

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI**

**BEFORE MS PADMAVATHY S, AM &
SHRI MANU KUMAR GIRI, JM**

I.T.A. No. 3083/Chny/2024
(Assessment Year: 2020-21)

I.T.A. No. 3084/Chny/2024
(Assessment Year: 2021-22)

Indian Overseas Bank, 763, Annasalai, Chennai, Tamil Nadu-600002 PAN: AAACI1223J	Vs.	The PCIT, Room No. 301, Wanaparthy Block- III Floor, Mahatma Gandhi Road, Nungambakkam, Chennai, Tamil Nadu-600034.
Appellant)	:	Respondent)

Appellant /Assessee by : Mr. C. Naresh, C.A.
Revenue / Respondent by : Mr. Shiva Srinavas, CIT
Date of Hearing : 06.08.2025
Date of Pronouncement : 07.08.2025

ORDER

Per Padmavathy S, AM:

These appeals by the assessee are against different orders of the Principle Commissioner of Income Tax, Chennai-4 [In short 'PCIT'] passed under section 263 of the Income Tax Act, 1961 (the Act) both dated 08.11.2024 for Assessment Year (AY) 2020-21 & 2021-22. The assessee raised the following grounds of appeal:

AY 2020-21

“1. On the facts and circumstances of the case and in law, the Id. PCIT erred in invoking the provisions of section 263 and revising the order of AO passed u/s 143(3) dated 28/09/2022 without coming to conclusion the order was erroneous but merely by directing the AO to re-examine various issues.

2. On the facts and circumstances of the case and in law, the Ld PCIT erred in passing the order u/s 263 without taking into consideration the specific submissions made by appellant to the show cause notice.

Without prejudice to above grounds on jurisdiction, even on merits -

3. On the facts and circumstances of the case and in law, the Ld PCIT erred in directing the AO to verify the claim in respect of recovery of bad debts written off not allowed as deduction even when the claim related to rural advances which was never claimed as deduction.

4. On the facts and in the circumstances of the case and in law, the Ld PCIT erred in directing the AO to verify the notional gain on foreign Currency Transitional Reserve (FCTR) which was correctly offered to tax as per ICDS VI.

5. On the facts and circumstances of the case and in law, the Ld. PCIT erred in directing the AO to verify the sale consideration of assets sold to ARC without considering the submissions made by appellant.

6. On the facts and in the circumstances of the case and in law interest on IPDI bonds were correctly claimed and these bonds were fully repaid establishing the fact that these are borrowings and therefore order of AO allowing interest thereof is not erroneous and prejudicial to revenue.

7. On the facts and in the circumstances of the case and in law, the Id. PCIT erred in directing the AO to examine the issue of interest accrued but not due without any basis.”

AY 2021-22

“1. On the facts and circumstances of the case and in law, the Id. PCIT erred in invoking the provisions of section 263 and revising the order of AO passed u/s 143(3) dated 28/09/2022 without coming to conclusion the order was erroneous but merely directing the AO to re-examine various issues.

2. On the facts and circumstances of the case and in law, the Ld PCIT erred in passing the order u/s 263 without taking into consideration the specific submissions made by appellant to the show cause notice.

Without prejudice to above grounds on jurisdiction, even on merits-

3. On the facts and in the circumstances of the case and in law, the Ld. PCIT erred in concluding that the provision for leave salary is contingent only for the reason that it was payable on death or retirement and directing the AO to verify the same without appreciating the fact that the liability accrued during the year and was determined based on actuarial valuation.

4. On the facts and in the circumstances of the case and in law, the Ld PCIT erred in directing the AO to verify the notional gain on foreign Currency Transitional Reserve (FCTR) which was correctly offered to tax as per ICDS VI.

5. On the facts and circumstances of the case and in law, the Ld. PCIT erred in directing the AO to verify the sale consideration of assets sold to ARC without considering the submissions made by appellant.

6. On the facts and in the circumstances of the case and in law the Id. PCIT erred in directing the AO to examine the issue of interest on Innovative Perpetual Debt Instruments without taking into consideration the submissions of appellant that no such interest was paid by appellant during the previous year.”

