

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

**आयकर अपील सं./ITA No.354/SRT/2023**

**Assessment Year: 2012-13  
(Physical Court Hearing)**

Harikrishna Jewels, 201, Sunstar Building, Opp. New Patidar Bhavan, Mahidharpura, Surat-395 003	<b>बनाम/ Vs.</b>	Principal Commissioner of Income Tax-1,, Surat, Room No.123, Aaykar Bhawan, Near Majura Gate, Opp. New Civil Hospital, Surat -395 001
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAGFH 3864 F</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी /Respondent)</b>

निर्धारिती की ओर से /Assessee by	Shri Rasesh Shah, CA
राजस्व की ओर से /Revenue by	Shri Ravi Kant Gupta, CIT-DR
सुनवाई की तारीख/Date of Hearing	10.02.2025
उद्घोषणा की तारीख/Date of Pronouncement	15.04.2025

**आदेश / ORDER**

**PER BIJAYANANDA PRUSETH, AM:**

By way of this appeal, the assessee has challenged the correctness of the order passed by Ld. Principal Commissioner of Income-tax-1, Surat [in short, 'PCIT'], under section 263 of the Income-tax Act, 1961 (in short, 'the Act') dated 25.03.2022 for assessment years (AY) i.e.,2012-13, which in turn arose out of assessment order passed by Assessing Officer (in short, "AO") under section 143(3) r.w.s. 147 of the Act on 25.12.2019. The assessee has raised the following grounds of appeal:-

*"1. On the facts and 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 143(3) r.w.s. 147 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 holding that the exemption of Rs.5,51,33,350/- claimed u/s 10AA is required to be disallowed.*

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

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

2. The Ld. Authorized Representative (Ld.AR) for the assessee submits that there was delay of 358 days in filing appeal before Tribunal. The appellant has filed application for condonation of delay in filing appeal in respect of order u/s 263 of the Act of the Ld.PCIT dated 25.03.2022. It is submitted that order u/s 263 was passed on the ground that exemption of Rs.5,51,33,350/- claimed u/s 10AA of the Act is required to be disallowed. Accordingly, assessment order passed u/s 143(3) r.w.s. 147 of the Act dated 25.12.2019 was set aside on the pretext that no enquiry was undertaken by the AO in respect of manufacturing activities undertaken by the appellant in the Special Economic Zone. The AO has subsequently passed order u/s 143(3) r.w.s. 263 on 28.03.2023 by making disallowance of Rs.5,51,33,350/-. The appellant submitted that the regular tax consultant was unaware of the provisions of direct appeal before the Tribunal against the order u/s 263 of the Act. When the appellant approached a new tax consultant, he advised not only to file appeal before CIT(A) but also to file belatedly appeal against the order passed u/s 263 of the Act. The Ld. AR submits that the delay was neither intentional

nor deliberate. He submitted that due to ignorance about direct appeal before Tribunal, appeal was not filed.

3. On the other hand, Ld. CIT-DR for the Revenue opposed the application for condonation of delay. He submitted that the reasons given by the appellant could not constitute sufficient cause for condonation of delay. He requested to reject the condonation of delay and dismiss the appeal of appellant.

4. We have considered the reasons given by the Ld. AR and perused the accompanied documents along with the affidavit. We find that the delay of 358 days in filing the appeal was not deliberate and intentional on the part of assessee. The regular tax consultant was not aware of direct appeal to the Tribunal against order u/s 263 of the Act. Moreover, assessee is not going to be benefited by filing appeal belatedly. It is now fairly settled that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice may be preferred. Hence, the delay in filing the appeal is condoned and we proceed to decide the case on merit.

4.1 Facts in brief are that assessee filed return of income on 19.09.2012 declaring total income at Rs. Nil after claiming deduction of Rs.5,51,33,350/- u/s 10AA of the Act. The case was selected for scrutiny and order u/s 143(3) was passed on 19.03.2015 by accepting the returned income. The case was reopened by issuance of notice u/s 148 on 30.03.2019 and order u/s 143(3) r.w.s. 147 was passed on 25.12.2019 accepting the return of income at Rs.Nil. The Ld.PCIT called for the records and found thr case was reopened based on

information from the Investigation Wing that the genuineness of transactions of the assessee with M/s Priyal Diam, Star Bright Gems, Shyama Exim, Divine Star, Fooks, H.K. Traders and K.K. Creations were not satisfactorily explained before the Investigation Wing. However, the AO finalized the assessment without any query to establish the genuineness of the transactions with the above parties. He also found that assessee has claimed huge deduction of Rs.5,51,33,350/- u/s 10AA. The assessee has incurred meagre expenses against the turnover of Rs.23,20,40,159/- and claimed deduction of Rs.5,51,33,350/- deduction u/s 10AA of the Act. He observed that such substantial deduction was allowed without any enquiry and AO has simply accepted the return of income. He issued notice u/s 263 on 12.03.2022 fixing hearing on 18.03.2022 and passed order u/s 263 on 25.03.2022. He set aside the order u/s 143(3) r.w.s. 147 of the Act with a direction to the AO to pass fresh assessment order after considering the issue discussed in his order u/s 263 of the Act.

5. Aggrieved by the order of Ld. PCIT, the assessee has filed appeal before the ITAT. The Ld. AR has filed a paper book containing details submitted before the lower authorities. The Ld. AR of the assessee has filed copies of various decisions in favour of assessee. He submitted The Ld. AR, therefore, submitted that order passed by the Ld.PCIT is not correct and is liable to be quashed because adequate opportunity of hearing was not given to the assessee by the Ld.PCIT.

6. On the other hand, Ld.CIT-DR has strongly relied on the order passed by Ld.PCIT. He has stated that Ld.PCIT has called for the records and duly examined it. He has also referred to provisions of section 263 of the Act and stated that the present case is covered by the scope and ambit of Section 263 of the Act because the AO has not made any inquiry which should have been made to come to a proper conclusion. The order passed by the Ld. PCIT is very detailed and well-reasoned and the Ld.PCIT has rightly relied on various decisions of Hon'ble Supreme Court to hold that the order of AO was both erroneous and prejudicial to the interests of revenue u/s 263 of the Act.

7. We have heard rival submissions and perused materials on record. We have also deliberated upon the decisions relied upon by both parties. We have also gone through the provisions of Section 263 of the Act. There is no dispute that case of the assessee was reopened after original assessment order passed u/s 143(3) of the Act. We find that case was reopened on the basis of information that the appellant had not carried out genuine transactions with M/s Priyal Diam, Star Bright Gems, Shyama Exim., Divine Star, Fooks H.K. Traders and K. K. Creations and the appellant had claimed huge deduction u/s 10AA of the Act. The AO did not carry out any enquiry which is evident from the assessment order. In the assessment order, even the reasons for reopening have not been mentioned. The AO has also not discussed as to how deduction u/s 10AA amounting to Rs.5,51,33,350/- has been rightly claimed by the assessee and how the conditions to claim such deduction have been fulfilled. It

is, thus, clear that the AO has not conducted the enquiry which he was supposed to undertake, especially in view of the reasons for reopening and the huge deduction claimed u/s 10AA. Therefore, the Ld.PCIT was validly invoked the provision of section 263 of the Act and rightly assumed jurisdiction u/s 263 of the Act. The revision by the Ld.PCIT must be objective and not on the basis of *ipse dixit* of the Ld.PCIT. Both the conditions of (i) the order being erroneous and it (ii) being prejudicial to the interests of revenue are satisfied in the instant case. Therefore, we uphold the jurisdiction of Ld.PCIT to invoke the provision of u/s 263 of the Act.

7.2 Having held that the Ld.PCIT has validly assumed jurisdiction u/s 263 of the Act, let us examine whether the order has been passed as per the mandate of section 263 of the Act. It would be proper to discuss the scope and ambit of Section 263 of the Act. A bare reading of the section reveals that the Ld.PCIT can call for and examine the record of any proceedings under the Act and if he considers that any order passed by the AO is erroneous in so far as it is prejudicial to the interests of the revenue, he may after giving opportunity of hearing and after making or causing to be made such inquiry as he deems necessary, pass such order as the circumstances of the case justify. For ready reference, section 263 of the Act reproduced below:

*“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, 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 92CA and directing a fresh order under the said section].*

... ..

**Explanation-2-** *For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner,-*

- (a) The order is passed without making inquiries or verification which should have been made;*
- (b) The order is passed allowing any relief without inquiring into the claim;*
- (c) The order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*
- (d) The order has not been passed in accordance with a decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.*

7.3 It is clear from a bare reading of the provisions that opportunity of hearing to the assessee is a condition precedent before passing an order u/s 263 of the Act. We find that there is clear violation of the principles of natural justice in the instant case because the case was decided against the assessee without properly hearing the assessee. As stated earlier, the only notice u/s 263 of the Act was issued on 12.03.2022 fixing the hearing on 18.03.2022. The assessee did not receive the notice because it was sent on wrong E-mail id. Without any further notice or opportunity of hearing, the Ld. PCIT passed order u/s 263 on 25.03.2022. Therefore, reasonable and sufficient opportunity was not granted to the assessee. Opportunity of being heard is not a mere formality. Without giving a proper opportunity to assessee, revision proceedings u/s 263 of the Act cannot be finalized as provisions of section 263

of the Act which mandates that the PCIT may pass such order after giving “the assessee opportunity of being heard” and after making or causing to be made such enquiry as he deems necessary. Accordingly, we set aside the order u/s 263 passed by the PCIT and restore it back to file of the Ld.PCIT to pass fresh order after giving reasonable and sufficient opportunity of hearing to the assessee. The assessee is directed to file details and explanation as needed by the Ld. PCIT.

8. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced under proviso to Rule 34 of ITAT, Rules, 1963 on 15/04/2025 in the open court.

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

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

सूरत /Surat

दिनांक/ Date: 15/04/2025

Dkp Outsourcing Sr.P.S\*

आदेश की प्रतिलिपि अग्रेषित/ 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**