

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No. 1227/AHD/2025
Assessment Years: 2020-21**

Shalby Ltd., Shalby Hospitals, Opp. Karnavati Club, Sarkhej Gandhinagar Highway, Ahmedabad, Gujarat - 380015 [PAN – AAICS5593B] (Appellant)	Vs.	Principal Commissioner of Income Tax, Ahmedabad-3 Ahmedabad - 380015 (Respondent)
Assessee by	Shri Aseem Thakkar, AR	
Revenue by	Shri R P Rastogi, CIT-DR	
Date of Hearing	23.02.2026	
Date of Pronouncement	26.03.2026	

ORDER

PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of Principal Commissioner of Income Tax, Ahmedabad – 3, [hereinafter referred to as ‘PCIT’], dated 30.03.2025 for the Assessment Year (A.Y.) 2020-21 in the proceeding u/s. 263 of the Income Tax Act.

2. The brief facts of the case are that the assessee had filed its return of income for A.Y. 2020-21 on 28.05.2021 declaring total income of Rs.6,83,24,890/-. The case was selected for complete scrutiny under CASS. In the course of assessment of the AO had made disallowance of Rs. 35,96,047/- on account of deduction claimed under section 80G of the

Act. The assessment was completed under section 143(3) on 27.09.2022 at total income of Rs.7,19,20,937/-. Subsequently, the case record was called for and examined by the PCIT. He found that the assessee had made payment of Rs. 3 crores to “All India Social Education and Charitable Trust” (hereinafter referred as “AISECT”) towards CSR activity, which was claimed as deduction under section 80G of the Act. A search action u/s. 132 of the Act, was conducted on political parties and charitable organisation groups in March 2021 and AISECT was also covered in the search action. It was found that this assessee was engaged in bogus donation scheme. The donations received through banking channels used to be returned back after charging a commission. Therefore, the donation of Rs. 3 crores made by the assessee to AISECT Trust was not genuine and, therefore, the deduction claimed by the assessee u/s. 80G of the Act, in respect of donation made to this entity was liable to be disallowed. Since the Assessing Officer did not examine this issue and allowed the deduction in respect of donation made to this party vis-à-vis the MAT income, the order of the AO was held to be erroneous and prejudicial to the interest of the revenue.

2.1 Another issue in respect of which the order of the AO was held to be erroneous and prejudicial to the interest of the revenue, was not invoking the provision of Rule 8D of IT Rules for disallowing the expenses incurred for earning of exempt income. The Ld. PCIT had noticed that the assessee had earned exempt income of Rs. 25,28,041/- as profit from investment in firm/LLP and 1% average value of investment was liable to be disallowed under Rule 8D r.w.s. 14A of the act, which was not made by the AO. Accordingly, the Ld. PCIT had set aside the assessment order passed by the AO under section 143(3) of the Act, dated 27-9-2022 with

a direction to pass fresh assessment order after re-examining these two issues.

3. Aggrieved with the order of the Ld. PCIT, the assessee is in appeal before us. The following grounds have been taken in this appeal:

1. *The Learned Pr. Commissioner of Income Tax, Ahmedabad -3 has erred in passing an order u/s 263 of the IT Act 1961 setting aside the Assessment Order passed us. 143(3) rows 144B of the IT. Act. 1961 did 27.092022 which is neither erroneous nor prejudicial to the interest of the Revenue*
2. *The Learned Pr Commissioner of Income Tax, Ahmedabad-3 has erred in passing an order u/s 263 of the IT Act, 1961 since the issues sought to be revised have been examined in the assessment proceedings hence the same being illegal and bad in law requires to be quashed.*
3. *The Learned Pr Commissioner of Income Tax Ahmedabad 3 has erred in not appreciating the fact that all information and related material and evidences had been furnished at the assessment stage relating to the issues raised in the revision proceedings. The A.O after examining the evidences and other material considering the same after due application of mind has passed the assessment order*
4. *The Learned Pr Commissioner of Income Tax, Ahmedabad 3 has erred in invoking revisionary powers u/s 263 of the Act for making disallowance of Donation of Rs.3 Crores given to political parties claimed as CSR expenses under CSR activity and for making addition of the same to MAT income though the deduction claimed by the appellant us.800 of the Act has already been disallowed by the Assessing Officer in assessment order passed u/s.143(3) rws 144B of the IT Act, 1961.*
5. *The Learned Pr. Commissioner of Income Tax, Ahmedabad 3 has erred in invoking revisionary powers u/s 263 of the Act for making disallowance of Rs 33,83,655 u/s 14A rwr8D of the IT. Rules 1962 in respect of exempt income of Rs 25,28.041-as profit from m investments in firms/LLPs though the said issue has already been examined by the Assessing officer at the time of assessment proceedings for the year under appeal.*
6. *The appellant craves leave to add, alter, amend or modify any of the grounds of appeal on or before the date of hearing of appeal.*

4. Shri Aseem Thakkar, the Ld. AR of the assessee submitted that both the issues on which the Ld. PCIT had passed the revisional order u/s 263 of the Act, were duly examined by the AO in the course of assessment proceeding. He explained that CSR expense of Rs. 3 crore was duly explained before the AO and it was contended that only the donation towards CSR activity made to Swachh Bharat Kosh and Clean Ganga Fund were liable to be disallowed under section 80G of the Act. Still, the AO had made disallowance of Rs. 35,96,047/- in respect of the donation claimed under section 80G of the Act made to All India Social Education and Charitable Trust. He submitted that the Ld. PCIT was not correct in directing that amount of Rs. 3 crores paid towards CSR activity was required to be disallowed and added back to MAT income. According to the Ld. AR, the Ld. PCIT was not categorical in recording as to whether the assessment order was erroneous and prejudicial to the interest of revenue with reference to normal computation of income or with regard to the MAT provision. He submitted that the CSR expense cannot form part of adjustment to the book profit as held by Hon'ble Delhi High Court in the case of *PCIT Vs. Sony India Pvt. Ltd.* (167 taxmann.com 549). On the issue of disallowance under section 14A of the Act, the Ld. AR pointed out that no addition in the book profit could be made on the basis of calculation worked out under section 14A read with the Rule 8D of the Rules. In this regard we relied upon the decision of Hon'ble Gujarat High Court in the case of *PCIT Vs. Gujarat Fluorochemicals Limited* (155 taxmann.com 135).

5. Per contra, Shri R P Rastogi, Ld. CIT-DR submitted that the issue was not the disallowance of CSR expense. He explained that pursuant to the search conducted on All India Social Education and Charitable Trust

it was evident that the expense of Rs. 3 crores as incurred by the assessee was bogus in nature, which would have an impact on the book profit of the assessee. Considering this aspect, the case law relied upon by the assessee was not applicable to the facts of the present case. On the issue of disallowance u/s. 14A read with Rule 8D of the Act, the Ld. CIT-DR submitted this aspect was not examined by the AO at all. Hence, the Ld. PCIT had rightly held that the order of the AO was erroneous and pre-judicial to the interest of revenue. He, therefore, strongly supported the order of the Ld. PCIT.

6. We have carefully considered the rival submissions. There is no dispute to the fact that the assessee had debited an amount of Rs. 3 crores in respect of CSR expense paid to AISECT. The assessee had claimed deduction u/s 80G of the Act in respect of this donation of Rs. 3 crores made to AISECT. The deductible amount at the rate of 50% was Rs. 31,02,337/- of the qualifying amount of Rs. 62,04,674/- which was disallowed by the AO. However, the book profit of the assessee was worked out after claiming deduction for CSR expenses of Rs. 3 crores as debited to the account. The contention of the assessee is that no adjustment on account of CSR expenses could have been made to the book profit for computation of MAT liability.

7. The basic issue to be decided in the present appeal is whether the order of the AO was erroneous or prejudicial to the interest of revenue. So far as the CSR expense is concerned, the amount of Rs. 3 crore was added in the computation of income and the assessee had only claimed deduction u/s 80G of the Act in that respect, which was disallowed by the AO. The Ld. PCIT has treated the order of the AO as erroneous

and prejudicial to the interest of the revenue on this issue for the reason that this amount should have been disallowed and added to MAT income as well. The adjustment to the book profit is required to be made in accordance with the provision of section 115JB of the Act and the CSR expense being not covered in the Explanation to the said section, couldn't have been added back. It has been held by Hon'ble Delhi High Court in the case of *Sony India Private Ltd. (supra)* that the CSR expense could not be excluded from the final accounts for the purpose of determining book profit under section 115JB of the Act. Further, the Hon'ble Supreme Court has held in the case of *Apollo Tyres Limited (122 Taxman 562)* that the AO does not have the jurisdiction to go behind net profit shown in the P&L account except to the extent provided in section 115J of the Act. The Supreme Court had categorically held that the Assessing Officer had no authority to reopen accounts of a company which were certified by auditors of the company as having been maintained in accordance with the provisions of the Companies Act and that he had limited power of making additions and reductions as provided for in Explanation to the said section.

8. In view of the law as laid down by the Hon'ble Supreme Court, the AO could not have disturbed the book profit and the adjustment on account of CSR expenses could not have been made as per Explanation to section 115JB of the Act. Thus, the AO could not have made any adjustment to the MAT income in respect of CSR expense and therefore, the order of the AO could not have been held as erroneous and prejudicial to the interest of revenue on this issue vis-à-vis MAT income.

9. As regarding disallowance under section 14A read with rule 8D of the Rules, this aspect was not examined by the AO while completing the assessment. However, the undisputed fact is that the assessee had discharged its tax liability for the current assessment year under the MAT provision under section 115JB of the Act. The Hon'ble Gujarat High Court has held in the case of *Gujarat Fluorochemicals Limited (supra)* that no addition in the book profit could be made on the basis of calculations worked out under section 14A of the Act. Therefore, even if certain disallowance is made in accordance with Rule 8D, that addition cannot be imported to the book profit of the assessee. Since the assessee was having only tax liability on the book profit in the current year, the omission of the AO in not considering the provision of Rule 8D of the Act cannot be held as prejudicial to the interest of revenue.

10. In view of the above facts and discussions, the order of the Ld. PCIT cannot be sustained for the reason that the basic condition that the order of the AO should be erroneous and prejudicial to the interest of the revenue, is not found fulfilled in the present case. Therefore, the order of the Ld. PCIT passed u/s 263 of the Act dated 30/03/2025, is quashed.

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

Order pronounced in the Court on 26/03/2026 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member
Dated – 26th March, 2026

Neelesh, Sr. PS

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

(True Copy)

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2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
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