

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH MUMBAI

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2763/MUM/2025
Assessment Year: 2020-21**

Small Industries Development Bank of India Swavalamban Bhavan, Sidhi C-11, G Block, Bandra East, Mumbai - 400051 (PAN: AABCS3480N) (Appellant)	Vs.	Assessment Unit Income Tax Department Circle 3(3)(1) Aaykar Bhawan Mumbai (Respondent)
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Present for:

Assessee : Shri Rakesh Joshi, CA
Revenue : Shri Arun Kanti Datta, CIT DR

Date of Hearing : 24.11.2025
Date of Pronouncement : 17.02.2026

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the revisionary order passed by Id. Principal Commissioner of Income Tax, PCIT, Mumbai 3, vide order no. ITBA/REV/F/REV5/2024-25/1074958148(1), dated 24.03.2025, passed against the assessment order by Assessing Officer, u/s. 143(3) r.w.s. 144B of the Income-tax Act (hereinafter referred to as the “Act”), dated 28.09.2022 for Assessment Year 2020-21.

2. Grounds taken by assessee are reproduced as under:

“1. On the fact and circumstances of the case as well as in Law, the Learned Principal Commissioner of Income Tax (PCIT) erred in initiating proceedings u/s. 263 of the Income Tax Act, 1961 (the Act) without bring out as to how the assessment order was erroneous and prejudicial to interest of revenue.

2. On the fact and circumstances of the case as well as in Law, the Learned Principal Commissioner of Income Tax (PCIT) has erred in passing Revision Order u/s 263 of the Income Tax Act, 1961 (the Act) for the assessment order passed u/s. 143(3) r.w.s 1448 of the Act dated 28.09.2022 without appreciating that the assessment order was passed after making adequate enquiries.

3. On the fact and circumstances of the case as well as in Law, the Learned PCIT has erred in considering the order passed u/s. 143(3) of the Income Tax Act, 1961 by the Learned Assessing officer as erroneous and prejudicial to the interest of revenue.

4. On the fact and circumstances of the case as well as in Law, the Learned PCIT has erred in setting aside Assessment order passed by the Learned Assessing officer and directing him to reframe the assessment afresh.”

2.1. The four grounds raised by the assessee relate to challenging the revisionary proceedings initiated u/s.263 by the ld. PCIT and passing of revisionary order thereupon.

3. Facts of the case are that assessee is a principal financial institution for promotion, financial and development of the Micro, Small and Medium Enterprises (MSME) sector in India. Assessee filed its return of income on 17.03.2021, reporting total income at Rs.1941,20,24,320/-. Case of the assessee was selected for complete scrutiny under CASS on the following parameters -

1. ICDS Compliance and Adjustment
2. Capital Gains/Income on Sale of Property
3. Capital Gains/Income on Sale of Property
4. Deduction from Total Income under Chapter VI-A
5. Refund Claim
6. Expenses Incurred for Earning Exempt Income
7. Capital Gains/Income on Sale of Property
8. High Creditors/liabilities
9. Claim of Any Other Amount Allowable as Deduction in Schedule BP
10. Foreign Bank Account

11. Unsecured Loans

12. Reduction of Income in Revised Return & Claim of Refund

3.1. Assessment was completed u/s.143(3) r.w.s. 144B, assessing total income at Rs.2041,20,61,053/-. Subsequently, on examination of records, ld. PCIT found that the faceless Assessing Officer has not gone through/verified certain issues while passing the impugned assessment order. There are three broader issues based on which ld. PCIT drew his consideration that the said assessment order is erroneous in so far as prejudicial to the interest of Revenue. The three issues relate to:

- i) Claim of bad debts written off
- ii) Adjustment of non-performing assets (NPA)
- iii) Claim of lease rent amortisation

3.2. Accordingly, a show cause notice u/s. 263 dated 27.02.2025 was issued seeking explanations and documentary evidences on the three listed issues, for which assessee furnished its detailed reply vide letter dated 13.03.2025, along with corroborative documentary evidences placed on record. After taking into consideration the submissions made and the arguments of the assessee, ld. PCIT held that the same are not tenable and the assessment order was accordingly set aside. He directed the ld. Assessing Officer to examine the three issues listed above and make additions or disallowances after due verification by giving opportunity of being heard to the assessee. Aggrieved by the said order, assessee is in appeal before the Tribunal.

4. Before us, ld. Counsel for the assessee took the Bench through the three issues as enumerated in the show cause notice, placed on record in the paper book. We deal with each of the three issues in the

show cause notice to adjudicate upon the grounds raised by the assessee.

5. For the first issue, ld. PCIT observed that assessee has claimed bad debts written off of Rs.1489,34,66,053/- in its computation of total income without showing any adjustment to the provision account. According to him, assessee has been claiming the deduction of provision for bad and doubtful debts u/s. 36(1)(viiia) every year. Accordingly, assessee is required to first adjust the bad debts to the provisions allowed u/s. 36(1)(viiia) and excess, if any, was allowable as a deduction. In view of these provisions, according to ld. PCIT, ld. Assessing Officer has allowed the claim of the assessee without making any enquiries or verification. Contention of the ld. Counsel on this issue is two-fold; whereby it is contended that ld. Assessing Officer has made due enquiries in this regard by issuing statutory notice u/s.142(1), dated 12.11.2021 and also that this issue is squarely covered by the decision of Coordinate Bench of ITAT, Mumbai in assessee's own case for Assessment Year 2005-06 which ld. PCIT himself has referred to in the revisionary order.

5.1. Ld. Counsel for the assessee referred to point no. 6 in the annexure to notice issued u/s.142(1) dated 12.11.2021 whereby ld. Assessing Officer states that "*with respect to other deduction claimed in Schedule BP of return, kindly provide the following details:*

- i) Please furnish detail of other deduction claimed in Schedule BP of the ITR along with documentary evidence to support your claim*
- ii) Please state if the above item has been shown in any other head of income"*

5.2. Assessee made its reply dated 26.11.2021, placed in the paper book whereon it submitted that -

- i) *The total of Rs.2322,35,20,421/- has been claimed as other income, details for the same has been attached in annexure-5.*
- ii) *Above item has not been shown under any other head income*

5.3. On this issue, ld. Assessing Officer issued another notice u/s.142(1) dated 04.03.2022 and raised a very specific query in its annexure vide point no.5, which is extracted below:

“5. It is noticed that the department had from AY 2002-03 onwards, when the profit and gains of the assessee becomes taxable, allowed the provision for bad and doubtful debts made by the assessee in the books of account subject to limit of 5% of total income in accordance with the provisions of section 36(1)(viia)(c) of the Act. Section 36(1)(viia) (c) provides that an assessee being a public financial institution or a state financial corporation or a state industrial investment corporation is eligible for deduction in respect of any provision for bad and doubtful debt made subject to limit of 50% of total income. As stated above, the department has allowed deduction u/s 36(1)(viia)(c) in every assessment year. In addition to this, the department also allowed the claim of the assessee in respect of bad debts written off u/s 36(1)(vii) without reducing the provision for bad and doubtful debts allowed u/s 36(1)(viia) in every assessment year from 2002-03 onwards. Therefore, the write back of Rs. 1,032,068,132/- on account of provision for bad and doubtful debts claimed by the assessee as deduction is out of the provisions allowed u/s 36(1)(viia) (c) in earlier assessment years is not eligible for deduction. This has resulted in under assessment of income to the tune of Rs. 1,032,068,132/-.

Please justify and explain the allowability of claim u/s 36(1)(viia) (c) of the Act, in view of the facts discussed as above.”

5.4. On this specific query, assessee furnished a detailed reply, explaining its case, which is extracted below. In this reply, assessee also referred to the decision of Coordinate Bench in its own case for Assessment Year 2005-06 in ITA No.4218/Mum/2011 dated 25.09.2018 and extracted the relevant portion applicable to the issue.

The contents of the submission made by the assessee before the ld. Assessing Officer on the specific query is extracted below:

5. This issue pertains to deduction claimed by the assessee under section 36(1)(viii)(c) of Income Tax Act. In this regard, it is pertinent to mention that the said issue is squarely covered in favour of assessee, in its own case in the order passed by the Honble ITAT, Mumbai in respect of A.Y. 2005-06 (ITA 4218) Copy of this ITAT judgment is enclosed herewith. Relevant portion of the said ITAT order is reproduced as below:

"5Before CIT(A) assessee pleaded that entire amount of Rs.240.78 Cr should be allowed as bad debt without reducing provision allowed u/s 36(1)(viii) (c) of Income Tax Act amounting to Rs. 132.39 Crore as there is no opening credit balance in the provision account. However Ld CIT(A) in Para 2 on page 1 dealing with this issue allowed a sum of Rs. 108.38 crore only as claimed by the assessee in the ROI

6. We found that issue is squarely covered by the order of the Tribunal in assessee's own case for the A.Y.2004-05 in ITA No.7143/Mum/2008. Relevant finding are at para 27 and 28, page 19 of the order which reads as under:-27. We have considered the rival submissions. The main grievance of the learned D.R. as projected in his argument is regarding opportunity to the AO. In this regard, we find that the grounds of appeal of the revenue project the grievance of the revenue only with regard to the fact that the claim was not made in the return of income and therefore cannot be entertained. In this regard, we find that the CIT(A) has relied on Circular No. 14 of 11.4.1955 of CBDT which says that Officers of the Department must not take advantage of ignorance of an assessee as to his rights and guide the Assessee of any rights available to him in law. In our view it is also in consonance with the principle that there shall be no tax without the authority of law. If in law an Assessee is not liable to be taxed on a particular income, the same cannot be foisted on the Assessee because of procedural lapses. The assessment and other proceedings under the Act are for determination of correct tax liability of an Assessee in accordance with law. Keeping the above spirit in mind, in our view the CIT(A) has rightly allowed the claim of the Assessee and the reasons given by the CIT(A) for doing so, in our view are acceptable and we agree with the same.

28. Even on merits of the claim of the Assessee, we are of the view that the same deserves to be accepted. The relevant provisions under which the deduction has been claimed by the Assessee are as follows:

36. Other deductions.-(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28-

(vii) subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year:

Provided that in the case of a bank to which clause (viii) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause;

(viii) in respect of any provision for bad and doubtful debts made by-fa) a scheduled bank not being a bank incorporated by or under the laws of a country outside India or a non-scheduled bank, an amount not exceeding five per cent, of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding ten per cent, of the aggregate average advances made by the rural branches of, such bank computed in the prescribed manner:

From a reading of the aforesaid provisions, it would be clear that the Assessee is thus entitled to claim deduction both under Sec. 36(1)(vii) and Sec, 36(1)(viii) of the Act. The only limitation is that the amount of deduction shall not exceed the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account. In the present case there is no dispute that provisions of Sec. 36(1)(viii) applies to the Assessee and also the fact the amount of deduction relating to bad debts written off is limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account. In the case of the Assessee there is no dispute that there was no credit balance in the provision account and therefore whole of the bad debts written off would in effect be in excess of the credit balance (which is nil) in provisions account. Therefore the whole of the bad debts written off would be deductible u/s.36(1)(vii) of the Act. The fact that this sum has been omitted to be claimed in the return of Income has been amply demonstrated by the Assessee. Even in the reassessment proceedings the AO has no answer to the claim of the Assessee in this regard and has merely observed in his order that there is no evidence produced by the Assessee. The book entries and the return of income before the AO are enough evidence to come to the conclusion that the amount in question was not claimed in the return of income though the Assessee could have claimed it legitimately. In the given circumstances, we are of the view that there is no merit in the ground raised by the Revenue. Consequently, the ground of appeal of the revenue is dismissed and the order of CIT(A) in this regard is upheld."

7. Rival contentions have been heard and record perused. We observe that the facts and circumstances during the year under consideration are same, as discussed by the Tribunal in assessee's own case for the A.Y.2004-05, respectfully following the same, we do not find any merit in the order of CIT(A)."

In view of the above, it may please be seen that assessee has correctly claimed the deduction under section 36(1) (viiia) (c) of Income Tax Act and the decision of Ld.CIT(A) in this regard was reversed by the Hon'ble ITAT, as mentioned above.

5.5. It is worth noting the observations of ld. PCIT in the impugned revisionary order on this issue, wherein he has taken note of the decision of Coordinate Bench in assessee's own case for Assessment Year 2005-06 (supra). On this, he noted that since the Department has not accepted the said decision and is in appeal before the Hon'ble High Court of Bombay, which is pending for disposal and the same has not reached finality, therefore in the interest of Revenue, he held order of the ld. Assessing Officer to be erroneous in so far as prejudicial to the interest of Revenue. Extracts in this regard from the order of ld. PCIT contained in para-6 is as under:

"6. The assessee has contended that the issue of deduction under section 36(1)(viiia) (c) of the Income Tax Act is covered in its favor by the ITAT's decision in its own case for AY 2005-06. However, the contention put forth by the assessee is not acceptable for the reason that The assessee has relied on decision of ITAT in its own case for AY 2005-06 with regard to re-working of deduction allowable u/s 36(1)(vii) of the Act after reducing the deduction u/s 36(1)(viiia) of the Act, however, the department has not accepted the decision and is in appeal before Bombay High Court and the same is pending. In view of the above, since the department appeal is pending before the High Court for the AY 2005-06 and has not reached finality. It is noted that the AO has not verified the issue of provisions for bad debts and issue of adjustments while finalising the assessee. As the AO has not looked into the issues during the current year with reference to the above, the order of the AO is held to be erroneous in so far as it is prejudicial to the interest of the revenue."

5.6. From the conspectus of the above discussion, including factual matrix and the judicial pronouncement in assessee's own case, it is noted that ld. Assessing Officer has made detailed enquiry, raising

specific query. Also, the citation given by the assessee in its own case covers the issue raised by the ld. PCIT for invoking the revisionary proceedings. In view of the above, we find that impugned revisionary proceedings invoked on this issue is not tenable and therefore, revisionary proceedings to the extent of this issue are bad in law and liable to be quashed. We accordingly hold so.

6. We now take up the second issue raised by the ld. PCIT in his show cause notice, which is on account of adjustment of NPA. In this regard, ld. PCIT observed that assessee has sold property of NPA borrowers which it has taken in its possession. Amount recovered out of these transactions were adjusted against the borrowers' dues. Ld. PCIT notes that as per the provisions of section 41(4), if the amount subsequently recovered on any such debt or part is greater than the difference between the debt or part of debt and the amount so allowed, the excess shall be deemed to be profits and gains of business or profession and accordingly, chargeable to income-tax as the income of the year in which it is recovered. According to him, in the notes to accounts, it was stated that assessee had adjusted or reduced the NPA to the extent of Rs.79.68 crores during the year which remained to be examined by the ld. Assessing Officer in the light of the aforesaid provisions of section 41(4). Thus, he held that to this extent, the assessment made by the ld. Assessing Officer is erroneous in so far as prejudicial to the interest of Revenue.

6.1. On this issue also, ld. Counsel for the assessee pointed to the notice issued u/s.142(1), dated 04.03.2022 wherein in point no.2 to the annexure, ld. Assessing Officer stated that "*furnish sample copy of sale deed where assessee company's PAN was mentioned while depositing the TDS to prove that property sold was of NPA borrowers*". On this,

assessee made its reply, submitting that “*sample copy of sale deed where assessee company’s PAN was mentioned while depositing the TDS to prove that property sold was of NPA borrowers are enclosed herewith*”.

6.2. In this regard, assessee made detailed submission before the Id. PCIT in the revisionary proceedings explaining the issue and sought dropping of the revisionary proceedings on this issue. Contents of the submission made by the assessee before the Id. PCIT are extracted below:

“Adjustment/Reduction of NPA Rs. 79.68 crore & Deduction of Rs. 61.12.083/-w.r.t. Lease rent amortization

The Assessee in response to Notice u/s 142(1) dt 04/03/22 filed its reply on 09/03/22 submitted sample copy of sale deed and after perusal of the same, the Ld. AO passed assessment order dt 28/09/2022.

Thus, your goodself will appreciate that the Ld. AO had made an enquiry W.EL Adjustment/Reduction of NPA Rs. 79.68 crore vide issue of Notices u/s 142(1) & Show cause notices and after perusal of the reply filed by the assessee vide letter on 09/03/22. the L.d. AO passed assessment order u/s 143(3). Therefore, the L.d. AO had applied his mind during the course of the regular assessment and as a result the assessment order passed by the Ld. AO is not erroneous and prejudicial to the interest of the revenue. We further place reliance on the above judicial pronouncement-

1. *Cartier Leaflyn (P.) Ltd. [2023] 146 taxmann.com 281 (SC)*
2. *SPML Infra Ltd. [2024] 164 taxmann.com 504 (Calcutta)*
3. *Colour Publications (P.) Ltd. [2018] 97 taxmann.com 116 (Mumbai - Trib.)*

Without prejudice to above-

We hereby attach Annual report for FY 19-20, in the Additional disclosure as per Re guidelines, Note 3 "Asset Quality and specific Provisions", Item (a) - "Non Performing Advances", Sub-item no. (iii) "Movements of Net NPAs", there is reduction of NPA during the year is Rs. 79.68 crore. The reduction of NPA comprises of the followings reasons-

- a. Upgradations*
- b. Recoveries (excluding recoveries made from upgraded accounts)*
- c. Technical/Prudential Write Offs*
- d. Write offs other than those under (iii) above*

Thus, one of the reason for reduction in NPA during the year is recoveries (excluding recoveries made from upgraded accounts).

The Question now arise whether the Recoveries of NPA made during the year is Taxed or not during the relevant AY 20-21. In order to cross check, the same, we hereby invite your attention to Page 7 of the Annual Report for FY 19-20, wherein Profit & Loss statement for the year ended March 31,2020 is there. On the Income Side, there is "Other Income" having Sch XIII and if we go to Sch XIII (Page 13 of the Annual Report) there is item 6- "Others (refer Note 11 & 17)" amounting to Rs. 6,16,95,44,591/-which comprises of the following-

6	<i>Others</i>	<i>6,16,95,44,591</i>
	<i>Recoveries out of Bad Debts</i>	<i>1,02,21,91,305</i>
	<i>Miscellaneous Receipt Account</i>	<i>89,86,78,942</i>
	<i>Prior Period Adjustment</i>	<i>3,72,25,52,439</i>
	<i>Income from Exchange Profit</i>	<i>4,22,59,832</i>
	<i>Others</i>	<i>48,38,62,072</i>

Further, on perusal of page 21 of the Annual Report, Note 17- "Other income - Schedule XIII includes principal recoveries on account of advances written off in earlier years Rs.1.02.21.91.305 (Previous year 36.79.23.266)."

After perusal of the above, your goodself will appreciate that the assessee had already included recoveries of the NPA under the head "Recoveries out of Bad Debts" totalling to Rs. 1,02,21,91,305/-. Since the assessee had already included reduction of NPA under the sub-head "Recoveries out of Bad Debts" and thus the proposal to initiate revisionary proceeding u/s 263 be dropped.

Thus, the assessee during the regular assessment submitted all the documents and letters explaining all the 3 points which have been duly considered by the assessing office and therefore the order in not erroneous."

6.3. From the above, it is thus noted that assessee made its submissions both, before the ld. Assessing Officer during the assessment proceedings as well as before the ld. PCIT during the revisionary proceedings. It is important to note that Explanation 1 to section 263 in clause (b) defines 'record' for the purpose of revisionary proceedings to include all records relating to any proceeding under this Act available at the time of examination by the PCIT. Thus, submission as extracted above were before the ld. PCIT in the course of impugned

revisionary proceedings which ought to have been considered before drawing an adverse inference on this issue.

7. The third issue is in respect of claim of lease rent amortisation of Rs.61,12,083/- which according to the ld. PCIT has been disallowed in the earlier Assessment Years 2017-18 and 2018-19. Accordingly, as a measure of consistency and uniformity in assessment, ld. PCIT held that in this year also, claim of the assessee on this account ought to have been disallowed by the ld. Assessing Officer which remained to be examined and hence, leading the assessment as erroneous in so far as prejudicial to the interest of Revenue.

7.1. On this third issue relating to claim of lease rent amortisation, ld. Counsel for the assessee submitted that appeals are pending for the two Assessment Years namely 2017-18 and 2018-19, wherein disallowance has been made. Accordingly, it was submitted that the matter may be remitted back to the file of ld. Assessing Officer and effect may be given based on the outcome of these appeals.

8. Per contra, ld. CIT DR asserted that even though submissions were made by the assessee in the course of assessment proceedings, the same were not subjected to due examination and verification by the ld. AO and hence, justifies the invocation of revisionary proceedings and the revisionary order passed by ld. PCIT.

9. We have heard both the parties and perused the material on record. From the perusal of the questionnaire to notice u/s 142(1) and the replies made by the assessee in respect of the first and second issues which formed the basis for passing the order u/s. 263 of the Act, we note that it is not a case of lack of enquiry. We observe that ld. CIT has

not applied his mind to arrive at a consideration which is erroneous in so far as prejudicial to the interest of revenue for passing the impugned order u/s. 263 of the Act. We observe that in the course of proceeding u/s. 263 of the Act, assessee had furnished the relevant details and explained the issues raised through the show cause notice, supporting his contentions by corroborative documentary evidence. It is well settled law that for invoking the provisions of section 263 of the Act, both the conditions that the order must be erroneous and prejudicial to the interest of revenue needs to be satisfied. This ratio stands laid down by various Hon'ble Courts.

9.1. For this, let us take the guidance of judicial precedence laid down by the Hon'ble Apex Court in the case of Malabar Industries Ltd. vs. CIT [2000] 243 ITR 83(SC) wherein their Lordships have held that *twin* conditions need to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer *must be erroneous and in so far as prejudicial to the interest of the Revenue*. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed *on incorrect assumption of fact*; or (ii) *incorrect application of law*; or (iii) Assessing Officer's order is in *violation of the principle of natural justice*; or (iv) if the order is passed by the Assessing Officer *without application of mind*; (v) if the AO *has not investigated the issue* before him; [*because AO has to discharge dual role of an investigator as well as that of an adjudicator*] then in aforesaid any of the events, the order passed by the AO can be termed as erroneous order. Looking at the second limb as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue, one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (*supra*) held

that this phrase i.e. “*prejudicial to the interest of the revenue*” has to be read in conjunction with an *erroneous order* passed by the AO. Their Lordships held that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law.

9.2. The aspect of application of mind by ld. PCIT as contended by the ld. Counsel has been succinctly dealt by the Hon’ble Delhi High Court in the judgment of DG Housing Finance Co. Ltd. [2012] 20 taxmann.com 587 (Del) which is dealt hereunder:

9.2.1. While advertng on the issue, Hon’ble High Court held that the CIT has to come to the conclusion and himself decide that order is erroneous, by conducting necessary enquiry, if required and necessary before the order u/s 263 of the Act is passed. In such cases, the order of the AO will be erroneous because the order passed is not sustainable in law and the said finding must be recorded by CIT who cannot remand the matter to the assessing officer to decide whether the findings recorded are erroneous.

9.2.2. In cases where there is inadequate enquiry but not lack of enquiry, again the CIT must give and record a finding that the order/enquiry made is erroneous. This can happen if an enquiry and verification is conducted by the CIT and he is able to establish and show the error or mistake made by the AO, making the order unsustainable in law.

9.2.3. In some cases, possibly though rarely, the CIT can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the AO had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the AO to conduct further enquiries without a finding that the order is erroneous, the condition or requirement which must be satisfied for exercise of jurisdiction u/s 263 of the Act. In such matters, to remand the matter/issue to the AO would imply and mean that the CIT has not examined and decided whether or not the order is erroneous but has directed the AO to decide the aspect/question.

9.2.4. The Hon'ble Court further held that this distinction must be kept in mind by the CIT while exercising jurisdiction u/s 263 of the Act and in the absence of the finding that the order is erroneous and prejudicial to the interest of revenue, exercise of jurisdiction under the said section is not sustainable. In most cases of alleged "inadequate investigation", it will be difficult to hold that the order of the AO, who had conducted enquiries and had acted as an investigator, is erroneous, without CIT conducting verification/enquiry himself. The order of the AO may be or may not be wrong. CIT cannot direct reconsideration on this ground but only when the order is erroneous. An order of remit cannot be passed by the CIT to ask the AO to decide whether the order was erroneous. This is not permissible. An order is erroneous, unless the CIT holds and records reason why it is erroneous. Therefore, CIT must after recording reasons, hold that order is erroneous. The jurisdictional pre-condition stipulated is that CIT must come to the conclusion that the order is erroneous and is unsustainable in law.

9.2.5. It was further observed by the Hon'ble High Court that the material, which the CIT can rely up on includes not only the records as it stands at the time when the order in question was passed by the AO but also records as it stands at the time of the examination by the CIT. Nothing prohibits CIT from collecting and relying new/additional material which evidence to show and state that the order of the AO is erroneous.

9.3. In the present case before us, we note that the first and second issues raised by the ld. Pr. CIT in the show cause notice u/s 263 had already been examined in the assessment proceedings. The extent of enquiry undertaken and replies filed in the assessment proceedings forms part of the records of the case on which ld. PCIT ought to have applied his mind before embarking upon the journey of initiating the revisionary proceedings.

9.4. We find that the first two issues in the present case considered by the ld. Pr. CIT for exercising revisionary proceedings u/s. 263 of the Act are purely on facts which are verifiable from the records of the assessee. Moreover, the same have been examined by the Ld. AO in the course of assessment proceedings for which all the relevant details and explanations were placed on record which also forms part of the paper book before us. Further, ld. CIT, DR could not bring any material on record to controvert the factual position as submitted before us.

9.5. Accordingly, on the first two issues raised by the ld. Pr. CIT in the revisionary proceedings, no action u/s 263 of the Act is justifiable which in our considered view cannot be sustained under the facts and circumstances of the present case and judicial precedents dealt herein above. We, therefore, to the extent of first and second issues, quash the

impugned order u/s 263 of the Act and allow the grounds raised by the assessee.

10. For the third issue relating to claim of lease rent amortisation, for which ld. PCIT has directed the ld. Assessing Officer for examination and verification and then allow the claim after giving opportunity of being heard to the assessee, we find it appropriate to remit this issue to the file of ld. Assessing Officer and give effect depending upon the outcome of the appeals for Assessment Year 2017-18 and 2018-19. To this extent, the revisionary proceeding undertaken by the ld. PCIT and the impugned order is upheld.

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

Order is pronounced in the open court on 17 February, 2026

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 17 February, 2026

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai