hence, there is no lack of enquiry on the part of assessing officer on this aspect and neither any incorrect view was taken in the course of assessment proceedings by the assessing officer, so as to make the assessment order as being erroneous insofar as prejudicial to the interest of Revenue.

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

This Order pronounced in Open Court on	27/02/2025
---	-------------------

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad; Dated 27/02/2025

TANMAY, Sr. PS

TRUE COPY

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad