

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER  
AND  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.2526/Del/2024  
(ASSESSMENT YEAR 2016-17)**

Amarendra Financial Private Limited, 14/5, Basement, Old Rajinder Nagar, Shaheed Hemu Kalani Marg, New Delhi-110060. PAN-AAHCA0512D <b>(Appellant)</b>	Vs.	Pr. CIT, (Central) KNP at Meerut.  <b>(Respondent)</b>
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Assessee by	Smt. Rano Jain, Adv., Ms. Mansi Jain, CA and Shri Pranshu Singhal, CA
Department by	Sh. Jitender Singh, CIT- DR
Date of Hearing	08/07/2025
Date of Pronouncement	26/09/2025

**ORDER**

**PER MANISH AGARWAL, AM:**

This appeal is filed by the assessee against the order of Ld. Principal Commissioner of Income Tax (Central), KNP at Meerut [PCIT, in short] passed u/s 263 of the Income Tax Act, 1961 dated 31.03.2024 for Assessment Year 2016-17.

2. Brief facts of the case are that return of income was e-filed by the assessee on 16.10.2016, declaring total income at Rs.28,69,100/-. A search and seizure action was carried on 11.10.2018 at the premises of the group company cases wherein it was found that certain information/documents were belonged to assessee and therefore, proceedings u/s 153C of the Act were initiated in the case

of the assessee by way of issue of notice on 05.02.2021. In response, the assessee filed return of income on 19.02.2021 declaring same income as was declared in the return filed u/s 139(1) of the Act. The assessment was completed u/s 153C r.w.s 143(3) vide order dated 25.01.2021 wherein total income was computed at 2,26,46,000/- by making additions of Rs.1,97,76,912/- in the hands of the assessee on protective basis. Thereafter, the Ld. PCIT, Central initiated the proceedings u/s 263 by issuing of show cause notice dated 21.03.2024 and after considering the submissions of the assessee, the impugned revisionary order u/s 263 was passed on 31.03.2024 wherein the Ld. PCIT has set aside the assessment order passed by the AO and direct him to pass the order afresh after making proper enquiries and investigation and further observed that the addition should be made on substantive basis in the hands of the assessee.

3. Against the said order, present appeal is preferred by the assessee before the tribunal. Before us, assessee also take additional grounds of appeal which are admitted as they are purely legal in nature and requires no verification of facts by placing reliance on the judgment of hon'ble Supreme court in the case of **NTPC Ltd.** reported in **229 ITR 383(SC)**.

4. Grounds of appeal No.1 and 2 are general in nature need no adjudication.

5. In ground of appeal No.3, assessee has challenged the order passed u//s 263 without jurisdiction as the appeal was filed against the order sought to be revised challenging the same issues based on which the assessment order is held as erroneous and prejudicial to the interest of revenue.

6. Before us, the Ld. AR of the assessee submits that assessee has filed an appeal before Ld. CIT(A) against the order of the AO passed u/s 153C r.w.s 143(3) dated 25.09.2021 on 01.11.202 in terms of e-filing acknowledgement No. 173644940011121, copy of the same is available in the paper book filed by assessee. Ld. AR further submits that in the said appeal, assessee has challenged the additions made u/s 68 and 69 of the Act on protective basis in the hands of assessee based on the seized material, therefore, Ld. PCIT(Central) has no jurisdiction to revise the said order u/s 263 of the Act. It is further submitted by Ld. AR that the appeal before Ld. CIT(A) is still pending for adjudication. She further submits that in the revision order passed u/s 263, Ld. PCIT directed the AO to make addition on “substantive basis” as against “protective basis” made by the AO. Thus, the Ld. AR vehemently argued that Ld. PCIT has grossly erred in exercise the revisionary jurisdiction available u/s 263 of the Act in as much as the issues taken for holding the order as erroneous and prejudicial to the interest of revenue are subject matter of appeal before the Ld. CIT(A). In this regard, reliance is placed on the judgment of Hon’ble Madras High Court in the case of ***Smt. Renuka Philip Vs. The Income Tax Officer*** reported in [2018] 409 ITR 567 (Mad.). Further judgment of the Co-ordinate Bench of ITAT, Delhi in the case of M/s Corporate International Financial Services Ltd. vs. PCIT (Central), Delhi reported in 2025(6) TMI 2009-ITAT, Delhi vide order dated 27.06.2025 is relied by the assessee. Accordingly, prayer is made that the order passed u/s 263 being without jurisdiction liable to be quashed.

7. On the other hand, Ld. CIT-DR vehemently supported the order of PCIT (Central) and submitted that Ld. PCIT has correctly assumed the jurisdiction u/s 263 of the Act. He further submitted that AO has wrongly made the additions on protective basis without providing the details of the person in whose hand’s

additions were proposed to be made on substantive basis with respect to the addition made u/s 69 of the Act. It is thus submitted that the order passed u/s 263 deserves to be upheld.

8. We have heard the parties and perused the materials available on record. At the outset, we find that all the three issues on which the additions were made were challenged before the Ld. CIT(A) in terms of the appeal filed on 1<sup>st</sup> November, 2021. The grounds of appeal taken before the Ld. CIT(A) are available in the paper book pages 127 to 131 filed by the assessee.

9. Before going further, the provision of section 263 are to be considered which reads as under:

***263. Revision of orders prejudicial to revenue.***

*(1)The [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or Commissioner may call for and examine the record of any proceeding 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,—*

- (i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or*
- (ii) an order modifying the order under section 92CA; or*
- (iii) an order cancelling the order under section 92CA and directing a fresh order under the said section].*

*Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—*

- (a) an order passed on or before or after the 1st day of June, 1988] by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall include—*

- (i) *an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;*
- (ii) *an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer [or the Transfer Pricing Officer, as the case may be,] conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;*
- (iii) *an order under section 92CA by the Transfer Pricing Officer;*
- (b) *"record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner;*
- (c) *where any order referred to in this sub-section and passed by the Assessing Officer 92[or the Transfer Pricing Officer, as the case may be,] had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the\* Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.***

*Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner,—*

- (a) *the order is passed without making inquiries or verification which should have been made;*
- (b) *the order is passed allowing any relief without inquiring into the claim;*
- (c) *the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*
- (d) *the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.*

*[Explanation 3.—For the purposes of this section, "Transfer Pricing Officer" shall have the same meaning as assigned to it in the Explanation to section 92CA.]*

*(2)No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.*

*(3)Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in*

*consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.*

*Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.*

10. The clause (c) of Explanation 1 to subsection (1) of Section 263 is brought into the statute with effect from 01.10.1984 which was further amended by Direct Tax Laws (Amendment) Act, 1987, subsequently, substituted by the Finance Act, 1988 w.e.f. 01.06.1988. The provisions of aforesaid explanation have been taken into consideration by the Hon'ble High Court of Allahabad in the case of ***CIT vs VAM Resorts and Hotels Pvt. Ltd reported in 418 ITR 723*** where the hon'ble high Court by following the judgment by Hon'ble Madras High Court in the case of Smt. Renuka Philip (supra), wherein after considering the facts of case that the issue which is pending before the Ld. CIT(A) has been taken up as the basis by the Ld. PCIT while invoking the powers u/s 263, held as under:

9. *“The second limb of argument of counsel for the assessee is that appeal before the CIT(A) was pending, as such, the CIT has no jurisdiction to revise the order, in view of Clause (c) of Explanation-1 to Section 263 of the Act, which provides that when appeal is pending before the Commissioner, the exercise of jurisdiction under Section 263 of the Act is barred. He relied upon the judgment in the case of Smt. Renuka Philip v. ITO [2019] 101 taxmann.com 119/[2018] 409 ITR 567 (Mad), the relevant paragraphs of which are extracted hereunder:*

'21. *With regard to the merits of the case, the learned counsel for the assessee referred to a decision of the Division Bench of this Court in Dr. P.K. Vasanthi Rangarajan v. CIT [2012] 23 taxmann.com 299/209 Taxman 628 (Mad.), wherein, the Hon'ble Division Bench held that there is no inhibition in the assessee claiming the benefit of investment made in four flats thereby gaining the benefit under Section 54F of the Act. The Court took note of the decision in TCA No. 656 of 2005 dated 04.01.2012.*

*However, we are not examining the merits of the matter at this juncture since, we are only called upon to answer the Substantial Question of Law with regard to the assumption of jurisdiction of the Commissioner under Section 263 of the Act. The power under Section 263 of the Act is not exercisable under certain circumstances. In this regard, we refer to Section 263(1) explanation 1(c), which reads as follows:*

*"Revision of orders prejudicial to revenue*

*263(1), (a) to (b)\*\* \*\* \**

*(c) Where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal [filed on or before or after the 1st day of June, 1988], the powers of the Commissioner under this Sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal."*

22. *The above explanation makes it clear that when the appeal is pending before the Commissioner, the exercise of jurisdiction under Section 263 of the Act is barred. The Commissioner in the order dated 14.03.2012 states that the appeal pertains to the claim made by the assessee under Section 54 of the Act and it has got nothing to do with the order passed by the Assessing Officer under Section 54F of the Act. The said finding rendered by the Commissioner is wholly unsustainable, since the assessee went on appeal against the re-assessment order dated 31.12.2009 stating that his claim for deduction under Section 54 of the Act should be accepted.'*

10-24 .....

25. *As, Clause (c) of Explanation 1 to Section 263 of the Act provides that when an appeal is pending before the Commissioner, the exercise of jurisdiction under Section 263 of the Act by CIT is barred. Thus, in the present case, the CIT wrongly exercised jurisdiction under Section 263 of the Act by remanding back the matter to assessing authority on 25.3.2013, while the appeal was decided by CIT (A) on 5.6.2013. Thus, the order passed by the ITAT does not suffer from any irregularity and needs no interference.*

26-27....

*28. Considering the facts and circumstances of the case, we are of the considered opinion, that the revenue has failed to make any case for interference in the order of the ITAT, as the CIT had proceeded to remand the matter back to the assessing authority while the appeal of the assessee was pending under Section 250 and the power of exercise under Section 263 was barred by Clause (c) to Explanation 1 of Section 263 of the Act. Further, the remand order by the CIT was based merely on suspicion and presumption.*

*29. The appeal is devoid of merit and is hereby dismissed. The question of law is, therefore, answered against the revenue and in favour of the assessee.*

11. In the instant case, additions were made u/s 68 and 69A of the Act by the AO, on protective basis and the Ld. PCIT initiated the revisionary proceedings u/s 263 for the reason that such additions should have been made on substantive basis. On perusal of the grounds of appeal raised before the Ld. CIT(A) while challenging the quantum addition u/s 68 and 69A of the Act, we find that in form 35 as available in the paper book pages 127 to 131, these issues are subject matter before the Ld. CIT(A).

12. In view of these facts and by respectfully following the aforesaid judgements of hon'ble Allahabad high court and Madras High Court, we are of the considered view that as per explanation 1(c) to section 263 of the Act, Ld. PCIT can initiate the proceedings qua the issues which are not disputed by the assessee, or which are not subject matter of appeal before the Ld. CIT(A) and those issues are not considered and decided in such appeals. Accordingly, we hold that revisionary jurisdiction exercised by Ld. PCIT u/s 263 of the Act is not permissible and thus, the revision order passed u/s 263 is hereby quashed. The ground of appeal No. 3 of the assessee is allowed.

13. Since, we have already allowed the appeal of the assessee by accepting the ground of appeal No. 3 thus all the remaining grounds of appeal became academic.

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

Order pronounced in the open Court on 26.09.2025.

Sd/-  
**(YOGESH KUMAR U.S)**  
**JUDICIAL MEMBER**

Sd/-  
**(MANISH AGARWAL)**  
**ACCOUNTANT MEMBER**

Dated: 26.09.2025  
*PK/Sr. Ps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**