

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**I.T.A. No. 1094/Del/2016
Assessment Year: 2011-12**

SH. KEHAR SINGH,
H.NO. 46, SECTOR-6,
URBAN ESTATE,
KARNAL
(PAN: CPSPS0058H)
(ASSEESSEE)

VS. PR. CIT, SECTOR-12,
AAYAKAR BHAWAN,
KARNAL

(RESPONDENT)

Assessee by: SH. K.L. ANEJA, ADV.

Revenue by: SH. NAVEEN CHANDRA, CIT(DR)

ORDER

PER H.S. SIDHU, JM

This appeal is filed by assessee against the Order dated 04.2.2016 passed by the Ld. Pr. CIT, Karnal relating to Assessment Year 2011-12 u/s. 263 of the Income Tax Act, 1961 (hereinafter referred as the Act).

2. The grounds raised by the assessee in the appeal read as under:-

1. *That the order of the Ld. Pr. CIT is against law and facts.*
2. *That the order passed by the Ld. AO dated 12.8.2013 is neither erroneous nor prejudicial to the interest of revenue as such proceedings initiated u/s. 263 are illegal and uncalled for and in excess of powers vested*

on law and judicial pronouncements etc. And AO's order dated 12.8.2013 deserved to be restored.

3. The brief facts of the case are that the Return of income declaring an income of Rs.1,59,800/- was filed by the assessee on 26.09.2011. The case of the assessee was taken into scrutiny as there were huge cash deposits to the tune of Rs.57.39 lacs approximately appearing in the Saving Bank Accounts of the assessee. The A.O. during the assessment proceedings noted that the assessee is an agriculturist and also has some income from sale of milk and finally the order u/s. 143(3) was passed by the A.O. on 12th August, 2013 in which he accepted the returned income of Rs. 1,59,800/-. Thereafter, from the perusal of assessment records, it was noticed that out of Rs. 57.39 lacs (approximately) cash deposited in the saving bank account of the assessee maintained with Allahabad Bank (Rs. 22.40 lacs approx.), in PNB (Rs. 18.01 lacs approximately) and in Union Bank of India (Rs. 16.98 lacs approx.). The assessee submitted that he sold agricultural land on 29.4.2010 for Rs. 12.76 lacs approximately and thereafter on 19.10.2010 for Rs. 14.54 lacs approximately. Thus, the assessee submitted some explanation for the source of cash deposits to the tune of Rs.27.25 lacs approximately. However, for the remaining amount i.e. Rs.30.14 lacs (approximately) remained unexplained and unverified. Further, it is also seen that even the amount of Rs.27.25 lac received on sale of agricultural and have apparently not been deposited in the above mentioned. bank accounts when the details of deposits in these bank accounts are perused carefully.

Thus, the entire amount of cash deposits remained unexplained/unverified. As the A.O. did practically no verification of assessee's claim about the source of cash deposits appearing in the bank accounts. Thus, the assessment order passed by the A.O. has become erroneous so far as it is pre-judicial to the interest of the Revenue and accordingly, the same needed revision u/s. 263 of the I.T. Act. Accordingly, notice u/s. 263 of the I.T. Act was issued to the assessee on 28th December, 2015 on the issues discussed above. In response, the assessee/his Advocate attended the proceedings on 13th January, 20th January and 3rd February, 2016 and also filed the written submissions to support their case that the action u/s. 263 of the Act is not warranted in this case. The assessment records and the submissions filed by the assessee during assessment proceedings as well as during the proceedings u/s. 263 have been perused carefully and assessee submissions/explanation were not because the A.O. didn't make any enquiry/verification of the sources of cash deposits appearing in the bank accounts, so the assessment order passed by him has become erroneous and pre-judicial-to the interest of the Revenue. Accordingly, the Ld. Pr. CIT has set-aside the assessment order dated 12.08.2013 passed by the A.O. in this case and directs the A.O. to do the assessment afresh after considering all the facts/issues discussed above. The A.O. was also directed to allow reasonable opportunities of being heard to the assessee before passing the assessment order in this case, vide order dated 04.02.2016 passed u/s. 263(1) of the Act.

4. Against the Order of the Ld. Pr. CIT dated 04.2.2016 passed u/s. 263(1) of the I.T. Act, the assessee appealed before the Tribunal.

5. Ld. Counsel of the assessee relied upon the original assessment order dated 12.8.2013 passed u/s. 143(3) of the I.T. Act in the case of the assessee as well as the documentary evidences filed by him in the shape of Synopsis/ Additional Synopsis alongwith various case laws and Paper Book.

6. The Synopsis filed by the Assessee's counsel are reproduced hereunder:-

"Undisputed facts

Income returned at Rs.159800/- from sources of income namely other sources (Bank Interest) House Property and petty sale of Milk of own cattles. Agriculture Income of Rs. 5.5 Lacs from agriculture holding of 20 Acres. Alike income from agriculture in the preceding years were as under and accepted by revenue.

AY 2010-11 6.50 Lacs Agriculture income in AY 2011-12 (under appeal)

AY 2009-10 6.0 Lacs Reduced on account of Sale of part of lands in April 2010

AY 2008-09 5.0 Lacs

AO having completed Assessment u/s 143(3) taking into consideration bank accounts, cash flow statement, called u/s 143 (2) - pages 6 - 7

Appellants reply dated 27.07.2013 duly considered - pages 8-9, 10-21 and 21-22.

CIT's notice u/s 263

The notice appears to be on account of alleged deficiency of examination of records and inadequacy of funds available for making deposits in Bank. The observations of CIT that cash withdrawals have been withdrawn and re-deposited is not understood as the appellant was having the Bank Accounts and certain transactions of gift to daughter in law acquisition of plots and purchase of car were through banking channel, are relevant for taking adverse view.

CIT in the light of above observations contained in the notice, made prima facia, an opinion that AO's order was erroneous as it was prejudicial to the interest of the Revenue (page 4 of order.)

The withdrawals are not meant (pages 4-5)

Finally the Ld CIT vide page 5 observed that AO's order was erroneous and prejudicial to the interest of the revenue. Aid was taken of explanation 2 to section 263 inserted in the statute w.e.f. 1.06.15, treating the same to be retrospective in nature is not correct as the retrospective effect is granted to grant any benefit to the assessee and not to do any HARM THE SETTLED ISSUES. to be unsettled.

The Ld CIT has not been able to show as to how AO's order is erroneous in law whether no enquiries or deficiency. In either case no erroneous law has been

applied by the AO which is contrary to law or coming to wrong conclusion.

CIT could not interfere with the AO's order simply because he disagrees with the AO in as much as none of the two conditions that should pre-exist. The order of Ld CIT may kindly be reversed and AO's order should pre-exist.

Submitted for Favourable consideration."

7. On the contrary, Ld. DR relied upon the order passed by the Ld. CIT dated 04.2.2016 passed under Section 263 of the I.T. Act and requested that the same may be upheld. In support of his contention, he also filed the Written Submission, the contents thereof are reproduced hereunder:-

"1.1 In the present case application of mind is not demonstrated through assessment order which is very evident.

1.2 It clearly demonstrate that there is no application of mind. The ratio has been laid down by the Hon'ble SC in case of Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83/109 Taxman 66 (SC) that when there is no application of mind, then the assessment order can be termed as erroneous and prejudicial to the interests of revenue.

2. Co-ordinate bench of ITAT Delhi in case NIIT Vs. Commissioner of Income- tax (Central-II [2015] 60 taxmann.com 313 (Delhi - Trib.) has analysed the relevant case laws on the issue, including the following

(i) Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83/1 09 Taxman 66 (SC),

- (ii) *M.D. Overseas Ltd. v. DGIT [2011]333 ITR 407/198 Taxman 136/10 taxmann.com 30 (AIL),*
- (iii) *Southern Herbals Ltd. v. DIT (Inv.)I1994J 207 ITR 55 (Kar.),*
- (iv) *CIT vs. Hastings Properties[2002] 253 ITR 124/[2001"] 119 Taxman 36 (Cal.),*
- (v) *CIT v. Usha International Ltd.f2012] 348 ITR 485/210 Taxman 188/25 taxmann.com 200 (Delhi),*
- (vi) *JK. Synthetics Ltd. v. CBD7T 1972-183 ITR 335 (SC),*
- (vii) *Sirpur Paper Mill Ltd. v. CWT[1970] 77 ITR 6 (SC),*
- (viii) *Gee Vee Enterprises v. Addl. CIT[1975] 99 ITR 375 (Delhi)*
- (ix) *ITO v. D.G. Housing Projects Ltd.[20 12] 343 TTR 329/20 taxmann.com 587/[2013] 212 Taxman 132 (Delhi)*

2.2 *The co-ordinate bench has stated as under,*

"28. We have considered the detailed submissions of both the parties and have perused the record of the case keeping in view the various authoritative pronouncements in this regard. There cannot be any quarrel with the legal propositions, as advanced by both the parties. It has consistently been held that if the AO's conclusion is arrived at after due application of mind on a particular issue, then the order cannot be said to be erroneous.

'Due application of mind' implies that if the assessee has merely responded to the AO's query and the AO, without proper verification of replies, accepts the same, then, it cannot be said to be a case of due application of mind.

28.1 Ld. Special counsel has rightly pointed out that the expression, 'inquiry', 'lack of inquiry' and 'inadequate inquiry', have not been defined and, therefore, when the action of the AO would be suggestive of lack of inquiry or inadequate inquiry, will depend upon the facts obtaining in a particular case. What emerges as a broad principle from the various decisions is that where the AO has reached a rational conclusion, based on his inquiries and material on record, the Commissioner should not start the matter afresh in a way as to question the manner of his conducting inquiries. It is not the province of the Commissioner to enter into the merits of evidence; it has only to see whether the requirements of essential inquiries and of law have been duly and properly complied with by AO or not.

28.2 It is well settled that before the Commissioner can invoke his powers u/s 263, he has to arrive at a conclusion that the assessment order is erroneous in so far as it was prejudicial to the interests of the revenue. Then only the powers u/s 263 can be invoked. Therefore, if AO accepts or rejects any claim of the assessee without due application of mind and if such failure causes

prejudice to revenue, the Commissioner would be well within his powers u/s 263 to intervene in the matter. An inquiry which is just farce or mere pretence of inquiry, cannot be said to be an inquiry at all, much less an inquiry needed to reach the level of satisfaction of the AO on the given issue. The level of satisfaction would obviously mean that he has conducted the inquiry in a manner whereby he places on record the material enough to reach the satisfaction, which a rational person, being informed of the nuances of tax laws would reach after due appreciation of such material. If this component is missing, it will always be a case of lack of inquiry and not inadequate inquiry. We find that Id. Commissioner, while considering this argument of assessee has observed that the representative of the assessee was assured that this issue will be considered with independent application of mind while passing the order u/s 263. Therefore, when specific issues will be considered, it will be examined whether the AO had reached the level of satisfaction by carrying out necessary inquiries qua that issue or not. Ground is disposed of accordingly"(emphasis supplied).

2.3 *The co-ordinate bench has further stated as under:*

"38.5 Thus, it is evident that Hon'ble Delhi High Court in D.G. Housing Projects Ltd. (supra) clearly pointed out that the facts in Gee Vee Enterprise (supra) were entirely different. Thus, the ratio laid

down in the case of Gee Vee Enterprise (supra) as well as D.G. Housing Projects Ltd. (supra), have to be taken into consideration depending upon the facts obtaining in a particular case while deciding various issues. The broad principle that emerges from various decisions is that if AO has merely accepted the assessee's explanation on various issues without proper inquiry then the same would come within the ambit of 'lack of enquiry' and not 'inadequate inquiry' . If a particular issue comes within the ambit of complete lack of inquiry then the order is to be considered as erroneous as well as prejudicial to the interests of revenue but if the case is of inadequate inquiry, then Id. CIT has to demonstrate that how the order was erroneous and prejudicial to the interests of revenue. This aspect we will take into consideration while deciding various issues on merits. In the result, this ground is disposed of accordingly"(emphasis supplied).

2.4 The ratios of various judicial pronouncements including NIIT Vs Commissioner of Income-tax (Central-H) [2015] 60 taxmann.com 313 (Delhi - Trib.), Subhlakshmi Vanijya (P.) Ltd. Vs CrT [2015] 60 taxmann.com 60 (Kolkata - Trib.) and CIT Vs Maithan International [2015] 56 taxmann.com 283 (Calcutta) are that the AO(functioning as an investigator) is required to conduct the inquiry in a manner whereby he places on record the material enough to reach the satisfaction, which a rational person, being informed of the nuances of tax laws would reach after due appreciation of such material. If this component is

missing, it will always be a case of lack of inquiry and not inadequate inquiry.

2.5 The right question to be asked is as to whether a normal person, leave alone ITO who is conversant with nuances of Income tax law, would be inquisitor in a given situation.

3.1 In the present case there in name of enquiry, there is just farce or mere pretence of inquiry. In the circumstances when, the case was selected under scrutiny on the ground that "AO should examine genuineness of Sundry creditors". Issuing notices u/s 133(6) only in 6 cases against 22 such cases, shows no application of mind as well as just farce or mere pretence of inquiry.

3.2 The fact of accepting sundry creditors without any further enquiry in spite of showing pattern of cash payments below Rs. 20000/- on consecutive days, in such payments which is unnatural shows AO has not conducted the inquiry in a manner whereby enough material is placed on record to reach the satisfaction, which a rational person, being informed of the nuances of tax laws would reach after due appreciation of such material.

3.3 During proceedings u/s 263, the assesee was required to show cause as to why the AO was not required to become inquisitor in the situations mentioned in the SCN dated 20.] 2.20 12(ref. page # 1 of the AO) . The main reply is as per letter dated 21.01.20 13(ref. page # 1 of the AO).

3.4 A perusal of the reply dated 10.11.2015 as quoted in the AO shows that the assessee failed to show cause as to why the AO was not required to become inquisitor in the given situations.

3.5 The CIT has specifically mentioned that out of 22 creditors, notices u/s 133(6) was issued to 6 creditors only(ref. first para at page# 1 of the AO). The CIT has also analysed the act of making enquiry by the AO in respect of the creditors and returned a findings the in spite of being new creditors, in 7 cases, no enquiry was made.

3.6 The CIT has also examined the ledger accounts of the sundry creditors(e.g. Prayan Enterprise and Aggarwal Brothers) which show cash payments of below the prescribed limit on consecutive days. A person of ordinary prudence, much less income tax officer, can clearly see a pattern in such payments which is unnatural.

3.6 During the course of proceedings u/s 263, the CrT examined the ledger 'accounts of the sundry creditors and (through application of mind) found specific instances of violation of provisions of section 40A(3) which were not seen by AO. It shows non-application of mind by the AO.

4.1 After considering the relevant material on record and giving due opportunity of being heard to the assessee, the CIT came to a logical and judicious conclusion that this issue was not considered by the AO.

4.2 *Presumption is in the favour of the revenue by virtue of sub-section (e) of 114 of Evidence Act, 1872 which reads as under:-*

" Section 114 in The Indian Evidence Act, 1872

114 Court may presume existence of certain facts. -The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustrations The Court may presume-(e) That judicial and official acts have been regularly performed;...."

4.3 *The assessee has not submitted any cogent material to rebut this presumption.*

4.4 *The Finance Act, 2015 w.e.f. 1st June, 2015, has inserted Explanation 2 to section 263 so as to provide that an order passed by the Assessing Officer 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 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.

4.5 This being an explanation is clarificatory in nature. Moreover, the language of this explanation is declaratory and has phrase 'it is hereby declared'. Therefore, it only clarifies the intension of the parliament. Hence, the position of the law would be interpreted as being same, even earlier.

4.6 The order of Hon'ble Mumbai, ITAT in' case of Mis Crompton Greaves Ltd. Vs CIT 2016-TIOL-816-ITAT-MUM has held that the explanation 2 being clarificatory in nature, is applicable retrospectively.

5.1 The CIT has returned his opinion that AO (as an investigator) should have been an inquisitor in the given situations.

5.2 The opinion is bound to have a certain amount of subjectivity. The opinion certainly requires much lesser degree of material/evidence as compared to 'satisfaction' which in turn requires much lesser degree of material/evidence as compared to 'reason to believe'. It has been laid down by Hon'ble SC in case of Raymond Woollen Mills Ltd. 236 ITR 34(SC) that sufficiency of material cannot be challenged in case of 'reason

to believe'. Therefore, the same cannot be done in case of 'opinion', also.

5.3 The assessee has failed to submit cogent material to show that this opinion is perverse."

8. In this case the AO has passed the following order u/s. 143(3) of the I.T. Act, 1961 vide order dated 12.8.2013:

"The assessee has filed his income tax return on 26.9.2011 for the AY 2011-12 declaring income at Rs. 1,59,800/- which was processed on 17.1.2013. Later on, the case was selected for scrutiny through CASS. Accordingly, notice u/s. 143(2) dated 14.8.2012 was issued and served upon the assessee fixing the case for 29.8.2012. On the fixed date of hearing, Sh. Kehar Singh himself attended the hearing. Notice u/s. 142(1) dated 17.5.2013 alongwith detailed questionnaire was issued and served upon the assessee fixing the case for 05.6.2013 and the same was complied with. In response to questionnaire and various order sheet entries, the assessee through its counsel Sh. SB Gupta, Adv. has filed his replies on various dates which have been perused. The assessee is an agriculturist and has some income from sale of milk. He is not doing any business. After discussion, returned income at Rs. 1,59,800 is accepted.

Assessed. Issue requisite documents."

9. We have heard the rival contentions and considered the written submissions filed by both the parties alongwith various case laws filed by the assessee and the orders of the authorities below. As far as citations referred by the Ld. Counsel are concerned, in our view, the same does pertain to the issue in dispute because the same are not identical to the facts of the present case. We find in this case the assessee filed its Return of income declaring an income of Rs.1,59,800/- on 26.09.2011. The case of the assessee was taken into scrutiny as there were huge cash deposits to the tune of Rs.57.39 lacs approximately appearing in the Saving Bank Accounts of the assessee. The A.O. during the assessment proceedings noted that the assessee is an agriculturist and also has some income from sale of milk and finally the order u/s. 143(3) was passed by the A.O. on 12th August, 2013 in which he accepted the returned income of Rs. 1,59,800/-. Thereafter, from the perusal of assessment records, it was noticed by the Ld. Pr. CIT that out of Rs. 57.39 lacs (approximately) cash deposited in the saving bank account of the assessee maintained with Allahabad Bank (Rs. 22.40 lacs approx.), in PNB (Rs. 18.01 lacs approximately) and in Union Bank of India (Rs. 16.98 lacs approx.). The assessee submitted that he sold agricultural land on 29.4.2010 for Rs. 12.76 lacs approximately and thereafter on 19.10.2010 for Rs. 14.54 lacs approximately. Thus, the assessee submitted some explanation for the source of cash deposits to the tune of Rs.27.25 lacs approximately. However, for the remaining amount i.e. Rs.30.14 lacs (approximately)

remained unexplained and unverified. Further, it is also seen that even the amount of Rs.27.25 lac received on sale of agricultural land and have apparently not been deposited in the above mentioned bank accounts when the details of deposits in these bank accounts are perused carefully. Thus, the entire amount of cash deposits remained unexplained/unverified. After carefully perusing the assessment order, we find that that A.O. did practically no verification of assessee's claim about the source of cash deposits appearing in the bank accounts. Thus, the assessment order passed by the A.O. has become erroneous so far as it is pre-judicial to the interest of the Revenue and accordingly, the same needed revision u/s. 263 of the I.T. Act, hence, Ld. Pr. CIT rightly issued notice u/s. 263 of the I.T. Act to the assessee on 28th December, 2015 on the issues discussed above. In response, the assessee/his Advocate attended the proceedings on 13th January, 20th January and 3rd February, 2016 and also filed the written submissions to support their case that the action u/s. 263 of the Act is not warranted in this case. The assessment records and the submissions filed by the assessee during assessment proceedings as well as during the proceedings u/s. 263 have been perused carefully and assessee submissions/explanation cannot be accepted on account of the following reasons :-

- i) The assessee mainly submitted that he had already filed the cash flow statement and about the source of cash deposits, he mainly submitted that the cash is credited out of sale of agricultural land (twice), withdrawals from

Bank Pass Books and sale of agriculture produce. He also filed the copies of the Saving Bank Accounts of the assessee.

- a) As far as the details of sale of agriculture produce is concerned, it is found that the agriculture produce was sold in April, 2010 and the total sale amount is shown as Rs.5.72 lacs. Here it is also relevant to mention that the assessee owns about 20 acres of land. However, when the dates and amount of cash deposit in the three Banks are considered then it is found that Rs.99,000/- each are deposited on 13th & 15th April in Union Bank and then Rs.50,000/- each is deposited in Allahabad Bank on 13th & 30th April and on 1st May, 2010. Thus, credit for agricultural produce sale can be allowed to the tune of Rs.3.48 lacs. Though, the dates and amount don't exactly tally with the date and amounts of the sale of agriculture produce yet a liberal view is taken and credit of Rs.3.48 lacs on account of sale of agriculture produce is allowed to the assessee.

b) If we look at the cash deposited in Saving bank accounts on different dates the following position emerges. For convenience sake cash deposit of Rs.2 lacs and above is Amount (in lacs) and above is discussed here:-

S.NO.	DATE OF DEPOSIT	NAME OF THE BANK	AMOUNT (RS. IN LACS)
1	10.05.2010	Allahabad Bank	10.90
2	19.06.2010	Allahabad Bank	3.50
3	03.07.2010	Union Bank	5.00
4	29.07.2010	Union Bank	5.00
5	18.09.2010	PNB	9.00
6	23.09.2010	PNB	9.00
7	11.11.2010	Union Bank	5.00
8	19.01.2011	Allahabad Bank	2.00
9	31.03.2011	Allahabad Bank	3.00
Total			Rs. 52.40 lacs

As far as the sources of these cash deposits are concerned, the source relating to agricultural income has been discussed above. Now, we consider the source relating to sale of agricultural lands on 29.4.2010. The assessee submitted that he alongwith his son received Rs.12.76 lacs as sale amount of his agricultural land, on the other hand, if we look at the date and amount of his agricultural land, on the other hand, if we look at the date and amount of cash deposited in Assessee's bank account then we find that the nearest deposit is on 10th May, 2010 of Rs. 10.90 lacs in Allahabad Bank. In the sale deed submitted, it is clearly mentioned that the sellers had already received the sale amount, so it can be safely presumed that the assessee had already received the sale amount on 29th April, 2010 or even before that. So, practically, there is no possibility of

depositing Rs.10.90 lacs from this amount of Rs.12.76 lacs. Similarly, the assessee submitted that he sold the agricultural land for Rs.14.54 lacs on 19th October, 2010, however, if we look at the nearest cash deposit in the three Bank accounts of the assessee, then we find that on 23rd September, the assessee had deposited Rs.9 lacs in PNB so there is gap of 26 days and then the next nearest date is on 11th November, 2010 where Rs.5 lacs is deposited by the assessee in Union Bank account. Here also there is gap of 23 days after the date of Registry. Thus, considering the substantial gaps of time, no matching amounts, no credit can be allowed to the assessee on account of sale of agricultural land by him.

c) As far as the assessee's claim of withdrawing from one Bank and later depositing again in the same Bank/other banks is concerned then, if we look at the dates of withdrawals of substantial amounts then we find that the withdrawals are made for specific purpose like purchase of property (Rs.7.25 + 7.25 lacs on 29th November, 2010), for purchase of car (Rs.4.83 lacs on 24th June, 2010), gift given to assessee's daughter-in-law (for booking a plot for Rs.7lacs on 20th May, 2010) etc. Secondly, usually the withdrawals are not meant for depositing the same as cash in the same Bank account or in other bank accounts on the same day/other dates. Thirdly, the withdrawals have to be matched with the amount and

dates, if any credit is to be allowed for such withdrawals. Thus, unless the assessee is able to co-relate the withdrawals with the cash deposits by way of matching of dates and amounts or the specific purpose for doing such acts logically, no credit can be allowed to the assessee on this account.

Considering the points discussed above, it is obvious that the assessment order dated 12.08.2013 passed by the A.O. is erroneous as well as pre-judicial to the interest of the Revenue as the A.O. didn't make any verification/enquiry in respect of the sources of huge cash deposits appearing in the bank accounts of the assessee.

9.1 We further find that Ld. Pr. CIT further rightly observed that, as per the Explanation 2 to Section 263(1), which is operational from 01.06.2015 – *"an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if in the opinion of the Principal Commissioner or Commissioner(a) the order is passed without making inquiries or verification which should have been made."*

9.2 In view of the above, it is very much obvious that the A.O. didn't make any enquiry/verification of the sources of cash deposits appearing in the bank accounts, so the assessment order passed by him has become erroneous and pre-judicial-to the interest of the Revenue. Accordingly, the Ld. Pr. CIT has rightly set-aside the assessment order dated

12.08.2013 passed by the A.O. in this case and directs the A.O. to do the assessment afresh after considering all the facts/issues discussed above. Further the A.O. was also directed to allow reasonable opportunities of being heard to the assessee before passing the assessment order in this case, vide order dated 04.02.2016 passed u/s. 263(1) of the Act.

10. In the background of the aforesaid discussions and precedents, we are of the view that the AO was found to be erroneous and prejudicial to the interest of revenue since at the time of the assessment the AO was duty bound to call for such details and examine/ verify them. We also find that in the case of M/s Malabar Industries, the Hon'ble Apex Court has held that incorrect assumption of facts or incorrect application of law will satisfy the requirement of the order being erroneous. We further note that in the same category fall order passed without applying the principles of natural justice or without application of mind. We are of the view that it is incumbent on the officer to investigate the facts stated in the return, when circumstances would make such an enquiry prudent and the word 'erroneous' in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated there are assumed to be correct. In view of the foregoing observations and the precedents, we are of the considered opinion that the assessment framed by the Assessing Officer was erroneous and prejudicial to the interests of revenue. Accordingly, Ld. Pr. CIT has passed a well reasoned revisional order u/s. 263(1) which does not need

any interference on our part, hence, we uphold the same and dismiss the Appeal of the Assessee.

11. In the result, the Appeal filed by the assessee stands dismissed.

Order pronounced in the Open Court on 18/10/2017.

Sd/-

**[L.P. SAHU]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date 18/10/2017

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches