

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.1228/Bang/2025
Assessment year : 2017-18

Comer Industries India Pvt. Ltd., 16A, Bommasandra Industrial Area, Attibele Hobli, Anekal Taluk, Bangalore 560099 PAN: AAGCC 1941H	Vs.	The Deputy Commissioner of Income Tax, Circle 2(2)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Balasubramanyam, CA
Respondent by	:	Shri Shivanand Kalakeri, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	25.02.2026
Date of Pronouncement	:	27.02.2026

ORDER

Per Prashant Maharishi, Vice President

1. ITA No.1228/Bang/2025 is filed by Comer Industries India Pvt. Ltd (the assessee/appellant) for the assessment year 2017-18 against the revisionary order passed by the Id. Principal Commissioner of Income Tax [Id. PCIT] u/s. 263 of the Income Tax Act, 1961 [the Act] dated 25.03.2025 wherein it is held that the assessment order passed u/s.

143(3) r.w.s. 144C r.w.s. 144B of the Income-tax Act, 1961 [the Act] dated 20.7.2022 is erroneous and prejudicial to the interests of the revenue to the extent of the fact that there are penalties paid by the assessee which were disallowed in the audit report, but same were not added in the computation of income and further the amount of Rs.1,21,861 being the delayed remittances to the employees' contribution to ESI & PF required to be disallowed u/s 36(1)(va) of the Act has not been disallowed by the Id. AO.

2. Brief facts of the case show that assessee filed its return of income on 30.11.2017 at a total income of Rs.42,89,810. The case was selected for scrutiny for examination of the foreign outward remittances. The AO after examining the same passed the assessment order at a total income of Rs.7,06,21,175 which also included the TP adjustment of Rs.6,63,31,365 on account of Transfer Pricing (TP). This TP adjustment was also subjected to the direction of the Id. DRP.
3. On review of the records, the Id. PCIT found that as per Form 3CD assessee has paid contribution of Rs. Rs.1,21,861 being employees' contribution towards PF & ESI which were deposited beyond the due dates mentioned in the respective law has not been disallowed in the impugned assessment order. Further a sum of penalty paid by the assessee of Rs.3,81,590 was also not disallowed. The claim of the Id. PCIT in the show cause notice is that the Id. AO has completed this assessment without making any enquiry on these aspects. Therefore assessee was granted an opportunity of hearing by issuing show cause notice.

4. The assessee replied the same stating that the PF deduction was claimed in accordance with the then prevailing judgment of Hon'ble Supreme Court in the case of Rajasthan State Beverages Corporation Ltd. and further these contributions were paid within due date of filing the return u/s. 139(1) of the Act and accordingly the claim was correctly allowed.
5. With respect to the penalty, the assessee submitted that the amount of Rs.3,81,590 included a sum of Rs.3,77,493 being interest paid u/s. 234C of the Act which was never claimed by the assessee as a deduction. Further a sum of Rs.697 is interest paid on late deposit of TDS and further interest on delayed filing of Central Excise dues of Rs.3,400. It was stated that the disallowance on account of interest on TDS and interest on delayed filing of Central Excise is acceptable. However, disallowance of interest u/s. 234C of the Act cannot be disallowed.
6. The ld. PCIT found that the late deposit of employees' contribution to PF & ESI cannot be allowed as a deduction in view of the decision of the Hon'ble Supreme Court decision in the case of Checkmate Services Pvt. Ltd., Checkmate Services (P.) Ltd. vs. Commissioner of Income-tax-1 [2022] 143 taxmann.com 178 (SC)/[2023] 290 Taxman 19 (SC)/[2022] 448 ITR 518 (SC)[12-10-2022] therefore the ld. AO allowing the same without making any enquiry makes the order erroneous and prejudicial to the interests of the revenue.

7. With respect to the interest on TDS of Rs.697 and Rs.3,400 on account of delayed filing of Excise return as the assessee has accepted the same, the order becomes erroneous. Accordingly the ld. PCIT directed the ld. AO to revise the assessment order by making enquiries and verification of these aspects and make a fresh assessment in accordance with the law.

8. Assessee is aggrieved in appeal before us. The first contention of the ld. AR is ground No.2 wherein it was submitted that when the order is subjected to the direction of the ld. DRP, the ld. PCIT could not have invoked his powers u/s. 263 of the Act. Further, the second contention raised was with respect to the fact that during the course of hearing, the ld. AO has examined these facts and therefore when the ld. AO has allowed the claim of the assessee after examination, the assumption of jurisdiction by the ld. PCIT is not correct. It was further stated that the issue of deduction u/s. 36(1)(va) could not have been made subject to jurisdiction u/s. 263 of the Act for the reason that as on the date of assessment order, there was a jurisdictional High Court decision in favour of the assessee and therefore on this issue also as on that date of the assessment order, same could not have been disallowed. He further submitted that whether the order is erroneous or not is to be seen at the time of passing of the assessment order and not at the time of examination of the records by the ld. PCIT. Therefore, according to him, the invoking of jurisdiction u/s. 263 of the Act is not proper.

9. The Id. CIT(DR) vehemently supported the order of the Id. PCIT holding that the order passed by the Id. PCIT is correct as the Id. AO has not at all examined the claim of deduction of delayed deposit of PF of employees and further even the penalty which is accepted by the assessee clearly shows that the order is sustainable.
10. On the issue of deduction of employees contribution deposited late, the Id. CIT(DR) submitted that as on the date of examination of the records, there was a decision of the Hon'ble Supreme Court which clearly stated that such deduction is not allowable if contribution is not deposited during the prescribed time as per the respective Act. Therefore the order is to be seen with respect to whether it is erroneous or not at the time of examination of the records by the PCIT. He further submitted that the argument of the Id. AR that when the assessment order is passed by the AO on the direction of the DRP, it cannot be revised u/s. 263 of the Act is not supported by law. Even after the direction of the DRP also, it is a specified order passed by the Id. AO which is subject to revision u/s. 263 of the Act.
11. We have carefully considered the rival contentions and perused the orders of the Id. lower authorities. According to the provisions of section 263 of the Act, the Principal Commissioner of the Commissioner may call for and examine the records of any proceedings under this Act and if he considers that the order passed by the AO is erroneous sofaras it is prejudicial to the interests of the Revenue, he may either pass an order or direct the AO to carry out

certain enquiries and then pass the order. Such action is required to be taken only when the PCIT examines the record. In the present case, the Id. PCIT has assumed jurisdiction u/s. 263 of the Act by issuing notice holding that the Id. AO has allowed the claim of the assessee of Rs.1,21,861 being delayed deposit of employees contribution of PF.

12. So far as the issue of disallowance not made by the Id. AO of interest on TDS of Rs.697 and Rs.3,400 on account of delayed filing of Excise return as the assessee has accepted the same, the revisionary order is upheld on this issues.
13. Now that question is that as on the date when the assessment order was passed i.e. on 20-07-2022 the deduction is allowable to the assessee of employees contribution deposited late as per respective PF ESI Laws in view of the decision of Honourable Jurisdictional high court. However when the Id PCIT Examined the record Hon Supreme court passed order in case of Checkmate Services (P.) Ltd. vs. Commissioner of Income-tax-1 [2022] 143 taxmann.com 178 (SC)/[2023] 290 Taxman 19 (SC)/[2022] 448 ITR 518 (SC)[12-10-2022]. Therefore as on the date the Ld. PCIT Examined the Records assessee could not have been allowed the above deduction , however as on the date of the assessment order , it could not have been disallowed in view of the decision of Honourable Jurisdictional High court.
14. Per Section 263 of the Income-tax Act, 1961, the determination of whether an assessment order is erroneous and prejudicial to the interests of the revenue is to be made at the time the Principal

Commissioner or Commissioner (PCIT/CIT) examines the records for revision. Such 'records' may include information that was not before the Assessing Officer (AO) when the original order was passed, or even subsequent legal developments. The Hon'ble Supreme Court, in Commissioner of Income-tax vs. Shree Manjunathesware Packing Products & Camphor Works / [1998] 96 Taxman 1 (SC), directly addressed the meaning of the word 'record' in Section 263(1). The Court held that "the word 'record' used in section 263(1) would mean records as it stands at time of examination by Commissioner but not as it stands at time of order passed by Assessing Officer".

15. Further , If a decision by the Supreme Court or jurisdictional High Court, even if rendered after the original assessment order, clarifies the existing law and shows that the AO's order was contrary to or inconsistent with it, such an order can be considered erroneous and prejudicial to revenue. This is because the higher court merely expounds existing law, as held in CIT v. United Commercial Bank [1993] 201 ITR 162 (Calcutta) and CIT v. Shriram Development Co. [1986] 25 Taxman 341 (Madhya Pradesh).
16. Thus we do not find any infirmity in the order of the Id PCIT in holding that the order of the Id AO is erroneous and Prejudicial to the interest of revenue as on the date of examination of Records due to the decision of Honourable Supreme court in case of Checkmate Services [Supra} situation has changed about allowability of deduction of belated payment of employees contribution of PF.

17. The Second arguments raised by the Id AR is that the impugned Assessment order is passed by the Id AO pursuant to directions of the Ld Dispute resolution panel and therefore same could not be revised by the Id PCIT. he has relied up on several Judicial Precedents such as Barclays Bank PLC vs. Commissioner of Income-tax (International Taxation), Mumbai [2022] 139 taxmann.com 503 (Mumbai - Trib.), Birla Carbon India (P.) Ltd. vs. Principal Commissioner of Income-tax [2025] 178 taxmann.com 679 (Mumbai - Trib.), Bharti Axa Life Insurance Co. Ltd. vs. Deputy Commissioner of Income Tax, Circle-12(1)(2), Mumbai [2020] 116 taxmann.com 933 (Mumbai - Trib.).
18. Devas Multimedia (P.) Ltd. vs. Principal Commissioner of Income-tax, Bangalore [2019] 111 taxmann.com 494 (Karnataka)/[2020] 268 Taxman 150 (Karnataka)/[2019] 419 ITR 391 (Karnataka)[27-09-2019] has held that

"18. It is undisputed that Draft Assessment Order was notified by the AO in view of the fact that assessee's business involved International Money Transaction. Petitioner/assessee was entitled to have an opportunity to look into Draft Assessment Order. He had option either to accept or to submit objections on variations. If objections were filed, in such an event, the AO is required to forward Draft Assessment Order and objections raised by the petitioner – assessee before the DRP to examine the objections raised by the assessee. DRP drew proceedings and forwarded to the AO. Consequently, AO passed the Final Assessment Order. In this background, where assessment order has attained finality and respondent/Principal Commissioner is not permitted to invoke Section 263 of Act 1961 or not, sub-clause (c) of Explanation 1 of Section 263 of Act 1961 stipulates that there is a prohibition in respect of a particular circumstance, where respondent/Principal Commissioner shall not invoke Section 263 of Act 1961 whereas similar Clause is not forth coming in respect of the matter examined by DRP against Draft Assessment Order of the AO along with objections of the Assessee. Therefore, the contention of the petitioner that respondent does not have power to invoke Section 263 of the Act insofar as examination of Final Assesment Order along with Assessee's objection pursuant to the DRP decision, is untenable.

No-doubt DRP panel consists of three Commissioners and Principal Commissioner examining or sitting over decision of the DRP may not be appropriate. At the same time, one cannot lose sight off, of a statutory provision like Section 263 of Act 1961, unless and until Section 263 of Act 1961 prohibits to examine the Final Assessment order, pursuant to the DRP decision. One cannot go beyond the statutory provision and so also 'read' or 'add' words by the Courts while interpreting a statutory provision. Time and again, Supreme Court and other Courts have held that in a matter of interpretation of statutory provisions, Court cannot 'add any words or sentence'. Even if there is any ambiguity, at the best Court can read down or struck down such statutory provision. In the present case, reading of Section 263 of Act 1961, it is crystal clear that there is no bar for the Principal Commissioner to invoke Section 263 of Act 1961 to examine the Final Assessment Order passed by the AO pursuant to the DRP decision."

19. Thus we reject this argument also.
20. It is in the end submitted that the Id AO in pursuance of The Order u/s 263 has started roving inquiry and has gone beyond the issues raised in 263 orders. In view of This we direct the Id AO to restrict the assessment pursuant to that order to the extent of Disallowance late deposit of employees contribution of PF as well as the Penalty covered in the order u/s 263 of the act strictly.
21. Accordingly we uphold the revisionary order passed by the Id PCIT. In the result, the appeal by the assessee is dismissed.

Pronounced in the open court on this 27th day of February, 2026.

Sd/-

Sd/-

(SOUNDARARAJAN K.)
JUDICIAL MEMBER

(PRASHANT MAHARISHI)
VICE PRESIDENT

Bangalore,
Dated, the 27th February, 2026.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.