

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'G': NEW DELHI**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER**

**AND**

**SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.2167/Del/2024  
Assessment Year 2013-14**

<b>Commissioner of Income Tax, Central Circle-25, New Delhi</b>	<b>Vs.</b>	<b>Shri Balaji Metal Tech Pvt. Ltd. Haryana 20/21B, 2<sup>nd</sup> Floor, Fruit Garden NIT Faridabad, Haryana Faridabad PAN No. AAQCS0136E</b>
Appellant		Respondent

Appellant	Sh. Mahesh Kumar, CIT DR
Respondent	Sh. Madhur Aggarwal, Advocate

<b>Date of Hearing</b>	<b>19.12.2025</b>
<b>Date of Pronouncement</b>	<b>28.01.2026</b>

**ORDER**

**PER C.N. PRASAD, JM,**

This appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals), Delhi-29 dated 07.02.2024 for the A.Y. 2013-14.

2. The revenue has raised following grounds in its appeal :-

*“1. Whether on facts and in circumstances of the case, Ld. CIT(A) is legally justified in deleting the additions on account of under invoicing of scrap purchases of Rs.4,06,32,539/- without going the fact of*

*the case in which the same was admitted in their statement based on material found during the course of search by the key persons of the JBM Group.*

*2. Whether on facts and in circumstances of the case, Ld. CIT(A) is legally justified in deleting the additions on account of unrecorded purchases (in quantity) of Rs.2,77,04,004/- without going the fact of case in which the same was admitted in their statement based on material found during the course of search by the Key persons of JBM Group.*

*3 Whether on facts and circumstances of the case, Ld. CIT(A) is legally justified in deleting the additions by ignoring the decision given by the Hon'ble Supreme Court in the case of Davawanti Vs. Commissioner of Income Tax [2017]84 taxmann.com 296 (SC), in which the Hon'ble Supreme Court held that addition can be made on the basis of statement of assessee and also estimation of sales & gross profit rates can be done by the AO by rejection of books of accounts, even when the facts of the instant case are similar to the case covered by this judgment as the addition is made on the basis of statement of assessee and also estimation of under-invoicing of scrap purchase and unrecorded purchases is done by the AO by rejection of books of accounts?*

*4. Whether on facts and in circumstances of the case, Ld.CIT(A) is legally justified in deleting the addition without considering the incriminating evidence found in digitally as well as physically form which were duly admitted in the statement recorded during the course of search.*

*5. Whether on facts and in circumstance of the case, Ld. CIT(A) is legally justified to rely upon retraction of the statement without considering it is nothing but an afterthought and self-serving just to save the assessee company and their employment.*

*6. Whether on facts and in circumstances of the case, Ld. CIT(A) is legally justified to deleting the additions made by the AO without any legality and merit of the case.*

*7 The order of Ld. CIT(A) is erroneous and is not tenable on facts and in law.*

*8. The grounds of appeal are without prejudice to each other.*

*9 The appellant craves to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

3. The Ld. Counsel for the assessee at the outset submitted that assessee filed application under Rule 27 raising a legal ground which is on wrongful assumption of jurisdiction on the part of the AO to frame assessment u/s.153C of the Act. The Ld. Counsel for the assessee submitted that before the Ld.CIT(A) the assessee had agitated that the proceedings conducted under section 153C are against the provisions of the Act and is bad in law, barred by limitation and is without jurisdiction. However, the Ld. CIT(A) decided the issues in favour of the assessee on some other ground and the revenue is in appeal before the Tribunal. The Ld.Counsel submitted that the assessee/respondent seeks to support the order of the ld. CIT(A) as provided under Rule 27 of Income Tax Appellate Tribunal Rules on the ground which was not decided against the assessee.

4. The Ld. Counsel for the assessee submitted that the assessment year under consideration i.e. 2013-14 is beyond the block period as per the decision of the Hon'ble Delhi High Court in the case of PCIT Vs. Ojjus Medicare (P) Ltd. (465 ITR 101) and the decision of the Hon'ble Supreme court in the case of Jasjit Singh (458 ITR 437).

5. Heard rival submissions, perused the orders of the authorities below. The following application under Rule 27 of I.T. A. T. Rules 1963 was filed by the Assessee.

“APPLICATION UNDER RULE 27 OF THE INCOME TAX  
APPELLATE TRIBUNAL RULES, 1963

Hon'ble Sir(s).

1. *The captioned appeal filed by the revenue was heard by the Hon'ble Bench on 21.07.2025, and is now fixed for clarification on 19.12.2025. However, the assessee - respondent seeks to rely upon the order of learned CIT (A) deleting the additions on merit, by contending that the order of learned CIT (A) need be upheld even on the ground that the assessment so framed is without jurisdiction as the same is a legal ground, which was taken before learned CIT (A) as well, however, the same can be taken at any stage of the proceedings even de-horse Rule 27 of I.T. Rules.*

2. *It is most respectfully submitted that since the assessee had succeeded in the appeal fully on merits, it did not prefer an appeal. However, the Revenue has since filed the instant appeal, the assessee-respondent seeks to support the order of the learned Commissioner of Income Tax (Appeals) as provided in Rule 27 of the Income Tax Appellate Tribunal Rules, as such, in view of Rule 27 of the Income Tax Appellate Tribunal Rules, 1963, the respondent seeks to raise, urge and argue the ground challenging the initiation of proceedings, in an appeal filed by the revenue. It is thus, prayed that the respondent be permitted to make its submissions in respect of the contention as was being specifically raised vide ground nos. 2 and 4 before the learned Commissioner of Income Tax (Appeals) and was also decided by him in his impugned order.*

3. *It is thus prayed, this application be taken as a notice of motion to raise the following legal ground, in support of the order of the learned Commissioner of income Tax (Appeals);*

**"Additional Ground No. 1** *That the learned Commissioner of Income Tax (Appeals) hat erred both in law and on facts in sustaining the Initiation of proceedings w/s 153C of the Act for AY 2013-2014, which proceedings are beyond the period of 6 years*

from the date of recording of satisfaction note by AO of the assessee le. 26.9.2019 and thus notice issued w/s 153C of the Act is without jurisdiction.

**"Additional Ground No. 2** That on the facts and circumstances of the case the approval accorded under section 153D of the Act (if any) is a mechanical and arbitrary approval without there being any application of mind and also without satisfying the statutory preconditions of the Act and as such, the assessment so framed is null and void und deserves to be quashed."

**Additional Ground No. 3** That on the facts and circumstances of the case the impugned assessment order so passed is null and void, and is also in complete violation of CBDT Circular No. 19/2019, since no DIN is mentioned in the entire body of assessment order."

It is therefore prayed, it be held that proceeding initiated u/s 153C of the Income Tax Act is without jurisdiction and bad in law and order of learned CIT (A) need be upheld even on the ground of wrongful assumption of jurisdiction on the part of learned AO to have framed assessment under section 153C of the Income Tax Act.

4. It is submitted that this submission is being made in view of Rule 27 of the Income Tax Appellate Tribunal Rules and is otherwise well settled proposition of law that the respondent is entitled to raise a legal ground at any stage of the proceedings, even though he may not have filed an appeal against such an order. The Judicial pronouncements are as under:

- 1. 83 ITR 223 (Bom) (B.R.Bamsi v/s CIT)**
- 2. 129 ITR 475 (All) (Moralia& Sons v/s CIT)**
- 3. 220 ITR 398 (Ker) (CIT v/s Cochin Refineries Ltd)**
- 4. 176 CTR 406 (Gau) (Assam Company (1) Ltd v/s CIT)**
- 5. 102 ITD 189 (Del) (ITO v/s Gurvinder Kaur)**
- 6. 284 ITR 80 (SC) CIT V. Varas International P.Ltd.**
- 7. 149 Taxmann 456 (Guj) KharidVechan Sangh Ltd. vs CIT.**

**8. 397 ITR 282 (All) CIT vs Jindal  
Polyster Ltd.**

5. *The respondent thus prays that it be permitted to urge the aforesaid grounds as raised and mentioned in para 3 above.*”

6. The above application of the assessee is admitted. The contention of the assessee in ground No.1 in Rule 27 Application that assessment year 2013-14 is beyond the block of 6 assessment years in the light of the decision of the Hon’ble Delhi High Court in the case of PCIT Vs. Ojjus Medicare Pvt. Ltd. (supra) and Hon’ble Supreme Court in the case of CIT Vs. Jasjit Singh (supra) has to be verified with the relevant satisfaction notes recorded by the Assessing officers as none of the SAT notes recorded are placed before us. We further observed that this ground was raised before Ld. CIT(A) but was not adjudicated. Thus, we restore this issue to the file of the Ld.CIT(A) who shall decide the issue afresh after considering the judgments of the Hon’ble Jurisdictional High Court in the case of PCIT Vs. Ojjus Medicare Pvt. Ltd. (supra) and Hon’ble Supreme Court in the case of CIT Vs. Jas jit Singh (supra) and after providing adequate opportunity to the assessee.

7. Since we have restored the issue of assumption of jurisdiction by the AO to proceed u/s.153C for the assessment year under consideration, to the Ld. CIT(A) the grounds raised by the revenue on merits are also restored to the file of the Ld.

CIT(A) to decide afresh since the outcome of the decision on jurisdictional issue will have a bearing on merits of the case.

6. In the result, the appeal of the revenue is allowed for statistical purpose.

Order pronounced in the open court on 28.01.2026.

**SD/-**  
**[BRAJESH KUMAR SINGH]**  
**ACCOUNTANT MEMBER**

**Dated:** 28.01.2026

*MESH, In.P.O.\**

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

**SD/-**  
**[C.N. PRASAD]**  
**JUDICIAL MEMBER**

Asst. Registrar,  
ITAT, New Delhi