आयकर अपीलीय अधिकरण, मुंबई पीठें, मुंबई
INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCHES, MUMBAI

BENCH: F

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

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<tr><td colspan="3">**ITA 1107/MUM/2026**
निर्धारण वर्ष/Assessment Year: **2021-22**)</td></tr>
<tr><td>**M P Trading Company**
501-502, Swami Samarth Prasad, Lokhadwala, Circle, Andheri West, Mumbai-400069, Maharashtra</td><td rowspan="2">**Vs.**</td><td>**PCIT, MUMBAI - 20**
Room No.418, Piramal Chambers, Lalbaug, Mumbai 400012 Mumbai-400012, Maharashtra</td></tr>
<tr><td>अपीलार्थी **Appellant**</td><td>प्रत्यर्थी **Respondent**</td></tr>
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<tr><td colspan="2">Permanent Account Number of Assessee:</td><td>**ABHFM9494Q**</td></tr>
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<tr><td colspan="2">अपीलार्थी द्वारा/Appellant represented by:</td><td>**Shri Vimal Punmiya**</td></tr>
<tr><td colspan="2">प्रत्यर्थी द्वारा/Respondent represented by:</td><td>**Shri Nishant Samaiya (CIT-DR)**</td></tr>
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सुनवाई की तारीख / Date of conclusion of hearing:	**07/06/2026**
घोषणा की तारीख / Date of pronouncement:	**04/08/2026**

आदेश / ORDER

PER SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER:

This appeal is filed by the assessee against the order of the learned Principal Commissioner of Income Tax, Mumbai-20 [Ld. PCIT], dated 27-03-2025 passed u/s 263 of the Act for the assessment year 2021-22.

2. At the outset, it is noticed from the appeal record that there is a delay of 244 days in filing the appeal before the Tribunal.

3. Ld. Counsel for the assessee referred to the affidavit dated 27.05.2026 and submitted that the reasons for the delay have been explained in paragraphs 1 to 11 of the affidavit, which are reproduced hereunder:

> *"1. That I am the Partner of the assessee firm and am well conversant with the facts and circumstances of the present case and hence competent to swear this affidavit.*
>
> *2. That the present appeal before the Hon'ble Income Tax Appellate Tribunal has been filed against the order passed under section 263 of the Income Tax Act, 1961 by the Learned Principal Commissioner of Income Tax, Mumbai 20 dated 27.03.2025.*
>
> *3. That the present appeal before the Hon'ble Tribunal has been filed on 30.01.2026 and there is a delay of 244 days in filing the present appeal before the Hon'ble Tribunal.*
>
> *4. That the delay in filing the appeal was neither intentional nor deliberate but occurred due to bonafide reasons and circumstances beyond the control of the assessee. The assessee is engaged in business activities and is not well versed with the technical legal provisions and appellate remedies available under the Income Tax Act, 1961. The assessee was under a genuine and bonafide belief that once the order under section 263 of the Act had been passed and the consequential proceedings before the Assessing Officer were pending, no separate appeal could be preferred before the Hon'ble Income Tax Appellate Tribunal against the revisionary order itself.*
>
> *5. That thereafter, the assessee approached and consulted legal counsel for the purpose of examining the legal remedies available in the matter. During the course of such professional consultation and legal examination of the records, During the course of such professional consultation and legal examination of the records, the assessee was advised and informed for the first time that an independent statutory remedy of appeal was also available before the Hon'ble Income Tax Appellate Tribunal against the revisionary order passed under section 263 of the Act.*
>
> *6. That prior to such legal consultation, the assessee had absolutely no knowledge or understanding regarding the maintainability of appeal before the Hon'ble Tribunal against an order passed under section 263 of the Act. The assessee was under a mistaken but bonafide impression that the grievance against the order under section 263 could only be agitated in proceedings arising from the consequential assessment order.*

7. That immediately upon becoming aware of the correct legal position and availability of appellate remedy, the assessee collected the necessary records and documents and took prompt and diligent steps for filing the present appeal before the Hon'ble Tribunal without any further delay. The appeal thereafter came to be filed on 30.01.2026.

8. That the delay has thus occurred solely on account of bonafide ignorance of the legal remedy available to the assessee and not on account of any wilful negligence, inaction or malafide intention. The assessee has throughout acted in a bonafide manner and has a good case on merits which deserves consideration by the Hon'ble Tribunal.

9. That if the delay in filing the present appeal is not condoned, the assessee would suffer grave and irreparable hardship and prejudice. On the other hand, no prejudice whatsoever would be caused to the Revenue if the delay is condoned and the appeal is admitted for hearing on merits. It is a settled principle of law that substantial justice should prevail over technical considerations.

10. That the assessee craves leave to rely upon such further facts and submissions as may be necessary at the time of hearing of the present condonation application.

11. That in the interest of substantial justice, the delay of 244 days in filing the present appeal may kindly be condoned."

4. Heard rival submissions and perused the affidavit filed by the assessee. On consideration of the reasons explained in paragraphs 1 to 11 of the affidavit, we are satisfied that the assessee was prevented by sufficient/reasonable cause from filing the present appeal within the prescribed period. The delay does not appear to be deliberate or intentional. In the interest of substantial justice, we condone the delay of 244 days in filing the present appeal and admit the appeal for adjudication on merits.

5. The assessee in its appeal has raised the following grounds:-

"1) The Ld. Principal Commissioner of Income Tax erred in passing the order under section 263 of the Income Tax Act, 1961 in spite of the fact that the assessment order was neither erroneous nor prejudicial to the interest of the

revenue. The Ld. Principal Commissioner of Income Tax erred in ignoring all the relevant facts and legal precedents cited by the appellant in support of its claim that in the facts and circumstances prevailing in the case of the appellant, no action under section 263, was called for because the two view are possible and the Ld. AO had adopted the view in favour of assessee.

2) On the facts and circumstance of the case and law, the Ld. Principal Commissioner of Income Tax erred in passing order u/s 263 and thereby disallowed the 100 percent of genuine purchases of Rs.6,30,18,770/- under section 69C of the Income Tax Act, 1961 as unexplained expenditure. On the facts and circumstance of the case and law, the Ld. Principal Commissioner of Income Tax erred in passing order u/s 263 and thereby disallowed the 100 percent of genuine purchases of Rs.6,30,18,770/- under section 69C of the Income Tax Act, 1961 as unexplained expenditure.

3) On the facts and circumstance of the case and law, the Ld. Principal Commissioner of Income Tax erred in passing order u/s 263 and thereby added the entire amount of Rs.3,53,87,270/- under section 41(1) of the Income Tax Act, 1961"

6. The assessee also filed the following additional grounds:-

"ADDITIONAL GROUND OF APPEAL BEFORE ITAT

1. On the facts and in the circumstances of the case and in law, the Learned Principal Commissioner of Income Tax erred in invoking and exercising jurisdiction under section 263 of the Income Tax Act, 1961 and in passing the impugned revisionary order without appreciating that the original assessment order against which proceedings under section 263 were initiated was already subject matter of appeal before the Learned Commissioner of Income Tax (Appeals). The Learned Principal Commissioner of Income Tax failed to appreciate that the issues sought to be revised were specifically and formed part of the appellate proceedings pending before the Learned Commissioner of Income Tax (Appeals) and therefore, in view of the settled legal position, assumption of revisionary jurisdiction under section 263 on such issues is wholly without jurisdiction, contrary to law and liable to be quashed."

7. Ld. Counsel for the assessee submitted that the assessee had raised additional grounds of appeal challenging the very jurisdiction of the Ld. PCIT in passing the impugned revisional order u/s 263 of the Act on the ground that the assessee had filed appeal against the original assessment order in respect of the disallowance of purchases and, therefore, since the original assessment order against which proceedings u/s 263 were initiated was already the subject matter of appeal before the Ld. CIT(A), assumption of revisional jurisdiction u/s 263 on such issues is without jurisdiction. The Ld. Counsel submitted that since the additional ground filed by the assessee is a legal ground the same be admitted and adjudicated upon.

8. Considering the rival submissions, we admit the additional ground for adjudication being a legal ground.

9. Ld. Counsel, at the outset, submitted that in the case of the assessee, an assessment was completed by the Assessing Officer u/s 143(3) r.w.s. 144B of the Act on 27.12.2022, bringing to tax 25% of the purchases made by the assessee from M/s Mahadev Enterprises and M/s Tirupati Traders, amounting to ₹1,57,54,693/-.

10. Ld. Counsel submitted that the Assessing Officer, in the course of assessment proceedings, called for various details in respect of purchases made by the assessee from five parties, which are tabulated at page 3 of the assessment order and the assessee had furnished all the details in respect of purchases made from the said parties. Considering the details furnished by the assessee, the Assessing Officer took a view that in respect of two parties, namely M/s Mahadev Enterprises and M/s Tirupati Traders from whom the assessee had made purchases of ₹1,86,32,000/- and ₹4,43,86,770/- respectively, the transactions were not genuine, alleging that the invoices did not reflect the transportation details and that the GST department had cancelled the GST numbers of these two parties. For these reasons, the Assessing Officer estimated the profit element embedded in the purchases at 25% by following the decision of the Hon'ble Gujarat High Court in the case of M/s. Vijay Proteins. The assessee filed an appeal against the order of the Assessing Officer contesting the disallowance made in respect of purchases from these two parties.

11. Ld. Counsel submitted that pending appeal before the Ld. CIT(A), the Ld. PCIT issued notice for revision of the assessment order on the ground that the order passed by the Assessing Officer is erroneous and prejudicial to the interests of the Revenue as the Assessing Officer failed to add the entire purchases u/s 69C of the Act from these two parties instead estimating the profit element at 25% on such purchases.

12. Ld. Counsel for the assessee, placing reliance on the following decisions, submitted that since the assessee had filed appeal against the disallowance made by the Assessing Officer in respect of purchases made from these two parties, the Ld. PCIT did not have jurisdiction to initiate proceedings u/s 263 of the Act during the pendency of the appeal before the Ld. CIT(A) by virtue of clause (c) of Explanation – 1 to section 263 of the Act.

> *"1) Mrs. Suneeta Sekri v. DCIT, (2026) 183 taxmann.com 97 (Mumbai – Trib.)*
>
> *2). Vaksons Metaplast (P.) Ltd. v. PCIT (Central), (2025) 181 taxmann.com 410 (Delhi – Trib.)*
>
> *3) Cupid Diamonds Private Limited V. Principal Commissioner of Income Tax – 5, ITA No.478/MUM/2025 (Mumbai – Trib.)*
>
> *4) Kathiravan Ananthalakshmi V. ACIT, ITA No. 341/Chny/2022 (Chennai – Trib.)*

> *5) Smt. Renuka Philip v. Income-tax Officer, Business Ward-XV(2)Chennai, [2019] 101 taxmann.com 119 (Madras)*

13. Coming to the merits, Ld. Counsel submitted that in the course of the assessment proceedings, the Assessing Officer after conducting inquiry and after considering the entire material available on record, came to a conscious conclusion that the profit element embedded in the alleged non-genuine purchases was liable to be brought to tax and accordingly made an addition of ₹1,57,53,693/-, being 25% of the purchases from M/s Mahadev Enterprises and M/s Tirupati Traders.

14. Ld. Counsel for the assessee further submitted that the assessee had furnished copies of all the invoices. The sales of the assessee were accepted. Without purchases, sales could not have taken place. The assessee's accounts were duly audited. All the payments were made by account payee cheque. The assessee had maintained a stock register and no discrepancies were found by the Assessing Officer. Both parties had given confirmation of purchases. There is no evidence on record to suggest that any cash was received back by the assessee. Ld. Counsel, therefore, submitted that since all these aspects were examined by the Assessing Officer and he had taken a conscious view in estimating the profit element in the said purchases at 25%, merely because the Ld. PCIT was of the view that further inquiry ought to have been conducted or a different addition ought to have been made, the same does not confer jurisdiction u/s 263 of the Act.

15. Ld. Counsel for the assessee submitted that it is a settled position of law that where the Assessing Officer has conducted inquiries and adopted a plausible view, revisional jurisdiction u/s 263 of the Act cannot be invoked merely because the Ld. PCIT is of the opinion that some other view should have been taken or a higher addition should have been made.

16. Ld. Counsel for the assessee submitted that the provisions of section 263 do not permit substitution of the opinion of the Ld. PCIT in place of the opinion formed by the Assessing Officer during the course of the assessment proceedings. Ld. Counsel for the assessee further submitted that in the present case, the Learned PCIT has merely alleged that the Assessing Officer ought to have invoked provisions of section 69C of the Act and ought to have made addition of the entire purchases instead of estimating profit element. Such observation clearly establishes that the Learned PCIT is merely substituting his opinion for the opinion already formed by the Learned Assessing Officer after due inquiry. The same is not permissible within the scope of section 263 of the Act.

17. Ld. Counsel submitted that the Learned PCIT has failed to appreciate that the issue relating to alleged bogus purchases and estimation of profit thereon is a highly debatable issue and different judicial forums have consistently held that only profit element embedded in such purchases can be brought to tax where sales are accepted and corresponding purchases are supported by books of account and banking transactions. Thus, the view adopted by the Assessing Officer was a legally sustainable and plausible view and therefore the assessment order cannot be treated as erroneous merely because the Learned PCIT does not agree with such view.

18. Ld. Counsel submitted that the Learned PCIT has further erred in observing that provisions of section 69C were mandatorily applicable in the present case. It is submitted that invocation of section 69C is itself dependent upon appreciation of facts and evidences and is not automatic in nature. The Assessing Officer having consciously chosen to estimate profit element instead of invoking section 69C after considering the material on record, the same cannot be revised merely on account of difference of opinion.

19. Ld. Counsel for the assessee, placed reliance on the following decisions in support of the above contentions:

(1) Manju Rakesh Jain v. Principal Commissioner of Income – Tax, [2025] 177 taxmann.com 361 (Mumbai - Trib.)
(2) AZB AND PARTNERS V. PCIT, Mumbai-8, I.T.A No.4105/Mum/2025 (Mumbai – Trib.)
(3) Mridul Shashikant Khandelwal v. PCIT (Central), [2025] 180 taxmann.com 788 (Mumbai - Trib.)
(4) Shree Siddhi Infrabuild (P.) Ltd. v. Principal Commissioner of Income-tax, [2025] 172 taxmann.com 232 (Gujarat)
(5) Surbhit Impex (P.) Ltd. v.Principal Commissioner of Income-tax - 8 [2025] 180 taxmann.com 351 (Mumbai - Trib.)

20. Ld. Counsel for the assessee, without prejudice to the above, submitted that the Learned PCIT has also erred in alleging that liability standing in the name of M/s Tirupati Traders amounting to Rs. 3,53,87,270/- ought to have been added under section 41(1) of the Act. The provisions of section 41(1) are applicable only where there is remission or cessation of an existing trading liability during the relevant previous year. Also the payment has been received by the assessee in the upcoming assessment years. In the present case, there was no material whatsoever on record to establish any remission or cessation of liability. Merely because the creditor was alleged to be non genuine or because the GST registration was cancelled does not automatically result in cessation of liability under section 41(1) of the Act. Further the transaction is clearly visible in the GST returns filed by the assessee which are a part of the paper book.

21. It is submitted that the Learned PCIT has proceeded entirely on assumptions and presumptions without bringing any independent material on record to demonstrate that the liability had ceased to exist. In absence of any remission, write back, waiver or cessation during the year under consideration, no addition under section 41(1) could have been made and therefore the assessment order cannot be held to be erroneous on this count also.

22. On the other hand, the Ld. DR strongly supported the order of the Ld. PCIT. Ld. DR also made the following submissions.

> *"1. The Ld. Principal Commissioner of Income Tax has rightly invoked the revisional jurisdiction under section 263 of the Income-tax Act, 1961, as the assessment order was both erroneous and prejudicial to the interests of the Revenue. The Assessing Officer himself recorded a categorical finding that purchases aggregating to Rs.6,30,18,770 from M/s Mahadev Enterprises and*

M/s Tirupati Traders were non-genuine on the basis of cancelled GST registrations, accommodation-entry fund trail and the assessee's failure to furnish supporting documentary evidence. However, despite recording such findings, the Assessing Officer restricted the addition to only 25% of the alleged bogus purchases instead of bringing the entire bogus purchases of Rs.6,30,18,770 to tax under section 69C. Accordingly, the Ld. PCIT rightly exercised the revisional jurisdiction under section 263 directing that the entire unexplained expenditure be examined and brought to tax in accordance with law.

2. Thus, once AO held entire purchase to be bogus [or in doubt] the addition restricted to 25% was erroneous and against to the revenue. Therefore, Ld. PCIT order for entire 100% is valid u/s 263.Once the expenditure itself was held to be unexplained, the entire amount was liable to be brought to tax under section 69C. The failure to do so rendered the assessment order erroneous and prejudicial to the interests of the Revenue.

3. The Ld. PCIT has rightly relied upon the judgment of the Hon'ble Bombay High Court in Pr. CIT v. Kanak Impex (India) Ltd. [2025] 172 taxmann.com 283 (Bom.), wherein it was held that where the assessee fails to establish the genuineness of the purchases and explain the source of expenditure, the entire amount of bogus purchases is liable to be brought to tax under section 69C and the appellate authorities are not justified in restricting the addition by estimating only the profit element. The Ld. PCIT, therefore, rightly held that the Assessing Officer ought to have brought the entire unexplained expenditure of Rs.6,30,18,770 to tax under section 69C instead of restricting the addition to 25% of the alleged bogus purchases. The said principle also stands fortified by the decision of the Hon'ble Supreme Court in N.K. Proteins Ltd. v. DCIT [2017], wherein the Hon'ble Supreme Court upheld 100% disallowance of bogus purchases, holding that where the transactions are found to be wholly fictitious and the assessee fails to establish the genuineness of the purchases, the entire amount represents unexplained expenditure liable to be added to the total income. The ratio of the aforesaid decisions squarely applies to the facts of the present case.

4. The Assessing Officer further failed to examine the applicability of section 41(1) in respect of the outstanding liability of Rs.3,53,87,270 shown in the name of M/s Tirupati Traders. Once the said concern was found to be bogus and non-genuine, the corresponding outstanding liability also required to be brought to tax under section 41(1). The omission to consider this issue further rendered the assessment order erroneous and prejudicial to the interests of the Revenue.

5. In view of the above facts and the settled legal position, the Ld. PCIT has validly exercised the revisional jurisdiction under section 263 to correct the patent errors committed by the Assessing Officer. The impugned order neither substitutes one possible view for another nor amounts to a mere change of

> *opinion, but correctly directs the Assessing Officer to apply the provisions of sections 69C and 41(1) in accordance with law. The order passed under section 263, therefore, deserves to be upheld."*

23. We have heard the rival submissions, perused the assessment order passed u/s 143(3) r.w.s. 144B of the Act and the order passed by the Ld. PCIT and considered the case laws relied upon. On perusal of the order of the Ld. PCIT, it is observed that the Ld. PCIT was of the view that since the Assessing Officer in the assessment order passed u/s 143(3) held that the purchases made by the assessee from M/s Mahadev Enterprises and M/s Tirupati Traders were unexplained he should have applied the provisions of section 69C of the Act and treated the entire purchases as unexplained expenditure. The Ld. PCIT was of the view that the correct provision applicable was section 69C and such unexplained expenditure attracted tax at the higher rate of 60% along with the additional charge u/s 115BBE of the Act.

24. The Ld. PCIT was also of the view that M/s Tirupati Traders was one of the sundry creditors shown by the assessee and since the GST authorities treated this party as bogus, the outstanding liability to the tune of ₹3,53,87,270/- was also bogus and since it was a non-existing liability, the same ought to have been added u/s 41(1) of the Act by the Assessing Officer.

25. For the above reasons, the Ld. PCIT was of the view that the assessment framed by the Assessing Officer u/s 143(3) r.w.s. 144B of the Act was erroneous and prejudicial to the interests of the Revenue.

26. In the course of proceedings before the Ld. PCIT, it was contended by the assessee in its reply dated 25.03.2025, placed at pages 203 to 208 of the Paper Book, that the Assessing Officer in the course of assessment proceedings required the assessee to furnish all the necessary documents to prove that the purchases made from five parties, namely JK Importers, Krishan Enterprises, Mahadev Enterprises, Sri Nanai Enterprises and Tirupati Traders were genuine purchase transactions. The assessee furnished copies of purchase invoices, ledger copies, transport bills/e-way bills, payment details to be reconciled with bank account statements, balance confirmations and submitted that all these purchases were genuine. The Assessing Officer had in fact examined all these evidences during the assessment proceedings and estimated the profit element embedded in the purchases only for the reason that the GST numbers of two out of the five parties were cancelled by the GST department *suo motu*. It was further contended that the assessee, vide submission dated 19.12.2022, had furnished all the relevant details called for by the Assessing Officer in the questionnaire, namely balance confirmations, ledger accounts, invoice copies, e-way bills for all transactions and bank payment entries during the original scrutiny proceedings.

27. It was also contended by the assessee before the Ld. PCIT that the Assessing Officer observed in the assessment order that the GST numbers of two parties were cancelled *suo motu* by the GST department due to non-filing of GST returns. However, filing of GST returns is the obligation of the concerned parties and the assessee cannot be held responsible for the same.

28. It was also submitted before the Ld. PCIT that the concerned parties had in fact, filed the GST returns for the assessment year involved and input tax credit was duly available to the assessee. The credit reflected on the GST portal in GSTR-2A had already been furnished as Annexure-3 before the Assessing Officer vide letter dated 19.12.2022 during the course of the assessment proceedings. Therefore, it was contended that cancellation of the GST numbers of the concerned parties by the GST department for non-filing of returns did not affect the assessee's transactions with those parties as during the relevant assessment year the transactions were correctly reported and reflected on the GST portal and all relevant details had already been furnished before the Assessing Officer. Assessee therefore had contended before the Ld. PCIT that the transactions were genuine and, in any case, the Assessing Officer had taken one of the plausible views and therefore, the assessment order passed by the Assessing Officer was neither erroneous nor prejudicial to the interests of the Revenue.

29. Ld. Counsel for the assessee further contended that it was also submitted before the Ld. PCIT that the assessee had filed an appeal before the Ld. CIT(A) against the disallowance of purchases made by the Assessing Officer and since the appeal was pending before the Ld. CIT(A), the revisional proceedings u/s 263 were barred by virtue of clause (c) of Explanation 1 to section 263 of the Act.

30. We observe that the Ld. PCIT, placing reliance on the decision in the case of PCIT vs. Kanak Impex (India) Ltd. (2025) 172 taxmann.com 283 (Bombay), came to the conclusion that the Assessing Officer ought to have treated the entire purchases as unexplained expenditure u/s 69C of the Act. The Ld. PCIT was also of the view that since M/s Tirupati Traders was not a genuine party, the outstanding balance should have been treated as income u/s 41(1) of the Act.

31. The contention of the assessee that the provisions of section 263 of the Act could not be invoked since the appeal was pending before the Ld. CIT(A) was negated by placing reliance on the decisions of the Hon'ble Supreme Court in the case of *CIT vs. Shri Arbuda Mills Ltd.* (1998) 231 ITR 50 (SC) and EIMCO K.C.P. Ltd. vs. CIT (2000) 242 ITR 659 (SC).

32. We observe that the Ld. PCIT wrongly placed reliance on the decisions of the Hon'ble Supreme Court in the case of CIT vs. Shri Arbuda Mills Ltd. (*supra*) and EIMCO K.C.P. Ltd. (*supra*) to hold that revisional proceedings u/s 263 were valid even though the assessee was in appeal before the Ld. CIT(A). We observe that in the case of CIT vs. Shri Arbuda Mills Ltd. (*supra*), the Assessing Officer had accepted the claims of the assessee in respect of three items against which no appeal was filed by the assessee. However, the assessee filed an appeal against two items which were not accepted by the Assessing Officer. The Ld. CIT invoked the provisions of section 263 of the Act to revise the assessment order in respect of the three items which had been accepted by the Assessing Officer, against which no appeal had been filed by the assessee. On these facts, the Hon'ble Supreme Court held that CIT had jurisdiction u/s 263 to revise the assessment though appeal is pending before Ld. CIT(A). Therefore, this decision has no application to the facts of the assessee's case.

33. Similarly, the decision in the case of EIMCO K.C.P. Ltd. (*supra*) pertains to assessment year 1969-70, which is prior to the amendment introduced by clause (c) of Explanation 1 to section 263 of the Act. The issue before the Hon'ble Apex Court was also not with regard to clause (c) of Explanation 1 to section 263 of the Act. Therefore, this decision has no application to the facts of the assessee's case.

34. We observe that identical issue came up for consideration before the Hon'ble Madras High Court in the case of Renuka Philip (Smt) v. ITO (2018) 409 ITR 567 (Mad.), wherein the Hon'ble High Court held as under:

> *"21. With regard to the merits of the case, the learned counsel for the assessee referred to a decision of the Division Bench of this Court in Dr. Smt. P.K. Vasanthi Rangarajan v. CIT [2012) 23 taxmann.com 299/209 Taxman 628 (Mad.), wherein, the Hon'ble Division Bench held that there is no inhibition in the assessee claiming the benefit of investment made in four flats thereby gaining the benefit under Section 54F of the Act. The Court took note of the decision in TA No. 656 of 2005 dated 04.01.2012. However, we are not examining the merits of the matter at this juncture since, we are only called upon to answer the Substantial Question of Law with regard to the assumption of jurisdiction of the Commissioner under Section 263 of the Act. The power under Section 263 of the Act is not exercisable under certain circumstances. In this regard, we refer to Section 263(1) explanation 1(c), which reads as follows:*
>
> > *"Revision of orders prejudicial to revenue 263(1)...*
> >
> > *(a) to (b)***

(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 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."

22. The above explanation makes it clear that when the appeal is pending before the Commissioner, the exercise of jurisdiction under Section 263 of the Act is barred. The Commissioner in the order dated 14.03.2012 states that the appeal pertains to the claim made by the assessee under Section 54 of the Act and it has got nothing to do with the order passed by the Assessing Officer under Section 54F of the Act. The said finding rendered by the Commissioner is wholly unsustainable, since the assessee went on appeal against the re-assessment order dated 31.12.2009 stating that his claim for deduction under Section 54 of the Act should be accepted.

23. Therefore, in the process of considering as to what relief the assessee is entitled to, the Assessing Officer held that the assessee is entitled to claim deduction under Section 54F of the Act and assigned certain reasons for that. Therefore, the larger issue was pending before the Commissioner of Appeals, and in such circumstances, the Commissioner could not exercise power under Section 263 of the Act on account of the statutory bar. Therefore, on this ground also, the assumption of jurisdiction under Section 263 of the Act was wholly erroneous."

35. Similarly, in the case of CIT vs. Vam Resorts and Hotels Pvt. Ltd. [418 ITR 723], the Hon'ble Allahabad High Court held as under:

"As, clause (c) of Explanation 1 to section 263 of the Act provides that when an appeal is pending before the Commissioner, the exercise of jurisdiction under section 263 of the Act by the Commissioner of Income-tax is barred. Thus, in the present case, the Commissioner of Income-tax wrongly exercised jurisdiction under section 263 of the Act by remanding back the matter to the assessing authority on March 25, 2013, while the appeal was decided by the Commissioner of Income-tax (Appeals) on June 5, 2013. Thus, the order passed by the Income-tax Appellate Tribunal does not suffer from any irregularity and needs no interference."

36. Similar view has been taken by the Mumbai Bench of the Tribunal in the case of Cupid Diamonds (P) Ltd. vs. DCIT in ITA No.478/Mum/2025 dated 11.08.2025, to which one of us (Hon'ble AM) was a party.

37. The ratio of the above decisions squarely applies to the facts of the assessee's case. The larger issue as to whether the purchases made by the assessee from M/s Mahadev Enterprises and M/s Tirupati Traders were genuine or not, or whether the profit element embedded therein should be estimated at 25%, was already the subject matter of appeal before the Ld. CIT(A). Therefore, since the larger issue was pending before the Ld. CIT(A), we hold that the Ld. PCIT was barred from invoking revisional jurisdiction by virtue of clause (c) of Explanation 1 to section 263 of the Act. Therefore, we hold that to the extent of treating the assessment order as erroneous and prejudicial to the interests of the Revenue in respect of purchases made from M/s Mahadev Enterprises and M/s Tirupati Traders, the order of the Ld. PCIT is bad in law.

38. Coming to the merits of the case as to whether the Ld. PCIT was justified in invoking revisional jurisdiction u/s 263 to hold that the Assessing Officer should have treated the entire purchases as unexplained expenditure u/s 69C of the Act, we find that on identical facts, the Coordinate Bench of the Tribunal in the case of Cupid Diamonds Pvt. Ltd. vs. PCIT in ITA No. 478/Mum/2025 dated 11.08.2025, in which one of us was a party to the order, after considering various decisions held that the Ld. PCIT erred in invoking revisional jurisdiction u/s 263 of the Act on the ground that the Assessing Officer failed to apply the correct provisions of the Act and failed to add the entire purchases, observing as under:

"3. Brief facts of the case are that the assessee company is engaged into business of manufacturing and trading of laboratory grown cut and polished diamonds. In the present case, assessee had filed return of income on 23.02.2022 declaring total income of Rs.2,41,89,710/-. The case was selected for Complete Scrutiny for the reason that business purchases need to be verified for their genuineness. The assessment was completed under section 143(3) r.w.s. 144B of the Act assessing total income at Rs. 3,37,35,741/, after making addition of Rs. 95,46,031/- u/s 37 of the Act on account of unverified business purchases.

3.1 The ld. PCIT on examination of the records found that the AO in order to verify the genuineness of purchases made by the assessee company issued notices u/s.133(6) of the Act to several parties from whom purchases were shown to have been made, out of which the assessee, however, could not prove genuineness and creditworthiness of the purchases totalling Rs.9,41,47,312/- from three of the parties namely R. K. Diam Private Limited, Rupesh kumar Hitendra kumar Khatri and Ketan Hitendra kumar Khatri. Accordingly, the purchases from the said parties were treated as bogus purchases. Enquiries also revealed unverified purchases amounting to Rs.1,31,301/- from K. Chandrakant and Co. International Private Limited since purchases of Rs.72,84,194/- were verified by the said party as against Rs.74,15,495/- claimed by the assessee company. While completing the assessment the AO made total addition of Rs.95,46,031/-which included a sum of Rs.94,14,730/-, being 10% of the total bogus purchases of Rs.9,41,47,312/- made from the above referred three parties and Rs. 1,31,301/- as unverified purchase from K. Chandrakant and Co. International Private Limited. However, the ld. PCIT observed that since the purchases made from the above referred parties could not be verified, the entire amount of Rs.9,41,47,312/- should have been added to the taxable income since these transactions remained unverified due to failure of the assessee to prove genuineness of the purchases. Further, the entire amount should have been treated as 'unexplained expenditure' and added to total income u/s.69C and taxed at 60% u/s.115BBE of the Act. In view of the above, he concluded that the assessment order passed under section 143(3) r.w.s. 144B of the Act was erroneous in so far as it is prejudicial to the interest of the revenue within the meaning of section 263 of the Act. Accordingly, proceedings were initiated and a show cause notice was issued to the assessee company in response to which the assessee has stated that the assessment order passed in the case was neither erroneous nor prejudicial of the interests of the Revenue since the AO had made enquiries about the income of the assessee and called for extensive records and examined the same in detail. It has also been stated that provisions of section 263 cannot be invoked when a larger issue is pending before CIT(A). Further, the assessee also contended that the purchases under reference can neither be termed as bogus nor unverifiable.

3.2 However, the ld. PCIT claimed that the contention of the assessee that the purchases from three parties could not be accepted in view of the fact that the creditworthiness and genuineness of these parties could not be proved during the *course of assessment proceedings. As regards the contention of the assessee that proceedings u/s.263 could not be initiated during the pendency of appeal before the CIT(Appeals), it is stated that the proceedings u/s.263 of the Act and the appeal proceedings before CIT(A) are independent proceedings and there is no bar in the Act that both proceedings cannot run simultaneously. While completing the assessment the Assessing Officer failed to make addition of entire bogus purchase transaction of Rs.9,41,47,312/- but restricted the addition to only 10% of the said amount. In this regard it is stated that the hon'ble Supreme Court in the case of N. K. Proteins Ltd. vs. DCIT (2017) 84 taxmann.com 195 (SC) had dismissed the SLP of the said company against the decision of100% of bogus purchases were added to the total income. Accordingly, after invoking the provisions of section 263 of the Act, the AO was directed to take further necessary action in this regard. In addition, the A.O. was also directed to examine the facts of the case and to initiate penalty as per the provisions of the Act.*

4. Before us, the ld. CIT(DR) relied on the order of ld. PCIT. It is stated that he correctly assumed jurisdiction as there was no basis for making addition on estimate no basis when the transactions could not be proved. He placed reliance on the decision in the case of Kanak Impex in ITA No.791 of 2021(Bom). Per contra, the ld.AR vehemently contested the revision order by claiming that assessee's case was selected for complete scrutiny for A.Y. 21-22 for verifying genuineness of business purchases and evaluation of low returned income in spite of large turnover from Gems and Jewellery business. The AO sent notices u/s 133(6) of the Act to parties from whom assessee had claimed to have made purchases. During the course of assessment out of the total 17 suppliers, 13 suppliers submitted responses to the notices u/s 133(6) along with necessary documentation including copy of ledgers and other evidence to establish genuineness of purchases. Hence, purchases from the said thirteen parties considered to be genuine and no addition proposed by AO. However, in respect of four parties genuineness of purchasers could not be established. Final disallowance made by AO to the tune of Rs. 95,46,031/-.

4.1 It is contented that the hon'ble Supreme Court in the case of Malabar Industries Ltd. v. CIT (supra) held that twin conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the PCIT. The twin conditions are that the order of the AO must be erroneous and so far as prejudicial to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law, or (iii) Assessing Officer's order is in violation of the principle of natural justice, or (iv) if the order is passed by the AO without application of mind. (v) if the AO has not investigated the issue before him; because AO has to discharge dual role of an investigator as well as that of an adjudicator then in aforesaid any event the order passed by the AO can be termed as erroneous order. Coming next to the second limb, which is required to be examined as to whether the actions of the AO can be termed as prejudicial to the interest of

Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. Their Lordship held when the AO adopted one of the courses permissible in law and it has resulted in loss to the revenue, 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 prejudicial to the interest of the Revenue "unless the view taken by the Assessing Officer is unsustainable in law". Thus, in our considered view following Apex Court ruling the Revision orders passed by Ld. PCIT are not sustainable in law. Reliance was placed on the decisions of the jurisdictional High Court in the case of CIT vs Gabriel India Ltd.((203 ITR 108) (Bom)(HC) and American Spring and Processing Works P. Ltd(2023) 295 Taxman 438(Bom) and also B.T. Global Communications India Ltd (2024) 466 ITR 714(Del) wherein revisions orders were not sustained as the AO taken one of the plausible views different from that of the PCIT.

5. We have carefully examined the facts of the case. We find that as per the assessment order, the AO has discussed all the relevant facts of the above purchases and the details submitted. It was observed by him that the some of the parties did not comply with notice u/s 133(6) of the Act. Finally, he rejected the genuineness of the said purchase transaction and made part disallowance at the rate of 10% of the said unverified transactions. Thus, we notice that a detailed enquiry is evident from the assessment order. In this case, during the assessment the AO issued query memos to the assessee, calling upon it to justify the genuineness of the purchase. The assessee responded to the same by giving necessary evidence. On perusal, the AO was not satisfied and he drew an adverse conclusion w.r.t. the said purchase after making due enquiries and investigations. We find that the impugned transaction has been duly examined and consequently the AO disallowed the same although on estimated basis rather than taxing the entire disputed purchases u/s 69C and simultaneous taxing at higher rate with initiation of penalty as well as observed by the ld. PCIT.

5.1 We further note that the AO by already making the disallowance of the said purchase had caused greater prejudice to the assessee in the assessment. Moreover, the said assessment is challenged before the ld. CIT(A) and the same is pending. While this is so, we are afraid whether the same issue could be the subject matter of revision proceedings u/s 263 of the Act by seeking to look into the very same issue from different perspective. We find that the action of the ld. PCIT is in complete disregard to the specific provisions of clause(c) of Explanation to section 263(1) of the Act, which places a clear embargo on the ld. PCIT with respect to exercise of revisionary jurisdiction on assessments which have been subject matter of appeal. Reliance in this regard is placed on the decision of the Hon'ble Calcutta High Court in the case of Oil India Ltd vs CIT reported in 138 ITR 836 (Cal) wherein, the hon'ble Court while interpreting the scope of powers of the Commissioner u/s 263 of the Act held that where an appeal is preferred before the Appellate Assistant Commissioner (AAC) and a subject is particularly raised, he cannot revise such an order taking into account an aspect not dealt by the AAC.

5.2. Further, we are of the considered opinion that the ld. CIT(A) having conferred with the co-terminus powers with that of the AO has got ample power to even enhance the assessment if circumstances so warrant. Just because the ld. CIT(A) had not exercised his enhancement powers in the instant case, even if it is to be done, that would not confer automatic revisionary power u/s 263 of the Act for the ld. PCIT. In this regard, the reliance placed by the ld. AR on the observations of the Hon'ble Supreme Court in the case of Jute Corporation Ltd in 187 ITR 688 and CIT v. Kanpur Coal Syndicate [1964] 53 ITR 225(SC), the Court inter alia held that under section 31(3)(a) in disposing of such an appeal the Appellate Assistant Commissioner may, in the case of an order of assessment, confirm, reduce, enhance or annul the assessment; under clause (b) thereof he may set aside the assessment and direct the Income-tax Officer to make a fresh assessment. The Appellate Assistant Commissioner has, therefore, plenary powers in disposing of an appeal. The scope of his power is co- terminus with that of the Income-tax Officer. He can do what the Income-tax Officer can do and also direct him to do what he has failed to do......." These observations are squarely applicable to the interpretation of section 251(1)(a) of the Act. Even otherwise, an appellate authority while hearing appeal against the order of a subordinate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. The appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter.

5.3 Accordingly, we hold that the issue of disallowance of purchase is already the subject matter of appellate proceedings before the ld. CIT(A) and hence the same cannot be the subject matter of re- verification and re-adjudication from different perspective by the ld. PCIT under revisionary jurisdiction u/s 263 of the Act. Hence, the action of the ld. PCIT in invoking revisionary jurisdiction u/s 263 of the Act deserves to be quashed on this count also.

5.4 Moreover, a detailed inquiry made by the AO, cannot make the order erroneous. It is his prerogative to make inquiry to the extent he feels proper. The ld. PCIT by invoking revisionary powers under section 263 of the Act cannot impose his own understanding of the extent of inquiry. There are plethora of judgments by various High Courts in this regard. The hon'ble Delhi High Court in the case of CIT Vs. Sunbeam Auto 332 ITR 167 (Del.), made a distinction between 'lack of inquiry' and 'inadequate inquiry'. The hon'ble court held that where the AO has made inquiry prior to the completion of assessment, the same cannot be set aside u/s 263 of the Act on the ground of inadequate inquiry. It was observed 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. The hon'ble Bombay High Court in case of Gabriel India Ltd. [1993] 203 ITR 108 (Bom), discussed the law on this aspect in length in the following manner:

"The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity."

5.5 The hon'ble Supreme Court in the another case of Principal Commissioner of Income-tax-2, Meerut v. Canara Bank Securities Ltd. [2020] 114 taxmann.com 545 (SC), dismissed the Revenue's SLP holding that 263 proceedings are invalid when AO had made enquiries and taken a plausible view in law.

5.6 Moreover, where two views are possible and the AO has taken one view with which the ld. PCIT does not agree, it cannot be treated as an erroneous order causing prejudice to the interests of the Revenue unless the view taken by the AO is unsustainable in law or the AO has completely omitted to make any enquiry altogether or the order demonstrates non-application of mind. Making estimated addition on unproved purchases itself is a debatable issue with various contrary judicial decisions. In such a situation also, the AO having taken one of the plausible views cannot be faulted with.

5.7 In view of the aforesaid findings, on the facts and circumstances of the case, we are of the considered opinion that in the instant case, ld. PCIT erred in invoking revisionary jurisdiction u/s 263 of the Act on the ground of that the AO failed to apply correct provisions of the Act and failed to add back entire unverified purchases. Moreover, the ld. PCIT has taken one of the plausible views that the impugned purchase should have been taxed under the provisions of section 69C of the Act treating it to be unexplained expenditure. We are afraid, even this view of the ld. PCIT may be subjected to debate as to whether the purchases duly reflected in the books of account could be brought within the purview of this section when the book results have been accepted. It goes without saying that on the facts and the circumstances of the case, the AO did not consider appropriate to initiate penalty proceedings. The ld. PCIT therefore, cannot direct him to take a different course of action than that adopted by the AO. Besides, the issue in hand is still pending for adjudication before the first appellate authority who himself is adequately empowered to take a different view of the matter. Accordingly, we set aside the order of the ld. PCIT quashing the same and allowing the grounds of appeal."

39. The said decision squarely applies to the facts of the assessee's case.

40. We further observe that the decision relied upon by the Ld. PCIT in the case of Pr.CIT vs. Kanak Impex (India) Ltd. (*supra*) is distinguishable on facts.

41. We further observe that in the following case, the decision of the Hon'ble Jurisdictional High Court in Pr.CIT vs. Kanak Impex (India) Ltd. (*supra*) was considered by the Coordinate Bench of the Mumbai Tribunal in the case of ACIT vs. Dhiraj Parbat Gothi in ITA No. 580/Mum/2025, order dated 30.05.2025 and distinguished on facts, observing as under:

> *"12. We also take note of the additional ground raised by the revenue for which Ld.SR DR referred to the decision of Hon'ble Jurisdictional High Court of Bombay in the case of Kanak Impex (India) Ltd. (supra). We have perused the said judgment. For the reliance placed by Ld. SR DR on the decision of Hon'ble Jurisdictional High Court of Bombay in the case of PCIT vs Kanak Impex (India) Ltd (supra) calling for addition of 100% of the alleged bogus purchases as against 25% made by the Ld.AO and confirmed by Ld. CIT(A), we have perused this aforesaid judgment. We observe that in para 4, Hon'ble Court noted the factual position that assessee did not appear before the Ld.AO during the course of assessment proceedings and failed to prove the genuineness of the purchase. The said assessment was completed ex-parte u/s. 144. r.w.s 147 of the Act. Hon'ble Court also observed in para 17 about the non-appearance of assessee before the Ld.AO for which there is no justification. Again, it noted in para 29 that the assessee chose not to attend the reassessment proceedings even though the notices were sent by post, email and affixture. Accordingly, in para 13, Hon'ble Court concluded that assessee having not joined the reassessment proceedings, the contention raised by the assessee are to be rejected. Observation of the Hon'ble Court while rejecting the contention of the assessee are:*
>
> > *"30. We fail to understand that the respondent-assessee having consciously and intentionally decided not to join the investigation, cannot now contend that the appellant-revenue should have given them all the details before making the addition. In our view, such a conduct of the respondent-assessee cannot be accepted. It was incumbent upon the respondent-assessee to have joined the re-assessment*

> *proceedings, discharge the initial onus of proving the purchases and seek details, if any."*

13. In the present set of facts, elaborately discussed above and in view of the submissions made by the assessee which have not been disproved or controverted by bringing any cogent material on record, judgement of Hon'ble Jurisdictional High Court of Bombay in the case of Kanak Impex (India) Limited (supra) is distinguishable and hence not applicable. Accordingly, additional ground raised by the revenue by relying on the said judgment is dismissed.

14. In the present set of facts, we draw force from the decision of Hon'ble Jurisdictional High Court of Bombay in the case of Nikunj Eximp Enterprises Pvt Ltd. vs. CIT(A) in [2015] 372 ITR 619 (Bom) wherein it has been held as under:

> *"1. The respondent assessee having been filed letters of confirmation of suppliers, copies of bank statement showing entries of payment through account payee cheques to the suppliers, copies of invoices for purchases and stock statement ie. stock reconciliation statement giving complete details with regard to opening stock, purchases, sales and closing stock and no fault with regard to it being found and the books of accounts not being rejected and the sales not being doubted, the purchases cannot be treated as bogus and be disallowed merely on the basis of suspicion. One cannot conclude that the purchases were not made by the respondent assessee merely because the parties were not produced, when there are materials on record to prove otherwise."*

42. In the case on hand, the assessee furnished all the necessary documents to prove that the purchases were genuine and after examining the details and evidence furnished by the assessee, the Assessing Officer chose to estimate the profit element embedded in such purchases at 25%.

43. We also find that there is no merit in the order of the Ld. PCIT in holding that the outstanding credit balance appearing in the account of M/s Tirupati Traders should be treated as income u/s 41(1) of the Act, since we do not find any cessation of liability so as to bring such balance to tax u/s 41(1) of the Act, especially when the only reason for treating such balance as income u/s 41(1) was that the supplier, M/s Tirupati Traders, was treated as non-genuine.

44. In the circumstances, we set aside the order passed by the Ld. PCIT u/s 263 of the Act for the assessment year 2021-22.

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

Order pronounced in the open court on 04/08/2026

Sd/-	**Sd/-**
PRABHASH SHANKAR **ACCOUNTANT MEMBER**	**CHALLA NAGENDRA PRASAD** **JUDICIAL MEMBER**

Mumbai, Dated: 04/08/2026

Prabhat

Copy to:

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