

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH MUMBAI
BEFORE: SHRI BEENA PILLAI, JUDICIAL MEMBER
&
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No. 3713/MUM/2025(AY: 2011-12)
&
ITA No. 3714/MUM/2025(AY: 2012-13)
&
ITA No. 3715/MUM/2025(AY: 2013-14)
&
ITA No. 3716/MUM/2025(AY: 2015-16)
&
ITA No. 3717/MUM/2025(AY: 2016-17)
&
ITA No. 3718/MUM/2025(AY: 2017-18)
&
ITA No. 3719/MUM/2025(AY: 2018-19)

Raj Impex 101A Devidarshan Complex Tembi Naka Thane West, Thane-400601. PAN: AALFR6800J	Vs.	PCIT Central Mumbai 1 Room No. 1001, 10 th Floor, Pratishtha Bhavan Old CGO Annex Maharashi Karve Road, Mumbai-400020.
(Appellant)	..	(Respondent)

Assessee by	Shri. Satish R Mody
Revenue by	Shri. Umashankar Prasad, CIT. DR
Date of Hearing	09/09/2025
Date of Pronouncement	27/10/2025

Order under section 254(1) of Income Tax Act

PER BENCH:

The captioned appeals are filed by the assessee challenging the separate revisionary orders passed u/s 263 of the Income tax Act (in short 'The Act') by the Ld. Principal Commissioner of Income Tax, Central Mumbai-1 (in short 'Ld. PCIT') for A.Y. 2011-12, 2012-13, 2013-14, 2015-16, 2016-17, 2017-18 and 2018-19 vide separate

order dated 30.03.2025, which in turn raises from the assessment order u/s 143(3) r.w.s. 153(A) of the Act passed by the Assistant Commissioner of Income Tax, Central Circle (2), Mumbai dated 05.04.2022 and 06.04.2022 separately for all the aforesaid years.

2. At the outset, as consented by both the parties that all the captioned appeals are on identical issues, having similar as well as interconnected facts and circumstances, and directed against the identical orders U/s 263 by the Ld. PCIT(Central), Mumbai, therefore may be taken together for hearing. The matters accordingly are heard together and disposed of under this common order.

3. For the sake of brevity and convenience ITA No. 3713/Mum/2025 for the A.Y. 2011-12 has been taken as lead case, wherein our observation, discussion and decision shall apply *mutatis mutandis* to the remaining appeals under consideration.

4. The assessee has raised the following grounds of appeal in ITA 3713/Mum/2025, which are identical in all the aforesaid appeals:

1. *On the facts & in the circumstances of the case the learned Pr. Commissioner of Income Tax, Central Mumbai-1 has erred legally & factually by passing order u/s 263 for fresh assessment where the order passed u/s 153A r.w.s. 143(3) was not at all prejudicial for revenue.*
2. *On the facts and in the circumstances of case the learned Pr. Commissioner of Income Tax, Central Mumbai-1 has further erred in passing order u/s 263 when the order passed u/s 153A r.w.s. 143(3) was made after search on assessee &*

there was no incriminating evidence for any concealed income or any corroborating evidence were found during search operation.

3. *The assessee reserve its right to add, to alter or to drop any at the grounds.*

5. Briefly stated, the assessee is a partnership firm engaged in the business of production of essential oils and perfumery by processing aromatic herbs. The Factory of the appellant is situated at Khasara No. 3267, VPO Bhadsali, Tehsil and District: Una Himachal Pradesh. In the relevant assessment years, the assessee had claimed deduction u/s 80IC of the Act, since the manufacturing unit is situated in Himachal Pradesh. An action u/s 132 of the Act was conducted on the appellant on 10.03.2021. Accordingly notice u/s 153(A) was issued on 13.01.2022 and served upon the assessee. In response the assessee company filed its return of income on 03.02.2022 declaring total income at Rs. 12,924/-. In the course of proceedings notice u/s 143(2) dated 10.02.2022 and 142(1) on 14.01.2022, 31.01.2022, 16.02.2022 were issued. In compliance various details and information from time to time were filed by the assessee. The submissions of the assessee were considered by the assessing officer, he accepted the returned income of the assessee, and accordingly the assessment was completed without any addition / disallowance.

6. Subsequently the case of the assessee was picked up of revisionary proceeding by Id. PCIT, Mumbai. Ld. PCIT observed that the assessing officer has allowed deduction u/s 80IC of the Act, whereas the assessee have not produced the goods as required per the list of articles or things or operations specified in the 14th schedule of Income Tax Act, to entitle for claim u/s 80IC. Ld. PCIT further observed certain

discrepancies and accordingly was of the opinion that there was likelihood of under assessment of taxable income for at least Rs. 3,08,26,203/-. The assessee also clarified its position before the Ld. PCIT by rebutting to the queries raised that the subjected claim of deduction u/s 80IC has been consistently allowed by the assessing officers after satisfying that condition laid down in Section 80IC which is duly fulfilled. The assessing officer had not either during the assessment proceeding or the search team during the physical clarification had found any fault in the said claim of the assessee. The judicial ratio in the order of ITAT in the assessee's case for AY 2014-15 was given on different set of facts and legal position therefore could not be applied for rest of the years. The assessee has provided the list of documents submitted to the department in support of its case that purportedly shows that the products and operations have completely compliant with mandate u/s 80IC of the Act. The Assessee also cited the decision of Hon'ble Supreme Court in the case of **PCIT, Central-3 Vs Abhisar Buildwell (P.) Ltd., reported in (2023) 149 taxmann.com 399** and certain other judicial ratios to argue that if no incrementing material was found in the course of search u/s. 132 of the Act, then the assessment of any completed/unabated assessment year could not be carried out and completed by the assessing officer in manner that leads to enhancements to income based on other material / information.

7. Ld. PCIT referred to the replies to the assessee however was not convinced with the same, thus, had concluded that as per mandate of explanation-2 below subsection (1) of sub-section 263 (inserted by finance Act 2015 w.e.f. 01.06.2015), the requisite enquiries were not made by the Ld. AO, which in the opinion of Ld. PCIT, were necessary to complete the assessment. Finally, the matter is restored back to

the file of Ld. AO for fresh assessment after detailed enquires, verification, analysis and investigation on the issue with reasonable opportunities to the assessee.

8. The findings of Ld. PCIT are culled out as under:

"15. Considering the positions of law and various judicial pronouncements, I hold that the assessment order passed by the assessing officer is erroneous and prejudicial to the interests of Revenue within the meaning of Section 263 of the Act. The impugned facts and particulars applicable in the impugned matters as discussed in detail earlier in this order have not been correctly and comprehensively examined by the Assessing Officer per the applicable statutory mandates. As detailed and evidenced above, inquiries, verifications, analyses, and investigations that were required to be carried out by the Assessing Officer have not been carried out in the manners these were to be carried out thereby attracting squarely the applicability of Explanation 2 of Section 263 of the Act. I therefore, set aside the assessment order passed to the Assessing Officer, with a direction to carry out and complete the assessment afresh, after conducting necessary enquiries as directed above in respect of the impugned matters including that of the underassessment through the non-disallowance of the claim of deduction u/s 80IC of the Act of Rs. 3,08,26,203/- for the AY 2011-12. The Assessing Officer is directed to take necessary actions including the passing of the order of assessment after affording proper opportunity of being heard to the assessee."

9. Being aggrieved that the aforesaid order by the Ld. PCIT, the assessee preferred the present appeal challenging the revisionary proceedings in terms of grounds of appeals before us.

10. At the outset Ld. Authorized Representative of the assessee (in short 'the Ld.AR) submitted that during the course of search which was the genesis of impugned assessment u/s 153A, no incrementing material was found to show that the appellate was not eligible for deduction u/s 80IC of the Act or the appellant has wrongly claimed the deduction u/s 80IC of the Act. Further, inspite of the aforesaid fact the assessee had submitted all the details called by the assessing officer and Ld. AO after duly considering the details filed. Ld. AO, after discussion with Ld. JCIT from time to time has passed the order u/s 153A r.w.s. 143(3) as approved u/s 153D of the Act, accepting the claim *qua* the deduction u/s. 80IC of the Act. It is submitted that ld. PCIT doubted the claim of the assessee u/s 80IC, having an opinion that the assessee was not producing the goods specified in the 14th schedule of IT Act and accordingly have issued the show caused regarding the assessee entitlement u/s. 80IC(2)(a)(ii) and also whether the product manufactured was covered u/s. 80IC(2)(b). A detailed reply was furnished by the assessee before the Ld. PCIT to clarify its position that no incrementing material was found in the course of search nor in show caused notice the Ld. PCIT was relying on any incrementing material to carry out the revisionary proceeding under section 263 of the Act. The assessee also clarified about the place, where manufacturing activity was carried and same is covered in the CBDT notification no. S.O.1269 (E) dated 04.11.2003. The address is further certified being stated in the punchanama therefore the assessee appellant was eligible for the deduction u/s. 80IC(2)(a)(ii), as the product manufactured by the appellate i.e. essential oil and perfumery was not covered in the negative list in schedule 13th of the Act. It is submitted that the Ld. PCIT had placed his reliance on books and supporting bills

invoices etc, however while passing the order u/s. 263 of the Act has not given any finding as how the order passed by assessing officer is erroneous. The matter is simply remanded to the AO for carry out further investigation without carrying out any investigation by Ld. PCIT himself. Ld. AR also raised a question regarding revisionary proceedings to an order passed u/s. 153A, if the same can be revised without revising the approval u/s 153D of the Act granted to pass such order? Ld.AR placed his reliance on the following decisions.

- a) Shri Surendra L. Hiranandani vs. PCIT, Central 1, ITA NO. 3226/M/2017, (Mumbai ITAT) dated 14/02/2018.*
- b) Smt. Abha Bansal vs. PCIT (Central) Gurgaon, [2021] 132 taxmann.com 231 (Delhi ITAT) dated 31/05/2021.*
- c) PCIT vs. Prakhar Developers (P.) Ltd. [2011] 162 taxmann.com 48 (Madhya Pradesh High Court) dated 1/4/2024.*
- d) Nalanda Engicon Pvt. Ltd. vs. DCIT, Central Circle-2, Patna ITA No. 322 to 329/Pat/2024, (Patna ITAT) dated 12/09/2024.*
- e) Gyan Infrabuild (P) Ltd. vs. PCIT (Central), ITA No. 175 to 178/Pat/2023 dated 13/05/2024 [2024] 162 taxmann.com 664*

11. Regarding additional ground to challenge the revisionary proceeding without revising the approval u/s. 153D of the act. Ld. AR placed his reliance on the judgement of **Arun Mohanlal Joshi vs. ACIT Central Circle (2) (2), Mumbai I.T. (SS)A No. 1169 to 1176/M/2025 dated 16.06.2025 ITAT Mumbai "A" Bench** and had submitted that the additional ground can be raised during the course of hearing even

oral and opportunity should be given to the other side which in the case of present appeal has provided to the Ld. DR. Ld. AR further stressed upon the issue that the addition in an unabated assessment year can only be made on the basis of incrementing material if the assessment is completed u/s 153A consequent to search action on the assessee. Reliance placed on the judgment **Vinay Joshi vs. PCIT, Central, Mumbai-1 (ITAT Mumbai) ITA No. 3721/M/2025 dated 30/07/2025.**

12. Ld. AR further argued that on merit no decision was given by the Ld. PCIT whereas the assessee has furnished all the information required during the course of hearing before the Ld. AO and clarified the issue before the Ld. PCIT also during the proceeding u/s 263 of the Act. It is submitted that one's the assessing officer has accepted the replies of the assessee and has passed an order, it cannot be the case of no enquiry. Since the PCIT while passing the order u/s. 263 of the Act has failed to give any decision/conclusion on merits, the order u/s. 263 of the Act is bad in law. Reliance is placed on the judgement **PCIT vs. V-con Integrated Solutions 476 ITR 526 (SC) dated 04/04/2025.** Regarding addition on the basis of statements any incriminating material which is relied upon the Ld. DR of Mr. Nari Behara during the course of search. Ld. AR placed reliance on the decision of the Ld. **DCIT vs. Aachman Vaijya (P) Ltd. (ITAT Mumbai) ITA NO. 824 to 827/Mum/2025 dated 21/03/2025 [2025] 173 taxmann.com 391** and submitted that no addition can be made based on the statements, without any incriminating material found during the course of search.

13. Ld. AR further clarified regarding no specific mention about the issue in the assessment order that merely because Ld. AO did not make any mention of the issue in respect of which specific notices were issued to the assessee, and did not make any reference to the enquiries conducted, the assessment order cannot be considered as erroneous. The reliance was placed on judgments **(a) CIT vs. Sunbeam Auto 332 ITR 167 (Delhi HC) (b) Smt. Abha Bansal vs. PCIT (Central) Gurgaon, [2021] 132 taxmann.com 231 (Delhi ITAT) dated 31/05/2021. (c) CIT v. Reliance Communication [2016] 69 taxmann.com 103 (Bombay High Court).**

14. Apropos, the reliance of department on A.Y. 2014-15 in the case of assessee which was decided against the assessee by ITAT, Ld. AR submitted that, it was on different set of facts, the case for A.Y. 2014-15 pertain to order u/s. 143(3) of the Act which was sought to be revised by the PCIT and such revision has been upheld. The order which is now sought to be revised by the PCIT under section 263 of the Act is an order passed post search by the assessing officer u/s. 153A of the Act, wherein detailed verification qua the assessee's eligibility u/s 80IC was carried out by the assessing officer during the course of assessment proceedings and the assessee cooperated inspite of the fact that Ld. AO had exceeded his jurisdiction u/s 153A by enquiring on an issue which does not emanated from the search proceedings on account of any incriminating material, whereas for abated assessment years any addition can be made only on the basis of incriminating material found during the course of search.

15. Regarding use of different sub-sections of section 80IC by the assessee and the manufacturing of Gutka and Tobacco mentioned in the assessment order, Ld. AR submitted that the said issues are irrelevant at this stage while the revisionary proceeding of the Id. PCIT are under consideration since such issues were never raised by the Id. PCIT, in his order of the 263 of the Act. It is submitted that Ld. CIT-DR cannot travel beyond the SCN and order u/s. 263 to justify the Ld. PCIT's order u/s. 263.

16. Ld. AR further raised the question on notice u/s 153A of the Act that such notices for the A.Y. 2011-12, 2012-13 and 2013-14 are issued beyond six years. Therefore, additional conditions of section 153A were required to be fulfilled however, no finding about escaped assessment amount for more than Rs. 50 lacs were given by either Ld. AO or Ld. PCIT in their order. Therefore, the assessment u/s 153A of the Act is *void ab initio* for the referred years and Ld. PCIT was not justified in revising the assessment for such years.

17. On merits of the case the assessee submits that the assessee manufactures essential oils and perfumery which is not covered in the negative list as per 13th Schedule of the Act, whereas it is producing the goods specified in the 14th schedule of IT Act. Further the place of manufacture i.e. the address has been confirmed from the panchanama itself. Since the appellant had satisfied all the pre-conditions, the appellant is eligible for deduction u/s. 80IC(2)(a)(ii) of the Act. Also, since the appellant is manufacturing essential oils and perfumery which is made from processing

aromatic herbs the appellant is even eligible for deduction u/s. 80IC(2)(b)(ii) of the Act.

18. With the aforesaid submission it was prayed by Ld. AR that the order u/s 263 based on improper application of the facts and under misreading of the legal provision of the act cannot sustain in the eyes of the law, the same therefore is liable to be quashed.

19. Per contra Ld. CIT-DR representing the revenue submitted that as per assessment order the activity of the assessee was manufacturing of Gutka and Tobacco which are not covered in the 14th schedule. It is further explained that the assessee had mentioned different sections in different years while claiming the exemption u/s 80IC. He took us to the relevant pages in the paper book of the assessee and have clarified that for A.Y. 2011-12 and 2012-13 the section mentioned was 80IC only, whereas in AY 2013-14 it was 80IC(2)(b)(ii), for A.Y. 2015-16, 2016-17 and 2017-18 it was 80IC(2)(A1) and A.Y. 2018-19 it was 80IC(2)(A2), it shows that the assessee is not clear of the provisions of the Act and its applicability to its product. The Ld. AO had also not made any enquiries to such shifting of section by the assessee. Therefore, it is clear case of no enquiry by the Ld. AO and therefore the claim of the assessee u/s 80IC was under wrong presumption by Ld. AO. Ld. DR submitted that the variation in claim of assessee was very much before the Ld. AO but he had not made any effort to verify the same. Ld. DR further submitted that as per form 3CD of the assessee placed in paper book in page No. 343-380, at page No. 351 the assessee mentioned his business or profession as "**Manufacturing in sale of**

perfume and essential oils", whereas as per sch. 14th showing list of articles or things or operations in Part C (referred by the Ld. AR) for state of Himachal Pradesh, the activity at item No. 2 is "**Medicinal herbs and aromatic herbs, etc. processing**", thus, the assessee is not involved in the said activity. Therefore, the assessee is not entitled to claim u/s 80IC of the Act. Ld. DR further drew out attention to the revisionary order u/s 263 and reiterated the contention raised by the Ld. PCIT that there were no enquiries by Ld. AO about the assessee is claimed u/s 80IC of the Act. Accordingly, the Ld. PCIT had rightly invoked the revisionary powers vested with him u/s 263 of the Act.

20. We have considered the rival submissions, perused the material available on record and case laws / jurisprudence relied upon by the parties. A search was conducted on 08.02.2021 u/s 132(1) of the Act in the case of JMJ Group of others, wherein the assessee M/s Raj Impex was also a party. Accordingly, the case of assessee was taken up for assessment u/s 153A of the Act. The assessments thereafter were completed with no addition *qua* the assessee's claim u/s 80IC of the Act. Subsequently, Ld. PCIT had perused the assessment records of the assessee and find that the assessee is not entitled to claim deduction u/s 80IC of the Act which has been claimed by the assessee for assessment years 2011-12, 2012-13, 2013-14, 2015-16, 2016-17, 2017-18 and 2018-19. Under such observations, Ld. PCIT invoked the provisions of Section 263 to revise the assessment made u/s 153A / 143(3) of the Act for all the aforesaid years. Show cause notices were issued to the assessee u/s 263 of the Act to which the assessee responded with necessary compliances and have objected to the revisionary proceedings initiate, as elaborated hereinabove. Ld. PCIT

did not find any substance in the submissions of assessee and therefore, had set aside the assessment to the file of Ld. AO to complete the assessment afresh after conducting necessary enquiries as directed in the order u/s 263 of the Act. It was the conviction of Ld. PCIT that the assessment order passed by Ld. AO are erroneous / prejudicial to the interest of revenue therefor, the said assessment needs to be set aside and fresh assessment should be made, examining the issue pertaining to assessee's claim u/s 80IC of the Act.

21. Before us, Ld. AR on behalf of the assessee has raised multifold contentions such as whether the assessment u/s 153A which is passed after approval of supervisory authority u/s 153D of Act, can be revised without revising the said approval granted u/s 153D of the Act.

22. Since the assessment was initiated after Search & Seizure operation 132(1) of the Act for the year under consideration which is an unabated assessment year, can the addition or disallowance be made without any incriminating material found or unearthed during the course of search. Ld. AR placed his reliance on the judgment of **PCIT, Central-3 Vs Abhisar Buildwell (P.) Ltd., reported in (2023) 149 taxmann.com 399.**

23. It is also alleged by the Ld. AR there was no decision by the Ld. PCIT, neither any enquiries were conducted by the Ld. PCIT himself to reach at any logical conclusion and the matter was remanded to the file of Ld. AO which is not as per the mandate of Section 263 of the Act. Ld. AR clarifies that the department has placed its

reliance on the statement of Shri Nari Behara recorded during the course of search, whereas as per settled principals the statement of a third party alone cannot be the basis of addition unless some incriminating material corroborating the stated reasons for under assessment / ineligible claims of assessee have been brought on record.

24. After considering the aforesaid contentions thoroughly, we find that in present case, undoubtedly all the assessment years involved herein are unabated assessment years since the search action was conducted on 08.03.2021, and the prescribed date for issuance of notice u/s 143(2) for the captioned assessment years was already elapsed, further no submissions contrary to this fact have been brought to our attention by the representatives of the revenue, therefore any addition under 153A of the act for an unabated / completed assessment was to be made only on the basis of incriminating material found during the search. Our view is fortified on this issue with the categorical findings of Hon'ble Apex Court in the case of **Abhisar Buildwell (supra)**, the same therefore are extracted as under:

14. In view of the above and for the reasons stated above, it is concluded as under:

(i) that in case of search under section 132 or requisition under section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

(ii) all pending assessments/reassessments shall stand abated;

(iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

(iv) *in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.*

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs

(emphasis supplied)

25. While interpreting the facts of present case, in light of the principle laid in the aforesaid judgment **Abhisar Buildwell (supra)**, we find that no addition has been made by the department to the income of assessee on the basis of any incriminating material in the main assessment orders u/s 153A, also no reference of such material has been recorded in the revisionary orders u/s 263 by the Ld. PCIT, therefore, the issue raised by the Ld. PCIT u/s 263 to check the entitlement of the assessment u/s 80IC, which was beyond the scope of assessment u/s 153A, so examination of such issue by the Ld. AO was beyond his jurisdiction, thus the assessment completed cannot be said to be erroneous, the same therefore falls out of the ambit of provisions of Section 263. We, therefore, are unable to concur with the exercise and assumption of powers u/s 263 by Ld. PCIT in the present matters, without satisfying the mandate of law. Since, it is held that the issue raised by the Ld. PCIT was not emanating from any incriminating material found during the search, therefore was out of ambit of powers

conferred upon him u/s 263, therefore, the revisionary action taken by the Ld. PCIT was beyond his jurisdiction and accordingly, the same cannot be sustained.

26. Since the order u/s 263 passed by Ld. PCIT was held as erroneous beyond the scope of provision of section 263 without the mandate of law to invoke such powers on the basis of no incriminating material for unabated assessment year, therefore, we are not dealing with other contention raised by the Ld. AR to deal with on legal aspects or merits of the case. The same, therefore, are rendered as academic only.

27. In result, the appeal of assessee in ITA No. 3713/MUM/2025 for AY 2011-12 is allowed. The remaining appeals in ITA Nos. 3714 to 3719/MUM/2025 for assessment years 2012-13, 2013-14, 2015-16, 2016-17, 2017-18, 2018-19, since all are raising the same questions, having parity of facts and identical impugned ordered u/s 263, therefore our decisions in ITA No. 3713/MUM/2025 shall apply *mutatis mutandis* to the remaining appeals also. Accordingly, are rendered as dismissed.

28. In combined result, in ITA Nos. 3713 to 3719/MUM/2025 for the assessment years 2011-12, 2012-13, 2013-14, 2015-16, 2016-17, 2017-18, 2018-19 of the assessee's are **allowed** in terms of our aforesaid observations.

Order pronounced in pursuance of Rule 34(4) of the Income Tax (Appellate Tribunal) Rules,
1963 on 27/10/2025.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Mumbai; Dated 27/10/2025
Disha Raut, *Steno*

Sd/-
(ARUN KHODPIA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai