

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
ITA No.522/SRT/2024 AYs: (2018-19)
(Physical Hearing)

Mohmedamin Mohmedumar General, Plot No.76, Baunat Bungalows, Gorat Road, Rander, Surat – 395005	Vs.	PCIT (Central), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABGPG4684H		
(Appellant)		(Respondent)

Appellant by	Shri Rasesh Shah, CA
Respondent by	Shri Ravi Kant Gupta, CIT-DR
Date of Hearing	29/07/2025
Date of Pronouncement	28/10/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee, emanates from the order passed under section (u/s) 263 of the Income-tax Act (in short, 'the Act') by the learned Principal Commissioner of Income-tax (in short, 'PCIT') for assessment year (AY) 2018-19, dated 07.03.2024.

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

"1. On the facts and in circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in passing the order u/s. 263, although the assessment order passed u/s. 143(3) r.w.s. 144B of the I.T. Act, 1961 was neither erroneous nor prejudicial to the interest of the revenue.

2. On the facts and circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in giving direction to assessing officer to make the disallowance of Rs.66,48,170/- on account of additional depreciation claimed u/s. 32(1)(ia) In the Return of Income.

3. On the facts and circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in setting aside the order passed u/s. 143(3) r.w.s.

144B with a direction to the assessing officer to pass fresh assessment order after taking into consideration, the issues as may be considered together with the issues discussed in order. Accordingly, PCIT has erred in setting aside the assessment order making it wide open instead of restricting the issues raised in show cause notice.

4. It is therefore prayed that above order passed by Pr. CIT u/s. 263 may please be quashed or set aside as your honours deems it proper.

The appellant craves leave to add, amend, alter, substitute, modify in any or all the above grounds of appeal, if necessary, on the basis of submissions to be made at the time of personal hearing.

3. The facts of the case in brief are that assessee filed his return of income for the AY 2018-19 on 06.08.2018, declaring total income of Rs.NIL. The case was selected for completed scrutiny on the issues of (i) investments / advances / loans, (ii) refund claim and (iii) unsecured loans. The Assessing Officer (in short, 'AO') issued noticed u/s 143(2) and 142(1) of the Act, calling for the details in support of the return of income and details regarding reasons for selection of the case for scrutiny. The assessee was engaged in the business of manufacture of textile and also carried out job work for other parties. The assessee filed requisite documents through ITBA portal. After considering the details, the return of income was accepted without any modification. Subsequently, the Id. PCIT called for the records and examined the same. He found that the assessee had claimed additional depreciation under Clause (ia) of section 32(1) of the Act. Such additional depreciation is allowable in case of new machinery and plant acquired and installed in the business of manufacture or production of any article or thing or in the business of generation, transmission, distribution of power. However, the business of textile declared

by the assessee in the return of income was stated under "Other services: with code 21008". Further, no quantitative details had been furnished in the return of income and audit report. Therefore, the Id. PCIT observed that assessee was not engaged in any business of manufacture of any article or thing. On verification of the record, he observed that AO accepted the returned income without inquiring properly the issue of claim of additional depreciation of Rs.66,48,178/- and passed the order without application of mind and law. Therefore, he issued show cause notice, which is reproduced in pages 2 to 4 of the revision order u/s 263 of the Act. Since no inquiry about the additional depreciation was made, the order was proposed to be held as erroneous in so far as prejudicial to the interests of revenue u/s 263 of the Act.

3.1 In reply to the show cause notice, the assessee submitted that it was engaged in the manufacturing of grey cloth on job work basis, for which new plant machinery in the form of shuttle less waterjet looms were purchased by it. He referred to the notice u/s 142(1) of the Act, dated 21.01.2021 issued by the AO, wherein specific details in respect of additional depreciation were called for by the AO. In reply, assessee had submitted details including copy of ledger account of plant and machinery along with all bills/invoices including the direct expenses thereon. The assessee also submitted that he had availed term loan under the Textile Upgradation Fund (TUF) Scheme by the Ministry of Textiles. Thus, the AO was supplied with relevant details, which was accepted by him after due verification. The assessee also submitted that it was carrying

on manufacturing activity, i.e., weaving of grey cloth on job work basis and not on his own account. Therefore, he has used the code "Other services". The assessee also relied on the decisions of Hon'ble Supreme Court in case of Malabar Industrial Company Limited vs. CIT, 243 ITR 83 (SC) and CIT vs. Green World Corporation, 181 Taxmann 11 (SC) and decisions of Hon'ble jurisdictional High Court in cases of CIT vs. Arvind Jewellers, 259 ITR 502 (Guj.), Aryan Arcades Ltd. vs. PCIT, 412 ITR 277 (Guj.) and other decisions and submitted that when the AO had taken a plausible view of the issue, it could not be subjected to the action u/s 263 of the Act.

3.2 The Id. PCIT did not accept the reply of the assessee. He has referred to the notice u/s 142(1) of the Act and reply of the assessee at para 6.1 and 6.2 respectively. He observed that the assessee had not submitted details and evidences of the assets being put to use, which is a necessary condition for claiming depreciation and additional depreciation u/s 32(1)(iia) of the Act. The AO allowed additional depreciation without verification as to whether the machines were put to use in the business of manufacture or production of any article or thing. The AO should not have allowed the claim, more so when the audit report and return of income did not provide quantitative details of materials consumed, finished product and bye-products, which all were shown as Nil. The Id. PCIT relied on the decisions in case of Malabar Industries Ltd. (supra), CIT vs. Paville Project Pvt. Ltd. (2023) 149 taxmann.com 115 (SC), CIT vs. Nagesh Knitwares Pvt. Ltd. and Ors. 345 ITR 135 (Del) and Gee Vee Enterprises

vs. Addl.CIT (1975) 99 ITR 375 (Del). Accordingly, assessment order passed u/s 147 r.ws. 144B was set aside with a direction to AO to pass fresh assessment order after considering the issue as might have been already considered together with the issue discussed in the order u/s 263 of the Act.

4. Aggrieved by the order of Id. PCIT, the assessee has filed present appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee has submitted paper book containing all the details submitted during the assessment proceedings as well as the proceedings u/s 263 of the Act. He also submitted copies of the notices issued u/s 143(2) and 142(1), letter filed before the AO on 07.01.2021 and 29.01.2021, ledger account of “shuttle less waterjet looms” and bank statements etc. The Id. AR also filed a paper book of the case laws. He submitted that the Hon’ble Gujarat High Court in case of CIT vs. J. B. Kharwar & Sons, 163 ITR 394 (Guj.) held that the process of dying and printing grey cloth would amount to manufacturing of goods for purpose of section 80J of the Act irrespective of fact that grey cloth which is subjected to process of dyeing and printing belongs to assessee or someone else. He submitted that it is not a case of lack of inquiry but may be a case of insufficient inquiry. Hence, revision u/s 263 of the Act is not permissible. For this, he relied on decision of Hon’ble Delhi High Court in case of CIT vs. Sunbeam Auto Ltd., 189 Taxman 436 (Del.). He also relied on the decisions in cases of Malabar Industrial Co. Ltd. (supra), CIT vs. Kwality Steel Supplies Complex, 84

taxmann.com 243 (SC), CIT vs. Arvind Jewellers (supra), CIT vs. Nirma Chemical Works Pvt. Ltd., 309 ITR 67 (Guj.).

5. On the other hand, Ld. CIT–DR has strongly relied on the order passed by Id. PCIT. He has stated that Id. PCIT has called for the records and duly examined it including the assessment order passed u/s 143 r.w.s. 144B of the Act. He has also referred to provisions of section 263 of the Act and stated that the present case is covered by the scope and ambit of section 263 of the Act because the AO has not made any further inquiry, which should have been made to come to a proper conclusion.

6. We have heard rival submissions and perused materials on record. We have also deliberated on the decisions relied upon by both parties. We have also gone through the provisions of Section 263 of the Act. We find that impugned order was passed by the AO u/s 147 r.w.s. 144B of the Act. The case was selected for complete scrutiny on three issues including investments and refund claim. The AO issued notice u/s 142(1) of the Act on 24.12.2020, 21.01.2021 and 25.01.2021. The same are at pages 42-47, 54-56 and 57-58 of the paper book. He requested assessee about the business activities of the assessee and justification of large refund. In reply, assessee submitted that it was engaged in textile manufacturing business and carried out job work for other parties. Regarding justification for large refund, the assessee submitted

that during the year under consideration, it had purchased new plant and machinery on which normal depreciation at 15% and additional depreciation of 20% was claimed, which led to unabsorbed depreciation loss during the year, due to which there was refund to the assessee. The appellant has also filed details of addition to the fixed assets and claim of depreciation. It enclosed ledger account copy of plant and machinery (Shuttle less waterjet looms). Further, the assessee purchased 16 imported Shuttle less waterjet looms from Yinn Chuen Logistics Warehousing Co. Ltd. It also submitted the purchase invoices of the looms along with other documents related to direct expenses for purchase of the machinery.

6.1 It is clear from the facts narrated above that the assessment order was passed by the AO after calling for various details from the assessee on the impugned issue of installation of plant and machinery and claim of depreciation /additional depreciation. The assessee had submitted various details, which is clear from the copies of such details filed in the paper books. The AO had gone through the details submitted by the appellant and thereafter allowed the additional depreciation as per law. We agreed with the contention of the Id. AR that the view of the AO may not get the approval of the Id. PCIT but the opinion of AO was certainly a possible view. When two views are possible and the AO has taken one of the possible views, the order cannot be said to be erroneous and prejudicial to the interests of revenue only on the ground that the Id. PCIT

may have a different view on the impugned issue. An order of assessment passed by the AO should not be interfered with only because another view is possible, as held by Hon'ble Supreme Court in case of CIT vs. Greenworld Corporation, 314 ITR 81 (SC). We find that the impugned issue additional depreciation was duly considered by the AO at the time of assessment proceedings. He has considered all issues, accepted explanation of the assessee and decided not to make any addition. Hence, the order of AO cannot said to be erroneous and prejudicial to the interests of revenue.

6.2 The grievance of the Id. PCIT is that the AO should have made further inquiry in respect of additional depreciation rather than accepting the assessee's explanation. Therefore, it could not be said that it was the case of "lack of inquiry". There is a distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate, that could not, by itself, give occasion to the Id. PCIT to pass order u/s 263 of the Act merely because he has different opinion in the matter. It is only in cases of lack of inquiry that such a course of action could be opened. In the present case, the AO has duly examined the facts and formed an opinion that no addition is necessary in view of the reply of the assessee on the subject-issue. Therefore, the decision of Id. PCIT that the order passed by AO was erroneous and prejudicial to the interests of revenue is not correct. Reliance for this view is placed on the decision of Hon'ble Delhi High Court in case of CIT vs. Sunbeam

Auto Ltd. [2010], 189 Taxman 436 (Del). We, accordingly, set aside the order passed u/s 263 of the Act. This ground of assessee's appeal is allowed.

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

Order is pronounced in terms of Rule 34 of ITAT Rule, 1963 on 28/10/2025 in the open court.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 28/10/2025

SAMANTA

Copy of the Order forwarded to:

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

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat