

आयकर अपीलीय न्यायाधिकरण में, हैदराबाद 'ए' बेंच, हैदराबाद  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' A ' Bench, Hyderabad**

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री मधुसूदन सावडिया, माननीय लेखा सदस्य  
**SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER**  
**AND**  
**SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.399/Hyd/2025  
(निर्धारण वर्ष/ Assessment Year: 2016-17)

Sri Edupayala Vana Durga Bhavani Hyderabad  PAN : AASAS1857Q	Vs.	The Income Tax Officer Ward-1 Sangareddy
<b>(अपीलार्थी/ Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri T.Chaitanya Kumar, Advocate, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. U. Mini Chandran, CIT- DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	03.09.2025
घोषणा की तारीख/ Date of Pronouncement	:	08.10.2025

**ORDER**

प्रति रवीश सूद, जे.एम./PER RAVISH SOOD, J.M.

The present appeal filed by the assessee is directed against the order passed by the Principal Commissioner of Income-Tax (for short "PCIT"), Hyderabad-2, dated 29.03.2024, which in turn arises from

the order passed by the Assessing Officer (for short, "A.O.") under Section 144 r.w.s. 147 of the Income Tax Act, 1961 (for short, "the Act") dated 29.03.2022 for A.Y. 2016-17.

2. The assessee has assailed the impugned order on the following grounds of appeal before us:

"1. The order of Learned Principal Commissioner of Income Tax (PCIT) is erroneous both in fact in law. Furthermore, the invocation of Section 263 by the Principal Commissioner of Income Tax (PCIT) against the said order is also bad in law and deserves to be quashed.

2. The order passed by the Learned Principal Commissioner of Income Tax (PCIT) under Section 263 is in violation of the principles of natural justice as the appellant was not provided with a sufficient and proper opportunity to present their case. The appellant was deprived of the opportunity to substantiate the facts and provide relevant documentary evidence, which makes the order unsustainable in law.

3. The PCIT's findings that the original assessment order was erroneous and prejudicial to the interests of the Revenue are arbitrary, perverse, and based on mere conjectures and surmises. The original assessment was completed u/s 147 of the IT Act estimating the income @ 8% on gross receipts of Rs. 2.48 crores.

4. The PCIT's erred in issuing show cause notice dated 13/12/2023 findings that the original assessment order was erroneous and prejudicial to the interests of the Revenue are arbitrary, perverse, and based on mere conjectures and surmises.

5. The directions issued by the PCIT for reassessment under Section 263 are without valid grounds and are based on an incorrect understanding of the facts and the law. The reassessment order, if passed, would result in a baseless and unwarranted demand, causing undue hardship to the appellant."

3. Succinctly stated, the assessee, an AOP, had not filed its return of income for the subject year, i.e., A.Y. 2016-17. The A.O., based on information that the assessee had during the subject year made cash deposits of Rs. 2,48,64,238/- in its bank accounts, initiated proceedings under section 147 of the Act. Notice under Section 148 of the Act, dated 29.03.2021, was issued, which, however, was not responded by the assessee.

4. As is discernible from the record, as the assessee had neither filed its return of income in response to the notice issued under section 148 of the Act nor complied to the notice(s) issued under section 142(1) of the Act, therefore, the A.O was constrained to complete the assessment under section 144 r.w section 147 of the Act, wherein after treating the entire amount of cash deposits of Rs. 2,48,64,238/- as unexplained, the income of the assessee was estimated by him @ 8%, i.e., at Rs.19,89,140/-.

5. Aggrieved, the assessee carried the order passed by the A.O under Section 144 r.w.s 147 of the Act, dated 29.03.2022 before the CIT(A).

6. We find on a perusal of the record that during the pendency of the assessee's quantum appeal before the CIT(A), the Pr. CIT had issued a notice under section 263 of the Act, wherein he had observed that as the A.O had failed to bring the entire amount of unexplained cash deposits to tax under section 69A r.w section 115BBE of the Act, therefore, the assessment order passed by him under Section 144 r.w.s 147 of the Act, dated 29.03.2022, was rendered as erroneous in so far it was prejudicial to the interest of the revenue. We find that, as the assessee had failed to come forth with any representation before the Pr. CIT, therefore, after considering the record he had set aside the assessment order and directed the A.O. to treat the entire amount of cash deposits as having been sourced out of the assessee's unexplained money under section 69A of the Act.

