REPORTABLE

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

Judgment reserved on: 17/09/2026

Judgment delivered on: 05/10/2026

Judgment (Full) uploaded on: 05/10/2026

D.B. Income Tax Appeal No. 183/2014

CNR: RJHC010166092014 | URN: ITA / 270U / 2014

Commissioner of Income Tax, Udaipur

----Appellant

Versus

M/s Hindustan Zinc Ltd., Yashad Bhawan, Udaipur

----Respondent

For Appellant(s)	:	Mr. KK Bissa Mr. HG Chanda
For Respondent(s)	:	Mr. Ajay Kumar Vohra Sr. Adv (through VC) assisted by Mr. Anjay Kothari Mr. Rohit Jain Mr. Ram Krisan Rao Mr. Amit Sharma

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DIVISION BENCH

HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL
HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

C.A.V. JUDGMENT

Sanjay K. Agrawal, CJ:

1. Two substantial questions of law formulated on 26.04.2016 and 14.09.2026 for decision of the present appeal, preferred under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act of 1961'), read as under:

> "1. Whether on the facts and in the circumstances of the case, the ITAT was justified in allowing the claim of the assessee for additional depreciation under Section 32(1)(iia) of the Income Tax Act?

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> 2. Whether the I.T.A.T. was justified in holding that the PCIT is not justified in exercising the power under Section 263 of the Income Tax Act by recording a finding which is perverse to the record?"

[For the sake of convenience, the appellant herein would be referred to as 'the Revenue' and the respondent would be referred to as 'the assessee'.]

2. The assessee-company is engaged in the business of zinc, lead, silver etc. and filed its return of income for Assessment Year 2007-08, declaring the taxable income of Rs.58,43,88,93,250/-. While filing the aforesaid return of income, the assessee claimed additional depreciation of Rs.18,87,27,973/- under Section 32(1)(iia) of the Act of 1961 in respect of new plant and machinery installed at Captive Power Plant, Chanderia (for short 'CPP') (Rs.9,90,887/-) and Wind Power Plant (for short 'WPP') (Rs.18,77,37,086/-).

3. The case of the assessee was selected for scrutiny and assessment and an assessment order dated 23.03.2009 came to be passed by the Assessing Officer under Section 143(3) of the Act of 1961, determining the taxable income of the assessee at Rs.61,65,85,62,500/- after making certain additions and disallowances. It is the case of the assessee that the additional depreciation claimed by it in the return of income in respect of CPP and WPP was accepted and allowed by the Assessing Officer while completing the scrutiny assessment and passing the assessment order for Assessment Year 2007-08.

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4. The revisional authority i.e. Commissioner of Income Tax (for short 'the CIT'), while exercising the revisional power under Section 263 of the Act of 1961, by order dated 14.03.2011 set aside the assessment order dated 23.03.2009 and directed the Assessing Officer to pass fresh assessment order, *inter alia,* for the reason that additional depreciation under Section 32(1)(iia) of the Act of 1961 is available to an assessee, who is engaged in manufacturing and production of an article or thing and since the assessee is generating power from CPP and WPP, which does not amount to manufacture or production of an article or thing, the assessee is not entitled for additional depreciation under Section 32(1)(iia) of the Act of 1961.

5. Feeling dissatisfied and aggrieved by the order of the CIT dated 14.03.2011, invoking revisional jurisdiction under Section 263(1) of the Act of 1961, the assessee preferred an appeal under Section 253 of the Act of 1961 before the Income Tax Appellate Tribunal (for short 'the ITAT') branding the same as unsustainable and stating that Section 263 of the Act of 1961 is not attracted and thus the CIT could not have invoked power and jurisdiction under Section 263 of the Act of 1961.

6. The ITAT, by the impugned order dated 28.02.2014, allowed the appeal of the assessee and set aside the order passed by the CIT under Section 263 of the Act of 1961, holding that for valid exercise of revisional jurisdiction under Section 263 of the Act of 1961, twin conditions of an order being 'erroneous' and 'prejudicial to the interest of revenue' have to be cumulatively met

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before revising an order. It was held that there is no error in the finding of the Assessing Officer and set aside the order passed by the CIT under Section 263 of the Act of 1961 and the order of the Assessing Officer was restored. The ITAT also held that the assessee is in production of an article or thing as generation of power amounts to 'production' of an article or thing, relying upon the principle of law laid down in the matters of **CIT Vs. Sesa Goa Ltd.[1], CIT Vs. Mysore Minerals Ltd.[2]** and **Arihant Tiles and Marbles P. Ltd. Vs. ITO[3].** It was finally held that the finding of the CIT that the assessee does not manufacture or produce an article or thing, is incorrect.

7. Being dissatisfied and aggrieved against the order of the ITAT setting aside the order of CIT and restoring the order of the Assessing Officer, the Revenue has preferred this appeal, in which substantial questions of law have been formulated and set out in the opening paragraph of this judgment.

8. Mr. KK Bissa, learned Senior Standing Counsel appearing for the Income Tax Department submitted that the ITAT was absolutely unjustified in setting aside a well reasoned order passed by the CIT as the assessee is not entitled for additional depreciation under Section 32(1)(iia) of the Act of 1961 and the findings recorded by the ITAT are incorrect and contrary to the facts and law available on the record and, therefore, the same deserves to be set aside and both the substantial questions of law be answered in their favour and appeal be allowed.

1 [2004] 271 ITR 331
2 [2001] 250 ITR 725 (Kar)
3 [2007] 211 CTR (Raj)

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9. Mr. Ajay Kumar Vohra, learned Senior Counsel appearing for the assessee submitted that the assessee is entitled for the additional depreciation under Section 32(1)(iia) of the Act of 1961 as the twin conditions required for claiming additional depreciation under Section 32(1)(iia) of the Act of 1961 are attracted. New plant and machinery had been acquired by the assessee after the cut-off date of 31.03.2005 and the assessee is engaged in the business of manufacture or production of an article or thing. As such, the ITAT has clearly recorded a finding that both the conditions, as required under Section 32(1)(iia) of the Act of 1961, namely that the order is erroneous and prejudicial to the interest of the revenue, are not satisfied. In view of that, the present appeal deserves to be dismissed.

10. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

11. In order to consider the plea raised at the Bar, it would be appropriate to notice Section 263(1) of the Act of 1961, which states as under: -

> **"263. Revision of orders prejudicial to revenue.**— (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,—

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(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 Principal Commissioner or Commissioner under this sub- section shall extend and shall be deemed

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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."

12. A careful perusal of Section 263(1) of the Act of 1961 would show that it is the essential condition to invoke Section 263 that the Commissioner must find that the order of assessment is erroneous firstly and secondly, that the order of the assessing authority is prejudicial to the interests of the Revenue. The CIT has power to take into consideration all records available at the time of examination by him. 'Record' would mean all records relating to proceeding available at the time of examination with the Commissioner. (See **Commissioner of Income Tax,**

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Bangalore v. Shree Manjunatheaware Packing Products & Camphore Works[4].)

13. The Supreme Court in the matter of **Malabar Industrial Co. Ltd. v. Commissioner of Income Tax, Kerala State**[5] has held that two conditions precedent for exercise of the revisional power under Section 263(1) of the Act of 1961 namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue, have to be satisfied. It is further held that if one of them is absent, recourse cannot be had to Section 263(1), and observed as under: -

> "6. A bare reading of this provision makes it clear that the prerequisite to exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income Tax Officer is erroneous insofar as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent — if the order of the Income Tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue — recourse cannot be had to Section 263(1) of the Act.
>
> 7. 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.
>
> 8. The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The High Court of Calcutta in Dawjee Dadabhoy & Co. v. S.P. Jain, the High Court of Karnataka in CIT v. T. Narayana

4 AIR 1998 SC 1478
5 (2000) 2 SCC 718

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Pai, the High Court of Bombay in CIT v. Gabriel India Ltd. and the High Court of Gujarat in CIT v. Minalben S. Parikh treated loss of tax as prejudicial to the interests of the Revenue.

10. 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 Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income Tax Officer 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 Income Tax Officer 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. (See Rampyari Devi Saraogi v. CIT7 and in Tara Devi Aggarwal v. CIT.)"

14. The principle of law laid down in **Malabar Industrial Co. Ltd.** (supra) has recently been followed by their Lordships of the Supreme Court with approval in the matter of **Commissioner of Income-tax v. Paville Projects Pvt. Ltd.**[6]

15. Reverting to the facts of the case in light of the principle laid down by the Supreme Court in the case of **Malabar Industrial Co. Ltd.** (supra), it has to be seen whether the order of the Assessing Officer sought to be revised under Section 263 of the Act of 1961 by the CIT is erroneous and prejudicial to the interest of the revenue and CIT is justified in setting aside the order of Assessing Officer.

6 (2023) 453 ITR 447

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16. At this stage, it would be appropriate to notice Section 32(1) (iia) of the Act of 1961, as amended by the Finance Act, 2007, which states as under:

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"**Depreciation**

32. (1) [In respect of depreciation of—

[iia(in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii):

Provided that no deduction shall be allowed in respect of-
(A) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or

(B) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house; or

(C) any office appliances or road transport vehicles; or

(D) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year;]"

17. A bare perusal of the aforesaid provisions would mandate that twin conditions required for claiming additional depreciation by the assessee would be; firstly that the new plant and machinery should have been acquired and installed after the cut-off date of 31.03.2005, and secondly, that the assessee should have been engaged in the business of manufacture or production of any article or thing and as such if the assessee fulfills both the aforesaid conditions, it would be eligible to claim additional

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depreciation in respect of the new plant and machinery acquired and installed.

18(1) Coming to the facts of the present case, it is the case of the assessee that it fulfills both the conditions, as required under Section 32(1)(iia) of the Act of 1961 for claiming additional depreciation of Rs.18,87,27,973/- in respect of new plant and machinery installed at CPP and WPP. However, as regards first condition, it is undisputed amongst the parties that assessee had acquired and installed new plant and machinery after the cut-off date of 31.03.2005, which is clear from the finding recorded by the learned ITAT in para 14 of the impugned order, which states as under:

> "We have found that the assessee has installed new machinery and plant of Captive Power Plant and Wind Power Plant. The CIT has not disputed this contention of the assessee-company. He has observed that the assessee neither manufactures nor produces any new articles or thing. But we have found it otherwise. In view of the above judicial verdicts, the assessee is producing new article or thing as required under the law. Therefore, there is no error in the finding of the A.O. in this regard. Accordingly, the order of the ld. CIT(A) dated 14.03.2011 is set aside and the assessment order is restored."

As such the first condition for invoking Section 32(1)(iia) of the Act of 1961 stands satisfied.

18(2) So far as second condition is concerned, the power and electricity has been held to be 'movable property' and would come under the purview of 'article' or 'thing', as electricity can be transmitted, transferred, delivered, stored or possessed etc.. In the matter of **State of A.P. Vs. National Thermal Power**

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Corpn. Ltd. & Others[7]**,** it has been held by their Lordships of Supreme Court as under:

> "**Electricity, what it is**
>
> **20.** Before we deal with the constitutional aspects, let us first state what electricity is, as understood in law, and what are its relevant characteristics. It is settled with the pronouncement of this Court in CST Vs. MP Electricity Board, Jabalpur that electricity is goods. The definition of goods as given in Article 366(12) of the Constitution was considered by this Court and it was held that the definition in terms is very wide according to which "goods" means all kinds of movable property. The term "movable property" when considered with reference to "goods" as defined for the purpose of sales tax cannot be taken in a narrow sense and merely because electrical energy is not tangible or cannot be moved or touched like, for instance, a piece of wood or a book, it cannot cease to be movable property when it has all the attributes of such property. It is capable of abstraction, consumption and use which if done dishonestly, is punishable under Section 39 of the Indian Electricity Act, 1910. If there can be sale and purchase of electrical energy like any other movable object, this Court held that there was no difficulty in holding that electric energy was intended to be covered by the definition of "goods". However, A.N. Grover, J. speaking for the three-Judge Bench of this Court went on to observe (at SCC p. 205, para 9) that electric energy "can be transmitted, transferred, delivered, stored, possessed etc. in the same way as any other movable property". In this observation we agree with Grover, J. on all other characteristics of electric energy except that it can be "stored" and to the extent that electric energy can be "stored" ', the observation must be held to be erroneous or by oversight. Science and technology till this day have not been able to evolve any methodology by which electric energy preserved or stored."

18(3) Similarly, it has been held by their Lordships of Supreme Court in the matter of **PCIT Vs. Damodar Valley Corporation**[8]**,** that assessee which generates electricity from thermal power is entitled for additional depreciation under Section 32(1)(iia) of the Act of 1961 and stated as under:

7 (2002) 5 SCC 203
8 [2022] 134 taxmann.com 63 (Calcutta)

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"4. The short question involved in this appeal is whether the respondent/assessee which generates electricity from thermal power is entitled for additional depreciation at the rate of 20% under section 32(1)(iia) of the Act. The substantial question which needs to be considered is whether the initiation of proceedings under section 263 of the Act was justified? If we answer the first question of law in favour of the assessee, then the necessity to answer the second question may not arise as it would become academic. We need not answer the fist question of law as there are various decisions of the Hon'ble Supreme Court as well as other High Courts including this Court. In the State of Andhra Pradesh v. National Thermal Power Corpn. Ltd. 2002 taxmann.com 2376, the Hon'ble Supreme Court held that electric energy can be transmitted, transferred, delivered, stored, possessed etc. in the same state as movable property. The Hon'ble Supreme Court followed its earlier decision in CST v. Madhya Pradesh Electricity Board /1969/ 1 SCC 200. Therefore, the revenue cannot dispute the fact that the electricity needs to be construed as a movable property as it being capable of being transmitted and transferred etc.

5. The next issue is whether the respondent/assessee would be entitled to additional depreciation under section 32(1)(iia)? We are guided by the decision of this Court in the case of CIT v. Ankit Metal and Power Ltd. [2016] 66 taxmann.com 367/[2015] 372 ITR 660. In the said decision the Division Bench followed the decision of the High Court of Madras in CIT v. Hi Tech Arai Ltd. [2010/ 321 ITR 477 and CIT v. VTM Ltd. [2010 187 Taxman 319/[2009] 319 ITR 336 (Mad.) and held that the assessee therein which was also engaged in the activity of manufacturing of power is entitled for additional depreciation under section 32(1)(iia) of the Act. To the same effect, there are several other decisions of other High Courts and the latest being in the case of Pr. CIT v. NTPC SAIL Power Co. (P.) Ltd. [2019] 103 taxman.com 398 (Delhi)

6. In the light of the above, we hold that the respondent/assessee is entitled for additional depreciation under section 32(1)(iia) of the Act. For the reasons, the appeal filed by the revenue is dismissed and the substantial question of law is answered against the revenue.

7. As pointed out earlier, since the core issue has been decided in favour of the respondent/assessee, the question whether exercise of jurisdiction by the Commissioner under section 263 of the Act is justified or not is not required to be considered."

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18(4) Further, generation of power and electricity would come under the purview of 'production' as the word 'production' has a wider connotation than the word 'manufacture', as held by the ITAT in the impugned order while relying upon the decisions rendered in the case of **Sesa Goa Ltd.** (supra), **Mysore Minerals Ltd.** (supra) and **Arihant Tiles and Marbles P. Ltd.** (supra).

18(5) Secondly, the assessee is involved in the business of manufacture and production of various minerals (zinc, lead, etc.) and its by-products and the power generated by the assessee at its CPP and WPP is used in the manufacturing units of the assessee to produce finished products.

18(6) It is a settled law that once an assessee acquires and installs new plant and machinery for generation of power after the cut-off date and is in the business of manufacture and production of an article or thing, the assessee is entitled to claim additional depreciation under Section 32(1)(iia) of the Act of 1961, regardless of the fact whether generation of power amounts to production of an article or thing.

18(7) In the matters of **CIT Vs. Mehru Electricals & Mechanical Engineers (P) Ltd.**[9], **Damodar Valley Corporation** (supra) and **CIT Vs. Hi Tech Arai Ltd.**[10] (against which SLP has been dismissed by the Supreme Court in SLP(c) No.35856/2010), wherein the issue involved was whether the assessee engaged in manufacture and production of an article or thing would be

9 [2017] 82 taxmann.com 102 (Rajasthan)
10 [2010] 321 ITR 477 (Madras)

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entitled to claim additional depreciation under Section 32(1)(iia) of the Act of 1961 in respect of Windmill/Wind Power Plant for power generation, it was conclusively held that once the conditions mentioned in Section 32(1)(iia) of the Act of 1961 for claiming additional depreciation have been fulfilled, the claim cannot be denied by the Revenue.

18(8) This would bring us to the facts of the case as the ITAT has clearly recorded a finding that the assessee fulfills all the statutory conditions for invoking Section 32(1)(iia) of the Act of 1961 for claiming additional depreciation in respect of new plant and machinery installed at CPP and WPP. Thus, the ITAT has come to the conclusion that the CIT could not have invoked power under Section 263 of the Act of 1961 and could not have set aside the order passed by the Assessing Officer as the order sought to be revised, is neither erroneous nor prejudicial to the interest of the Revenue under Section 263 of the Act of 1961. Upon due consideration, we find that the ITAT has rightly recorded a finding that there was no reason for the CIT to invoke Section 263(1) of the Act of 1961 and it has rightly set aside the order of the CIT, interfering with the order passed by the Assessing Officer, granting additional depreciation under Section 32(1)(iia) of the Act of 1961, which is neither perverse nor contrary to the record.

19. In that view of the matter, the substantial questions of law are answered against the Revenue and in favour of the assessee.

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20. Consequently, we do not find any merit in the appeal, which deserves to be dismissed and the same is, accordingly, dismissed leaving the parties to bear their own cost(s).

(VINIT KUMAR MATHUR),J (SANJAY K. AGRAWAL),CJ

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