IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, AM.

&

DINESH MOHAN SINHA, JM

आयकरअपीलसं./ITA No. 595/RJT/2024

निर्धारणवर्ष / Assessment Year: (2018-19)

(Hybrid Hearing)

Shiv Green Energy Pvt. Ltd. 107, Divyam Park, Opp. H.O. Bhatt Bunglow, Nr. Sanjeevani Medical Store, Jamnagar - 361006	**Vs.**	The Principal Commissioner of Income Tax, Jamnagar 361001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AASCS8645J**		
(Appellant)		**(Respondent)**

आयकरअपीलसं./ITA No. 229/RJT/2024

निर्धारणवर्ष / Assessment Year: (2017-18)

(Hybrid Hearing)

Ashok Gopaldas Vithlani Prop of Ashok Gopaldas, Jodhpur Gate, Jam Khambhaliya, Devbhoomi Dwarka 361305	**Vs.**	The Principal Commissioner of Income Tax, Jamnagar 361008
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AATPV6927E**		
(Appellant)		**(Respondent)**

Appellant by : Shri Mahesh Paun, Ld. AR
Respondent by : ShriSanjay Pungalia, Ld. CIT. (DR)

Date of Hearing :24/04/2025
Date of Pronouncement :30/04/2025

आदेश / O R D E R

Per, DR. ARJUN LAL SAINI, AM:

By way of these two appeals, the different two assessees, have challenged the correctness of the order passed by the Learned Principal Commissioner of Income Tax,(hereinafter referred to as 'Ld. PCIT'), under section 263 of the Act.

2. Since the issue involved in these two appeals are common and identical and covered by the assessee's own group cases, therefore we have clubbed these two appeals and heard together and a consolidated order is being passed for the sake of convenience and brevity. The Ld. PCIT has exercised his jurisdiction u/s. 263 of the Act, on excess stock / valuation of stock found during the survey proceedings. The said issue of excess stock/ storage stock have been covered by the assessee's own group cases in ITA No. 609 & 610 & 612/Rjt/2024, vide order dated 25.04.2025 in the case of "Shree Samrath Switchgear &Transmission P. Ltd. & Shri Samrath Electronics P. Ltd.& Shri Gojiya Bhikhubhai"

3. In order to adjudicate these two appeals, pertaining to section 263 of the Act, we have taken the lead case in ITA No. 595/Rjt/2024, for Assessment Year 2018-19, wherein the grounds of appeal raised by the assessee are as follows:

> *"All the below mentioned grounds of appeal are independent and without prejudicial to each other.*
>
> *1. Learned PCIT Jamnagar erred in law as well on facts by holding that the assessment order, dated 15/04/2021 passed by the Assessing Officer u/s 143(3) of the Act for the AY 2018-19, it is prejudicial to the interest of the revenue within the meaning of the provisions of section 263 of the Act, set aside the passed order u/s. 263*

dtd. 21/02/2024 and giving direction to the assessing officer to not to revise the assessment order.

2. Learned PCIT Jamnagar erred in law as well facts by not giving effective opportunity of being heard, passed order is against the law and principle of natural justice.

3. Appellant craves leave to add, amend, alter or withdraw any ground of appeals."

4. The appeal filed by the assessee in ITA No. 595/Rjt/2024 (Shiv Green Energy Pvt. Ltd.) is barred by limitation by 116 days. The assessee moved a petition for condonation of delay, requesting the Bench to condone the delay. The Ld. Counsel for the assessee submitted that due to critical health of assessee's group grand-father, who used to look taxation matters for entire group, a tax consultant was appointed, to look after the taxation matters, who was negligent and did not file the appeal, on time, therefore, such delay has occurred, which may kindly be condoned in the interest of justice.

5. However, the Ld. DR for the revenue opposed the prayer of the assessee for condonation of delay and stated that the delay should not be condoned on such flimsy grounds and appeal of the assessee should be dismissed.

6. We have heard both the parties on this preliminary issue. We note that due to ill health of assessee's group grand-father, another tax consultant was appointed, to look after the taxation matters, who was negligent and did not file the appeal, on time. We note that because of the mistake of the assessee`s Tax consultant, the assessee should not be penalized, for that reliance is placed on the decision of I.T.A.T., 'C' Bench, Kolkata in the case of M/s. Garg Bros. Pvt. Ltd. & Others vs. DCIT [ITA Nos.2519 to 2521/Kol/2017, order dated 18.04.2018], wherein under similar set of facts and reasons, the Hon'ble Tribunal was pleased to condone the delay of 211 days by holding as under:

"3. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the application for condonation of delay, we are of the considered opinion that assessee was under a bona fide belief that the impugned order of Pr. CIT

was not appealable before this Tribunal since they were not advised by their Tax Consultants about this legal right. Later on, when a Senior Lawyer advised them to file an appeal, the assessees immediately took steps to file the appeals. Therefore, the delay caused. We note that delay wasoccurred because of the wrong advice of the Tax Professional for which assessees cannot be penalized. For the ends of justice, we condone the delay and admit the appeal for hearing."

7.We note that the reasons given in the affidavit for condonation of delay were convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing this appeal. Having heard both the parties and after having gone through the affidavit as well the delay condonation, application, weare of the considered opinion that in the interest of justice, the delay deserves to be condoned. We, accordingly, condone the delay inassessee`s appeal in ITA No. 595/Rjt/2024 (Shiv Green Energy Pvt. Ltd.).

8. When, these two appeals called out for hearing, the Ld. Counsel of the assessee invited our attention to the order dated 25.04.2025 in the case of"Shree Samrath Switchgear &Transmission P. Ltd. & Shri Samrath Electronics P. Ltd.& Shri Gojiya Bhikhubhai", vide in ITA No. 609&610 & 612/Rjt/2024 in assessee's own group case, wherein the issue of excess stock/ storage stock have been adjudicated in favour of the assessee and jurisdiction exercised by the Ld. PCIT u/s. 263 of the Act have been quashed, and appeals of these assessees were allowed. The findings in the order of the Tribunal dated 25.04.2025, in assessee's own group case, wherein the Tribunal *inter alia* observed are as follows:

"26.We have carefully considered the facts of the case, the submission of the Learned Counsel for the assessee and ld DR for the Revenue and evidences on record.Though facts have been discussed in detail in the foregoing paragraphs, however in the succinct manner, the relevant facts and background are reiterated in order to appreciate the controversy and the issue for adjudication. We note that learned PCIT has raised three issues in these appeals, which are as follows:

(1)Issue No.1 Excess stock found during survey processing. This issue is involved in the following appeals:
(a) In ITA No.609/RJT/2024 Rs.72,46,345/-

(b) In ITA No.610/RJT/2024 Rs.74,25,708/-
(c) In ITA No.612/RJT/2024 Rs.65,25, 851/-

(2) Issue No.2 Job work expenses/ contract expenses/sub-contract expenses paid without deducting TDS Rs.5,17,98,259/-. This issue is in ITA No.612/RJT/2024, only.

(3) Row expenses, under the direct expenses Rs.1,36,50,985/-, assessee had treated revenue expenditure, however, as per Ld. PCIT it should be capital expenditure.This issue is in ITA No.612/RJT/2024, only.

27. Now we shall take these issues one by one as follows. The first issue raised by the ld. PCIT isthe excess stock found during survey proceedings. The ld PCIT noticed that during the previous year, a survey proceedings u/s 133A of the Act, was conducted at the business premises of the assessee. As on date of survey, difference in the valuation of stock was found in physical stock and as recorded in the books of account of the assessee and accordingly, the statement was recorded during the survey proceedings conducted u/s 133A of the Act, and the Director of the assessee has admitted the same excess stock as unaccounted income which was not recorded in the books and account and agreed to offer this income as current year's income over and above his regular business income of the current year. The Ld. PCIT noticed that assessee has paid the taxes on excess stock, however, the assessee has not explained the manner of earning of the excess stock, therefore, order passed by the assessing officer is erroneous and prejudicial to the interest of the revenue.

28. We note that during the assessment proceedings, the assessing officer has issued notice under section 142(1) of the Act, which is placed at PB Page No.13 to 19 of the assessee`s paper book. In the said notice, the assessing officer has asked the question about the valuation of the closing stock and also asked the question whether this stock relates to the business.The important question raised by the assessing officer, during the assessment proceedings, by way of notice under section 142(1) of the Act, is reproduced below:

1. *Details of other income with supporting documents:*
2. *Valuation of closing stock.*
3. *Details of income offered for taxation u/s.133A.*
4. *Please explain the details of noting appearing on the papers impounded during the course of survey carried out at your business premises u/s.133A.*

5.During the course of survey u/s.133A at your business premises, you have admitted undisclosed income of Rs.65,25,851 + 20,301/-. Please explain in detail show you have accounted for this disclosure amounts in your books of accounts and the return of income filed for the year under consideration.

29.In response to the notice of the assessing officer, the assessee has submitted detailed reply before the assessing officer, which is placed at paper book Page no.25 and relevant reply of the assessee is reproduced below:

"The provision of section 15BBE are applicable when income chargeable assessable u/s. 68 to 69. The Scheme of Sections 69,69A, 69B and 69C of the Income - Tax Act 1961 would show that in cases where the nature and source of investments made by the assessee or the nature and source of acquisition of money, bullion etc. owned by, the assessee or the source of expenditure incurred by the assessee are not explained at all, or not satisfactorily explained, than, the value of such investments and money or the value of articles not recorded in the books of account or the unexplained expenditure may be deemed to be the income of the assessee. It follows that the moment a satisfactory explanation is given about such nature and source by the assessee, than the source would stand disclosed and will, therefore, be known and the income would be treated under the appropriate head of income for assessment as per the provisions of the Act.For invoking provision of sections 69, 69A, 69B & 69C two conditions are required to be satisfied. They are (i) investment/ expenditure are not recorded in the book; of account of assessee and (ii) the nature and source of acquisition of asset; or expenditure are not explained or not explained Satisfactorily.In case of survey u/s 133A it is to be noted that once a specific surrender made by the assessee has been realized, the department cannot take a U turn while framing the assessment of the assessee by taxing the same under the head income from other sources under section 69, 69A and 69B. It has to be assessed under the Head Income from Business.

We have explained the source of income disclosed during survey satisfactorily to the income tax authority at the time of survey. And as the income tax authority was satisfied with the nature and source of income, the tax at applicable rate were agreed to be deposited and subsequently the challan copy was sent to the income tax authority. Hence in our case provision of section 68 to 69 cannot be invoked.

Both the aspect being nature and source of the impugned amount were explained by usand our explanation was accepted by the survey officer and no further question or doubt were raised and the survey was closed.

As a result of evidence of my statement on record, the question of invoking provisions of sec. 69 etc, does not arise because the source and nature having been explained and accepted in authorized survey proceeding in a statement on oath sees. 69 etc, become inapplicable and consequently, section 115BBE too does not apply to facts of our case. The income declared during the course of survey is from our business income is evident from the statement given during the course of survey.The stock was from the current business,shown in our books of accounts and treated as our Business Income."

30. From the above reply by the assessee, during the assessment proceedings, it is abundantly clear that assessee has explained the source of income disclosed during survey,and as the Survey team was satisfied with the nature and source of income. The assessee has agreed to pay the tax on excess stock and subsequently assessee has paid the taxes on excess stock, and hence there is no loss to the revenue.Thus, we find that both the aspects, being nature and source of the impugned amount were

explained by the assessee and such explanation of the assessee, was accepted by the assessing officer, therefore we note that assessing officer has applied his mind and framed the assessment order by taking the plausible view. Therefore, the order passed by the assessing officer is neither erroneous nor prejudicial to the interest of the revenue, hence consequently, section 115BBE of the Act, too does not apply to the facts of the assessee`s case. The income declared during the course of survey is from assessee`s business, which is evident from the statement given during the course of survey by the assessee. The stock was from the current business of the assessee, and the excess stock found by the survey team was because of different valuation technique adopted by the survey team. Therefore, we find that assessee has explained the source and nature of the stock and moreover the assessee has paid the taxes on excess stock, as per his statement recorded, during the survey proceedings. Therefore, there is no loss to the revenue, hence, the order passed by the assessing officer is neither erroneous nor prejudicial to the interest of the revenue.

31.According to us, the present order of assessing officer passed u/s 143(3) of the Act dated 15.04.2021 of the Act, cannot be termed as ***erroneous,*** *since enquiry was, in fact, carried out by him on the issue on which the ld PCIT has found fault with and has taken a plausible view. We note that the assessing officer has made enquiry during the assessment proceedings about excess stock and assessee has explained the nature and source of the stock. Thus, we note that the assessing officer enquired during assessment proceedings and the assessee had filed details before him. So, we find that the assessing officer's action cannot be termed "****erroneous".*** *Since not only enquiry was carried out by the assessing officer on the issue under consideration and based on the evidence gathered, he has taken a plausible view, which at any rate cannot be called, as an un-sustainable view.*

32. Let us take the guidance of judicial precedents laid down by the Hon'ble Apex Court in Malabar Industries Ltd. vs. CIT [2000] 243 ITR 83(SC) wherein their Lordship have held that twin conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the PCIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In the following circumstances, the order of the assessing officer can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii)Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the assessing officer has not investigated the issue before him; then the order passed by the Assessing Officer can be termed as erroneous order. Coming next to the second limb, which is required to be examined, as to whether the actions of the assessing officer can be termed as prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (supra) held that this phrase i.e. "prejudicial to theinterest of the revenue'' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing

Officer has taken one view with which the PCIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue ***"unless the view taken by the Assessing Officer is unsustainable in law".****Therefore, we are of the considered opinion that assessing officer's order cannot be termed as* ***erroneous as well as prejudicial to the interest of the revenue*** *and therefore, jurisdictional condition precedent as prescribed by statute for invoking revisional jurisdiction is absent and therefore, we are inclined to quash the impugned order dated 21-02-2024 of the ld. PCIT.*

33.In the result, appeal filed by the assessee, in ITA No. 612/RJT/2024, is allowed.

34.Since we have adjudicated the issue relating to excess stock by taking the lead case, in ITA No. 612/RJT/2024, for assessment Year 2018-19, the same and identical issues are involved in other group appeals of the assessee, Viz: in ITA No.609/RJT/2024, and in ITA No.610/RJT/2024.Accordingly, our observations made in ITA No. 612/RJT/2024, for assessment Year 2018-19, shall apply mutatis mutandis to the aforesaid other appeals of Assessees, namely, ITA No.609/RJT/2024, and ITA No.610/RJT/2024. For the parity of reasons, we allow the abovementioned appeals of the Assesseein terms of directions noted in in ITA No. 612/RJT/2024, for assessment Year 2018-19.

35. In the result, appeals of the assessees(in ITA No.609/RJT/2024, and ITA No.610/RJT/2024), are allowed.

36.Issue No.2 Job work expenses/ contract expenses/sub-contract expenses paid without deducting TDS Rs.5,17,98,259/-. This issue pertains to ITA No.612/RJT/2024 (GojjyaBhikhubhai). We note that during the assessment proceedings theassessee has explained the said issue,relatingto TDS and in fact, the assessing officer issued the notice under section 142(1) of the Act, asking the assessee to submit details of TDS. In response, the assessee submitted required details of the TDS which is placed at paper book Page no.80. Therefore, we find that in respect of TDS, on contract and sub -contract expenses of Rs.13,00,93,467/-, the assessee has submitted that TDS has already been deducted, as per applicable rates and the same was also deposited into the government account. In respect of the same, the assessee has submitted ledger account, copy of challan of TDS payment and acknowledgement of TDS return filed, during the assessment proceedings. In respect of TDS, on Job work expenses of Rs. 4,25,67,395/-, the assessee has submitted that there was no liability of TDS as all the payment were below Rs 30,000/- in a single payment or below Rs.1,00,000/- in aggregate during a financial year. As the individual wise payment was less than these threshold limit, the assessee was not liable to deduct the TDS from this expenses. In respect of the same, the assessee has submitted the ledger account of job work expenses of Rs. 4,25,67,395/- .We note that as per ld. PCIT,an amount of Rs. 5,17,98,259/- being 30% of Rs. 17,26,60,862/- (13,00,93,467 + 4,25,67,395) is required to be disallowed u/s 40(a)(ia) of Act.

37. We find that in respect of TDS, on contract and sub -contract expenses of Rs.13,00,93,467/-, the assessee has submitted that TDS has already been deducted, as per applicable rates and the same was also deposited into the government account.In respect of TDS, on Job work expenses of Rs. 4,25,67,395/-, the assessee has submitted

that there was no liability of TDS, as all the paymentswere below Rs. 30,000/- in a single payment or below Rs.1,00,000/- in aggregate during a financial year. As the individual- wise payment was less than these threshold limit, the assessee was not liable to deduct the TDS from this expenses. All these facts were examined by the assessing officer during the assessment proceedings with supporting documentary evidences, and applied his mind and took the plausible view therefore, such order passed by the assessing officer is neither erroneous nor prejudicial to the interest of the revenue.

38. Therefore, we allow issue No.2 of Job work expenses/ contract expenses in ITA No.612/RJT/2024 (GojjyaBhikhubhai), and quash the order of the ld. PCIT.

39.Issue No. 3 :Row expenses, in ITA No.612/RJT/2024 (GojjyaBhikhubhai), pertains to revenue expenditure Vs. Capital expenditure. The assessee treated revenue expenditure, however, as per Ld. PCIT it should be capital expenditure. We note that assessee is in the business of Job Work Contractor & Material Supplier in Electrical Line anddoing various job works, like Erection, Installation, Repairing, Maintenance, Operating etc, of Electrical Sub-Station, Generator, Transformer, Electric Line etc, as per the requirements of customers. The assessee has been doing the same business since last, many years and row expenses were claimed by the assessee, in the past, as a revenue expenditure and department did not raise any objection in the previous years. Therefore, based on the principle of consistency, the assessing officer took the plausible view and treated these expenses, as a revenue expenses.It is a well settled legal position that factual matters which permeate through more than one assessment year, if the Revenue has accepted a particular's view or proposition in the past, it is not open for the Revenue to take a entirely contrary or different stand in a later year on the same issue, involving identical facts unless and until a cogent case is made out by the Assessing Officer on the basis of change in facts. For that we rely on the order of the Hon'ble Supreme Court in Radhasoami Satsang vs. CIT 193 ITR 321 (SC), wherein it was held as follows:
"We are aware of the fact that, strictly speaking, res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. On these reasoning, in the absence of any material change justifying the Revenue to take a different view of the matter - and, if there was no change, it was in support of the assessee – we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of lncome-tax in the earlier proceedings, a different and contradictory stand should have been taken."

40. We note that in assessee`s case under consideration, there is no change in facts, and assessing officer took the plausible view based on the past trend and past assessment years. Therefore view taken by the assessing officer is a plausible view, which is not erroneous and prejudicial to the interest of the revenue.Theassessee, during the assessment proceedings, has submitted the details of direct expenses, ledger account and other relevant documents before the assessing officer, in response to the notice under section 142(1) of the Act. Therefore, the order passed by the

assessing officer should not be erroneous and prejudicial to the interest of the Revenue. We find that ld. PCIT has exercised jurisdiction u/s.263 of the Act on the ground that the assessing officer failed to make proper enquiry which he ought to have made before completing the assessment. However, there is a distinction between "lack of enquiry" and "inadequate enquiry. If there is an enquiry, even inadequate, that would not by itself give occasion to the PCIT to pass order under section 263 of the Act, merely because he has a different opinion in the matter. The assessing officer is not required to give detailed reason in respect of each and every item of issue in the assessment order. The assessing officer had called for explanation regarding various issues and the assessee had furnished his explanation. Therefore, the view taken by the assessing officer was one of the plausible views and the assessment order passed by the assessing officer could not be held to be prejudicial to the Revenue. We derive support for our conclusions, as above, from the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Sunbeam Auto Ltd. 332 ITR 167 (Del.). For reasons stated above, we are of the view that the jurisdiction u/s.263 of the Act was not properly exercised by the PCIT, as the condition precedent for invoking the same viz., that the order of the assessing officer is erroneous and prejudicial to the interest of the revenue, is not shown to be present in the present case. We therefore quash the order u/s.263 of the Act and allow these three appeals of the different assessees.

41.In the combined result, the appeals of the assessees (in ITA No.612/RJT/2024,in ITA No.609 and 610/RJT/2024), are allowed."

9. Since, the issue is squarely covered by the decision of the Coordinate Bench, of the ITAT, Rajkot, in assessee's own group case (supra) and there is no change in facts and law, on account of excess stock / valuation of stock. The said issue has been decided in favour of the assessee and order of the Ld. PCIT passed u/s. 263 of the has been quashed by the Tribunal. In these two appeals, under consideration, the Ld. CIT- DR for the revenue has argued in the similar manner and identical way as he had argued in assessee's own group case (supra). The Ld. Sr. DR for the revenue categorical stated that arguments made by him in the assessee's own group case (supra) should be applicable in these two appeals also. On the other hand, the Ld. Counsel of the assessee submitted that his issue relating to excess stock / valuation of stock is squarely covered by the decision of this Tribunal in assessee's own group case(supra) and he relied on the argument made in the assessee's own group case (supra).

10. We have heard both the parties and carefully perused the facts of the assessee's appeals and noted that in these appeals the facts are similar and identical, which are covered by the decision of the coordinate Bench in assessee's own group case(supra). Therefore, we respectfully following the binding precedent of the Co-ordinate Bench, in assessee's own group case(supra), we quash both the orders of the Ld. PCIT.

11. In the result, appeals filed by the assessees***(ITA No. 595/Rjt/2024 for AY 2018-19 & ITA No. 229/Rjt/2024 for AY 2017-18)*** are allowed.

Order pronounced in the open court on 30/04/2025.

Sd/-	Sd/-
(DINESH MOHAN SINHA)	(Dr. A.L. SAINI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Rajkot
दिनांक/ Date: 30/04/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot