



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।

**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH,
RAJKOT**

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER.

&

DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 871 /RJT/2024
(निर्धारण वर्ष/Assessment Year: (2020-21))

Jitendrasinh Zala Plot No. 63F New Aram Colony, Jamnagar – 361001 (Gujarat)	Vs.	The Pr. Commissioner of Income Tax, Income Tax Office, Jamnagar – 361001
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.: AAEPZ9231C		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by : Shri Chetan Agarwal, Ld. AR
Respondent by : Shri Sanjay Punglia, Ld. CIT(DR)

Date of Hearing : 21/08/2025
Date of Pronouncement : 18/11/2025

आदेश / ORDER

Per, Dr. A. L. Saini, AM:

By way of this appeal, the assessee has challenged the correctness of the order dated 22.10.2024 passed by the Learned Principal Commissioner of Income-tax (in short “Ld PCIT”) under section 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), for the assessment year 2020-21. Grievances raised by the assessee, which, being interconnected, will be taken up together, are as follows:



2. Grounds of appeal raised by the assessee are as follows:

- “1. The Ld. PCIT erred in law as well as on fact in assuming jurisdiction u/s.263 of the Act.
2. The Ld. PCIT erred in law as well as on fact in holding that order passed u/s 143(3) by Ld.AO is erroneous and prejudicial to the interest of revenue.”

3. The facts of the case which can be stated quite shortly are as follows: The assessee has filed original return of income for assessment year under consideration, on 19/01/2021, declaring total income of Rs. 16,61,010/-. The said return of income was revised on 03/02/2021, declaring total income at Rs. 15,85,390/-. Thereafter, the case of the assessee for the assessment year under consideration was selected for complete scrutiny assessment. Accordingly, the assessment was finalized u/s 143(3) r.w.s. 144B of the Income-tax Act (for short 'the Act') dated 06/09/2022, accepting the returned income.

4. Later on, the Learned Principal Commissioner of Income-tax (in short “Ld PCIT”), exercised his jurisdiction under section 263 of the Income-tax Act, 1961. On perusal of the case records, the Ld. PCIT noticed the following discrepancies:

(i) Fin Tech Corporation Pvt. Ltd has booked expense of Rs. 22,88,000/-, on provision basis and the assessee has claimed that the bill for the same was raised in the next year that is, in financial year (FY) 2020-21 relevant to AY 2021-22. However, no such entry was found under liability in the books of accounts of the assessee.

(ii) Variation in agriculture income shown in computation of income with the agriculture income declared in the return of income.

(iii) No rent income declared from the properties other than self-occupied.

(iv) As per audit report, no TDS was deducted out of various expenses incurred.



As the case of the assessee was selected for complete scrutiny, the assessing officer should have verified the above issues for the assessment year under consideration during the course of assessment proceedings. Such failure on the part of the assessing officer has rendered the assessment order u/s 143(3) r.w.s. 144B of the Act dated 06/09/2022 erroneous and prejudicial to the interest of the revenue within the meaning of the provisions of section 263 of the Act. Therefore, the Ld. PCIT issued a show cause notice u/s. 263 of the Act, asking the assessee to explain the transaction. The show cause notice issued by the Ld. PCIT u/s. 263 of the Act dated 8.10.2024 is reproduced in the revision order of Ld.PCIT.

5. In response to the above notice of the Ld. PCIT, the assessee submitted his written submission before the Ld. PCIT, with documentary evidences. The assessee submitted before the Ld.PCIT with respect to the booked expenses of Rs.22,88,000/-by Fine Tech Corporation Pvt Ltd on provision basis in their books. The assessee had already explained in course of assessment proceedings, before the assessing officer that the company has recorded their expenses of Rs.22,88,000/-, on provision basis for which assessee had received advance payment only and the same has been duly recorded in assessee`s books of accounts. Moreover, it was also submitted that assessee has raised the bill of Rs.22,85,322/- in next year. Besides, the amount of advance payment of Rs.22,65,120/-was received on 31.03.2020 for the same and for that assessee submitted before the assessing officer ledger account of Fine Tech Corporation Pvt, Ltd from assessee`s books. It was submitted before the assessing officer that the amount of advance payment does not always necessarily mean to have to show under the current liabilities, as the accountant of the assessee has shown that payment also in debtors ledger of Fine Tech Corporation Pvt Ltd and hence debtor ledger is the net off advance payment. The assessing officer also verified



the said fact from the ledger account of Fine Tech Corporation Pvt Ltd. Hence, there is no question of hiding the sale as alleged in the notice under section 263 of the Act.

6. Regarding claiming of interest on Self- Occupied Property, the assessee submitted before the learned PCIT that interest on self-occupied house property was claimed for the residential house, that is, Plot No.63 F New Aram Colony, Jamnagar, which is merged by demolishing Plot No.63 A1. Kodiyar Colony and Plot No. 63 A2, Aram Colony and named as Plot No. 63 F New Aram Colony for which residential loan is shown in the books. Hence, there is not more than one house property during the year under consideration. Hence, only assessee claimed interest on self-occupied property and not shown any deemed rent income.

7. Regarding room rent expenses of Rs. 23,74,186/-, site expenses of Rs. 28,93,270/-, and salary overtime expenses, the assessee submitted as follows before the learned PCIT:

(a)Regarding Room Rent Expenses: the assessee submitted that room rent is not paid to single person and also it is not paid for whole some agreement for all staff to single person. It is paid employee- wise and payment is also through banking channel and cash payment of Rs.2,74,520/- is only on May 2019 whereas many of the employees have changed their rooms because of agreement period of 11 months. The assessee submitted before the assessing officer, room rent expense summary and ledger account.

(b)Regarding Site Expenses of Rs. 28,93,270/-, the assessee submitted before the assessing officer that site expenses are paid to different persons and not a single contractor as assumed and hence TDS was not applicable. The assessee



submitted before the assessing officer, ledger account of site expenses and group summary for the same.

(c) Regarding salary and overtime and other expenses, the assessee submitted that salary and overtime expenses were paid to various employees and TDS was paid wherever applicable. The assessee submitted before the assessing officer salary and overtime expense summary for the whole year along with TDS payable ledger showing clearly that TDS was paid on salary during the year wherever it was applicable. The assessee explained before the assessing officer each of the points alleged in the notice, hence assessee submitted that there is not any hidden income or concealment of details by the assessee in the course of assessment when submitted before assessing officer and in assessment proceedings, the assessing officer, has verified all these facts and not made addition. Moreover, assessing officer had made proper inquiry with respect to all the points as clarified above so PCIT cannot revise in 263, with reference to 142(1) notices and assessee`s reply thereon.

8. However, the Ld. PCIT rejected the submissions of the assessee, and observed that in respect of the four issues raised in the notice under section 263 of the Act, the assessment order passed by the Assessing Officer u/s 143(3) rws 144B of the Act dated 06/09/2022 in the case of the assessee for the assessment year (AY) 2020-21 is erroneous in so far as it is prejudicial to the interest of revenue within the meaning of section 263 of the Act and ld.PCIT, set aside the assessment order to the extent of the issues mentioned and discussed above and directed the assessing officer to examine these four issues, with documentary evidences.

9. Feeling aggrieved by the order of Ld. PCIT, the assessee is in appeal before us.



10. Learned Counsel for the assessee, argued that, first of all, the agricultural income is not taxable, therefore, the findings of the Ld. PCIT that there is loss of revenue, is not acceptable. The Ld. Counsel for the assessee stated that the agricultural income has been shown as per the actual production, therefore there may be variation in the agricultural income, as compared to the previous year. About the issue of addition of Rs. 22,88,000/- the company has recorded their expenses of Rs.22,88,000/-, on provision basis for which assessee had received advance payment only and the same has been duly recorded in assessee`s books of accounts. In respect of rent income, the Ld. Counsel submitted that there was only one property, which was occupied by the assessee, hence no rental income has been declared by the assessee. About next issue, Ld. Counsel stated that as per Audit Report, no doubt, there was no TDS deducted, however, in appropriate cases considering the entry of the expenses, the TDS has also been deducted in the books of accounts. In respect of those expenses, which did not attract the provision of TDS, there was no TDS deducted and hence, the order passed by the Ld. Assessing Officer should not be considered as erroneous and prejudicial to the interest of revenue.

11. On the other hand, the Ld. CIT(DR) for the revenue, submitted that about expenses of Rs. 22,88,000/-, on provision basis, however, no particular has been shown in the books of account, therefore, no addition was made by the Assessing Officer. The Ld. CIT(DR) also submitted that there is a lot of variation in agricultural income shown in the computation of income. The Ld. CIT(DR) for the revenue also pointed out that no rental income was declared by the assessee form the property other then, self- occupied property, and also has not demonstrated that asset which has been vacant, were come under the self – occupied property or not. The Ld. CIT(DR) also pointed out that assessee has shown lot of expenses in the profit & loss account, however, there was no



deduction of TDS, therefore, the Ld. PCIT has rightly invoked the jurisdiction. Therefore, ld. DR stated that the Assessing Officer has not applied his mind hence, the order passed by the assessing officer is erroneous and prejudicial to the interest of revenue.

12. In rejoinder, the Ld. Counsel for the assessee relied on the judgement of the Hon'ble Supreme Court in the case of M/s. V-Con Integrated Solutions Pvt. Ltd., wherein the Hon'ble Supreme Court held as follows:

“In such cases, it would be wrong to say that the Revenue is remediless. The power under section 263 of the Income Tax Act, 1961, can be exercised by the Commissioner of Income Tax, but by going into the merits and making an addition, and not by way of a remand, recording that there was failure to investigate. There is a distinction between the failure or absence of investigation and a wrong decision/conclusion. A wrong decision/conclusion can be corrected by the Commissioner of Income Tax with a decision on merits and by making an addition or disallowance.”

13. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld PCIT and other materials brought on record. We note that during the assessment proceedings, the Assessing Officer has issued the show- cause notice, which is placed on paper book page no. 38, wherein the Assessing Officer has raised the relevant questions about that the issue raised by Ld. PCIT. The Questions and query raised by the Assessing Officer during the assessment proceedings are reproduced below:

“On going through the records and 26AS data available, it is seen that you have received the contract receipt of Rs. 14,44,25,028/- whereas as per return of income filed these are of Rs. 13,92,31,026/-. Hence there is a difference of Rs. 51,94,002/-. You are requested to submit your reply why the said difference should be considered your income and accordingly added to you income.

Further, On going through the 26AS data, it is seen that you have received refund interest of F.Y. 2018-19 is of Rs. 80,136/-, which has not declared by you as your



income. Kindly explain why the said interest should be considered your income and accordingly added to you income.

Subsequently, it is seen that you have claimed in your computation of income Rs.2,00,000/-, as house property loss, in this respect you are requested to submit the loan details and the payment made by you during F.Y. 2019-20. In absence of any substantial evidence, the same will be considered your income and according will be added.

Hence, you are requested to show cause why the total receipts/ payment of Rs. 54,74,138/-as discussed above should be considered as your income and accordingly added to your income. Your reply should be reach in this office on or before 19.03.2022, in absence of failure, it would be considered that you have nothing to say in this respect and the assessment proceedings will be completed on basis of material available.

You are hereby given an opportunity to show cause why proposed variation should not be made and the assessment should not be completed accordingly.

3. Kindly submit your response through your registered e-filing account at www.incometax.gov.in by 23:59 hours of 19/03/2022, whereby you may either:-

- a. accept the proposed variation, or*
- b. file your written reply objecting to the proposed variation; or*
- c. If required, after filing written reply you may request for personal hearing so as to make oral submissions or present your case. The request can only be made by clicking the Seek Video Conferencing button available against the SCN, in the view notices of this proceeding in the e-proceedings tab on e-filing portal. The request can be made only before expiry of compliance date & time. On approval of request, personal hearing shall be conducted exclusively through video conference.”*

14. In response to show cause notice of the Assessing Officer, the assessee filed its submission before the Assessing Officer, along with documentary evidences, which is placed on paper book page no. 40, the said reply submitted to the Assessing Officer are as follows:

“With reference to above, we would like to submit as under:

- 1. Please find enclosed herewith detailed 26AS Reconciliation along with complete documentary evidences for yours kind verification.*
- 2. Your honour may appreciate that assessee has already taken Income tax refund interest as an income in statement of income for AY 2020-21 under the head of income from other sources. (we again attached statement of income for honours kind verification.)*



3. Your honour may appreciate that assessee has taken home loan having a/c No: LBJAM00004540464 for the year under consideration.

15. Therefore, we find that the during the assessment proceeding, the assessing officer issued notice u/s. 142(1) of the Act and has raised questions. In response to the said notices u/s.142(1) of the Act, the assessee submitted its reply before the Assessing Officer. The assessing officer, having examined the details and documents and after application of mind, framed the assessment order, therefore, such assessment order was not erroneous and prejudicial to the interest of revenue. In this context, we note that there is difference between 'Lack of enquiry' and 'inadequate enquiry'. It is for the assessing officer to decide the extent of enquiry to be made as it is his satisfaction as what is required under law. Reliance is placed on the decision of CIT v. Sunbeam Auto Ltd. [(2010) 332 ITR 167], wherein Hon'ble Delhi High Court has held that if there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass order u/s 263 of the Act, merely because the Commissioner has a different opinion in the matter and that only in cases where there is no enquiry, the power u/s 263 of the Act can be exercised. The ld. PCIT cannot pass the order u/s 263 of the Act on the ground that further/thorough enquiry should have been made by assessing officer.

16. Let us take the guidance of judicial precedents laid down by the Hon'ble Apex Court in Malabar Industries Ltd. vs. CIT [2000] 243 ITR 83(SC) wherein their Lordship have held that *twin* conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In the following circumstances, the order of the assessing officer can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii)



incorrect application of law; or (iii) Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the assessing officer has not investigated the issue before him; then the order passed by the Assessing Officer can be termed as erroneous order. Coming next to the second limb, which is required to be examined as to whether the actions of the assessing officer can be termed as prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (supra) held that this phrase i.e. "*prejudicial to the interest of the revenue*" has to be read in conjunction with an *erroneous order* passed by the Assessing Officer. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the 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 interest of the revenue **"unless the view taken by the Assessing Officer is unsustainable in law"**.

17. Taking note of the aforesaid dictum of law laid down by the Hon'ble Apex Court, we find that in assessee's case under consideration, there is no failure on the part of the assessing officer to conduct adequate enquiry. It is pertinent to mention here that there was as such no allegation of 'no enquiry' or 'lack of enquiry' or verification, because the Ld. Pr. C.I.T. himself found all the details/evidences in the assessment record, i.e. well within the A.O.'s possession and what he alleged was about the plausible view taken by the A.O. as against his perception and understanding on the same set of facts and documents. **The main**



allegation of Id PCIT in his order under section 263, was that assessing officer has not made further inquiry. It means inquiry has been made by the assessing officer. The Id Counsel at this juncture submitted before the Bench that there is no end of further inquiry, the assessing officer whenever needed made further inquiry also. It is the domain of the assessing officer to decide, whether further inquiry is needed or not. After getting the documents and information from the assessee, during the assessment proceedings, the assessing officer has examined the documents and evidences and applied his mind, and he made further inquiry also whenever he thinks fit that further inquiry is necessary and then framed the assessment under section 143(3) of the Act. Therefore, the impugned order of the PCIT has to be quashed for the reason that order of the assessing officer sought to be revised in the impugned order was neither erroneous nor prejudicial to the interest of the revenue for the reason of any lack of inquiry that the assessing officer ought to have made in the given facts and circumstances of the case. We accordingly quash the order u/s 263 of the Act and allow the appeal of the assessee.

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

Order is pronounced on 18/11/2025 in the open court.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Rajkot

दिनांक/ Date: 18/11/2025

True Copy

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot