IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

ITA No.3439/Mum/2025
(Assessment Year: 2020-21)

Zensar Technologies Ltd., Magnet House, 2nd Floor, N.M. Marg, Ballard Estate, Mumbai – 400001	Vs.	PCIT, Room No.344, Aayakar Bhawan, M.K. Road, Mumbai – 400020
(**Appellant**)	:	(**Respondent**)
PAN NO. AAACF 0742K		

Appellant by	:	Shri Nitesh Joshi, And Shri Ninad Patade
Respondent by	:	Shri Arun Kanti Datta, (CIT- DR)
(Appellant)		**(Respondent)**

Date of Hearing	:	29.01.2026
Date of Pronouncement	:	12.02.2026

O R D E R

Per Saktijit Dey, Vice President:

In the present appeal, the assessee assails the validity of the order dated 24.03.2025 passed by learned Principal Commissioner of Income Tax (PCIT), Mumbai under section (u/s.) 263 of the Income Tax Act, 1961 (in short the 'Act') pertaining to Assessment Year (A.Y.) 2020-21.

2. Before we proceed to deal with the substantive issues arising in the appeal, we must observe, at the outset, Shri Nitesh Joshi, learned counsel appearing for the assessee submitted that though in the order passed u/s. 263 of the Act, learned PCIT has exercised his revisionary jurisdiction in respect of three issues arising out of the

assessment order and has set aside the assessment order with a direction to the Assessing Officer to re-examine those issues, however, while completing the fresh assessment in pursuance to the directions of learned PCIT, the Assessing Officer has made addition only with respect to the deduction claimed u/s. 10AA of the Act in respect of expenditure on Research and Development (R&D).

3. Keeping in view, the aforesaid submission of learned counsel for the assessee, we deem it appropriate to examine the validity of the impugned order passed u/s. 263 of the Act qua the disallowance/ addition made in respect of deduction claimed on account of R&D expenditure.

4. Briefly the facts are, the assessee is a resident corporate entity engaged in the business of providing Software and Digital Services to its customers. For the assessment year under dispute, the assessee had filed its return of income on 09.02.2021, declaring total income of Rs.176,25,19,070/-, under normal provisions of the Act and book profit of Rs.275,57,06,552/- u/s. 115JB of the Act. Subsequently, the assessee filed a revised return of income on 31.03.2021, declaring income of Rs.169,58,36,070/- under normal provisions and book profit at Rs.275,57,06,552/- u/s. 115JB of the Act. Assessee’s case was selected for complete scrutiny. In course of assessment proceeding, the Assessing Officer issued notices u/s. 142(1) and 143(2) of the Act from time to time raising various queries and calling upon the assessee to furnish a necessary supporting evidences and submission. In response to the notices issued by the Assessing Officer, the assessee

furnished its responses. After considering the submissions of the assessee and other materials on record, the Assessing Officer ultimately completed the assessment vide order dated 21.09.2022, determining the total income at Rs.179,40,83,573/- after making following additions: -

(i) Variation on account of disallowance u/s. 10AA of the Act at Rs.4,47,85,838/-.

(ii) Variation in respect of claim of deduction u/s. 80G at Rs.2,65,00,000/-.

(iii) Variation on account of education cess on deduction claimed at Rs.2,69,61,665/-.

5 After completion of assessment as aforesaid, learned PCIT called for and examined the assessment records pertaining to assessment year under consideration. While doing so, he was of the view that in course of assessment proceeding, the Assessing Officer has not properly enquired into and examined the allocation of R&D expenses amounting to Rs.5,56,51,000/- between the eligible units claiming deduction u/s. 10AA of the Act and non-eligible units. He further observed that the Assessing Officer had not properly verified the authenticity of writing off of intangible assets amounting to Rs.2,58,64,851/-. Proceeding further, he observed that the Assessing Officer while completing the assessment had not examined assessee's claim of deduction u/s. 80JJAA of the Act. According to learned PCIT, due to non-examination/improper examination of these issues, the assessment order is not only erroneous but prejudicial to the interest of Revenue. Therefore, in exercise of jurisdiction u/s. 263 of the Act he issued

a show cause notice dated 13.03.2025 requiring the assessee to explain why the assessment order should not be revised. In response to the show cause notice issued by learned PCIT, the assessee furnished a detailed submission, vehemently objecting to the exercise of jurisdiction u/s. 263 of the Act to revise the assessment order. The assessee submitted that in course of assessment proceeding, the Assessing Officer having thoroughly enquired into and examined all the issues and passed the assessment order after proper application of mind. The assessment order so passed cannot be considered as either erroneous or prejudicial to the interest of Revenue so as to empower the PCIT to revise it. Learned PCIT, however did not find merit in the submissions of the assessee. Ultimately, he concluded that while completing the assessment, the Assessing Officer had not enquired into and examined the issues in the manner in which, they were required to be examined. Therefore, in the opinion of learned PCIT, the assessment order is not only erroneous but prejudicial to the interest of Revenue requiring revision u/s. 263 of the Act. Accordingly, he passed the impugned order setting aside the order of assessment with a direction to the Assessing Officer to re-examine the issues, keeping in view the observations made by him in the order passed u/s. 263 of the Act.

6. While implementing the directions of learned PCIT as stated earlier, the Assessing Officer made addition only with regard to assessee's claim of deduction on R&D expenses by making proportionate allocation

between eligible and non-eligible units. Whereas, on couple of other issue raised by learned PCIT, the Assessing Officer did not make any addition/disallowance.

7. Before us, learned counsel appearing for the assessee submitted that in the year under consideration, the assessee had six undertakings eligible to claim deduction u/s.10AA of the Act. Whereas, he submitted, the assessee had other undertakings, which are not eligible for claiming deduction u/s. 10AA of the Act. He submitted, assessee maintained separate books of account for eligible and non-eligible units. He submitted, deduction claimed by the assessee u/s. 10AA of the Act in respect of eligible units was after complying the statutory conditions. In this context, he drew our attention to Form-56F placed on record. Learned counsel submitted, the entire R&D activity is not for the current activities being undertaking but for development of future products and services. He submitted, expenditures were allocated between eligible or non-eligible units purely based on expenditure incurred by the respective undertakings. In this context, he drew our attention to the audited financial statement. He submitted, since the R&D expenses had no direct nexus with the eligible undertakings, no part of such expenses were allocated to them. He submitted, the products/services sold/supplied by the eligible undertakings are already in existence. Whereas, R&D expenses are incurred for development of products/services, which may materialize in future. It also

may so happen that the R&D project would not fructify. It is also not known, whether the assessee itself would utilize the result of such R&D or transfer it to a third party. Thus, he submitted, when the R&D expenses do not have any direct or proximate nexus to the eligible undertakings no allocation of such expenses could have been made. Drawing our attention to the documents furnished in the paper book, learned counsel submitted, in course of assessment proceeding, the Assessing Officer from time to time has conducted enquiry specifically on the issue of R&D expenses. He submitted, in response to queries raised by the Assessing Officer, the assessee had furnished detailed submission backed by supporting evidences to demonstrate the R&D expenses are not connected to eligible undertakings. He submitted, since the Assessing Officer completed the assessment after detailed enquiry and thorough application of mind, the assessment order passed cannot be considered to be erroneous or prejudicial to the interest of Revenue, merely because the decision of the Assessing Officer allowing assessee's claim of deduction in respect of R&D expenses is not acceptable to learned PCIT.

8. Drawing our attention to the provision contained u/s. 10AA of the Act, learned counsel submitted, language used is "profit derived from". He submitted, expression "derived from" has been interpreted by courts and Tribunal to mean that such profit must have direct first-degree nexus with

the activities of the undertakings. In this context, he placed reliance on following decisions: -

(i) Zandu Pharmaceuticals Works Ltd. vs. CIT, [2013] 31 taxmann.com 191 (Bombay).

(ii) CIT vs. Torrent Pharmaceuticals Ltd. [2017] 88 taxmann.com 530 (Gujarat).

(iii) Dr. Reddy's Laboratories Ltd. vs. DCIT, ITA No. 1844 to 1846/Hyd/2017 order dated 08.06.2018.

(iv) Wockhardt Ltd. vs. The ACIT, ITA No. 6323/Mum/2010, order dated 13.04.2012.

9. Proceeding further, learned counsel submitted that the process of initiation of proceeding u/s. 263 of the Act is not an independent decision of the revisionary authority but purely based on audit objection. Thus, he submitted, since the revisionary authority has not independently applied his mind for invoking Section 263 of the Act but his action is based on audit objection, the exercise of power u/s. 263 of the Act is vitiated. Hence, the order passed u/s. 263 of the Act is invalid. In support of such contention, learned counsel relied upon the following decisions:-

(i) PCIT vs. Reeta Lakhmani [2022] 145 taxmann.com 590 (Calcutta)

(ii) Smt. Neetu Hurkat vs. PCIT, ITA No. 957/Ahd/2024 order dated 14.11.2025.

10. Per contra, learned Departmental Representative (DR) strongly relying upon the observations of learned PCIT submitted, though,

assessee's case was selected for complete scrutiny and one of the issues identified by the Assessing Officer is in relation to expenditure incurred for eligible units claiming deduction u/s. 10AA of the Act, however, in course of scrutiny assessment proceeding, the Assessing Officer has failed to make proper enquiry on the issue. He submitted, such lapse on the part of the Assessing Officer has not only made the assessment order erroneous but it is also made prejudicial to the interest of Revenue. He submitted, Explanaiton-2 under Section 263 of the Act empowers the revisionary authority to exercise jurisdiction, if he is of the opinion that the Assessing Officer has not made the enquiry, which he should have made. Thus, he submitted, learned PCIT has correctly exercised jurisdiction u/s. 263 of the Act to revise the assessment order.

11. We have given a thoughtful consideration to rival contentions, in the light of judicial precedents cited before us and perused the materials on record. As discussed earlier, assessee's case for the impugned assessment year was selected for complete scrutiny. A reading of the original assessment order reveals that the following issues were identified by the Assessing Officer for enquiry/examination:-

i. Double Taxation Relief u/s. 90/91.
ii. Reduction of Income in Revised Return & Claim of Refund.
iii. Imports.
iv. Loss from Currency Fluctuations.
v. Refund Claim.
vi. ICDS Compliance and Adjustment.
vii. Expenses Incurred for Earning Exempt Income.

viii. Deduction on Account of Donation for Scientific Research.
ix. Deduction from Total Income under Chapter VI-A.

12. As could be seen from the aforesaid, one of the issues identified for enquiry/examination is expenditure incurred for exempt income, which covers exemption claimed by the assessee u/s. 10AA of the Act. Thus, the issue, which arises for consideration is, whether in course of assessment proceeding, the Assessing Officer has enquired into and examined the issue. On 11.11.2021, the Assessing Officer issued a notice u/s. 142(1) of the Act (copy placed at Page 95 of the paper book) with an annexure wherein the Assessing Officer specifically referring to the R&D expenditure of Rs.5,56,51,192/- and called the assessee to furnish the breakup of the deduction along with documentary evidences to support the claim. Failing which, assessee should explain why the deduction claimed should not be disallowed. In response to the said query, the assessee furnished its reply on 23.11.2021 providing detailed breakup of R&D expenses of Rs.5,56,51,192/- and justifying why deduction should be allowed. Thereafter, on 17.12.2021, the Assessing Officer issued another notice u/s. 142(1) of the Act directing the assessee to justify the deduction claimed u/s. 10AA of the Act. In response to the said notice, the assessee furnished the requisite reply. Further on 10.03.2022, the Assessing Officer issued one more notice u/s. 142(1) of the Act calling upon the assessee to justify its claim of deduction u/s. 10AA of the Act. In response to the said query, the

assessee furnished its reply on 10.03.2022 with supporting evidences. Thus, aforesaid facts and materials on record, do clearly establish that in course of assessment proceeding, Assessing Officer had made detailed enquiry with regard not only to the deduction claimed by the assessee u/s. 10AA of the Act but also in relation to the expenditure claimed thereon. Therefore, the allegation of the revisionary authority that the Assessing Officer failed to make enquiry or proper enquiry is contrary to the facts and materials on record. As evident on record, the assessee has maintained regular books of account for both eligible and non-eligible undertakings. The claim of expenditure in respect of eligible and non-eligible units are on actual basis. On a careful perusal of the show cause notice issued u/s. 263 of the Act, as also the order passed by learned PCIT under the said provision, we have not found any specific finding of learned PCIT to demonstrate that the expenditure claimed by the assessee are not on actual basis. It would be apt to go through the observations of learned PCIT in this regard:-

> *"5.2 The decisions of ITAT cited by the assessee, it is seen that these assessee were having different type of activities. And the activities carried out by the SEZ units and non-SEZ units were different. This is not so in the present case. Here the core activity of export of software and providing digital solutions is being carried out both at SEZ and non-SEZ units. In allocation of expenses, the geographical location does not matter. Common expenses like salaries of the directors and management personals, accounting personals, ERP, finance cost is allocated to SEZ units also. It is seen that assessee itself allocated indirect expenditures to SEZ units. The R&D expenditure has been claimed as deduction under section 35. The R&D activities were carried out in the field of Information Technology and were related to the areas of technology and research by design to improve the productivity and quality of, products and solutions/services for customers. Areas of focus were identified based on the current and new trends as per strategy, leading to development of new products, processes and/or solutions, including developing an internal knowledge base for*

advancements of technical capabilities within the organization. As the SEZ units were engaged in similar activities, the R&D expenses of Rs.556.51 lakh clearly provided both direct and indirect benefits to them. Hence, a reasonable apportionment based on turnover or another appropriate method should have been applied between SEZ and non-SEZ units. If these expenses were allocated to SEZ units, the profit of SEZ units, the eligible profit for deduction under section 10AA would have reduced, thereby increasing the taxable income.

5.3 In any case, the Assessing Officer has not at all verified the nexus of R&D expenditure to the activities of SEZ units and also the other units. The AO has simply failed to consider this issue and also not made any enquiry on this. The Assessing Officer has also failed to examine the allocation of various common expenses debited in head office to SEZ units resulting into the higher deduction being allowed to SEZ units. The Assessing Officer has simply accepted the working given in the form 56 F without making any enquiry or verification regarding the turnover and the expenses disclosed therein. This is apparent from the notices issued during the course of assessment proceedings where these issues are not touched at all. During the proceedings under section 263 also, the assessee has also not pointed out any enquiry conducted on these issues during the course of assessment proceedings. Thus, it is held that the Assessing Officer has simply accepted the working given in the form 56 F without making any enquiry or verification into the nexus and allocation of R&D expenditure and other common expenditure and the basis of allocation, if required while allowing deduction u/s 10AA for SEZ units."

13. A careful analysis of aforesaid observations of learned PCIT make it clear that his opinion regarding the allocation of R&D expenses between eligible or non-eligible undertakings is merely based on presumption that such expenses may have direct or indirect relationship with the eligible undertakings. Thus, the view expressed by learned PCIT to revise the assessment order is in the realm of conjectures and surmises and not based on any concrete evidence. On the contrary, materials on record demonstrate that after conducting full-fledged enquiry and proper appreciation of facts and materials on record, the Assessing Officer has taken a conscious and considered decision to allow the deduction claimed towards R&D expenses.

Merely because the decision taken by the Assessing Officer is not to the liking of revisionary authority or not acceptable to him, that will not make the assessment order erroneous and prejudicial to the interest of Revenue.

14. Explanation-2 under Section 263 of the Act does not vest unbridled power with the revisionary authority to revise the assessment order alleging lack of proper enquiry. If the materials on record demonstrate that the Assessing Officer has made proper enquiry, the assessment order cannot be revised arbitrarily alleging lack of proper enquiry in the manner in which, enquiry should have been made according to the revisionary authority. In case of 'Zandu Pharmaceuticals Works Ltd. vs. CIT' (Supra), the Hon'ble Jurisdictional High Court while interpreting the expression 'derived from' has observed that there must not only be a direct nexus between the profit and gains and industrial undertaking but there must also be a direct nexus between the industrial undertaking and the expenses, which are sought to be apportioned/attributable to it. In the facts of the present appeal, learned PCIT himself was doubtful regarding the existence of direct nexus between the R&D expenses and eligible undertaking, therefore, he has used to words "direct or indirect nexus".

15. A second plank of assessee's challenge to the impugned order is based on the fact that the revisionary authority has exercised jurisdiction u/s. 263 of the Act merely based on audit objection. Though, neither in the show cause notice issued u/s. 263 of the Act or in the order passed under

that provision, learned PCIT has referred to the audit objection, however, in the assessment order passed in pursuance to the directions of learned PCIT, the Assessing Officer has clearly and in no uncertain terms stated that the audit objection has suggested for disallowance of deduction u/s. 10AA of the Act on account of non-allocation of R&D expenses to SEZ units.

16. The aforesaid observation of the Assessing Officer in the order giving effect to the directions of learned PCIT, prima facie, demonstrates that the genesis of the revisionary proceeding for disallowance of a part of R&D expense was based on audit objection. Thus, the decision to invoke the provisions of Section 263 of the Act, qua the issue of disallowance of R&D expense is not an independent decision of learned PCIT but is greatly influenced by the audit objection. That being the case, the exercise of power u/s. 263 of the Act, in our considered opinion is vitiated, hence, unsustainable. Accordingly, we quash and set aside the impugned order passed u/s. 263 of the Act and restore the order of assessment dated 21.09.2022.

17. In the result, appeal is allowed.

Order pronounced in the open court on 12/02/2026.

Sd/-	Sd/-
(Arun Khodpia)	(Saktijit Dey)
Accountant Member	Vice President

Mumbai; Dated : 12/02/2026

Aks/-

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai