IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.682/PUN/2024
Assessment Year : 2018-19

Bank of Maharashtra 1501, Lokmangal, Shivajinagar, Pune – 411005	**Vs.**	PCIT, Pune
PAN: AACCB0774B		
(Appellant)		**(Respondent)**

Assessee by	**:**	Shri Ananthan and Mrs. Lalitha Rameswaran
Department by	**:**	Shri Amol Khairnar, CIT-DR
Date of hearing	**:**	06-11-2024
Date of pronouncement	**:**	30-12-2024

O R D E R

PER R.K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 04.03.2024 passed by the PCIT, Pune-1 relating to assessment year 2018-19.

2. Facts of the case in brief, are that the assessee is a domestic banking company in which the public is substantially interested. It is governed by the Banking Regulation Act, 1949 and it regularly follows the mercantile system of accounting. The assessee filed its return of income on 29.09.2018 declaring total loss of Rs.1612,29,57,294/- under the normal provisions. The return was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the CPC on 12.11.2019 determining the total loss at Rs.1569,56,31,310/-.

The case was selected for scrutiny through CASS and notice u/s 143(2) of the Act dated 23.09.2019 was issued and served on the assessee. Subsequently, notice u/s 142(1) of the Act was also issued and served on the assessee, in response to which the AR of the assessee filed the requisite details from time to time. The case was selected for complete scrutiny under the E-assessment Scheme, 2019 on the following issues:

S. No.	*Issues*
i.	*Claim of Any other Amount Allowable as Deduction in Schedule BP*
ii.	*Verification of Genuineness of Expenses*
iii.	*Business Purchase*
iv.	*Depreciation Claim*
v.	*Default in TDS*
vi.	*Default in TDS & Disallowance for such Default*
vii.	*Refund Claim*
viii.	*Business Loss*
ix.	*ICDS Compliance and Adjustment*
x.	*Disallowance u/s 40A(7) (Gratuity provision)*
xi.	*Expenses incurred for Earning Exempt Income*
xii.	*Excess Contribution to Provident Fund, Superannuation Fund or Gratuity Fund*
xiii.	*Capital Gains/Income on Sale of Property*
xiv.	*Business Expenses*

3. The Assessing Officer completed the assessment u/s 143(3) r.w.s. 144B of the Act on 27.04.2021 determining the total loss of the assessee at Rs.1569,56,31,309/- under the normal provisions and determined the book profit u/s 115JB of the Act at Rs.6911,69,43,041/-.

4. Subsequently, the Ld. PCIT examined the records and observed that the said book profit under the provisions of section 115JB was rectified by the Assessing Officer to Rs.2404,02,51,679/- vide order dated 08.06.2021 under section 154 r.w.s. 143(3) and this rectification was further rectified by the Assessing Officer to

Rs.2191,38,41,784/- vide order dated 07.04.2022 under section 154 r.w.s. 143(3) of the Act. On subsequent review of the assessment and the case records, he observed as under:

> *"2.1 The reasons for selection of the case for scrutiny includes 'business loss' and 'business expenses*
>
> *2.2 The assessee has claimed deduction of Rs.1137,14,39,790/- under section 36(1)(viia) of the Act which has been allowed by the Faceless Assessing Officer (hereinafter referred to as 'FAO') in the assessment completed on 27/04/2021. However, on verification of records, it is observed that addition under section 36(1)(viia) of the Act on account of excess provisions for bad and doubtful debts was made in assessee's own case in the assessments completed for AYs. 2011-12 to 2017-18 and earlier years also. In A.Y. 2011-12, the issue was contested before the Hon'ble Income Tax Appellate Tribunal (hereinafter referred to as 'ITAT') in appeal ITA No.634/PUN/2017. In the said year, the assessee bank had claimed deduction of Rs 486.59 crores under section 36(1)(viia) though the actual provision in respect of rural advances in the books of accounts was Rs.102.36 crores only. Therefore, the Assessing Officer restricted the claim of the assessee to Rs. 102.36 crores ie to the extent of actual provision for rural advances made in the books of accounts. The Hon'ble ITAT observed that a similar claim was made by the assessee in assessment year 2010-11 wherein the Co-ordinate Bench of Tribunal upheld the findings of Commissioner of Income Tax (Appeals) and had restricted the deduction under section 36(1)(viia) to the extent of provision made (total provision). In view of the admitted position, this ground of appeal by the assessee qua the claim of deduction under section 36(1)(viia) was allowed by the Hon'ble ITAT to the extent of provision actually made for bad and doubtful debts (total provision) in the books of account at Rs.342.00 crores and thus confirmed the balance addition / disallowance made by the Assessing Officer at Rs.144.59 crores. Similar issue was involved in this case for assessment years 2012-13 to 2017-18 and the Hon'ble ITAT has decided the issue as per the above discussion for assessment years 2011-12 to 2015-16 and accordingly confirmed the part of the addition/disallowance on this issue.*
>
> *2.3 It is also seen that the decision of the Hon'ble ITAT in respect of the relief allowed to the assessee i.e. restricting the disallowance under section 36(1)(viia) to the total provision on account of bad and doubtful debts instead of restricting the same only to the extent of actual provision related to rural advances, has not been accepted by the Department and the Department has filed appeal before the Hon'ble High Court for A.Y.s 2006-07 to 2010-11 and 2013-14 to 2015-16. Therefore, the issue of relief granted by the Hon'ble ITAT has also not yet reached finality.*

> *2.4 During the year under consideration, the assessee has claimed deduction under section 36(1)(viia) of the Act at Rs.1137.14 crores whereas provision towards rural advances was at Rs.206.57 crores only However, the FAO has allowed the entire claim of the assessee at Rs 1137.14 crores instead of restricting it to the actual provision in the books of accounts at Rs.206.57 crores."*

5. In view of the above, the Ld. PCIT issued a notice u/s 263 of the Act asking the assessee to explain as to why the order passed by the Assessing Officer should not be revised as the same was erroneous and prejudicial to the interest of Revenue. The assessee replied that in order to invoke the provisions of section 263 of the Act, the twin conditions i.e. the order is erroneous and prejudicial to the interest of Revenue are to be satisfied. Merely because the order passed by the Assessing Officer is prejudicial to the interest of the Revenue, the PCIT cannot interfere and revise the order. It was also argued that the allegations in the notice and the assumption of jurisdiction u/s 263 of the Act are beyond the facts and law. It was submitted that since the Assessing Officer in the instant case has made adequate enquiries at the time of assessment, power u/s 263 of the Act cannot be invoked.

6. However, the Ld. PCIT was not satisfied with the arguments advanced by the assessee. Rejecting the various explanations given by the assessee and distinguishing the various decisions cited before him, the Ld. PCIT held that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue to the extent of allowance of deduction u/s 36(1)(viia) of the Act. The relevant observations of the PCIT read as under:

"2.7.1 The submission of the assessee is considered. However, as discussed in earlier paras, the FAO has allowed the deduction under section 36(1)(viia) of the Act to the assessee merely on a computation sheet submitted by the assessee without making proper verification. Even the list of rural branches was not obtained. The list submitted by the assessee now during the present proceedings also lacks any details of population of the relevant place.

2.7.2 As regards assessee's contention regarding restriction of deduction to the extent of total provision under bad and doubtful debts, it is to be noted here that the issue has not yet reached finality and the Departmental appeal has already been admitted by the Hon'ble High Court in the assessee's own case for A.Y.2006-07 to 2009-10 on this issue. Considering the above facts, the submission of the assessee is not acceptable.

3. In view of the above facts, it is seen from records that the FAO has allowed deduction under section 36(1) (viia) of the Act to the turn of Rs.1137,14,39,790/- without making proper inquiries, without making proper verification and without examining the actual facts of the case which are required to be verified for allowing such a deduction in terms of provisions of Rule 6ABA read with section 36(1)(viia) and section 36(2)(v) of the Income Tax Act, 1961. Failure on the part of the FAO rendered the assessment order dated 27/04/2021 under section 143(3) read with section 144B of the Act as erroneous in so far as it is prejudicial to the interests of the revenue.

3.1 Since proper enquiries with regard to correctness of the claim have not been made, the order passed u/s. 143(3) r.w.s. 144B of Income-tax Act, 1961, dated 27/04/2021 is prejudicial to the interests of revenue. Thus both the conditions specified under section 263 of the Act are satisfied in this case and it is a fit case to invoke provisions of the said section. Hence, the assessment order dated 27/04/2021 for the AY 2018-19 is hereby partly set aside to the file of the Assessing Officer on the issue of allowance of deduction under section 36(1)(viia) of the Act. The Assessing Officer shall examine the issue in the above stated aspects and decide the issue after giving sufficient opportunity to the assessee to present its case

3.2 The assessment order dated 27/04/2021 is partly set aside only viz. the issue of assessee's claim of deduction under section 36(1) (viia) of the Act. Since, the order is being partly set aside, the jurisdictional Assessing Officer may take up this matter."

7. Aggrieved with such order of the Ld. PCIT, the assessee is in appeal before the Tribunal by raising the following grounds:

1. The order of the learned PCIT is bad in law, arbitrary, perverse and legally unsustainable.

2. The learned PCIT erred in holding that the asst order is erroneous & prejudicial to the interest of the Revenue.

2.1. The learned PCIT failed to appreciate the fact that the Faceless Assessing Officer had indeed called for the details and allowed the deduction.

2.2. The learned PCIT erred in holding that the order is prejudicial to the interest of the Revenue without pointing out any defect in the claim made by the Appellant Bank.

2.3. The learned PCIT erred in holding that the order is erroneous & prejudicial to the interest of the Revenue without making any specific enquiry & finding in this regard.

3. The learned PCIT erred in disregarding the contention of the Appellant Bank that the deduction u/s 36(1)(viia) has to be allowed by considering the total provision for bad & doubtful debts made by the Bank.

3.1. The learned PCIT failed to appreciate the fact that the Faceless Assessing Officer has allowed this deduction following the decisions of the Hon'ble Tribunal in the Appellant Bank's own case and as such, is not erroneous.

3.2. The learned PCIT failed to appreciate the fact that the provisions of section 263 cannot be invoked on this point.

The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal.

8. The Ld. Counsel for the assessee strongly challenged the order of the Ld. PCIT invoking the jurisdiction u/s 263 of the Act. The Ld. Counsel for the assessee referring to the notice u/s 142(1) of the Act issued by the Assessing Officer on 13.01.2021 drew the attention of the Bench to question No.17 which reads as under:

"17. In Page No.12 of ITR, you have shown an amount of Rs.41937413926/- regarding provision for bad and doubtful debts u/s 36(1)(viia). In this regard, kindly furnish the details of deduction claimed along with calculation made as per section u/s 36(1)(viia) r.w.r. 6ABA of Income-tax Rules, 1962. Please justify allowability and explain the same."

9. Referring to the reply dated 29.01.2021 given by the assessee, copy of which is placed at pages 40 to 49 of the paper book, the Ld. Counsel for the assessee drew the attention of the Bench to the reply at point No.17 (at page 47) which reads as under:

> *"Point No. 17*
>
> *Bank provides for bad and doubtful debts as per the prudential norms of RBI in the books of account and the same is offered to tax irrespective of the amount. However, an Incentive has been given to the Banks by providing the deduction for bad and doubtful debts u/s 36(1)(viia) of the Income Tax Act, 1961 i.e. 10% of average rural advances and 8.5% of taxable income before claiming deduction under this section. The procedure for calculation of 10% of average rural advances made by rural branches has been prescribed under Rule 6ABA of the Income Tax Rules 1962.*
>
> *Bank was having 615 rural branches as on 31st March 2018. Accordingly, the advances of such branches had been considered for calculation of eligibility, which were verified / audited by branch statutory auditors and then consolidation of the same had also been verified/audited by central statutory auditors, appointed by RBI. The statement showing the calculation of eligible amount for claiming deduction u/s 36(1)(viia) is also enclosed as [Annexure-7], which comes to Rs. 1137,14,39,790)*
>
> *During the year under consideration, Bank has made NPA provision for Rs.5330,88,53,716/- (as shown in page 110 of annual report) which had been first offered to tax in the computation of income. Against the same, Bank has claimed deduction for provision for bad debts for Rs.1137,14,39,790 Crores u/s 36(1)(viia) as per Annexure -7 thereby disallowed the provision of Rs.4193,74,13,926 in ITR.*
>
> *The amount reflected in page 21 of ITR in point 6 (1) of Rs.4193,74,13,926/- is the disallowed portion of provision for bad and doubtful debts u/s 36(1)(viia) as per the formula prescribed under Rule 6ABA of Income Tax Rules, 1962.*
>
> *Point No. 18*
>
> *Prior period income and prior period expenses was Rs.38,53,239/- and Rs.1,67,35,091/- respectively. While filing the Income Tax Return, Prior Period Income was offered to tax whereas prior period expenses had been claimed as deduction. Item-wise details are attached as [Annexure 8]. Such expenses are generally made under the circumstances as under:-*
>
> > *a) In some cases, rent for the premises gets revised with retrospective effect, by making agreement during the year.*

b) Sometimes the demand for payment of enhanced taxes, electricity etc is given by the concerned authority, which pertains to earlier period.

c) Interest of deposits is paid with retrospective effect.

As per Accounting Standard-5 issued by Institute of Chartered Accountants of India, prior period item are the result of either error or omission in the financial statement of earlier period. As such, in case of Bank, since the liability of payment is crystalized in the relevant previous year and there is no omission or error in booking of such expenditure in earlier years, these expenses should not be categorised as Prior Period Expense. Alternatively, even if such expenses are considered as Prior Period Expenses, it should be allowed in the current year since the liability for the same had been crystalized in the relevant previous year and the same was not claimed in any earlier years. Hon'ble ITAT. Pune in the order refereed above, had also given relief on this issue."

10. Referring to page 69 of the appeal set, the Ld. Counsel for the assessee drew the attention of the Bench to the Annexure-7 which is as under:

			A.Y. 2018-19
Working of Provision for Bad and Doubtful Debts Eligible u/s 36(1)(viia)			
1	*Total Number of Branches*		*1 846*
2	*Total Number of Rural Branches (As per 2011 Census)*		*615*
3	*Average Aggregate Advances at Rural Branches*		*1137 14 39 790*
4	*Total Income before making any deduction under clause 36(1)(viia)*		*-*
5	*10% of Average Aggregate Rural Advances*	*11371439790*	
6	*8.50% of Total Income before making any deduction under clause 36(1)(viia)*		
7	*Total amount eligible u/s 36(1)(viia)*		*1137 14 39 790*

11. Referring to the second questionnaire issued by the Assessing Officer dated 31.03.2021, the Ld. Counsel for the assessee drew the attention of the Bench to the following queries raised by the Assessing Officer which read as under:

"2. Deduction under section 36(1)(viia):

As per section 36(1) (viia) of the Act "a scheduled bank [not being a bank incorporated by or under the laws of a country outside India or a non-scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co- operative agricultural and rural development bank), an amount not exceeding 42 [seven and one-half per cent] of the total income (computed before making any."

Further, on examination of computation of total income, it is seen that you have claimed the deduction of Rs.1137,14,39,790/- on account of bad debts provision against which you have made a provision of Rs.5330,88,53,716/-which is for provisions of rural advances and provision of non-rural advances. As per your submission dated 20.01.2021, the advances accounts pertaining to rural branches and provision thereof is for Rs.419.37 Crore You are requested to furnish the detailed bifurcation and working of provision made for rural advances and non-rural advances. Further, considering the judgment of Hon'ble Supreme Court in the case of "Catholic Syrian Bank (2012) 343 ITR 270, you are requested to explain as to why the deduction under section 36(1)(viia), should not be restricted to provision made for rural advances only and therefore the differential amount of 'of ' 879.11 crores should not be added back to the return of income for the year under consideration. Further, you are requested produce the working of claim of provision of rural advance of Rs.419.37 crore working as per rule 6ABA of Income Tax Rule. If you fails to produce the working of the said provision as per rule 6ABA of Income Tax Rule, the amount of Rs. 419.37 crore will also be added to the total income. It is to further to draw your attention to order passed in your case for A.Y. 2016-17 and 2017-18 wherein similar addition was made. Hence, you are also requested to show cause as to how in the year under consideration, conditions are different from that of A.Y. 2016-17 and be made in the year under consideration."

12. Referring to the reply given by the assessee vide letter dated 04.04.2021, the Ld. Counsel for the assessee drew the attention of the Bench to point No.2 which reads as under:

"Point No.2

Deduction u/s 36(1)(viia)

Bank provides for bad and doubtful debts as per the prudential norms of RBI in the books of account and the same is offered to tax irrespective of the amount However, an incentive has been given to the Banks by providing the deduction for bad and doubtful debts u/s 30(1)(viia) of the Income Tax Act, 1961 i.e. 10% of average rural advances and 8.5% of taxable income before claiming deduction under this section. The procedure for calculation of 10% of average rural

advances made by rural branches has been prescribed under Rule GABA of the Income Tax Rules 1962.

Bank was having 515 rural branches as on 31 March 2018. Accordingly, the advances of such branches had been considered for calculation of eligibility, which were verified/audited by branch statutory auditors and then consolidation of the same had also been verified/audited by central statutory auditors, appointed by RBI The statement showing the calculation of eligible amount for claiming deduction u/s 36(1)(viia) had already been provided vide our reply dated 20 Jan 2021.

During the year under consideration, Bank has made NPA provision for Rs.5330,88,53,716/- (as shown in page 110 of annual report) which had been first offered to tax in the computation of income Against the same. Bank has claimed deduction towards provision for bad debts for Rs. 1137,14,39,790/- u/s 36(1)(viia) as per the limit prescribed under Rule 6ABA, thereby disallowed the provision of Rs. 4193,74,13,926/- in ITR. The amount of provision towards rural advances was Rs. 206.57 Crore.

The issue is squarely covered by the decision of the Hon'ble Bangalore bench of the ITAT in the case of ING Vysya Bank in ITA No 53 & 54/8/2013 dt 25/10/2013, In that case, the assessee had created a provision of Rs. 88,20,47,000/- for non rural advances and Rs. 10,00,000/- for rural advances. It had claimed the deduction of Rs 23,80,55,247/- u/s 36(1)(viia) The learned Assessing Officer restricted the claim to Rs. 10,00,000/- being the provision made towards rural advances. The CIT(A) allowed the claim of the appellant. On further appeal by the Revenue, the Hon'ble ITAT held that the provision need not relate to rural advances. In para 37, the Hon'ble ITAT held as follows:

> *"The actual provision made in the books by the assessee on account of PBDD (irrespective of whether it is rural or non rural) has to be seen. To the extent PBDD so created, subject to the permissible upper limits referred to above, the deduction has to be allowed. The question of bifurcated the PBDD as one relating to rural advances and other advances (non rural advances) does not arise for consideration"*

The Hon'ble ITAT also considered the decision of Hon'ble Supreme Court in the case of Catholic Syrian Bank and held that, that decision was not relevant to the present case

On the similar set of facts, the Hon'ble Bangalore Bench of ITAT in the case of Vijaya Bank 2015 (7) TMI 86 -ITAT Bangalore, held that for the purpose of deduction u/s 36(1)(viia), the provision need not be bifurcated between rural and non rural and the entire provision has to be considered.

It is pertinent to note that the Department has not filed any appeal before the Hon'ble Karnataka High Court against the decisions in the case of ING Vysya Bank and Vijaya Bank. Through in the case of Vijaya Bank an appeal was filed by

the Department against the order of the ITAT, the issue relating to deduction u/s 35(1)(viia) was not challenged.

Further, in the bank's own case, Hon'ble ITAT, Pune in ITA No 1370 of 2014 relating to AY 2010-11, ITA No. 634 & 635 of 2017 relating to AY 2011-12 & 2012-13 and in ITA No. 114 & 780 of 2018 relating to AY 2013- 14 & 2014-15, has also decided the similar issue in favour of Bank and allowing the claim u/s 36(1)(viia) for the total provisions made for bad and doubtful debts subject to limit specified under Rule 6ABA.

Therefore, it is submitted that deduction u/s 36(1)(viia) should not be restricted to provisions made for rural advances only and the total claim of Rs.1137,14,39,790/- u/s 36(1)(viia) should be allowed considering the above submissions

Though the addition had been made u/s 36(1)(viia) during assessment for AY 2016-17 and 2017-18, the same has been challenged in appeal, which is pending adjudication. Further the addition made u/s 36(1)(viia) during AY 2010-11 to AY 2014-15 during assessment proceedings, was already reversed by Hon'ble ITAT and as such, allowed the claim u/s 36(1) (viia) upto the amount of provision actually created in the books."

13. He submitted that since the Tribunal has passed the order on the issue raised by Ld. PCIT in favour of the assessee and since the Assessing Officer, on the basis of the reply given by the assessee and on the basis of the decision of the Tribunal in assessee's own case and various other cases, did not make any addition, therefore, the order cannot be called as erroneous. Referring to the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co Ltd. Vs CIT [2000] 243 ITR 83 (SC), he submitted that in order to invoke the powers u/s 263 of the Act, the twin conditions namely, the order is erroneous and the order is prejudicial to the interests of Revenue must be satisfied. He submitted that in the instant case the order may be prejudicial to the interests of the Revenue, however, it cannot be said to be erroneous especially when the Assessing Officer on the basis of the detailed reply given by the assessee to the queries raised by him has accepted the

contention in light of the decision of the Tribunal in assessee's own case. Therefore, in absence of fulfillment of the twin conditions, the order cannot be revised by the Ld. PCIT u/s 263 of the Act.

14. In his second plank of argument, the Ld. Counsel for the assessee submitted that 263 proceedings were initiated at the behest of the Assessing Officer and not *suo motu* by the Ld. PCIT. Referring to various decisions he submitted that the proceedings u/s 263 of the Act initiated at the behest of the Assessing Officer and not on the basis of own application of mind by the CIT / PCIT is not a valid assumption of jurisdiction.

15. The Ld. Counsel for the assessee in his third plank of argument submitted that the order of the Assessing Officer can be held to be erroneous only to that extent the details of which were not given. Referring to pages 58 to 68 of the paper book, the Ld. Counsel for the assessee drew the attention of the Bench to the list of approved branches as on March, 2018 and submitted that the Ld. PCIT has not applied his mind while passing the order u/s 263 of the Act. He accordingly submitted that since the faceless Assessing Officer has called for the details and on the basis of various replies given by the assessee has allowed the deduction, therefore, the Ld. PCIT without applying his mind should not have invoked the jurisdiction u/s 263 of the Act. He also relied on the following decisions:

i) PCIT vs. R.K. Jain Infra Projects (P.) Ltd. (2024) 159 taxmann.com 387 (SC)

ii) CIT vs. Max India Ltd. (2007) 295 ITR 282 (SC)

iii) PCIT vs. R.K. Jain Infra Projects (P.) Ltd. (2023) 150 taxmann.com 313 (Del)

iv) PCIT vs. Clix Finance India (P.) Ltd. (2024) 160 taxmann.com 357 (Del)

v) Prudential Assurance Co. Ltd. vs. DIT (IT) (2010) 191 Taxman 62 (Bom)

vi) CIT vs. M/s. A.R. Builders & Developers P Ltd. (2020) 425 ITR 272 (Mad)

vii) KN Agarwal vs. CIT (1991) 189 ITR 769 (All)

viii) CIT vs. M/s. Dhaneswar Rath Institute of Engineering & Medical Sciences (2023) 458 ITR 509 (Ori)

ix) DCIT vs. Bank of Maharashtra 2020 (3) 877 – ITAT, Pune

x) Madhya Gujarat Vij Company Ltd. vs. PCIT 2024-TIOL-1019-ITAT-Ahm

xi) PCIT vs. M/s. Sinhotia Metals and Minerals Pvt. Ltd. (2023) 455 ITR 736 (Cal)

xii) Karan Jain vs. PCIT (2024) 465 ITR 1 (Gau)

16. The Ld. DR on the other hand heavily relied on the order of the Ld. PCIT and submitted that the Ld. PCIT after following due procedure of law has set aside the order to the file of the Assessing Officer to the limited extent of verification of the claim of deduction u/s 36(1)(viia) of the Act. Therefore, the grounds raised by the assessee should be dismissed.

17. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Ld. PCIT and the paper book filed on behalf of the assessee. We have also considered the various decisions relied on by both sides. We find the Assessing Officer during the course of assessment proceedings has called for various details from the assessee from time to time and

the assessee in response to the queries raised by the Assessing Officer had made detailed submissions. It is also an undisputed fact that the issue on which the Ld. PCIT has invoked jurisdiction u/s 263 of the Act has already been decided by the Tribunal in assessee's own case in its favour. Merely because the department has not accepted the decision of the Tribunal and has filed an appeal before the Hon'ble High Court, therefore, in our opinion, the order of the Assessing Officer cannot be held as erroneous. In our opinion, it may be prejudicial to the interests of the Revenue but certainly not erroneous.

18. We find the Hon'ble Supreme Court in the case of Malabar Industrial Co Ltd. Vs CIT (supra) has held that in order to invoke the jurisdiction u/s 263 of the Act, the twin conditions must be satisfied i.e. the order must be erroneous and the order must be prejudicial to the interests of the Revenue. Since in the instant case, the Tribunal has already decided the issue in favour of the assessee though it has not been accepted by the Revenue and the appeal is pending before the Hon'ble High Court and since the Assessing Officer, on the basis of submissions made by the assessee and relying on the decision of the Tribunal in assessee's own case has not made any addition / disallowance, therefore, the order of the Assessing Officer in our opinion cannot be held to be erroneous. Once the order is held not to be erroneous, the twin conditions i.e. the order is erroneous and the order is prejudicial to the interests of the Revenue are not satisfied. Therefore, the Ld. PCIT in our opinion is not justified in assuming jurisdiction u/s 263 of the Act.

Thus, the order of the Ld. PCIT is set aside and the grounds raised by the assessee are allowed.

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

Order pronounced in the open Court on 30th December, 2024.

Sd/-	**Sd/-**
(ASTHA CHANDRA)	(R. K. PANDA)
JUDICIAL MEMBER	VICE PRESIDENT

पुणे Pune; दिनांक Dated : 30th December, 2024

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. DR, ITAT, 'A' Bench, Pune
4. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	06.11.2024		Sr. PS/PS
2	Draft placed before author	07.11.2024 & 18.12.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			