

**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.461/SRT/2024

Assessment Year: (2018-19)

(Physical court hearing)

Balubhhai Kikabhai Patel Nahuli, Karmbele, Umbergon, Surat-396 105	बनाम/ Vs.	Principal Commissioner of Income-tax, Valsad, Room No. 301, 3 rd Floor, Palak Arcade, Shanti Nagar, Tithal Road, Valsad-396 001
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AKQPP 2563 H		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Rasesh Shah, CA
राजस्व की ओर से /Respondent by	Shri Ritesh Misra, CIT-DR
सुनवाई की तारीख/Date of Hearing	13/03/2025
उद्घोषणा की तारीख/Date of Pronouncement	28/05/2025

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 15.03.2024 by the Principal Commissioner of Income Tax, Valsad, [in short, 'PCIT'] which in turn assessment order passed by National-e Assessment Centre, Delhi/Assessing Officer for the assessment year (AY) 2018-19 on 21.04.2021.

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 143(3)r.w.s.144B of the I.T. Act, 1961 was neither erroneous nor prejudicial to the interest of the Revenue.

2. 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.

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

2. Brief facts of the case are that assessee filed his return of income (in short 'ROI') on 23.08.2018 declaring total income at Nil and exempt income of Rs.38,68,230/-. The case was selected for limited scrutiny on the issue of agricultural income. In response to the notices u/s 143(2) and 142(1) of the Act, assessee submitted various details. The assessee had shown gross agricultural receipts of Rs. 57,80,205/- and after claiming expenses of Rs.23,36,222/-, he had shown net agricultural income of Rs.33,81,983/-. After considering submission of the assessee, AO issued a show cause notice along with draft assessment order proposing disallowance of agricultural income of Rs.13,07,563/- because assessee has no documents except self-made list and vouchers. The AO further asked as to why 10% of balance sale of Rs.44,10,644/- amounting to Rs.4,41,064/- be not added u/s 68 of the Act due to various defects in the bills submitted by the assessee. The reply of the assessee is reproduced at para-3.1 and 4.1 of the assessment order. The AO disallowed 50% of the retail sales of Rs.13,07,563/- i.e., Rs.6,53,782/- and added the same u/s 68 of the Act. He also disallowed 10% of the balance sale of Rs.44,10,642/- i.e., Rs.4,41,064/- on account of non-verifiable bills and added it u/s 68 r.w.s. 115BBE of the Act. The total income was

accordingly determined at Rs.10,94,850/- as against the returned income of Rs.Nil.

3. The Ld.PCIT called for the record and noted that assessee had sold agricultural produce of Rs.44,10,642/- to Jasiwal Vegitable, Kunal Fruits and Sai Fruits. They had issued bills to the assessee which were not verifiable and no PAN was mentioned in the sale bills. However, AO added only 10% of the unverified/bills/vouchers of unexplained agricultural income. Agricultural income is exempted from taxation and if income is not agricultural income, it must be taxed accordingly. The AO should have added 100% of agricultural income instead of restricting it to 10% of Rs.44,10,642/-. Hence, the order of AO passed u/s 143(3) r.w.s. 144B was found to be erroneous as well as prejudicial to the interests of the Revenue. Accordingly, show cause notice u/s 263 was issued on 07.02.2022. In reply, assessee submitted that he has furnished complete details of agricultural income including copies of sale bills, land records and details agricultural expenses etc. The explanation was not accepted because assessee has sold agricultural produce of Rs.44,10,642/- to various vendors, who had issued bills which are not verifiable. The AO has analyzed the agricultural income and found that Rs.44,10,642/- was not proved. However, he restricted the addition to Rs.4,41,064/-, being of 10% of agricultural income of Rs.44,10,642/-. He should have added 100% of non-verifiable agricultural income u/s 68 of the Act.

3.1 The Ld.PCIT also did not accept the contention of the assessee that clause (c) of Explanation 1 to Section 263(1) is applicable and the revisionary power did not extend to the matters on which Appellate Authority bestowed consideration and given decisions. The Ld. PCIT observed that the CIT(A) has dismissed the appeal of the assessee by confirming the disallowance made by the AO. He has not considered enhancing the assessment because details called for by him were not complied with. Hence, there is no bar on Ld.PCIT to revise the assessment order because CIT(A) has got no opportunity to examine the genuineness of agricultural income during appellate proceedings. Thereafter he has discussed the scope of Section 263 and Explanation 2 of Section 263(1) of the Act. He has relied on the decision in cases of Malabar Industries Ltd. vs. CIT 243 ITR 83 (SC) and held that there is a escapement of income of Rs.39,69,578/- (Rs.44,10,642 – Rs.4,41,064/-) and short levy of tax of Rs.30,66,499/-. He held that the AO passed the order without conducting proper inquiry. He failed to add the entire cash credit in the books of account which were claimed to be agricultural income. He ought to have added the complete sale proceeds in absence of documentary evidences rather than making estimation u/s 68 of the Act. Accordingly, he set aside the order of AO with a direction to the AO to examine (i) the production register and area of cultivation of each crop and its yield, (ii) rate of agriculture produce during the relevant period of time, (iii) verify the genuineness of the sale bills and (iv) ask the assessee to furnish complete details of purchasers parties with address

and PAN corresponding to the sale of Rs.44,10,642/-. In the result, he set aside the assessment order and directed AO to pass fresh assessment order as per the directions given above.

4. Aggrieved by the order of Ld.PCIT, the assessee has filed present appeal before the Tribunal. The Ld. AR has filed two set of paper books containing of 142 and 85 pages respectively. The Ld. AR submitted that the gross agricultural income was Rs.57,18,205 and net agricultural income was only Rs.33,81,983/- but Ld.PCIT directed to add Rs.44,10,062/-. He submitted that all details were given to the AO which is clear from the papers/documents enclosed in the paper books. The AO has discussed the issue in detail in the assessment order after reproducing submission of the assessee and considering the same. The AO has taken one of the permissible views on consideration of the facts of the case, therefore, the action of Ld.PCIT would amount to change of opinion on the same issue, which is not permissible. He further submitted that the assessment order was challenged before the CIT(A) and it was dismissed by him. Hence, it has merged with the order of CIT(A). He also submitted that the agricultural income has also been accepted by the AO in the next assessment year. He relied on the decision of the Hon'ble jurisdictional High Court in case of CIT vs. Meshana District Co-Op. Milk Producers Union Ltd. 263 ITR 645 (Guj) and CIT vs. Shashi Theater (P.) Ltd. 248 ITR 126 (Guj); CIT vs. Amit Corporation 81 CCH 69 (Guj); CIT vs. Arvind Jewellers 259 ITR 502 (Guj); CIT vs. R.K. Construction Co. 313 ITR 65 (Guj) and Rayon Silk Mills vs. CIT 221 ITR 155 (Guj).

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.

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. A bare reading of the section 263 of the Act reveals that the Ld. PCIT can call for and examine the record of any proceedings under the Act and if he considers that any other 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. The Apex Court in case of CIT vs. Greenwrlld Corporation, 314 ITR 811 (SC) held that the jurisdiction u/s 263 can be exercised only when both the following conditions are satisfied i.e., (i) the order of the AO should be erroneous and (ii) it should be prejudicial to the interests of revenue. These conditions are conjunctive. An order of assessment passed by the AO should not be interfered with only because another view is possible. The Hon'ble Apex Court in case of Max India Ltd. vs. CIT 295 ITR 282 (SC) held that the Commissioner has to be satisfied of the twin conditions as stated above. If one of them is absent, recourse cannot be had to Section 263 of the Act. We find that the case was selected for scrutiny on the issue of agricultural income. The AO has issued notices u/s 143(2) r.w.s. 142(1) on different occasions calling for various details regarding the agricultural income

of the assessee. The assessee has filed details of agricultural land vide submission dated 09.01.2020 in response to notice u/s 143(2) dated 22.09.2019. Subsequently, AO issued notice u/s 142(1) on 12.11.2020 asking assessee to file complete details of land holding and product/yield/ crop name, area in acre, total production and yield per acre, amount received and rate per ton along with sale receipts and expenses incurred with receipts. The assessee filed reply vide letter dated 23.12.2020. Again, the AO issued notice u/s 142(1) on 15.01.2021 asking for various details about the agricultural land and sale of agricultural produce. The assessee filed reply on 04.02.2021 and also filed assessment order u/s 143(3) for the previous AY 2017-18. The AO again issued notice u/s 142(1) on 18.03.2021 in response to which assessee filed reply dated 23.03.2021. Thereafter, AO issued show cause notice proposing why additions should not be made as per the draft assessment order. The assessee filed reply to the show cause notice on 12.04.2021. All these details are available in the paper book of the appellant. It is, therefore, clear that the AO had called for various details on the issue of agricultural income vide statutory notices issued u/s 143(2) and 142(1) from time to time. He had also issued show cause notice and called for the explanation of the assessee. After considering the explanation and details filed by the assessee, AO passed the order adding Rs.10,94,850/- to the total income. From the facts discussed above, it cannot be said that the AO has not applied his mind to the issue and the details submitted by the assessee. Not making the addition of the entire

agricultural income of Rs.33,81,983/- and restricting it to Rs.10,94,850/- would not by itself lead an inference that AO has not applied his mind to the impugned issue. The AO has duly considered the explanation and details submitted by the assessee and had taken a considered decision regarding the addition to be made in the assessment order. The grievance of the Ld.PCIT that the AO should have added entire sale of Rs.44,10,642/- instead of Rs.4,41,064/- is a plausible view, different from the view of the AO. When two view are possible and the AO has taken one of those views, the order cannot be said to be erroneous. The order of the AO cannot be termed prejudicial simply because the AO adopted one of the course permissible in law and it has resulted in loss of revenue, or where two view are possible and the AO has taken one view with which the Ld.PCIT did not agree. It has been so held by the Hon'ble Supreme Court in case of CIT vs. Kwality Steel Suppliers Complex, 395 ITR 1 (SC) and CIT vs. Max India Ltd. 295 ITR 282 (SC). Hence, the order of the AO cannot be said to be amenable for revision under the provisions of Section 263 of the Act.

7. The Ld. AR also submitted that the assessee had filed appeal before CIT(A) and the CIT(A) had passed order u/s 250 dismissing the appeal. Since the order was subject-matter of the appeal, it was beyond purview of Section 263 of the Act. The Ld.PCIT did not accept such argument by observing that the order of CIT(A) was an *ex parte* order and the matter of enhancement of agricultural income was not considered by him. The CIT(A) did not get

opportunity to examine genuineness of the agricultural income during appellate proceedings due to non compliance by the assessee. We find that on further appeal, the ITAT has set aside the order of CIT(A) in ITA No.82/Srt/2024 dated 28.03.2024 which is at pages 68 to 70 of the paper book No.1. Therefore, the matter is pending for fresh adjudication on merits before the CIT(A). The CIT(A) can pass such order in appeal as he thinks fit; he can confirm, reduce or enhance the assessment u/s 251(1)(i) of the Act. Therefore, it is open for the CIT(A) to consider enhancement of agricultural income because the appeal is now pending before him. Since the impugned issue is subject-matter of appeal before CIT(A), the powers of Ld.PCIT u/s 263(1)(c) of the Act shall not extend to such matter.

8. In view of the above factual and legal positions, the order of Ld.PCIT setting aside the order of the AO is not liable to be sustained and is, accordingly, quashed. The grounds of appeal are allowed.

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

Order pronounced under proviso to Rule 34 of the ITAT Rules, 1963 on 28/05/2025 in the open court.

Sd/-
(PAWAN SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER
सूरत /Surat
दिनांक/ Date: 28/05/2025
Dkp Outsourcing Sr.P.S*

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

आदेश की प्रतिलिपि अग्रोषित/ 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

By order/आदेश से,

// True Copy //

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत