

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA**

**BEFORE SHRI RAJESH KUMAR, AM  
AND  
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No.2452/KOL/2024  
(Assessment Year:2015-16)**

**Kush Trading & Commerce Pvt.  
Ltd.**

C/o Raipur Nuclear Care Center,  
Ward No.16, Rajpur-492001

**(Appellant)**

**PAN No. AABCK2078G**

**Income Tax Officer,  
Ward 4(4)**

P-7, Chowringhee Square,  
Aayakar Bhavan, Kolkata-700069  
West Bengal

**(Respondent)**

**Vs.**

**Assessee by** : Shri Sunil Surana, AR  
**Revenue by** : Shri Raja Sengupta, DR

**Date of hearing:** 17.07.2025  
**Date of pronouncement:** 26.08.2025

**ORDER**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the revisionary order of the Pr. Commissioner of Income Tax, Kolkata (hereinafter referred to as the "Ld. PCIT"] dated 11.05.2020 for the AY 2015-16.

02. At the outset, we observed that the appeal of the assessee is delayed by 1595 days in filing the appeal for which the assessee filed the condemnation petition along with the affidavit of the Charter Accountant of the assessee Shri Gaurav Aggarwal.

03. We find from the perusal of the said affidavit that the copy of the revisionary order under section 263 of the Income-tax Act, 1961 (the Act) was handed over to him on 15.02.2020 for filing the appeal, however, the same was misplaced by him which was Covid period and it is only on 25.10.2024 when the assessee enquired from him about the status of the appeal, the counsel of the assessee told that the appeal has not been filed and thereafter, the documents were located and the appeal was filed within a delay of 1595 days. It was submitted before us by the counsel of the assessee that the assessee has not gained in any manner by the delayed filing of appeal and though the delay has happened on the part of the assessee for which the assessee cannot be penalized.

04. After considering the reasons cited before us, we are inclined to condone the delay.

05. The only issue raised in the grounds of appeal is against the invalid exercise of jurisdiction by the Id. PCIT on the proposal moved by the Id. AO.

06. The facts in brief are that the assessee filed the return of income on 30-09-2015, declaring dividend income at ₹nil, which was processed under section 143(1) of the Act. Thereafter, the case of the assessee was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS) and passed order under section 143(3) of the Act, accepting the returned income. Thereafter, the Id. AO detected an error in the assessment order and accordingly, moved a proposal to the Office of the Id. PCIT for review of the assessment order under section 263 of the Act. The Id. PCIT on perusal of the proposal from

the AO observed that prima facie it appeared that Id. AO had failed to take logical action on the information available with him and accordingly, the impugned assessment is erroneous and prejudicial to the interests of the Revenue. Accordingly, show cause notice under Section 263 of the Act was issued on 6-3-2020, pointing out the discrepancy in the assessment order. Finally, the learned PCIT revised the order by directing the AO to frame the assessment denovo after giving an opportunity of hearing to the assessee.

07. The Id. Counsel for the assessee vehemently submitted before us that the revisionary jurisdiction has been invoked by the Learned PCIT merely on the proposal moved by the Learned AO and the Id. PCIT without having recording any satisfaction passed order under Section 263 of the Act. The Id. PCIT merely relied on the information moved in the proposal and simply revised the order thereafter, without giving his own finding on the issue as to how the assessment framed is erroneous and prejudicial to the interest of the revenue. The counsel submitted that the order passed by the PCIT on the proposal of the AO is invalid and may be quashed. The assessee, in defense of his argument, relied on the following decisions: -

- a. Judgement of the Kolkata ITAT in case of Sinhotia Metals & Minerals Pvt Ltd in ITA No. 889/Kol/2017 pronounced on 16.01.2019.
- b. Judgement of the Calcutta High Court in case of Sinhotia Metals & Minerals Pvt Ltd in IA No. GA/1/2019 pronounced on 07.01.2022.

c. Judgement of the Kolkata ITAT in the case of Karabi Dealers Pvt Ltd vide ITA No.389/Kol/2021 pronounced on 02.11.2022.

d. Judgement of the Calcutta High Court in case of Karabi Dealers Pvt Ltd in IA No. GA/1/2023 pronounced on 12.04.2023.

08. The learned year, therefore, prayed that the divisionary order passed by the learned PCIT may kindly be quashed.

09. The Id. DR, on the other hand, relied on the order of the learned PCIT.

010. After hearing the rival contentions and perusing the materials available on record, we find that apparently the jurisdiction under section 263 of the Act was invoked upon a proposal was received from the Learned AO that in assessment frame under section 143 (3) of the Act, there are certain mistakes and the learned PCIT acting on the said proposal initiated the proceedings under Section 263 of the Act. We note that even in the order framed under Section 263 of the Act, the Id. PCIT has not recorded his own satisfaction as to how the assessment order is erroneous and prejudicial to the interests of the revenue. The case of assessee finds support from the decision of Delhi High Court in the case of D. G. Housing vs. ITO [2012] 343 ITR 329(Del) wherein the Hon'ble High Court has held that it is incumbent upon the PCIT to record an objective finding as to how the issues raised in the revisionary proceedings has rendered the assessment as erroneous.

011. Besides, the case is squarely covered by the decision of the Hon'ble Jurisdictional High Court in the case of Sinhotia Metals &

Minerals Pvt Ltd (*supra*), Karabi Dealers Pvt Ltd. (*supra*) wherein the Hon'ble Court has held that PCIT cannot invoke the jurisdiction at the instance of the AO. Consequently, we quash the order of the Id. PCIT by allowing the appeal of the assessee.

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

Order pronounced in the open court on 26.08.2025.

Sd/-  
(PRADIPKUMAR CHOUBEY)  
(JUDICIAL MEMBER)

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Kolkata, Dated: 26.08.2025

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Kolkata