

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
(THROUGH VIRTUAL HEARING)

श्री जार्ज माथन, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

आयकर अपील सं/ITA No.553/CTK/2024
(निर्धारण वर्ष / Assessment Year : 2018-2019)

Bajrang Steel And Alloys Private Limited Plot No:- 31, Kalunga, Near Kalunga High School, Sundergarh, 770031	Vs	PCIT, Sambalpur
PAN No. : AAACM 2123 M		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Miss Sarmila Agarwal, CA
राजस्व की ओर से / Revenue by	:	Shri Ashim Kumar Chakraborty, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	22/09/2025
घोषणा की तारीख/Date of Pronouncement	:	22/09/2025

आदेश / ORDER

Per Bench :

This is an appeal filed by the assessee against the order of the Ld.CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2018-2019.

2. It was submitted by the Ld. AR that the return filed by the assessee came to be processed originally and the assessment came to be completed making an addition of Rs.60,33,481/- U/s. 37(1) of the Act on the ground of the bogus purchases. It was submission that the Ld. PCIT invoked its power u/s.263 of the Act on the ground that the AO in the show cause notice proposed the addition u/s 69C of the Act but had made the addition u/s. 37(1) of the Act in the course of assessment. The

Ld. PCIT issued show cause notice and after the receiving the reply of the assessee, directed the AO to make the addition u/s. 69C of the Act instead of Section 37(1) of the Act. It was submission that the addition *per se* having been made, the Ld. PCIT has only shifted the addition from section 37(1) of the Act to section 69C of the Act. It was submission that order u/s. 263 of the Act is unsustainable, insofar as no enquiry has been done by the Ld.PCIT. It was prayer that the order u/s. 263 of the Act is liable to be quashed.

3. In reply, Ld CIT DR submitted that in the show cause notice issued by the AO in the course of original assessment, the AO had proposed the addition u/s. 69C of the Act but when the assessment order was passed, he had wrongly applied the provision of section 37(1) of the Act. It was submission that this had led to a loss of revenue, insofar as an addition u/s. 37(1) of the Act would have resulted in only 30% tax, whereas if the addition u/s. 69C of the Act is made, the tax would be at the special rate of 60% under Section 115BBE of the Act. It was further submission that application of wrong section can be corrected by the PCIT by invoking the power of U/s. 263 of the Act. It was further submission that the assessment order making the addition u/s. 37(1) of the Act being erroneous, the Ld. CIT(A) had corrected the error. It was further submitted that the assessment order making the addition u/s. 37(1) of the Act was also prejudicial to the interest of revenue, insofar as the wrong section had been applied leading to lower tax liability. We are vehemently supported the order of the Ld. PCIT, Sambalpur.

4. We have considered the rival submissions. A perusal of the order of the PCIT shows that, at the outset, the addition of Rs.60,33,481/- as raised in the assessment, has been challenged by the assessee in appeal before the CIT(A). Whether the same is to be assessed u/s. 37(1) or u/s. 69(C) of the Act, was well within the purview of the Ld. CIT(A), insofar as, obviously the AO should also have been granted another opportunity to represent its case before the Ld. CIT(A). It is admitted fact the Id. AO in the show cause notice has referred to the provision of section 69C of the Act in respect of said addition but the AO wisdom had applied his mind and has made the addition u/s. 37(1) of the Act. The act of Ld. PCIT in invoking its powers u/s. 263 of the Act to direct the AO to assess the said amount under section 69C of the Act, is nothing but a change of opinion, insofar as, he is proposing to impose his views over that of the AO. This is not permissible under the provisions u/s. 263 of the Act. The AO having taken a view on the issue and applied a particular section the action of the Id. Pr.CIT in directing that another section is to apply is not permissible and on this ground, we find that order passed u/s. 263 of the Act is unsustainable and consequently we quash the same.

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

Order dictated and pronounced in the open court on 22/09/2025.

Sd/-

(राजेश कुमार)

(RAJESH KUMAR)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

दिनांक Dated 22/09/2025

Prakash Kumar Mishra, Sr.P.S.

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

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

1. अपीलार्थी / The Appellant- Bajrang Steel And Alloys Private Limited
Plot No:- 31, Kalunga, Near Kalunga High School, Sundergarh, 770031
2. प्रत्यर्थी / The Respondent- PCIT, Sambalpur
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack