

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH MUMBAI**

**BEFORE HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
SHRI GIRISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No. 1647/Mum/2016
(Assessment Year: 2011-12)**

&

**ITA No. 5370/Mum/2018
Assessment Year: 2011-12**

Ram Baburao Salve 17/18, Vyapar Bhuvan P. D'Mello Road, Carnac Bunder, Mumbai – 400009.	Vs.	ITO Wd 17(3)(1), Mumbai.
PAN/GIR No. AACPS5498L		
(Applicant)		(Respondent)

Assessee by	Shri Dharan Gandhi – Advocate
Revenue by	Shri Umashankar Prasad - CIT DR

Date of Hearing	23.07.2025
Date of Pronouncement	13.10.2025

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeals have been filed by the assessee challenging the different impugned order dated 13.02.2016 & 03.08.2018 passed u/s.263 of the Income Tax Act, 1961 ('the Act'), by the Principal Commissioner of Income Tax - 17, Mumbai for the assessment year 2011-12.

Since all the issues involved in these appeals are belongs to one assessee, therefore, they have been clubbed, heard together and a consolidated order is being passed for the sake of convenience and brevity. Firstly we shall take up **ITA No. 1647/Mum/2016, A.Y 2011-12:**

2. As per the facts of the present case the assessee is an individual and proprietor of M/s. Ganesh Container Movers Syndicate and had filed declaring total income of Rs. 13,15,310 which was subsequently revised thereby declaring Nil income.

3. Initially the case was selected for scrutiny and an order under section 143(3) was passed on March 15, 2014 thereby assessing the taxable income at Rs.25,59,430 after addition of Rs. 1,59,93,300 under section 68 being cash deposit in saving bank account and treating this income as business income and thereafter allowing set off of brought forward losses.

4. Subsequently, Ld. PCIT vide order under section 263 dated February 10, 2016 directed the AO to re-compute the income treating the addition of Rs. 1,59,93,300 being cash deposit under the head '*Income from other sources*' considering the same as erroneous and prejudicial to the interest of income and disallowed the set off of brought forward losses without providing any reason in the order.

5. Thereafter AO passed afresh assessment order dated March 28, 2016 and the Ld. CIT(A) vide order dated July 26,

2018 confirmed the addition of cash deposit of Rs. 1,59,93,300 under the head '*Income from other sources*'.

6. Aggrieved by these orders, assessee has preferred separate appeals before us.

7. First of all, we shall take up appeal bearing ITA No. 1647/Mum/2016, A.Y 2011-12 which is against the orders passed by Ld. PCIT u/s 263 of the Act. The grounds which are reproduced herein below:

1. *That on the facts and in the circumstances of the case the initiation of proceedings U/s. 263 and the order passed there under by the Id. CIT City 17 is wrong, unjustified, bad in law. The conditions precedent for initiation of action U/s. 263 did not exist and were not satisfied in this case. The order so passed deserves to be cancelled in limine.*

2. *That the order passed by the Assessing Officer was neither erroneous nor prejudicial to the interest of revenue within the meaning of section 263 and the Id. CIT City 17 erred in law as well as on facts in assuming jurisdiction U/s. 263 and setting aside the assessment with a preconceived notion and a prejudiced mind. The order so passed is liable to be cancelled.*

3. *That the Id. CIT City 17 erred in holding that the carry forward loss could not be set off and or adjusted against the income from other source and erred that the same was not properly investigated and was not justified in imposing his own view of the manner in which enquiry was to be conducted. The directions given by the Id. CIT City 17 amount to making a roving and fishing enquiry, which is outside the scope of the provisions of section 263.*

4. *That the Id. CIT City 17 erred in law in invoking the provisions of section 263 merely on the basis of the so called 'background' wrongly conceived by him which had no application in the facts of the*

appellant's case. The Id. CIT City 17 erred in misconstruing the meaning and purport of the principles decided in the Court decisions relied on which had no relevance in the facts of the appellant's case.

5. In the facts, Circumstances and in Law your appellant therefore respectfully submits that the Order passed by the CIT City 17 may please be cancelled and the Assessing officers order may please be restored.

8. All the grounds raised in the present appeal are interrelated and interconnected and relates to challenging the order of Ld. PCIT u/s 263 of the Act, therefore we have decided to adjudicate the same through the same present consolidated order.

9. Ld. AR appearing on behalf of the assessee reiterated same arguments as were raised by the revenue authorities and also submitted that the order passed by the AO was neither erroneous or prejudicial to the interest of the revenue and the conditions precedent for initiation of action u/s 263 of the Act did not exist and were not satisfied in the present case. Therefore Ld. PCIT was wrong in initiation of proceedings u/s 263 of the Act. It was further submitted that the impugned order was passed with a preconceived motion and prejudice mind. It was also submitted that the AO had carried out all the required verifications and investigations before passing the assessment thus the order u/s 263 of the Act was unwarranted.

10. Whereas on the contrary Ld. DR relied upon the orders passed by the revenue authorities.

11. We have heard the counsels for both the parties, perused the material placed on record, judgments cited before me and also the orders passed by the revenue authorities. From the records we noticed that earlier assessment order was passed u/s 143(3) on 15.03.2014 and in that assessment order addition of Rs. 15993300 was made being cash deposits in the savings bank account by treating the income as business income and thereafter allowing set off of brought forward losses. But Ld. PCIT while invoking the provisional jurisdiction u/s 263 of the Act was of the view that addition of Rs. 15993300 ought to have been treated under the head income from other sources and the set off of brought forward losses ought to have been disallowed.

12. At this stage we have to analyze as to whether the AO's order u/s 143(3) of the Act was erroneous and prejudicial to the interest of revenue or not. In this regard our attention has been drawn towards show cause notice dated 4th March, 2014 issued and served during the course of original assessment proceedings and the same reads as under:

"Sub Assessment proceedings u/s 143(3) for A.Y.2011-12-

Final Show cause Notice-reg

Sir/Madam,

In connection with the assessment proceedings for A.Y. 2011-12, you were asked vide order sheet notings dated 4/10/2013, 16/12/2013 & 20/01/2014 to produce/submit details like cash flow statement, source of cash deposit/reconcile the same etc but till date no submission was made by you regarding source of cash deposit in your bank accounts. Hence in the absence of any details the

assessment proceedings for the assessment year 2011-12 be completed on the basis of information available on record for this year.

It is specifically communicated to you regarding the cash deposits made during the year in your bank account as under:

<i>Sr. No.</i>	<i>Name of the bank</i>	<i>Amount(cash deposit)</i>
<i>1.</i>	<i>Bombay Mercantile Co-operative Bank</i>	<i>67,51,200/-</i>
<i>2.</i>	<i>Saraswat Co-operative Bank</i>	<i>87,97,100/-</i>
<i>3.</i>	<i>Union Bank of India</i>	<i>4,45,000/-</i>
<i>TOTAL</i>		<i>1,59,93,300/-</i>

In the absence of any explanation from you for the sources of cash deposit, the same will be treated as unexplained cash credit u/s.68 of the Income-tax Act and will be added back to your total income."

13. We also noticed that during the course of hearing of the original assessment, the Assessee filed letter dated 07.03.2014 addressed to the Assessing Officer-Ward-13(2)(1) Mumbai, in response to above notice explaining the addition of cash deposited in various bank accounts of Rs. 1,59,93,300/- (*Part of paper book page no. 1 to 19*). The AO in his original assessment order dated March 15, 2014 determined the total income at Rs 25,59,430/-making addition of cash deposited in various bank accounts aggregating to Rs.1,59,93,300/-under section 68 of the Income Tax Act as "*business income*". In this letter the Assessee submitted as under:-

"We are in receipt of your letter dated 4/3/2014 fixing the hearing on 7/3/2014 at 12:30p.m. In this connection we submit as under-

(1) Shri Asif Shaikh who is consistently representing our case before your honor and who has been replying your queries is presently out of station. Therefore I am filing this written submission after consulting him on telephone.

(2) Assessee is a individual and Proprietor of M/s. Ganesh Container Movers Syndicate and is a transport contractor and container handling transport contractor.

(3) On perusal of return of income for the A.Y 2001-02 to 2010-11 of the assessee, your honour will appreciate that the assessee's only possible sources of income are as under:-

(A)Business income all throughout last 10 years.

(B)Assessee possesses agricultural land at various locations as under:-

i. Shri Ram Salve is an **agriculturist by birth. He has agricultural lands at Mahabaleshwar seven acres and**

ii. **He has agricultural land at Taloja 8% acres. Both the lands are in the name of Shri.Ram B Salve.**

iii. He has not declared any agricultural income in his return of income under the mistaken belief that agriculture income is exempt from taxation.

(4) Talathis certificate showing evidence of ownership and location of agriculture lands and size/area, along with crops taken etc. are enclosed. As per the land records assessee has taken various crops such as Strawberry, Wheat, Bajra and Potato etc. at both the places. Certificate from the tatathi to this effect is enclosed. Assessee is maintaining records of income and expenditure relating to Agriculture income which can be produced as and when required Presently the Talathi is out of station. Since the matter is urgent we have taken tentative certificate. After Talathi resumes duty we shall take fresh certificate with full details including Rest year

(5) Assessee's average yearly income from both the locations is approximately Rs. 19 to 21 lakhs after adjusting expenses as per the cash book maintained. Purchase & sales bills we are trying to trace out and will be produced as and when required."

14. As per assessee, the AO although accepted the letter, but no hearing took place and the letter was not considered while framing the Assessment Order. Thereafter, almost after a week, the AO passed the original assessment order dated 15.03.2014 without any reference to this letter. It was submitted that according to the Assessee, the only possible sources of cash deposited in various bank accounts account were:

- i. *Business income and/or*
- ii. *Agricultural income based on Talathi's certificate **(Copy of 7/12 extract certified by the talathis part of paper book at page no 1 to 19)** showing that the assessee possesses agricultural land both at Mahabaleshwar and Taloja and that the Assessee has taken various crops such as strawberry, wheat, bajra, potato, etc. as per Govt. records. These being Govt. records there is no reason to doubt the authenticity of the same.*

15. The AO had confirmed on *page no. 3 para 4* of original assessment order dated 15.03.2014 (**refer Paper book page no. 23**) reads as under:-

"During the course of assessment proceedings, it is seen from schedule I of the balance sheet that the assessee owns a farm house at Taloja, but has not shown any rent income from the said property."

16. Thus, both the agricultural lands at Taloja and Mahabaleshwar appear in the balance sheet of the Assessee which were bought by his ancestors long ago. The Assessee

refers to and relies upon the said Balance Sheet (**enclosed as Annexure A**)

17. In this way, there was material to support the claim of the Assessee that as per Govt. records cash **deposited in various bank accounts represented the sale of agricultural crops** taken by the Petitioner during last several years. The Assessee has filed **Talathi's certificate** showing that the Assessee possesses agricultural lands and that he has taken various crops as given in the Talathi's certificate as per Govt. records. Based on these facts according to assessee *two views* were possible that either the cash deposited in bank accounts represented *agricultural income and/or business income*. As per assessee, the AO has taken the *second view* that it is business income because the Assessee has not shown agriculture income in his return of Income for last many years under the mistaken belief that agricultural income is exempt from taxation. Therefore, In our view, since the Assessee has been showing business income regularly throughout last several years, the AO took the view that there is escapement of business income and therefore, the cash deposited in the bank account was treated by AO as *"business income*. Thus, if *two views* are possible on a point of law and AO has taken *one view* with which the Ld. PCIT does not agree, it cannot be treated as *erroneous order prejudicial to the interest of the Revenue*. Therefore in this way, the original assessment order passed by the AO dated 15.03.2014 was neither erroneous nor prejudicial to the interest of Revenue.

18. After having considered the facts of the present case and after hearing the parties at length, we are of the view that although the AO had not accepted the cash deposited in bank account as '*business income*' in a mechanical way but had applied his mind to various aspects of the matter before completing the assessment. Based on assessee's letter dated 07.03.2014, although AO had not mentioned in the assessment order, he should have checked the old records of the Assessee for last many years and thereafter out of the two possible views, that the cash deposited in bank account either represented agricultural income or business income. In our view, the AO took the view, in the best interest of the Revenue that it is business income. Had he adopted the first view that it is agricultural income, the entire cash deposited in bank account would have gone tax-free, which according to Assessing Officer, was probably not in the interest of Revenue. But the fact remains that it is agricultural income. Therefore, the original assessment order passed by the Assessing Officer cannot be treated as erroneous and prejudicial to the interest of Revenue.

19. Although the AO had not referred to Appellant's letter dated March 7, 2014 in his assessment order dated March 15, 2014. The Assessing Officer was bound to consider Appellant's letter dated March 7, 2014 because Assessing Officer has passed the order almost after a week i.e. on March 15, 2014. Based on Appellant's letter dated March 7, 2014 along with *Talathi's certificate* showing production of various crops such

as *Strawberry, Wheat, Bajra, Potato etc*, as per assessee the AO ought to have given a finding in the assessment order that the cash deposited in various bank accounts is '*agricultural income*' instead of business income assessed by him. In this view of the matter, the original assessment order dated 15.03.2015 is erroneous and prejudicial to the interest of Assessee and not Revenue as claimed by Pr. CIT-17.

20. The Hon'ble Kerala High Court observed in the case of ***Paul Mathews & Sons vs. Commissioner of Income Tax 263 ITR 0101*** on page 8 Para 18 reading as under.

"18. It can thus be seen that the Assessing Officer has not accepted the income declared by the assessee in a mechanical way, but applied his mind to the various aspects of the matter before completing assessment.

.....
.....
In such circumstances the question as to whether the CIT could have invoked his power under s. 263 of the Act to hold that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue is justifiable in law arises for consideration.

19. In *Malabar Industrial Co. Ltd. Vs. CIT (200) 159 CTR (SC) 1: (2001) 243 ITR 83 (SC)* the apex Court considered the meaning of "*prejudicial to Revenue*" and it was held thus that the word "*prejudicial to Revenue*" must be read in conjunction with an erroneous order. Dealing with the matter, the apex Court held that:

*"A bare reading of Section 263 of the Income-tax Act 1961 makes it clear that the prerequisite for the exercise of jurisdiction by the CIT suo motu under it, is **that the order of the Assessing Officer is erroneous** insofar as it is prejudicial to the interest of the Revenue. The CIT has to be satisfied of twin conditions, namely, (1) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interest of the Revenue. If one of them is absent if the order of the Assessing Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is*

prejudicial to the Revenue recourse cannot be had to s. 263(1) of the Act. The provision 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 the section 263 will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous, in the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Assessing Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be "prejudicial to the interest of the Revenue". The phrase "prejudicial to the interest of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the Revenue, for example when an Assessing Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Assessing Officer is unsustainable in law."

21. We noticed that the Principal Commissioner of Income-tax-17 in his order dated 10.2.2016 has also relied upon both the above two judgments for reopening of the Appellant's case u/s. 263 stating that the original assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue which is incorrect. Pr. Commissioner has observed in his Order u/s.263 on page-2-para-6 reading as under:-

"6. It is pertinent to cite the decision of the Apex Court in the case of Malabar Industrial Company Limited Vs. CIT reported in 243 ITR 83, wherein it was held that

"Prejudicial to the interest of Revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. If, due to an erroneous order of the Assessing Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the revenue. Further in the decision of the Kerala High Court in the case of Paul Mathews and Sons Vs. CIT reported in 263 1TR 101, it was held that an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous."

22. In this regard reliance is further placed upon judgments in the case of ***(1) Paul Mathews & Sons v Commissioner of Income Tax 263 ITR 0101 (SC) and (2) Malabar Industrial Co. Ltd. VL CIT 243 TR 83 (SC)***, However based on facts given above, AO's original order is neither erroneous nor prejudicial to the interest of Revenue. The Pr. CIT has not given any reasons as to why cash deposited in bank account represented *income from other sources* and not *business income* as assessed by the AO in his original assessment order. Both these judgments relied upon by Ld. Pr.CIT, in fact, support the case of the Petitioner. Moreover Hon'ble Supreme Court Judgement in the case of ***CIT Vs. Max India Ltd 295 ITR 0282*** reads as under:

"Revision - Erroneous and prejudicial order-Two view possible-where two views are possible and the Assessing Officer has takes one view with which the CIT does not agree, it cannot be treated as an

erroneous order prejudicial to the interest of the Revenue, unless the view token by the Assessing Officer is unsustainable in law-when the CIT passed the impugned order under s.263, two view were inherently possible."

23. Further reliance is being placed upon the decision of Hon'ble Bombay High Court observed in the case of **CIT vs. Gabriel India Ltd., 203 ITR 0108 (Bom)** which reads as under:

"Conclusion:

In order to exercise jurisdiction under s. 263, commissioner must have material to prima facie come to a conclusion that order of Assessing Officer is erroneous as also prejudicial to interest of Revenue."

24. On the contrary, there is absolutely no material relied upon by the Ld. PCIT in his order for coming to the conclusion that the cash deposited in the bank accounts represented "*income from other sources*" instead of "*business income*".

25. Therefore considering the totality of the facts and circumstances as discussed by us above and also keeping in view the decisions of Hon'ble Supreme Court, Hon'ble Jurisdictional Bombay High Court and other authorities, we are of the view that the assessment order passed under section 143(3) cannot be termed as erroneous and prejudicial to the interest of the Revenue within the

meaning of section 263. Thus we allow the grounds raised by the assessee and quash the order of Ld. PCIT passed u/s 263 of the Act.

26. In the result the appeal filed by the assessee ***stands allowed.***

ITA No. 5370/Mum/2018, A.Y 2011-12

27. Since we have quashed the order of Ld. PCIT passed u/s 263 of the Act in ITA No. 1647/Mum/2016, A.Y 2011-12 therefore the present appeal being the ***consequential in nature has become infructuous.***

Order pronounced in the open court on 13.10.2025

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 13/10/2025
KRK, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER ,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai