

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before Dr. BRR Kumar, Vice President
And Ms. Suchitra Kamble, Judicial Member**

**ITA No. 986/Ahd/2025
Assessment Year 2018-19**

Vishal Vasudevbbhai Modi, 128/3, Golwad, Ratanpole, Kalupur, Ahmedabad PAN: ANOPM0228K (Appellant)	Vs	The PCIT, Ahmedabad-1 (Respondent)
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**Assessee by: Shri P.F. Jain, A.R.
Revenue by: Shri R P Rastogi, CIT-D.R.**

Date of hearing : 07-07-2025
Date of pronouncement : 17-07-2025

आदेश/ORDER

Per Suchitra Kamble, Judicial Member:

This is an appeal filed against the order dated 30-03-2025 passed by PCIT, Ahmedabad-1 for assessment year 2018-19.

2. The grounds of appeal are as under:-

"1. The learned PCIT, Ahmedabad 1, has grievously erred in law and on facts in setting aside the assessment order passed u/s 147 read with section 144 read with section 144B dated 02/03/2023 for AY 2018-19 without properly appreciating the objection to proceedings u/s 263 dated 29/03/2025 duly uploaded on the same date.

2. The order u/s 263 is submitted to be bad in law and on facts in as much as that the order passed by the A.O. on 02/03/2023 after fully considering the facts on record and the order is neither erroneous nor prejudicial to the interest of revenue.

3. *The order u/s 263 is also submitted to be bad in law much as that the conditions envisaged for invoking the provisions of section 263 are not applicable to the facts of the assessee.*

4. *He has erred in law and on facts in applying the judicial case laws as mentioned in para 6.5 of the order which are submitted to be distinguishable and not applicable to the facts of the assessee.*

5. *The assessment order is being under appeal before CIT(A) there was no justification for the PCIT to invoke the provisions of section 263.*

6. *On the facts of the assessee no order u/s 263 ought to have been passed.*

7. *Appellant craves leave to add, to alter and or modify any ground of appeal.”*

3. The return of income for assessment year 2018-19 was not filed by the assessee. The Assessing Officer received information that the assessee made cash deposits of Rs. 16,53,74,155/-. Notice u/s. 148 of the Act was issued. Assessment order u/s. 147 r.w.s. 144 r.w.s. 144B of the Act was passed on 02-03-2023 at the assessed income of Rs. 1,33,29,072/-. The Assessing Officer made addition of Rs. 1,32,29,932/- on account of cash deposits being 8% of total deposits and also made addition on account of commission income of Rs. 99,140/-. The assessee did not submit any reply during the assessment proceedings. Despite this fact, the Assessing Officer considered cash deposits as business receipts and taxed on 8% on such receipts. The Pr. CIT issued notice u/s. 263 of the Income Tax Act dated 25-03-2025 for the reason the assessee did not explain nature and source of acquisition of money and the Assessing Officer ought to have added entire cash deposits as unexplained money u/s. 69A of the act. Thus, the Pr. CIT was of the view that the under assessment crept in the assessment order has resulted in short levy of legitimate taxes which is erroneous and prejudicial to the

interest of the revenue. In response to the notice, the assessee submitted reply. After going through the reply, the Pr. CIT held that the assessee never denied that the assessee made cash deposits in bank account maintained by him and the total cash deposits was Rs. 16,53,74,155/-. The Assessing Officer treated entire cash deposits as business receipts and determined income of Rs. 1,32,29,932/- being 8% of cash deposits. The Assessing Officer presumed business activity of the assessee on his own without any response or reply of the assessee. The Pr. CIT passed order u/s. 263 dated 30-03-2025 thereby setting aside the assessment order passed u/s. 147 r.w.s. 144 r.w.s. 144B of the Act and directed the Assessing Officer to pass a fresh assessment order in accordance with law.

4. Being aggrieved by the order u/s. 263, the assessee filed appeal before us.

5. The ld. A.R. submitted that in the assessment order, the cash deposit was considered as business proceeds and brought at 8% was estimated at Rs. 1,32,29,932/- and undisclosed income by way of commission has been estimated at Rs. 99,140/-. Against the assessment order, the assessee filed appeal before the CIT(A) and the estimation of income on the said cash deposit of Rs. 16,53,074/- in the bank account. The ld. A.R. submitted that the assessment order cannot be treated as erroneous and it is not prima facie prejudicial to the interest of Revenue hence the question of section 263 invocation does not arise even for assessment year 2017-18. The Assessing Officer has considered bank deposits of Rs. 89,52,71,742/- as business receipts on account of assessee engaged in the recharge business and profit was estimated at 8% at Rs. 7,16,21,739/-.

The ld. A.R. submitted that the said business receipts also are identical to the assessment year 2018-19. The Assessing Officer has correctly treated bank receipt as business receipt and has estimated income on the same at Rs. 1,32,29,932/- which has been disputed u/s. 144. The ld. A.R. further relied upon the decision of the Tribunal in case of Vishal Vasudevhai Modi vs. ITO (ITA No. 910/Ahd/2023 order dated 19-03-2025).

6. The ld. D.R. relied upon the order of the Pr. CIT passed u/s. 263 of the Act and submitted that the Assessing Officer has not invoked section 69A and has not taxed the said cash deposits at a higher rate u/s. 115BBE and therefore the assessment order passed u/s. 147 r.w.s. 144 r.w.s. 144B is erroneous and prejudicial to the interest of revenue.

7. We have heard both the parties and perused all the relevant material available on record. During the submissions before us, the ld. A.R. submitted that the assessee is engaged in the business of recharge. The ld. A.R. also submitted that even for the assessment year 2017-18, the Assessing Officer considered bank deposits of Rs. 18,52,71,742/- as business receipt on account of assessee engaged in the recharge business and profit has been estimated at 8% at Rs. 7,16,21,739/-. The facts of the present assessment year i.e. assessment year 2018-19 also are same. The Assessing Officer has observed that there is no change in the business structures and correctly treated the bank receipt as business receipt and estimated the income on the same at Rs. 1,32,29,932/-. The Pr. CIT observed that the Assessing Officer in the present assessment year i.e. assessment year 2018-19 added entire cash deposits as unexplained money u/s. 69A of the Act. The assessee has not complied with the

notices before the Assessing Officer but the CIT(A) has not taken cognizance whether the assessee was continuing his business that of assessment year 2017-18 to the present assessment year i.e. assessment year 2018-19 or not. Merely observing that the Assessing Officer ought to have added entire cash deposit as unexplained money u/s. 69A of the Act will not suffice when the assessee under reopening proceedings before the Assessing Officer (u/s. 147 of the act) has not responded but at the same time the assessee's business structure has not changed from the earlier assessment year, then the Assessing Officer in his opinion has taken a plausible view which was not amount to erroneous or prejudicial to the interest of revenue. Thus, invocation of section 263 by the Pr. CIT is not justified and hence the appeal of the assessee is allowed.

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

Order pronounced in the open court on 17-07-2025

Sd/-
(Dr. BRR Kumar)
Vice President

Sd/-
(Suchitra Kamble)
Judicial Member

Ahmedabad : Dated 17/07/2025

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद