



IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "B", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER  
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.849/PUN/2025  
Assessment Year : 2020-21

Vivek Nathuram Gavhane, E/19 Ganesh House, Near Nisarg Mandal Karyalaya, Market Yard, Pune 411 037 Maharashtra PAN : AAWPG1618A	Vs.	Pr.CIT (Central), Pune
Appellant		Respondent

Appellant by	:	Shri Nikhil S. Pathak
Respondent by	:	Shri Amit Bobde
Date of hearing	:	15.09.2025
Date of pronouncement	:	04.11.2025

**आदेश / ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The captioned appeal at the instance of assessee pertaining to A.Y. 2020-21 is directed against the order dated 27.01.2025 framed by PCIT(Central), Pune emanating out of Assessment Order dated 30.09.2022 passed u/s.143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. Brief facts of the case are that the assessee is an individual and carried on the business of supply of food, foodgrains, grocery, stationery etc. in the name of sole proprietary concern M/s. Ashish Trading Company. Income of Rs.99,44,420/- declared in the return of income for A.Y. 2020-21 e-filed on 31.03.2021. A survey u/s.133A of the Act carried out on the business premises of the assessee on 27.09.2019. Case selected for scrutiny followed by validly serving of



statutory notices u/s.143(2) and 142(1) of the Act. Various details were called for by ld. Assessing Officer (AO) in the questionnaire issued to which necessary details were filed. Books of account and other financial statements were examined. Ld. AO concluded the assessment after making addition u/s.69C and 69A of the Act at Rs.39,82,750/- and 15,60,000/- respectively and assessed income at Rs.1,54,87,170/-.

3. Thereafter, assessment records were examined by ld. PCIT within the powers conferred u/s.263 of the Act and he observed that on certain immovable properties the assessee has shown rental income during the year and has claimed depreciation at Rs.81,24,101/- by observing that when income from let out property has been offered under the head 'Income from House Property then the depreciation claimed on such properties cannot be allowed u/s.32 of the Act for the year under consideration. Accordingly ld. PCIT issued a show cause notice dated 30.05.2024 u/s.263 of the Act on the sole issue that ld. AO failed to disallow the depreciation at Rs.81,24,101/- claimed by the assessee alleging use of properties for business purposes.

4. In response to notice u/s.263 of the Act, assessee filed written submissions wherein it has been stated that the properties in question were rented for part of the year and thereafter they have been utilized for business purposes and therefore a valid claim has been made in the books of account. It is also submitted that ld. AO has thoroughly enquired into this issue and a specific query was raised regarding claim of depreciation. However, ld. PCIT was not satisfied with these submissions and he framed the impugned order setting aside



the assessment order dated 30.09.2022 with a direction to examine the alleged issue in detail framing a fresh assessment order after making necessary verification and even making enquiries in respect of the issue regarding claim of depreciation on the immovable properties which have been rented during the year.

5. Aggrieved assessee is now in appeal before this Tribunal raising the following grounds :

*“The following grounds are taken without prejudice to each other -On facts and in law,*

1] *The Ld. PCIT erred in revising the Asst. Order Passed u/s 143(3) on the issue of claim of depreciation in respect of let out properties on the ground that the assessment order passed was erroneous and prejudicial to the interest of revenue.*

2] *The Ld. PCIT erred in holding that the assessee has failed to substantiate that the let-out properties were used for the purpose of business for the part of the year and hence allowability of depreciation in respect of the let-out properties was required to be verified.*

3] *The Ld. PCIT erred in not appreciating that the let-out properties were also used by the assessee for the business purposes for part of the year and hence there was no reason to set aside the assessment order since it was neither erroneous nor prejudicial to the interest of revenue.*

4] *The Ld. PCIT erred in holding that the assessee has failed to substantiate its claim of depreciation in respect of let-out properties without appreciating the various evidences submitted by the assessee to substantiate his claim of depreciation and hence, there was no reason to revise the assessment order u/s 263 of the Act.*

5] *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

6. Ld. Counsel for the assessee submitted that ld. PCIT erred to assume jurisdiction on the issue which has already been examined by ld. AO and a legally permissible view has been taken. Reference was made to the notice issued by ld.



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AO in the course of the original assessment proceedings and the submissions filed by the assessee. Further, reference placed on the decision of this Tribunal in the case of *Sanjay Amrutrao Satav (HUF) Vs. ITO in ITA No.200/PUN/2021 dated 30.06.2022* and judgment of Hon'ble High Court of Delhi in the case of *ITO Vs. D.G. Housing Projects Ltd. reported in (2021) 20 taxmann.com 587 (Delhi)* and also the decision of this Tribunal in the case of *Goel Eisha Capitals Vs. PCIT (central), Pune in ITA No.1006/PUN/2024 dated 07.04.2025*.

7. On the other hand, ld. DR vehemently argued supported the order of ld. PCIT.

8. We have heard the rival contentions and perused the record placed before us. The first grievance of the assessee is that ld. PCIT grossly erred in assuming jurisdiction u/s.263 of the Act on the issue which has already been enquired and thoroughly examined by ld. AO. We find that the provisions of Section 263 of the Act has direct bearing on the issue raised before us, therefore, it is pertinent to take note of this section which reads as under:

*"263(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.*

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

*(a) an order passed on or before or after the 1<sup>st</sup> day of June, 1988 by the Assessing Officer shall include-*



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*(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;*

*(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorized by the Board in this behalf under section 120;*

*(b) record shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner;*

*(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 1<sup>st</sup> 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.*

*(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.*

*(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.*

*Explanation- In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded."*

8.1. On a bare perusal of the sub section-1 would reveal that powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his administrative control to



call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned Commissioner was not required the assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show cause notice pointing out the reasons for the formation of his belief that action u/s 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the 4<sup>th</sup> compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order. He may set aside the order and direct the Assessing Officer to pass a fresh order. At this stage, before considering the multi-fold contentions of the ld. Representatives, we deem it pertinent to take note of the fundamental tests propounded in various judgments relevant for judging the action of the CIT taken u/s 263.

8.2. Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC)* has laid down following ratio with regard to provisions of section 263 of the Act:

*“There can be no doubt that 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 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' 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 interests of the revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the revenue - RampyariDevi Saraogi v. CIT [1968] 67 ITR 84 (SC) and in Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC). [Emphasis Supplied]"*

9. Now examining the facts of the instant case in light of the above judicial precedents, we note that the certain immovable properties were rented out and for part of the year assessee has earned rental income and for the remaining period has claimed depreciation on use of properties for business purposes. Details of the same are as under :

Sr.No.	Asset Particulars	Depreciation claimed in P&L a/c (in Rs.)	Rental income (in Rs.)
1	Building at Gultekdi-Navkar (shop)	41,65,920/-	22,70,000/-
2	Flat at Bombay	10,63,732/-	1,80,000/-
3	Office at Sumit Plaza Shop No.46	2,48,728/-	1,20,000/-
4	Warehouse at Vadki (60% portion)	26,45,721/-	18,58,280/-
		81,24,101/-	44,28,280/-

10. We further notice that during the course of impugned proceedings assessee made submissions giving details of the



facts of the case about the properties which have been utilized partly for earning rental income and thereafter they have been used for business purposes. Submissions of the assessee filed before Id. PCIT reads as under :

*"1. Fact and details of the case:*

*It may kindly be appreciated that the properties in question were indeed used for business purposes for part of the year, while for the remainder of the year, they were rented out. Therefore, the depreciation claimed on these properties includes both business use and rental use. A total rental income of Rs. 44,28,280 was offered under the head "House Property." It can also see from the computation attached herewith as Annexure 1 for your verification. The total depreciation of Rs. 81,24,101 was claimed, but it pertains to the period during which the properties were used for business purposes.*

.....

*Your honor, it may be taken into consideration that the above listed properties have been rented out for a few months as given detailed in the chart as above and has also been used for the purpose of business for part of the year.*

*The detailed explanation for each of the properties about how they were in use for the entire year is given below-*

*a) in respect of the shop located at Gultekdi, total rent that has been received from the party is Rs.22,70,000/- and the same has also been taken into consideration at the time of filing of return in Income under house property. Out of 22,70,000/-, rent received for the FY 2019-20 is Rs 7,70,000/- and the remaining amount of Rs 15,00,000/- is in reference with the arrears of rent received pertaining to the previous year for a period of 6 months viz-a-viz 2,50,000/- per month from October 2018 to 31st March 2019 in the year under consideration. The rent of Rs 7,50,000/- is for the period of 3 months and addition Rs. 20,000/- is recover against damages. We are attaching herewith the Rent agreement as Annexure 2 for your verification*

*b) The flat situated in Bombay was rented out for Rs. 60,000/- p.m. to a party from the very start of the financial year. However, even after certain reminders and notices to the tenant, the assessee was not able to recover the rent from the party. A letter raised by the assessee to the third party for the recovery of rent has been given as Annexure 3 for your verification. Later, the assessee has asked the third party to vacate the flat and thereafter the assessee has himself used the flat for the purpose of storage of files and other business-related documents of the branch of assessee at Mumbai. Therefore,*



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as the flat was vacated and used for the purpose of business, the assessee has claimed depreciation on the said flat.

c) The assessee has rented office located at sumit plaza at Rs. 30,000/- p.m. for 4 months only, afterwards assessee use such property for the purpose of office use. We are attaching herewith the letter of communication with the tenant as Annexure 4 for your verification

d) The assessee has rented warehouse located at Wadki for 4 months only, afterwards assessee use such property for the purpose of storage of stock. As in the year under consideration the stock in hand was increased, the assessee decided to shift the entire stock at the warehouse.

## 2. Details and PAN of the Tenant:

A chart giving details of Name and address of the tenant along with the copy of PAN attaching herewith as Annexure 5 for your verification.

## 3. Copy of Bank Statement:

Your honour it may kindly be noted that the assessee has not received rent in bank account regularly on a monthly basis. Due to large volume of the bank statement, we are attaching herewith the saving bank statement in which rent was received as Annexure 6 for your verification. It can also see from the bank statement that the rent has not received for full year under consideration.

## 4. Confirmation of Tenant

We are attaching herewith the confirmation of Tenant as Annexure 7 for your verification.

## 5. Affidavit of the assessee that the asset was put to use

Your honor, it may be taken into consideration that the properties have been rented out for a few months and has also been used for the purpose of business for part of the year. We are attaching herewith the affidavit as Annexure 8 for your verification.

Your Honour we would like to submit that all these properties were rented for partial period only. For a major period, the said properties were used for business purpose of the assessee. As per the provisions of Section 32, depreciation is allowed on assets used for business or professional purposes fully if asset is put to use more than 180 days during the financial year. Further, if asset acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than 180 days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed in the act. In this



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*case properties let out is also use for the purpose of business for more than 180 days during the financial year.*

*The properties were used for business purposes for part of the year and rented out for the remaining period. Based on the actual usage during the year, we have calculated the depreciation as per the provision of Act that should be claimed for the business use period.*

*In view of the above clarifications, we respectfully request that the proceedings under Section 263 be concluded favorably based on the information provided.”*

11. Now the facts narrated by the assessee before ld.PCIT indicates that the above properties were rented for part of the year and only for the part period the said properties were used for business purposes and a valid claim within the four corners of the law have been made by the assessee. We further observe that ld. AO during the course of assessment proceedings, issued a show cause notice dated 22.09.2022 placed at pages 27 to 29 of the paper book, and the very first issue raised by ld. AO in this show cause notice is regarding the depreciation claimed at Rs.1,43,56,980/-, which as per the observation of ld. AO is substantially higher as compared to the previous years. Ld. AO has asked about the proof to justify whether these premises were used for business purposes for the year under consideration. There is a specific query about the claim of depreciation with specific observation that the said claim is on higher side. We further find that assessee in its reply dated 25.09.2022 has furnished the details to the AO about the valid claim of depreciation and for the sake of convenience reply filed by the assessee before ld. AO is reproduced below :

*“Respected Sir,*

*In connection with above mentioned assessment proceedings for AY 2020-21 we are submitting herewith the further information called by your honor as under:*



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1. On perusal of the financial statements for the year under consideration it is seen that you have claimed depreciation expenses of rs. 1,43,56,980/-which is substantially higher as compared to the previous years. therefore, please justify this increase in the depreciation expenses as compared to the previous years and give details of the purchases of all the buildings claimed to have been used for business purposes during the year under consideration like purchase deed, previously given on rent etc. further, submit the proof in order to justify that these premises were used for the business purposes during the year under consideration and even today if the same are still the part of your fixed assets.

The assessee with view to expand his business has started offices in Bombay and Pune. The assessee had two office premises located namely in Pune and Bombay and two of Godowns which were used by the assessee for business purpose These were earlier rented out by the assessee These premises were reflected in the Balance sheet of the assessee under the head of Fixed under zero depreciation as the said premises were not used for the business purpose. During the year the assessee started using the said premises for business purpose so the group was changed to 10% building in the opening balance. During the year under assessment the assessee started the construction and contracting business. in these businesses the assessee required more premise and godowns to accommodate the staff so the above offices were used for the same purpose. These premises are namely two different office in Pune, which comprises of two offices located namely at Market Yard and at Navkar residency while in Bombay the office was started at the New Mumbai the properties of the assessee which were earlier rented were taken back from the rental People and use for the business purpose when up as it is used for business purpose the depreciation on the same is a allowable as a business expenses. In this connection The increase in depreciation is mainly due to increase in the properties which were being put to use as business as it is as per provisions of section 32 of the income tax act the same is reproduced as below:

As per section 32 of Income Tax Act, 1961, a assessee is entitled to claim depreciation on fixed assets only if the following conditions are satisfied:

1. Assessee must be owner of the asset-registered owner need not be necessary.
2. The asset must be used for the purposes of business or profession.
3. The asset must be used during the previous year. The use of the asset during the previous year may be active use or passive (ie, kept ready for use).

As per the above provision the depreciation is rightly allowable read with section 32 of the Income Tax Act 196. As asset is owned and



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*used by the assessee for business purpose. Further the fixed assets chart contains the details of the depreciation expenses.”*

12. From the above reply of assessee, we find that the issue which has been referred by ld. PCIT in the impugned order relating to claim of depreciation on the buildings has specifically been enquired by ld. AO during the course of assessment proceedings and the assessee has also given detailed reply to such queries. On perusal of evidence placed on record, it is discernible that for the partial period assessee has rented those properties and has shown rental income and for the remaining period when it was used for business purposes it has claimed depreciation. Now for the issue that has been thoroughly examined by ld. AO and assessee has given detailed replies to the satisfaction of the ld. AO and a legally permissible view has been taken, then in such case ld. PCIT cannot assume jurisdiction u/s.263 of the Act on such issues. Ld. Counsel for the assessee referred and relied on the decision of this Tribunal in the case of *Sanjay Amrutrao Satav (HUF) Vs. ITO (supra)* wherein this Tribunal has held as under :

*“9. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the validity of the revision exercised by the ld. Pr.CIT u/s 263 of the Act in respect of claim for deduction u/s 54B allowed by the Assessing Officer. The Parliament had conferred the power of revision on the Commissioner of Income Tax u/s 263 of the Act in case the assessment order passed is erroneous and prejudicial to the interests of revenue. In order to invoke the power of revision, the above two conditions are required to be satisfied cumulatively. References in this regard can be made to the decision of the Hon’ble Supreme Court in the case of *Malabar Industrial Co. Ltd. vs. CIT*, 243 ITR 83 (SC) and in the case of *CIT vs. Max India Ltd.*, 295 ITR 282 (SC). The error in the assessment order should be one that it is not debatable or plausible view. In a case where the Assessing Officer examined the claim took one of the plausible view, the assessment order cannot be termed as an “erroneous”. We may examine the facts of the present case to find out whether the Assessing Officer had carried out necessary enquiries and verification while allowing the claim of the*



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assessee for deduction u/s 54B of the Act. We had examined the assessment record found that the Assessing Officer had called for the details of purchase and sale of the immovable transactions and examined the claim u/s 54B vide its notice dated 03.03.2015 u/s 142(1) and the assessee had filed a detailed reply explaining the nature of transactions. From the order of the assessment, it is clear that the Assessing Officer accepted the claim of the appellant by observing as under :-

*“In support of the same, the assessee has filed copy of valuation report for claimed cost of acquisition & copy of Index-II in respect of investments of agricultural land claimed u/s 54B of the Act. The same has been kept on record.”*

*From this very observation it cannot be said that the Assessing Officer had not examined the claim, therefore, the assessment order cannot be said to be erroneous for want of enquiry on the claim.*

10. *The courts have made a distinction between “lack of enquiry” and “inadequate enquiry”. If there was enquiry even an inadequate that would be itself give no occasion to the Commissioner to exercise the power of revision u/s 263 as held by the Hon’ble Bombay High Court in the case of CIT vs. Gabriel India Ltd., 203 ITR 108 (Bombay) and followed by the Hon’ble Delhi High Court in the case of CIT vs. Sunbeam Auto Ltd., 332 ITR 167 (Delhi) and in the case of CIT vs. Anil Kumar Sharma, 335 ITR 83 (Delhi). The relevant paragraphs of the decision of the Hon’ble Delhi High Court in the case of Sunbeam Auto Ltd. (supra) are extracted hereunder :-*

*“We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income-tax under section 263 of the Income-tax Act. As noted above, the submission of learned counsel for the revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between “lack of inquiry” and “inadequate inquiry”. If there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under section 263 of the Act,*



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*merely because he has different opinion in the matter. It is only in cases of "lack of inquiry", that such a course of action would be open. In Gabriel India Ltd.'s case (supra), law on this aspect was discussed in the following manner :*

*". . . From a reading of sub-section (1) of section 263, it is clear that the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the Income-tax Officer is 'erroneous insofar as it is prejudicial to the interests of the revenue'. It is not an arbitrary or unchartered power. It can be exercised only on fulfilment of the requirements laid down in sub-section (1). The consideration of the Commissioner as to whether an order is erroneous insofar as it is prejudicial to the interests of the revenue must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. [See : Parashuram Pottery Works Co. Ltd. v. ITO[1977] 106 ITR 1 (SC) at page 10]. ....."*

11. *Further, we find that the ld. Pr.CIT had not brought on record any material to show that the claim made for deduction u/s 54B is not allowable to the assessee. The power of revision u/s 263 cannot be exercised with a view to initiate a roving and fishing enquiry in the matters which we have already concluded. In this regard, the observation made by the Hon'ble Supreme Court in the case of Parashuram Pottery Works Co. Ltd. vs. ITO, 106 ITR 1 (SC) is reproduced hereunder :-*

*"From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and*



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*circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. . . . There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.” .....*

12. *Since in the light of the above circumstances, we are of the considered opinion that the Assessing Officer had allowed the claim for deduction u/s 54B of the Act after due verification and examination of the details filed before the Assessing Officer and it cannot be said that there is total lack of enquiry on the part of the Assessing Officer while allowing the claim of the assessee. Therefore, the assessment order cannot be termed as “erroneous”. There is no material on record indicating that the appellant had not satisfied the conditions laid down under the provisions of the Act for claiming exemption u/s 54B of the Act. Therefore, the assessment order cannot be branded as “erroneous” and “prejudicial to the interests of the revenue”. Thus, the ld. Pr.CIT is not justified in exercising the power of revision u/s 263 of the Act and order passed u/s 263 by the ld. Pr.CIT is hereby set-aside. Accordingly, the grounds of appeal raised by the assessee stand allowed.”*

13. Similar view has been taken by this Tribunal in the recent decision in the case of *Goel Eisha Capitals Vs. PCIT (supra)*. Respectfully following the above referred decisions and on due consideration of the facts of the case in hand, we find that since ld. AO in the instant case has raised specific queries regarding the claim of depreciation on immovable properties which have been rented partly during the year, the assessee has replied in detail and the ld. AO after considering the reply of the assessee has accepted the submissions made by the assessee, therefore, it is not a case of lack of enquiry or



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inadequate enquiry and under such facts and circumstances jurisdiction u/s.263 of the Act cannot be invoked. In view thereof, the grounds raised by the assessee challenging the assumption of jurisdiction u/s.263 of the Act are hereby allowed.

14. Even on merits also, assessee has successfully demonstrated that along with offering rental income from letting out the properties for part of the year a valid claim of depreciation has been made for remaining part of the year on such immovable properties which have been used for business purposes.

15. We accordingly quash the impugned order of Id. PCIT and allow the grounds of appeal raised by the assessee and restore the assessment order dated 30.09.2022.

16. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 04<sup>th</sup> day of November, 2025.

Sd/-  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

Sd/-  
**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 04<sup>th</sup> November, 2025.

*Satish*



ITA No.849/PUN/2025  
Vivek Nathuram Gavhane

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.