

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "A" BENCH : MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 4246/Mum/2025
Assessment Year : 2022-23

LIC Mutual Fund Asset Management Limited, 4 th Floor, Industrial Assurance Building, Opp: Churchgate Station, Churchgate, Mumbai-400020. PAN : AAACJ1166H	vs.	DCIT-1(2)(1), Aayakar Bhavan, Maharshi Karve Road, Mumbai-400020.
(Appellant)		(Respondent)
For Assessee :	Shri Madhur Agrawal & Shri Ravikant Pathak	
For Revenue :	Shri Rajesh Kumar Yadav, CIT-DR	
Date of Hearing :	15-09-2025	
Date of Pronouncement :	19-09-2025	

ORDER

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by the assessee against the order of the Learned Pr. Commissioner of Income Tax, Mumbai-1, [Ld.PCIT], dated 07-03-2025, u/s. 263 of the Income Tax Act, 1961 ('the Act'), pertaining to Assessment Year (AY) 2022-23, wherein the assessee has taken the following grounds of appeal:

"1.The Hon'ble Principal Commissioner of Income Tax, Mumbai-1 (hereinafter referred as Hon'ble PCIT) erred in setting aside the assessment order passed u/s 143(3) of the Income Tax Act, 1961 ("Act") and passing the revision order u/s 263 of the Act.

The Appellant submits that assessment order passed by the AO is neither erroneous nor prejudicial to the interest of the revenue; hence, the revision order passed u/s 263 of the Act is bad in law and deserves to be quashed.

The Appellant craves leave to add, amend and modify above grounds of appeal.”

2. At the outset, it is noted that there is a delay of 25 days in filing the appeal as pointed out by the Registry. After hearing both the parties and perusing the affidavit placed on record the contents of which have remain unrebutted before us, we find that there was reasonable cause for the delay in filing the present appeal, the delay is hereby condoned and appeal is admitted for adjudication.

3. Briefly the facts of the case are that the assessee filed its return of income, declaring total income of Rs.NIL. The return was selected for scrutiny to verify whether the taxable income has been disclosed correctly by the assessee as the assessee has claimed substantial amount of refund in its return of income. Thereafter, notices were issued u/s. 143(2) and 142(1) of the Act and after calling for necessary information and documentation, the AO passed the assessment order u/s. 143(3) r.w.s. 144B of the Act with a finding that the refund claim is genuine in nature and no adverse inference is drawn in this case and the returned income of NIL was accepted.

4. Subsequently, the assessment records were called-for by the Ld.PCIT and it was noticed by the Ld.PCIT that certain accounting entries made and disclosure of income earned by the assessee for the impugned assessment year were indicative of error, leading to under assessment of income and a show cause was issued to the assessee u/s. 263 of the Act, dt. 14-08-2024 and the contents of the show cause read as under:

“M/s LIC Mutual Fund for A.Y. 2022-23 was assessed by FAO and an order u/s 143(3) dated 24.03.2024 was made.

From the records available, it is seen that FAO had failed to inquire into the following

- 1. out of proportion increase in advertisement expenses and purchase of new right to use [ROU] assets.*
- 2. Of depreciation/ Amortisation claimed on ROU assets.*
- 3. Of accounting for dividend received on investments and of Nature of gain(capital or revenue) from the sale of shares purchased and held by LIC Mutual Fund*
- 4. For disclosing income from management of Mutual Fund and from portfolio management fees on net basis instead of gross basis. Hence the expenditure in relation to above has been hidden and could not have been examined by the FAO.*

The order is hence erroneous and prejudicial to interests of revenue. This office hence considers it appropriate that revision u/s 263 of the Income Tax Act 1961 may be considered under this section.

In this regard, a hearing in the matter is fixed on 22.08.2024 at 11.30AM. You are requested to attend in person or through an Authorized representative or through written submissions to submit your representation, if any along with supporting documents/information in support of the issues involved. You also have the option to file your submission from the e-filing portal using link: incometaxefiling.gov.in and this office email id with intimation/copy also at Mumbai.dcit.hq.judicial1@incometax.gov.in.”

5. Thereafter, another notice was issued on 28-08-2024 and the matter was scheduled for hearing on 18-09-2024, wherein the assessee filed its written submissions, which are available at Pgs. 83 to 155 of the assessee’s Paper Book. Thereafter, another submission was filed by the assessee on 31-12-2024, which is available at Pgs. 156 to 161 of the assessee’s Paper Book. Thereafter, the Ld.PCIT passed the impugned order u/s. 263 of the Act and the contents thereof reads as under:

“1. On perusal of records called for, it was seen that the accounting entries made and the disclosure of the income earned by the assessee for A.Y. 2022-23, was indicative of error leading to the under assessment of the income.

- i. Out of proportion increase in advertisement expenses and purchase of new right to use [ROU] assets.*

- ii. Of depreciation/ Amortisation claimed on ROU assets.*
- iii. Of accounting for dividend received on investments and of Nature of gain (capital or revenue) from the sale of shares purchased and held by LIC Mutual Fund*
- iv. For disclosing income from management of Mutual Fund and from portfolio management fees on net basis instead of gross basis. Hence the expenditure in relation to above has been hidden and could not have been examined by the FAO.*

2. A notice of hearing dated 27.08.2024 was sent to the assessee. In response to which a detailed reply was furnished by the assessee and hearing was granted to Shri Ravikant Pathak, CA, Authorised Representative, who in his submission sought to clarify the point raised in the notice u/s 263 of the Act.

From the perusal of the details it will appear that

- 1. The income from PMS has been shown on the net basis, where as the disclosure of income has to be on gross and any taxes etc so paid must be shown separately. Authorized Representative plead that only GST component has not been shown which is an error. The issue will hence be examined by the AO in revision proceeding and whether the GST claimed has been paid on time.*
- 2. As regards the other issues on which FAO has failed to make proper inquiry given (As per para above) in the notice u/s 263 of the Income-tax Act, 1961, the assessment is set-aside to be done afresh only for the points listed in the notice.*
- 3. As a result the earlier assessment made u/s 143(3) dated 24.03.2024 is to be revised on the points raised in the notice, and the assessment of income will be done after collecting the factual details with due regard to the natural justice.”*
- 6. Against the aforesaid findings and the order of the Ld. PCIT, the assessee is in appeal before us.*
- 7. During the course of hearing, the Ld.AR taken us through the show cause notice issued by the Ld.PCIT and the detailed submissions filed by the assessee, which are available at part of assessee’s Paper Book Pgs. 83 to 155 and 156 to 161 and it was submitted that on each of the matters raised in the show cause notice, the assessee has filed detailed submissions and has demonstrated that the order so passed by the AO*

cannot be held as erroneous in so far as prejudicial to the interest of the Revenue.

8. Referring to first issue, which has been raised by the Ld. PCIT in respect of purchase of new Right to Use (ROU) assets and depreciation or amortisation claimed on ROU assets, it was submitted that it is due to new accounting standards that the assessee has made the requisite disclosure in the financial statements in respect of assets which have been taken on lease and the assessee has not purchased any new rights to use assets as such during the financial year relevant to impugned assessment year. It was further submitted that depreciation on ROU assets amounting to Rs. 2,00,74,230/- has already been disallowed by the assessee while filing the return of income. Therefore, the question of enquiring about an amount which is already disallowed in computation of income and not claimed as deduction, does not arise for consideration and the order so passed by the AO cannot be held as erroneous and prejudicial to the interest of the Revenue.

9. Regarding accounting of dividend received on investment, it was submitted that the assessee has not earned any dividend income during the year under consideration and, therefore, the question of any accounting thereof by the assessee company and any enquiry thereof by the FAO does not arise for consideration and the said fact was also brought to the notice of Ld.PCIT and there is no finding recorded by him other than remanding the matter to the file of the AO.

10. Regarding sale of shares by the assessee-company, it was submitted that the assessee-company has not sold any investment being shares of any company during the subject year and, therefore, the question of declaring any income, whether capital or revenue, from sale of shares does

not arise for consideration. It was further submitted that the assessee has infact realized certain Short Term Capital Gain on sale of mutual funds, which have been duly offered to tax under the head 'income from capital gains' and necessary details were again submitted before the Ld.PCIT which he has failed to appreciate and the matter has been remanded to the AO for verification.

11. Regarding disclosing income from management of mutual fund and from portfolio management fee, our reference was drawn to Note 20 of the audited financial statement and it was submitted that no expenses have been claimed as deduction from the gross revenue as disclosed in Note No. 20 of the audited financial statement. Regarding GST amount, it was submitted that the only adjustment is on account of the GST, which has been reduced from the gross revenues and the same were shown on the Liability side and have been paid to the credit of the Government, after claiming input of the GST credit. Further reference was drawn to the tax audit report and it was submitted that GST payable as on 31-03-2022 was Rs. 85,13,005/- and the same has been paid before the due date of filing of the return of income and no disallowance is called-for u/s. 43B of the Act. It was accordingly submitted that where relevant facts are evident on face of the financial statements and the return of income and the ld PCIT has failed to point out any error or prejudice caused to the Revenue, the order so passed by the AO cannot be held as erroneous in so far as prejudicial to the interest of the Revenue.

12. Regarding increase in advertisement expenses, it was submitted that these expenses have been incurred as part of the assessee's business of marketing and management of various mutual funds and during the year under consideration, there was increase in advertisement expenses on account of the fact that there is a new fund offer and the assessee has to

incur substantially higher advertisement expenses as in all years whenever NFO has been launched by the assessee in the respective years and it was accordingly submitted that such expenses being incurred for the purposes of the business and claimed while filing the return of income cannot be result in incorrect claim and the order so passed by the AO cannot be held as erroneous and prejudicial to the interest of the Revenue.

13. Further, reliance was placed on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Vikas Polymers [2012] 341 ITR 537 (Delhi), wherein it was held that the assessee must be called, his explanation sought and examined by the Commissioner and thereafter, if the Commissioner still feels that the order is erroneous and prejudicial to the interest of the Revenue, the Commissioner may pass revisionary orders and if, on the other hand, Commissioner is satisfied after hearing the assessee, that the order is not erroneous and prejudicial to the interest of the Revenue, he may choose not to exercise his power of revision. It was further submitted that even though Explanation 2 to section 263 of the Act has not been invoked in the instant case and at the same time, the said explanation does not override the law as interpreted by the various Hon'ble High Courts, wherein it was held that the CIT cannot treat the AO's order as being erroneous and prejudicial to the interest of the Revenue without conducting an enquiry and recording a finding. It was submitted that in the instant case, on perusal of the impugned order, it may be noted that no such finding has been recorded by the Ld.PCIT and the AO has been directed to carry out the necessary enquiries and such a direction is clearly not what is emphasized in terms of provisions of section 263 of the Act. It was submitted that if the provisions are interpreted as so done by the Ld. PCIT in the instant case, in every case, the Commissioner will be empowered to find fault in the order of the AO and force the AO to conduct enquiries in the manner preferred by the Commissioner which will lead to

unending litigation and no finality in the legal proceedings can be achieved which cannot be the intention of the Legislature and reliance was placed on the decisions in case of M/s. Amira Pure Foods Pvt. Ltd.(ITA No. 3205/Del/2017) and Narayan Rane (ITA No. 2690/Mum/2016). It was accordingly submitted that the order so passed by the Ld.PCIT be set aside and that of the AO be sustained.

14. Per contra, the Ld.DR has been heard, who has submitted that it is where the AO has failed to make any enquiry or verification on specific issues that were material to the completion of the assessment proceedings as highlighted by the ld PCIT and the AO accepted the submissions of the assessee, without scrutiny or examination and the Ld. PCIT is empowered to revise the assessment order, which is clearly erroneous and prejudicial to the interest of the Revenue. Further, reliance was placed on the decision of the Hon'ble High Court of Allahabad in the case of CIT vs. Bhagwan Das [2005] 142 TAXMAN 1 (ALL.), the decision of the Hon'ble Bombay High Court in the case of KEC International Ltd. vs. DCIT, [2025] 171 taxmann.com 541 (Bombay) and the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd., [2000] 243 ITR 83.

15. We have heard the rival contentions and perused the material available on record. Section 263 of the Act provides that the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceedings under this Act, and if he considers that any order passed therein by the Assessing Officer or the Transfer Pricing Officer, as the case may be, is erroneous in so far as it is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including, an

order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or an order modifying the order under section 92CA; or an order cancelling the order under section 92CA and directing a fresh order under the said section.

16. The Statute thus vest the revisionary jurisdiction on the Commissioner where the order passed by the Assessing officer is found to be erroneous and prejudicial to the interest of the Revenue and for the purposes of exercise of such revisionary jurisdiction, has laid down a clear and robust mechanism, whereby the Commissioner has to provide an opportunity of being heard to be assessee and thereafter, after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify. As held by the Courts from time to time, there is no statutory requirement to issue a show-cause u/s 263 detailing specific grounds on which the revisionary proceedings are proposed, at the same time, an opportunity is to be provided to the assessee to contest the grounds basis which the Commissioner seeks to exercise his revisionary jurisdiction. The opportunity of being heard is not limited to allowing verbal contentions/arguments to be raised but include an opportunity to present written submissions/arguments and to take into consideration the submissions so made and thereby examining the same and passing a speaking order accepting or rejecting the contentions so raised and determining as to how the order so passed by the AO is held to be erroneous and prejudicial to the interest of the Revenue and passing appropriate directions. As part of such exercise and examination of submissions so made by the assessee, the Commissioner is also empowered to make or cause to be made such further inquiry as he deems necessary in the facts and circumstances of the relevant case. The statute thus provides an opportunity to the Revenue to contest the order and findings of the Assessing officer through exercise of revisionary jurisdiction

with the Commissioner and at the same time, provides an opportunity to the assessee to contest such action and therefore, the Commissioner has to exercise due care in allowing equal opportunity and follow a judicious approach while exercising such powers. And such an exercise of judicious approach has to reflect in the order and directions of the Commissioner and he has to speak through his order and lay bare his mind and thoughts as to why he is opinion that it is a fit case for exercise of revisionary jurisdiction within the touchstone of dual principle, i.e, the order so passed by the Assessing officer is not just erroneous but also prejudicial to the interest of the Revenue.

17. In the instant case, we however find that the order so passed by the Ld.PCIT doesn't meet the aforesaid test and deserve to be set-aside for passing a speaking order. As evident from the impugned order, reproduced in earlier part of our order, we find that the Ld.PCIT has started with the findings in the initial show-cause and ended with the findings in the initial show-cause as his final findings and matter has been set-aside to the file of the AO on points raised in the show-cause. No finding has been recorded as to how the submissions so filed by the assessee were not found acceptable and the reasons for arriving at such a finding. In the show-cause, the Ld.PCIT has raised four grounds on which he was of the prima facie opinion that the order so passed by the AO was erroneous and prejudicial to the interest of the Revenue. In response, the assessee filed detailed written submissions dated 19-09-2024 and 31-12-2024 running in hundred of pages. However, there is no finding recorded by him as to why he found those submissions as not acceptable and how the order so passed by the AO is erroneous and prejudicial to the interest of the Revenue. Before us, the Ld.AR has tried to demonstrate that some of the issued raised by the Ld.PCIT are non-existent in assessee's case such as matter relating to accounting for dividends and gains on sale of shares

where no such dividend has been received by the assessee and no sale of shares have been undertaken by the assessee, matter relating to depreciation on ROU assets where no such asset has been purchased at first place and depreciation has already been written back in the computation of income and matter relating to advertisement expenses being incurred for the purposes of assessee's business. We find that the Ld.PCIT should have dealt with each of the issues so raised by him in the show-cause and consider the submissions so filed by the assessee and arrive at an appropriate finding. Given that there are no findings recorded by Ld.PCIT, we are of the considered view that the matter be remitted to the file of the Ld.PCIT to allow him to consider the submissions so made by the assessee and pass a speaking order as per law after allowing reasonable opportunity to the assessee. All the contentions raised before us are thus left open and the assessee is at liberty to raise the same before the Ld.PCIT where so advised.

18. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 19-09-2025

Sd/-
[ANIKESH BANERJEE]
JUDICIAL MEMBER

Sd/-
[VIKRAM SINGH YADAV]
ACCOUNTANT MEMBER

Mumbai,
Dated: 19-09-2025

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai