

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, KOLKATA**

**BEFORE SHRI RAJESH KUMAR, AM  
AND  
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No. 211/KOL/2022  
(Assessment Year: 2015-16)**

**International Seaport (Haldia)**

**Pvt. Ltd.**

C/o S.N. Ghosh & Associates,  
Advocates, 2 Garstin Place, 2<sup>nd</sup>  
Floor, Suite No.203, Off Hare  
Street, Kolkata-700001,  
West Bengal

**(Appellant)**

**Vs.**

**PCIT, 2**

Aaykar Bhawan, P-7,  
Chowringhee Square,  
Kolkata-700069, West Bengal

**(Respondent)**

**PAN No. AAACI9468D**

**Assessee by** : Shri Somnath Ghosh, AR

**Revenue by** : Shri S. Datta, DR

**Date of hearing:** 29.01.2026

**Date of pronouncement:** 26.02.2026

**ORDER**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the Pr. Commissioner of Income Tax(hereinafter referred to as the "Ld. PCIT"] dated 31.03.2021 for the AY 2015-16.

2. At the outset, we observe from the appellate folder that the appeal is barred by 334 days. In this regard, the Id. AR drew our attention to the judgment of the Hon'ble Supreme Court in Miscellaneous Application No.21 of 2022 in Suo Motto Writ Petition (C) No.3 of 2020, dated 10.01.2022, wherein the Hon'ble Supreme Court has directed to exclude the period of limitation for the period as

mentioned in the said judgment on account of Covid-19. The relevant observations of the Hon'ble Supreme Court are as under :-

"4. *The present Miscellaneous Application has been filed by the Supreme Court Advocates-on-Record Association in the context of the spread of the new variant of the COVID-19 and the drastic surge in the number of COVID cases across the country. Considering the prevailing conditions, the applicants are seeking the following:*

- i. allow the present application by restoring the order dated 23.03.2020 passed by this Hon'ble Court in Suo Motu Writ Petition (C) NO. 3 of 2020; and*
- ii. allow the present application by restoring the order dated 27.04.2021 passed by this Hon'ble Court in M.A. no. 665 of 2021 in Suo Motu Writ Petition (C) NO. 3 of 2020; and pass such other order or orders as this Hon'ble Court may deem fit and proper.*

5. *Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:*

*I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*

*II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*

*III. In cases where the limitation would have expired during the 15.03.2020 till 28.02.2022, period notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*

*IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*

2.1. Thus, the Id. AR submitted that the delay of 334 days in filing the appeal may kindly be condoned and the assessee may kindly be decided on merits. The Ld. D.R did not raise any objection in

condoning the delay. After hearing both the sides, we find that there is no delay in filing the appeal of the assessee.

3. The assessee has challenged the revisionary jurisdiction exercised by the Id. PCIT u/s 263 of the Act as well as the consequent order framed u/s 263 of the Act by the Id. PCIT by assuming the jurisdiction invalidly and therefore, the order passed u/s 263 of the Act is ex-facie wrong and nullity in the eyes of law.
4. The facts in brief are that the assessee filed the return of income on 20.09.2015, declaring total income at ₹99,24,040/-. The assessment u/s 143(3) of the Act was framed vide order dated 12.12.2017, assessing the total income at ₹1,43,10,972/-. The Id. PCIT thereafter upon perusal of the assessment records observed that the assessee had debited depreciation of ₹10,39,45,438/- in the Profit and Loss account and also claimed depreciation of ₹1,23,67,510/- on account of re-valuation of assets under exceptional items. The Id. PCIT further noted that in the computation of book profit under MAT, the assessee added the depreciation of ₹11,63,12,948/- (₹10,39,45,438/- + 23,67,510/- and reduced the same amount of depreciation including the depreciation on re-valuation of assets. Thus, the Id. PCIT noted that the assessee reduced the depreciation of ₹1,23,67,510/- while computing the book profit which was not allowable as per the provisions of Section 115JB of the Income-tax Act, 1961. Thereafter, the Id. PCIT noted that the prima facie it appears that the issue has escaped the attention of the Id. AO as he did not consider the same while framing the assessment u/s 143(3) of the Income-tax Act, 1961 and therefore, the assessment order is erroneous and prejudicial to the interest of the Revenue. The Id. PCIT accordingly issued show cause notice u/s 263 of the Income-tax Act,

1961 on 31.03.2021, and finally revised the assessments by directing the Id. AO to frame the fresh assessment after considering the aforesaid observations by passing the order u/s 263(1) of the Act dated 31.03.2021 and directed the Id. AO to frame the fresh assessment after considering the aforesaid observations as contained in the order u/s 263(1) of the Act dated 31.03.2021.

5. The Id. Counsel for the assessee vehemently submitted before us that the issue of allowability of depreciation was specifically examined by the Id. AO during the original assessment proceedings. The Id. AR referred to the notice issued u/s 142(1) of the Act which is available at page no.20 of the Paper Book in which Para no.16, the Id. AO specifically called for the details of exceptional items debited amounting to ₹1,23,67,510/- and called upon the assessee to explain how the same was allowable. The Id. AR referred to the reply filed by the assessee in response thereto wherein it was submitted before the Id. AO vide letter dated 13.11.2017, which is available at page no.13 and 14 of the Paper Book and in para no.16, the assessee replied the said query of the Id. AO in detail by submitting as under:-

*"16. Furnish details of Exceptional items debited amount to Rs. 1,23,67,510/- and explain how the same is eligible for deduction In accordance with the requirements of Schedule II to the Companies Act, 2013, the Company reassessed the remaining useful life of tangible fixed assets with effect from 1st April, 2014. Accordingly, the carrying values as on that date (net of residual values) are depreciated over their assessed remaining useful lives. As a result of this change as on 1st April, 2014, the carrying amount of assets (after retaining the residual value) amounting to Rs. 12,367,510/-, where remaining useful life is nil as on that date, has been recognized in the Statement of Profit and Loss as an exceptional item. Further, the above amount (Depreciation as per Companies Act, 2013) has been added back to the Profit as per Statement of Profit and Loss while computing the Business Income eligible for deduction."*

6. The Id. AR therefore, prayed that the issue has been examined by the Id. AO in detail during the assessment proceedings and therefore, the Id. AO has taken a possible view and the jurisdiction u/s 263 of

the Act is not available to the Id. Pr. Commissioner of Income Tax. The case of the assessee find support from the decision of the Hon'ble Supreme Court in case of Principal Commissioner of Income-tax 1 vs. V-Con integrated Solutions (P.) Ltd. [2025] 173 taxmann.com 773 (Punjab & Haryana)/[2025] 476 ITR 522 (Punjab & Haryana)[12-09-2024], wherein it is held as under:-

**"5.** We find that the ITAT has examined the entire record. The ITAT has noticed that the Assessing Officer had raised several queries and had also demanded documents, the details of which have been mentioned in the ITAT order, which is quoted as under:-

*"12. So far as the issue relating to the issue of shares to the two companies namely M/s Takecare India Pvt. Ltd. And Videocon Realty infrastructure Ltd. Was concerned, the assessee explained that the AO had made adequate enquiries on this issue and various replies and details were furnished to the AO, considering which the AO has accepted the claim of the assessee. The Id. Counsel, in this respect has submitted that the AO had issued questionnaire dated 28.12.2020 wherein, the following details were asked for from the assessee, on this issue:*

- a). *Name and address of the shareholders.*
- b). *PAN of the shareholders, (c) Face Value of each share.*
- c). *Number of shares allotted to each shareholder*
- d). *Total value of the shares allotted to each shareholder.*
- e). *Payment received from each shareholder during the financial year.*

*2) Provide documentary evidence to substantiate the identity and ITR of the shareholders to substantiate creditworthiness the shareholders as well as the proof of genuineness of transaction in respect of fresh credit of the share capital account.*

*3) The valuation report with respect to the working of EPS.*

*4) The comparison of the working of EPS with the immediately prior instance, wherein the shares were allotted.*

*5) The year wise details of dividend declared during the year and three earlier years."*

**6.** Therefore, it is noted that the Assessing Officer had issued a questionnaire on 28.12.2020 and had also asked for documents, which were answered and furnished to the Assessing Officer by the assessee and the same were also informed to the PCIT, who ensued proceedings under Section 263 of the IT Act. However, PCIT have not pointed out any further enquires, which were required to be made by the Assessing Officer in this case, which have not been so made. The scope of Section 263 of the IT Act, is apparently to see whether the concerned Assessing Officer has failed to conduct a proper inquiry, and therefore, committed an error resulting in causing loss to the

revenue. Simply by holding that the Assessing Officer was required to make more enquiries, would not be a valid ground for treating the order of the Assessing Officer, as erroneous and prejudicial to the interests of the revenue. The power under Section 263 of the Act cannot be invoked in such circumstances by the PCIT. The order, therefore, passed by the PCIT is not sustainable in the eyes of law and the same has been quashed by the ITAT, which does not warrant any interference by this Court in appeal.

7. In view thereof, we do not find any substantial question of law has arisen in this appeal for consideration, as the factual aspects have completely and thoroughly been examined by the ITAT.”

7. Therefore, respectfully following the decision of Hon'ble Apex Court we are inclined to quash the order passed u/s 263 of the Income-tax Act, 1961 . The appeal of the assessee is allowed.
8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 26.02.2026.

Sd/-  
(PRADIP KUMAR CHOUBEY)  
(JUDICIAL MEMBER)

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Kolkata, Dated: 26.02.2026

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Kolkata