

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE: SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND  
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 615/Ahd/2025  
(निर्धारण वर्ष / Assessment Year : 2018-19)

<b>Air Wind Green Energy Limited</b> 110, Swaraparklane, First Floor, Near Atabhai Chowk, Bhavnagar, Gujarat -364002	<b>बनाम/</b> Vs.	<b>The PCIT</b> Ahmedabad-1, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AANCA9739J		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Varis Isani, Advocate
प्रत्यर्थी की ओर से/Respondent by :	Shri Sher Singh, CIT.DR

<b>Date of Hearing</b>	12/08/2025
<b>Date of Pronouncement</b>	08/09/2025

**(आदेश)/ORDER**

**PER ANNAPURNA GUPTA, AM:**

The present appeal has been filed by the assessee against the order of the Ld. Principal Commissioner of Income Tax, (hereinafter referred to as “PCIT”), dated 12.03.2025 passed under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) and relates to Assessment Year (A.Y.) 2018-19.

2. The grounds raised by the assessee are as under:

“1. The Lrd. Principal Commissioner of Income Tax Ahmedabad-1 (for short "Assessing Officer PCIT.") has erred in passing the

*order u/s. 263 of the Income Tax Act wherein there was no error in the order passed by the assessing authority u/s. 147 r.w.s. 144 r.w.s. 144B of the Income Tax Act for A.Y. 2018-19 the assessing officer, National Faceless Assessment Centre, New Delhi added income of Rs. 51,87,600/-.*

2. *The Lrd. Principal Commissioner of Income Tax Ahmedabad-1 has grievously erred in law in initiating penalty proceeding u/s.270A(9) of the Income Tax Act, First time in the revision proceedings. The action of the Lrd. PCIT is highly unjustifiable, unlawful, unwarranted and without jurisdictions. The order passed by the Lrd. PCIT to modified the original assessment order to the extent of levy of penalty u/s. 270A(9) of the IT Act deserves to be quashed and set aside.*
3. *The Lrd. Principal Commissioner of Income Tax Ahmedabad-1 has grievously erred in law in initiating penalty proceedings first time in the revision u/s. 263 of the IT Act. As AO has not initiate penalty proceedings in the original assessment order, the Lrd. PCIT has no power to initiate new proceedings like penalty. The Lrd. PCIT can only revise existing order. Therefore, the order of Lrd. PCIT is highly unjustifiable and bad in law.*
4. *The Lrd. Principal Commissioner of Income Tax Ahmedabad-1 erroneously issued the notice u/s. 263 for revision of the assessment proceedings without any legal stand hence, bad in law. In absence of any erroneous order and iota of evidence which is prejudicial to the interest of revenue, the action of the Lrd. PCIT for issuing notice and proceeding u/s. 263 of the Income Tax Act is highly unjustifiable and unlawful.*
5. *The appellant craves leave to add, alter, vary, omit, withdraw or amend any of the grounds of appeal and to submit such statements, documents and papers as may be considered necessary either at or before the hearing of this appeal so as to enable the Hon'ble ITAT to decide this appeal according to law.”*

3. A perusal of the order of the Ld. PCIT reveals that he had assumed jurisdiction to revise the assessment order passed in the case of the assessee u/s.147 of the Act noting that the AO had erroneously disallowed bogus purchases made by the assessee

u/s.37 (1) of the Act while he should have invoked section 69C, of the Act for the said purpose. The Ld. PCIT noted that re-assessment proceedings in the case of the assessee had been initiated on information received by the AO that the assessee had entered into transaction with one Sharukhan Jamiyatkhan Pathan which transaction was bogus and on which input tax credit had been availed. He noted that while the AO had made addition on account of bogus accommodation entry of Rs.51,87,600/-, however, while doing so he had disallowed purchases u/s.37(1) of the Act, but, not invoked the provisions of Section 69C of the Act. The assessee was confronted with the said error noted by the Ld. PCIT and after considering the submissions filed by the assessee, the Ld. PCIT held that there was no error in the order of the AO for not invoking Section 69C of the Act while disallowing the bogus purchases made by the assessee. However, he went on to hold that since admittedly the assessee had taken bogus accommodation entry of purchases, the AO had erred in not initiating penalty proceedings u/s.270A(9) of the Act. Accordingly, he directed the AO to initiate penalty proceedings u/s.270A(9) of the Act for under reporting of income as a consequence of mis-reporting thereof. Thus, the Ld. PCIT exercised revisionary jurisdiction solely for the purpose of directing the AO to initiate penalty proceedings u/s.270A(9) of the Act for under reporting its income as a consequence of mis-reporting.

The Ld. Counsel for the assessee stated that the judicial authorities in various decisions have consistently held that revisionary powers u/s.263 of the Act cannot be exercised on an assessment order merely for the purpose of directing the initiation of penalty proceedings. He pointed out that the ITAT in the context of levy penalty u/s.270A of the Act had held so in the following cases:

- i. M/s. G M Builders, Mumbai vs. PCIT in ITA No.2192/Mum/2024, dated 12.03.2025
- ii. Vikas Vijay Gupta vs. PCIT in ITA No.404/Ahd/2024
- iii. Mikuni India Private Limited vs. PCIT in ITA No.745/JPR/2024, dated 26.12.2024

Copies of orders were placed before us.

4. Ld. DR, however, heavily supported the order of the PCIT, though, he was unable to draw our attention to any contrary decision of either the ITAT or the higher authorities upholding the exercise of revisionary jurisdiction for initiation of penalty proceedings in assessment orders as valid.

5. We have heard the contentions of both the parties and gone through the order of the Ld. PCIT. Undoubtedly, the assessment order passed in the case of the assessee u/s.147 of the Act was found to be erroneous causing prejudice to the Revenue by the Ld. PCIT on account of the AO having not initiated penalty

proceedings for mis-reporting of income for under reporting of income as a consequence of mis-reporting of income u/s.270A(9) of the Act. Ld. Counsel for the assessee has pointed out that the issue stands squarely covered in favour of the assessee by various decisions of the Co-ordinate Benches of ITAT has noted above in our order.

6. We have gone through the said decisions and we have noted that in the case of M/s. G M Builders, Mumbai (supra), the ITAT took note of the decision of the Hon'ble Delhi High Court in the case of Addl. CIT v/s J.K. D's Costa, reported in [1982] 133 ITR 7 (Delhi), wherein Hon'ble High Court was seized with an identical case wherein revisionary powers were assumed for directing initiation of penalty proceedings u/s.271(1)(c) of the Act . Hon'ble High court noted that assessment proceedings and penalty proceedings are separate proceedings and when the Commissioner is dealing with assessment proceedings u/s.263 of the Act, he cannot expand the scope of these proceedings and to view the penalty proceedings also as part of the proceedings which are being sought to be revised by him. The High Court noted that the requirement of initiation of penalty proceeding during assessment by law need not necessarily be by way of recording the same in the assessment order. The Hon'ble High Court held that it would suffice if there were some records somewhere, even apart from the assessment order itself, that the ITO records his satisfaction that the assessee is guilty of concealment or other default for which

penalty action is called for. The High Court noted that in certain cases it is possible for the AO to issue a penalty notice or initiate penalty proceedings even before the assessment is completed though the actual penalty order cannot be passed until the assessment finalised. Noting so, therefore, that assessment proceedings are separate from penalty proceedings the Hon'ble High Court held the assessment order cannot be held to be erroneous for not having initiated penalty proceedings therein. This proposition of law has been reiterated by the ITAT in the case of Vijay Vikas Gupta(supra) & Mikuni India (P) Ltd. (supra).

7. Since the judicial position on this issue is in favour of the assessee and no contrary view of any higher judicial authority has been brought to our notice, we hold that the order passed in the present case u/s.263 of the Act directing initiation of penalty u/s 270A of the Act in the assessment order made in the case of the assessee, is beyond the powers prescribed as per law. The order passed u/s 263 of the Act is therefore held to be not sustainable in law.

8. In the result, appeal filed by the assessee is allowed.

<b>This Order pronounced on</b>	<b>08/09/2025</b>
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Sd/-  
(T.R. SENTHIL KUMAR)  
**JUDICIAL MEMBER**

Ahmedabad; Dated 08/09/2025  
S. K. SINHA

Sd/-  
(ANNAPURNA GUPTA)  
**ACCOUNTANT MEMBER**

TRUE COPY

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad