आयकर अपीलीय अधिकरण,राजकोट न्यायपीठ,राजकोट।

IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं/.**ITA Nos.26/RJT/2025**
निर्धारणवर्ष/**Assessment Year : 2021-22**

Jabir Ayoob Vahevaria Plot No.3452 GIDC 3, Dared Jamnagar-361 004 (Gujarat)	बनाम Vs.	Principal Commissioner of Income-tax, Jamnagar, Room No.101, 1st Floor, Aaykar Bhavan, Nr. Shubhas Bridge, Jamnagar-361 001
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No.:**AEQPV3027C**		
(अपीलार्थी/**Appellant**)	..	(प्रत्यर्थी/**Respondent**)

आयकरअपीलसं/.**ITA Nos.27/RJT/2025**
निर्धारणवर्ष/**Assessment Year : 2021-22**

Altaf Ayoobbhai Vehvaria, Prop. of K A Enterprise, Ground Floor, Near Alamin Park, Vehwaria Madresa, Jamnagar-361 004	बनाम Vs.	Principal Commissioner of Income-tax, Jamnagar, Room No.101, 1st Floor, Aaykar Bhavan, Nr. Shubhas Bridge, Jamnagar-361 001
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No.: **AEMPV7317M**		
(अपीलार्थी/**Appellant**)	..	(प्रत्यर्थी/**Respondent**)

निर्धारिती की ओर से/Assessee by : Shri Chetan Agarwal, AR
राजस्व की ओर से/Revenue by : Shri Sanjay Punglia, CIT- DR

सुनवाई की तारीख/**Date of Hearing :** **: originally heard on 24.04.2025 and refixed for clarification on 21.08.2025**

घोषणा की तारीख/**Date of Pronouncement : 29/08/2025**

आदेश/Order

Per, Dr. Arjun Lal Saini, A.M.

By way of these two appeals, different two assessees have challenged the correctness of the separate orders passed by the Learned Principal Commissioner of Income Tax, (in short "ld. PCIT"] both orders dated 10.01.2025, under section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), for assessment year 2021-22.

2. These two appeals, relate to different assessees but for same assessment year 2021-22, and facts and grounds of appeal, are identical and similar, therefore these two appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. The facts as well as grounds of appeal narrated in ITA No.26/RJT/2025, for assessment year (AY). 2021-2022, (in case of Jabir Ayoob Vahevaria) have been taken into consideration for deciding these two appeals *en masse.*

3. The grounds of appeal raised by the assessee in "***lead***" case in ITA No.26/RJT/2022 for A.Y.21-22, are as follows:

> *"1. The Ld. Pr.CIT erred in law as well as on fact in assuming jurisdiction under 263 of the Act.*
>
> *2. The Ld.Pr.CIT erred in law as well as on fact in holding that assessment order passed by Ld.assessing officer u/s 143(3) rws 144B is erroneous and prejudicial to the interest of revenue."*

4. The relevant material facts, as culled out from the material on record, are as follows. The return of income for assessment year (AY) 2021-22, was filed by the assessee, on 06.03.2022, declaring total loss of Rs.18,98,111/-. The assessee`s case was selected for scrutiny under the computer-Assisted Scrutiny Selection (CASS) for the reason *"assessee had made substantial purchases*

from such suppliers who are either non-filers or have filed non-business ITR or reflected a substantially lower turnover in ITR, as compared to turnover shown in GSTR-1 return". Subsequently, the assessment was completed under section 143(3) r.w.s 144B of the Act, vide order dated 23.12.2022, accepting the returned income.

5. Later on, the Learned Principal Commissioner of Income Tax, (in short "ld. PCIT"], has exercised his jurisdiction, under section 263 of the Income Tax Act, 1961. On perusal of the assessment records, it was observed by ld.PCIT that while finalizing the assessment proceedings, the assessing officer failed to verify or examine various aspects of the taxability of income. The ld.PCIT noted that assessee`s case was selected for scrutiny under CASS, primarily for verifying substantial purchases from suppliers who were either Non-Filers, or had filed non-business ITRs or had shown substantially low turnover. The examination of GST data, on the GST portal, revealed that purchases were made from the entities who either (a) had not filed their return of income for the year under consideration or (b) had their GST numbers cancelled on the same day or within a short span of their issuance. The ld.PCIT noted that these entities appeared to be bogus and were likely used to accommodate unaccounted money. Thus, purchases from these entities should have been disallowed and treated, as unexplained expenditure u/s 69C r.w.s. 155BBE of the Act. The ld.PCIT observed that assessing officer failed to conduct any verification or inquiry to ascertain the genuineness of these transactions, despite it being the primary reason for scrutiny selection.

6. Considering the above facts, the Ld. PCIT issued show -cause notice to the assessee, u/s 263 of the Act, dated 11.12.2024, which is reproduced by ld.PCIT in his revision order under section 263 of the Act, vide page Nos.2 to 5.

7. In response to above show cause notice, the assessee submitted his reply before Ld. PCIT. From plain reading of contention of notice of u/s 263 of the Act, the assessee submitted its reply that main allegation of ld.PCIT is that the assessing officer had not made any inquiry in the course of assessment proceedings. The assessee submitted that vide notice u/s 142(1) of the Act dated 10.08.2022, issued by the assessing officer, the assessing officer has specifically asked the details and documents in respect of the issue raised by the learned PCIT in his order under section 263 of the Act. The assessing officer again issued second notice u/s 142(1) dated 11.10.2022 wherein assessing officer has specifically asked details and questions in respect of the issue raised by the learned PCIT in his order under section 263 of the Act. In response to above notices the assessee submitted reply before the assessing officer vide reply dated 11.11.2022.The assessing officer again issued third notice u/s 142(1) dated 26.10.2022 wherein assessing officer has specifically asked details and questions in respect of the issue raised by the learned PCIT in his order under section 263 of the Act. In response to above notice, vide reply dated 14.11.2022, the assessee submitted relevant details and documents. The assessing officer again issued fourth notice u/s 142(1) dated 21.11.2022 wherein assessing officer has specifically asked details and questions in respect of the issue raised by the learned PCIT in his order under section 263 of the Act. In response to above notice, vide reply dated 25.11.2022, the assessee submitted relevant details and documents. The assessing officer again issued fifth notice u/s 142(1) dated 20.12.2022 wherein assessing officer has specifically asked details and questions in respect of the issue raised by the learned PCIT in his order under section 263 of the Act. In response to above notice, vide reply dated 21.12.2022, the assessee submitted relevant details and documents. Hence, it can be observed from above that during the course of assessment proceedings, the assessing officer has made due inquiry on the issue under consideration.

Hence, the order passed by assessing officer cannot be termed as erroneous and prejudicial to the interest of revenue.

8.However, Ld. PCIT rejected the submission of assessee and held that the assessment order passed by the Assessing Officer u/s 143(3) r.w.s 144B of the Act, dated 23/12/2022, in the case of the assessee for the AY 2021-22 is erroneous in so far as it is prejudicial to the interest of revenue within the meaning of section 263 of the Act. Therefore, ld.PCIT set -aside the assessment order passed under section143(3) r.w.s 144B of the Act, dated 23/12/2022 for A.Y. 2021-22 to the extent of the issues mentioned and discussed above and directed the assessing officer to conduct detailed verification of the purchases from eleven entities flagged as suspicious and reassess the income of the assessee.

9.Aggrieved by the order of Ld. PCIT, the assessee is in appeal before us.

10. Shri Chetan Agarwal, Ld. Counsel for the assessee argued that no doubt, some purchases were made from the non-filers of the income-tax. However, all the purchases were made through banking channel and payments also were made through banking channel. Therefore, the genuineness of the purchases should not be doubted. If the supplier did not file the income tax return, then purchaser should not be penalised, as all the purchases are for the purpose of business, and transactions are through banking channel and assessee cannot compel the supplier to file the income tax return. Just because some of the parties are non-filer of income tax return, do not mean that they are not engaged in the business. The total purchases made from 11 parties, are genuine. In respect of 11 parties, from whom assessee made purchases, the Assessing Officer issued notices/ summons u/s 133(6) of the Act, wherein the detail of these 11 parties have been asked by the Assessing Officer and in response to

notices, the respective party submitted its reply before the assessing officer. The Assessing Officer also issued notices u/s 142(1) dated 26.10.2022 asking the assessee to file the reply in respect of issue raised by the Ld. PCIT. In response to notices, the assessee submitted the detailed reply before the Assessing Officer along with required evidences. Therefore, the findings of Ld. PCIT that the order passed by the Assessing Officer is erroneous, is not correct, as the Assessing Officer has made detailed enquiry by issuing five notices u/s 142(1) of the Act and the assessee also submitted his reply before the Assessing Officer along with evidences. Therefore, it shows that the Assessing Officer has applied his mind and made detailed enquiry and thereafter the Assessing Officer framed the assessment order, which should not be erroneous and prejudicial to the interest of revenue. Besides, the sale made by the assessee, out of purchases, were not doubted. Therefore, purchases made by the assessee, from these suppliers should also not be doubted. Therefore, Ld. Counsel for the assessee contended that the order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of revenue. Therefore, order passed by Ld. PCIT may be quashed.

11. On the other hand, Ld. CIT DR for the Revenue supported the order of Ld. PCIT and submitted that all the parties from whom assessee purchased goods, do not have GST number. Moreover, the Assessing Officer has only took the documentary evidences from the assessee, which were kept on record and did not examine them, therefore, there is non- application of mind by the Assessing Officer. Therefore, order passed by the Assessing Officer is erroneous and prejudicial to the interest of revenue.

12. In short rejoinder, the Ld. Counsel for the assessee, submitted that assessee submitted the GST data by filing GST return, to the GST department and the GST- Department has accepted the sales and purchases of the parties which

were shown in GST return. The respective party and assessee filed GST return. Therefore, genuineness of the purchases and sale should not be doubted.

13. We have heard both the parties and perused the materials available on record, and we have also deliberated the case law relied upon by Ld. Counsel for the assessee and ld.DR for the revenue. First of all, we should examine whether Assessing Officer has conducted enquiry in respect of issue raised by the Ld. PCIT or not. We note that the first notice issued by the Assessing Officer, under section 142(1) of the Act, dated 10.08.2022, which is placed at page 39 of the paper book, wherein the relevant part of the notice (for our analysis) is reproduced below:

> *"With respect to the payments for the business purchase during the year under consideration, kindly submit the below specified details I table format:*
>
> *1) with respect to purchases made by you, kindly provide details as under:*
> - *a) name, address, PAN and GST registration number of the parties from which the purchases have been made.*
> - *b) Date of purchase.*
> - *c) Copy of agreement if any.*
> - *d) Product details*
>   - *i. Item no.*
>   - *ii. Quantity*
>   - *iii. Amount*
> - *e) Details of transaction:*
>   - *i. date of transportation.*
>   - *ii. Name and address of the transporter.*
>   - *iii. Vehicle number.*
>   - *iv. Weight.*
>   - *v. Amount paid.*
>   - *vi. TDS deducted."*

14. In response to above notice of the Assessing Officer, assessee submitted his reply which is placed at page no. 43 of the paper book, and the same is reproduced below:

Sr.No.	*Particulars*	*Submission*
4	*Complete details along with documentary evidence viz. challan of transaction charges*	*The details as required as per format and relevant*

	incurred toward purchases/sales of rupees one lakh and above.	*documentary evidences of transportation charges incurred towards purchases are attached herewith at Annexure-B*
5	*Complete bank transaction statement in respect of all bank a/c reflecting and highlighting all payment/received to purchase/sales/transportation charges for the financial year 2020-21 relevant to the AY 2021-22*	*The copy of bank statement of Navanagar Co-Operative Bank Ltd., Jamnagar for the year under consideration reflecting payment& receipt is attached herewith at Annexure-E*

15. We note that during assessment proceedings, the Assessing Officer has issued second show cause notice u/s 142(1) of the Act dated 11.10.2022 which is placed at page no. 226 of the paper book. In response to that notice, the assessee submitted his reply, which is placed at pages 229-230 of the paper book.

16. The Assessing Officer issued third notice u/s 142(1) of the Act dated 26.10.2022 which is placed at page no.309 of paper book, wherein the Assessing Officer asked the assessee to furnish the following details;

> *"in continuation to the notices u/s 142(1) of the I T Act, you are further requested to furnish the following documents as mentioned below.*
>
> *Kindly furnish a copy of, (i) Annual GST Return, (ii) GSTR-1 and (iii) GSTR-2A, for the F.Y. 2020-21 relevant to AY 2021-22."*

17. In response to above notice, the assessee submitted detailed reply and also filed before assessing officer, annual GST return, and quarterly GST return in respect of purchases made by assessee.

18.We note that the issue raised by Ld. PCIT, in his revision order u/s 263 of the Act is that assessing officer has not examined the issue in detail and

properly during the assessment proceedings, therefore, assessment order passed by the assessing officer is erroneous and prejudicial to the interest of the revenue. We do not agree with learned PCIT, to the effect that assessing officer has not conducted detailed and proper enquiry. In fact, as we have noted above, assessing officer, during the assessment proceedings, issued five notices to conduct enquiry for each and every item and assessee submitted its replies before the assessing officer against these five notices with documentary evidences, therefore, we are of the view that assessing officer not only conducted primary enquiry, but he had conducted further enquiry also in respect of the issue raised by the learned PCIT.

19. Therefore, it cannot be said that there is no enquiry done by the Assessing Officer in the assessee’s case under consideration. In fact, we find that detailed enquiry was done and having applied mind, the Assessing Officer, scrutinized accounts of assessee very carefully. Therefore, this is not a case of non- enquiry rather it is a full enquiry and therefore based on the factual position, it cannot be said that the Assessing Officer did not make any proper enquiry, as alleged by the Ld. PCIT in his order passed u/s 263 of the Act. The Hon’ble Bombay High Court in CIT Vs Gabriel India Ltd (233 ITR 108 Bom /71 Taxman 585) held that the power of *suo moto* revision under sub-section (1) of section 263 is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision under this sub-section, viz., (i) the order is erroneous; and (ii) by virtue of the order being erroneous prejudice has been caused to the interests of the revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous. One finds that the expressions 'erroneous', 'erroneous assessment' and 'erroneous judgment' have been defined in Black's Law Dictionary. According to the definition, 'erroneous' means 'involving error; deviating from the law'. 'Erroneous

assessment' refers to an assessment that deviates from the law and is, therefore, invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, 'erroneous judgment' means 'one rendered according to course and practice of Court, but contrary to law, upon mistaken view of law, or upon erroneous application of legal principles. The Hon'ble Court further held that from the above said definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an assessing officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualize a case of substitution of the judgment of the Commissioner for that of the ITO, who passed the order, unless the decision is held to be erroneous. Cases may be visualized where the ITO while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the ITO. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the ITO has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. It may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interests of the revenue. But that by itself will not be enough to vest the Commissioner with the power of *suomoto* revision because the first requirement, viz., that the order is erroneous, is absent. Similarly, if an order is

erroneous but not prejudicial to the interests of the revenue, then also the power of *suo moto* revision cannot be exercised. Any and every erroneous order cannot be the subject-matter of revision because the second requirement also must be fulfilled. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed. Therefore, in order to exercise power under section 263(1) there must be material before the Commissioner to consider that the order passed by the ITO was erroneous insofar as it is prejudicial to the interests of the revenue and that it must be an order which is not in accordance with the law or which has been passed by the ITO without making any enquiry in undue haste. An order can be said to be prejudicial to the interests of the revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realized or cannot be realized. There must be material available on the record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision. Exercise of power of *suo moto* revision under such circumstances will amount to arbitrary exercise of power. It is well-settled that when exercise of statutory power is dependent upon the existence of certain objective facts, the authority before exercising such power must have materials on record to satisfy it in that regard. If the action of the authority is challenged before the Court, it would be open to the Courts to examine whether the relevant objectives were available from the records called for and examined by such authority. The decision of the ITO could not be held to be 'erroneous' simply because in his order he did not make an elaborate discussion in that regard. Moreover, the Commissioner himself, even after initiating proceedings for revision and hearing the assessee, could not say that the allowance of the claim of the assessee was erroneous, he simply asked the ITO to re-examine the matter, which was not permissible.

20. The Hon'ble Jurisdictional High Court in CIT Vs. Arvind Jewellers (259 ITR 502), while relying on the decision of Hon'ble Apex Court has taken a view that the provisions of section 263 cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous, that section will be attracted and incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. The Supreme Court has also made it clear 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 and that every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue. It was further emphatically stated that when an ITO adopts one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the ITO 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 ITO is unsustainable in law.

21.The Hon'ble Jurisdictional High Court of Gujarat in Aryan Arcade Ltd., vs PCIT (2019) 412 ITR 277 (Gujarat) held that merely because Commissioner held a different belief that would not permit him to take the order in revision, it is further held that when Assessing Officer made full enquiry, he made up his mind, the notice of revision is not valid. Further, Hon'ble Madras High Court in CIT Vs Mepco Industries Ltd., (2007) 207 CTR 462 (Madras) held that when two views are possible on an issue and it is not the case of the Commissioner that the view taken by Assessing Officer is not permissible in law, Commissioner cannot invoke his jurisdiction under section 263 of the Act.

22. The Hon'ble Delhi High Court in CIT Vs Vikas Polymers (341 ITR 537 Delhi) held that it is a pre-requisite that the Commissioner must give reasons to

justify the exercise of *suo moto* revisional powers by him to reopen a concluded assessment. A bare reiteration by him that the order of the Income-tax Officer is erroneous insofar as it is prejudicial to the interest of the revenue will not suffice. The exercise of the power being quasi-judicial in nature, the reasons must be such as to show that the enhancement or modification of the assessment or cancellation of the assessment or directions issued for a fresh assessment were called for, and must irresistibly lead to the conclusion that the order of the Income-tax Officer was not only erroneous but was prejudicial to the interest of the revenue. Thus, while the Income-tax Officer is not called upon to write an elaborate judgment giving detailed reasons in respect of each and every disallowance, deduction, etc., it is incumbent upon the Commissioner not to exercise his *suomoto* revisional powers unless supported by adequate reasons for doing so.

23. Therefore, we note that applying the aforesaid law to the facts of the present case, we are of the view that the exercise of revisional power by the Commissioner in the instant case was uncalled for and unjustified and it was more in the nature of roving and fishing enquiry, on the part of the learned PCIT, hence, based on these facts and circumstances, we quash the order of the learned PCIT.

24. In the result, assessee's appeal ITA No.26/Rjt/2025, is allowed.

25. Since, we have adjudicated the issue by taking the lead case in ITA No.26/RJT/2025 for A.Y. 2021-22, and in other assessee`s appeal, viz: in ITA No.27/RJT/2025, for same assessment year 2021-22, the facts and grounds are identical and similar, therefore, our instant adjudication in ITA No.26/RJT/2025, shall apply *mutatis mutandis* to other appeal of assessee (in ITA No.27/RJT/2025) also.

26. In the combined result, these two different assessee's appeals (**in ITA No.26/RJT/2025 & 27/RJT/2025**), are allowed.

A copy of the instant common order be placed in the respective case file(s).

Order pronounced in the open court on 29/08/2025.

Sd/-	Sd/-
(DINESH MOHAN SINHA)	**(DR. ARJUN LAL SAINI)**
न्यायिक सदस्य/**JUDICIAL MEMBER**	लेखा सदस्य/**ACCOUNTANT MEMBER**

राजकोट /Rajkot *True Copy*

दिनांक/ Date: 29/08/2024

DKP Outsourcing Sr.P.S

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेश से,

सहायक पंजीकार

आयकर अपीलीय अधिकरण ,राजकोट