2. The assessee is a nationalized bank. The assessee filed the return of income for AY 2020-21 on 13.02.2021 declaring a total loss of Rs. 153,44,11,07,507/- and for AY 2021-22 on 14.03.2022 declaring a loss of Rs. 1859,95,78,311/-. The case of both AYs were selected for scrutiny and the Assessing Officer (AO) completed the assessment assessing the income of the assessee for AY 2020-21 at Rs. 3573,35,91,905/- and for AY 2021-22 at Rs. 4,73,78,64,705/- after making various additions/disallowances. Subsequently, the PCIT issued a show-cause notice under section 263 stating that the order of the AO is erroneous and prejudicial to the interest of the revenue. The relevant observations of the PCIT while invoking the powers under section 263 for the years under consideration are extracted below:

AY 2020-21

“02 From the records, it is observed that for the relevant year the assessee had not offered for taxation, the interest accrued on securities but not received for an amount of Rs. 112.32 crores. Since the assessee is following mercantile system of accounting, this interest of Rs. 112.32 crores should have been offered for taxation. Even the AO while passing the assessment order dated 28-09-2022 failed to make this addition.

2.1 Further from the records, it was observed that for the relevant year the assessee has excluded an amount of Rs. 7.32 crores related to write back of bad debts on the ground that the same was not allowed as a deduction in the preceding year(s). However, the AO failed to examine as to in which of the years the said amount of Rs. 7.32 crores was claimed as a deduction by the assessee but not allowed.

2.2 It was further noted that the assessee has earned substantial income on account of gain in Foreign Currency Translation Reserve (FCTR). However, this amount was not offered for taxation on the ground that the same is only a notional gain. It is relevant to note that as per the provision of Section 43AA the gains arising on account of change in foreign exchange rates shall be treated as income in respect of all foreign currency transaction including those related to foreign currency translation reserves. Therefore, the AO while completing the assessment should have made additions in respect of the said gain in FCTR.

2.3 It was further noted that during the relevant year the assessee has received an amount of Rs. 377.05 crores on account of sale of distressed assets to ARCs which comprised of cash component and component related to investment in shares of ARCs. However, only the cash component of the consideration received from ARCs was offered for taxation by the assessee. Since the assessee is following mercantile system of accounting, the component related to investment in shares of ARCs should have also been offered for taxation. The AO while completing the assessment had omitted to examine this issue and make appropriate addition.

2.4 Similarly, the AO has failed to examine the allowability of deduction in respect of interest paid on IPDI bonds which is mandatorily to be paid out of appropriation of profits.”

AY 2021-22

“02. From the records, it was observed that for the relevant year the assessee has wrongly claimed the unpaid amount of leave encashment/ leave salary of Rs. 80 crores as a deduction while computing the taxable profits which as per the provisions of sec. 438 is to be allowed only on actual payment basis. The AO while completing the assessment on 27-12-2022 had omitted to make this addition.

2.1 It was further noted that the assessee had earned income on account of Foreign Currency Translation Reserve (FCTR), However, this amount was not offered for taxation on the ground that the same is only a notional gain. As per the provisions of Section 43AA, the gains arising on account of change in foreign exchange rates shall be treated as income in respect of all foreign currency transaction including those related to foreign currency translation reserves. Therefore, the AO while completing the assessment should have made additions in respect of the said gains on account of FCTR, which was omitted.

2.2 It was further noted that during the relevant year the assessee had received an amount of Rs. 423.8 crores on account of sale of distressed assets to ARCs which comprised of cash component and component in the form of investment in shares of ARCs. However, only the cash component of the consideration received from ARCs was offered for taxation by the assessee. Since the assessee is following mercantile system of accounting, the component received in the form of investment in shares of ARCs should have also been offered for taxation.

2.3 Moreover, the AO had failed to examine the allowability of deduction in respect of interest paid on IPDI bonds which is mandatorily to be paid out of appropriation of profits.”

3. In response to the show-cause notice under section 263 the assessee filed detailed response with respect to each of the points. The assessee further submitted that the issues for which the PCIT has invoked the provisions of section 263 have already been verified by the AO during the course of assessment proceedings and that the AO in the draft assessment order had proposed to make the additions/disallowances pertaining to the same issued which the PCIT is holding as not being verified by the AO. The assessee also submitted that the AO after

considering the details furnished with respect to each of the additions/disallowances made the conscious decision to allow the claim of the assessee while passing the final assessment order. Accordingly, the assessee submitted that there is no error which is prejudicial to the interest of the revenue in the order passed by the AO under section 143(3) of the Act. The PCIT however, did not accept the submissions of the assessee and held that the AO failed to conduct the appropriate enquiry and accordingly partially set-aside the order of the AO with a direction to re-examine the issues and take appropriate action as per law. The assessee is in appeal before the Tribunal against the order of the PCIT.

4. The ld. AR at the outset submitted that the PCIT while setting aside the order passed under section 143(3) has not given any specific finding with regard to the error that is prejudicial to the interest of the revenue. The ld. AR further submitted that the PCIT has held that the AO has failed to examine the issue in depth and directed the AO to take appropriate action as per law which does not mention the errors in the order of the AO with respect to the issues. The ld. AR took the Bench through the proposed disallowances/additions in the draft assessment order for which the PCIT has invoked the provisions of section 263. The ld. AR further took the Bench through the detailed submission made before the AO with regard to each of the issues and submitted that the AO after considering the submissions of the assessee has taken the conscious decision to accept the contentions of the assessee. Accordingly, the ld. AR argued that invoking explanation (2) to section 263 in assessee's case. The ld. AR submitted that the PCIT has exercised the powers under section 263 in assessee's own case for earlier years on similar grounds and that the Co-ordinate Bench for AY 2019-20 (ITA No. 1569/Chny/2024 dated 18.12.2024) and for AY 2016-17 & 2017-18 (ITA No. 1570 & 1571/Chny/2024 dated 18.12.2024) has quashed the order of the PCIT. Therefore the ld AR submitted that

the issue for the years under consideration is covered by the above decision of the coordinate bench.

5. The Id. DR on the other hand vehemently argued that the AO has passed an order giving effect to the revision order under section 263 and that the assessee is in appeal before the CIT(A) against the order under section 143(3) r.w.s. 263 of the Act. The Id DR further argued that the PCIT in the revision order has only directed the AO re-examine certain issues and therefore there is no injustice caused to the assessee. The Id. DR further argued that the PCIT has given specific findings with regard to each of the issues elaborating the failure on the part of the AO to verify. Accordingly, the Id. DR supported the order of the PCIT.

6. We heard the parties and perused the material on record. From the perusal of the order under section 263, we notice that the PCIT has invoked the provisions of section 263 for the reason that the AO failed to conduct appropriate enquiry with respect to the following issues:

AY 2020-21

- (i) *in respect of not offering the write back of bad debts written off in earlier years of Rs. 7.32 crores for taxation,*
- (ii) *in respect of deduction claimed of Rs. 97.63 Crores which is claimed by the assessee to be the FCTR loss in respect of monetary items and the taxability of the FCTR gain of Rs.224.06 crores which is claimed by the assessee to be in respect of non-monetary items,*
- (iii) *in respect of whether the consideration received on sale of distressed assets in the form of investments in ARCs of Rs. 101.32 cores, has been duly offered for taxation and*
- (iv) *in respect of allowability of deduction of interest on IPDI Bonds which as per RBI can only be paid out of appropriation of profits.*

AY 2021-22

- (i) *in respect of the allowability of the claim of deduction of leave encashment of Rs. 80 crores, the liability of is contingent to death or retirement of an employee,*
- (ii) *in respect of deduction claimed of Rs. 221.68 Crores which is claimed by the assessee to be the FCTR loss in respect of monetary items and the taxability of the FCTR gain of Rs.182.36 crores which is claimed by the assessee to be in respect of non-monetary items,*
- (iii) *whether in respect of the gain shown on sale of distressed assets to ARCs, the sale consideration adopted is of only the cash component without considering the amount of Rs.80.07 crores received by way of investment in ARCs and*
- (iv) *in respect of allowability of deduction of interest on IPDI Bonds which as per RBI can only be paid out of appropriation of profits.*

7. In this regard we notice that the AO while passing the draft assessment order (Page 23 to 40 of PB for AY 2021-22 and pg. 1 to 21 of PB for AY 2020-21) has considered each of the above issues proposing the additions/disallowances in this regard. We further notice that the assessee has filed a detailed reply in response to the proposed disallowances/additions by the AO (page 22 to 37 in PB for AY 2020-21 and page 41 to 52 in PB for AY 2021-22). Accordingly, we see merit in the contention of the assessee that the AO has conducted enquiry and passed the final assessment order after considering the detailed response filed by the assessee. Further we notice that in assessee's own case for AY 2019-20 the PCIT has invoked the provisions of section 263 for similar reason of AO not conducting adequate enquiry with regard to certain disallowances / additions and the Co-ordinate Bench while considering the appeal filed against the order under section 263 has held that

“6. We have heard the rival contentions, perused the materials available on record and gone through the orders of the lower authorities. In the circumstances before adjudicating the issues arising from the impugned order, we have to first examine the scope of revisional jurisdiction u/s. 263 of the Act. For that, let us take the guidance of judicial precedence 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 should be satisfied before jurisdiction u/s.263 of the Act is exercised by the Ld.CIT. The twin conditions which need to be satisfied are that

- (i) the order of the Assessing Officer must be erroneous and
- (ii) as a consequence of passing an erroneous order, prejudice is caused to the interest of the Revenue.

In the following circumstances, the order of the AO can be held to be erroneous i.e.

- (i) if the Assessing Officer's order was passed on assumption of incorrect facts; or assumption of incorrect law;
- (ii) Assessing Officer's order is in violation of the principles of natural justice;
- (iii) if the AO's order is passed without application of mind; or (iv) if the AO has not investigated the issue before him.

6.1 In the circumstances enumerated above only the order passed by the Assessing Officer can be termed as erroneous for the purpose of Section 263 of the Act. Coming next to the second limb, the AO's erroneous order can be revised by the Ld. CIT only when it is shown that the said order is 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 the interest of the revenue" has to be read in conjunction with an "erroneous" order passed by the Assessing Officer. The Hon'ble Supreme Court held that for invoking powers conferred by Section 263; the CIT should not only show that the AO's order is erroneous as a result of any of the situations enumerated above but CIT must also further show that as a result of an erroneous order, some loss is caused to the interest of the revenue. Their Lordship in the said judgment held 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. It was further observed that when the Assessing Officer adopts 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 Ld. CIT does not agree, it cannot be treated as an order prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law.

6.2 Keeping the aforesaid legal principles in mind when we apply the same to the facts of the present case, we note that the issues that has been raked up by the Ld.PCIT in the present case,

emanated from perusal of order u/s.143(3) of the Act of the AO dated 30.09.2021 for the A.Y. 2019-20:

- TDS U/S.194 - IA
- Rule 87
- Income u/s.41(1)
- Employee Stock Purchase Scheme(ESPS)
- Provisions Contingencies
- ARC Sale
- Wage Revision
- Depreciation on securities
- Top Ten NPA Borrowers

6.3 The ld.PCIT was of the view that the action of the AO was erroneous and prejudicial to the interest of Revenue and by setting aside the AO's order u/s.143(3) of the Act directed the AO to examine the above issues and take appropriate action as per the law for the A.Y. 2019-20.

6.4 The aforesaid assertion of the ld.PCIT that the AO while scrutinizing the assessment has failed to verify the issues stated (supra) is contrary to the facts revealed from the records and found to be incorrect assertion of the Ld.PCIT. This fact is revealed from perusal of the details / documents filed before us that the AO had selected for scrutiny assessment to verify various issues stated supra, which includes the following issues raked up by the ld.PCIT in his order.

Issues raised	Para of Notice U/s.142(1)	Response given in
TDS U/S.194IA	Page 2 Para 4	Page 2 & 3 Para 4
Rule 87	Page 4 Para 10	Page 6 Para 10
Depreciation on Securities	Page 4 Para 15	Page 8 para 15 - annexure 5
Top 10 NPA borrowers	Page 4 Para 12	Page 7 para 12 - annexure 4

6.5 These issues under the order of the AO u/s.143(3) of the Act, are considered by the AO specifically raised the question by issuing notice to the assessee and the same have been addressed by written submissions and the AO has drawn conclusions in accordance with law while framing the assessment orders. Therefore, the action of the AO allowing the claim of assessee cannot be held to be erroneous as well as prejudicial to the Revenue.

6.6 Further, as submitted by the assessee and perusal of the documents, we note that the following issues are part of the disclosure shown in the annual report of the assessee and the computation of income reported:

- Employee Stock Purchase scheme
- Provisions and contingencies
- ARC Sales - Wage Revision
- Income u/s.41(1)

6.7 We note that out of these issues, on the issue of ARC Sales the ld.PCIT has stated that AO had failed to examine the provision made against the gross book value. In our opinion and as seen from the records, when the aggregate value (net of provisions) of accounts has been clearly reduced from the aggregate sale consideration to arrive the gain over the net book value, again verifying the provision figure becomes futile exercise. In respect of other issue i.e. taxability of income u/s.41(1) of the Act, when the expenditure is itself is based on the approved amount for expenditure without having balance liability on account of such expenditure in the Balance sheet, the question of applying section 41(1) of the Act based on the write off made by the vendors does not arise.

6.8 Therefore, the findings of the ld.PCIT on these two issues lacks merit and hence the order of the AO cannot be treated as erroneous. Therefore, the ld.PCIT has erred in treating the said order as erroneous and prejudicial to the interest of the revenue.

7. We also note that in respect of other 3 issues namely i) Employee Stock Purchase scheme, ii) Provision and contingencies and iii) Wage revision, the ld.PCIT had not formed an opinion that the order of AO was erroneous and prejudicial to the interest of the revenue but merely set aside the order of AO without drawing a conclusion based on facts and law that the order is erroneous and prejudicial to the interest of the revenue. Therefore, we concur with the assessee's reliance on the following decisions of Hon'ble Courts:

- Delhi High court - Vikas Polimers (194 Taxman 57)
- Bombay High Court - Gabreil India Ltd (71 Taxman 585) and
- ITAT Ahmedabad - Comtrade Commodities Services Ltd (156 taxmann,com 369).

Therefore, the AO has considered the submissions and assessment records available and framed the assessment, cannot be found faulted with by the ld.PCIT.

8. In the light of the aforesaid facts, we are of the view that the assessee succeeds and the ld. PCIT(TP) erred in invoking his jurisdiction u/s.263 of the Act and hence the same is quashed for 2019-20.”

8. We from the perusal of the order under section 263 notice that for each of the issues the PCIT has not given any specific finding as to the error in the order of the AO which is prejudicial to the interest of the revenue but has merely set-aside the order of the AO with a direction to conduct further enquiry and decide in accordance with law. In our considered view the PCIT without drawing any conclusion based on facts or on law that the order of the AO is erroneous and prejudicial to the interest of the revenue cannot assume jurisdiction under section 263. From the perusal of the draft order and the details furnished by the assessee, we are inclined to agree with the argument that the AO has conducted enquiry with regard to each of the issues and has taken a conscious decision to accept the submissions while passing the final assessment order. The mere fact the AO has not given an elaborate finding with respect to the additions / disallowances cannot be the reason for holding that the AO has not made the enquiry more so when the AO in the draft assessment order has specifically proposed the additions / disallowances. It is a settled position that the AO's order not containing detailed finding cannot be the reason for exercising powers under section 263 since the same be beyond the control of the assessee.

9. The ld. AR during the course of hearing submitted that on merits the issues for which revision is done under section 263 are held in favour of the assessee by the decisions of the coordinate bench. This fact makes it clear that the impugned issues are debatable and on that count also the revision under section 263 is not tenable as has been held by the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd (supra), where it is held that "***** *The phrase prejudicial to the*

interests of the revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the Income-tax Officer is unsustainable in law". There is no dispute that under section 263 of the Act, the PCIT does have the power to set aside the assessment order and send the matter for a fresh assessment if he is satisfied that further enquiry is necessary and the assessment order is prejudicial to the interests of the Revenue. However, in doing so, the PCIT must have some material which would enable to form a prima facie opinion that the order passed by the AO is erroneous, insofar as it is prejudicial to the interests of the Revenue. As already mentioned, the PCIT has not recorded any finding with regard to the error of fact or law that is prejudicial to the interest of the revenue in the given case of the years under consideration. In view of these discussions and respectfully following the decisions of the Co-ordinate Bench in assessee's own case on identical facts for AY 2009-10, we hold that the order of the PCIT for AY 2020-21 & 2021-22 is without jurisdiction and is liable to be quashed.

10. In result the appeal of the assessee for AY 2020-21 and 2021-22 are allowed.

Order pronounced in the open court on 07-08-2025.

Sd/-
(MANU KUMAR GIRI)
Judicial Member

*SK, Sr. PS

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Chennai
4. CIT, Chennai
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