

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
ITA Nos.246 to 248 & 223/SRT/2024
AYs: (2013-14 to 2015-16 & 2016-17)
(Physical Hearing)

Sachin Notified Area, Plot No.5719, Unnati Building, Sachin GIDC, Sachin, Surat – 394230, Gujarat	Vs.	The PCIT - 1, Surat
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAALS0146H

(Appellant)

(Respondent)

Appellant by	Shri P. M. Jagasheth, CA
Respondent by	Shri Mukesh Jain, CIT-DR
Date of Hearing	04/09/2025
Date of Pronouncement	10/09/2025

आदेश / O R D E R

PER BENCH:

These four appeals by the assessee emanate from the orders passed under section 263 of the Income-tax Act, 1961 (in short, 'the Act') dated 09.02.2024 and 21.02.2024 by the learned Principal Commissioner of Income-tax - 1, Surat [in short, 'Id. PCIT'] for the assessment years (AYs) 2013-14 to 2015-16 and 2016-17 respectively. Since facts are same, with consent of both parties, the cases were heard together; and a common order is passed for the sake of convenience and brevity. ITA No.246/SRT/2024 for AY 2013-14 is taken as 'lead' case.

2. The grounds of appeal in ITA No.246/SRT/2024 are as under:

"1. On the facts and in the circumstances of the case as well as law on the subject, the learned Pr. Commissioner of the Income Tax has grievously erred in initiating the proceedings u/s.263 of the Act, 1961.

2. *On the facts and in the circumstances of the case as well as law on the subject, the learned Pr. Commissioner of the Income Tax has grievously erred in assuming jurisdiction u/s 263 of the Act, 1961.*

3. *On the facts and in the circumstances of the case as well as law on the subject, the learned Pr. Commissioner of the Income Tax has erred in violating the principles of natural justice by not the mentioning the grounds for initiating action u/s.263 of Income Tax Act, 1961 in the show cause notice issued. As such the order passed u/s 263 is void ab initio. The action of the Ld. CIT was wholly unreasonable, uncalled for the bad in law.*

4. *On the facts and in the circumstances of the case as well as law on the subject, that the order of u/s.263 is merely 'change in opinion'. The action of the Ld. Pr. CIT was wholly unreasonable, uncalled for and bad in law.*

5. *On the facts and in the circumstances of the case as well as law on the subject, the learned Pr. Commissioner of Income Tax has grievously erred in assuming that the Learned Assessing Officer had not verified the Return of Income, Computation of income and claim of deduction u/s.10(20) of the Income Tax Act, 1961, Balance Sheet, Income and Expenditure Account, books of account etc. during the course of assessment proceedings and without made proper inquiry on finalized the orders of assessment is contrary to the fact of the case.*

6. *On the facts and in the circumstances of the case as well as law on the subject, the learned Pr. Commissioner of Income Tax has grievously erred in assuming that the Learned Assessing Officer had not verified that the interest income from FDR to identify the income as income from other sources.*

7. *On the facts and in the circumstances of the case as well as law on the subject, the entire proceedings are bad-in-law and invalid as assessment order for the same year was framed, wherein due inquiry was made.*

8. *On the facts and in the circumstances of the case as well as law on the subject, the learned Pr. Commissioner of Income Tax has grievously erred in setting aside the assessment order u/s.147 rws.144B of the Act without pointing out as to how the order is erroneous and prejudicial to interest of revenue.*

9. *It is therefore prayed that the above proposed proceedings may please be revoked as learned members of the tribunal may deem it proper.*

10. *Appellant craves liberty to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal."*

3. Brief facts of the case are that assessee filed his return of income for AY.2013-14 on 29.03.2014, declaring Nil income after claiming deduction of Rs.3,76,57,712/- u/s 10(20) of the Act. The case was processed u/s 143(1) by

accepting the returned income. Subsequently, the case was re-opened u/s 147 of the Act in view of the decision of Hon'ble Supreme Court in case of New Okhla Industrial Development Authority (Noida) vs. CCIT, 95 taxman.com 58 (SC) and re-assessment was completed u/s 144 r.w.s. 144B on 30.03.2022, determining total income at Rs.3,76,57,512/- by disallowing exemption of Rs.3,76,57,512/- claimed u/s 10(20) of the Act.

4. The Id. PCIT called for the assessment records and examined the same. He found that the assessee had received Rs.9,16,72,902/- towards interest on FDR, which was not routed through the Income and Expenditure account but was directly shown in the balance sheet as capital fund under the head "Reserve and Surplus". Such income was required to be added to the assessee's total income under the head 'Income from other sources' as the assessee was not eligible to claim exemption u/s 10(20) of the Act. Since the AO failed to make the above addition, the Id. PCIT, after considering decisions in cases of Parulbhai Patel vs. ACIT, 367 ITR 234 (Guj.), Jet Airways, 331 ITR 236 (Bom.) and CIT-1 vs. Amitabh Bachchan, 384 ITR 200 (SC), held that the assessment order dated 30.03.2022 by the AO was erroneous in so far as it is prejudicial to the interests of revenue u/s 263 of the Act. He issued show cause notice to the assessee, which is at pages 8 and 9 of the order u/s 263 of the Act. The reply of the assessee in para 4.1 at pages 9 and 10 of the order u/s 263 of the Act. The finding of the Id. PCIT is at para 5 to 8 of the order u/s 263 of the Act. The appellant had submitted that appeal against order u/s 263 of the Act for AY 2017-18, in which identical issue was involved, was allowed by the Surat Tribunal in ITA

No.343/SRT/2022, dated 26.06.2023 and hence, the proceedings were initiated u/s 263 of the Act may be quashed. The Id. PCIT did not accept the plea of the assessee by observing that the decision of the ITAT has not been accepted by the Department and further appeal has been preferred before the Hon'ble Gujarat High Court. Therefore, the issue is subjudice and to keep the issue alive, the order u/s 263 of the Act is being passed. The Id. PCIT also observed that the AO passed the assessment order without verification/inquiry, application of mind and law on the issue and failed to make addition to the total income of the assessee as per law, which should have been made in course of assessment proceedings. Hence, the order passed u/s 144 r.w.s. 144B of the Act was erroneous in so far as it is prejudicial to the interests of revenue u/s 263 of the Act. Thereafter, the Id. PCIT has discussed the provisions of section 263 of the Act after relying of the decisions in cases of Malabar Industries Ltd., 243 ITR 83 (SC), Pavile Projects (P.) Ltd., 149 taxmann.com 115, Nagesh Knitwears P. Ltd. & Ors., 345 ITR 135 (Del) and Gee Vee Enterprises vs. Addl. CIT, 99 ITR 375 (Del), set aside the order of AO with a direction to pass fresh assessment order after taking into consideration the issues discussed in the order u/s 263 of the Act.

5. Aggrieved by the order of Id. PCIT, the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee has filed a paper book and relied on various decisions to contend that provisions of section 263 cannot be invoked in the present case because the ITAT has quashed the order u/s 263 of the Act in appellant's own case (supra) for AY 2017-18 on similar issue. The Id. AR has filed various other decisions and submitted that the

issue has been decided in favour of the assessee. He, however, submitted that since the Id. PCIT has not decided the issue on merit and has decided only to keep the issue alive, the matter may be set aside to his file to decide afresh in accordance with law.

6. On the other hand, learned Commissioner of Income-tax - Departmental Representative (Id. CIT-DR) of the revenue supported the order of the Id. PCIT. He has filed written submission wherein it was submitted that FDR interest received shown in the balance sheet is not right accounting policy as it is revenue receipt and it should be routed through the profit and loss account. The Id. AR relied on the decision of the Hon'ble Supreme Court in case of New Okhla Industrial Development Authority (Noida) (supra) and submitted that the Hon'ble Supreme Court has categorically held that exemption u/s 10(20) of the Act is not to be allowed in the case except in case of Municipality as referred to in Clause (e) of Article 243P of the Constitution. The Id. CIT-DR submitted that the assessee's contention that Sachin Notified Area was created u/s 16 of the Gujarat Industrial Development Act, 1962 (in short, 'GIDA') by Notification in the Official Gazette would not help the assessee in view of the finding of the Hon'ble Supreme Court in case of New Okhla Industrial Development Authority (supra). The GIDA operates in a totally difference sphere from Parts IX & IX-A of the Constitution as well as the Gujarat Panchayat's Act, 1961 and the Gujarat Municipalities Act, 1962. Hence, he requested to uphold the order of the Id. PCIT.

7. We have heard both parties and perused the materials available on record. We have also deliberated upon the decisions relied upon by both sides. It is an undisputed fact that the AO has not added the interest on FDR of Rs.9,16,72,909/-, which was not routed through the profit and loss account and was directly credited to the balance sheet. However, the ITAT, Surat in appellant's own case (supra) has quashed the order of the Id. PCIT on the same issue where FDR of Rs.4,21,54,142/- was directly shown in the balance sheet instead of being routed through the Income and Expenditure account. The appellant had submitted before the Id. PCIT to quash the proceedings u/s 263 of the Act for the subject year in view of the decision of the ITAT, Surat (supra). However, the Id. PCIT did not accept the contention by observing that the decision of the Tribunal has not been accepted and the Department has preferred appeal against the order of ITAT before the Hon'ble Gujarat High Court. For ready reference, observation of the Id. PCIT is reproduced below:

*"5. I have carefully considered the facts of the case from assessment records and the reply of the assessee. In the reply the assessee has stated that its appeal against order u/s 263 of the Act for AY 2017-18, in which identical issue is involved, has been allowed by Hon'ble ITAT, Surat Bench, Surat (In ITA No.343/SRT/2022, order dated 26.06.2023) and hence, the proceedings u/s 263 of the Act may be quashed. It is pertinent to mention that the above decision has not been accepted by the department. **The department has preferred further appeal u/s 260A of the Act against the order of the Hon'ble ITAT in ITA No.343/SRT/2022 dated 26.06.202 and hence, the issue is subjudice and to keep the issue alive, this order is being passed...."***

7.1 It is thus clear that to keep the issue alive, the Id. PCIT has set aside the order of AO passed u/s 147 r.w.s. 144B of the Act. He has not decided the issue on merit in the light of the various decisions including the decision of the Hon'ble Supreme Court in case of New Okhla Industrial Development Authority

(supra). The Id. AR of the assessee submitted that the ratio of the above decision is not applicable to the facts of the appellant. On the other hand, the Id. CIT-DR has submitted that the case of the appellant is squarely covered by the decision of the Hon'ble Supreme Court. We find that the Id. PCIT has not discussed and decided the matter in the light of the submission made by the parties and has passed the impugned order only to keep the issue alive. Considering the facts discussed above and the decision cited supra, we are of the view that the matter needs to be set aside to file of Id. PCIT for fresh adjudication after considering rival submissions in accordance with law. Accordingly, the grounds are allowed for statistical purpose.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

ITA Nos.247, 248 & 223/SRT/2024 (AYs 2014-15, 2015-16 & 2016-17):

9. The facts of the above appeals and reasons given by the Id. PCIT in his orders u/s 263 of the Act for the above AYs are similar to the facts and the reasons of ITA No.246/SRT/2024 (supra). The Id. PCIT has passed the impugned orders to keep the issue alive since appeal against the order of ITAT for AY 2017-18 was filed by the Department before the Hon'ble Gujarat High Court. Hence, following the reasons given in ITA No.246/SRT/2024 (supra), these three appeals are also set aside to the file of Id. PCIT for fresh order u/s 263 of the Act after granting adequate and reasonable opportunity of hearing to the appellant.

10. In the result, the appeals of the assessee are allowed for statistical purpose.

11. In the combined result, these four appeals of the assessee are allowed or statistical purpose.

Order is pronounced in the open court on 10/09/2025.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 10/09/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat