

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
SHRI M BALAGANESH, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A Nos.2341 to 2343/Del/2025  
निर्धारणवर्ष/Assessment Years: 2017-18 to 2019-20**

VANDANA JAIN Veersons Building, Gohana Road, Fazilpur B.O. Barwasni (202), Sonipat, Haryana, INDIA. PAN No.AAMPJ6134E	<b>बनाम Vs.</b>	PCIT (Central), Delhi-1.
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

<b>Assessee by</b>	Ms. Mansi Jain, CA Shri Tanishq Ahuja, Advocate & Shri Sidharth Bajaj, Advocate
<b>Revenue by</b>	Ms. Nimisha Singh, CIT DR

सुनवाईकीतारीख/ Date of hearing:	17.09.2025
उद्घोषणाकीतारीख/Pronouncement on	21.11.2025

**आदेश /O R D E R**

**PER C.N. PRASAD, J.M.**

These three appeals are filed by the Assessee against different orders of the Ld. PCIT(Central), New Delhi for the assessment years 2017-18 to 2019-20 passed u/s 263 of the Act. The assessee has raised the following common grounds in all these appeals except for the figures: -

1. *“On the facts and circumstances of the case, the order passed by the Ld. Pr. Commissioner of Income Tax (CIT) u/s 263 of the Act is bad, both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, the order passed by the Ld. PCIT assuming jurisdiction u/s 263 is bad in law in the absence of twin conditions of the order passed by the AO being erroneous as well as prejudicial to the interest of the Revenue having been satisfied.*
3. *On the facts and circumstances of the case, the order passed by the Ld. PCIT has erred in rejecting the contention of the assessee that his action of assuming jurisdiction u/s 263 is bad in law, as the issues raised in show cause notice u/s 263, already being a matter pending before the Commissioner of Income Tax (Appeals), the jurisdiction u/s 263 is in violation of clause (c) of the Explanation under sub section (1) of section 263.*
4. (i) *On the facts and circumstances of the case, the Ld. PCIT has erred both on facts and in law in ignoring the fact that the issues raised by him in notice u/s 263 were before the AO and as such the jurisdiction on these issues u/s 263 cannot be assumed by him.*  
  
(ii) *That the Ld. Pr. CIT has erred both on facts and in law in ignoring the contention of the appellant that the proceeding u/s 263 cannot be used for substituting opinion of the AO by that of the Pr. CIT.*
5. (i) *On the facts and circumstances of the case, the Ld. PCIT has erred both on facts and in law in enhancing the income of the assessee by Rs. 1,62,99,640/- on account of Sales held to be bogus.*  
  
(ii) *That the Ld. PCIT has erred ignoring the fact that the assessee having declared the bogus purchases also, enhancement will lead to double taxation of the same income.*
6. (i) *On the facts and circumstances of the case, the Ld. PCIT has erred both on facts and in law in directing the Assessing Officer to re-compute the interest u/s 234A of the Act.*  
  
(ii) *That the re-computation of interest u/s 234A may at most be a matter of rectification u/s 154 of the Act, not of revision u/s 263 of the Act.*
7. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

2. Ld. Counsel for the assessee, at the outset, submitted that the order passed by the Ld. PCIT assuming jurisdiction u/s 263 is bad in law since the issues raised in show cause notice u/s 263 were already subject matter of appeal before the CIT(Appeals) and therefore the jurisdiction u/s 263 is in violation of clause (c) of explanation under sub-clause (1) of section 263 of the Act. Ld. Counsel for the assessee referring to page 100 to 104 submitted that this is a copy of Form 35 filed before the Ld. CIT (Appeals) for the AY 2017-18 and referring to page 106 of the Paper Book which are the grounds of appeal submits that one of the grounds raised by the assessee before the Ld. CIT(Appeals) that the Assessing Officer erred in making addition on account of commission at 0.5% without there being any basis. Ld. Counsel for the assessee also referring to page 107 which is the show cause notice issued by the Ld. PCIT submits that Ld. PCIT proposed to treat the transactions which were considered by the AO for estimating the commission at 0.5% as unexplained cash credit u/s 68 of the Act. Ld. Counsel for the assessee submitted that since the addition made by the AO on account of commission and the entire transaction is under appeal the Ld. PCIT lacks jurisdiction to invoke the provisions u/s 263 of the Act. Reliance was placed on the decision of the Hon'ble Madras High Court in the case of Smt. Renuka

Philp vs. ITO (409 ITR 567) and the decision of the Hon'ble Allahabad High Court in the case of CIT vs. Vam Resorts & Hotels Pvt. Ltd. (418 ITR 723) the assessee also made the following elaborate submissions:

These are appeals against the order of the Ld. Pr. Commissioner of Income Tax (PCIT) passed in his jurisdiction under section 263 of the Act.

In pursuance of a search having been conducted in the case of Sumit Jindal Group of cases, the cases of the assessee were reopened by issue of notice under section 153C of the Act. During the assessment proceedings various queries were raised by the Ld. Assessing Officer (AO) which was duly answered by the assessee, and orders under section 153C r.w.s. 143(3) of the Act were passed by the Ld. AO as on 21.03.2023.

In these orders, following additions were made:

AY 2017-18	Rs. 81,498/-
AY 2018-19	Rs. 3,46,434/-
AY 2019-20	Rs. 92,360/-

These additions were made under section 69C by the A.O. on account of commission calculated @0.50% on all transactions including sales as well as purchases made by the assessee from Sumit Jindal group concerns holding the same to be bogus.

Against the order of Ld. AO, the assessee filed an appeal before the Ld. Commissioner of Income Tax (Appeal) [CIT(A)] as on 18.04.2023 in respect of all 3 AY's. As on date the appeals are pending before the Ld. CIT(A).

The Ld. PCIT issued show cause notices under section 263 of the Act as on 13.12.2024 for all 3 AY's, whereby the allegation made by Ld. PCIT was that the Ld. AO made addition of only commission while he had to make addition of whole amount of sale/purchase. The second issue raised by Pr. CIT was that the A.O. has computed lesser interest under section 234A of the Act.

**Not a case of lack of enquiry:**

As is clear from the facts narrated hereinabove, the only issue which has been discussed by Ld. AO in the assessment proceedings was with respect to the purchase/sale transactions done by the assessee with Sumit Jindal group. During the assessment proceedings, Ld. AO issued various queries and show cause notices which were duly replied to by the assessee. In his Assessment order Ld. A.O. has discussed only this issue. The following were the proceedings at the time of assessment: -

(i) Statement of the assessee was recorded wherein she accepted that she was not concerned with the business dealings of Aditya Overseas and that her husband used to look after the business and she just used to sign the documents wherever he asked her to do.

(ii) Statement of Sh. Atul Jain, husband of the assessee was recorded u/s 132(4) as on 14.03.2019. Copy of statement is placed at **PB. Pg. 25-39 for AY 2017-18, PB Pg. 27-41 for AY 2018-19 and PB. Pg. 28-42 for AY 2019-20**. In the whole statement only issue of bogus billing has been discussed.

(iii) Notice under section 142(1) of the Act dated 06.01.2022 (**PB Pg. 40-43 for AY 2017.2018, PB. Pg. 42-45 and PB. Pg. 43-46 for AY 2019-20**):

In this notice certain general enquiries are made, which was duly replied to by the assessee vide letter dated 16.02.2022 (**PB. Pg. 44-48 for AY 2017-18, PB. Pg. 46-51 for AY 2018-19 and PB Pg. 47-51 for AY 2019-20**)

(iv) Notice u/s 142(1) dated 15.09.2022 (**PB Pg. 49-53 for AY 2017-18, PB. Pg. 52-56 for AY 2018-19 and PB. Pg. 52-56 for AY 2019-20**)

In this notice specific queries only with respect to the sale/purchase bills taken from the Sumit Jindal group was asked.

(v) Reply dated 08.11.2022 (**PB Pg. 54-56 for AY 2017-18, PB. Pg. 57-58 for AY 2018-19 and PB. Pg. 57-61 for AY 2019-20**)

Vide this letter while explaining the impugned transactions assessee filed copy of its bank statement (Pb pg. 57-60 for AY 2017-18, PB. Pg. 59-62 for AY 2018-19 and PB. Pg. 62-65 for AY 2019-20).

- (vi) Notice u/s 142(1) dated 07.12.2022 (PB Pg. 62-65 for AY 2017-18, PB Pg. 67-70 for AY 2018-19 and PB Pg. 68-71 for AY 2019-20)

In this reply once again query with respect to transactions with Sumit Jindal group was made.

- (vii) Reply dated 16.12.2022 (PB pg. 66-69 for AY 2017-18, PB Pg. 71-72 for AY 2018-19 and PB Pg. 72-74 For AY 2019-20)

Vide this letter while explaining the impugned transactions, assessee filed copy of ledger account of concerned parties (PB Pg. 79 for AY 2017-18, PB Pg. 73-76 for AY 2018-19 and PB Pg. 75-78 for AY 2019-20), purchase register (PB Pg. 70-72 for AY 2017-18 PB. Pg. 77-79 for AY 2018-19 and 79-83 for AY 2019-20), sale register (PB Pg. 73-76 for AY 2017-18, PB. Pg. 81-83 for AY 2018-19 and PB. Pg. 86-91 for AY 2019-20), stock Summary (PB. pg. 77-78 for AY 2017-18, PB Pg. 80 for AY 2018-19 and PB Pg. 84-85 for AY 2019-20).

- (viii) Assessment order dated 21.03.2023

From the perusal of the assessment order, it can be seen that Ld. AO talks about only the sale/purchase from the concerned parties and discussion between the assessee and the assessing officer with respect to the same.

The reason for getting these bills was clarified by Sh. Atul Jain, director of the assessee company, in his statement recorded as on 26.07.2019, which has also been quoted by the Assessing Officer himself in the order at page 9 Para 5.2, which reads as under;  
"Q-6 Please tell for what purpose you have taken Non genuine Bills/entries?"

*Ans In both vaksons Metaplast Private Limited and M/s Aditya Overseas, we had taken bank overdraft limits. As per the bank norms, the sales have to be 4 times of the OD limit taken. The business was not flourishing. To sustain the bank loans, I have started taking the non-genuine purchase bills of chana, Rajma, Dal, Urad Dal etc and started issuing the no genuine sales bills to the concerns related with M/s Aditya Overseas or M/s Vaksons Metaplast Private Limited. This resulted in increased sales, through which I kept the OD of bank floating. I also furnished false statement in the*

*bank as to the stock held by me on account of these bogus purchase. It was for the purpose of obtaining loans.”*

From the above, it was clear that the assessee company had taken bogus bills for purchases/sales in the year under consideration and only after taking into consideration the explanation given by the director of the assessee company, the Assessing Officer made an addition only on account of commission on the entries relating to purchases.

From the above it becomes very clear that it is not a case where no enquiries with respect to the bogus bills were made by Ld. AO. It does not seem to be a case of even inadequate enquiry. The jurisdiction under section 263 of the Act cannot be assumed in such cases where Ld. AO had made proper enquiry in respect of the issues in question. Reliance is placed on the following judgments: -

- CIT v. Sunbeam Auto Ltd., [2011] 332 ITR 167, dated 11.09.2009, Delhi High Court
- CIT v. Gabriel India Limited, [1993] 203 ITR 108, dt. 15.04.1993, Bombay High Court
- Pr. CIT v. M/s. Clix Finance India Pvt. Ltd., ITA 1428/2018, dt. 01.03.2024, Delhi High Court
- Pr. CIT v. Shri Sanjeev Malhotra Proprietor M/S International Subscription, ITA No. 40 of 2016, dt. 21.03.2017, Allahabad High Court
- CIT v. Max India Ltd., [2007] 295 ITR 282(SC), dt. 01.11.2007, Supreme Court
- CIT v. Max India Ltd., [2004] 268 ITR 128, dt. 18.05.2004, Punjab & Haryana High Court
- BSE Limited v. Pr. CIT, [2024] 112 ITR (Trib.) 195 (ITAT Mumbai)
- Madhuri Enterprises Pvt. Ltd. v. PCIT, ITA 1266/Del/2022, dt. 14.08.2024, ITAT Delhi

(ix) An issue being subject matter of appeal cannot be raised by the PCIT under section 263 of the Act: -

From the perusal of the facts narrated above, it can be seen that the order of Ld. AO passed on 21.03.2023 was taken in appeal before the Ld. CIT(A) as on 18.04.2023.

It is also clear from the facts narrated above that the subject matter of the appeal was the same as has been raised by Ld. PCIT in its jurisdiction under section 263 of the Act as the show cause notice under section 263 of the Act was issued by Ld. PCIT as on 13.12.2024.

The provisions of Explanation-1 to sub-section (i) to section 263, clause (c) reads as follows: -

*“where any order referred to in this subsection and passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] 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 [Principal Commissioner or] 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.”*

From the reading of the above it is too clear that a matter which is a subject of an appeal cannot be taken up by Ld. PCIT as a matter under section 263 of the Act. Reliance is placed on the following judgments: -

- CIT v. Vam Resorts & Hotels Pvt. Ltd., [2019] 418 ITR 723 (All), dt. 20.08.2019, Allahabad High Court
- Smt. Sainulaptheen Katheeja Umma v. ITO, I.T.A. No. 264/Chny/2022, dt. 15.02.2023, ITAT Chennai
- ACC Limited, Cement v. CIT (LTU), ITA No. 3576/Mum/2019, dt. 08.07.2020, ITAT Mumbai
- IMC Limited v. PCIT, ITA 1006/Kol/2019, dt. 25.08.2023, ITAT Kolkata
- Arpan Securities Pvt. Limited v. ITO, I.T.A. No. 152/KOL/2022, dt. 01.02.2023, ITAT Kolkata

Otherwise also an issue which has been dealt by the A.O. in the body of the order can only be a subject matter of enhancement by the CIT(A) and not revision under section 263.

Reliance is placed:

1. GURINDER MOHAN SINGH NINDRAJOG v. COMMISSIONER OF INCOME-TAX [2012] 348 ITR 170 (Del)
2. Hari Mohan Sharma, Madan Mohan Sharma vs. ACIT, ITA No. 2953-54/Del/2018 dt. 31.01.2019

**CN MERITS**

The Ld. PCIT in his order under section 263 of the Act has held that the Ld. AO made addition of only commission while he had to make addition of whole amount of sale/purchase. The second issue raised by Pr. CIT was that the A.O. has computed lesser interest under section 234A of the Act.

The main issue which the Ld. PCIT has raised to be erroneous to the extent of prejudicial to the interest of the revenue is on account of bogus sale/purchase made by the assessee. It is to be appreciated that the A.O. has made addition only on account of commission considering the submissions, evidences and specifically the statement of the director recorded on oath, whereby he explained the reasons for taking bogus bills. It was explained that bogus bills were taken both for sales as well as purchases. Therefore the same money was being rotated. The assessee had to incur commission out of books, which has been added by the A.O. as its unexplained income. This is one of the plausible views the A.O. has taken on the given facts and circumstances.

**In respect of the other issue**

The issue of mistake in computing the interest under section 234A can at best be termed as a mistake apparent from record, which may be rectified under section 154 of the Act.

Provisions of section 263 give jurisdictional power whereas provisions of section 154 gives power of rectification. It will not be correct to say that "rectification" is equal to "revision" under the Act.

3. On the other hand, the Ld. DR strongly supported the orders of the authorities below.

4. Heard rival submissions, perused the orders of the authorities below. We find considerable merit in the submissions of the assessee. The provisions of Explanation 1 to sub section (1) to section 263 clause (c) restricts the power of the Ld. PCIT to invoke jurisdiction u/s 263 of the Act on the issues which have been subject matter of any appeal before the Ld. CIT(Appeals). The Madras High Court in the case of Smt. Renuka Philip vs. ITO (supra) has squarely held that when the larger issue was pending before the Commissioner of Appeals in such circumstances the Commissioner could not exercise power u/s 263 on account of statutory bar in view of the clause (c) of explanation to section 263(1) of the Act. Similar view has been taken by the Hon'ble Allahabad High Court in the case of CIT vs. Vam Resorts & Hotels Pvt. Ltd. (supra). Thus, respectfully following the said decision, we hold that the PCIT had no jurisdiction to invoke the provisions of section 263 of the Act since the issue in show cause notice was already subject matter of appeal before the Ld. CIT(Appeals) in all these cases. Thus, we quash the orders passed by the Ld. CIT(Appeals) u/s 263 of the Act for the assessment years 2017-18 to 2019-20.

5. In the result, appeals of the Assessee are allowed.

Order pronounced in the open court on 21.11.2025

**Sd/-**  
**(M BALAGANESH)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

Dated: 21.11.2025

*\*Kavita Arora, Sr. P.S.*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**