

आयकर अपीलीय न्यायाधिकरण में, हैदराबाद 'बी' बेंच, हैदराबाद  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad "B" Bench, Hyderabad**

श्री विजय पाल राव, माननीय उपाध्यक्ष एवं श्री मंजूनाथ जी, माननीय लेखा सदस्य  
**SHRI VIJAY PAL RAO, HON'BLE VICE PRESIDENT**  
**AND**  
**SHRI MANJUNATHA G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.1011/Hyd/2025  
(निर्धारण वर्ष/ Assessment Year: 2021-22)

Gopal Reddy Gattu, R/o. Hyderabad.  PAN : ABHPG8027D	Vs.	The Assistant Commissioner of Income-tax, Circle – 5(1), Hyderabad.
<b>(अपीलार्थी/ Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri T. Chaitanya Kumar, Advocate.
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Narendra Kumar Naik, CIT-DR (Appeared through Hybrid Mode)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	10.02.2026
घोषणा की तारीख/ Date of Pronouncement	:	04.03.2026

**ORDER**

**PER MANJUNATHA G., A.M :**

This appeal filed by the assessee is directed against the order  
of the learned Principal Commissioner of Income Tax (Appeals),

Hyderabad – 4, dated 28.01.2025, passed under Section 263 of Income Tax Act, 1961 (for short “the Act”) and pertains to the assessment year 2021-22.

2. The grounds raised by the assessee read as under :

*“1. The Principal Commissioner of Income Tax (PCIT) erred in assuming Jurisdiction under Section 263 of the Income Tax Act, 1961. The original assessment order passed under Section 143(3) was neither erroneous nor prejudicial to the interests of the Revenue. Therefore, the invocation of Section 263 by the PCIT is bad in law and deserves to be quashed.*

*2. The order passed under Section 263 is in violation of the principles of natural Justice as the appellant was not provided with a sufficient and proper opportunity to present their case. The appellant was deprived of the opportunity to substantiate the facts and provide relevant documentary evidence, which makes the order unsustainable in law.*

*3. The PCIT's findings that the original assessment order was erroneous and prejudicial to the interests of the Revenue are arbitrary, perverse, and based on mere conjectures and surmises. The original assessment was completed u/s 143(3) read with sec 144B of the IT Act estimating the income @5% on gross receipts of Rs. 270.73 crores.*

*4. The PCIT's erred in issuing show cause notice dated 21.10.2024 findings that the original assessment order was erroneous and prejudicial to the interests of the Revenue are arbitrary, perverse, and based on mere conjectures and surmises.*

*5. The exercise of revisionary powers under Section 263 by the PCIT is improper and not in accordance with law. The revisionary authority has failed to demonstrate how the original assessment order was erroneous, and the order under Section 263 is merely a difference of opinion, which does not warrant the invocation of such powers.*

*6. The directions issued by the PCIT for reassessment under Section 263 are without valid grounds and are based on an incorrect understanding of the facts and the law. The reassessment order, if passed, would result in a baseless and unwarranted demand, causing undue hardship to the appellant.*

*7. The directions issued by the PCIT for reassessment under Section 263 directing assessing officer make addition of Rs. 39,54,091/- and indirect income of Rs. 1,02,21,481/- credited into the Profit & Loss account is set a side to the Assessing officer.*

*8. The appellant to raise any additional grounds of appeal that may arise during the course of the hearing.”*

3. At the outset, there is a delay of 70 days in filing the captioned appeal before the Tribunal. The appellant has filed an affidavit explaining the reasons that, the impugned order under Section 263 of the Income Tax Act, 1961 was passed by the learned Principal Commissioner of Income Tax, Hyderabad-4 on 28.01.2025, revising the assessment made under Section 143(3) r.w.s. 144B dated 26.12.2022. As against the said order, he was required to file an appeal before the Tribunal within the statutory period of 60 days, i.e., on or before 31.03.2025. However, the appeal was e-filed on 09.06.2025, resulting in a delay of 70 days. He further explained that, he had engaged a regular Income Tax Practitioner (ITP) for handling tax matters and that on 15.02.2025, Form No. 36 and the memorandum of appeal were prepared on the instructions of his counsel and handed over to the said ITP for obtaining his signature and filing before the Tribunal. During the relevant period, the ITP had to travel out of Hyderabad for medical treatment and, in the process, Form No. 36 remained unattended and the filing could not be completed. The ITP also failed to

communicate the status of filing to him or the counsel. Subsequently, during the first week of June 2025, upon enquiry by him, it came to light that, the appeal was not filed. Immediately thereafter, he collected the signed copy and handed over to the counsel and the appeal was filed online on 09.06.2025, resulting in a delay of 70 days.

4. The appellant further submitted that, the delay in filing the appeal was neither intentional nor due to any negligence or lack of diligence on his part, but was solely on account of the health-related absence of the Income Tax Practitioner (ITP) and the communication lapse during the relevant period. He was under a bona fide belief that, the appeal had been filed within the prescribed time. It was also submitted that, the impugned order involves substantial questions of law and facts which require adjudication by the Tribunal and that, if the delay is not condoned, he would suffer irreparable loss. Therefore, he prayed that, since there was 'sufficient cause', the delay of 70 days in filing the appeal may kindly be condoned in the interest of substantial justice and the appeal be admitted for hearing on merits.

5. Ld. CIT-DR for the Revenue, Dr. Narendra Kumar, on the other hand, opposed the petition filed by the appellant for condoning the delay in filing of the appeal and submitted that, the appellant has not demonstrated 'sufficient cause' for the delay of 70 days. It was contended that, the reasons stated in the affidavit, namely the health-related absence of the Income Tax Practitioner and the communication lapse, do not constitute adequate grounds for condonation of delay. Therefore, it was prayed that, the petition for condonation of delay may be rejected.

6. We have heard both the parties and perused the petition and affidavit filed by the assessee seeking condonation of delay of 70 days in filing the appeal before the Tribunal. We find that, the reasons explained by the assessee appear to be genuine and bona fide and come under 'sufficient cause'. We further find that, the Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. MST Katiji, reported in 167 ITR 471, has laid down certain principles for condoning the delay and directed that a lenient approach should be followed to avoid dismissal of meritorious cases on technical grounds. Going by the principles laid down in MST Katiji (supra), and also considering the submissions of the

assessee, we condone the delay of 70 days in filing the appeal before the Tribunal and admit the appeal for adjudication.

7. The brief facts of the case are that, the assessee is an individual engaged in the business of trading in tractors under the name and style of “Balaji Automotives” on wholesale and retail trade. The assessee filed return of income for the A.Y. 2021-22 on 22.08.2022 declaring total income of Rs. 9,12,10,390/-. The case has been selected for scrutiny, and the assessment was completed under Section 143(3) of the Income Tax Act, 1961 on 26.12.2022 and assessed the total income at Rs. 13,58,63,970/- by estimating 5% net profit on the total turnover of Rs. 270,73,79,478/-. The A.O. had also made addition of Rs. 4,95,000/- under the head “Income from other sources” towards agricultural income claimed by the assessee.

8. The case has been subsequently taken up for revision proceedings and a show-cause notice under Section 263 of the Act, dated 14.10.2024 was issued and called upon the assessee to explain as to why the assessment order passed under Section 143(3) r.w.s. 144B of the Act, dated 26.12.2022 shall not be revised. In the said show cause notice, the learned PCIT had

observed that on verification of profit and loss account, it was observed that, in addition to sales of Rs. 270,73,79,478/-, direct income of Rs. 39,54,091/- and indirect income of Rs. 1,02,21,481/- were credited to the profit and loss account. While completing the assessment, these amounts were not added to the estimated income, resulting in short computation of income of Rs. 1,41,75,572/-. Therefore, the A.O. called upon the assessee to file his objections, if any, for proposed revision of assessment order.

9. In response to the show-cause notice, the assessee failed to attend the hearing and submit any documents. Therefore, the learned PCIT, after taking into account the relevant facts, observed that, the A.O. has completed the assessment and determined the total income at Rs. 13,58,63,970/- by estimating net profit of 5% on total turnover and making addition of Rs. 4,95,000/- under the head 'income from other sources' towards agricultural income claimed by the assessee. However, while completing the assessment, the A.O. failed to consider the direct and indirect income reported by the assessee and credited to the profit and loss account, aggregating to Rs. 1,41,75,572/-, which resulted in under-assessment of income. Therefore, the learned

PCIT observed that, the assessment order passed by the A.O. is not only erroneous, but also prejudicial to the interest of revenue. Thus, taking into account relevant facts and also by following certain judicial precedents, including the decision of Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. Vs. CIT, reported in (2000) 243 ITR 83 (SC), set aside the assessment order passed by the A.O. under Section 143(3) r.w.s. 144B of the Act dated 26.12.2022 and directed the A.O. to verify the issues with regard to direct income and indirect income credited into the profit and loss account and to pass a fresh assessment after affording a reasonable opportunity to the assessee.

10. Aggrieved by the order of learned PCIT, the assessee is now in appeal before the Tribunal.

11. The learned counsel for the assessee, Shri T. Chaitanya Kumar, Advocate, submitted that, the order passed by the learned PCIT under Section 263 of the Act, dated 28.01.2025 is bad in law, because the assessment order passed by the A.O. is neither erroneous nor prejudicial to the interest of the revenue. The learned counsel for the assessee further submitted that, the

assessment has been completed by rejecting the books of accounts and estimating net profit of 5% on total turnover. The assessee has challenged the assessment by filing an appeal before the Ld. CIT(A). Once the issue has been challenged before the appellate authority, then there is no power for the learned PCIT to revise the assessment order, as per clause (c), Explanation (1) to Section 263 of the Income Tax Act, 1961. The learned PCIT without appreciating the relevant facts simply set aside the assessment order passed by the A.O. Therefore, he submitted that, the order of the learned PCIT should be set aside. In this regard, he relied upon the decision of ITAT, Chennai Bench in the case of Karthi Ravan Anantalakshmi Vs. ACIT in ITA No. 340/Chny/2022 dated 03.08.2022.

12. The learned CIT-DR, Dr. Narendra Kumar Naik, on the other hand, submitted that, the assessment order passed by the A.O. is erroneous insofar as it is prejudicial to the interest of the revenue, because the A.O. has failed to consider the direct and indirect income reported by the assessee in the profit and loss account while completing the assessment, which is evident from the assessment order passed by the A.O., where the A.O. has assessed

the income by estimating 5% profit on total turnover and made addition towards agricultural income, but failed to assess direct and indirect income aggregating to Rs. 1,41,75,572/-. Further, the issue considered by the learned PCIT in the revision proceedings is not the subject matter of appeal before the Ld. CIT(A), because the assessee had only challenged estimation of net profit on total turnover. Therefore, the case law relied upon by the assessee i.e., *Karthi Ravan Anantalakshmi Vs. ACIT (supra)*, is not applicable to the facts of the present case and thus, should be rejected.

13. We have heard both parties, perused the material available on record and had gone through the orders of the authorities below. We have also carefully considered the relevant show-cause notices issued by the learned PCIT under Section 263 of the Income Tax Act, 1961 and the relevant assessment order passed by the A.O. under Section 143(3) r.w.s. 144B dated 26.12.2022. Admittedly, the assessment has been completed under Section 143(3) of the Act on 26.12.2022 and determined the total income at Rs. 13,58,63,970/-, which includes sum of Rs. 13,53,68,970/- being the income from business and profession and Rs. 4,95,000/- towards agricultural income assessed under the head

'income from other sources'. The A.O. determined the business income by estimating 5% net profit on total turnover of Rs. 270,73,79,478/- and assessed income from business of Rs. 13,53,68,970/-. While assessing the income from business and profession, the A.O. had only considered total turnover reported by the assessee without considering direct income of 39,54,091/- and indirect income of Rs.1,02,21,481/- even though the assessee has credited direct and indirect income to the profit and loss account, which is part of net profit reported by the assessee for the financial year under consideration. Since the A.O. has not considered the direct income of Rs. 39,54,091/- and other indirect income of Rs. 1,02,21,481/-, in our considered view, the assessment order passed by the A.O. is not only erroneous, but also prejudicial to the interest of the revenue, for the simple reason that, because of erroneous order passed by the A.O., the lawful revenue payable to the Government has been under-assessed. Although the learned counsel for the assessee argued that, once the matter is subject to an appeal before the Ld. CIT(A), then on the very same issue, the learned PCIT cannot assume jurisdiction in view of Explanation (1) to Section 263 of the Act,

but in our considered view, going by clause (c), Explanation (1) to Section 263 of the Act, it is very clear that, where any order referred to in sub-section (1) and passed by the A.O. had been the subject matter of any appeal, the powers of the PCIT under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal. From the above provisions, it is very clear that, only those issues which have been considered and decided in appeal cannot be revised by the learned PCIT in revision proceedings.

14. In the present case, going by the show-cause notice issued by the learned PCIT and the issues considered thereon, in our considered view, the issue considered by the learned PCIT with regard to direct income and indirect income, is not a subject matter of appeal before the Ld. CIT(A), because the assessee has only challenged the estimation of net profit on total turnover, which does not include the direct and indirect income reported by the assessee and not considered by the A.O. Therefore, the arguments of the learned counsel for the assessee in light of the decision of ITAT Chennai Bench in the case of Karthi Ravan

Anantalakshmi Vs. ACIT in ITA No. 340/Chny/2022 (supra), is devoid of merit and cannot be accepted.

15. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that, the assessment order passed by the A.O. under Section 143(3) r.w.s. 144B of the Act, dated 26.12.2022, is erroneous and prejudicial to the interest of the revenue. The learned PCIT, after considering relevant facts, has rightly set aside the assessment order by exercising powers conferred under Section 263 of the Act. Thus, we are inclined to uphold the order of learned PCIT passed under Section 263 of the Act, and dismiss the appeal filed by the assessee.

16. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 04<sup>th</sup> March, 2026.

<b>Sd/-</b> श्री विजय पाल राव <b>(VIJAY PAL RAO)</b> उपाध्यक्ष /VICE PRESIDENT	<b>Sd/-</b> (मंजूनाथ जी) <b>(MANJUNATHA G.)</b> लेखा सदस्य/ACCOUNTANT MEMBER
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Hyderabad, dated 04.03.2026.  
TYNM/sps

**आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	Gopal Reddy Gattu, E-Block, Flat No.101, Aditya Empress Towers, Aditya Empress Towers, Shaikpet Nala, Tolichowki, Golconda Post, Hyderabad.
2.	राजस्व/ The Revenue	:	The Assistant Commissioner of Income Tax, Circle 5(1), Hyderabad.
3.	The Principal Commissioner of Income Tax, Hyderabad.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Hyderabad