

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'D' BENCH, KOLKATA**

Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 1202/KOL/2025
Assessment Year: 2018-19**

Western Commercial Corporation	Vs.	PCIT-9, Kolkata
(Appellant)		(Respondent)
PAN: AAAPFW3170B		

Appearances:

Assessee represented by : None.

Department represented by : Sanat Kumar Raha, CIT(DR).

Date of concluding the hearing : 05-August-2025

Date of pronouncing the order : 29-September-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Pr. Commissioner of Income Tax-9, Kolkata [hereinafter referred to as 'Pr. CIT/PCIT'] passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2018-19 dated 08.08.2023, which has been passed against the assessment order u/s 143(3) r.w.s. 144B of the Act, dated 20.04.2021.

1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 577 days. An application along with an affidavit seeking condonation of delay has been filed by the assessee, stating as under:



"We, Western Commercial Corporation, respectfully submit this application seeking condonation of delay in filing the appeal under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") against the order passed under Section 263 vide M. No. Pr CIT-9/Kol/Order u/s 263/WCC/2023-24/3961-63 of the Act by the Learned Principal Commissioner of Income Tax-9, Kolkata (hereinafter referred to as "Ld. PCIT") for the Assessment Year 2018-19.

Background

- 1. The Ld. PCIT passed an order under Section 263 of the Act on 8th August 2023, setting aside the original assessment order under Section 143(3) and directing the Assessing Officer (AO) to frame a fresh assessment after examining specific issues and providing a reasonable opportunity of being heard to the assessee.*
- 2. The A.O. passed a fresh assessment order under Section 143(3) read with Section 263 on 31st March 2025 solely relying upon the foundational order passed by the Ld. PCIT.*
- 3. In light of the Ld. Assessing Officer's order dated 31st March 2025, which was received by us on the same date, we have preferred to file an appeal in Form 36 before the Hon'ble ITAT, Kolkata Bench, on 30th May 2025.*

Reason for Delay:

- 1. The delay in filing the appeal against the order passed by the Learned Principal Commissioner of Income Tax (Ld. PCIT) under Section 263 of the Income Tax Act, 1961, dated 8th August 2023, was unintentional and occurred due to our bona fide belief that the appropriate course of action was to await the outcome of the fresh assessment proceedings directed under Section 263. We were under the impression that any grievances could be effectively addressed in the appeal against the subsequent assessment order.*
- 2. The order under Section 263 passed by the Ld. PCIT was not conclusive in itself. It directed the Assessing Officer (AO) to frame a fresh assessment after examining specific issues and providing a reasonable opportunity of being heard to the assessee. However, despite availing the opportunity to present our submissions during the reassessment proceedings, the AO disregarded our submissions and passed an order based solely on findings of the Ld. PCIT under Section 143(3) read with Section 263 on 31st March 2025. In this order, the AO made an unwarranted addition by arbitrarily applying a predetermined percentage to a purported figure of suppressed sales to arrive at the assessed loss. This computation lacks any factual or*



legal basis, as the alleged suppression of sales stems from an incorrect assumption originally made by the Ld. PCIT in the Section 263 order.

3. It was only upon receipt and review of the AO's order dated 31st March 2025 that we realized the necessity of challenging the foundational order under Section 263 to seek complete and effective relief. Subsequ, we filed an appeal in Form 36 before the Hon'ble Income Tax Appellate Tribunal, Kolkata Bench, on 30th May 2025.

Prayer:

1. In view of the facts and circumstances stated above, it is most respectfully prayed that the Hon'ble Bench may be pleased to condone the delay in filing the appeal under Section 253 of the Income Tax Act, 1961 against the order passed under Section 263, as the delay was neither deliberate nor due to negligence but caused by a bona fide misunderstanding of the procedural requirements.

2. It is further prayed that the Hon'ble Bench may kindly grant us an opportunity to present our case on merits in the interest of justice, so that the issues involved may be adjudicated fairly and comprehensively.”

1.2. Considering the application for condonation of delay and the enclosed affidavit and the reasons stated therein, we are satisfied that the assessee had a reasonable and sufficient cause regarding when and against which order to file the appeal and was prevented from filing the instant appeal within statutory time limit and the delay is neither intentional nor has resulted in any benefit to the assessee. We, therefore, condone the delay and admit the appeal for adjudication.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

*“1. Erroneous Assumption of Suppression of Sales - Rs 13,73,334/-:
That the Ld. PCIT, while passing the order under section 263 of the Income Tax Act, 1961, erroneously considered the appellant's turnover as Rs 24,06,292/- instead of the correct reported turnover of Rs 1,82,62,460/- as disclosed in the Profit and Loss Account and in Clause 40 of the Form 3CD audit report, resulting in an incorrect assumption of understatement of revenue.*

That had the correct turnover figure been applied as per the appellant's audited financial statements, the increase in sundry debtors during FY 2017-18 (Rs 37,79,626/-) would fall well within the total reported turnover, thereby negating the premise that such increase is indicative of suppressed sales.

That the Ld. PCIT's finding that "increase in debtors shall not exceed the sale of any particular year" is factually and legally untenable when applied to the correct figures, thereby rendering the basis of the revisionary proceedings unsustainable.

2. Contradictory Income Determination and Mechanical Reliance on PCIT Directions:

The Ld. Assessing Officer has erred both in law and on facts in passing the assessment order under section 143(3) of the Income Tax Act, 1961, wherein the total loss of the assessee has been incorrectly determined at Rs 38,28,521/-. In stark contrast, the computation sheet annexed to the impugned order reflects a total income of Rs. 55,72,060/-, which is contradictory and irreconcilable. This apparent inconsistency reflects a complete non-application of mind and renders the assessment order defective, arbitrary, and liable to be set aside.

Further, the assessee had duly filed its return of income for AY 2018-19 declaring a loss of Rs 93.69,585/-. However, while framing the assessment, the Ld. A.O. failed to consider or verify the same and proceeded to pass the impugned order without addressing the returned loss or making any independent enquiry into its validity. This amounts to a violation of principles of natural justice and statutory duty.

Moreover, the Ld. A.O. has placed blind reliance on the directions issued by the Ld. Principal Commissioner of Income Tax (PCIT) under section 263, without relying on all submissions made by the assessee and not considered the facts of the case.

3. Unjustified Addition Without Notice Based on Quashed Assessment:

The Ld. Assessing Officer has erred in law and on facts in passing the assessment order dated 31st March 2025 under section 143(3) r.w.s. 263 of the Act by arbitrarily adding 8% of Rs 13,73,334/- to the assessed loss. This computation is entirely baseless, as the underlying figure of Rs.13,73,334/- originates from an incorrect assumption made by the Ld. PCIT in the section 263 order, wherein the actual turnover of Rs 1,82,62,460/- reported in the ITR and Tax Audit Report was not considered. Applying a profit percentage to a fundamentally flawed figure renders the entire addition unsustainable. Furthermore, the final show cause notice issued by the Ld. A.O. bearing DIN: ITBA/AST/F/143(3)(SCN)/2024-25/1074365083(1), dated 11th March 2025, made no mention whatsoever of any proposed addition of 8% of Rs 13,73,334/-. Hence, the said addition has been made in violation of the principles of natural justice and



established judicial procedure, rendering the assessment order invalid and unsustainable in law.

1. Erroneous Assumption of Suppression of Sales - Rs 13,73,334/-:

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Rs.13,73,334/- originates from an incorrect assumption made by the Ld. PCIT in the section 263 order, wherein the actual turnover of Rs 1,82,62,460/- reported in the ITR and Tax Audit Report was not considered. Applying a profit percentage to a fundamentally flawed figure renders the entire addition unsustainable. Furthermore, the final show cause notice issued by the Ld. A.O. bearing DIN: ITBA/AST/F/143(3)(SCN)/2024-25/1074365083(1), dated 11th March 2025, made no mention whatsoever of any proposed addition of 8% of Rs 13,73,334/-. Hence, the said addition has been made in violation of the principles of natural justice and established judicial procedure, rendering the assessment order invalid and unsustainable in law.

4. Reliance on Quashed Order and Erroneous Assumption Leading to Invalid Addition

The Ld. Assessing Officer has erred both in law and on facts in passing the assessment order dated 31st March 2025 under section 143(3) read with section 263 of the Act by mechanically relying on the earlier assessment order dated 20th April 2021 passed under section 143(3) r.w.s. 144B. This earlier order had already been held to be “erroneous and prejudicial to the interests of the Revenue” by the Ld. PCIT under section 263, who specifically observed in Para 6 of the revisionary order that the A.O. had failed to carry out the requisite enquiry and verification as mandated under clause (a) of Explanation 2 to section 263.

Despite these explicit findings and the setting aside of the previous order, the Ld. A.O. did not undertake any alternative mechanism to compute the said income. Instead, he repeated the same computational mechanism and assumptions without duly verifying the financial statements and documentary evidence submitted by the assessee.

Thus, the computation underlying the impugned addition is factually incorrect, legally untenable, and in complete disregard of the directions under section 263. Accordingly, the addition made on such a flawed basis is arbitrary and deserves to be deleted in full.

FOR THAT your assessee craves to add/ alter/ amend / delete / modify any ground or grounds before or at the time of disposal of the final appeal petition.”

3. Brief facts of the case are that the assessee firm had filed its return of income for the AY 2018-19 on 25.10.2018 declaring ‘NIL’ income after claiming the current year’s loss of ₹93,69,585/-, which was to be carried forward to the subsequent assessment year. The case was selected for scrutiny through CASS and a notice u/s 143(2) of the Act was issued.



The assessment was completed under section 143(3) r.w.s. 144B of the Act on 20/04/2021 determining the loss of ₹ 39,38,338/- after making addition of ₹ 54,31,197/- under different heads.

4. Subsequently, the Ld. PCIT examined the record and the return of income and noted that the assessment order passed under section 143(3) r.w.s. 144B was erroneous in so far as it was prejudicial to the interests of the revenue as sales were understated to the extent of ₹13,73,334/- and initiated revision proceeding under section 263 of the Act. The notices under section 263 were issued but the assessee did not comply with the notices issued and therefore, he held that the assessment order passed was erroneous in so far as it was prejudicial to the interests of the revenue. As the assessment was made without enquiry/verification, he invoked the provision of clause (a) of the Explanation to section 263 of the Act in respect of the issue and set aside the assessment order and restored the same to the file of the Ld. AO so as to frame a fresh assessment after examining the issues as discussed in the order under section 263 and after providing a reasonable opportunity of being heard to the assessee before finalising the assessment. The Assessing Officer (hereinafter referred to as Ld. 'AO') noted certain discrepancies and estimated 8% of the total suppressed sales of ₹13,73,334/- as additional profit, which worked out to ₹1,09,867/- and added the same to the income of the assessee as gross profit and suppressed sale. Aggrieved with the order u/s 263 of the PCIT, the assessee has filed an appeal before the Tribunal.

5. None appeared on behalf of the assessee and the appeal was heard with the assistance of the Ld. DR. The Ld. DR argued very vehemently that since there was failure on the part of the Ld. AO to examine certain



issues as mentioned in the order of the Ld. PCIT, he was justified in setting aside the assessment order and directing to redo the assessment as per his directions.

6. We have considered the submissions made and also examined the facts and the record. We are of the considered view that on account of non-representation by the assessee, proper submission could not be filed before the Ld. Pr. CIT. Hence, in the interest of justice and in order to grant one more opportunity to the assessee, the order of the Ld. Pr. CIT is hereby set aside with the direction to grant another opportunity of being heard to the assessee. All the issues filed before the Tribunal can be taken up by the assessee before the Ld. Pr. CIT, who shall adjudicate the same in the course of the proceedings under section 263 of the Act while passing the order. The Ld. Pr. CIT shall grant at least two opportunities and in case the assessee fails to appear before the Ld. Pr. CIT, adverse inference can be drawn by the Ld. Pr. CIT. With these directions, the appeal of the assessee is hereby partly allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 29th September, 2025.

Sd/-

[George Mathan]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 29.09.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Western Commercial Corporation, 16B Chowringhee Mansion
2nd Floor 30 Jawaharlal Nehru Road, Kolkata, West Bengal,
700016.**
2. **PCIT-9, Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata