

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH JABALPUR**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT  
SHRI NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No. 21/JAB/2022)  
(Assessment Year: 2017-18)

M/s Ambajee Jewellers, 01, Avatar Complex, Gorakhpur, Jabalpur- 482001	Vs.	Principal Commissioner of Income Tax, Jabalpur-1
PAN/GIR No. AAMFA 0012A		
<b>(Applicant)</b>	:	<b>(Respondent)</b>

<b>Applicant by</b>	:	Shri Dhiraj Ghai, CA
<b>Respondent by</b>	:	Shri Shravan Kumar Meena, CIT DR

<b>Date of Hearing</b>	:	16.09.2025
<b>Date of Pronouncement</b>	:	12.12.2025

O R D E R

**PER NIKHIL CHOUDHARY, AM:**

This is an appeal filed by the assessee against the order of the learned Principal Commissioner of Income Tax-1, [in short the 'PCIT] Jabalpur under Section (u/s.) 263 of the Income Tax Act, 1961 (in short the 'Act') passed on 19.01.2022 setting aside the orders of the learned Assessing Officer (in short the 'AO') passed u/s. 143(3) of the Act on 30.12.2019. The grounds of appeal are as under:-

- “1. *On the facts and circumstances of the case, the order passed by the learned Principal Commissioner of Income Tax (Pr. CIT) under Section 263 of the Act is bad, both in the eyes of law and on facts.*

2. *On the facts and On circumstances of the case, the order passed by the learned Pr. CIT under Section 263 of the Act is bad, both in the eyes of law and on facts, having been passed without giving assessee an opportunity of being heard on adverse opinion drawn from the reply submitted to notice under section 263 in violation of principle of natural justice.*
3. *On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law assuming jurisdiction under section 263 in the absence of twin conditions of the order passed by the A.O. being erroneous as well as prejudicial to the interest of the Revenue, being satisfied.*
4. *On the facts and circumstances of the case, the order passed by the learned Pr. CIT assuming jurisdiction under section 263 is bad in law having been initiated at the instance of audit objection only and merely on presumption assumptions.*
5. *On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in ignoring the fact that the issue raised by him in notice under Section 263 was before the A.O. and as such the jurisdiction on this issue under Section 263 cannot be assumed by him.*
6. *On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in ignoring the fact that he under proceeding Section 263 cannot be used for substituting opinion of the A.O. by that of the PCIT.*
7. *On the facts and circumstances of the case, the order passed by Pr. CIT under section 263 of the Income Tax Act is unsustainable as power to revise can be invoked in the case of lack of enquiry, not in the case inadequate enquiry.*
8. *On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in setting aside the matter to the file of the AO without giving a finding as to the error and prejudice caused to the revenue by the assessment order, and as such the order passed is bad in law and liable to be quashed.*
9. *On the facts circumstances of the case, Pr CIT has erred both on facts and in law in setting aside the issue of the examination of 100% purchase bills to the file of the Ld AO without properly appreciating explanation of assessee given during assessment proceedings brought on record to prove that AO has deeply examined all the purchase bills during assessment proceedings itself.*

10. *Considering the fact that the assessment order dated 30/12/19 is not erroneous so far as prejudicial to the interest of revenue hence the id Pr. CIT-1 was not justified in initiating revision proceeding by issuing show cause notice on 15/7/21.*
11. *On the facts and circumstances of the case, Pr CIT has erred both on facts and in law by mentioning contrary statements in 263 order viz that AO order was passed under section 144 and further erred in mentioning that assessee has produced partial purchase bills only during assessment proceeding*
12. *The revision order dated 19/01/2022 is bad in law for other reasons also hence may kindly be cancelled.*
13. *The assessee craves the leave to add or amend any ground of appeal.”*

2. The facts of the case are that the case of the assessee for the Assessment Year (AY) 2017-18 was selected for scrutiny for examination of abnormal increase in cash deposits during the demonetization period as compared to pre demonetization period. Subsequently, the assessment was completed on an assessed income of Rs.2,66,90,289/- after making an addition of Rs.2,12,82,278/- on account of allegedly bogus sales u/s. 68 of the Act. The learned PCIT called for the records of the case and observed from the same, that during the course of scrutiny proceedings, the assessee had only produced purchase bills to the tune of Rs.6,15,87,426/-, against a declared purchase of Rs.10,08,35,106/- in the trading account. The assessee had not produced any purchase bills in respect of purchases allegedly made from sister concerns, namely, M/s Ambaji Diamonds, Jabalpur and M/s. Ambaji Hall Mark Gold, Jabalpur. The PCIT also noted the observation in the assessment order that no details of the stock position had been submitted by the assessee. The learned PCIT, thereafter, held that excess purchase of Rs.3,92,47,680/- on this account for which bills were not produced should

be disallowed and added back to the assessee's total income. However, the AO had added back only Rs.2,12,82,278/-. As a result of this, there had been under assessment of income to the extent of Rs.1,38,61,255/- u/s. 68 of the Act. From the same, learned PCIT concluded that the AO had failed to conduct proper enquiries on the issue and therefore, the order of the AO was erroneous, in so far as it was prejudicial to the interest of revenue since the enquiry which the AO was expected to have done had not been done by him. Learned PCIT, therefore, held that the case fell within the ambit of Explanation-2 to Section 263 of the Act. He therefore, issued a show cause notice as to why the proceedings u/s.263 of the Act should not be done in respect of the said assessment. In response, the assessee submitted that the assessment had been initiated on account of, 'abnormal increase in cash deposits during the demonetization period as compared to the pre demonetization period'. Now, it had been alleged that since the assessee had failed to produce all the bills of purchases, the difference in purchases amounting to Rs.3,92,47,680/- should be added back u/s.69C of the Act. However, it was submitted that Section 69C of the Act only applied when expenditure had been incurred out of the books of account or where the assessee was unable to explain the source of such investments. Therefore, Section 69C of the Act did not deal with the issue of genuineness of purchases. It was further submitted that all the notices had been duly replied and the purchase bills produced by the assessee had not been called into doubt as the assessee had duly given name and addresses of the purchases, including the sisters concerns, where the same was legally required to be made as per law. It was further submitted that the ITAT, Jaipur Bench in the case of *Nisraj Real Estate* 31 DTR

456 had held that unverified purchases made by the assessee could not be treated as unexplained expenses u/s. 69C of the Act and no addition could be made thereof u/s.69C of the Act as once the sales were made, the purchases were obviously made. It was further submitted that the basic fact for making addition u/s. 69C of the Act was that there must be some expenditure incurred by the assessee, the source of which had not been disclosed. However, if such expenditure was recorded in the books of account, then Section 69C could not be invoked. Thus, the learned PCIT wrongly invoked the provisions of Section 69C of the Act. Without prejudice to this explanation, it was submitted that the AO had mentioned in Para 13 of his order that the assessee had produced the cash book and all the sales and purchase bills for verification on 27.12.2019. With regard to exchange of jewellery and sales under Rs.2,00,000/-, it was submitted that keeping address and PAN was not mandatory in the eyes of law. With regard to non-production of bills M/s Ambaji Diamonds, Jabalpur and M/s. Ambaji Hall Mark Gold, Jabalpur, it was submitted that those two cases had also been subjected to assessment u/s. 143(3) of the Act where the sale bills of those assesseees had been examined. Those became the purchase bills of the assessee. Copies of those assessment orders were attached to show that the purchase bills of the assessee and sales bills of those sisters concerns was duly verified. In the case of Ambaji Diamond Jewellers, the same AO had admitted that the assessee had produced 100% of sales bills. Accordingly, the contention that the assessee had not proved the purchases by way of purchase bills was incorrect. It was also submitted that all the purchases were subjected to VAT payments and the relevant VAT returns had been duly submitted containing the details

of all the purchases. Thus, it could not be stated that AO not verified the purchases. Therefore, the proceeding u/s.263 of the Act was not warranted in the said matter. Furthermore, it was argued that the complete set of purchase bills had never been asked for and, therefore, the assessee could not be treated as being in default for failure to furnish them. It was further submitted that the AO had examined/considered purchase bills of 6.5 crores only to consider whether the stock was available in the hands of the assessee or not so as to cross relate to sales during October, 2016; to check the bills below Rs.2.00 lacs; to cross examine whether or not customer was known or unknown to assessee; to examine the full and complete purchase bills above Rs.2.00 lacs. Therefore, the assessee had actually submitted all the bills that had been called for and to hold that the assessee had not produced bills of Rs.3.92 crores was incorrect allegation.

3. Learned PCIT referred to Explanation-2 of Section 263 of the Act and held that it was legally settled question in law that non enquiry and non-application of mind and non-application of law renders and assessment erroneous in so far as it is prejudicial to the interest of revenue and after quoting from various judgments and perusing the documents available on records, he came to the conclusion that since the assessee had failed to furnish the purchase bills amounting to Rs.3,92,47,630/-, the veracity of those purchases could not be ascertained and the said purchase had to be considered as bogus purchase within the meaning of the provisions of Section 69C of the Act. He pointed out that AO in her assessment order dated 30.12.2019 had disallowed Rs.2,12,82,278/- u/s. 68 of the Act on account of bogus sales cash during the month of October, 2016 but

failed to disallow the remaining amount of Rs.1,79,65,402/-. This also needed to be disallowed. Furthermore, the learned PCIT observed that the assessee in its computation of income for the AY 2017-18 had taken net profit as per the P&L account at Rs.34,14,086/- whereas the net profit as disclosed in the audited P&L account was Rs.44,83,385/-. Thus, a lesser net profit to the extent of Rs.10,69,299/- was taken and offered for taxation while filing the return of income. He therefore, directed the AO to recalculate the net profit at the rate of Rs.44,83,385/- and assess income at Rs.4,37,31,065/-, after holding that since the AO failed to make the proper enquiry and proper application of law, the order passed by her u/s. 144 of the Act was erroneous in so far as prejudicial to the interest of revenue. The matter was therefore, sent back to the AO for denovo consideration.

4. The assessee is aggrieved by this order u/s. 263 of the Act and has accordingly come before us. Shri Dheeraj Ghai, CA (hereinafter known as learned 'A.R.')

appearing before us submitted that the learned PCIT had restored the matter back to the file of the AO with a direction to make additions on account of purchases from unregistered dealer and sister concerns and on account of alleged wrong rate of profit. However, it was submitted that the entire foundation of the PCIT's belief was itself based upon the wrong presumption. He pointed out that the case of M/s Ambaji Ji Hallmark Gold and Shri Ajay Rawat had been taken up for assessment by the same AO where the sales of those parties had been totally examined and accepted. It was submitted that those sales were the purchases of the assessee. Therefore, if the sales were accepted in the hands of Ambaji Hallmark Gold and Shri Ajay Rawat, then they could not be unexplained in

the hands of the assessee. It was further argued that the AO had added back a sum of Rs.2,12,82,278/- as bogus sales disbelieving the cash sales made by the assessee in the month of October. On the other hand, the learned PCIT had alleged that there were bogus purchases of Rs.3,92,47,680/- and, therefore, he had ordered that a further sum of Rs.1,79,65,402/- be added back. It was submitted that since the expenditure on purchases did not amount to unexplained cash credit, it could not be added back u/s. 68 of the Act and since the expenditure was made in out of the books of account it could also not be added u/s. 69C of the Act. Therefore, the orders of the ld. PCIT were themselves erroneous in law. It was further argued that on perusal of the assessment order, it was quite clear that the AO had rejected the books of account and had estimated the profit. It was, therefore, against the principles of natural justice that the AO would on the one hand reject the books of account and on the other hand seek to examine the bills, to make additions on account of those that could not be produced. As regards, the wrong profit which was allegedly declared in the return as compared in the audit report, the learned AR did not refer any specific explanation after discrepancies.

5. On the other hand, learned CIT-DR appearing on behalf of the Revenue submitted that the assessee had not furnished the bills in respect of purchases made from its sister concerns and also did not maintain bills for gold receipts from unregistered dealer. It was incorrect to state that the purchases had been accepted in the hands of the sisters concern. Drawing our attention to the copies of the assessment order of M/s Ambaji Hallmark Gold, it was pointed out that in that said case also, the AO had made an addition on account of unexplained sales and in that order also he had recorded

the fact that the assessee had not produced sales bills in respect of sales made to its sisters concern M/s Ambaji Diamond Jewellers and M/s Ambaji Jewellers. Since the AO was the same and the purchases were unverified with reference to files of the sister concerns Ambaji Hallmark Gold, the AO should have treated the expenditure on purchases as bogus and added the same back. Learned PCIT was therefore, correct in observing that the AO had not made the additions she ought to have and, therefore, the order was erroneous and prejudicial to the revenue. The learned PCIT had also pointed out that there was a discrepancy in the profit as per the audited account and the profit declared in the return and the same had not been reconciled by the assessee. Accordingly, the revision proceedings was justified on this account also because the AO had not noticed this and made the necessary additions.

6. We have duly considered the facts and circumstances of the case and the argument of the rival parties. We observed that as far as sales made by Shri Ajay Rawat are concerned, the learned CIT(A) has quashed the addition made by the AO in the case of Shri Ajay Rawat on account of unexplained sales holding that the said sales amounting to Rs.3,25,60,242/- had been completely explained. Therefore, once the said sales stood explained in the hands of the seller, they cannot be regarded as unexplained in the hands of the purchaser. Any direction to the AO to undo the findings of the learned CIT(A) cannot therefore, be valid and no revision proceedings may lie in respect of this amount settled and decided in first appeal. However, with regard to the sales made by M/s Ambaji Hallmark Gold, sufficient information has not been furnished before us to suggest that the sales of M/s Ambaji Hallmark Gold stood

accepted by the AO. In the assessment proceedings of that concern, we note that the AO as made an addition of Rs.73,56,343/-as bogus sales after considering the amount surrendered by that assessee against under the PMGKY. In the circumstances, it cannot be said that the sales have been accepted by the Department and, therefore, it cannot be held that the purchases stood accepted. That being the case, the enquiry of the AO in the matter should have been taken into the logical conclusion and since it was not, we cannot find fault with the order of the PCIT in restoring back to the matter of the AO for *denovo* consideration. Similarly, even before us, the assessee has not been able to explain the reason for differentiation between the net profit declared in the P&L account of its audited account and reduced figure declared in the computation of income. We noticed that in the reply submitted before the PCIT the assessee has not submitted any explanation in this regard. Therefore, we cannot find any fault in the decision of the learned PCIT to restore the matter back to the file of the AO for *denovo* consideration. We would however point out that once these matters have been restored back to the file of the AO, for *denovo* consideration, the AO would be obliged independently apply his mind to the facts of the submissions made by the assessee and without being unduly influenced with the remarks of the learned PCIT, since *denovo* assessment itself implies fresh application of mind to the facts of the case. Furthermore, once the AO considers the issue afresh, he would be at liberty to consider under what provisions of the Act disallowances, if any, should be made. We further note that the contention of the assessee that the action of the PCIT is bad in law, because of the audit objection not acceptable, in view of the judgment of the Hon'ble Supreme Court in the case of

'Commissioner of Income Tax vs. P.V.S. Beedies Pvt. Ltd.' in [1999] 237 ITR 13 (SC).

Therefore, while we hold that the jurisdiction of the learned PCIT was improperly exercised in relation to the purchases made from Ajay Rawat, there is no infirmity in the proceedings on account of the remaining issues under consideration. We, therefore, confirm the orders of the learned PCIT to that extent. The appeal of the assessee is accordingly held to be partly allowed.

7. In the result, appeal of the assessee is partly allowed.

*Order pronounced in the open court on 12.12.2025*

Sd/-  
(Kul Bharat)  
Vice President

Sd/-  
(Nikhil Choudhary)  
Accountant Member

Dated : 12.12.2025

Aks/-

**Copy of the Order forwarded to :**

1. The Applicant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)