

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष  
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.511/Chny/2025  
Assessment Years: 2009-10

M/s.RMZ Infinity(Chennai) Pvt. Ltd,  
No.110, Mount Poonamallee Road,  
Porur, Porur S.O,  
Kanchipuram Dist,  
Tamil Nadu-600 116.  
[PAN: AAACD2287R]

The Principal commissioner of  
Income Tax-4,  
Circle-1, LTU,  
Chennai

(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/ Assessee by  
प्रत्यर्थी की ओर से /Revenue by

(प्रत्यर्थी/Respondent)

: Shri B.Ramakrishnan, F.C.A  
: Ms.E.Pavuna Sundari, CIT

सुनवाई की तारीख/Date of Hearing : 15.05.2025  
घोषणा की तारीख /Date of Pronouncement : 11.06.2025

**आदेश / O R D E R**

**PER AMITABH SHUKLA, A.M. :**

This appeal is filed by the assessee against the order bearing DIN & Order No.ITBA/REV/F/REV5/2024-25/1070000889(1) dated 28.10.2024 of the Leaned Principal Commissioner of Income Tax,(herein after "PCIT"), Chennai u/s 263 for the assessment year 2009-10.

2.0 The only issue contested by the appellant assessee through its six grounds of appeal, is regarding the invocation of revisionary jurisdiction u/s 263 of the Act by the Ld.PCIT-4. It is the case of the assessee that the impugned order of the Ld.AO passed u/s 154 of Act

dated 02.06.2022 does not qualify as an order which is erroneous in so far as it is prejudicial to the interest of Revenue and therefore the assumption of jurisdiction of the PCIT was wrong.

3.0 It has been noted that there is a delay of 51 days in the case, in filing of this appeal before the tribunal. In its affidavit the assessee has pleaded that the assessee was exposed to the order u/s 263 dated 28.10.2024 which was linked to passing of order u/s. 154. It is the case of the assessee that around the time there was a change in the management team of the assessee as result of which some additional time was consumed for internal discussion on the fitness of taking the appellate course of action. All these activities contributed to the delay which was neither willful nor wanton. The assessee submitted that there will not be case of any non-compliance now. We have considered the justification put forth by the assessee and we are satisfied with their adequacy. We are also conscious of the fact that no litigant gains by intentionally delaying its own matters. The Ld. DR did not pose any serious objections to the delay. Accordingly, we hereby condone the delay and proceed to adjudicate this appeal.

4.0 Before proceeding further, we would like to place on record the following brief factual matrix of the case narrated by the Ld.Counsel for the assessee. Return of income for AY-2009-10 was filed by the assessee (formerly known as WS Electric Limited) declaring total income

of Rs.16,33,10,041/- on 28.09.2009. Order u/s. 143(1) was passed on 04.11.2010 determining income at Rs.18,88,80,960/- and a tax demand of Rs.1,88,53,850/-. Subsequently, the assessee moved petition u/s. 154 dated 27.12.2010, 02.07.2018 and 19.02.2019. In the impugned rectification petitions, the assessee had requested for rectification u/s 154 towards following issues:-

- i) That in the order u/s.143(1) capital gains has been calculated while omitting to consider cost of acquisition of Rs.2,55,70,923/-.
- ii) TDS claim of Rs.3,29,478/- has not been considered qua M/s.Hewlett Packard Global Soft Pvt Ltd
- iii) The assessee is primarily earning lease rental income under the head income from house property and that it was wrongly assessed as business income.
- iv) That by an inadvertent mistake an amount of Rs.6,12,70,077/- was shown as short time capital gains in schedule CG-A as against long term capital gains in schedule CG-B. It was submitted that the assessee had paid applicable taxes on long time capital gain while filing its return of income. Acting upon the request of the assessee, the Ld.AO passed u/s 154 of Act dated 02.06.2022 by rectifying the mistakes by treating short time capital gains as long time capital gains, income from business as income from house property and giving the necessary credit for TDS.

5.0 The PCIT- 4 Chennai premised that the mistake concerning treatment of short time capital gains as long time capital gains and business income as income from house property were not amenable to action u/s 154 without detailed enquiry and verification and that by doing so, the Ld.AO has passed an order which is erroneous and prejudicial to the interest of the Revenue. Consequently, he proceeded to set aside the order u/s. 154, directing the Ld.AO to hold detailed enquiries as to whether assessee's case is that of earnings from business or income from house property and that to hold enquiries from records, sale / purchase agreements etc as to whether assessee had earned long time capital gains or short time capital gains. While passing the impugned order, the Ld PCIT placed reliance upon decision of Hon'ble Apex court to support his arguments on earnings from business or income from house property.

6.0 Per contra, the Ld.DR relied upon the order of lower authorities. It was vehemently argued that as the Ld.AO had not conducted any enquiries and investigation before passing the impugned order u/s 154, the same fell in the category of an order which is erroneous in so far as it is prejudicial to the interest of Revenue and therefore the assumption of jurisdiction u/s 263 of the Act by the PCIT was correct.

7.0 We have heard rival submissions in the light of material available on records. Before proceeding further to be deem it necessary to extract the statutory provisions of section 263 of the Act.

**“...263. Revision of orders prejudicial to revenue.—(1) The 1[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 2[Assessing Officer] 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 an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.**

3[4[Explanation 1.]—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

(a) an order passed 5[on or before or after the 1st day of June, 1988] by the Assessing Officer shall include—

(i) an order of assessment made by the 6[Assistant Commissioner or Deputy Commissioner] or the Income-tax Officer on the basis of the directions issued by the 7[Joint Commissioner] under section 144A;

(ii) an order made by the 7[Joint Commissioner] in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the 8[Principal Chief Commissioner or Chief Commissioner] or 9[Principal Director General or Director General] or 1[Principal Commissioner or Commissioner] authorised by the Board in this behalf under section 120;

(b) —record\1[shall include and shall be deemed always to have included] all records relating to any proceeding under this Act available at the time of examination by the 1[Principal Commissioner or Commissioner];

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal 5[filed on or before or after the 1st day of June, 1988], the powers of the 1[Principal Commissioner or Commissioner] under this sub-section shall extend 2[and shall be deemed always to have extended] to such matters as had not been considered and decided in such appeal.] 733

*1[Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer 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 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 any 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.]*

*2[(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.]*

*(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, 3[National Tax Tribunal,] the High Court or the Supreme Court. Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded....”*

8.0 From a perusal of statutory provisions enumerated herein above it is clear that a PCIT is empowered to exercise his revisionary authority qua orders passed by authorities sub-ordinate to him provided the order to be considered for revision must satisfy the twin conditions of the same being erroneous in so far as it is prejudicial to the interest of Revenue. Thus, the order which is to be considered for revision must be both “erroneous” as well as “prejudicial to the interest of Revenue”. If either of the limbs are missing the revisionary authority cannot be legally exercised. We have noted that in the case of Malabar Industrial Company Limited (243 ITR 83) Hon’ble Apex Court held that the phrase prejudicial to the interest of Revenue u/s 263 has to be read with

conjunction with expression erroneous order passed by the Ld.AO. Further, in the case of Tamil Nadu Ware Housing Corporation (292 ITR 310) Hon'ble Madras High Court observed that for revision of an order, it must satisfy the twin conditions of the same being erroneous in so far as it is prejudicial to the interest of Revenue. It was stated therein a positive finding has to be recorded by the CIT that the assessment order was erroneous as well as prejudicial to the interest of the Revenue. Similarly views has been held by the Hon'ble Delhi High Court in the case of Bharat Aluminium Company Limited 303 ITR 256. The same proposition has been echoed in a catena of other judgements passed by superior judicial authority.

9.0 The term "prejudicial to the interest of the Revenue" has been incorporated in the Act, through explanation-2 inserted by the Finance Act 2015 w.e.f. 01.06.2015. Thus, by way of a deeming provision, it has been statutorily mandated that an order shall be deemed to be "erroneous in so far as it is prejudicial to the interest of the Revenue" if in the opinion of the PCIT the order is passed, inter-alia, without making any enquiries or verifications which should have been made or the order is passed allowing any relief without enquiry into the claim. Thus, the principal controversy, in this case, which deserves to be adjudicated is as to whether the order u/s 154 dated 02.06.2022 fell into the category of

an order being “erroneous in so far as it is prejudicial to the interest of the Revenue” or not.

10.0 At this stage, we would like to examine first the reasons for the passing of the impugned order u/s.154 by the Ld.AO dated 01.06.2022. The same is necessary because of the huge time gap of rectifying u/s. 154 of the Act an order u/s 143(1) dated 04.11.2010 after a gap of nearly 12 years. The Ld. Counsel for the assessee submitted that it had made a request for rectification u/s 154 long back on 27.12.2010. It is the case of the assessee that as there was no action, it filed another request for rectification on 02.07.2018 followed by another reminder dated 19.02.2019. The Ld. Counsel has filed copies of his applications dated 02.07.2018 and 19.02.2019 along with annexure. The assessee has stated that the Board had issued circular no.4 of 2012 dated 20.06.2012 in which it had discussed the issue of disputed arrear demands appearing in the records of Revenue. Apropos to the aforesaid circular some assessing officers had stated that a reconciliation of disputed arrear demand was difficult given the expiry of four years limitation period prescribed u/s 154(7). Consequently, in exercise of powers u/s 119(2)(b) the board allowed the assessing officers to reconcile disputed arrear demands by taking actions including rectifications irrespective of expiry of limitation period prescribed u/s 154(7). Thus, the Ld. Counsel argued

that in its case rectification was done by the Ld.AO taking support of above circular.

11.0 Coming to the controversy of the order u/s 154 being erroneous in so far as it is prejudicial to the interest of Revenue, as held by Ld.PCIT, we have noted that the conclusion is not correct. As discussed herein above explanation-2 to section 263 states that an order shall be deemed to be erroneous if (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. The Ld.PCIT has subscribed to the view that the order u/s 154 is erroneous in so far as it is prejudicial to the interest of Revenue because the Ld.AO has not done any examination upon the matter as to how the business income was to be treated as income from house property. He held the view that the issue required a detailed examination. Similarly on the issue of treatment of declared short time capital gains as long term capital gains he has held that such a claim could have been allowed only after due examination of the agreement of the sale, corresponding purchase agreement, period of holding etc and which has not been done by the Ld.AO. Pertinently, the Ld.PCIT has also observed in his order that the Ld.AO did not had any authority to conduct the enquiries u/s 154. The Ld.PCIT has placing reliance upon ratios laid down by Hon'ble Supreme Court and the Jurisdictional High Court on merits, ordinarily the rental

income was to be assessed as business income in such case. The observation of the Ld.PCIT regarding that no verification / enquiries was undertaken by the Ld.AO before passing order u/s 154 are correct. The question that however arises is that why as the Ld.AO refrained from doing any enquiries or verification. It is settled principle of law as repeatedly emphasized by Hon'ble Supreme Court and High courts that the scope of section 154 is very limited and circumscribed and does not encompass any investigation, verification and evaluation of facts and record. It is well settled now that a mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long- drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record.

12.0 Now once it is concluded that no enquiry or verification is possible u/s 154, then the order dated 02.06.2022 would go beyond the purview of an order being "erroneous in so far as it is prejudicial to the interest of the Revenue". An assessing officer can be held guilty of passing an order which is held to be "erroneous in so far as it is prejudicial to the interest of the Revenue" provided he fails to do enquiries or verification before passing an order. In the instant case, section 154 does not empowers to hold any enquiries or verification before passing an order and therefore explanation-2 to section 263 cannot be invoked.

An assessing officer cannot be held accountable for not holding any verification or enquiries which he was not otherwise statutorily empowered or mandated to conduct.

13.0 We have also noted that there is yet another peculiar facet of the controversy which makes the order u/s. 263 questionable and thus bereft of any merit. The Ld. PCIT in para 9 of his impugned order has held as under:

*“09. In view of the aforesaid discussion, the rectification order passed under section 154 dated 02.06.2022 by the Assessing Officer for the assessment year 2009-10 is considered to be erroneous and prejudicial to the interests of revenue, within the meaning of Sec.263 of the I.T.Act, 1961. The same is hence partly set aside, with the direction to the Assessing Officer to make necessary enquiries as per the discussion in the preceding paragraphs in respect of the said two issues and pass a fresh order within the stipulated time, after providing due opportunity to the assessee of being heard.....”*

We have noted that the directions given by the Ld.PCIT themselves are inoperable or such orders which can never see the light of the day. A quasi-judicial authority like PCIT can only give directions which it is empowered to issue under the Act. In the instant case the directions contained in the phrase *and “pass a fresh order”* are not supported by any judicial authority of the Income Tax Act. The order was passed by the Ld.AO u/s 154. Revisionary Action u/s 263 was taken on the ground that no prior enquiry or verification was done by the Ld.AO before passing the impugned order. It is trite law that no enquiry or verification is possible to be conducted u/s 154. Therefore, in case the directions of

the Ld.PCIT are to conduct enquiry or verification before passing another order u/s 154, the same would be illegal directions because they are not supported by statutory provisions of section 154 as also a catena of judgements which mandates that any enquiry or verification is impermissible. Assuming that the direction was to pass another assessment order the same again becomes a questionable direction because assessment proceedings can only be done either u/s 143(2) of the Income Tax Act qua return of income filed u/s 139 or u/s 148 or on account of search assessments. At the opportune time no such proceedings were pending. Further time limits to initiate scrutiny proceedings in the case of the assessee qua return of income filed u/s 139 or u/s 148 had since exhausted. It is seen that the Ld.PCIT has tried to expand the scope of action u/s 154 which is not legally permissible. Thus, the directions of the Ld.PCIT per se are not capable of being legally complied by the Ld.AO.

14.0 We are therefore of the considered view that the impugned order passed u/s 263 dated 28.10.2024 of the Ld.PCIT setting aside the order u/s 154 dated 02.06.2022 is not based upon correct understanding and appreciation of the facts of the case as well as contemporaneous statutory provisions prescribed u/s 263. We therefore quash and set aside the impugned order passed u/s 263 dated 28.10.2024 of the Ld.PCIT and allow all the grounds of appeal raised by the assessee.

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

Order pronounced on 11<sup>th</sup> , June -2025 at Chennai.

Sd/-

(एबी टी. वर्की)

(ABY T VARKEY)

न्यायिक सदस्य / Judicial Member

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 11<sup>th</sup> , June -2025.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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