IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1339/PUN/2025
Assessment Year : 2018-19

Everllence India Private Limited, E-73, MIDC Waluj, Aurangabad – 431 136 Maharashtra PAN : AAACM0320L	Vs.	Principal Commissioner of Income Tax, Nashik-1
Appellant		Respondent

Assessee by	:	Shri Rahul Sarda
Revenue by	:	Shri Amol Khairnar
Date of hearing	:	17.02.2026
Date of pronouncement	:	09.03.2026

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeal at the instance of assessee pertaining to A.Y. 2018-19 is directed against the order dated 29.03.2025 framed by ld. Principal Commissioner of Income Tax, Nashik-01 arising out of Assessment Order dated 30.06.2022 passed u/s. 143(3) r.w.s.144C(13) of the Income Tax Act, 1961 (in short 'the Act').

2. Brief facts of the case are that the assessee is a Private Limited company engaged in the business of manufacturing activity of assembling of Diesel Engines and Steam Turbines for various Marine and Power Plant applications. Income of Rs.62,26,88,510/- declared in the return of income for A.Y. 2018-19 e-filed on 30.11.2018. Same was processed u/s.143(1) of the Act. Thereafter, the assessee's case has been

selected for scrutiny under CASS for the following four reasons:

- i. *Claim of any other amount allowable as deduction in Schedule BP*
- ii. *Exports/Imports*
- iii. *Duty Drawback*
- iv. *International Related Party Transactions in respect of Intangible property*

3. Various submissions were filed by the assessee and finally ld. Assessing Officer made certain additions on account Transfer Pricing and on account of Duty drawback thereby assessing income u/s.143(3) r.w.s.144C(13) of the Act at Rs.70,57,81,401/-. These assessment records have been examined by the ld. PCIT under the powers provided u/s.263 of the Act and on verification of the assessment records, ld. PCIT has observed that ld. Assessing Officer has not examined the assessee's claim of depreciation on Goodwill at Rs.6,21,81,534/- and secondly ld. Assessing Officer has not examined the deduction on account of Warranty provision at Rs.1,68,66,893/-. Show cause notice issued on 07.03.2025 to which assessee made detailed submissions. However, ld. PCIT was not satisfied and was of the view of the order of the Assessing Officer is erroneous and prejudicial to the interest of Revenue because proper verification have not been carried out by the Assessing Officer for the issues mentioned in the show cause notice relating to claim of depreciation on Goodwill and claiming expenses for provision of warranty.

4. Now the assessee is in appeal before this Tribunal assailing the revisionary order u/s.263 of the Act.

5. Ld. Counsel for the assessee referred to the detailed written submissions filed before ld.CIT(A) and also referred to the paper book running into 219 pages and submitted that the depreciation has been claimed on the opening written down value (WDV) of the Goodwill which has been created in the books in the preceding financial year. Therefore, ld. Assessing Officer has rightly allowed the claim of depreciation on WDV of Goodwill. He also submitted that the assessment proceedings were carried out for the specific reasons (mentioned supra) and therefore there was no jurisdiction with the Assessing Officer to deal with the other issues. As regards the warranty expenses is concerned, he submitted that the provision made during the year has already been added back to the income and the assessee has only claimed the actual amount of warranty expenses incurred during the year as against the income for the year and which is much lower to the provision of warranty expenses. He therefore stated that the revisionary proceedings deserve to be quashed.

6. On the other hand, ld. Departmental Representative supported the order of the ld.Assessing Officer and placed reliance on the decision of this Tribunal in the case of *M/s. Gera Developments Pvt. Ltd. Vs. PCIT – ITA No.1053/PUN/2024 order dated 09.12.2025*.

7. We have heard the rival contentions and perused the record placed before us. We find that the provision of Section 263 of the Act has a direct bearing on the issue raised before

us, therefore, it is pertinent to take note of this section which reads as under:

> *"263(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.*
>
> *Explanation- For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,-*
>
> *(a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include-*
>
> *(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;*
> *(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorized by the Board in this behalf under section 120;*
>
> *(b) record shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner;*
>
> *(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the 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.*
>
> *(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, National Tax 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 any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded."*

7.1. On a bare perusal of the sub section-1 would reveal that powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned Commissioner was not required the assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show cause notice pointing out the reasons for the formation of his belief that action u/s 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the 4th compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order. He may set aside the order and direct the Assessing Officer to pass a fresh order. At this stage, before considering the multi-fold contentions of the ld. Representatives, we deem it pertinent to take note of the fundamental tests propounded in various judgments relevant for judging the action of the CIT taken u/s 263.

7.2. Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC)* has laid down following ratio with regard to provisions of section 263 of the Act:

> *"There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer; it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the revenue - Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 (SC) and in Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC). [Emphasis Supplied]"*

8. Now in light of the above provisions of section 263 of the Act and judicial precedents, we move on to examine the facts of the case. First issue referred by the ld. PCIT is regarding the claim of depreciation on Goodwill at Rs.6,21,81,534/-. Assessee has claimed depreciation @25% on the opening

written down value of Goodwill of Rs.24.87 crore. There is no dispute to the fact that Goodwill has been brought in the books of account of the assessee in the scheme of amalgamation with M/s. MAN Turbo machinery India Private Limited effective from 01.04.2016 and that during the A.Y. 2016-17 the Goodwill has been created at Rs.33.16 crore approximately. The depreciation claimed on such Goodwill during F.Y. 2017-18 relevant to F.Y. 2016-17 has been allowed to the assessee and the issue of creation of such Goodwill and the depreciation thereon is not pending before the Revenue authorities at any stage as has been claimed by the ld. Counsel for the assessee. Now once the claim of creation of Goodwill and the depreciation charged thereon in the first year, i.e. F.Y. 2016-17 has been accepted by the Revenue authority, then during the year under consideration, there is opening balance of written down value on which depreciation has been claimed @25% as provided under the Act. Audited balance sheet and Tax Audit report have been e-filed in which the claim of the assessee has been examined by the Auditors and therefore ld. Assessing Officer had no reason to suspect the depreciation claimed on the opening written down value.

9. So far as the decision of this Tribunal in the case of *M/s. Gera Developments Pvt. Ltd. Vs. PCIT (supra)* referred and relied on by ld.DR is concerned, we find the facts in that case are totally different because in that case the total written down value of the Goodwill has been impaired to Nil amount but the assessee claimed depreciation as per the Income Tax Act on the written down value of the Goodwill. So on one hand there is total impairment of Goodwill and the asset has been

brought to Nil value in the regular books of account but on the other hand depreciation has been claimed as per the Income Tax Act on the block of assets. However, ld. Assessing Officer did not raise any question regarding this issue and therefore the revisionary powers exercised by the ld. PCIT on this issue have been confirmed by this Tribunal. However, in the instant case, there is no such case of impairment and it is a simple case of brought forward written down value of Goodwill as on 01.04.2017 and at the year end depreciation has been claimed. If the Revenue authorities had any doubts about the genuineness of the creation of Goodwill, then they should have taken due course of reopening the assessment for A.Y. 2017-18 when the transaction of creation of Goodwill took place. However, for the year under consideration, the order of the Assessing Officer cannot be said to be erroneous and prejudicial to the interest of Revenue for having not examined this claim of depreciation on Goodwill.

10. So far as the claim of warranty expenses is concerned, we have gone through the computation of income placed at pages 91 to 96 of the paper book and observe that the assessee has *suo motu* disallowed the provision for warranty at Rs.7,56,88,372/- and has only claimed the actual warranty expenses incurred during the year at Rs.1,68,86,893/-. Therefore, when the assessee has itself added back the provision for warranty expenses and has only claimed the actual amount of expenses incurred on warranty, therefore, in our view, ld. Assessing Officer has rightly accepted the said transaction appearing in the computation of income and there remain no reason to examine this issue. Therefore, on the

issue of warranty expenses also, the order of the Assessing Officer cannot be said to be erroneous and prejudicial to the interest of Revenue.

11. To conclude, we are of the considered view that ld. PCIT failed to assume correct jurisdiction u/s.263 of the Act for the issues referred in the show cause notice and in light of our observations made hereinabove we quash the impugned order u/s.263 of the Act and the assessment order dated 30.06.2022 being neither erroneous nor prejudicial to the interest of Revenue is hereby restored to its original place. Grounds of appeal raised by the assessee are allowed.

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

Order pronounced on this 09th day of March, 2026.

Sd/-	Sd/-
(VINAY BHAMORE)	**(MANISH BORAD)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; **दिनांक** / Dated : 09th March, 2026.
Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. **अपीलार्थी** / The Appellant.
2. **प्रत्यर्थी** / The Respondent.
3. The Pr. CIT concerned.
4. **विभागीय प्रतिनिधि**, **आयकर अपीलीय अधिकरण**, "**A**" **बेंच**, **पुणे** / DR, ITAT, "**A**" Bench, Pune.
5. **गार्ड फ़ाइल** / Guard File.

आदेशानुसार / BY ORDER,

/ True Copy //

Assistant Registrar,
आयकर अपीलीय अधिकरण, **पुणे** / ITAT, Pune.