

IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER
ITA No. 3671/MUM/2025 (AY: 2022-23)
(Physical hearing)

Rashi Peripherals Limited, 5 th Floor, Aristo House, Corner of Telligully Circle, Andheri (East), Mumbai – 400069. [PAN: AAACR2162H]	Vs	DPCIT, Mumbai - 3 Room No. 612, 6 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai – 400020.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Lalchand Choudhary, FCA
Revenue by	Shri Umashankar Prasad, CIT –DR/ Shri Annavarani Kosuri Sr DR
Date of Institution	23.05.2025
Date of hearing	07.11.2025
Date of pronouncement	07.11.2025 / 06.01.2026

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Id. Pr. CIT - 3, Mumbai dated 26.03.2025 for A.Y. 2022-23. The assessee has raised following grounds of appeal:

"1. The appellant prefers the following Appeal against the order dated 26/03/2025 of the Principal Commissioner of Income Tax, Mumbai-3 (hereinafter referred to as "The PCIT") passed under section 263 of the Income Tax Act, 1961 ("The Act"). Each of the grounds is in alternative and without prejudice to other.

2. On facts and in law, Hon'ble PCIT erred in passing an order under S. 263 directing the AO to disallow the claim for deduction of Rs. 15,05,300 under S. 80JJAA of the Income Tax Act, 1961 in respect of costs of additional employees employed by the appellant for a delay of 23 days in filing of the Form 10DA in this regard.

3. On facts and in law, Hon'ble PCIT erred in not appreciating the fact that the Assessment Unit (AU) has verified the details of claim so made by the

appellant under S. 80JJAA and has allowed the claim after proper verification.

4. On facts and in law, Hon'ble PCIT failed to appreciate that the appellant having obtained the report in form 10DA well in time, no order under S. 263 could be passed merely in respect of a procedural delay of 23 days in filing of form 10DA.

5. Hon'ble PCIT failed to appreciate and erred in invoking the provisions of S. 263 of the Act on a legal issue where the Assessment Unit has taken one of the possible views prevalent in respect of the small delay in filing of Form 10DA.

6. Hon'ble PCIT erred in invoking the provisions of S. 263 where a petition dated 15/12/2023 for condonation of 23 days was under consideration before a higher authority ie. Hon'ble CBDT. He failed to appreciate if the delay is condoned by the higher authority; the order so passed under S. 263 by him will lose its value.

7. Hon'ble PCIT failed to appreciate and erred in invoking the provisions of S. 263 of the Act on a settled legal issue where the deduction under S. 80JJAA has been allowed by Hon'ble Tribunals and Hon'ble High Court in case of small procedural delay in filing of Form 10DA.

8. On facts and in law, the PCIT failed to appreciate that he was not empowered to pass an order under S. 263 in respect of an Assessment order passed under S. 143(3) rws 144B by the Assessment Unit. He failed to appreciate that the jurisdiction under S. 263 could be invoked only in respect of an order passed by an Assessing Officer or a Transfer Pricing Officer and not in respect of any order passed by the Assessment Unit. The order so passed under S. 263 is thus bad in law, illegal and void ab initio."

2. Rival submissions of both the parties have been heard and record perused.

The learned Authorised Representative (Id. AR) of the assessee submits that assessee-company filed its return of income on 29.01.2022 declaring income of Rs. 254.62 crores. The assessee in its computation of total income claimed deduction under section 80JJAA of Rs. 15,05,300/-only. Such deduction was claimed in respect of cost incurred for employing additional employee. The assessee filed required Form 10DA on 23.11.2022 i.e. prior to filing return of income. The CPC while processing

return rejected the claim of assessee on the ground that there was delay of 23 days in filing audit report / Form 10DA. However, the case was selected for scrutiny and claim of deduction under section 115JJAA was allowed by assessment unit in the order passed under section 143(3) r.w.s. 144B on 21.03.2024. The deduction under section 80JJAA was allowed by assessing officer after full verification of facts. However, the assessment order dated 21.03.2024 was revised by Id. Pr. CIT-3 Mumbai by invoking his jurisdiction under section 263 in his order dated 26.03.2025. The Id. Pr. CIT before revising the assessment order recorded that there was delay of 23 days in filing Form 10DA and the Faceless Assessing Officer (FAO) allowed the claim of assessee ignoring such fact whereas the due date for filing Form 10DA was 31.10.2022. The FAO allowed the claim of assessee in contravention of provisions of the Act. On same observation, the Pr. CIT issued show cause notice. The assessee contested the revision proceedings before PCIT and submitted that filing Form 10DA was merely a technical breach and relief should not have been refused for the want of relevant form which was filed before making claim of deduction in the return of income. The assessee also relied on the various case laws wherein similar delay in filing Form 10DA was allowed. The assessment order passed by assessing officer was not erroneous and so far as prejudicial to the interest of revenue. The Id. Pr. CIT disregarded the submission of assessee and directed the assessing officer to disallow the claim of deduction under section 80JJAA. The Id. AR submits that the direction in para 17 of his order is not correct. To support his submission,

the Id. AR relied upon the decision of Hon'ble Apex Court in CIT Vs G.M. Knitting Industries (P) Ltd. wherein it was held that when necessary certificate for claiming deduction under section 80IB, in Form 3AA was filed during assessment proceedings, the assessee was entitled for such deduction. The Id. AR submits that in a series of decision by Tribunal as well as by various High Courts has held that filing similar Forms are merely directory and not mandatory. The Id. AR reiterated that assessee has already filed Form 10DA before filing return of income. Thus, the order passed by assessing officer is not erroneous and so far as prejudicial to the interest of revenue. The AO has not committed any error while passing assessment order. The Id AR the assessee submits that in fact the grounds of appeal raised by the assessee is covered.

3. On the other hand, the learned Commissioner of Income Tax - Departmental Representative (Id. CIT-DR) for the revenue submits that assessing officer has only verified the details of new employees and old employees along with appointment letter and employee-wise salary with details of TDS and ignore the fact that Form 10DA was filed beyond due date.
4. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We have also deliberated on various case laws relied by assessee in the reply before Id. Pr CIT during the revision proceedings as well as decision relied before us. We find that there is no much dispute on the fact. Admittedly, there was delay of 23 days in filing Form 10DA. The assessee filed return of income

for impugned assessment year on 29.11.2022. Form 10DA was filed on 23.11.2022 i.e. six days prior to filing return of income. We find that the assessing officer during assessment proceedings issued show cause notice dated 28.12.2023 and sought explanation about the deduction under section 80JJAA. The assessing officer also sought details of new employees, old employees with their appointment letter, employee's salary, and details of TDS and calculation of 80JJAA. The assessee in response to such show cause notice furnished detailed reply dated 10.01.2024 and furnished the required details. Copy of show cause notice issued by assessing officer and the reply thereto by assessee is available on record. Even otherwise, we find the Id. PCIT in para 3.1 of his order has accepted the fact that assessing officer verified the details of new employee. The only basis for revising the assessment order is that Form 10DA was filed after 23 days of his specified date.

5. We find that on similar ground of appeal, co-ordinate bench of Ahmadabad Tribunal in *Akuntha Projects (P) Ltd. Vs Deputy Director-CPC* in (2024) 162 taxmann.com 861 held that when audit report in Form 10DA was available before assessing officer before framing the assessment order claim of deduction under section 80JJAA could not be denied. Similar view was taken by *Kolkata Tarasafe International (P) Limited Vs DDIT, CPC* (2024) 168 taxmann.com 514 (Kolkata). We also find that Hon'ble Madras High Court in *Svasti Microfinance (P.) Ltd. Vs CBDT* (2024) 164 taxmann.com 229 (Madras) also held that where Form 10DA was signed within stipulated date and filed on extended date for filing return of income, it was

appropriate case for condoning the delay in filing Form 10DA. We find that Hon'ble Apex Court in CIT Vs G.M Knitting Industries (P) Ltd (supra) also held that when certificate in Form-10CCB was not filed with return of income but filed before final assessment order was made, the assessee was entitled to claim deduction under section 80IB.

6. Again adverting to the facts of the case in hand, we find that Form-10DA was filed before filing return of income, thus, it was available before assessing officer before passing assessment order. Moreover, the assessing officer before passing the assessment order examined the claim of assessee by seeking and examining the details new employee employed by the assessee, thus, the assessing officer passed assessment order after due verification of claim in including Form-10DA. In our view, in such circumstances, the assessment order cannot be said to be erroneous as the assessing officer while allowing the claim of assessee under section 80JJAA has taken a plausible and legally sustainable view. Thus, the twin conditions for invoking jurisdiction under section 263 are not satisfied in the present case. Therefore, the order passed by Id. Pr. CIT dated 26.03.2025 is set aside. In the result, grounds of assessee are allowed.
7. In the result, the appeal of the assessee is allowed.

Order was pronounced in the open Court on 07/11/2025.

Sd/-

OMKARESHWAR CHIDARA
ACCOUNTANT MEMBER

PAWAN SINGH
JUDICIAL MEMBER

MUMBAI, Dated: 07/11/2025
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PER OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

After hearing the appeal, the case was fixed for clarification on 07.11.2025 and was heard on 07.11.2025. Concurring with the final conclusion arrived at by Ld.JM that the claim of appellant Company is correct on merits, the following observations are made :

I have gone through the Order of Ld.JM in the above case. Prima Facie, Form 10DA, power to condone delay lies with CBDT and not AO. The AO has not applied his mind in this regard and completed the assessment and hence it is a mistake. The Ld. PCIT has correctly assumed jurisdiction under section 263 of Act. The appellant has correctly applied condonation petition to CBDT and the same is pending. The Hon'ble Madras High court's decision quoted in Ld.JM's order is against the rejection of application of applicant by CBDT shows the power to condone delay is with CBDT. Only the Authority which is vested with the power to condone delay, can condone. In our case, the AO does not have the power to condone the delay, which is acknowledged by appellant and hence the appellant filed condonation petition before CBDT which can be seen from PCIT's order under section 263, page 5. Form 10B, 10CCB etc. delay cases were quoted in the draft order where CBDT was not vested with the power to condone the delay and hence decisions were rendered in favour of appellant. It was already mentioned that it is not the question of delay to be condoned or not, but whether the AO has the power to condone the delay and allow the deduction, that too when CPC passed an order disallowing the deduction claimed by appellant. Moreover, the AO is not the appellate authority on the Order of CPC.

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2. If a petition is filed by appellant before CBDT and if the same is rejected, then appeal lies to High court. Hence, it is not in the domain of Ld.AO to condone the delay.

3. Secondly, from the Order of PCIT, it can be seen that Order under section 143(1) passed by CPC disallowing the decision under section 80JJAA due to delay in filing Form 10DA also was not considered by AO. The Ld.AO has not applied his mind to this aspect, without raising this issue of delay (passed by CPC), the Ld.AO completed the assessment and hence PCIT's order is correct and the order of AO is erroneous. In this regard, para 3, page 32 of the order of the Ld.PCIT under section 263 is reproduced as under :

3. On examination of assessment order along with assessment records, it is noticed that there is a delay in filing of form 10DA. The assessee has filed the Form 10DA late by 23 days from the specified date. The Faceless Assessing Officer (FAO) has allowed the claim of the assessee ignoring the fact that the form 10DA was filed late by 23 days from the due date. Further it is also noticed that the deduction u/s 80JJAA was disallowed in intimation u/s 143(1) of the Act.

3.1. Further, the AO only verified the details of new employees and old employees along with the appointment letter and employee wise salary wise details with TDS and calculation of 80JJAA of the Act. However, the AO has ignored the fact that the assessee has filed form 10DA on 23.11.2022 whereas the due date for the same was 31.10.2022. Though, the Form 10DA was filed belatedly, the AO has allowed the same in contravention to the provisions of the Act.

4. Thirdly, the Ld.PCIT passed the order as follows at para 14, page 7, which is reproduced as follows :

14. The assessee argues that the Assessment Unit made sufficient inquiries regarding the claim under Section 80JJAA. However, the inquiry focused on employee details and salary calculations, not on whether the procedural requirement of timely filing Form 10DA was met. The assessment unit's allowance of deduction despite a clear procedural lapse constitutes an error that is prejudicial to the interests of the revenue, making the case fit for revision under Section 263. The CPC disallowed the claim due to non-compliance with procedural requirements. The subsequent allowance by the Assessment Unit, despite this lapse, shows inconsistency in approach. The revision proceedings under Section 263 are justified as they seek to correct an incorrect allowance of deduction, which is prejudicial to the interest of the revenue.

5. To sum up:

- a) The AO does not have the power to overturn the order of CPC, by allowing deduction.
- b) The AO is not the appellate authority of the order of CPC.
- c) The AO has not applied his mind relating to disallowance made by CPC and allowed the claim of appellant without asking any reason relating to delay in filing Form No.10DA.
- d) The power to condone the delay lies with CBDT, which was acknowledged by appellant and hence filed a petition before CBDT and the same is pending. Even the High Court of Madras quoted in your Order confirms the petition.

- e) The AO has not enquired anything about the delay in procedural requirement.
- f) The cases-law relied on by Ld.JM does not relate to the fact that CPC disallowed and AO allowed without asking for reasons of delay. Secondly, in those cases, the appellant filed petition before CBDT which is the appropriate authority to condone the delay and hence those cases are not applicable to the impugned case on hand. Thirdly, the New Bombay Merchant case is also distinguishable on facts as it relates to Form 10, where power to condone delay was not with Board, whereas here the power is vested with Board only.
- g) The Ld.AO has started the "computation of income" from the "Returned Income" figure and not from CPC determined income, which clearly shows that Ld.AO did not apply his mind and hence the Order of Ld.PCIT u/s 263 is valid to this extent.
- h) But, the last para of Ld.PCIT i.e. para 17 directing the AO to disallow the deduction u/s 80JJAA is not correct because Ld.AO has conducted enquiry into the genuineness of claim in his scrutiny assessment before allowing the claim.
- i) To confirm the order u/s 263 of Income Tax Act, the assessment order should be "erroneous" and "prejudicial to the interest of Revenue". In our impugned case, the order of Ld.AO is "erroneous" in the sense that there is non-application of mind because there is delay in filing Form 10DA, which was seen by CPC, but not by AO. But, this "error" did not cause "prejudice to the interest of Revenue", since AO caused enquiries and allowed

and allowed the claim u/s 80JJAA. As the twin conditions are not satisfied, the order of CIT u/s 263 is not valid.

6. To conclude, the order of Ld.PCIT is correct to the extent of non-application of mind w.r.t. delay in filing of Form 10DA. But on merits and also due to the fact that Ld.AO has conducted enquiries and allowed the deduction as mentioned in the assessment order, the order of Ld.PCIT u/s 263 as mentioned in Para 17 directing AO to disallow the claim is not correct. The main purpose of Order u/s 263 of Income Tax Act is to conduct necessary enquiries and then allow the deduction and since this issue was already taken care by Ld.AO in his assessment order, the order of Revision is incorrect to this extent. Taking into consideration all the circumstances which are peculiar to this case, the appeal of assessee is allowed.

7. In the result, the assessee's appeal is allowed.

Order was pronounced in the open court on 06/01/2026.

Sd/-

OMKARESHWAR CHIDARA
ACCOUNTANT MEMBER

PAWAN SINGH
JUDICIAL MEMBER



Visakhapatnam
Dated 06/01/2026
L.Rama, SPS

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai