

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No. 1061/Bang/2024
Assessment Year: 2017-18

LSI India Research & Development Pvt. Ltd., SI, Wipro Electronic City Special, Economic Zone Doddathogur Village, Begur Hobli, Electronic City, Bangalore – 560 100. PAN – AAECM 1677 N	Vs.	The Pr. Commissioner of Income Tax (PCIT), Bangaluru – 2, Bangaluru. .
APPELLANT		RESPONDENT

Assessee by	:	Smt. Tanmayee Rajkumar, Advocate
Revenue by	:	Shri Shivanand Kalakeri, CIT (DR)

Date of hearing	:	08.07.2025
Date of Pronouncement	:	23.07.2025

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the Id. Pr. CIT, Bengaluru - 2 vide order dated 27/03/2024 in DIN No. ITBA/REV/F/REV5/2023-24/1063432323(1) for the assessment year 2017-18.

2. The only issue raised by the assessee is that the Id. PCIT under section 263 of the Act has erred in holding the assessment framed u/s 143(3) r.w.s. 144(3) r.w.s 144B of the Act as erroneous in so far as

prejudicial to the interest of the revenue and further directing the AO to make a fresh assessment in accordance with law.

3. The necessary facts are that the assessee has received certain capital assets amounting to Rs. 42,89,70,248/- on free of cost/loan basis from holding/ subsidiary companies. These fixed assets, according to the Id. PCIT u/s 263 of the Act, were representing the income of the assessee as provided u/s 28(iv) of the Act. However, the assessee has not offered the same to the income in the return filed u/s 139 of the Act. Similarly, the assessment has been framed without any enquiry from the assessee so as to offer such free of cost equipment as income under clause (iv) of sec. 28 of the Act. Accordingly, the Id. PCIT u/s 263 proposed to hold the assessment order as erroneous in so far prejudicial to the interest of revenue.

3.1 In response to the show cause notice issued by Id. PCIT u/s 263 of the Act, the assessee submitted that the equipment's were acquired for the limited purpose of testing the software development. Furthermore, these equipment's were received on returnable basis and for the benefits of recipients/customer and not for the assessee. Accordingly, the assessee contended that these equipment's cannot be treated as benefit/perquisite u/s 28(iv) of the Act. However, the Id. PCIT u/s 263 of the Act rejected the contention of the assessee by observing as under:

"5. On perusal of the reply it is clear that the assessee company has been provided with the customized/specific assets (Primarily in the nature of testing equipment) by the relevant group companies. As assessee mentioned in his submission that such assets were provided by the group entities/end customers on a free of cost basis and on a returnable basis for the limited

purpose of software development. From submission it is also not clear the usable period of such assets. Therefore, if such assets are used for more than one F.Y, then these should be treated as capital assets.

5.1 Also, it is not mentioned when such assets were returned to the group company or any information about the disposal of such assets. Hence, this should be considered as benefit or perquisite arising out of the Business or exercise of profession irrespective of whether it is convertible into money or not, is made chargeable to income tax under the head profit and gains of business or profession

6. In view of the above discussion, since the aforesaid assessment order u/s 143(3) r.w.s.144C(3) r.w.s 144B of the Income-tax Act, 1961 dated 25-05-2021 is erroneous insofar as it is prejudicial to the interests of Revenue in terms of section 263 of the IT Act 1961, the assessment order is set aside and the Assessing Officer is directed under section 263, to make a fresh assessment in accordance with law, after considering the above facts. The AO shall examine in accordance with law and CBDT Instructions on this subject. The AO shall conduct necessary enquiries and verification for this purpose, and shall give the assessee an opportunity to furnish the necessary supportive evidence of his claim and explain why the proposed addition/disallowance should not be made to income. The AO shall consider the facts, and the results of any enquiries made, as well as the explanation furnished by the assessee, and make a fresh assessment in accordance with law and consequent penalty provisions applicable as per law."

4. Being aggrieved by the order of the Id. PCIT u/s 263 of the Act, the assessee is in appeal before us.

5. The Id. AR before us filed a paper book running from pages 1 to 184 and raised various contentions that these equipments were received on returnable basis and, therefore, the provisions of sec. 28(iv) of the Act cannot be attracted. In this regard, the Id. AR relied on the order of Bangalore Tribunal in the case of ACIT Vs. Sony India Software Center Private Limited reported in 170 Taxmann.com 309.

5.1 Without prejudice to the above, the Id. AR submitted that the direction given by the Id. PCIT can be modified to the extent that if the assessee satisfies that these equipments were received on returnable based on the production of the documentary evidences, the same cannot

be treated as benefit/perquisite provided under said clause (iv) of sec. 28 of the Act.

6. On the other hand, the DR contended that the assessee has not produced any evidence suggesting that the equipments were received on returnable basis. Therefore, the principles laid down by the Tribunal in the case of Sony India Software Center Private Limited (supra) are not attracted. The Id. DR vehemently supported the order of the Id. PCIT.

7. We have heard both parties and carefully gone through the materials on record. From the preceding discussion, we note that the issue on hand is limited to the extent whether the equipment's were received by the assessee on returnable basis and, therefore, the same cannot be made subject to the addition under sub clause (iv) of sec. 28 of the Act. On perusal of the order of the Id. PCIT, we find that the assessment order has been held as erroneous in so far as prejudicial to the interest of revenue on the reasoning that there was no enquiry raised by the AO during the assessment proceedings qua the receipt of equipment's on free of cost basis. Even during the proceedings before the Id. PCIT, the assessee could not demonstrate that the equipment's were received on returnable basis. Accordingly, the Id. PCIT has set aside the issue to the file of the AO for fresh examination after necessary verification and the opportunity of being heard to the assessee. As such, we note that the Id. PCIT has not given any direction to the AO for making the addition of Rs. 42,89,70,248/- representing the equipment received on free of cost basis, meaning thereby, the assessee has also been granted fresh opportunity to substantiate that these equipments were received on returnable basis. Accordingly, in our

considered opinion, there is no infirmity in the direction issued by the Id. PCIT u/s 263 of the Act.

7.1 Before parting, we find pertinent to hold that if the assessee substantiates based on the documents to the level of AO's satisfaction that these equipments were received on returnable basis than the AO will decide the issue on hand afresh in the light of the Tribunal order in the case of Sony India Software Center Private Limited, cited above. Hence, the ground of appeal of the assessee is partly allowed for statistical purposes.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in court on 23rd day of July, 2025

Sd/-

(KESHAV DUBEY)

Judicial Member

Bangalore

Dated, 23rd July, 2025

/ vms /

Sd/-

(WASEEM AHMED)

Accountant Member

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore