

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

ITA No.1605/Ahd/2025
(Assessment Year: 2018-19)

Alang Steel Recycling Private Limited Ground Floor, Shop No.G-1 Sukun-1, Bhilwara Circle Bhavnagar – 364 001 [PAN: AAMCA 4837 A]	Vs.	The Pr. CIT-1, Ahmedabad – 380 015
(Appellant)	..	(Respondent)

Assessee represented by :	Shri Parimalsinh B. Parmar, AR
Revenue represented by :	Shri R.P. Rastogi, CIT-DR
Date of Hearing	08.12.2025
Date of Pronouncement	16.01.2026

ORDER

PER SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Principal Commissioner of Income-Tax, Ahmedabad-1, [hereinafter referred to as “PCIT”] dated 21/03/2023, in exercise of his revisionary powers under Section 263 of the Income-tax Act, 1961 [hereinafter referred to as “the Act”], for the Assessment Year (AY) 2018-19.

2. The assessee has taken the following Grounds of Appeal:-

“1. The Ld. PCIT has erred, both in law and on facts, in assuming jurisdiction under section 263 of the Act on the erroneous ground that the underlying

assessment order is erroneous insofar as it is prejudicial to the interest of the revenue.

2. The Ld. PCIT has erred, both in law and on facts, in not appreciating that in order to invoke section 263, twin conditions must be fulfilled cumulatively viz. the underlying assessment order must be erroneous and such error must be prejudicial to the interest of the revenue. In this case, Id. AO has passed reasoned assessment order after analysing all details and therefore, there is no error in the underlying assessment order so as to justify action under section 263 of the Act. Under such circumstances, the very assumption of power under section 263 of the Act is unjustified and bad in law.

3. The Ld. PCIT has erred, both in law and on facts, in not appreciating that the action of learned AO in invoking section 37 as against section 69C r.w.s. 115BBE of the Act in relation to the solitary addition made while framing the assessment cannot be a ground to invoke provisions of section 263 of the Act.

4. The Ld. PCIT has erred, both in law and on facts, in not appreciating that provisions of section 263 could not have been invoked in this case in view of provisions of clause (c) of Explanation 1 to section 263.

5. The Ld. PCIT has erred, both in law and on facts, in passing an ex-parte order which is in gross violation of principles of natural justice.

6. Ld. PCIT has erred in not considering various facts, submissions, explanations clarifications furnished by assessee during the course of original assessment proceedings and further erred in not appreciating the facts as well as law in correct perspective.

7. The assessee craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”

Application for condonation of delay:

3. At the outset, we note that the assessee has filed an application seeking condonation of delay of **83 days** in filing the present appeal. The said application is supported by a duly sworn affidavit of Ms. Dimple Arvindbhai Modi, Director of the assessee-company, explaining the reasons for the delay.

4. On perusal of the application and the affidavit, it is noticed that the impugned order under section 263 of the Act dated 05.03.2025 was not acted upon

within the prescribed period mainly due to the fact that the income-tax matters of the assessee-company were earlier being handled by the Chief Accountant, who left the services of the assessee-company with effect from 01.10.2024, and due to inadvertence the credentials of the income-tax portal and information regarding ongoing proceedings were not handed over to his successor. As a result, the assessee remained unaware of the order passed by the learned Principal Commissioner of Income-tax. The position came to light only when a tax consultant accessed the portal after obtaining the credentials from the erstwhile Chief Accountant, whereafter immediate steps were taken to file the appeal before the Tribunal.

5. Having regard to the reasons stated in the application and affidavit, and there being nothing on record to suggest that the delay was deliberate, intentional or due to any mala fide conduct on the part of the assessee, we are satisfied that the assessee was prevented by sufficient and reasonable cause from filing the appeal within the prescribed time. It is a settled principle that a liberal approach is to be adopted while considering applications for condonation of delay so as to advance substantial justice rather than to defeat it on technical grounds.

5.1. Accordingly, in the interest of justice, the delay of **83 days** in filing the present appeal is condoned and the appeal is admitted for adjudication on merits.

6. On merits, the brief facts of the case are that the assessee filed its return of income for Assessment Year 2018–19 on 30.10.2018 declaring a total income of ₹10,75,470/-. The assessment was completed under section 147 read with section 144B of the Income-tax Act, 1961 (“the Act”) on 21.03.2023 assessing

the total income at ₹88,37,215/-. The case was reopened on the basis of information received from the investigation wing alleging that **the assessee had availed bogus purchase bills** through Shri Gurukamal Singh, proprietor of M/s Preet Enterprise, operating through multiple entities. It was alleged that the assessee had shown purchases from M/s Hamalloys Exim and M/s Bankey Bihari Industries, which were stated to be involved in **issuance of accommodation bills without actual supply of goods.**

7. During the reassessment proceedings, the Assessing Officer examined the issue of purchases and, in respect of transactions aggregating to ₹77,61,745/-, treated the same as non-genuine and disallowed the entire **amount under section 37 of the Act while framing the reassessment order.** However, according to the learned Principal Commissioner of Income-tax, the Assessing Officer failed to invoke the provisions of section 69C read with section 115BBE of the Act. The Principal Commissioner observed that the assessee had remained non-compliant during the reassessment proceedings and had not furnished satisfactory evidence to establish the genuineness of the transactions or the source of expenditure, and therefore the entire amount ought to have been treated as unexplained expenditure under section 69C of the Act and not under section 37 of the Act.

7.1. Accordingly, Principal CIT issued a show cause notice to the assessee proposing revision of the assessment order on the ground that it was erroneous and prejudicial to the interest of the revenue. As there was no compliance, further notices dated 20.01.2025 and 04.02.2025 were issued, fixing dates of hearing. The assessee did not respond to any of the notices. The learned Principal Commissioner observed that the notices were duly served through the income-

tax portal and by post, and therefore proceeded to decide the matter on the basis of material available on record.

8. The Principal Commissioner held that the Assessing Officer had failed to make proper enquiry and had not applied the correct provisions of law by disallowing the amount under section 37 instead of section 69C read with section 115BBE of the Act. Relying, inter alia, on the decision of the Hon'ble Supreme Court in *BSES Rajdhani Power Ltd. v. Pr. CIT* [2023] 152 taxmann.com 139 (SC), the Principal Commissioner held that the assessment order was erroneous and prejudicial to the interest of the revenue. Consequently, the assessment order dated 21.03.2023 was set aside with a direction to the Assessing Officer to pass a fresh assessment order in accordance with law after examining the issue afresh.

9. The assessee is in appeal before us against the order passed by Principal CIT u/s 263 of the Act.

10. We have heard the rival contentions and perused the material on record.

10.1. The short issue for our consideration is whether the learned Principal Commissioner was justified in assuming revisionary jurisdiction under section 263 of the Act on the ground that the Assessing Officer ought to have invoked section 69C read with section 115BBE of the Act instead of disallowing the amount under section 37 of the Act.

10.2. It is a settled position of law, as laid down by the Hon'ble Supreme Court in **Malabar Industrial Co. Ltd. v. CIT (243 ITR 83)**, that for invoking section 263, two conditions must be satisfied cumulatively, namely, the order of the Assessing Officer must be erroneous and it must also be prejudicial to the interest of the revenue. If either of these conditions is absent, the assumption of jurisdiction under section 263 is not sustainable in law.

10.3. In the present case, it is an undisputed fact that the Assessing Officer examined the issue of alleged bogus purchases during the reassessment proceedings and disallowed **100% of the purchases amounting to ₹77,61,745/-**. The Principal Commissioner has not disputed the quantum of disallowance made by the Assessing Officer. The sole basis for invoking section 263 is that, according to the Principal Commissioner, the disallowance should have been made under section 69C read with section 115BBE of the Act instead of section 37 of the Act.

10.4. At this stage, it is necessary to examine the scope and applicability of section 69C of the Act. Section 69C applies where an assessee has incurred expenditure and offers no explanation about the source of such expenditure or the explanation offered is not satisfactory. The provision is a deeming fiction meant to bring to tax expenditure incurred from unexplained sources. On the other hand, section 37(1) deals with allowability of business expenditure and empowers the Assessing Officer to disallow expenditure which is found to be not genuine or not incurred wholly and exclusively for the purposes of business.

10.5. In the present case, the purchases were recorded in the regular books of account and the payments were made through banking channels. The source of expenditure, therefore, stood explained from the books of account themselves. The Assessing Officer doubted the genuineness of the purchases and, accordingly, treated the same as non-genuine business expenditure and disallowed the entire amount under section 37 of the Act.

10.6. In **Arvind Kumar v. PCIT [2025] 178 taxmann.com 351 (Delhi-Trib.)**, the Tribunal addressed the limited but important controversy whether disallowance of allegedly non-genuine purchases should fall under section 37(1) or be re-characterised as unexplained expenditure under section 69C so as to attract section 115BBE. The assessee's case was reopened on the allegation of purchases from a non-genuine entity, during which the Assessing Officer carried out detailed enquiries including examination of audited books, bank statements, purchase bills, physical verification of the supplier and recording of statements, and thereafter disallowed 100% of the expenditure holding it to be not genuine under section 37(1). The Principal Commissioner sought to revise the assessment under section 263 on the ground that the addition ought to have been made under section 69C and taxed at the higher rate prescribed under section 115BBE. The Tribunal rejected this approach, **holding that section 37 is the appropriate provision where the nature of expense (purchases) and the source of expense (bank payments) are not in dispute and the only doubt relates to the genuineness of the claim, whereas section 69C applies only where the source of expenditure itself remains unexplained.** It was further held that the Assessing Officer **had taken a plausible and legally sustainable view after conducting adequate enquiry, and the PCIT could not substitute his own view merely because he preferred a different charging provision.** Accordingly, the

revisionary order was set aside, reaffirming that disallowance of non-genuine business expenditure does not automatically convert into unexplained expenditure under section 69C.

10.7. In **Vijubha Jitubha Jadeja v. PCIT [2023] 154 taxmann.com 615 (Rajkot-Trib.)**, the Tribunal examined the scope of revision under section 263 in the context of differential treatment of additions under sections 68 and 69C vis-à-vis applicability of section 115BBE, and drew a clear doctrinal distinction between unexplained credits and bogus business expenditure. The Tribunal upheld the revision to the limited extent that where the Assessing Officer had himself made an addition under section 68 on account of unexplained sundry creditors, taxing such addition at the special rate prescribed under section 115BBE was a statutory and automatic consequence, and failure to do so constituted an error prejudicial to the interests of the Revenue. However, the Tribunal simultaneously rejected the PCIT's attempt to re-characterise disallowance of bogus salary and wages as unexplained expenditure under section 69C, holding that **section 69C applies only to cases where expenditure is actually incurred from unexplained sources, whereas bogus expenses represent no real expenditure at all and therefore fall outside the ambit of section 69C**. Such bogus claims can only be disallowed under section 37(1) as inadmissible business expenditure and cannot be converted into deemed income so as to attract section 115BBE. Accordingly, the Tribunal held that while non-application of section 115BBE to a valid section 68 addition justified revision, invocation of section 69C for bogus expenses was legally unsustainable, reinforcing the principle that deeming provisions must be strictly confined to their statutory preconditions.

10.8. The Mumbai Bench of the Tribunal in **Nabeel Construction (P.) Ltd. v. PCIT [2025] 179 taxmann.com 417** examined the controversy whether a disallowance of non-genuine purchases and wages recorded in the books could be re-characterised as unexplained expenditure under section 69C so as to justify revision under section 263. The assessee, engaged in labour-intensive construction activity, had recorded all contract receipts, purchases and wage payments in its regular books of account and made payments exclusively through disclosed banking channels. The Assessing Officer, constrained by limitation, disallowed the entire expenditure as non-genuine, a treatment traceable to section 37(1), without invoking section 69C. The Principal Commissioner sought to revise the assessment on the ground that the disallowance ought to have been made under section 69C read with section 115BBE. The Tribunal rejected this approach, holding that section 69C is a narrow deeming provision applicable only where expenditure is incurred from unexplained or undisclosed sources, whereas in the present case the very books of account explained both the incurrence and source of expenditure. It was held that a business disallowance, even if total, does not automatically convert into “unexplained expenditure”, and section 69C cannot be invoked merely because the genuineness of expenditure is doubted. Since the Assessing Officer had taken a legally permissible view by disallowing the expenditure under section 37, the PCIT could not invoke section 263 merely to substitute his preferred provision of law, and the revisionary order was therefore quashed.

10.9. It is well settled that where two views are possible and the Assessing Officer has adopted one of the plausible views, the order cannot be branded as erroneous merely because the Principal Commissioner prefers another view. This principle has been reiterated by the Hon’ble Supreme Court in *Malabar Industrial Co. Ltd.* (supra) and *Kwality Steel Suppliers v. CIT* (395 ITR 1).

10.10. In view of the foregoing discussion, we hold that the Assessing Officer, after examining the issue of alleged bogus purchases during the reassessment proceedings, has taken a legally permissible and plausible view by disallowing the entire amount of ₹77,61,745/- under section 37 of the Act, the purchases having been recorded in the regular books of account and the payments having been made through banking channels, thereby explaining the source of expenditure, and that the mere fact that the learned Principal Commissioner was of the opinion that section 69C read with section 115BBE ought to have been invoked does not render the assessment order erroneous or prejudicial to the interest of the revenue within the meaning of section 263 of the Act; rather, the impugned revisionary action represents an impermissible substitution of the Principal Commissioner's view for that of the Assessing Officer on a debatable issue of law, which is not sanctioned under section 263.

10.11. Accordingly, the impugned order passed by the learned Principal Commissioner under section 263 of the Act is set aside and the assessment order dated 21.03.2023 is restored.

11. In the result, the appeal of the assessee is **allowed**.

The order is pronounced in the open Court on 16 .01.2026

Sd/-
(DR. B.R.R. KUMAR)
VICE-PRESIDENT

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad; Dated

16.01.2026

**tc nair*

आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The (NFAC), Pr.CIT Ahmedabad-1.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

//True Copy //

**सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad**