

आयकरअपीलीयअधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, CHENNAI

श्री एस.एस.विस्वनेत्ररवि, न्यायिक सदस्य एवं श्री एस.आर.रघुनाथा, लेखासदस्यकेसमक्ष
BEFORE SHRI S.S.VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI S. R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं/.ITA Nos.:418 to 421/Chny/2025
निर्धारणवर्ष / Assessment Years: 2014-15, 2015-16, 2016-17 & 2018-19

Shri Perinba Raja Ramesh, No.37, Rameswaram Road, T.Nagar, Chennai-600 017.	vs.	PCIT (Central) Chennai-1
[PAN: ADFPP-5207-J] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकरअपीलसं/.ITA Nos.:422 to 425/Chny/2025
निर्धारणवर्ष / Assessment Years: 2014-15, 2015-16, 2016-17 & 2018-19

Shri PaulpandianUthamaraj Winston, No.37, Rameswaram Road, T.Nagar, Chennai-600 017.	vs.	PCIT (Central) Chennai-1
[PAN: AABPU-5409-L] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri Y.Sridhar, F.C.A
प्रत्यर्थीकीओरसे/Respondent by : Ms.E.Pavuna Sundari, CIT

सुनवाईकीतारीख/Date of Hearing : 07.05.2025
घोषणाकीतारीख/Date of Pronouncement : 03.06.2025

आदेश/ ORDER

PER BENCH:

These appeals preferred by the different assesseees against the separate orders of the Learned Principal Commissioner of Income Tax (Central), (hereinafter in short "the Ld.PCIT"), Chennai-1, all dated 16.03.2024 for the Assessment Years

(hereinafter in short "AY") 2014-15, 2015-16, 2016-17 and 2018-19. The common issue is raised in these appeals, hence, they were heard together and are being disposed off by this consolidated order. For the purpose of adjudication, facts from AY 2014-15 have been culled out, wherein the grounds raised by the assessee are as under:

"1. That the Order of the Ld. Pr. CIT is erroneous on the facts and the merits of the case and provisions of Law as well and hence requires to be quashed.

2. That the Ld. Pr. CIT erred in passing an order u/s.263 without adhering to the principles of natural justice, proven by the fact that the appellant was not granted sufficient time to respond to the show-cause notice, thus violating the maxim of audi alteram partem.

3. That Ld. Pr. CIT erred in passing an order u/s.263 without adhering to the conditions laid down u/s.263(1) which emphasizes that in order to categorise an order passed by a subordinate to be erroneous, the revisionary authority is dutybound to conduct make or cause such enquiry to be made before passing the order u/s.263.

*4. That the Ld. Pr. CIT erred in failing to appreciate the decision of the Hon'ble Supreme Court in the case of **Pr. CIT v. Earth Minerals Co. Ltd. [2024] 162 taxmann.com 273 (SC)** which enforces the point raised in Ground No.2."*

2. There was a delay of 257 days in filing the appeal by the above assesseees. The Ld.DR stated in the affidavit for condonation of delay that due to fault of previous Auditor of the assessee, order u/s.263 of the Act was not contested before the ITAT. Moreover, he wrongly opined that since the order is only set aside to redo the assessments, claims of appellants with regard to reduction u/s.24(b) would still prevail. Therefore, the appeals could not be filed within the stipulated period and hence, the present A.R for the assessee seeks for condonation of delay. Having found the reason stated comes under reasonable cause for the delay, we condone the delay in filing of appeals and admitted the same for adjudication.

3. Briefly stated, an action u/s.133A of the Income Tax Act, 1961 (hereinafter in short 'the Act') was conducted in the case of the assessee on 22.03.2018 and as a result, the assessment for the above years were reopened and subsequently after appropriate inquiries made through issue of multiple notices u/s.142(1), the assessment orders were finally concluded on 30.03.2022 u/s.147, arriving at a taxable income as under:

Assessee: Perinba Raja Ramesh

AY	Impugned order	Date of order	Addition Rs.
2014-15	147 rws 143(3)	30-03-2022	10,33,940/-
2015-16	147 rws 143(3)	30-03-2022	12,08,335/-
2016-17	147 rws 143(3)	30-03-2022	13,07,031/-
2018-19	147 rws 143(3)	30-03-2022	-
Total			35,49,306/-

Assessee: PaulpandianUthamraj Winston:

AY	Impugned order	Date of order	Addition Rs.
2014-15	147 rws 143(3)	30-03-2022	10,44,906/-
2015-16	147 rws 143(3)	30-03-2022	10,83,518 /-
2016-17	147 rws 143(3)	30-03-2022	27,69,300/-
2018-19	147 rws 143(3)	30-03-2022	-
Total			48,97,724/-

4. According to the Principal Commissioner of Income-tax, (Central) Chennai-1, the above assessment orders passed by the Assessing Officer were erroneous as well as prejudicial to the interest of Revenue as per Clause (a) of Explanation 2 to Sec. 263 and without providing adequate opportunity of being heard to the assessee, the order u/s.263 was passed, to examine a specific issue of allowance of interest u/s.24(b), as according to the Pr.CIT, the assessment orders were passed without making enquiries or verification which should have been made, before allowing the deduction in respect of the interest paid on loans obtained towards the properties from which rental income was reported.

5. According to the Id. Pr. CIT, there was no enquiry or verification made on the correctness of claim of deduction u/s.24(b) of the Act. However, this characterization was enforced, without conducting enquiries by the revisionary authority or cause such enquiry. The claim of deduction u/s.24(b) was according to the Pr. CIT, an illogical claim, and therefore, through the order u/s.263, the assessing officer was directed to carry out necessary enquiries and verification regarding the claim of interest on borrowed capital under the provisions of Section 24 of the Act and revise the assessment orders passed in respect of above years.

6. The Id. AR contended that if only the enquiries were undertaken by the Pr. CIT, either on his own or cause such enquiries before passing the order u/s.263, the truth would have gotten unraveled and this unnecessary torment unleashed on the assessee could have been avoided. Therefore, it is evident that it is only the order u/s.263 which is erroneous, since it had failed to follow the principles ordained under the provisions of Section 263, which permits such authority to classify an order to be erroneous, unless an enquiry is conducted by such revisionary authority.

7. Further, according to the Id.AR, the revisionary authority was premeditated to set aside the order, irrespective of the genuineness of claim of deduction u/s.24(b) proven by the fact that while the notice of hearing was issued on 01.03.2024, fixing the date of hearing with a short gap of four days of compliance on 05.03.2024 and knowing very well that the response is beyond the control of the assessee, and arbitrarily inferred that the assessee has no objection to the proposed action u/s.263 of the Act.

8. This contention is substantiated from the plain reading of the provisions of Section 263(1) itself and for ease of reference, the same is captured and provided as follows:

“263. Revision of orders prejudicial to revenue.

(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 interests 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,—...**”*

9. Therefore, the essential condition to be fulfilled to categorize any order passed by a subordinate authority is that the revisionary authority has to make or cause to be made such enquiry as he deems necessary before passing such order. It can be considered common ground that any accusation has to be backed by proper enquiries and evidence before drawing such conclusion.

10. In the case under consideration, when the Id.Pr. CIT has formed an opinion that it is a case of lack of enquiry, directing the AO to undertake such enquiry once

again is rather based on 'reason to suspect' and not 'reason to believe'. Therefore, the opinion formed by the Id.Pr. CIT without undertaking enquiry or causing such an enquiry on his own, before passing the order u/s.263 is grossly inappropriate.

11. The Id. AR cited the decision held by the Hon'ble Supreme Court in the case of Pr. CIT v. Earth Minerals Co. Ltd. [2024] 162 taxmann.com 273 (SC) which ratified the order of the High Court of Orissa reported in [2024] 162 taxmann.com 272 (Orissa) which affirmed the finding of the Income-tax Appellate Tribunal (Cuttack Bench) delivered in ITA No. 223 of 2019 (Cuttack ITAT), which had held to be as follows:

“on account of the absence of any enquiry being done by the Id. Pr. CIT before passing the order u/s.263 of the Act, the impugned order passed u/s.263 of the Act by the Id. Pr. CIT is held to be bad in law and the same is hereby annulled.”

12. The Id. AR further contended that the revisionary powers u/s.263 of the Act can only be invoked in certain cases where there is clear material on record which suggests that the AO has adopted an interpretation of statute which has led to an incorrect or incomplete imposition of tax. The Id. AR cited the decision of ITAT, Chennai in Golden Vats Pvt Ltd vs. ACIT in ITA No.416/Chny/2023 pronounced on 09/01/2024, quoting judicial precedents, that –

“when larger issue was pending before CIT(A), the revisionary authority could not exercise jurisdiction u/s.263”.

13. Per contra, the Id. DR vehemently argued that the AO has failed to verify the genuineness of the claim of deduction towards borrowed capital by calling for details of the parties from whom loans were borrowed and hence, the Id. PCIT came to the conclusion that the assessment framed by theAO was erroneous and prejudicial to

the interest of the Revenue and thus the plea of the assessee may kindly be dismissed. Therefore, the assessment order dated 30/3/2022 deserves revision u/s.263 of the Act.

14. We have heard both the contentions perused the records and gone through the orders of the authorities. The facts are not repeated for the sake of brevity. The solitary issue which is common to all the eight appeals that needs to be examined is with regard to the correctness of the Id.PCIT's action in invoking Section 263 of the Act and interfering with the orders of assessment passed by the Assessing Officer classifying it to be erroneous inasmuch as prejudicial to the interests of Revenue, thereby setting aside the order with a direction to the Assessing Officer to carry out necessary enquires and verification in connection with the claim of interest on borrowed capital under the provisions of Section 24 of the Act and revise the assessment orders passed in respect of above years, is valid or otherwise.

15. An action under Section 133A was undertaken in the case of the assessee and the sole and whole aspect of investigation in the survey, post-survey enquiry and the reassessment proceedings, was confined to the rental income, which according to the AO was suppressed. When the principal issue is pivoted to the correctness of rental income offered in the returns filed prior to the action under Section 133A, it cannot be said that there was a total lack of enquiry while concluding the assessment proceedings.

16. Even if it were an error on part of the AO to have missed out to check the correctness of claim of interest u/s.24(a), such omission can only be categorized as a case of 'inadequate enquiry'.

17. Only in the event of a complete lack of enquiry, can the Id.Pr. CIT revise the order of assessment directly, but in case of inadequate enquiry, the Id. Pr. CIT must make their own enquiries before passing the revision order. If the Commissioner wants to revise the assessment on the ground that the enquiry was inadequate, then he must make an independent inquiry to demonstrate how the assessment is erroneous and prejudicial.

18. Mere inadequacy of inquiry does not justify revision unless supported by material gathered by the Id.Pr. CIT. If the AO has conducted an enquiry, however inadequate, the Id. Pr. CIT cannot just label it as erroneous without doing further enquiry by himself. In the action taken by the Id.Pr. CIT to revise the eight assessment orders, there is not even an iota of proof having undertaken any inquiry before concluding the orders to be erroneous. Moreover, it is apparent from the period of time made available to the assessee to respond to the notice under Section 263, and the conclusion drawn that the Id. Pr. CIT passed the orders in a hurried and mechanical manner without proper application of mind.

19. The decision cited by the Ld. AR in the case of Pr. CIT v. Earth Minerals Co. (supra.) rallies squarely in favour of the assessee and in view of the foregoing discussions, we conclude that the issue under question does not warrant invoking of Section 263 and hence set aside the PCIT's order which is untenable in law. We also find that the assessee has already preferred an appeal against the assessment order questioning the additions before the Id.CIT(A). Therefore, relying on the decision of ITAT, Chennai in Golden Vats Pvt Ltd vs. ACIT (supra), we are of the view that when the larger issue was pending before the CIT(A), the revisionary authority cannot exercise jurisdiction u/s.263 of the

Act. Hence, we set aside the order u/s.263 of the Act of the Id.PCIT by allowing the grounds of appeal filed by both the assesseees in all the eight appeals.

20. In the result, all the appeals filed by both the assesseees are allowed.

Order pronounced in the court on 03rd June, 2025 at Chennai.

Sd/-
(एस एस विश्वनेत्र रवि)
(S.S. VISWANETHRA RAVI)
न्यायिक सदस्य/Judicial Member

Sd/-
(एस. आर. रघुनाथा)
(S. R. RAGHUNATHA)
लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 03rd June, 2025

SP

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF