

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE MS SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.348/SRT/2025

Assessment Year: (2018-19)

(Hybrid Hearing)

Jayvadan Amratlal Rughnathwala, 6/7, Khatodara Ind Service Society, B/h Sub Jail Khatodara, Surat – 395002	Vs.	The PCIT - 1, Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAQPR4348L		
(Appellant)		(Respondent)

Appellant by	Shri Rasesh Shah, CA
Respondent by	Shri Ravinder Sindhu, CIT-DR
Date of Hearing	26/08/2025
Date of Pronouncement	19/11/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanate from the order passed under section 263 of the Income-tax Act, 1961 (in short, 'the Act') by the learned Principal Commissioner of Income Tax, Valsad [in short, 'ld. PCIT'], dated 22.01.2025 for assessment year (AY) 2018-19.

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

"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 147 r.w.s. 144B of the I.T. Act, 1961 was neither erroneous nor prejudicial to the interest of the revenue.

2. It is therefore prayed that above order passed by Pr CIT u/s 263 may please be quashed or modified as your honours deem it proper.

3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of appeal.”

3. Brief facts of the case are that the assessee filed his return of income u/s 139 of the Act for the AY 2018-19, declaring total income at Rs.17,69,010/-. In this case, information had been received from the Investigation Wing that M/s. S.K. Enterprise (Prop. Shahrukhkhan Pathan) was primarily engaged in generating and passing on GST credit to their buyers without any physical movement of goods. During investigation, it had been found that the assessee was one of such beneficiaries and had made purchases of Rs.13,26,030/- from M/s S.K. Enterprise and availed bogus GST credit. On the basis of this information, case of the assessee was reopened u/s 147 of the Act and notice u/s 148 of the Act was issued on 31.03.2022. During assessment proceedings, after conducting inquiries, the AO found that the assessee had taken bogus purchase entry of Rs.14,84,152/- from M/s S.K. Enterprises without actual movement of goods and hence, the purchase expense of Rs.14,84,152/- made from M/s S.K. Enterprise was disallowed and treated as income of assessee u/s 69C of the Act. Scrutiny assessment u/s 147 r.w.s. 144B of the Act was completed on 20.03.2023, determining the total income at Rs.32,53,152/- after making addition of Rs.14,48,152/- u/s 69C of the Act and tax was levied u/s 115BBE of the Act. Penalty proceedings were separately initiated u/s 270A of the Act by issuing show cause notice on 20.03.2023.

4. Subsequently, the Id. PCIT called for the records and examined the same. He found that the AO had initiated penalty proceedings under wrong provisions of the Act, i.e., u/s 270A of the Act instead of penalty u/s 271AAC of the Act. The Id. PCIT issued show cause notices to the assessee. In compliance of the same, assessee furnished his reply on 10.10.2024. After considering the same, the Id. PCIT observed that the AO failed to initiate correct penalty u/s 271AAC of the Act in this case and this omission on the part of the AO had made the assessment order erroneous and prejudicial to the interests of revenue. Accordingly, the assessment order passed u/s.147 r.w.s. 144B of the Act dated 20.03.2023 was set aside by the Id. PCIT, vide his order u/s 263 of the Act dated 22.01.2025.

5. Aggrieved by the order of Id. PCIT, the assessee filed appeal before this Tribunal. The learned Authorized Representative (Id. AR) of the assessee filed written submission and submitted that the Id. PCIT was not correct in invoking the jurisdiction u/s 263 of the Act.

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of the Id. PCIT. He submitted that the order of AO suffers from legal infirmity, which was corrected by way of a revision order u/s 263 of the Act by the Id. PCIT.

7. We have heard both the parties and perused the materials available on record. We have also gone through the provisions of section 263 of the Act. On perusal of the records in the case of assessee, it is seen that the assessee had

preferred appeal against the quantum addition of Rs.14,84,152/- made u/s 69C on account of disallowance of bogus purchases and taxation of the same u/s 115BBE of the Act before the CIT(A). The same was dismissed by the CIT(A) vide its order dated 09.08.2024. Against the order of CIT(A), assessee preferred appeal before this Tribunal. After hearing both sides, this Tribunal remanded the matter to the file of AO for proper verification and adjudication, after giving reasonable opportunity of being heard to the assessee, in ITA No. 923/SRT/2024, dated 29.08.2025. Thus, as on the date, the original assessment order dated 20.03.2023 no longer exists. Once the original assessment order has been set aside by the Tribunal, there remains no order which can be subjected to revision u/s 263 of the Act. Section 263 presupposes the existence of a valid and operative order, which is both “erroneous” and “prejudicial to the interests of revenue.” If the underlying order itself has been remanded back to the AO for fresh adjudication, there remains no order which can be subjected to the proceedings u/s 263 of the Act. Therefore, the revision order u/s 263 of the Act becomes infructuous. We, therefore, set aside the impugned order passed u/s 263 of the Act. The appeal of the assessee is, accordingly, allowed.

8. We make it clear that we have not adjudicated on the merits of the subject order u/s 263 of the Act. The Id. PCIT will be at liberty to revise the fresh assessment order of AO, if the conditions of section 263 of the Act are fulfilled.

9. In the result, the appeal of the assessee is allowed.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on
19/11/2025.

Sd/-
(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 19/11/2025

SAMANTA

Copy of the Order forwarded to:

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

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat