

**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA 'DB' BENCH AT KOLKATA**

[Virtual Court]

Before

SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER

&

SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

**ITA No(s). 313/PAT/2026
Assessment Year(s) 2022-23**

Mohammed Tanweer Alam	Vs.	PCIT (Central), Patna
(Appellant)		(Respondent)
PAN: ABJPF1692H		

Appearances:

Assessee represented by : Ravi Sah, CA.

Department represented by : Bharat Bhusan Garg, CIT, DR.

Date of concluding the hearing : 08.07.2026

Date of pronouncing the order : 10.08.2026

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Pr. Commissioner of Income Tax (Central), Patna [hereinafter referred to as 'PCIT'] passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2022-23 dated 30.03.2026.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

"1. For that the Ld. PCIT(A) erred on facts and in law in concluding that A.O. had failed to make requisite inquiry regarding the amount of referral fees of Rs.77 lakhs disclosed by the appellant in the Statement on Oath recorded at the time of search as Professional Income which was inquired upon by the Investigation wing. The A.O. also inquire and thoroughly examined the same and specifically covered the issue in the Notice U/s 142(1) dt. 21.12.2023, examined the seized documents and conducted multiple hearings which was duly supervised by the JCIT and further the

assessment order was passed only after his approval. Thus in fact it is a case of thorough and deliberate inquiry against the conclusion of no inquiry reached by the PCIT.

2. For that the Ld. CIT(A) erred in law and on facts in concluding the assessment order to be erroneous and prejudicial to the interest of revenue without any new finding of facts from the seized materials- which was either missed or not considered by the A.O. resulting in inadequate or not inquiry.

3. For that the Ld. CIT (A) erred on facts and in law in treating the amount of referral fees of Rs.77 lakhs disclosed during search as unexplained and to be covered U/s 69B and 69 in spite of the source of the same having been explained with corresponding supporting evidence for found at the time of search operations itself.

4. For that the Ld. CIT(A) erred in law and on facts in concluding that the amount of referral fees of Rs.74 lakhs disclosed by the appellant should have been covered U/s 69B and 69 and charged to tax U/s 115BBE as the AO has not specified the Section under which addition was made without there being any specific statutory requirement in this regard.

5. For that the Ld. CIT(A) erred in law and on facts in concluding that the AO erred in not initiating penalty proceedings U/s 271AAC of the Act.

6. For that the Ld. CIT (A) erred in law in treating the non initiation of penalty proceedings under appropriate section to render the assessment order as erroneous."

3. Brief facts of the case are that the assessee is a medical practitioner and derives income from proprietorship concern, M/s Fatma Hospital at Purnea. The return of income was filed u/s 139(1) of the Act on 28.10.2022 showing total income of ₹2,37,52,280/-. There was a search and seizure action u/s 132 of the Act, and during the course of the search carried out on 22.12.2022, various incriminating documents were found and seized which were inventoried as FH-01 to FH-25 and were seized from the residential premises of the assessee at Fatma Hospital, Line Bazar, Purnea. The Assessing Officer (hereinafter referred to as Ld. 'AO') made the assessment at the total income of ₹3,14,52,280/-. Subsequent to the framing of the assessment order, the

Ld. PCIT examined the records of the assessee and noted that in respect of the shop number 112 and 113 and flat number 401 in Panorama Rameshwaram at Purnea purchased from Seemanachal Infratech Private Limited (vendor), considerations of ₹48 lakh and ₹42 lakh respectively were paid for the shops and the flat. From the assessment order, it was further observed that the assessee had paid ₹10 lakh on 28.05.2021, ₹10 lakh on 18.08.2021 and ₹5 lakh on 18.08.2021 in cash to the vendor, which was over and above the recorded consideration amount for purchase of shop and flat. The assessee had paid total amount of ₹30 lakh over and above the consideration amount as noted on the sale deed and the same was added as undisclosed investment. However, in the assessment order the section under which the addition was made was not specified and tax had not been computed under the provision of section 115BBE of the Act. In the view of the Ld. PCIT, the addition attracted section 69B of the Act and failure to mention the applicable charging section rendered the addition defective in law as the Ld. AO had failed to assess the undisclosed investment of ₹30 lakh u/s 69B read with section 115BBE of the Act despite the said provisions being attracted, which resulted in incorrect computation of tax and short levy of tax and interest. A sum of ₹47 lakh out of the total cash of ₹96,42,200/- found during the search was added to the total income of the assessee for AY 2022-23 on account of undisclosed cash found during the search, but once again the statutory provision under which the said addition of ₹47 lakh was made was not mentioned in the assessment order while the provisions of section 69A of the Act were clearly attracted, and this amount was also not subjected to tax as per the provision of section 115BBE of the Act which prescribes a special rate of tax for income added/assessed u/ss 69, 69A, 69B of the Act, etc.

The Ld. PCIT was further of the view that mere acceptance of the disclosure made by the assessee during the assessment proceedings does not dilute the mandatory statutory requirement of invoking the relevant deeming provisions of the Act, where the nature of the addition clearly falls within the ambit of unexplained money u/s 69A of the Act and this had resulted into incorrect computation of tax liability and consequent short levy of tax and interest. It was further noticed by him that the search was conducted on 22.12.2022 whereas the assessee had already filed the return of income for AY 2022-23 on 28.10.2022 u/s 139(1) of the Act, i.e. prior to the date of search, and as per *Explanation (b)* to section 271AAB of the Act, penalty under this section was applicable in respect of “undisclosed income of the specified previous year” and the “specified previous year” being defined in the Act as that which has ended before the date of search but the due date for filing the return u/s 139(1) of the Act had not expired and the return had not been furnished before the date of search or the previous year in which the search is conducted. Therefore, AY 2022-23 does not fall within the definition of “specified previous year” and penalty u/s 271AAB was not legally applicable in the case, but penalty u/s 271AAC was attracted being at the rate of 10% of the tax payable u/s 115BBE of the Act. Since the Ld. AO had neither invoked sections 69B and 69A of the Act which were applicable, nor had applied section 115BBE of the Act, he consequently failed to initiate penalty proceedings u/s 271AAC of the Act. This inaction on the part of the Ld. AO made the order passed by him on 15.03.2024 erroneous in so far as the interests of the revenue were concerned, as the issues involving substantial ramification of revenue were erroneously concluded and incorrect sections had been applied. Further, no questionnaire, verification report or analytical

discussion evidencing due application of mind was found on record. There was a failure of statutory duty by the Ld. AO. The Ld. PCIT invoked the deeming provision of *Explanation (2)* of section 263 of the Act, which have been brought into the statute with effect from 01.06.2015 (erroneously mentioned as 01.06.2025 in the impugned order). Accordingly, a show cause notice u/s 263 of the Act with DIN was issued on 12.03.2026, granting an opportunity of being heard to the assessee, against which the assessee filed the submission on 18.03.2026, and he disputed the invocation of the provision of section 263 of the Act. The Ld. PCIT relied upon the decisions of **Ambuja Cements Limited [TS-219-ITAT-2026(Mum)]** order delivered on 23.02.2026, **Ram Pyari Devi Saraogi Vs. CIT [1968] 67 ITR 84 (SC)** and **Tara Devi Aggarwal Vs. CIT [1973] 88 ITR 323 (SC)** and held that a stereo-typed order which simply accepts what the assessee has stated and fails to make enquiries which are called for in the circumstances, is erroneous. He also relied upon the decision of **Gee Vee Enterprises v. Addl. CIT, Delhi-I, (1975) 99 ITR 375** and held that the Ld. AO had failed to conduct necessary and reasonable inquiries and material facts on taxable income were ignored and the assessment order suffered from non-application of mind which had resulted into potential loss of revenue and held that the order was both erroneous and prejudicial to the interest of the revenue within the meaning of section 263 of the Act. He therefore, set aside the assessment order dated 15.03.2024 passed u/s 143(3) for AY 2022-23 and directed the Ld. AO to conduct a thorough and comprehensive inquiry into all the bank transactions, examine the nature, source and genuineness of the deposits, verify supporting documentary evidence, and pass a reasoned and speaking

order strictly in accordance with law after providing adequate opportunity to the assessee.

4. Aggrieved with the order of the Ld. PCIT, the assessee has filed an appeal before us.

5. Rival submissions were heard and the materials placed on record have been examined. The Ld. AR drew our attention to the fact that a search and seizure action was conducted on 22.12.2022 in the course of which the assessee made certain declarations that the return of income was filed on 28.10.2022. The assessee runs a diagnostic centre and unaccounted envelopes were found. The issue was raised before the Ld. AO. The seizure of cash was from the residence and was disclosed in different years. It was stated that the copy of the statement was not given to the assessee. When the Bench inquired as to how the offer for surrender was made, the Ld. AR submitted that the copy of statement was not given to the assessee. The assessee runs three diagnostic centres and when asked to furnish detail as to what was the breakup of undisclosed receipt, the Ld. AR could not give the bifurcation and stated that the cash found was related to the referral fee received by the assessee from other diagnostic centres.

6. The Ld. DR drew our attention to the fact that the appeal has been filed against the order u/s 263 of the Act which related to the fact that the correct sections were not invoked by the Ld. AO while making the addition, and the special rate of tax applicable and the penalty under the correct section was not initiated. He further stated that the search had been carried out after the return was filed, and the assessee cannot claim that the cash found was related to referral fee and therefore, was part of the professional receipt, as acceptance of any referral fee is not

permitted as per law and the regulations of the Medical Council of India. The Ld. AR in the rejoinder submitted that there was no error in the order of the Ld. AO.

7. We have considered the submission made and also gone through the facts of the case and the order of the Ld. PCIT. The Ld. PCIT has mentioned that there was non-application of mind by the Ld. AO, as neither the correct sections were mentioned in the order nor the penalty was initiated under the correct provisions. It is to be seen as to whether the provisions of section 263 of the Act are attracted in this case or not. For ready reference, section 263 of the Act as applicable to the year under consideration is extracted as under:

“263. (1) The Principal Chief Commissioner or Chief Commissioner or 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 or the Transfer Pricing Officer, as the case may be, 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,—

(i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or

(ii) an order modifying the order under section 92CA; or

(iii) an order cancelling the order under section 92CA and directing a fresh order under the said section.

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 or the Transfer Pricing Officer, as the case may be, 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 or the Transfer Pricing Officer, as the case may be, 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;*

(iii) *an order under section 92CA by the Transfer Pricing Officer;*

(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 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.*

Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer or the Transfer Pricing Officer, as the case may be, 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.*

Explanation 3.—For the purposes of this section, "Transfer Pricing Officer" shall have the same meaning as assigned to it in the Explanation to section 92CA.

(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and the period commencing on the date on which stay on any proceeding under this section was granted by an order or injunction of any court and ending on the date on which certified copy of the order vacating the stay was received by the jurisdictional Principal Commissioner or Commissioner shall be excluded."

8. A study of the literature on the issue was carried out. When an **order** can be said to be **erroneous** has been defined by the Hon'ble Delhi High Court in the case of **CIT vs. Leisure Wear Exports Ltd. [2011] 11 taxmann.com 54/202 Taxman 130 (Mag.) (Delhi)** that *if an order is based on incorrect assumption of facts or on incorrect application of law or without applying the principle of natural justice and without application of mind, it would be treated as 'erroneous'*

8.1 Further, what is **prejudicial to the interest of the revenue** has been defined by the Hon'ble Jurisdictional High Court in the case of **Dawjee Dadabhoy & Co. vs. S. P. Jain [1957] 31 ITR 872 (Cal.)** that *the words "prejudicial to the interests of the Revenue" must mean that the orders or assessment challenged are such as are not in accordance with law, in consequence whereof the lawful revenue due to the State has not been realized or cannot be realised. It can mean nothing else. In the case*

of **Venkata Krishna Rice Co. vs. CIT [1987] 30 Taxman 528 (Mad.)** the Hon'ble Madras High Court has held that *the expression "prejudicial to the interests of the Revenue" must be regarded as involving a conception of acts or orders which are subversive of the administration of revenue. There must be some grievous error in the order passed by the AO, which might set a bad trend of pattern for similar assessments, which on broad reckoning, the Commissioner might think to be prejudicial to the interests of revenue administration. The scope of the interference under this section is not to set aside merely unfavourable orders and bring to tax some more money to the treasury. Nor is the section, meant to get at sheer escapement of revenue which, as is well known, is taken care of by provisions elsewhere in the Act such for instance, as section 147. The prejudice must be prejudice to the Revenue administration. In the case of CIT vs. Leisure Wear Exports Ltd. (supra), the Hon'ble Delhi High Court has held that the expression "prejudicial to the interest of the Revenue" is of wide import and is not confined to loss of tax. If, due to an erroneous order of the AO, the Revenue is losing tax lawfully payable by a person, it would be certainly 'prejudicial to the interest of the Revenue'.* The Hon'ble Gauhati High Court in the case of **Smt. Lila Choudhury v. CIT [2008] 167 Taxman 1 (Gau.)** that thus, *"prejudicial to the interests of the Revenue" would mean an erroneous order which goes against the interests of revenue collection.* In the case of **CIT v. Emery Stone Mfg. Co. [1995] 83 Taxman 643 (Raj.)** the Hon'ble Rajasthan High Court has held that *Allowing certain deductions without proving the claim or without proper verification or in ignorance of the provisions of law are the various instances on the basis of which the order could be considered prejudicial to the Revenue and could be set right in revisional jurisdiction.* The Hon'ble Gujarat High Court in the case of **CIT**

v. Smt. Minalben S. Parikh [1995] 79 Taxman 184 (Guj.) has held that it is not necessary that **every order which is found erroneous is also prejudicial to the interest of the Revenue**. What is meant by words "prejudicial to the interest of the revenue" has not been defined. However, giving ordinary meaning to the words used in the statute, they must mean that the orders under consideration are such as are not in accordance with law and in consequence whereof, the lawful revenue due to the State has not been realised or cannot be realised. If income in question had been taxed and legitimate revenue due in respect of that income had been realised, though as a result of erroneous order having been made in that respect, the Commissioner could not exercise powers for revising the order u/s 263 merely on the basis that the order under consideration was erroneous. If the material in that regard was available on the record of the assessee, the Commissioner could not exercise his powers by ignoring that material which linked the income concerned with the tax realisation made thereon. The two questions were inter-linked and the authority exercising powers u/s 263 was under obligation to consider the entire material about the existence of income and the tax which was realisable in accordance with law and further what tax had in fact been realised under the alleged assessment orders.

8.2 The Hon'ble Supreme Court in the case of **Gita Devi Aggarwal vs. CIT [1970] 76 ITR 496 (SC)** regarding **Opportunity of being heard to be given**, have held that provision merely requires that an opportunity of being heard should be given to the assessee and the stringent requirement of service of notice u/s 147 cannot be applied to a proceeding u/s 263. Also, in the case of **CIT vs. Electro House [1971] 82 ITR 824 (SC)** the Hon'ble Supreme Court have held that the jurisdiction of the Commissioner to proceed u/s 263 was not dependant on the fulfilment of

any condition precedent. All that he was required to do before reaching his decision, and not before commencing the inquiry, was that he must give the assessee an opportunity of being heard and make or cause to make such enquiry as he deems necessary. Those requirements had nothing to do with the jurisdiction of the Commissioner. They pertained to the region of natural justice. Breach of the principles of natural justice might affect the legality of the order made but that did not affect the jurisdiction of the Commissioner. No notice was required to be issued by the Commissioner before assuming jurisdiction to proceed u/s 263.

9. Thus, a study of the literature on the subject reveals that since the Ld. AO had failed to mention the correct section for the addition made, which mandated application of special rate of tax u/s 115BBE of the Act, there was not only incorrect application of section but the revenue was losing tax due to it; and therefore, the order of the Ld. AO was erroneous in so far as it was prejudicial to the interest of the revenue. Further, resorting to the incorrect provision of law for initiation of penalty proceeding, which necessarily have to be initiated in the course of any proceeding when warranted on facts, and the reference to incorrect section may result in the final order of penalty being subjected to adverse appellate findings. Therefore, on both the counts, the order of the Ld. PCIT is correct since in his view there was non-application of mind and incorrect application of the provision of the law or omission to apply the correct provision of law, which resulted in the order being erroneous and the Ld. AO's order was erroneous in so far as it was prejudicial to the interests of the revenue, The Ld. PCIT has merely set aside the order before the Ld. AO with certain directions, and no prejudice is caused to the assessee by virtue of those directions as the assessment order was found to be erroneous in so far as it is prejudicial

to the interest of the revenue, and it was within the ambit of the powers available u/s 263 of the Act to the Ld. PCIT to direct the Ld. AO to carry out necessary inquiries and thereafter revise the assessment order by invoking the correct provision of law. Therefore, we find no reason to interfere with the findings of the Ld. PCIT whose order is in accordance with law and as per the judicial pronouncements as discussed above. The appeal of the assessee is therefore, dismissed and the order of PCIT is upheld as he had followed due process of law before passing the order u/s 263 of the Act.

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

Order pronounced in the open Court on 10th August, 2026.

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 10.08.2026

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Mohammed Tanweer Alam, 1 Mistri Tola, Madhubani, Purnea, Bihar, 854301.**
2. **PCIT (Central), Patna, Office of the PCIT (Central), Patna, Central Revenue Building, Birchand Patel Path, Patna, Bihar, 852113.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Patna Benches, Patna.
6. Guard File.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata