

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.402/SRT/2024**

**Assessment Year: (2020-21)**

**(Hybrid Hearing)**

M/s Shree Waheguru Fashions Pvt. Ltd., B-1110, Radha Krishna Textile Market, Ring Road, Surat - 395002	<b>बनाम/ Vs.</b>	Principal Commissioner of Income-tax (Central), Central Circle-1, Surat, Aayakar Bhavan, Majura Gate, Surat-395001
<b>स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AAHCS 9568 H</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>

<b>निर्धारिती की ओर से /Appellant by</b>	Shri Rasesh Shah, CA
<b>राजस्व की ओर से /Respondent by</b>	Shri Ravinder Sindhu, CIT(DR)
<b>सुनवाई की तारीख/Date of Hearing</b>	21/01/2025
<b>उद्घोषणा की तारीख/Date of Pronouncement</b>	03/04/2025

**आदेश / ORDER**

**PER BIJAYANANDA PRUSETH, AM:**

This appeal by the assessee emanates from the order passed under section 263 of the Income-tax Act, 1961 (in short, 'the Act') dated 13.03.2024 by the Principal Commissioner of Income Tax (Central), Surat [in short, 'PCIT'] for the assessment year (AY) 2020-21.

2. The grounds of appeal raised by the assessee are as under:

*"1. On the facts and in circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in passing the order u/s. 263, although the assessment order passed u/s. 147 r.w.s. 1448 of the I.T. Act, 1961 was neither erroneous nor prejudicial to the interest of the revenue.*

*2. On the facts and circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in directing the assessing officer to make fresh inquiry and verification in respect of Rs.1,23,93,591/- being cash deposit in the bank account and thereby erred in setting aside the assessment with the direction to pass fresh assessment order in consequence to order passed u/s. 263.*

*3. It is therefore prayed that above order passed by Pr. CIT u/s. 263 may please be quashed or set aside as your honours deems it proper.*

*4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

3. Brief facts of the case are that a search and seizure operation u/s 132 of the Act was conducted on 25.06.2019 and cash of Rs.10,00,000/- was seized from Shri Amit Babulal Adnani, CEO of the assessee-company. Shri Adnani admitted in his statement u/s 132(4) that the seized cash belonged to the appellant-company. The assessee filed its return of income for AY 2020-21 on 28.01.2021 declaring total income of Rs.24,64,670/-. The case was selected for complete scrutiny being a search assessment. The AO issued notices u/s 143(2) and 142(1) of the Act and after affording opportunity of hearing completed the assessment u/s 144 of the Act accepting the returned income. The Ld.PCIT called for the records and verified it and found that the AO did not make any verification regarding the source of cash deposit of Rs. 1,23,93,591/- in its bank account held with Axis Bank, which is reflected in Form-26AS. The Ld.PCIT issued a show cause notice on 17.01.2024 which is at para-3 of the revision order u/s 263 of the Act. He required assessee to explain why order u/s 263 be not passed setting aside the assessment order u/s 144 dated 29.09.2021. The assessee filed their detailed reply vide letter dated 01.02.2024, which is

reproduced at para-4 (pages 3 to 8) of the revision order. The assessee contended that the source of cash deposit is from case sales made and such sales are disclosed in the regular books of account. The assessee had submitted copy of cash book, sample bill of cash sales, profit and loss account, balance-sheet and copy of bank statement etc. The Ld.PCIT was not satisfied with the reply of assessee and had discussed the same at para-5.1 to 5.6 of revision order. He observed that assessee had not submitted any details during assessment proceedings due to which AO completed assessment by invoking provisions of Section 144 of the Act. However, he has accepted the returned income of Rs.24,64,670/- without any verification or discussion on the source of cash deposit of Rs.1,23,93,591/- in the bank account. The Ld.PCIT observed that the explanation of the assessee and details submitted require deep and proper investigation. The assessee had claimed that it had deposited cash of Rs.79,93,317/- out of cash sales of Rs.1,04,80,703/- and balance was used for cash expenses. The assessee also submitted that some debtors/customers directly deposited cash of Rs.44,00,274/- in its bank account. The Ld.PCIT found that the assessee has made entry of Rs.10,00,000/- in the cash book on 23.06.2019 as payment to Shri Amit Bhai, Surat which was seized from him during the search proceedings on 25.06.2019 at Kolkata. Since the cash was unaccounted, it is clear that the cash book was prepared as per the whims of the assessee. The assessee has not submitted any details during assessment proceedings, but AO accepted the cash as cash sales from disclosed sources without verification. Thereafter, the Ld.PCIT relied on the decision of Hon'ble

Supreme Court in case of Malabar Industries Ltd. vs. CIT (2000) 243 ITR 83 (SC) and held that the AO has not investigated the issue before him; not applied his mind and not applied correct law while passing assessment order on 29.09.2021 u/s 144 of the Act. Hence, the order is erroneous and prejudicial to the interest of revenue. The Ld.PCIT also relied on the decisions in the cases of CIT vs. Paville Projects (P.) Ltd. (2023) 149 taxmann.com 115 (SC); CIT vs. Nagesh Knitwear's P. Ltd. and Others (2012) 345 ITR 135 (Del); Gee Vee Enterprises vs. ACIT (197) 99 ITR 375 (Del). The Ld. PCIT also referred to Explanation-2(a) of Section 263, inserted with effect from 01.06.2015, *wherein* the order of AO shall be deemed to be erroneous in so far as it is prejudicial to the interests of Revenue, if, in the opinion of the Ld.PCIT, the order is passed without making enquiries or verification which should have been made. Accordingly, assessment order u/s 144 was set aside with a direction to AO to pass fresh assessment order after taking into consideration the issue discussed in the order u/s 263 of the Act after granting reasonable and sufficient opportunities of being heard to assessee.

4. Aggrieved by the order of Ld.PCIT, the assessee has filed present appeal before the Tribunal. The Ld. AR has filed a paper book containing of 264 pages including submission to Ld.PCIT and details filed before AO and Ld.PCIT. He has also filed a separate paper book enclosing copies of various decisions in favour of assessee. He submitted that the assessment order was passed after taking approval of the JCIT, Central Range, Surat. He submitted that such an order

with approval of JCIT cannot be revised u/s 263 of the Act. For this, he relied on the decisions (i) Prakhar Developers Pvt. Ltd. vs. PCIT IT(SS)A No.109 & 110/Ind/2021 (Ind. Trib.) (ii) Vishwa Infraways Pvt. Ltd. vs. CIT ITA NO.598/Pun/2015 (Pun.Trib.) and (iii) Devenker Kumar Gupta vs. PCIT 116 taxmann.com 95 (Del.Trib.). He also submitted that the approval is not supported by DIN which is invalid in view of CBDT Circular No.19/2019 issued on 14.08.2019. Hence, proceedings u/s 147 is not valid and consequently action u/s 263 cannot be sustained.

4.1 The Ld. AR also submitted that cash of Rs.79,93,317/- was deposited by assessee out of cash sales and Rs.44,00,274/- was directly deposited by parties to whom assessee sold the goods. Assessee had given details of month-wise cash sales of Rs.1,04,80,703/- from its Kolkata branch. In support assessee has submitted audited financial statement, cash book and sample invoice of sales of the Kolkata branch. Further, assessee had also filed the GSTR-9 of Kolkata branch where cash sales is reflected. For debtors realization in cash, assessee filed ledger account of debtors who deposited cash in assessee's bank account. After considering the explanation and various details, the Ld.PCIT did not ask the assessee to file further details. He also did not make any further enquiry and mechanically set aside the case on the ground that AO did not make any enquiry. The Ld. AR submitted that the Ld.PCIT has not recorded objective satisfaction on the submission made by assessee. He relied on the decisions in the case of Rayon Silk Mills vs. CIT 221 ITR 155 (Guj) and CIT vs. Ganpat Ram Bishnoi 152 taxmann.com 242 (Raj). The Ld. AR further stated that the Ld.PCIT

has not made any enquiry u/s 263 of the Act. Even in case of no enquiry made by the AO, the Ld.PCIT is expected to conduct minimum enquiry as held in case of PCIT vs. Delhi Airport Metro Express Pvt. Ltd. 398 ITR 8 (Del). The Ld. AR also relied on the decision in case of CIT vs. V.M. Mittal Stainless Steel Pvt. Ltd. 263 ITR 0255 (SC) The Ld. AR also submitted that Explanation-2(a) is not applicable because AO has passed order after making proper enquiry and verification. In any case, the assessee explained the cash deposits in its detailed submission filed before Ld.PCIT and the Ld.PCIT did not require any further explanation or filing of explanation. Under such circumstances, the action of Ld.PCIT could not survive.

5. On the other hand, Ld. CIT-DR for the Revenue supported the order of Ld.PCIT. He submitted that the order of AO is both erroneous and prejudicial to the interests of revenue. The AO did not conduct any enquiry of cash deposit of Rs.1,23,93,591/- in the Axis Bank account of the assessee. The AO accepted the return filed by assessee without verification, which is clearly covered under Explanation-2(a) of Section 263 of the Act.

6. 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. The Ld. AR submitted that the AO issued notice U/s 142(1) of the Act on 25.09.2021 and required the assessee to file compliance by 11 AM on 27.09.2021 as the case was getting time barred on 30.09.2021. The assessee requested to grant some more time because very short time was available to

furnish voluminous details asked by the AO. The AO, however, passed the order on 29.03.2021 after taking prior approval u/s 153D of the Act of even date. It is clear from the above facts that the AO has passed the order in a haste without obtaining necessary details. It is also seen from the paper book that assessee did not file any written submission or explanation to the AO during the assessment proceeding. The AO has issued notice u/s 143(2) on 30.06.2021. He issued notice u/s 142(1) on 25.09.2021 requiring assessee to furnish various details by 11 AM on or before 27.09.2021. It is seen from the Annexure to the notice u/s 142(1) that he has requested assessee to explain source and accountability of the cash seized of Rs.10 lacs and not cash of Rs.1,23,93,591/- deposited in assessee's bank account. These are at pages 64 to 66 of the paper book. It is, therefore, clear that the AO did not ask any question about the cash deposit of Rs. 1,23,93,591/- in Axis bank Account of the Assessee. Since it was a complete scrutiny, the AO should have made inquiries and verification regarding the huge cash deposit of Rs. 1,23,93,591/- , which he failed to do. Therefore, the case of the assessee is squarely covered by Explanation 2(a) of section 263 of the Act. We do not find any infirmity in the order of PCIT.

6.1. The Ld AR has relied on decisions of ITAT in case of Prakhar Developers Pvt. Ltd.(Supra), Vishwa Infrawaves Pvt. Ltd.(Supra) and Devendra Kumar Gupta(supra) and submitted that revision u/s 263 is not possible when assessment order was passed after taking prior approval of the JCIT u/s 153D

of the Act. Before deciding the issue, it would be proper to reproduce the relevant part of the section :

*“263. (1) The [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or] Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the [Assessing] Officer [or the Transfer Pricing Officer, as the case may be,] is erroneous in so far as it is prejudicial to the interest of the revenue, he may, 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 92CA and directing a fresh order under the said section].” (emphasis supplied)*

6.2 It is clear from bare reading of Section 263 of the Act that the Ld.PCIT can revise the order passed by the AO or TPO which is erroneous in so far as it is prejudicial to the interests of revenue. The Hon’ble Supreme Court in case of T. N. Civil Supplies Corporation Ltd Vs Commissioner of Income Tax, 260 ITR 82(SC) held that there is no scope for limiting phrase “order passed by ITO” in section 263 to exclude orders passed by ITO on directions of a superior authority either u/s 144A or 144B. The relevant part of the decisions is as under:

*“3. The High Court in its decision has followed its earlier decision in which it had referred to and relied upon the reasoning of several other High Courts on the same issue to negative the contentions of the assessee.*

*4. Given the uniformity of interpretation by the several High Courts, it would not be appropriate to interfere with the decision of the High Court.*

*5. In any event we are of the view that having regard to the subsequent amendments to the Act issued from time to time there was no scope for limiting the phrase “order passed by the Income-tax Officer” in Section 263 to exclude orders passed by the*

*Income-tax Officer on the directions of a superior authority either under Section 144A or 144B.”*

Respectfully following the decision of Hon’ble Supreme Court, it is held that the order passed by the AO after obtaining approval of the JCIT is clearly amenable to the provision of section 263 of the Act. The ratio is applicable with equal force whether direction was given u/s 144A or 144B of the Act or approval u/s 153D of the Act by the JCIT.

6.3 The Ld AR also submitted that the approval of the JCIT is not supported by DIN for which he relied upon the decisions in case of Ashok Commercial Enterprises Vs ACIT 459 ITR 100 (Bom) and Finesse International Designs Pvt. Ltd Vs DCIT 157 taxmann.com 271 (Del. Tribunal). We find that, the hon’ble Supreme Court in case of CIT vs Brandix Mauritius Holdings Ltd (2024) 158 taxmann.com 247 (SC). As granted interim stay against order of the Hon’ble High Court. Hence, this plea of Ld AR is also not tenable.

6.4 The Ld AR has further submitted that the Ld. PCIT did not record objective satisfaction on the submission filed by the assessee. We find that the Ld. PCIT has duly recorded objective satisfaction after going through the assessment record that the AO has not enquired into the source of cash deposit of Rs 1,23,93,591/-. Hence, we do not find any infirmity in the action of PCIT.

6.5 The Ld. AR further submitted that there was no reason for setting aside the matter to the file of AO for fresh assessment after considering the issue

discussed by him in revision order u/s 263 of the Act. He submitted that all the details required for deciding the issue were submitted to Ld.PCIT vide letter dated 01.02.2024 which are at pages 4 to 7 of the paper book. The other details including financial statement of Surat and Kolkata branches, tax audit report, ITR with computation of income, GSTR-9 of Kolkata branch, sample bills of cash sales of Kolkata branch, bank statement, cash book of Kolkata branch, cash flow statement, month-wise list of debtors who deposited cash in the Axis bank and ledger account of such debtors are at pages 8 to 264 of the paper book. All these papers were given to the Ld.PCIT. The Ld.PCIT has also not pointed out any deficiency in the details nor did he not call for any further details before passing revision order u/s 263 of the Act. Therefore, the Ld.PCIT should have decided the matter on merit instead of setting aside the issue to the AO for fresh assessment.

6.6 In view of contentions of Ld. AR as above, we have again gone through the details and materials available on record. The assessee was engaged in manufacturing as well as retail and wholesale trade of textile goods. The goods are sold on credit as well as on cash basis. Assessee has two places of business, i.e., at Surat and Kolkata. The cash deposit of Rs.1,23,93,591/- pertains to Axis bank account maintained by assessee at Kolkata branch. The appellant has submitted details to show that the total sales including GST of Kolkata branch was Rs.7,01,15,045/-. It includes credit sales of Rs.5,96,34,342/- and cash sales of Rs.1,04,80,703/-. This is supported by the GSTR-9 as well as audited profit and loss account of Kolkata branch. The appellant has incurred cash expenses

of Rs.44,00,274/- and deposited remaining cash sales of Rs.79,93,371/- in the bank account. The debtors have also deposited Rs.44,00,274/- in the bank of assessee. The list of the debtors and their ledger accounts have been furnished by the assessee, which is in the paper book submitted before us. It is clear from the above facts that the assessee had deposited the cash out of cash sales and realization from the debtors in its bank account with Axis bank at Kolkata. It may further be mentioned that assessee has separately disclosed a sum of Rs.10,00,000/- in its return and paid tax thereon u/s 115BBE of the Act. If this amount is reduced, the appellant was required to explain Rs.1,13,93,591/- instead of Rs.1,23,93,591/-. In view of the above facts, the appellant has explained the source of the cash deposited in its bank account. As per provisions of Section 263 of the Act, the Ld.PCIT may pass such order as the circumstances of the case justify after giving assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary. In the present case the issue has been clearly identified by the Ld.PCIT and he has validly assumed jurisdiction u/s 263 of the Act. He has thereafter issued the show cause notice requiring assessee to submit its explanation on the impugned issue. The assessee has filed explanation and various details which are in the paper book before us. The explanation is supported with relevant details and documentary evidence. The Ld.PCIT has neither pointed out any deficiency in the submissions of assessee so as to arrive at a proper and logical conclusion. Therefore, the explanation of the assessee was acceptable and the case did not merit another round of fresh

assessment before AO on the same set of facts and submission as was before the Ld.PCIT. Accordingly, we quash the revision order of Ld.PCIT u/s 263 of the Act and allowed the grounds of appeal.

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

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963  
on 03/04/2025 in the open court

Sd/-  
(PAWAN SINGH)  
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-  
(BIJAYANANDA PRUSETH)  
लेखा सदस्य/ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 03/04/2025

Dkp Outsourcing Sr.P.S\*

आदेश की प्रतिलिपि अत्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

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By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत