IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)

ITA No. 2666/MUM/2025
Assessment Year: 2019-2020

Bajaj Auto Ltd., 2nd floor, Bajaj Bhawan, 226, Jamnalal Bajaj Marg, Nariman Point, Mumbai-400021. **PAN NO. AADCB 2923 M** **Appellant**	***Vs.***	The Principal Commissioner of Income-tax-3 Room No. 612, 6th floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai-400020. **Respondent**

Assessee by	:	Mr. P.J. Pardiwala a/w Ms. Vasanti Patel
Revenue by	:	Mr. Satyaprakash R. Singh, CIT-DR Mr. Aditya Rai, Sr. DR

Date of Hearing	:	28/11/2025
Date of pronouncement	:	23/01/2026

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against revisionary order passed u/s 263 of the Income-tax Act, 1961 (in short 'the Act') by the learned Principal Commissioner of Income-tax-3, Mumbai [in short 'the Ld. PCIT'] for assessment year 2019-2020, raising following grounds:

On the facts and in the circumstances of the case and in law, the direction given by the Learned PCIT to revise the assessment order dated 27 May 2022 passed under section 143(3) read with section 144C(3) of the Act (hereinafter referred to as 'assessment order') is erroneous, illegal and bad in law on the following grounds:

1. The Learned PCIT erred in holding the assessment order for the captioned AY as erroneous and prejudicial to the interest of the revenue, treating the same as ***passed without any enquiry****.*

2. The Learned PCIT erred in not appreciating the fact that, on some of the issues, due enquiry was made by the Learned Assessing Officer ('Learned AO') and there was ***due application of mind by the learned AO,*** *and hence, the action of the Learned PCIT to assume jurisdiction under section 263 of the Act is bad in law.*

3. The Learned PCIT erred in not appreciating the fact that when ***two views are possible on a given issue and the Learned AO has adopted one possible view****, the order passed by the AO cannot be said to be erroneous and prejudicial to the interest of revenue within meaning of section 263 of the Act and any attempt made by the Learned PCIT to revise the assessment order would be without jurisdiction.*

4. The Learned PCIT erred in not appreciating the fact that Explanation 2 to section 263 of the Act can be applied only when there was lack of enquiry, or no enquiry made by the AO, and ***cannot be applied for inadequate enquiry*** *by the AO, and that para 2 of the impugned order itself states that the "following issues were not examined thoroughly by the assessing officer".*

Without prejudice to the above, the appellant wishes to raise the following grounds on merits:

Ground no. 5 to 12: Disallowance in respect of ***provision under section 37(1): Rs. 121,88,44,175:***

5. On the facts and in the circumstances of the case and in law, the learned PCIT has incorrectly assumed jurisdiction under section 263 of the Act on the said issue ***without requiring the appellant to show cause in the notice issued*** *as to why the assessment order passed in respect of the said issue is erroneous and prejudicial to the interest of the revenue.*

6. On the facts and in the circumstances of the case and in law, the learned PCIT has erred in directing the Learned AO to make a

disallowance of Rs. 121,88,44,175 under section 37(1), being 70% of the deduction claimed by the appellant in respect of provision for expenses after reducing a sum Rs. 52,23,61,790 already disallowed by the appellant under section 40(a)(ia) of the Act.

In doing so, the learned PCIT erred in the following respects:

7. In not appreciating the fact that as per the provisions of Indian Accounting Standard - 37 (Ind AS) issued by the Institute of Chartered Accountants of India and as per the accounting policy regularly followed by the appellant, the ***provisions made denote a reasonable estimate of a present obligation*** *as a result of past events and hence ought to be allowed as a deduction;*

8. In not appreciating the fact that the provisions have been made in connection with work already done up to 31 March 2019 in respect of which invoices were not received up to the said date and hence the same constitute expenditure incurred during the year under consideration;

9. In not appreciating the fact that the ***provisions have been made on the basis of reasonable estimates for work*** *done up to 31 March 2019 and hence the same are in connection with the expenditure incurred during the year under consideration;*

10. In not appreciating the fact that the Income Computation and Disclosure Standard X relating to 'Provisions, Contingent Liabilities and Contingent Assets' notified under section 145(2) of the Act, provisions should be made for all known liabilities, and hence there is no question of making disallowance in respect of the aforesaid provisions;

11. In not appreciating the fact that the aforesaid provisions of Rs. 174, 12,05,965 constitute less than 1% of the total expenditure of Rs. 25,538.11 crores debited to the Profit and Loss account, and hence the provisions ought to be allowed being reasonable.

12. In holding that the entire amount of provision should have been disallowed under section 37(1) ***without even examining the facts or basis of the provision,*** *which according to the learned PCIT himself ought to have been thoroughly examined by the learned AO.*

Ground No. 13 to 25: Disallowance under section 40(a)(ia) in respect of target discount, consistency discount and cash discount provided to spare parts dealers: Rs. 46,32,27,674:

13. On the facts and in the circumstances of the case and in law, the learned PCIT has erred in directing the Learned AO to make a disallowance under section 40(a)(ia) of the Act, of a sum of Rs. 46,32,27,674, computed at 30% of the target discount of Rs. 64,98,79,896, consistency discount of Rs. 70,16,14,802 and cash discount of Rs. 19,25,97,550 provided to the dealers of spare parts.

In doing so, the learned PCIT erred in the following respects:

14. In not appreciating the fact that as per the provisions of section 194H, tax is required to be deducted at source only in respect of ***commission or brokerage****, which is defined to include any payment to a person acting on behalf of another person for services rendered, or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset or valuable article;*

15. In not appreciating the fact that in the case of the appellant, the discount paid to dealers ought not to be regarded as commission, since the dealers neither act on behalf of the appellant nor do they provide any service to the appellant in the course of sale of goods by the appellant;

16. In not appreciating the fact that the ***transaction of the appellant with its dealers is on a principal-to- principal basis*** *and not on principal-agent basis, which is evident from the following:*

(a) sample agreement between the appellant and the dealer, which clarifies that the relationship between the appellant and the dealer is that of principal to principal;

(b) once the appellant sells the spare parts to the dealers, the sale of the appellant is concluded;

(c) the dealer is not entitled to return the spare parts purchased from the appellant, in case they remain unsold, and hence the risk of obsolete/ unsold stock lies with the dealer;

(d) neither is the appellant privy to the sale of spare parts by a dealer to the customers, nor is the customer privy to the sale of spare parts by the appellant to a dealer;

(e) the sale by the appellant to the dealer as well as the sale by the dealer to the customer is subject to sales tax/ value added tax.

17. In observing that the appellant does some kind of performance evaluation of the dealers and decides to reward them with the discounts, thereby not appreciating the fact that the discount policy is decided and communicated to all dealers well in advance, and hence the said discount is more in the nature of a trade discount offered to those dealers who purchase quantities in bulk from the appellant during a particular period;

18. In observing that the since the ***discount is not a part of the invoice and is provided by way of credit note,*** *it should be treated as commission, thereby not appreciating the fact that the discount is given only upon purchase of certain quantities over a particular period, which cannot be ascertained at the time of sale, i.e. when a particular invoice is issued;*

19. In observing that since the target discount and consistency discount was not part of the invoice as in the case of cash discounts given by the appellant, it should be treated as commission without appreciating the fact that even cash discount does not form part of the invoice and accordingly, the target discount and consistency discount ought to be treated on par with the cash discount;

20. In observing that the discount was not reduced from the invoice value for GST purposes, ignoring the fact that under Section 15(3)(b) of the CGST Act, 2017, post-sale discounts agreed upon before or at the time of supply and passed through credit notes remain valid trade discounts. The fact that these discounts are provided after meeting sales targets does not change their nature to commission, nor does it create any additional GST liability, as they are not separate consideration for services but rather a reduction in the price of goods; and in any case whether or not discount is reduced for the purpose of payment of GST, is wholly irrelevant in deciding the issue whether discount is to be treated as commission

21. In observing that section 194H does not necessarily require the payee to be an agent, thereby not appreciating the fact that the definition of "commission or brokerage" under section 194H only covers payments made to a person acting on behalf of the payer;

22. In observing that the discount provided to dealers is not as per an obligation under any contract, thereby not appreciating the fact that the appellant has a discount policy in place which is communicated to the dealers well in advance, and that the appellant is bound to honour the said discount policy;

23. In not following the decision of the Hon'ble Supreme Court and the decision of the jurisdictional High Court relied upon by the appellant in identical facts of the case;

24. In not relying on the meaning of 'commission' and 'discount' re-produced by the Learned PCIT himself from law dictionaries and judicial precedents provided in para 15.3.6 of the revision order.

25. In incorrectly observing that the appellant has paid commission to its dealers under the garb of sale price discount without appreciating the entire arrangement under which such amounts are paid to the spare part dealers.

Ground No. 26 to 30: Disallowance of expenditure incurred on dies and moulds: Rs. 57,01,42,237:

26. On the facts and in the circumstances of the case and in law, the learned PCIT has erred in directing the Learned AO to make a disallowance of Rs. 57,01,42,237 in respect of cost of dies and moulds put to use during the year treating the said expenditure as capital expenditure.

In doing so, the learned PCIT erred in the following respects:

27. In merely relying on the assessment order for the earlier year wherein similar disallowance was made on the ground that dies and moulds are in the nature of capital expenditure;

28. In not appreciating the fact that since the dies and moulds represented a part of the appellant's plant and machinery, the dies and moulds purchased in the past had been capitalised and therefore the cost of new dies and moulds put to use during the year represented only replacements either on account of wear and tear of the dies or on account of change in the design of the press part for the production of which the aforesaid dies and moulds have been used and hence ought to be allowed as a deduction.

29. In not appreciating the fact that the Hon'ble Tribunal and the Hon'ble Commissioner of Income-tax (Appeals) have, in the appellant's own case for earlier years, consistently decided the aforesaid issue in favour of the appellant.

30. Without prejudice to the above grounds of appeal, the learned PCIT, while directing the learned AO to treat the expenditure on dies and moulds as capital expenditure, erred in not directing the learned AO to allow depreciation thereon.

Ground No. 31 to 35: Disallowance of expenditure incurred on jigs and fixtures: Rs. 37,59,92,362:

31. On the facts and in the circumstances of the case and in law, the learned PCIT has erred in directing the Learned AO to make a disallowance of Rs. 37,59,92,362 in respect of expenditure incurred on jigs and fixtures treating the said expenditure as capital expenditure.

In doing so, the learned PCIT erred in the following respects:

32. In merely relying on the assessment order for the earlier year wherein similar disallowance was made on the ground that jigs and fixtures are in the nature of capital expenditure;

33. In not appreciating the fact that the said expenditure on jigs and fixtures was in the nature of replacement and thereby qualified for deduction;

34. In not appreciating the fact that the Hon'ble Tribunal and the Hon'ble Commissioner of Income-tax (Appeals) have, in the appellant's own case for earlier years, consistently decided the aforesaid issue in favour of the appellant.

35. Without prejudice to the above grounds of appeal, the learned PCIT, while directing the learned AO to treat the expenditure on jigs and fixtures as capital expenditure, erred in not directing the learned AO to allow depreciation thereon.

The above grounds of objections are distinct and separate and without prejudice to each other.

2. Briefly stated, the assessee is an Indian company engaged in the business of development, manufacture and distribution of automobiles, primarily two-wheelers and three-wheelers, along with their parts and accessories. For the assessment year under consideration, the assessee filed its return of income on 29.11.2019 declaring a total income of ₹5312,50,59,250/-, under regular provisions of the Act, which was subsequently revised on 30.07.2023 to ₹5239,91,61,650/-. The book profit declared of Rs.

6859,55,54,577/- u/s 115JB of the Act remained same in original as well as revised return of income. The return was selected for scrutiny and statutory notices issued under the Income-tax Act, 1961 ("the Act") were duly complied with.

2.1 In view of the international transactions entered into by the assessee with its Associated Enterprises during the relevant previous year, the Assessing Officer made a reference to the Transfer Pricing Officer for determination of the Arm's Length Price. The learned Transfer Pricing Officer(TPO) passed an order under section 92CA(3) of the Act dated 19.01.2022 proposing an adjustment of ₹4,63,86,606/-. Thereafter, the Assessing Officer issued a draft assessment order incorporating, *inter-alia*, the transfer pricing adjustment and certain other corporate additions and disallowances.

2.2 Since the assessee did not opt for adjudication by the Dispute Resolution Panel and intended to pursue the appellate remedy before the Commissioner (Appeals)/ National Faceless Appeal Centre, the Assessing Officer passed the final assessment order on 27.05.2022 under section 143(3) read with section 144C(3) of the Act. Aggrieved thereby, the assessee preferred an appeal before the National Faceless Appeal Centre, Delhi which remained pending.

2.3 Meanwhile, the learned Principal Commissioner of Income-tax ("PCIT") called for and examined the assessment records. Upon

such examination, he formed a *prima-facie* view that the assessment order dated 27.05.2022 was erroneous insofar as it was prejudicial to the interests of the Revenue, on the ground that the Assessing Officer had failed to carry out certain enquiries which, according to the PCIT, ought to have been conducted in the facts and circumstances of the case. Invoking Explanation 2 to section 263 of the Act, the ld. PCIT issued a show-cause notice dated 23.01.2025 calling upon the assessee to explain as why the assessment order should not be revised in respect of the following four issues:

(i) failure to examine provisions created towards commission payable to directors and towards advertisement, freight and other expenses, which, according to the ld PCIT, were in the nature of unascertained liabilities and liable for disallowance;

(ii) failure to examine the allowability of deduction claimed towards education cess amounting to ₹67,94,69,345/-;

(iii) failure to examine applicability of tax deduction at source under section 194H in respect of expenditure of ₹151.41 crores incurred towards cash discounts and target incentives, which had been disallowed in earlier years; and.

(iv) failure to examine the nature of expenditure of ₹37,49,92,829/- incurred on dies and moulds and jigs and

fixtures, which was claimed as revenue expenditure, but being consistently treated as capital expenditure by the ld AO in earlier years

2.4 In response, the assessee filed detailed submissions contending that all the aforesaid issues had been duly examined by the Assessing Officer during the course of assessment proceedings and were allowed on merits, following binding judicial precedents of the Hon'ble High Courts and Coordinate Benches of the Income-tax Appellate Tribunal (ITAT), including decisions rendered in the assessee's own case. It was submitted that the assessment order was neither erroneous nor prejudicial to the interests of the Revenue and, therefore, did not warrant interference under section 263 of the Act.

2.5 The learned Authorised Representative(AR) placed reliance on the judgment of the Hon'ble Supreme Court in *Malabar Industrial Co. Ltd. v. CIT* (243 ITR 83), and submitted that unless the twin conditions, namely, the order being erroneous and prejudicial to the interests of the Revenue, are cumulatively satisfied, jurisdiction under section 263 cannot be assumed. Reliance was also placed on the decision of the Hon'ble Bombay High Court in *Gabriel India Ltd.* (203 ITR 108) to contend that 'inadequacy of enquiry' cannot be equated with 'lack of enquiry' so as to render an assessment order erroneous.

2.6 The Ld. Authorized Representative also referred to the decision of the Hon'ble Kerala High Court in the case of *Bismillah Trading Co. Vs. Intelligence Office* [2001] 248 ITR 292 (Ker) to explain meaning of the term 'prejudicial to Revenue'. The Ld. Authorized representative also referred to the other decisions on the issue in dispute.

2.7 With regard to the issue of 'discounts and incentives', the assessee furnished a detailed break-up of the amount of ₹154.40 crores comprising target discounts (Rs.: 64,98,79,896) ; consistency discounts (Rs.:70,16,14,802)and cash discounts (Rs.: 19,25,97,550) granted to spare parts dealers. It was explained that these discounts were granted in terms of commercial schemes linked to achievement of sales targets and were computed as a percentage of turnover. It was submitted that primarily the transaction of supply of spare parts to the authorized dealers was in the nature of buy and sale agreement, wherein the ownership in the property was duly transferred to the dealer and hence, the transactions with dealers were on a principal-to-principal basis and, not in the nature of principal-to-agent and therefore, the trade discounts allowed to the dealers on achieving certain amount of the sales performance was in the nature of the discounts only and therefore, was not liable for deduction of tax at source u/s 194H of the Act characterizing the payment as 'commission' .

2.8 In support, the assessee placed reliance on the dealership agreement and judicial precedents including the judgment of the Hon'ble Supreme Court in Bharti Cellular Ltd. v. Asst. CIT [2024] 160 taxmann.com 12 (SC) and the decision of the Coordinate bench in Mahindra & Mahindra Ltd. (ITA No.7999/Mum/2011) to contend that trade discounts cannot be equated with commission.

2.9 The Ld. Authorized Representative in the chart submitted pointed out similarity of the agreement entered into between Bharti Cellular ltd (supra) and its franchise and assessee and its dealers. The Authorized Representative submitted that in the identical line of the business, the Tribunal in Mahindra and Mahindra ltd (supra) held that relationship between the manufacturer and the distributers/ sales dealers was in the nature of the principle to principle. Regarding the characterizing of the expenses incurred on Dies and Moulds as revenue expenditure, the Ld. Authorized Representative of the assessee referred to the decision of the Hon'ble Madras High Court in the case of TVS Motors Ltd. [2014] 364 ITR 1 (Mad.) and decision of the Co-ordinate Bench in the case of the assessee itself wherein these expenses have been held to be revenue expenditure in nature.

3. The learned PCIT, however, was not persuaded by the submissions of the assessee. He concluded that the Assessing Officer had failed to conduct necessary enquiries on the aforesaid four issues as a prudent Assessing Officer for safeguard of the

interest of the Revenue and that such failure rendered the assessment order erroneous insofar as prejudicial to the interest of the Revenue. Accordingly, by the impugned order passed under section 263 of the Act, the ld PCIT set aside the assessment order dated 27.05.2022 and directed the Assessing Officer to frame a fresh assessment in accordance with the directions contained therein.

3.1 First, with regard to year-end provisions amounting to ₹174.12 crore, the Ld. PCIT noted that the assessee had created ad-hoc provisions towards commission payable to directors and advertisement, freight and other expenses, on which tax had not been deducted. The Assessing Officer had disallowed only 30% under section 40(a)(ia). The Ld. PCIT held that these were not actual expenditures but unascertained liabilities, not allowable under section 37(1). He also observed that in an earlier assessment year the assessee itself had disallowed similar provisions in full. Accordingly, he directed disallowance of the balance 70%, holding that the entire provision ought to have been disallowed under section 37(1).

3.2 Secondly, in respect of the claim of deduction of education cess amounting to ₹67.94 crore, the Ld. PCIT recorded that the assessee had filed Form 69 withdrawing the claim. The Assessing Officer was therefore directed to verify the withdrawal and take action in accordance with law.

3.3 Thirdly, regarding discounts of ₹154.40 crore given to dealers, the Ld. PCIT rejected the assessee's contention that these were trade discounts not attracting section 194H. He held that discounts linked to achievement of sales targets and granted through post-sale credit notes constituted commission in substance. Relying on judicial precedents, he concluded that the assessee had camouflaged commission as discounts and, since tax was not deducted under section 194H, directed disallowance of 30% under section 40(a)(ia).

3.4 Lastly, the Ld. PCIT held that expenditure on dies and moulds (₹57.01 crore) and jigs and fixtures (₹37.59 crore) was capital in nature. He observed that these items formed an integral part of plant and machinery, provided enduring benefit, and their replacement could not be treated as revenue expenditure. Accordingly, the Assessing Officer was directed to disallow the entire claim.

3.5 In view of above conclusion, the Ld. PCIT set aside the order of the Assessing Officer and directed to pass a fresh assessment order keeping in view the directions given above. Aggrieved, the assessee is in appeal before the ITAT by way of raising grounds as reproduced above.

4. Before us, the assessee has filed a factual paper book containing pages 1 to 329.

4.1 In view of arguments of both the parties, we take up the challenge of the assessee to the proceeding u/s 263 of the Act issue wise i.e. four issues.

Issue No. 1 : Disallowance of Year-end Provisions – Validity of Revision under Section 263

5. The first issue on which the learned Principal Commissioner of Income-tax ("PCIT") has invoked jurisdiction under section 263 of the Act relates to the allowability of year-end provisions created by the assessee towards commission payable to directors and towards advertisement, freight and other expenses. In the impugned order, the ld PCIT directed the Assessing Officer to disallow the entire amount of such provisions by treating the same as unascertained liabilities and to make a further disallowance of 70 percentile of such expenditures since 30 percentile of the expenditure had already been disallowed by the assessee under section 40(a)(ia) of the Act in the return of income. The finding of the Ld. PCIT on the issue in dispute is reproduced as under:

> *15.1* ***Disallowance of entire amount of Rs. 174,12,05,965 of year end provisions instead of 30 percent:*** *It is seen from Tax audit report point 21(b)(ii), that the assessee had made an year end provision of Rs. 174,12,05,965/- on 31.03.2023 for Commission Payable to Directors of Rs. 21150000 and Advertisement Freight and Other Provisions of Rs 1720055965/-. As per the TAR, the said payments were classified to the payments on which tax had not been paid. The assessee had claimed disallowance of 30% of expenditure u/s 40(a)(ia) for this provision.*
>
> *It is seen that these are not the actual payments i.e., not actually expended by the assessee in the previous year but the adhoc year*

> *end provisions created for future payments. The aforesaid expenditure being an **unascertained liability**, was not allowable to the assessee. Hence the same may qualify for disallowance u/s 37(1). Also, from the computation of income provided by the same assessee for AY 2021-22 to the ITD, it is seen that the assessee itself has suo-motu cancelled the claim of deduction u/s 40(a)(ia) in respect of the adhoc year-end provisions and offered the entire amount to tax by disallowing u/s 37(1). Hence, the entire amount of Rs. 174,12,05,965/- should have been disallowed u/s 37(1) instead of 30% of amount disallowed u/s 40(a) (ia) of the Act. Therefore, this office is revising the order u/s 143(3) r.w.s 144C(3) of the Act on 27.05.2022 passed by the AO. The AO is directed to disallow the amount of Rs. 121,88,44,175/-(remaining 70%).*

5.1 Before us, the learned counsel for the assessee assailed the revisionary order on two counts. Firstly, it was contended that no effective show-cause notice was issued to the assessee on the issue of year-end provisions and, therefore, the impugned order stood vitiated for violation of principles of natural justice. Secondly, it was submitted that, on merits, the provisions were ascertained liabilities and were allowable under the mercantile system of accounting.

5.2 On the issue of lack of opportunity, it was submitted that the ld PCIT referred to year-end provisions in paragraph 2 of the show-cause notice dated 23.01.2025, but in paragraph 6 of the said notice, he called upon the assessee to explain only in respect of the issues enumerated in paragraphs 3 to 5 thereof. According to the assessee, these paragraphs pertained to education cess, cash discounts and target incentives, and dies and moulds/jigs and fixtures, and not to year-end provisions. It was contended that, acting on this understanding, the assessee confined its written submissions dated 04.02.2025 to the issues specified in paragraph

6 of the notice and, even during the course of personal hearing, no query was raised by the ld PCIT on the issue of year-end provisions. It was, therefore, urged that the assessee was deprived of an effective opportunity of being heard on this issue.

5.3 In this connection, the Ld. counsel for the assessee further placed reliance on the decision of the Hon'ble Supreme Court in the case of CIT v. Amitabh Bachchan (2016) 384 ITR 200 (SC) to contend that the Commissioner can exercise revisional jurisdiction only after affording the assessee an opportunity to contest the specific grounds on which such jurisdiction is sought to be exercised. Reliance was also placed on the decision of the Mumbai Bench of the Tribunal in *Colorcraft Kashimira Ceramic Compound* (105 ITD 599) for the proposition that an order under section 263 cannot be sustained when it travels beyond the reasons stated in the show-cause notice.

5.4 The Ld. counsel for the assessee accordingly submitted that the Ld. PCIT had not issued any show cause notice to the assessee to present its submission on the issue related to disallowance of entire year end provisions made in the accounts and therefore, direction of the Ld. PCIT to the Assessing Officer for disallowing the entire provision by treating the same as ascertained liability ought to be set aside.

5.5 We have carefully considered the rival submissions and perused the material on record. In our considered opinion, the objection raised by the assessee on the ground of absence of show-cause notice is misconceived. The Ld. PCIT in paragraph 2 of the notice u/s 263 of the Act has clearly brought out the issue of year end provisions. A copy of notice dated 23.01.2025 is placed on paper book page 105. In paragraph 2 of the said notice, the Ld. PCIT raised this issue as under:

> *"2. On perusal of the Tax audit report point 21(b)(ii), it is seen that the assessee had made an year end provision of Rs. 174,12,05,965/- on 31.03.2023 for Commission Payable to Directors of Rs.2,11,50,000/- and Advertisement Freight and Other Provisions of Rs.172,00,55,965/-. As per the Tax Audit Report the said payments were classified to the payment on which tax had not been paid. The assessee had claimed disallowance of 30% of expenditure u/s. 40(a)(ia) for this provision.*
>
> *2.1 It is further seen that these are not the actual payments i.e. not actually expended by the assessee in the previous year but the ad-hoc year end provisions created for future payments. The aforesaid expenditure being an unascertained liability, are not allowable to the assessee. Hence, the same may qualify for disallowance u/s. 37(1). Also, from the computation of income provided by the assessee, in its own case for AY 2021-22 to the Income Tax Department, it is seen that the assessee itself has suo-moto cancelled the claim of deduetion u/s. 40(a)(ia) in respect of the adhoc year-end provisions and offered the entire amount to tax by disallowing u/s. 37(1). Hence, the entire amount of Rs.174,12,05,965/- should have been disallowed u/s. 37(1) instead of 30% of amount disallowed u/s. 40(a)(ia)."*

5.6 A plain reading of the show-cause notice dated 23.01.2025 demonstrates that the issue of year-end provisions was specifically and unequivocally raised in paragraph 2 thereof. The ld PCIT clearly recorded his *prima-facie* view that *although the assessee had*

disallowed 30 per cent of such provisions under section 40(a)(ia), the entire expenditure was liable for disallowance under section 37(1) as being unascertained in nature, and that the Assessing Officer had failed to examine the issue from this perspective. Merely because, in paragraph 6 of the notice, reference was made to paragraphs 3 to 5 while calling for a response, the substantive notice contained in paragraph 2 does not stand effaced. At best, the omission of paragraph 2 in paragraph 6 can be regarded as an inadvertent error, which does not dilute the clarity of the show-cause notice on this issue.

5.7 The record further reveals that the assessee, despite being put to notice, chose not to file any reply on the issue of year-end provisions, proceeding on an erroneous assumption that no response was required. The principles of natural justice require that an opportunity be afforded; they do not mandate that the authority must compel a response. Once the issue was clearly set out in the show-cause notice, it was incumbent upon the assessee to place its explanation on record.

5.8 The reliance placed on *Amitabh Bachchan* (supra) is misplaced. In that case, the Hon'ble Supreme Court found that the particular issue forming the basis of revision was not at all mentioned in the show-cause notice. In the present case, the issue was expressly articulated in paragraph 2 of the notice. Similarly, the decision in *Colorcraft Kashimira Ceramic Compound* (supra) is

distinguishable on facts, as the revisional order therein was founded on reasons entirely different from those mentioned in the notice, which is not the position here. Accordingly, we reject the contention of the assessee that the revisional order is vitiated for want of a show-cause notice on this issue.

6. The assessee next contended that, on merits, the year-end provisions were ascertained liabilities, created in accordance with Accounting Standards and the Income Computation and Disclosure Standards, and, therefore, were allowable.

6.1 The Ld. counsel submitted that the Ld. PCIT has given aforesaid direction only on the basis of the Tax Audit Report (TAR), wherein, against clause 21(b)(ii) requiring details of payment on which tax was not deducted, yearend provisions of Rs.2,11,50,000/- for commission payable to directors and Rs.1,72,00,965/- for advertisement, freight and other provisions was mentioned. The Ld. counsel submitted that no further details were available with the Ld. PCIT or called out from the assessee. It was submitted that in Tax Audit Report against clause 21(g) requiring details of any liability of contingent nature debited to the profit and loss account, the amount is mentioned as NIL only.

6.2 The Ld. counsel submitted that in the return of income filed for the year under consideration, a sum of Rs.52,23,61,790/- (being 30% of the amount mentioned in point 21(b)(ii) of the Tax Audit

Report in respect of year end provisions of Rs.174,12,05,965/-) was disallowed u/s 40(a)(ia) of the Act for non-deduction of tax at source.

6.3 It was submitted that the assessee follows the mercantile system of accounting and that the provisions were made in respect of expenses incurred up to 31st March for which invoices had not been received by the year-end. Detailed reliance was placed on Accounting Standard-29 and ICDS-X relating to provisions

6.4 Further, in the earlier years i.e. AY 2015-16 and AY 2016-17, similar disallowance under section 40(a)(ia) was made. Accordingly, the Assessing Officer was very well aware during the course of assessment proceedings that such disallowance was made in the earlier years. The Ld. counsel for the assessee placed relied on the decision of the Mumbai Bench of the Tribunal in the case of Bank of America National Association (ITA No. 3343/Mum/2019) wherein it is held as under:

> *21 In this regard, we wish to place reliance on the decision of the Mumbai Bench of the Tribunal in the case of Bank of America National Association (ITA No. 3343/MUM/2019) wherein it was held as under:*
>
> *'8.10 Regarding the claim of the Ld. CIT that no enquiry has been made by the Assessing Officer on the issue in dispute, we find that Assessing Officer has followed finding of his predecessors wherein no income has been added in the hands of assessee for interest payment by the domestic branches to the head office/overseas branches. The said assessment records of the earlier years were available with the Assessing Officer and further assessee also made submission making its claim that said interest received was not taxable in the hands of the PE in India in view of the judicial precedents. In background of such facts and circumstances, in our opinion, the Assessing Officer was not ought to have carry out further enquiry on the issue in*

dispute, therefore the finding of the Ld. CIT that no enquiry has been carried out by the Assessing Officer on the issue in dispute is without any basis and fallacious. The explanation below section 263 of the Act is also not applicable over the facts of the case. The said explanation, prescribe that the assessment order is deemed to be erroneous insofar as prejudicial to the interest of the revenue if the Assessing Officer has not carried out the inquiries which ought to have been carried out in the facts of the case. In the case, in background of the earlier years and submission of the assessee, there was no requirement of carrying out further inquiries on the issue-in-dispute.

22. In view of the above, it is submitted that the impugned order of the PCIT passed under section 263 of the Act be set-aside.

6.5 We have heard rival submissions of the parties and perused the relevant materials on record. Before us, the Ld. Departmental Representative (DR) submitted that whether on the merit said liability was ascertained or unascertained could be discharged only after making inquiry on the issue in dispute by the Assessing Officer.

6.6 While above submissions of the assessee may be relevant in the course of assessment proceedings, the limited question before us, in the context of section 263, is whether the Assessing Officer examined the issue at all. On this aspect, it is an admitted position that the Assessing Officer did not conduct any enquiry to determine whether the year-end provisions represented ascertained liabilities or were in the nature of contingent or unascertained liabilities. Before us, in the paper book also no evidence to support that any inquiry was conducted by the Assessing Officer during the assessment proceedings for examining the year end provisions from the angle of unascertained liability was carried out. No material has

been placed before us to demonstrate that the issue was examined during the assessment proceedings. The assessee's learned counsel, fairly and candidly, also conceded that no such enquiry was carried out.

6.7 It is now well settled that the Assessing Officer is not merely an adjudicator but also an investigator. Where the facts of the case warrant an enquiry, failure to conduct such enquiry renders the assessment order erroneous insofar as it is prejudicial to the interests of the Revenue. Explanation 2 to section 263 specifically deems an assessment order to be erroneous and prejudicial where the Assessing Officer has not made enquiries which ought to have been made in the facts and circumstances of the case.

6.8 In the present case, the ld PCIT has also noticed that, in assessment year 2021-22, the assessee itself has disallowed the entire amount of similar year-end provisions under section 37(1) of the Act instead of restricting the disallowance to 30 per cent under section 40(a)(ia) of the Act. The return of income for AY 2021-22 was due on 30/11/2021 whereas the impugned assessment has been completed on27/05/2022, and therefore, the facts of AY 2021-22 were available before the ld AO while making scrutiny of the present assessment year. This circumstance, by itself, warranted a deeper examination by the Assessing Officer in the year under consideration, which was admittedly not undertaken.

6.9 The reliance placed by the assessee on the decision of the Tribunal in *Bank of America National Association(supra)* is of no assistance, as in that case the Assessing Officer had consciously followed the settled position in earlier years and the assessment records reflected application of mind. In the present case, no such conscious examination or adoption of a view is discernible from the record.

6.10 In view of the above discussion, we hold that the Assessing Officer failed to conduct the enquiry which he ought to have conducted in respect of the allowability of year-end provisions. Consequently, the assessment order suffers from the vice of lack of enquiry and squarely falls within the mischief of Explanation 2 to section 263 of the Act. The learned PCIT was, therefore, justified in holding the assessment order to be erroneous insofar as it was prejudicial to the interests of the Revenue on this issue.

6.11 Accordingly, the challenge raised by the assessee to the impugned order under section 263 on the issue of year-end provisions is rejected.

Issue No. 2 : Deduction of Education Cess – Scope of Revisional Direction

7. The next issue concerns the claim of deduction of education cess amounting to ₹67,94,69,345/-, which was made by the

assessee in the revised return of income by placing reliance on the decision of the Hon'ble Jurisdictional High Court.

7.1 Subsequently, the Finance Act, 2022 amended section 40(a)(ii) of the Act retrospectively, clarifying that the expression "tax" includes surcharge and cess, thereby rendering education cess not allowable as a deduction. Further, by the same Finance Act, sub-section (18) was inserted in section 155 of the Act, providing a mechanism for re-computation of income where deduction of surcharge or cess had been claimed and allowed in earlier years, subject to the assessee filing an application in the prescribed form and within the prescribed time for withdrawal of such claim. The relevant extract is reproduced as under:

> *"(18) Where any deduction in respect of any surcharge or cess, which is not allowable as deduction under section 40, has been claimed and allowed in the case of an assessee in any previous year, such claim shall be deemed to be under-reported income of the assessee for such previous year for the purposes of sub-section (3) of section 270A, notwithstanding anything contained in sub-section (6) of section 270A, and the Assessing Officer shall recompute the total income of the assessee for such previous year and make necessary amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of section 154 being reckoned from the end of the previous year commencing on the 1st day of April, 2021*
>
> *Provided that in a case where the assessee makes an application to the Assessing Officer in the prescribed form and within the prescribed time, requesting for recomputation of the total income of the previous year without allowing the claim for deduction of surcharge or cess and pays the amount due thereon within the specified time, such claim shall not be deemed to be under- reported income for the purposes of sub-section (3) of section 270A."*

7.2 Pursuant to the amendment made in section 155(18), the Central Board of Direct Taxes, vide Notification No. 111 of 2022 dated 28.09.2022, inserted Rule 132 in the Income-tax Rules, 1962, prescribing Form No. 69 for withdrawal of the claim of deduction in respect of surcharge or cess. The said Rule came into effect from 01.10.2022.

7.3 In the present case, it is not in dispute that the assessment was completed prior to the introduction of Rule 132. It is also the assessee's case that the Assessing Officer, at the time of framing the assessment, allowed the claim following the then prevailing judicial position. Thereafter, in compliance with the amended statutory provisions, the assessee filed Form No. 69 on 13.03.2023, withdrawing its claim for deduction of education cess, which was to be dealt with by way of rectification under section 155(18) of the Act.

7.4 The assessee contended that once the statutory mechanism under section 155(18) stood triggered and the claim itself was withdrawn, no prejudice to the interests of the Revenue survived and, consequently, invocation of section 263 on this issue was unwarranted.

7.5 After considering the submission of the assessee, the Ld. PCIT in para 15.2 has accordingly directed the Assessing Officer to verify

the contention of the assessee. The relevant finding of the Ld. PCIT is reproduced as under:

> *15.2* ***Claim of deduction of 'education cess amounting Rs. Rs.67,94,69,345:*** *The assessee has submitted that the assessee company has filed form 69 to withdraw its claim for deduction of education cess. Accordingly, the AO is directed to verify and take necessary action as per the Income Tax Act, 1961.*

7.6 We note that, after considering the submissions of the assessee, the learned PCIT, in paragraph 15.2 of the impugned order, did not set aside the assessment on this issue nor did he record any finding that the assessment order was erroneous and prejudicial to the interests of the Revenue. The ld PCIT merely directed the Assessing Officer to verify the assessee's contention regarding filing of Form No. 69 and to take action in accordance with law.

7.7 Thus, the PCIT has not exercised revisional jurisdiction to revise or set aside the assessment on the issue of education cess. The direction issued is in the nature of a consequential verification, leaving the assessment order intact on this aspect.

7.8 In these circumstances, no live grievance survives for adjudication before us on this issue. Accordingly, the challenge raised by the assessee on the issue of deduction of education cess has become infructuous and is dismissed as such.

Issue No. 3 Disallowance under section 40(a)(ia) in respect of target discount, consistency discount and cash discount –

relationship between OEM and dealers – nature of payment as "commission" u/s 194H

8. On the third issue of deduction of cash discounts and targets discount to dealers liable for deduction of tax at source being commission, the the learned PCIT held that the Assessing Officer failed to examine whether the so-called target / consistency / cash discounts allowed by the assessee to its spare parts dealers attract deduction of tax at source under section 194H and, consequently, disallowance under section 40(a)(ia) of the Act. The relevant observation of Ld. PCIT is reproduced as under:

> *15.3* ***Deduction of cash discounts and targets:*** *The assessee has submitted that the Assessee incurred expenditure of Rs. 154,40,92,249 in respect of discount provided to the provided to the dealers which was debited to the Profit and Loss account . The aforesaid discounts are provided to spare part dealers as per the scheme of the Assessee. The relationship with its dealers is a straightforward sale transaction and not one based on commission, as the dealers are independent entities that bear the risks and rewards of their business. The discounts offered are incentives for meeting sales targets, not commissions for. Hence the transaction between the Assessee and the dealers is purely in the nature of a sale transaction and hence the provisions of section 194H are not applicable.*
>
> *15.3.1 The submission of the assessee is considered but not found to be acceptable. The Assessee stated that Section 194H does not apply because the discounts are trade discounts and not commission. However, it is clear that such payments made based on sales performance fall squarely within the ambit of commission under Section 194H.*
>
> *15.3.2 The assessee has relied upon decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Intervet India (P.) Ltd [2014] 49 taxmann.com. So it can be seen that the Honble' court held that, "The application of the provision is required to be considered to the relevant facts of every case". In this case the*

assessee is giving commission on achievement of sales target on percentage basis by credit notes not by way of goods.

15.3.3 Out of various discount schemes run by the Assessee company, it is stated that the Discount schemes are directly passed through credit notes. The assessee is offering above discounts on completion of periodic targets and is computed as a percentage of sales turnover. Hence, it is established that the assessee has paid commission to its dealers under the garb of sale price discount in the form of credit notes.

15.3.4 The assessee has adopted the modus-operandi in dolling out commission under the nomenclature of 'various discounts schemes', which is other than the discounts mentioned in the invoice. The discount in question has been given by issuing credit notes to the beneficiaries, who are the assessee's dealers; therefore, the ailed discount given to its dealers in the form of credit notes is nothing but commission on sale. There is no explanation by the assessee as to why the credit note was issued for the alleged discounts and why it has not shown in the invoice.

15.3.5 The assessee does some kind of performance evaluation of the distributors and accordingly decides to reward them with credit notes described as sales discount. The assessee has given Various Discount schemes namely Target discount-spare parts, Consistency discount -spare parts and Cash Discount to dealers-Spare parts/- these discounts are directly passed through credit notes, by way of credit note to its dealers. Since, this amount was not part of the invoice as in the case of cash discounts given by the assessee; therefore, it should be treated as commission and consequently it should be disallowed by applying the provisions of sec. 40(a)(ia) on the ground that the assessee has violated the provisions of sec. 194H has no tax was deducted at source.

15.3.6 The distinction between the 'commission' and 'discount' as explained in law dictionaries and in judicial pronouncement. The definition of commission as given in the Black's law dictionary that; "the recompense, compensation or reward of an agent, salesman, executor, trustee, receiver, factor; broker or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit to the principal. This was further elaborated in the decision of the Weiner vs Swales reported in 217 Md 123; as a fee paid to an agent or employee for transacting a piece of business or performing a service." The discount; in general sense, all allowance or deduction made from a gross sum on any account whatever; in a more limited and technical sense, the taking of interest in advance. It was further elaborated as a deduction from an original price or

debt, allowed for paying promptly or in cash. The distinction between the commission and discount as explained by the Hon'ble Bombay High Court in the case of Harihar Cotton Pressing Factory vs CIT reported in 39 ITR 594 wherein it has been explained the expression; "commission" has no technical meaning but both in legal and commercial acceptation of the term it has definite signification and is understood as an allowance for service or labour in discharging certain duties such four instance of an agent, factor, broker or any other person who manages the affairs or undertakes to do some work or renders some service to another. Rebate, on the other hand, is a remission or a payment back and of the nature of a deduction from the gross amount

15.3.7 In the decision of the ***Hon'ble Apex Court in the case of Cromandel Fertilisers Ltd vs Union of India reported in 17 ELT 607*** *wherein the Hon'ble Apex Court has applied the aforesaid principles and observed that; 'the trader discounts given to the dealers by the manufacturer were held to be liable to be deducted from the price charged to the dealers for the purpose of arriving at the excisable value of the goods; but the commissions given to the agents were held to be not deductible from the price for the purpose of arriving at the excisable value of the goods.*

It is clear from the various decisions that a discount is given from the gross price and it occur at the instance of sale and purchase between the manufacturer and the distributor/dealer. Whereas the commission is in the nature of refund or compensation for performing some task or business by one person on behalf of the other and in case of sale and purchase of goods, the commission is accrued at the instance of further sales by the dealer or distributor.

Thus, the discount given to the trader or distributor by the manufacturer would be liable to be deducted from the price charged to the dealer or distributor for the value of the goods under the sales tax and excise Act. In the case in hand, the undisputed fact is that the amount of so called discount has not been reduced from the value of price charged by the assessee from the distributor for the purpose of GST.

15.3.8 Reliance is also placed upon the decision of the Hon'ble Delhi High Court in the case of ***Commissioner of Income-tax v. Idea Cellular Ltd. reported in 325 ITR 148*** *wherein the Hon'ble High Court has also discussed the definition of commission as well as discount and also the difference between two terms/expression. There is no dispute that there is no necessity for a formal contract of agency it may be implied which could arise from the act and conduct of the parties or situation in which the parties are put as*

observed by the Hon'ble Supreme Court in the case of Lakshminarayan Ram Gopal and Son Ltd. v. Government of Hyderabad reported in 25 ITR 449. In the case in hand, it is manifest from the records as well as from the facts and circumstances of the case that the benefit/incentive given by the assessee through credit note is certainly not in the nature of discount because the discount is always given at the time of transaction of sale and purchase between the manufacturer and the distributor/dealer and the said amount is required to be reduced from the gross price and therefore, the sale price is always ex-discount. On the other hand, the commission is given only after the completion of the task or services or the sale, if it is on sale of products by the distributor or dealer to the retailer or consumers. When the distributor records the purchase price without reducing the amount of so called discount, then the said benefit allowed by the assessee to the distributor, would not partake the character of discount.

15.3.9 Section 194H talks about the payment to a recipient which is the income by way of commission or brokerage and does not talk about the relationship between the payer and the payee necessarily be of a principal and agent. The explanation to sec. 194H elaborates the terms commission or brokerage by including any payment received or receivable directly or indirectly a person acting on behalf of another person. Thus, it is clear that the provisions of sec. 194H do not require any formal contract of agency. The relationship between the parties depends on the act performed by the parties and facts and situation in which the parties are working.

15.3.10 In the case in hand, though the assessee has claimed that the discount was given to the dealers under the 'various discount schemes; however, when this amount is not as per the obligation under any contract, then the assessee was required to produce the relevant records and material in support of its claim that such scheme of giving the benefit/incentive to the distributor was duly approved by the Board of Directors of the assessee company. Reliance is also placed upon following judicial pronouncement in support of our above- mentioned arguments: SKOL Breweries Ltd Vs. ACIT ITA No. 6175/Mum/2011 (ITAT Mumbai "K" Bench) Decision of Apex court in the case of Lakshminarayan Ram Gopal and Son Ltd. vs. Government of Hyderabad reported in 25 ITR 449. Decision of the Hon'ble Delhi High Court in the case of Commissioner of Income-tax v. Idea Cellular Ltd. reported in 325 ITR 148.

15.3.11 Based on the above facts and arguments, it is clearly established that amount of 154,40,92,249 debited and/or charged

to its profit and loss account on account of 'various sale discount schemes' is nothing but in the nature of 'commission' only. Hence, Therefore, this office is revising the order u/s 143(3) r.w.s 144C(3) of the Act on 27.05.2022 passed by the AO. The AO is directed to disallow the amount of Rs. 46,32,27,674/-(30% of Rs. 154,40,92,249).

8.1. From the above observations of the ld PCIT, it is noticed that during the year under consideration, the assessee incurred expenditure of Rs. 154,40,92,249/- in respect of target discount, consistency discount and cash discount provided to dealers which was debited to the Profit and Loss account. The aforesaid discounts were provided to the dealers as per the scheme of the assessee. Those target discounts and consistency discounts were offered on completion of periodic targets and are computed as a percentage of the sales turnover.

8.2 From the above observations of the learned PCIT, it is further evident that the core dispute revolves around the true nature of the discounts allowed by the assessee to its dealers. Accordingly, to the ld PCIT said discounts are actually commission to dealers and are liable for deduction of tax at source u/s 194H of the Act, but the assessee has not deducted tax at source on such payments and therefore those payments are liable for disallowance u/s 40(a0(ia) of the Act. The learned PCIT proceeded on the footing that the Assessing Officer had not made any enquiry whatsoever on this issue. It is also noted that no material has been brought on record to demonstrate that any specific enquiry was, in fact, conducted by the Assessing Officer during the assessment proceedings.

8.3 Before us, it is submitted that the transaction of the assessee with the dealers represents a sale on a principal-to-principal basis. The dealers purchase spare parts from the assessee independently and not as agents of assessee. It is submitted that in case any spare parts remain unsold by the dealer, they are not returnable to the assessee and the loss, if any has to be borne by the dealer himself. It is further submitted that neither is the assessee privy to the sale of spare parts by a dealer to his customers, nor is the customer privy to the sale of spare parts by the assessee to the dealer.

8.4 The ld counsel invited our attention to the sample copy of the agreement with one such dealers (PB: 161-214) and submitted that extracts of the same fortify the stand of the Appellant. He also invited reference to clause 2.1, 2.2, 2.5, 2.6, 4.12, 14.2 of the agreement.

8.5 The ld Counsel submitted that in view of the above, it is clear that the relationship between the assessee and the dealer is that of *principal to principal* and not that of an *agent* and the transaction between the assessee and the dealers is purely in the nature of a sale transaction and hence the provisions of section 194H are not applicable.

8.6 Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Bharti Cellular Ltd. vs. Assistant Commissioner of Income-tax [2024] 160 taxmann.com 12 (SC)**

wherein it is held that where assessees, telecom service providers entered into agreements with distributors/franchisees for sale of their prepaid products, however, contractual obligations of distributors/franchisees did not reflect a fiduciary character of relationship, or business being done on principal's account, they would not be under a legal obligation to deduct tax at source on income/profit component in payments received by distributors/franchisees from third parties/customers, or while selling/transferring prepaid coupons or starter-kits to distributors.

8.7 The ld counsel submitted that issue of cash discount and target incentive is covered in favour of the assessee by the decision of Tribunal in the case of assessee for AY 2021-22.

8.8 Reliance was also placed on the following decisions, wherein it is held that the provisions of section 194H would not be applicable on payments made to distributors / dealers.

- **CIT vs. Ahmedabad Stamp Vendors Association [2012] 348 ITR 378 (SC)**
- **CIT vs. Intervet India (P.) Ltd [2014] 49 taxmann.com 14 (Bombay)**
- **Commissioner of Income-tax vs. Jai Drinks (P) Ltd [2011] 336 ITR 383 (Delhi)**
- **Mahindra & Mahindra Limited (ITA No. 7999/Mum/2011)**

- **Mahindra & Mahindra Limited (ITA No. 586/Mum/2013) The Department had filed an appeal before the Hon'ble Bombay High Court (ITA No. 1148 of 2014) wherein the Hon'ble High Court dismissed the appeal of the Department.**

8.9 The Ld. counsel for the assessee submitted that the Ld. PCIT before invoking jurisdiction u/s 263 of the Act ought to have evaluated whether the issue in dispute was covered by the decision of the appellate authorities in the case of the assessee or otherwise.

8.10 We have heard rival submission of parties on the issue in dispute and perused the relevant material on record including sample copy of agreements with dealers available on paper book pages 161-214. Before us, the Ld. counsel for the assessee fairly admitted that no inquiry was carried out by the Assessing Officer for verification of the facts of the case particularly the agreements vis-a-vis actual conduct of the assessee. Therefore, in our opinion, the assessment order is liable to be held as deemed to be erroneous in so far as prejudicial to the interest of the revenue invoking Explanation 2(a/b) to section 263 of the Act.

8.11 The assessee has nevertheless urged that, on merits, the relationship with its spare parts dealers is on a principal-to-principal basis, that the impugned payments are mere trade discounts forming part of sale transactions, and that the issue

stands covered in its favour by earlier Tribunal orders and by the decision of the Hon'ble Supreme Court in *Bharti Cellular Ltd.(supra)* These submissions, however, cannot be accepted at this stage in the absence of foundational factual verification by the Assessing Officer.

8.12 Per contra, the learned Departmental Representative submitted that the assessment order is vitiated both in law and on facts. It was contended that the Assessing Officer failed to undertake any meaningful or effective enquiry into the true nature of the relationship between the assessee and its dealers, as well as the character of the impugned payments, notwithstanding the substantial magnitude of the amounts involved. Such omission, according to the learned DR, renders the assessment order erroneous and prejudicial to the interests of the Revenue. It was further argued that, having regard to the typical features of dealership arrangements in the automobile Original Equipment Manufacturer (OEM) sector, and the extensive contractual and practical controls exercised over dealers, the relationship bears the clear indicia of a principal–agent arrangement. Consequently, the so-called "discounts", in substance, represent commission or incentive paid for services rendered by the dealers in the course of promoting and selling the assessee's products, and therefore squarely fall within the ambit of section 194H of the Act.

8.13 Under section 194H, "commission or brokerage" has been defined widely to include any payment, directly or indirectly, to a person acting on behalf of another for:

- services rendered (other than professional services), or
- any services in the course of buying or selling goods, or
- in relation to any transaction relating to any asset, article or thing.

8.14 But the test is not how the parties describe the payment (discount, incentive, bonus, commission, etc.), but whether, in substance, the recipient is acting "on behalf of" the payer in relation to the buying / selling transaction or in rendering ancillary services.

8.15 The character of the relationship is also governed by sections 182 to 188 of the Indian Contract Act, 1872, where an agent is a person who is employed to do any act for another or to represent another in dealings with third persons, *interalia* :

- obligation to comply with instructions of the principal;
- lack of unfettered freedom regarding price, terms, territory and branding;
- obligation to protect and promote the principal's business;
- authority, express or implied, to represent the principal to customers and third parties; and

- Fiduciary obligations such as reporting, accounting, and adherence to standards prescribed by the principal.

8.16 It is well settled in TDS jurisprudence that mere use of the expression "principal to principal" in an agreement is not conclusive. The real relationship is required to be inferred from:

- the terms of the written contract; and
- the actual manner in which the parties conduct themselves in the market.

8.17 In the automobile sector, a dealer is ordinarily appointed as an "authorised dealer" of the OEM and is permitted to use its trademarks, logos and brand name. The dealership agreement usually provides *inter-alia* for:

(a) Territorial allocation and exclusivity:-

(i)The dealer is confined to a specified territory / area allotted by the OEM.

(ii)Appointment of competing dealers in that area is regulated by the OEM.

(b) Price and margin control:-

(i)Vehicles / spare parts are to be sold at prices, discounts, schemes and incentives as may be notified by the OEM from time to time.

(ii)The effective margin of the dealer is largely determined by the OEM through a mix of base discount and performance-linked schemes.

(c) Mandatory pre-sale and post-sale services:-

(i)The dealer is obliged to provide test drives, pre-delivery inspection, registration support, and other pre-sale services in the exact manner prescribed by the OEM.

(ii)The dealer is required to provide warranty and free-service obligations to customers on behalf of the OEM, using genuine parts and trained manpower.

(d) Branding and infrastructure obligations:-

(i)The showroom, signage, workshop layout and staff uniforms are to conform strictly to OEM brand guidelines.

(ii)The dealer is often required to invest in specified equipment, training, IT interfaces and reporting systems mandated by the OEM.

(e) Sales promotion and reporting:-

(i)Dealers are required to implement promotional campaigns, display vehicles, conduct “melas”, test-drive events and other activities as per OEM instructions.

(ii)Detailed sales / inventory / customer data are periodically reported in formats prescribed by the OEM, enabling the OEM to monitor performance and market share.

(f) Monitoring and termination:-

(i)The OEM retains wide powers of inspection and audit of dealer operations.

(ii)Failure to meet sales targets, maintain standards, or comply with instructions typically entitles the OEM to terminate the dealership.

8.18 These features demonstrate that, notwithstanding a formal clause describing the arrangement as “principal to principal”, the dealer functions in substance as an extended sales and service arm of the OEM, bearing fiduciary obligations and acting on behalf of the OEM in dealing with customers and promoting its products.

8.19 The assessee stated that the discounts in question are given “as per the scheme of the assessee” and are computed as a percentage of sales turnover, often on completion of periodic targets. On a correct appreciation of such schemes in the context of the dealer relationship described above, the following features become evident:

(a) Payments are contingent on performance of obligations:-

(i)The so-called target / consistency discounts accrue only if the dealer achieves specified sales volumes, model-mix, market-share, or other performance benchmarks which the OEM sets for its own business objectives.

(ii)These incentives are thus not inherent in the initial sale of spare parts, but are additional consideration for achieving the OEM's performance targets.

(b) Payments compensate for sales-promotion and market-development services:-

(i)Dealers incur substantial expenditure in conducting promotional activities, maintaining display vehicles, organising events, and providing after-sales service strictly as per OEM norms.

(ii)Target and consistency incentives are designed to reward and induce such sustained efforts at promoting the OEM's brand and capturing market share.

(c) Quantum is linked to dealer's services to OEM, not merely to a one-off sale price:-

(i)The effective rate of incentive varies with the extent to which the dealer aligns with OEM's strategic objectives (for example: selling specified models, pushing slow-moving inventory, maintaining a certain stock level).

(ii)This shows that the payment is in substance a success fee / commission for fulfilling the OEM's directions, and not a simple reduction in sale price.

(d) Credit-note / post-facto nature:-

(i)In practice, such incentives are ordinarily given by way of credit notes after the period is over and targets are evaluated.

(ii)The original supply invoices for spare parts are raised at standard list prices. A post-sale credit linked to performance is conceptually closer to "commission" than to an upfront trade discount embedded in the invoice itself.

8.20 In light of the above, inference can be drawn that the incentives to authorised spare parts dealers are essentially payments for services rendered by the dealers to the OEM in the course of buying and selling goods, squarely falling within the inclusive definition of "commission or brokerage" in the Explanation to section 194H.

8.21 The assessee has contended that the unsold stock is not returnable to it and that it is not privy to the dealer's sale to the ultimate customer. In our opinion, these factors, by themselves, are not conclusive. Even in well-recognised agency arrangements, agents may, for reasons of commercial convenience, purchase and hold goods in their own name; the mere incidence of inventory risk does not, ipso facto, transform an agent into an independent trader. What is of real significance is whether, in economic and contractual terms, the dealer is obliged to operate in close alignment with the instructions of the OEM in matters relating to pricing discipline, incentive schemes, customer interface, branding and market representation, and whether the impugned payments are

intrinsically linked to the performance of such obligations. The consistent use of expressions such as "authorised dealer", the imposition of extensive branding, sales and service obligations, and the continuous monitoring and supervisory control exercised by the OEM, unmistakably indicate that the dealer functions as an extension of the OEM's sales and service apparatus. Accordingly, the substance of the relationship, and not the formal description of it as one of "principal to principal" in the agreement, points towards an agency relationship in commercial reality.

8.22 It is relevant to reproduce clause 4.13 of the dealer's agreement available on page 165 of the paper book, which reads as under:

> *"4.13 BAJAJ shall be entitled to call upon the DEALER to submit an Irrevocable Unconditional Bank Guarantee (from Nationalized Bank or other Bank acceptable to BAJAJ or Security Deposit or both for securing the due performance of the DEALER's obligations under this Agreement.*
>
> *4.13.1. The DEALER shall, within ten (10) business days from a demand being made by BAJAJ in that regard, deposit such amount as may be determined by BAJAJ, from time to time, as Security Deposit for the Term of this Agreement to secure the due performance by the DEALER of its obligations contained in this Agreement. The Security Deposit shall not carry any interest. Upon the termination or expiry of this Agreement, BAJAJ shall refund the Security Deposit amount after deduction of all outstanding dues of the DEALER under this agreement.*
>
> *4.13.2. In lieu of Security Deposit or in addition thereto, BAJAJ may, at its discretion, accept an irrevocable unconditional bank guarantee of such amount as may be determined by BAJAJ, in the format agreeable to the BAJAJ to secure the performance of the DEALER's obligation hereunder. The DEALER shall, in such an event, procure and deliver to BAJAJ such Bank Guarantee within a*

period of ten (10) business days from a demand being made by BAJAJ in that regard

4.13.3. It is clarified that BAJAJ shall have the right determine the amount of the Security Deposit and or the Bank Guarantee and to revise it from time to time."

8.23 Thus, the dealer is not only has to purchase but to perform as per expectation of the assessee.

8.24 The dealer is not mere a buyer or purchaser of goods but is required to follow all the conditions of brand and advertisement fixed by the assessee, which is evident from various clauses from 5.1 to 5.11 of the dealer's agreement.

8.25 Further, the clause 7.4 of the agreement specifies that the facilities and infrastructure of the dealer shall remain exclusive to the Bajaj and can't be used in any manner to display, service or sell goods competitive with the products, without written consent of Bajaj. This clause reflects the control of the assessee over the dealer.

8.26 As per clause 6.12 of dealer agreement, the dealer is required to give written confirmation that the products sold by the dealer have not been sold /marketed outside the territory, which is contrary to the claim of the assessee that he is not privy to the sales of the dealer. Not only this, the clause 9.2 requires that the dealer has to maintain its showroom and workshop as per the standard of the assessee. The relevant clause is reproduced as under:

"9.2 The DEALER shall maintain the level of Products' Quality and take care of distribution of the Products in the Territory specified in this Agreement and particularly, as found necessary, and shall:

9.2.1. maintain the said Showroom, Service Stations and Godown / Warehouse in good order and condition during the Term;

9.2.2. ensure that the said Showroom, Service Stations and Godown / Warehouse facilities are run and managed by expert personnel and are suitably stocked with the Products;

9.2.3 shall not change the location or reduce the area of the said Showroom, Service Station or Godown / Warehouse facilities without the prior written consent of BAJAJ;

9.2.4. not, during the Term, use the said Showroom, Service Station or Godown / Warehouse facilities in any manner to service, display or sell any goods competitive with the Products without the prior written consent of BAJAJ and

9.2.5. acquire, set up and maintain additional Service Stations, if required by BAJAJ, equipped as above along the main traffic roads so that customers are always assisted in the best possible way."

8.27 The clause 9.3 also requires the dealer to maintain trained staff as per requirement of the assessee. For ready reference said clause is reproduced as under:

"9.3 If required by BAJAJ, the DEALER shall send at the DEALER'S own cost, managerial personnel, sales personnel, service personnel, engineers or mechanics for training at BAJAJ's factories or such other place as may be notified by BAJAJ. The number of such trainees, the duration of such training shall be mutually decided in advance between BAJAJ and the DEALER. The cost of travel, lodging and all expenses of such trainees shall be borne entirely by the DEALER."

8.28 The dealer is required to provide all details of service carried out to the assessee at all times. The relevant clause is reproduced asunder:

> *"10.5 The DEALER shall ensure that the pre-delivery inspection and after sales service for Products are carried out fully and efficiently in accordance with the requirements and policies of*
>
> *BAJAJ established from time to time. In particular, the DEALER shall at all times make complete and accurate reports in the form and at the times required by BAJAJ in respect of all work carried out by it in pursuance of BAJAJ service requirement and policies. The DEALER shall also maintain a service history of each vehicle serviced by it in a form required by BAJAJ."*

8.29 Therefore, the assessee's attempt to treat the payments mechanically as "trade discounts" is an over-simplification which ignores the commercial and contractual realities of the dealership arrangement.

8.30 The assessee relies on *Bharti Cellular Ltd. v. ACIT* (supra) and decisions such as *Ahmedabad Stamp Vendors Association* (supra) etc., where discounts to distributors were held not to be commission. Those decisions turned on their own specific factual matrices, where:

- distributors purchased products at a discounted price and were largely free to resell at any price to any customer;
- there were no significant territorial, branding or service obligations imposed on them in favour of the principal;
- incentives were essentially embedded trade discounts without post-facto performance conditions of the type seen in automobile dealership contracts.

8.31 In contrast, automobile dealers, as indicated earlier, are deeply integrated into the OEM's sales and service network, are

required to represent the OEM to customers, and are bound by extensive contractual controls. Target and consistency incentives are designed to incentivise and compensate these services, and not merely to pass on a lower purchase price.

8.32 Thus, the ratio of *Bharti Cellular* (supra) cannot be mechanically transplanted onto the facts of an automobile OEM–dealer network without first verifying whether the foundational facts are indeed comparable. Whether those precedents apply to the present case is itself a matter requiring careful factual examination, which has admittedly not been carried out by the Assessing Officer.

8.33 The Assessing officer is not only adjudicating officer but he is investigative officer also. In the present case, at the least, the Assessing Officer ought to have:

(i) Called for and examined complete dealership agreements with spare parts dealers, including all annexures, circulars and scheme documents relating to target / consistency incentives, and analysed:

- territorial restrictions;
- obligations regarding branding, showroom standards and service infrastructure;
- provisions on pricing, discounts, mandatory schemes and incentives;
- clauses on termination, inspection, reporting and audit; and

- non-compete / exclusive dealing clauses.

(ii) Verified the actual operation of the schemes, including:

- whether incentives were granted through post-period credit notes;
- whether they were contingent on achieving sales or market-share targets;
- whether they depended on promoting particular models or clearing OEM-driven inventory; and
- the basis on which the quantum was determined for each dealer.

(iii) Examined the nature of services rendered by dealers in relation to:

- sales promotion events;
- pre-delivery inspection and documentation;
- warranty and after-sales service obligations discharged on behalf of the OEM; and
- data reporting and customer-relationship management undertaken as per OEM instructions.

(iv) Considered dealers' accounting treatment and TDS practices:

- whether dealers treated these receipts as "commission / incentive" in their books;

- whether they themselves deducted TDS when passing on similar incentives to sub-dealers / retailers; and
- how comparable OEMs in the same industry have been deducting TDS on similar schemes.

(v) Applied the correct legal tests under section 194H, in light of:

- the inclusive definition of "commission or brokerage";
- the jurisprudence on substance over nomenclature; and
- the difference between an upfront trade discount embedded in the invoice and a post-facto, performance-linked payment.

8.34 No such examination is reflected either in the assessment order or in the assessment records. The mere fact that certain Tribunal decisions in other years are claimed to be favourable to the assessee does not absolve the Assessing Officer of his duty to conduct independent, year-specific enquiry, especially when:

- the quantum involved is substantial; and
- The assessing officers in earlier years have disallowed the said incentives.

8.35 In our considered view, the Assessing Officer was duty-bound to conduct a detailed, year-specific enquiry into the dealership agreements, the incentive schemes, their actual mode of operation, and the nature of services rendered by the dealers, before arriving at a conclusion on the applicability of section 194H and the

consequential disallowance under section 40(a)(ia). The complete absence of such enquiry vitiates the assessment.

8.36 Having regard to the magnitude of the amounts involved and the prima facie nature of the payments, the failure of the Assessing Officer to make enquiries which were clearly warranted has resulted in an assessment order that is not only erroneous but also prejudicial to the interests of the Revenue.

9. The next ground Nos. 26 to 30 relate to disallowance of expenditure incurred on Dies and Moulds amounting to Rs.57,01,42,237/-. The ground Nos. 31 to 35 relates to disallowance of expenditure incurred on Jigs and Fixtures amounting to Rs.37,59,92,362/-.

9.1 The relevant finding of ld PCIT is reproduced as under:

> *15.4 Deduction of expenditure claimed in respect of Dies and Mouls' amounting Rs. 57,01,42,237 and Jigs and Fixture amount to Rs. 37,59,92,362: The assessee had an amount of 57,01,42,237 for purchase of 'Dies and Moulds' and Rs. 37,59,92,362/- for purchase of Jigs and Fixture and claimed as revenue expenditure. In this regard the assessee has submitted details submission which are reproduced as above. The submission of the assessee is considered but not found to be acceptable.*
>
> *15.4.1 The expenditure incurred on dies and moulds is not a routine replacement but a capital expenditure. Dies and moulds are a key component of the plant and machinery used in the production of the assessee's goods. Even if these items are replaced periodically, their purchase or replacement constitutes an enduring benefit in the form of enhanced production capacity, which is characteristic of capital expenditure.*

15.4.2 The mere fact that dies and moulds have a relatively short life span (1-2 months) does not necessarily make the expenditure revenue in nature. In many cases, items with a short life span, such as machinery or tools, still form part of the capital investment, and their replacement enhances the productive capacity of the business.

15.4.3 Similarly, jigs and fixtures are part of the production equipment, and their purchase or replacement adds to the long-term efficiency and productivity of the manufacturing plant. While they are used in the production process, their expenditure should be capitalized because these items represent a permanent addition to the plant and machinery.

15.4.4 This issue has been considered in earlier years and a finding was given that the purchase of dies and moulds by the assessee represents replacement of capital asset and therefore is capital in nature. Further, in the same way purchase of dies and moulds by the assessee represents Jigs and fixture was also treated in capital in nature by the department. Further, the assessee has stated that in the some of the years CIT(A) has allowed the claim of the assessee. Further, in some of the years, ITAT has also upheld the claim of the assessee. In this regard it is pertinent to mention that the department has filed further appeal against the said orders. Both the issues of the assessee are recurring in nature and pending for final adjudication. Therefore, this office is revising the order 143(3) r.w.s 144C(3) of the Act on 27.05.2022 passed by the AO. The AO is directed to disallowed the expenditure claimed in respect of Dies and Moulds' amounting Rs.57,01,42,237 and Jigs and Fixture amount to Rs.37,59,92,362/-."

9.2 Before us, the Ld. counsel for the assessee submitted that 'Dies and Moulds' are used with die casting machines/moulding machine/sheet metal presses to produce the parts used in manufacture of the products viz. two wheelers and three wheelers. The said die and moulds used by the assessee are capable of producing about 50,000 to 1,00,000 units of a part of a motorcycle. 'Dies and moulds' are used with die casting machine/ moulding machine/ sheet metal presses to produce the parts used in manufacture of the products, viz. two wheelers and three wheelers.

The said 'dies and moulds' used by the assessee are capable of producing about 50,000 to 1,00,000 units of a part of a motorcycle. The assessee produces over 40 lakhs two-wheelers and three-wheelers annually. Accordingly, the life of the dies and moulds would approximately be one to two months in majority of the cases. In view of the above, the assessee is regularly required to replace the dies and moulds initially capitalised to the plant and machinery. Therefore, the expenditure incurred pertains to such cost of the new dies and moulds which represents only replacements either on account of wear and tear of the die or change in the design of the press part. Hence, the cost of dies and moulds cannot be held to be a capital expenditure and the expenditure aggregating to Rs. 57,01,42,237 incurred on dies and moulds ought to be allowed as a deduction.

9.3 It was further submitted that 'Jigs and fixtures' are basically tooling aids required in the production process. A 'fixture' is basically an item to hold in a fixed place, the raw material to be worked on. For example, steel sheets will have to be held in place when a press with a die hits on it to form a press part. Further, a 'jig' is a tool used to guide the working tools. For example, if the components are to be drilled at various points, it is kept below the drilling head. The component is held in place by the fixture and jig on the top of the sheet guides the drill to stay in the required place to get the drilling done. However, the life of the jigs and fixtures is

approximately 1-2 months after which Jigs and fixtures needs to be replaced either on account of wear and tear or change in the design of parts. Hence, the cost of jigs and fixtures cannot be held to be a capital expenditure and the expenditure aggregating to Rs. 37,59,92,362 incurred on the purchase of jigs and fixtures ought to be allowed as deduction. Further, the Ld. counsel for the assessee submitted that expenditure incurred in respect of Dies and Moulds and Jigs and Fixtures is revenue expenditure as settled by the following decisions of the Hon'ble Tribunal in the case of Bajaj Holdings & Investment Limited (erstwhile Bajaj Auto Limited, prior to demerger):

a. ITAT-AY 2003-04 (ITA No. 1420/Mum/2007)

b. ITAT-AY 2002-03 (ITA No. 2899/Mum/2010)

c. ITAT-AY 2001-02 (ITA No. 4236/Mum/05)

d. ITAT-AY 1999-00 (ITA No. 2125/Mum/05)

e. ITAT-AY 2000-01 (ITA No. 3055/Mum/05)

f. ITAT-AY 1998-99 (ITA No. 8952/Mum/2004)

g. ITAT-AY 1997-98 (ITA No. 5030/Mum/2001)

h. ITAT-AY 1996-97 (ITA No. ITA No. 1781/Mum/2000)

i. ITAT-AY 1995-96 (ITA No. 3493/Mum/1999)

j. ITAT-AY 1994-95

k. ITAT-AY 1993-94

1. ITAT-AY 1991-92

9.4 The Ld. counsel further submitted that in assessee's own case (post demerger) the Ld. CIT(A) has allowed the claim of the assessee in assessment year 2008-09 to assessment year 2014-15. The ld Counsel submitted that once the issues in respect of which a proposed action under section 263 is contemplated, have already been decided on merits in favour of the assessee, action under section 263 itself becomes without jurisdiction.

9.5 We have heard rival submissions of the parties and perused the relevant materials on record. It is undisputed that no inquiry has been made by the Ld. Assessing Officer whatsoever in the case. He has even not verified that facts of earlier years are identical to the facts of current year and how the decisions of coordinate bench or Hon'ble High court in earlier years are applicable in the facts of the year under consideration. The ld AO has not examined , which are dyes have moulds purchased in the year under consideration and whether they are replacement of old dyes or new dyes with change of designs of products. The ld AO has not examined the life of the dyes and what happened to the dyes after their useful life and whether they have been sold as scrap or still lying with the assessee. The assessing officer has accepted the claim of the assessee at face value. Not making the basic enquiries has defeated the purpose for which the case was selected for scrutiny assessment.

9.6 Undisputedly the first purchase of Dies and Moulds and Jigs and Fixtures was capitalized by the assessee and depreciation was claimed thereof. The issue in dispute is regarding the replacement expenditure, therefore, for ascertaining first of all it was to be examined whether the Dies and Moulds and Jigs and Fixtures are part of plant and machinery or separately a machinery, eligible for deduction of depreciation. After the inserting of concept of block of asset, any sale of asset under the block of asset is reduced and any addition to the item under the block of asset is added to be block of asset and depreciation thereon is accordingly computed on the written down value of the block of asset. In the instant case the first purchase expenditure of these items was treated by the assessee as capital expenditure and thereafter if their value got obsolete then effect of should have been allowed under the computation of the block of asset. In our opinion, the Assessing Officer in the capacity of investigator was not required to remain silent on the submission and merely accept the submission of the assessee for the reason in earlier year same was admitted by the Ld. CIT(A). Admittedly, no inquiry whatsoever kind was carried out by the Assessing Officer for verification of claim deduction under the provisions of the Act.

10. In view of aforesaid discussion on all the four issues of taking action under section 263 of the Act, we find that even no basic enquiry of verification of quantum of claim of the assessee or whether the claim on merit is identical to earlier years where the

assessee has been allowed relief by the appellate authority , the case of assessee squarely falls under the Explanation-2 of the section 263 of the Act, accordingly, the assessment order is deemed to erroneous in so far as prejudicial to the interest of Revenue. Accordingly, we uphold the order of the ld PCIT. The grounds of appeal of the assessee are accordingly dismissed.

11. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 23/01/2026.

Sd/-	**Sd/-**
(NARENDER KUMAR CHOUDHRY)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 23/01/2026
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai