

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES 'A': NEW DELHI.**

**BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER  
and  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.2216/Del/2025  
(Assessment Year: 2017-18)**

**ITA No.2217/Del/2025  
(Assessment Year: 2018-19)**

**ITA No.2218/Del/2025  
(Assessment Year: 2019-20)**

Vaksons Metaplast Pvt. Ltd.,  
105, Barodia Tower, Central Market,  
D Block, Prashant Vihar, Sector 11,  
Rohini,  
New Delhi – 110 085.

vs.

PCIT (Central),  
Delhi – 1.

**(PAN : AAFCV0902J)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Smt. Rano Jain, Advocate  
Ms. Mansi Jain, CA  
Shri Tanishq Ahuja, CA  
REVENUE BY : Shri Amit Jain, CIT DR

Date of Hearing : 10.09.2025  
Date of Order : 05.12.2025

**ORDER**

**PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :**

1. These appeals are filed by the assessee against the order of the Learned Pr. Commissioner of Income-tax, Delhi-1 ["Ld. PCIT", for short] dated

17.02.2025, 18.02.2025 & 17.02.2025 for the AYs 2017-18, 2018-19 & 2019-20 respectively.

2. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order. We take up the assessee's appeal being ITA No.2216/Del/2025 for AY 2017-18 as lead case to adjudicate the issues under consideration.
3. Brief facts of the case are, a search and seizure action under section 132 of the Income Tax Act, 1961 (for short 'the Act') was carried out in the Hawala Traders Group of cases on 31.10.2018. A warrant of authorization u/s 132 of the Act was issued in the name of Shri Sumit Jindal on 31.10.2018. During the search and seizure action, business premise of Sumit Jindal was also covered. In the search proceedings, certain incriminating documents and materials in the form of soft data were found and seized. During assessment proceedings on perusal of soft data, the AO observed that incriminating documents related to the assessee. Accordingly notice under Section 153 C was issued and served on the assessee. Accordingly, assessee filed its original return of income under section 139 on 31.10.2018 declaring taxable income of Rs.8,94,302. In response to notice u/s 153C of the Act, assessee filed its return of income on 15.09.2021 declaring the same income as per original return of income. Subsequently, notices u/s 143 (2) and 142 (1) were

issued and served on the assessee. In response to above notices, assessee filed its written submissions wherein it was submitted that assessee has made purchases from Om Trading Company to the extent of Rs.1,59,96,530 and the same was sold on profit to other parties. It was agreed before the AO that both purchases and sales are bogus and assessee has received a commission of 0.50% on those transactions. After considering the submissions of the assessee and also recorded statement of Atul Jain, Director of the assessee company on oath u/s 132 (4)/133A of the Act on 14.06.2019 wherein he admitted that he was involved in booking bogus bills of purchases and sales, etc. from Sumit Jindal and his dummy entities. After considering the submissions of the Director of the assessee and other details available on record, the AO tabulated the non-genuine purchases and sales recorded by the assessee at page 10 of the assessment order and accordingly proceeded to make the addition @ 0.50% as unexplained expenditure u/s 69C of the Act.

4. Ld. PCIT (Central), Delhi-1 on perusal of the assessment record, observed that assessee had made bogus purchases of Rs.1,59,96,530 from Om Trading Company during the year and these purchases had been accounted for through non-genuine bills issued from the dummy entities controlled by Sumit Jindal based on the statement recorded from the Director of the assessee company that these purchases are bogus and no

transport bills are available on record. As purchases were non-genuine and bogus transactions were held to be non-genuine, he observed that purchases should have been added back u/s 69C of the Act and taxed as per the provisions of Section 115BBE in the assessment order u/s 153C of the Act dated 21.03.2023. However, the AO had added back only 0.50% of the transaction value u/s 69C of the Act. He further observed that notice u/s 153C of the Act was issued to the assessee on 20.07.2021 requiring it to prepare true and correct returns of total income within 10 days. Further no response to the above said notice, assessee had filed its ITR on 15.09.2021 after a delay of 2 months, declaring the same income as declared in the original return of income. No interest u/s 234A of the Act was charged in the computation of income with regard to delay in filing the return of income. In view of the above observations, Id. PCIT issued notice u/s 263 of the Act requiring the assessee to respond. In response, assessee has submitted reply vide letter dated 07.01.2025 and relevant extract of the letter is reproduced at pages 2 to 12 in the impugned order which is reproduced below :

“5. The assessee submitted reply on 07.01.2025, which is reproduced below:

"This is in reply to notice for hearing dated 04.12.2024, whereby your goodself has proposed to revise the order under section 153C dated 21.03.2023 passed by the Assessing Officer, holding the same be erroneous to the extent prejudicial to the interest of revenue.

Your honour has raised two issues, one of which reads from the notice as under: "From perusal of assessment record, it is observed that you have made

non-genuine purchases Rs.1,59,96,530/- from M/S Om Trading Company during the year and these purchases have been accounted for through non-genuine bills issued from the dummy entity M/s Om Trading Company of Sh. Sumit Jindal. In statements on oath dated 14.06.2019 and 26.07.2019, Sh. Atul Jain, Director of the assessee company, has admitted that these purchases are bogus and no transport bills are available. As purchases were non-genuine and the bogus transactions of Rs.1,59,96,530/- were non-genuine, purchases should have been added back u/s 69C of the Income Tax act, 1961 and taxed as per provisions u/s 115BBE. However, the AO had added back only Rs.79,982/- in lieu of commission which is 0.5% per transaction u/s 69C of the I. T. Act."

In respect of the above, following facts are necessary to be understood:

1. The assessee is a company, who filed its return of income for the relevant assessment year as on 31.10.2017, declaring income of Rs. 8,94,302/-
2. A notice under section 153C was issued to the assessee as on 20.07.2021.
3. In reply to the said notice, the assessee filed return of income as on 15.09.2021.
4. On the search and seizure operation conducted in the case of Sumit Jindal, certain incriminating documents/ material in the form of soft data was found and seized, on the basis of which, survey action under section 133A was conducted in the case of the assessee.
5. During the survey proceedings, statement of the director of the company, Sh. Atul Jain was also recorded. Copy of statement is placed in PB pg 33-47
6. In the statement recorded as on 15.06.2019, Sh. Atul Jain admitted that certain transactions of sale/purchase in Vakson Metaplast Private Limited are not genuine and these are bogus in nature.
7. In reply to Q. no. 14 (PB Pg.39), he stated that 'I used to get the bills through commission agent and I used to pay commission to obtain bills for the same'.
8. Further in reply to q. no. 15, Sh. Atul Jain deposed as under:  
  
'I also issued the sales invoice in the books to the various parties including the above parties. Through this, I used to circulate this money and receive back. '
9. So, in this manner it was clarified that the assessee company was getting both purchase as well as sale bills for commission.

10. The reason for getting these bills was clarified by Sh. Atul Jain in his statement recorded as on 26.07.2019, which has also been quoted by the Assessing Officer himself in the order at page 8 Para 5.3 (PB PG. 112), which reads as under:

“Q.6 Please tell for what purpose you have taken Non genuine Bills/entries?  
 Ans In both Vaksons Metaplast Private Limited and M/s Aditya Overseas, we had taken bank overdraft limits. As per the bank norms, the sales have to be 4 times of the 00 limit taken. The business was not flourishing. To sustain the bank loans, I have started taking the non genuine purchase bills of chana, Rajma, Dal, Urad Dal etc and started issuing the no genuine sales bills to the concerns related with M/s Aditya Overseas or M/s Vaksons Metaplast Private Limited. This resulted in increased sales, through which I kept the 00 of bank floating. I also furnished false statement in the bank as to the stock held by me on account of these bogus purchase. It was for the purpose of obtaining loans.”

11. From the above, it was clear that the assessee company had taken bogus bills for purchases in the year under consideration and only after taking into consideration the explanation given by the director of the assessee company, the Assessing Officer made an addition only on account of commission on the entries relating to purchases.

12. An addition of Rs.79,982/- was made by the Assessing Officer in his order dated 21.03.2023 (PB Pg. 115).

13. The assessee had filed the appeal against the said order before the CIT(A) as on 19.04.2023 (PB Pg. 122).

14. Now your goodself has issued notice of hearing under section 263 on the transactions which were there before the Assessing Officer during the assessment proceedings and the appeal against the said issue is pending before the CIT(A) as on today.

1. LEGAL ISSUE:

At the very outset, it is to be stated that proceedings initiated u/s 263 of the Act holding the assessment order so passed by the Ld. AO to be erroneous and prejudicial to the interest of the revenue, is completely against the facts of instant case of the assessee. In this regard, relevant provisions of section 263 of the act have been reproduced as under:

"263. (1) The [Principal Commissioner or] Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the [Assessing] Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Explanation 1.-For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,-

- (a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include-
  - (i) an order of assessment made by the Assistant Commissioner [or Deputy Commissioner] or the Income-tax Officer on the basis of the directions issued by the [Joint] Commissioner under section 144A,;
  - (ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or] Commissioner authorised by the Board in this behalf under section 120;
- (b) "record" shall include and shall be deemed always to have included] all records relating to any proceeding under this Act available at the time of examination by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or] Commissioner;
- (c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner 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.

Explanation 2.-For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,-

- (a) the order is passed without making inquiries or verification which should have been made;
- (b) the order is passed allowing any relief without inquiring into the claim;
- (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
- (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person .. "

(i) An issue being subject matter of appeal cannot be raised by the PCIT under section 263 of the Act: -

From the perusal of the facts narrated above, it can be seen that the order of Ld. AO passed on 21.03.2023 (PB Pg 105-116) was taken in appeal before the Ld. CIT(A) as on 19.04.2023 (PB Pg 122-126). It is also clear from the facts narrated above that the subject matter of the appeal was the commission on bogus purchases made by the assessee, same as has been raised by your honour in your jurisdiction under section 263 of the Act as the show cause notice under section 263 of the Act is issued as on 04.12.2024.

The provisions of Explanation-1 to sub-section (i) to section 263, clause (c) reads as follows:-

"where any order referred to in this subsection and passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] had been the subject matter of any appeal [filed on or before or after the 1st day of June, 1988] the powers of the [Principal Commissioner or] Commissioner 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.]"

The above explanation was inserted by the Finance Act, 1989, with retrospective effect from 1st June 1988. Earlier to that, two judicial views were prevailing, one endorsing the view that the Assessing Officer's order once being subjected to appeal before the CIT (Appeals), revision under section 263 of the Act is not tenable as the whole order gets merged into the appellate order. The other view was that the merger of the assessment order be treated as confined to the issues actually considered and decided in appeal only. With the Explanation (c) having been brought into the statute, the first view got superseded.

From the reading of the above it is too clear that a matter which subject of an appeal cannot be taken up by Ld. PCIT as a matter under section 263 of the Act. Since the appeal before the CIT(A) is pending, as such, the PCIT has no jurisdiction to revise the order, in view of Clause (c) of Explanation-1 to Section 263 of the Act, which provides that when appeal is pending before the Commissioner, the exercise of jurisdiction under Section 263 of the Act is barred.

Reliance is placed upon the judgment in the case of Smt. Renuka Philip vs. ITO (2018) 409 ITR 567 (Mad), the relevant paragraphs of which are extracted hereunder.....

Reliance is also placed on the following judgments: -

- CIT v. Vam Resorts & Hotels Pvt. Ltd., [2019] 418 ITR 723 (All), dt. 20.08.2019, Allahabad High Court
- Smt. Sainulaptheen Katheeja Umma v. ITO, I. T.A. No. 2641Chny12022, dt. 15.02.2023, ITAT Chennai

- ACC Limited, Cement v. CIT (LTU), ITA No. 35761Mum12019, dt. 08.07.2020, ITAT Mumbai

Honourable Delhi High court in [2012] 348 ITR 170 (Del) GURINDER MOHAN SINGH NINDRAJOG v. COMMISSIONER OF INCOME-TAX has visualized in para no 19 and 20 has laid down the guidance when the powers of the Commissioners, in various situations, are validly invoked. The Honourable High court held that ...

After considering all these judgments, in a recent decision, the Delhi bench of the ITAT in the case of Hari Mohan Sharma, Madan Mohan Sharma vs. ACIT, ITA No. 2953-541De112018 dt. 31.01.2019, summarised the situation as under:

"16. On the basis of the above decision following remedial matrix as per the law is as under :-

Sr. No.	Situation	Remedial Measures under the Income Tax Act
a	Assessing Officer may accept the return of income without making any addition or disallowance; or	U/s 147 of the act subject to limitations contained therein
b	the assessment is framed and the Assessing Officer makes certain addition or disallowance and in making such additions or disallowances, he deals with such item or items of income in the body of order of assessment but he under assessed such sums;	u/s 251 (1) (a) where the Assessing Officer had dealt with the issue in the assessment and was the subject-matter of appeal
c	Assessing Officer makes no addition in respect of some of the items, though in the course of hearing before him holds a discussion of such items of income	U/s 263 of the act
d	where the Assessing Officer inadvertently omits to tax an amount which ought to have been taxed and in respect of which he does not make any enquiry	u/s 147 of the act
e	where an item or items of income or expenditure, incurred and claimed is not at all considered and an assessment is framed, as a result thereof, a prejudice is caused to the Revenue,	u/s 263 of the act
f	where an item of income. which ought to have been taxed remained untaxed, and there is an escapement of income, as a result of the assessee's failure to disclose fully and truly all material facts necessary for computation of income.	u/s 147 of the act

ACIT Vs. Versatile Poly tech P. Ltd. ITA 2257/1088/Del/2018, dt. 15.03.2019

"35. Now, coming to the addition made by the CIT(A) amounting to 3,58,65,500/- by invoking the provisions of section 56(2)(viib) is concerned, it is an admitted fact that the Assessing Officer in the body of the assessment order has neither discussed this issue nor made any addition on this account. Under these circumstances, it has to be seen as to whether the Id. CIT(A) has jurisdiction to make such addition on an issue which was never considered by the Assessing Officer.

Although the powers of the CIT(A) are co-terminus with that of the powers of the Assessing Officer, yet, he has jurisdiction only on those items which have been considered by the Assessing Officer irrespective of the fact whether the issue is subject matter of appeal or not. However, in our opinion, he does not have any jurisdiction over an issue which has not been considered by the Assessing Officer. In case it is accepted that the Id. CIT(A) has power to consider an issue which was not considered by the Assessing Officer, then, the provisions of section 263 or 147 will become otiose."

In view of the above, as the same issue is pending adjudication before the CIT(A), your goodself does not have jurisdiction on the same under section 263 of the Act.

Not a case of no enquiry:

1.1. It is quite evident from the reading of the section that for invoking the provisions of section 263, the order passed by the A.O. has to satisfy both the conditions stated as under:

- i. Being erroneous, and
- ii. Being prejudicial to the interest of revenue.

It is a trite law that these twin conditions are must to be fulfilled simultaneously, in order to invoke the provisions of section 263.

1.2. The jurisdiction under section 263 cannot be exercised unless and until the Commissioner makes out that the impugned order of the Assessing Officer is erroneous and is also prejudicial to the interests of the Revenue. Both the preconditions are cumulative, concurrent and must co-exist. If one of it is lacking, the power to revise cannot be exercised.

1.3 "Erroneous" means suffering from errors or mistakes. If the Assessing Officer fails to make an enquiry into the truth of the facts stated in the return filed by the assessee before accepting the statement made by the assessee, his order can be said to be erroneous and the Commissioner may be justified to revise, if, facts are found to the contrary. It should not be an endeavor of the Commissioner of Income-tax to find one or other minor fault or mistake or lapse on the part of the Assessing Officer but the object should be to correct an

erroneous order, which may affect the tax administration as 'a whole and which involves prejudices to the income-tax administration.

1.4. In the instant case of the assessee, while initiating the proceedings u/s 263 of the Act, nothing has been brought on record evidencing the assessment order to be erroneous. Your honor, the dispute that resulted in initiation of proceedings u/s 263 of the act is simply due to a different view taken by the Assessing Officer while framing the assessment order. Thy Apex Court in the case of Malabar Industrial Co. Ltd. (supra) while considering the prerequisite for exercising power by the Commissioner under Section 263 of the Act, held as under:

“A bare reading of Section 263 of the Income Tax Act, 1961 makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner suo moto under it, is that the order of the Income-tax Officer is erroneous insofar as it is prejudicial to the interests of the revenue. The Commissioner has to be satisfied of twin conditions, namely, (i). the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue. If one of them is absent - if the order of the Income-tax Officer is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the Revenue - recourse cannot be had to Section 263(1) of the Act. The provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer; it is only when an order is erroneous that the section will be attracted.”

Similar view has been taken by the Bombay High Court in the case of Commissioner of Income Tax vs. Development Credit Bank Ltd., 323 ITR 83(SC), relevant paragraph of the same is extracted below:

“Held, dismissing the appeal, that there was no basis or justification for the Commissioner to Invoke the provisions of Section 263. The Assessing Officer after making an enquiry and eliciting a response from the assessee came to the conclusion that the assessee was entitled to depreciation on the value of securities held on the trading account. The Commissioner could not have treated this findings to be erroneous or to be prejudicial to the interests of the Revenue. The observation of the Commissioner that the Assessing Officer had arrived at a finding without conducting an enquiry was erroneous, since an enquiry was specifically held with reference to which a disclosure of details was called for by the Assessing Officer and furnished by the Assessing Officer and furnished by the assessee.”

Decision of Hon'ble Supreme Court in the case of Malabar Industries 243 ITR 83 and has propounded the following broader principle to judge the action of CIT taken under section 263.

(i) The CIT must record satisfaction that the order of the AD is erroneous and prejudicial to the interest of the Revenue. Both the conditions must be fulfilled.

- (ii) Sec. 263 cannot be invoked to correct each and every type of mistake or error committed by the AO and it was only when an order is erroneous that the section will be attracted.
- (iii) An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.
- (iv) If the order is passed without application of mind, such order will fall under the category of erroneous order.
- (v) Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the AO has adopted one of the courses permissible under law or where two views are possible and the AO has taken one view with which the CIT does not agree. It cannot be treated as an erroneous order, unless the view taken by the AO is unsustainable under law.
- (vi) If while making the assessment, the AO examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determine the income, the CIT, while exercising his power under s 263 is not permitted to substitute his estimate of income in place of the income estimated by the AO.
- (vii) The AO exercises quasi-judicial power vested in him and if he exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous simply because the CIT does not see stratified with the conclusion.
- (viii) The CIT, before exercising his jurisdiction under s. 263 must have material on record to arrive at a satisfaction.
- (ix) If the AO has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the AO allows the claim on being satisfied with the explanation of the assessee, the decision of the AO cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard.

As is clear from the facts narrated hereinabove, the only issue which has been discussed by Ld. AO in the assessment proceedings was with respect to the transactions taken by the assessee with the entity controlled by Shri Sumit Jindal who was involved in the business of bogus sale/purchase bills. During the assessment proceedings, Ld. AO issued various queries and show cause notices which were duly replied to by the assessee with the relevant documentary evidences.

The following were the proceedings at the time of assessment/survey: -

(i) As stated herein above, in the statement recorded at the time of survey (PB Pg. 33-47), the director of the assessee company had deposed that the company had purchased purchase bills on commission.

(ii) "In notice under section 142(1) dated 13.09.2022 (PB Pg. 57-61) specific question regarding the transactions with the entities controlled by Sh. Sumit Jindal was asked. The questionnaire also included a table with the names of entities controlled by Sh. Sumit Jindal.

(iii) The said notice was replied as on 17.10.2022 (PB Pg. 62-65), whereby the assessee gave para wise details of transactions done with the said entities.

(iv) The reply was accompanied by the bank statement highlighting the payment done and received from the entity in the year under consideration. (PB Pg.66-72).

(v) Details of party wise purchase and party wise sales was also given (PB Pg. 73-76).

(vi) Another notice under section 142(1) dated 07.12.2022 (PB Pg. 77-79) was issued again asking for the same transactions.

(vii) Said notice was replied vide letter dated 13.12.2022 (PB Pg. 86-87). The reply had clearly stated the modus operandi, as follows:

"In respect of the on-going proceedings u/s 153C, under the instructions of the Assessee, In this regards we respectfully submit the trading account with the alleged parties with date, bill number, item, quantity and amount of purchase and also the goods sold in the same pattern is enclosed herewith. Copy of ledger accounts of these alleged parties during the year under consideration are also enclosed herewith. Your honour will appreciate that assessee company has admitted both purchase and sales with these alleged Parties are just paper transactions and a commission of 0.50% has been paid for these transactions. From the perusal of the enclosed trading accounts, your honour will appreciate that assessee company has offered gross profit into trading accounts through transactions with these alleged company as such is no loss to the revenue rather more tax has been paid even after considering the commission of 0.50% on transactions with alleged firm as such no addition may kindly be made during the assessment year under consideration."

(viii) The reply was accompanied by ledger account of the concerned party, party wise details of purchase and corresponding sale, purchase register, sale register and stock register.

(ix) The said reply was also accompanied with the copies of trading account of the impugned entity, which clearly shows that the assessee is not earning anything on these transaction. Only in order to inflate the turnover for bank purposes the transactions were undertaken.

From the basis of above explanation and evidences brought on record the Assessing Officer chose to make addition on account of commission of purchase transactions.

The revisionary authority cannot step into the shoes of the AO and re-do assessment. In the present case the AO has taken view based on the facts and record produced by the assessee in respect of the transactions with Sumit Jindal controlled entities. The view taken by the AO based on the facts and record is a plausible view and such view cannot be held as erroneous and prejudicial to the interest of revenue so as to invoke revisionary jurisdiction u/s 263 of the Act.

Reliance is once again placed on:

- (i) Malabar Industrial Co. Ltd. v, CIT reported in [2000J 243 ITR 83 (SC)
- (ii) CIT (Central), Ludhiana v, Max India Ltd. reported in [2008J 166 Taxman 188 (SC)
- (iii) CIT v. Sunbeam Auto Ltd. reported in [2011J 332 ITR 167 (Delhi)
- (iv) DIT v. Jyoti Foundation reported in [2013J 357 ITR 388 (Delhi)

When the AO during the course of original assessment proceedings made extensive inquiries and was satisfied with the correctness of the claim of the assessee, on the basis of which he made addition of commission income, then the order passed by the AO cannot be held as erroneous so far as prejudicial to the interest of the revenue for want of inquiry. Once the AO has already conducted inquiry during the original assessment then the explanation (2) to section 263 cannot be interpreted in a manner to make inquiries unending.

When the AO has examined the issue, applied his mind and reached to a conclusion which is legally a plausible view then your goodself cannot invoke the provisions of section 263 merely, because you do not agree with the view of the AO.

The Hon'ble Delhi High Court in case of CIT vs, Sunbeam Auto Ltd. (supra) while dealing an issue of lack of inquiry and inadequate inquiry has held in para 12 as under:

"12. We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income-tax under section 263 of the Income-tax Act. As noted above, the submission of learned counsel for the revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to

give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry", that such a course of action would be open."

Similarly in case of DIT vs. Jyoti Foundation (supra) the Hon'ble Delhi High Court has reiterated its view in para 4 as under:

"4. Revisionary power under Section 263 of the Act is conferred by the Act on the Commissioner/Director of Income-tax when an order passed by the lower authority is erroneous and prejudicial to the interest of the Revenue. Orders which are passed without inquiry or investigation are treated as erroneous and prejudicial to the interest of the Revenue, but orders which are passed after inquiry/investigation on the question/issue are not per se or normally treated as erroneous and prejudicial to the interest of the Revenue because there visionary authority feels and opines that further inquiry/investigation was required or deeper or further scrutiny should be undertaken."

SECOND ISSUE:

In the notice, second issue raised by your goodself reads as under:

"It also been observed that a notice u/s 153C of the Income Tax Act was issued upon you on 20.07.2021 requiring to prepare true and correct return of total income within 10 days. However in response to the notice u/s 153C of the Act you filed your ITR on 15.09.2021 after a delay of 2 months, declaring an income of Rs.8,94,302. No interest u/s 234A of I. T. Act has been charged in the computation of income."

The issue of mistake in computing the interest under section 234A can at best be termed as a mistake apparent from record, which may be rectified under section 154 of the Act.

Provisions of section 263 give jurisdictional power whereas provisions of section 154 gives power of rectification. It will not be correct to say that "rectification" is equal to "revision" under the Act. Term "erroneous" used in the section 263 is to be read relating to jurisdictional error on the part of the Assessing Officer in exercise of his powers vested under the law. It cannot be read as to a "mistake" which is rectifiable under the provisions of section 154 either suo moto or on the for application of the assessee.

Error committed by the Assessing Officer must be an error of jurisdiction, for if the order is not kept confined to jurisdictional error, no distinction would be

left between the corrective powers conferred under section 154 and the revisionary powers exercisable under section 263.

If such a distinction between the corrective powers and revisionary powers is not recognized, every incorrect order would become amenable to revisionary jurisdiction and the fall out would be that revisionary jurisdiction would then become exercisable even in case where the provisions for rectification are attracted. Such an exercise of provisions of section 263 will lead to making the provisions of section 154 redundant.

Rectification u/s 154 can be done suo mota either by Assessing Officer himself or by the assessee on application. In the instant case, all the documents and details related to the impugned transaction were on record. We need to understand if such a mistake can lead to holding the order erroneous for the purpose of assuming jurisdiction u/s. 263 to invoke revisionary proceedings. The matter was open before Ld. AO to take appropriate measures for rectification of mistake apparent from records.

This issue in the present case is purely on facts which are verifiable from the records of the assessee, examination and verification of the original computation of income and tax placed on record. Further, considering the judicial precedent in the case of Malabar Industries Ltd. (supra), it is case of bonafide mistake committed by the Assessing Officer, which effectively does not result into prejudice caused to the revenue in the year under consideration. Accordingly, on this issue raised by your goodself in the revisionary proceeding, no action u/s. 263 of the Act is justifiable.

#### ON MERITS:

As stated herein above, under the facts, that the assessee itself has accepted the factum of taking entries on commission basis. However these bogus bills were purchased both on account of purchase. Therefore it cannot be said that the total amount of such bills pertaining to purchase transaction are undisclosed income of the assessee to be taxed under section 68,69A of the Act, as proposed by your goodself in the impugned notice.

It is to be understood that the assessee had filed during the assessment proceedings the trading account of the impugned entity to demonstrate that it has not earned any income on these transactions. The reason behind purchasing these bills was also explained to the Assessing Officer. Therefore in such a scenario at most an addition on account of commission is an appropriate addition.

Thus, in such circumstances, no adverse inference can be drawn under the garb of revisionary proceedings u/s 263 of the Act. Keeping in view the facts mentioned above and submissions along with various documentary evidences placed on record, your honor is requested to kindly drop the proceedings under section 263 of the Act."

6. I have considered facts of the case, the assessment order as well as submissions of the assessee. The first legal issue raised by the assessee is that an issue being subject matter of appeal cannot be raised by the PCIT under section 263 of the Act. It was submitted that the order of AO passed on 21.03.2023 was taken in appeal before the Ld. CIT(A) as on 19.04.2023 (PB Pg 122:126). It was clear that the subject matter of the appeal was the commission on bogus purchases made by the assessee and the same has been raised in the notice under section 263 of the Act. Reliance was placed upon provisions of Explanation-1 to Section 263 of I.T. Act as well as various judicial decisions.
5. After considering the submissions of the assessee, Id. PCIT reproduced paras 5 and 6 of the assessment order and also reproduced the statement recorded from Atul Jain, Director of the company on 26.07.2019 and after considering the above information from the assessment order, he observed that there is a categorical finding that certain incriminating materials were found and on analysis of the same, it was found that the assessee indulged in booking bogus purchases and sales of items, such as, chana, dal, rajma, etc. The non-genuine purchases have been made from Sumit Jindal and his dummy entities. During the course of survey proceedings, the statement of the Director of the assessee company was recorded on oath wherein he admitted that he was involved in booking bogus purchases and sales. Based on the above documentary evidences, the AO was required to add back these bogus purchases during the year under consideration as unexplained expenditure u/s 69C of the Act. By relying on the decisions of N.K. Proteins Limited vs. CIT (2017-TIOL-23-SC-IT), Daniel Merchants Private Limited vs. ITO (Appeal No.2396/2017 dated 29.11.2017), Malabar Industrial Company Limited

vs. CIT (2000) 243 ITR 83 (SC), he came to the conclusion that the AO passed the order which is erroneous as well as pre-judicial to the interest of Revenue and he should have made the bogus purchases u/s 69C of the Act. He further observed that not only Director of the assessee company admitted in his statement on oath with regard to bogus purchases and also furnished the details for the same. After giving adequate opportunities to the assessee and assessee has no say in this matter and default is admitted, accordingly by relying on the cases as discussed above, he proceeded to enhance the disallowance u/s 69C of the Act for the assessment year under consideration i.e. 2017-2018 at Rs.1,59,96,530/- instead of Rs.79,982/-.

6. Aggrieved, assessee is in appeal before us raising following grounds of appeal:-

“1. On the facts and circumstances of the case, the order passed by the learned Pr. Commissioner of Income Tax (CIT) under Section 263 of the Act is bad, both in the eye of law and on facts.

2. On the facts and circumstances of the case, the order passed by the learned Pr. CIT assuming jurisdiction under section 263 is bad in law in the absence of twin conditions of the order passed by the A.O. being erroneous as well as prejudicial to the interest of the Revenue having been satisfied.

3. On the facts and circumstances of the case, the order passed by the learned Pr. CIT has erred in rejecting the contention of the assessee that his action of assuming jurisdiction under section 263 is bad in law, as the issues raised in show cause notice under section 263, already being a matter pending before the Commissioner of Income Tax (Appeals) [CIT(A)], the jurisdiction under section 263 is in violation of Clause (c) of the Explanation under sub section (1) of section 263.

4. (i). On the facts and circumstances of the case, the learned Pr.CIT has erred both on facts and in law in ignoring the fact that the issues raised by him

in notice under Section 263 were before the A.O. and as such the jurisdiction on these issues under Section 263 cannot be assumed by him.

(ii). That the learned Pr.CIT has erred both on facts and in law in ignoring the contention of the appellant that the proceeding under Section 263 cannot be used for substituting opinion of the A.O. by that of the Pr.CIT.

5. (i) On the facts and circumstances of the case, the learned Pr.CIT has erred both on facts and in law in enhancing the income of the assessee by Rs.1,59,96,530/- on account of purchases held to be bogus.

(ii) That the Id. Pr.CIT has erred ignoring the fact that the assessee having declared the bogus sales also, enhancement will lead to double taxation of the same income.

6. (i) On the facts and circumstances of the case, the learned Pr.CIT has erred both on facts and in law in directing the Assessing Officer to recompute the interest under section 234A of the Act.

(ii) That the re-computation of interest under section 234A may at most be a matter of rectification under section 154 of the Act, not of revision under section 263 of the Act.

7. At the time of hearing, Id. AR of the assessee submitted that assessment was completed u/s 153C of the Act and during search proceedings, certain incriminating material was found. Accordingly, assessment proceedings were initiated in the case of the assessee. During assessment proceedings, Director of the assessee company agreed on oath that both purchases and sales are bogus and he has accepted that he has earned 0.50% as commission on both the transactions. Further she submitted that aggrieved with the order passed u/s 153C of the Act, assessee filed an appeal before the Id. CIT (A) on 19.04.2023 and she had filed form 35 at

pages 117-121 of the paper book in support of the issues pending before the ld. CIT (A). She submitted that as the issues under consideration are already pending before ld. CIT (A), ld. PCIT has no jurisdiction to proceed jurisdiction u/s 263 of the Act. In this regard, she brought to our notice page 124 of the paper book wherein notice u/s 263 was placed on record and ld. PCIT has initiated the proceedings on the same issue on which assessee has filed the appeal before the ld. CIT (A). Further she brought to our notice page 28 of the paper book which is exactly on the same issue which was raised by the AO. Further she brought to our notice page 105 of the paper book wherein AO has discussed the exactly similar issue and she also brought to our notice page 122 of the paper book which is the grounds of appeal raised before the ld. CIT (A) and the issues raised by the assessee are exactly on the same issue on which proceedings u/s 263 are initiated. She prayed that proceeding initiated u/s 263 is bad in law as per the provisions of Section 263 of the Act.

8. On the other hand, ld. DR of the Revenue relied on page 8 of the impugned order wherein ld. PCIT has discussed the whole facts on record and accordingly he supported the findings of the ld. PCIT and justified that proceedings initiated are proper. Further he submitted that ld. PCIT has not only raised the issue of bogus purchases and also raised the issue of not charging interest u/s 234A of the Act.

9. Considered the rival submissions and material available on record. We observed that during search proceedings, certain incriminating material was found in the case of Sumit Jindal. Based on the incriminating material, proceedings u/s 153C were initiated in the case of assessee. During assessment proceedings, Director of the assessee company accepted the fact that he has taken accommodation entries from Sumit Jindal, both purchases as well as sales. In that process, he has only earned 0.50% of the value of the transactions. Based on the above findings, the AO has restricted the addition to the extent of income earned by the assessee. Accordingly, AO has completed the assessment proceedings u/s 153C of the Act. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A) and assessee has brought on record details of filing the appeal before the Id. CIT (A) in the paper book. Since the issue of bogus purchases and accommodation entries of sales on which proceedings were initiated u/s 153C are under challenge before the Id. CIT (A), during verification of the assessment record, the Id. PCIT has initiated the proceedings u/s 263 of the Act on the same issue. As per the provisions of the Sections 263, Explanation 1(c) of the Act where it clearly states that any order passed by the AO had been the subject matter of any appeal, powers of the PCIT/Commissioner under this sub-section shall extend to such matters as had not been considered and decided in

such appeal. Therefore, in the present case, the issue raised by the ld. PCIT in Section 263 proceedings are exactly similar to the issue raised by the assessee before the ld. CIT (A) and since the appeal was not disposed off at the stage, the issue under consideration is challenged before the ld. CIT (A), it can be considered that the ld. CIT (A) had not been considered at this stage. Therefore, initiation of proceedings u/s 263 of the Act in the present case is bad in law. Therefore, we are inclined to quash the proceedings initiated u/s 263 of the Act. We further observed that the incriminating material found during the search not only discloses the details of bogus purchases and also disclosed details about bogus sales. Ld. PCIT is silent on this aspect.

10. Further we observed that Assessing Officer had not dealt with the issue of section 234A of the Act, this issue is not raised or any discussion in the issues raised before the ld. CIT (A). This issue being new, we are inclined to stay the proceedings initiated by ld. PCIT. Therefore, we are inclined to allow partly the grounds raised by the assessee.
11. In the result, the appeal, filed by the assessee is partly allowed.
12. With regard to appeals for the AYs 2018-19 & 2019-20, since the facts are exactly similar to AY 2017-18 our above findings in AY 2017-18 are applicable *mutatis mutandis* in Assessment Years 2018-19 & 2019-20.

Accordingly, the appeals filed by the assessee for Assessment Years 2018-19 & 2019-20 are partly allowed.

13. To sum up : all the appeals filed by the assessee are partly allowed.

**Order pronounced in the open court on this 5<sup>th</sup> day of December, 2025.**

**Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**sd/-  
(S.RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

**Dated : 05.12.2025  
TS**

Copy forwarded to:

1. Appellant
2. Assessee
3. CIT
4. CIT(Appeals).
5. DR: ITAT

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**