7. The assessee, being aggrieved with the order passed by the Pr. CIT under Section 263 of the Act has carried the matter in appeal before us.

8. Shri T. Chaitanya, the Ld. Authorized Representative for the assessee at the threshold of hearing of the appeal, submitted that as

the income of the assessee, an endowment, is exempt from tax under Section 10(23BBA) of the Act, therefore, the assessing of its income by the A.O vide his order passed under Section 144 r.w.s 147 of the Act, dated 29.03.2022 was invalid and not sustainable in the eyes of law. Elaborating further on his contention, the Ld. AR submitted that as the assessment order passed in the case of the assessee was in itself invalid, therefore, the Pr. CIT could not have revised the same in exercise of the powers vested with him under Section 263 of the Act. The Ld. AR submitted that the validity of the assessment could safely be challenged in the course of the present proceedings, as the same are in the nature of collateral proceedings. Apart from that, the Ld. AR submitted that since the assessee had already challenged the impugned addition made by the AO u/s 69A of the Act, vide his order passed under Section 144 r.w.s 147 of the Act, dated 29.03.2022, before the CIT(A), therefore, the Pr. CIT was divested from invoking his revisional jurisdiction u/s 263 of the Act. The Ld. A.R. submitted that the "Explanation 1(c)" to Section 263 specifically bars revision of matters which are the subject matter of appeal. The Ld. A.R. to support his said claim had relied on the judgment of the Hon'ble High

Court of Madras in the case of Smt. Renuka Philip Vs. ITO (2018) 409 ITR 567 (Mad) and the orders of the ITAT, Kolkata in the case of, viz. (i). Rajesh Kumar Jalan Vs. Pr. CIT, Kolkata-13, Kolkata (2024) 113 ITR (Trib) 188 (Kol); and (ii). Rajesh Kumar Jalan Vs. ITO, Ward 44(2), Kolkata.

9. Per Contra, the Ld. CIT D.R., on the other hand, supported the order of the Principal Commissioner of Income-tax. The Ld. CIT - DR, submitted that the estimation of income @ 8% of the entire amount of cash deposits by the Assessing Officer was arbitrary, erroneous, and prejudicial to the interest of the revenue, since the entire deposits should have been brought to tax under Section 69A of the Act. Further, the Ld. CIT-DR rebutted the contention of the assessee's counsel that as the assessee had assailed the impugned addition made by the A.O. u/s 69A of the Act before the CIT(A), therefore, the Pr. CIT, as per "Explanation 1(c)" to Section 263 of the Act, during the pendency of the said appeal could not have assumed jurisdiction to revise the subject assessment order. The Ld. CIT-DR submitted that, as the subject matter of the appeal that was pending before the CIT(A) was different from the issue on which the Pr. CIT had validly assumed

jurisdiction to revise the assessment order, therefore, the Ld. A.Rs contention was devoid and bereft of any substance. Elaborating on her contention, the Ld. CIT-DR, submitted that while the assessee had, inter alia, assailed the order passed by the A.O. u/s 144 r.w.s 147 of the Act, dated 29.03.2022 before the CIT(A), on the ground that the latter had erred in making an addition of 8% of the unexplained cash deposits, but the Pr. CIT had revised the impugned order for the reason that the A.O. though in the assessment order had held the subject cash deposits of Rs. 2.48 crores (approx.) as the assessee's unexplained money, but thereafter, despite admitting the said fact, had wrongly made the addition only to the extent of 8% of such cash deposits, which, thus, had rendered the order passed by him as erroneous in so far it was prejudicial to the interest of the revenue under Section 263 of the Act. The Ld. CIT-DR submitted that as the subject matter of appeal before the CIT(A) and the issue on which the assessment order passed by the A.O. u/s 144 r.w.s 147 of the Act, dated 29.03.2022 were separate and distinct and not the same, therefore, the Pr. CIT had rightly assumed jurisdiction and

revised the assessment order vide his order passed u/s 263 of the Act, dated 29.03.2024.

10. We have heard the Ld. Authorized Representatives of both parties, perused the orders of the authorities below and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the assessee's counsel.

11. We shall first deal with the Ld. AR's claim that as the income of the assessee, an endowment, was exempt from tax under Section 10(23BBA) of the Act, therefore, as the assessing of its income by the A.O vide his order passed under Section 144 r.w.s 147 of the Act, dated 29.03.2022 was in itself invalid and not sustainable in the eyes of law, thus, the same could not have been revised by the Pr. CIT under Section 263 of the Act.

12. We find that Section 10(23BBA) of the Act, contemplates that any income of any body or authority (whether or not a body corporate or corporation sole) established, constituted or appointed by or under any Central, State or Provincial Act which provides for the

administration of any one or more of the following, that is to say, public religious or charitable trusts or endowments (including maths, temples, gurdwaras, wakfs, churches, synagogues, agiaries or other places of public or religious worship) or societies for religious or charitable purposes registered as such under the Societies Registration Act, 1860(21 of 1860), or any other law for the time being in force is exempt from tax. We, thus, are of a firm conviction that though the income of any body or authority established, constituted or appointed by or under any Central, State or Provincial Act administering a public or religious trusts or endowments or societies for religious or charitable purposes registered as such under the Societies Registration Act, 1860 is exempt under Section 10(23BBA) of the Act, but the income of such public or religious trusts or endowments, viz. maths, temples, gurdwaras, wakfs, churches, synagogues, agiaries or other places of public or religious worship cannot be brought within the meaning of the exemption contemplated in the said statutory provision. We, thus, in terms of our aforesaid deliberations, are unable to concur with the Ld. AR that as the income of the assessee, an endowment, was though exempt under Section

10(23BBA) of the Act, but had wrongly been assessed to tax by the AO vide his order passed under Section 144 r.w.s 147 of the Act, dated 29.03.2022, therefore, such invalid order of assessment could not have been revised by the Pr. CIT under Section 263 of the Act, and, thus, reject the same.

13. We shall now deal with the second facet of the Ld. AR's contention, i.e., since the assessee had already challenged the impugned addition made by the AO u/s 69A of the Act, vide his order passed under Section 144 r.w.s 147 of the Act, dated 29.03.2022, before the CIT(A), therefore, the Pr. CIT had no jurisdiction to invoke the revisional jurisdiction u/s 263 of the Act.

14. As is discernible from the record, the assessee had challenged the addition of the unexplained money made on an estimate basis by the A.O., i.e., @ 8% of the amount of cash deposits, vide order passed u/s 144 r.w.s 147 of the Act, dated 29.03.2022, before the CIT(A). Admittedly, the Pr. CIT during the pendency of the assessee's appeal before the CIT(A) had issued a "Show Cause Notice" ("SCN") dated 15.12.2023 to the assessee, wherein it was called upon to explain

that as to why the assessment order passed by the A.O u/s 144 r.w.s 147 of the Act, dated 29.03.2022, may not be revised by him u/s 263 of the Act. On a perusal of the SCN, dated 15.12.2023 (supra), it transpires that the Pr. CIT had observed that the A.O, based on the information that the assessee during the subject year had made cash deposits of Rs. 2,48,64,238/- in its bank account, but not filed its return of income, initiated proceedings under Section 147 of the Act. The Pr. CIT had further observed that the A.O had estimated the income of the assessee @8% of the entire amount of cash deposits, which, however, did neither represent its turnover nor the gross receipts. Also, the Pr. CIT had observed that the A.O., while estimating the assessee's income @8% of the amount of cash deposits ought to have corroborated the same based on his factual findings in the course of the assessment proceedings.

15. Before proceeding further, we deem it apposite to cull out the "Explanation 1(c)" to section 263 of the Act, which provides that where any order, i.e., an order passed by the Assessing Officer or Transfer Pricing Officer, as the case may be, had been the subject matter of

any appeal, 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. For the sake of clarity, we deem it apposite to cull out “Explanation 1(c)” to Section 263 of the Act, as under:

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

(a) to (b). .....

(c). where any order referred to in this sub-section and passed by the Assessing Officer [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.**”

16. We find that the controversy involved in the present appeal lies in a narrow compass, i.e., the scope of the powers of the Pr. CIT to revise an order passed by the A.O. in exercise of the jurisdiction vested with him under sub-section (1) of Section 263 of the Act, where such order has been carried in appeal by the assessee. We find that the said issue is squarely covered by the Judgment of the **Hon’ble**

**Supreme Court** in the case of **CIT, Gujarat-1 Vs. Shri Arbuda Mills Ltd., (1998) 231 ITR 50 (SC)** and, thus, is no more *res-integra*. The Hon'ble Apex Court, had held that the powers of the CIT under Section 263 of the Act shall extend, and shall, deemed always to have extended to such matters as had not been considered and decided in an appeal. For the sake of clarity, we deem it apposite to cull out the observations of the **Honble Apex court** in the case of **CIT, Gujarat-1 Vs. Shri Arbuda Mills Ltd. (supra)**, as under:

"We may refer to the amendment made in Section 263 of the Income Tax Act by the Finance Act, 1989 with retrospective effect from 1-6-1988. The relevant part thereof for the present case is as under:

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

(a)-(b)           XX                                   XXX                                   XX

(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)."

**The consequence of the said amendment made with retrospective effect is that the powers under Section 263 of the Commissioner shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in an appeal. Accordingly, even in respect of the aforesaid three items, the powers of the Commissioner under Section 263 shall extend and shall be deemed always to have extended to them **because the same had not been considered and****

**decided in the appeal filed by the assessee.** This is sufficient to answer the question which has been referred.

6. The question referred is, therefore, answered in the negative in favour of the Revenue and against the assessee.”

**(emphasis supplied by us)**

17. We, thus, are of the considered view, that as per the judgment of the **Hon'ble Supreme Court** in **CIT, Gujarat-1 Vs. Shri Arbuda Mills Ltd. (supra)**, it is where the assessee has assailed the order passed by the Assessing Officer before an appellate authority, and the same had been considered and decided in such appeal, that the Pr. CIT would thereafter be divested of his jurisdiction to revise any such matter considered and decided in such appeal. Accordingly, as in the present appeal before us, the appeal filed by the assessee, wherein, it had assailed before the CIT(A) the estimated addition, i.e., @8% of the amount of cash deposits made by the A.O was pending before the CIT(A) and had not been considered and decided by the said appellate authority, therefore, the Pr. CIT, in the absence of the merger of the order passed by the A.O. with that of the CIT(A), thus, at the relevant point of time remained well within his jurisdiction to exercise the powers vested with him under Section 263 of the Act.

18. Alternatively and without prejudice to our aforesaid observations, we find substance in the Ld. CIT-DR's contention that as the subject matter of appeal before the CIT(A) and the issue on which the assessment order passed by the A.O. u/s 144 r.w.s 147 of the Act, dated 29.03.2022, are separate and distinct, and not the same, therefore, the Pr. CIT had rightly assumed jurisdiction and revised the assessment order vide his order passed u/s 263 of the Act, dated 29.03.2024. We say so, for the reason that while for the assessee has assailed the order passed by the A.O. u/s 144 r.w.s 147 of the Act, dated 29.03.2022 on the ground that he had arbitrarily made an addition of Rs. 19,89,140/-, but the Pr. CIT had revised the said order for the reason, viz. (i). the A.O., while framing the assessment, had not verified and examined the sources of the cash deposits and its relevance with respect to the business of the assessee; (ii). the A.O., had arbitrarily taken the profits @8% of the cash receipts as the assessee's income without adducing any reason, despite no books of accounts were produced before him; and (iii). the A.O. had failed to explain the basis or methodology that was adopted by him to estimate the income @8% of the entire cash deposits rather

than treating the entire amount as the assessee's unexplained money as per Section 69A of the Act. Accordingly, we are of the view that, as the issue based on which the Pr. CIT had, vide his SCN dated 15.12.2023 sought to exercise his jurisdiction under Section 263 of the Act, and the subject matter of appeal before the CIT(A) based on which the assessee had assailed before him the assessment order passed by the A.O. u/s 144 r.w.s 147 of the Act, dated 29.03.2022, were separate and distinct and not the same, therefore, on the said count also no infirmity can be related to the assumption of jurisdiction under sub-section (1) of Section 263 of the Act by the Pr. CIT, who, thus, remaining well within his jurisdiction, had thereafter validly revised the assessment order vide his order passed u/s 263 of the Act, dated 29.03.2024.

19. Coming to the merits of the case, we concur with the Ld. Pr. CIT that though the A.O., based on the fact that the assessee had during the subject year made cash deposits of Rs. 2,48,64,238/- in its bank accounts, initiated proceedings under section 147 of the Act, but had while framing the assessment not verified and examined the sources of the cash deposits and its relevance with respect to the business of

the assessee, and had arbitrarily taken the profit @8% of the cash deposits without giving any reason for doing so. Rather, we concur with the Ld. Pr. CIT that the A.O. had failed to even explain the basis or methodology that was adopted by him to estimate the income @8% of the entire cash deposits rather than treating the entire amount as its unexplained money as per Section 69A of the Act. At this stage, we may herein observe, that though the A.O. had in the assessment order observed that as the assessee had failed to furnish the details of nature of transactions and sources for the cash deposits of Rs. 2,48,64,238/- which were treated as unexplained money in the bank account of the assessee, but thereafter, he had without giving any reason, much the less a cogent reason, instead of making an addition of the entire amount of cash deposits under Section 69A of the Act, estimated its income @8% of the cash deposits i.e., at Rs. 19,89,140/-.

20. We, thus, in the backdrop of the facts involved in the present case, are persuaded to subscribe to the observations of the Ld. Pr. CIT, wherein he had after referring to "Explanation 2(a)" to Section 263 of the Act, rightly observed that as the A.O. had without carrying

out any verifications and enquiries estimated the income of the assessee @8% of the cash deposits instead of treating the entire money as the unexplained money of the assessee as per Section 69A of the Act, set aside his order. However, we are unable to persuade ourselves to concur with the directions of the Ld. Pr. CIT to the extent he had directed the AO to summarily treat the entire amount of cash deposits of Rs. 2,48,64,238/- as the assessee's unexplained money under Section 69A of the Act and bring it to tax under the provisions of Section 115BBE of the Act. We are of the considered view, that in the totality of the facts involved in the present appeal, i.e., the assessee, an endowment, had failed to participate in the proceedings before both the A.O. and the Ld. Pr. CIT, and, thus, failed to come forth with any explanation regarding the nature and source of the cash deposits made in its bank account during the year, the matter in all fairness ought to have been set-aside to the file of the A.O. with a direction to re-adjudicate the subject issue after carrying out necessary enquiries and verifications. We, thus, in terms of our aforesaid observations, though, concur with the setting aside of the order passed by the A.O. under Section 144 r.w.s 147 of the Act,

dated 29.03.2022, but with a modification of the direction given by him in terms of our aforesaid observations.

21. Resultantly, the appeal filed by the assessee is partly allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the Open Court on 08<sup>th</sup> October, 2025.

<p>Sd/- (श्री मधुसूदन सावडिया) <b>(MADHUSUDAN SAWDIA)</b> लेखा सदस्य/ACCOUNTANT MEMBER</p>	<p>Sd/- (श्री रवीश सूद) <b>(RAVISH SOOD)</b> न्यायिक सदस्य/JUDICIAL MEMBER</p>
--	--

Hyderabad,  
Dated 08.10.2025.  
**L.Rama/sps**

**आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	Sri Edupayala Vana Durga Bhavani, E-Block, Flat No.101, Aditya Empress Towers, Shaikpet Nala Tolichowk, Golconda Post, Hyderabad-500008.
2.	राजस्व/ The Revenue	:	The Income Tax Officer, Ward-1, Sangareddy
3.	The Principal Commissioner of Income Tax, Hyderabad.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Hyderabad