

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA Nos.175/Ind/2018
Assessment Year: 2009-10**

M/s. Sainath Developers 43, R.R. Arcade Zone-2, M.P. Nagar Bhopal	बनाम/ Vs.	Principal CIT (Central) Bhopal
(Appellant)		(Revenue)
P.A. No.ABHFS7937C		

**ITA Nos.176 to 180/Ind/2018
Assessment Year: 2010-11 to 2014-15**

M/s. Sainath Developers 43, R.R. Arcade Zone-2, M.P. Nagar Bhopal	बनाम/ Vs.	Principal CIT (Central) Bhopal
(Appellant)		(Revenue)

Appellant by	Shri S.S. Deshpande, A.R.
Respondent by	Smt. Ashima Gupta, D.R.
Date of Hearing:	26.06.2019
Date of Pronouncement:	22.07.2019

आदेश / O R D E R

PER BENCH:

This bunch of 6 appeals by the assessee pertaining to the assessment year 2009-10 and 2010-11 to 2014-15 against separate orders of the Principal CIT, Bhopal dated 17.11.2017. Since the identical grounds have been raised, all these appeals were taken up together and are being disposed of by way of a consolidated order for the sake of brevity and convenience. We take the assessment year 2009-10 as a lead year in ITA No.175/Ind/2018. The assessee has raised following grounds of appeal:

1. *“That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in initiating proceedings u/s 263 as the same was barred by limitation.*
2. *That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the order passed is erroneous and prejudicial to the interest of the revenue when the A.O. could not have made the disallowance of the amount under consideration.*
3. *That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the salary paid to partners was required to be disallowed disregarding the evidences brought on record.*

4. *That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the order was erroneous and prejudicial to the interest of the revenue.*

5. *That the assessee craves leave to add, amend, modify or alter any ground of appeal on or before the hearing.”*

2. Ground Nos.1 to 4 are against revising the assessment order. Ground No.5 is general in nature and needs no separate adjudication.

3. The facts giving rise to the present appeal are that a search & seizure action u/s 132 of the Income Tax Act, 1961 (hereinafter called as ‘the Act’) was carried out in the case of the assessee on 29.1.2014. The assessment u/s 153A of the Act was framed vide order dated 18.3.2016, thereby assessing total income of Rs.14,21,177/- accepting the income declared by the assessee. The Ld. Principal CIT observed that on verification of record, it was found that the assessee has submitted copy of partnership deed executed on 31.12.2007 as per which, there were 5 partners and there was no specific provision made in

the partnership deed regarding payment of remuneration to the partners. He further observed that an amended partnership deed was filed where 6 partners were mentioned and there was no specific provision made in this deed also regarding payment of remuneration to the partners. Therefore, the Ld. Principal CIT observed that there was no specific provision regarding remuneration to the partners. Keeping this fact in view, Ld. Principal CIT issued a show cause notice u/s 263 of the Act to the assessee, thereby calling upon the assessee as to why the assessment framed u/s 153A r.w.s. 143(3) of the Act dated 18.3.2016 pertaining to the assessment year 2009-10 should not be revised. In response thereto, the assessee filed objection against the issuance of notice u/s 263 of the Act. However, Ld. Principal CIT did not find the reply of the assessee acceptable and proceeded to revise the assessment order. Ld. Principal CIT after considering the

facts on record and submissions of the assessee, set aside the order of the A.O. and directed to reframe the assessment after examining the issue related to allowability of remuneration to the partners. Aggrieved against this, the assessee is in present appeal.

4. Ld. Counsel for the assessee Shri Deshpande vehemently argued that the Ld. Principal CIT grossly erred and did not consider the settled principles of law while revising the assessment order and invoking provisions of section 263 of the Act. Ld. Counsel for the assessee further reiterated the submissions as made in the written submissions. The submissions of the Ld. Counsel for the assessee are reproduced as under:

May it please your honours,

The brief facts of the case are stated hereunder:

The assessee is partnership firm deriving income from business of builders and developers. Regular returns are being filed by the assessee since long. The returns for the A.Y. 2009-10 to 2014-15 were filed on the due dates along with the TAR (Pg. 10-86 of PB). A search was conducted at the various business premises of Signature group on 29.01.2014 and also at the premises of the assessee. Assessments for the A.Y. 2009-10 and 2010-11 were completed u/s 143(3) (Pg.88-91 of PB). In all the returns the assessee claimed the deduction u/s 40b on account of remuneration to the partners. There was a change in the constitution of the firm as from 01.04.2008 and some of the earlier partners retired from the partnership firm as from this date. No provision was made for payment of remuneration to the partners. However, a revised amended partnership deed was executed on 16th May, 2008 in which clause no.6 provided for payment of remuneration to the

partners. On this basis the accounts were completed and the remuneration was debited in the profit and loss account in the respective years. The TAR showing the remuneration was filed every year. After due scrutinizing all the facts the assessments for the assessment years 2008-09 and 2009-10 were completed u/s 143(3) accepting the remuneration paid to the partners.

In the assessment u/s 153A or all these years details as required by the A.O. were filed and the assessments upto the A.Y. 2013-14 were completed accepting the returned income. For the 2014-15 the addition has been made on account of unsecured loans.

Legal arguments

The assessee had filed the returns in time disclosing the remuneration paid to the partners as per the deed of partnership dated 16th May, 2008. Assessments for the A.Y. 2009-10 and 2010-11 were completed u/s 143(3). The other years returns would have been processed u/s 143(1).

After the search the assessments were completed by accepting all the returns upto and including the A.Y. 2013-14. For the A.Y. 2014-15 some addition was made in respect of unsecured loans. No addition was made in respect of the claim of the assessee for the payment of remuneration. The claim made in the original return was accepted. Thus, it is submitted that no incriminating material was found. In the absence of any incriminating material no addition could be made. On this legal proposition if the addition could not have been made in the original assessment then the same cannot be treated as an erroneous assessment which is prejudicial to the interest of the revenue. Secondly, it is submitted that 263 action could have been taken

against 143(1)(a) intimation or against the assessment u/s 143(3). Now, the notice after the expiry of two years is beyond limitation.

The Ld. PCIT has set aside the assessment on the ground that in the partnership deed dated 01.04.2008 no provision was made in respect of the payment of remuneration to the partners. He further observed that the ~~said~~ partnership deed ^{dated 16.05.2008} is neither filed earlier and is not available in the assessment records. He therefore, set aside the assessment relying on the partnership deed dated 01.04.2008 without considering the revised partnership deed dated 16.05.2008.

It is humbly submitted that the remuneration to the partners has been paid as per the deed of partnership dated 16.05.2008. In all the years the audited accounts have been submitted on e-filing return which clearly mentions the remuneration paid to the partners. The Ld. PCIT did not appreciate the facts and has merely relied on a deed of partnership dated 01.04.2008. It is further submitted that the remuneration and the interest has already been assessed in the respective hand of the partners. Thus, all the necessary facts were disclosed to the Department and now saying that the deed of partnership dated 16.05.2008 cannot be considered is against the principal of law.

All the necessary facts were disclosed in the return and were investigated by the Id. A.O. After verification he has accepted the claim of the assessee. Thus, the order is not erroneous nor is prejudicial to the interest of the revenue and as such the action of the PCIT is bad in law.

The Ld. A.O. has applied his mind while passing the order. The order has been passed u/s 153A/143(3) after detailed scrutiny of the claim of the

assessee. As such the order cannot be treated as erroneous. In this connection attention is drawn to the following judgments:

CIT V/s. Max India Ltd. 295 ITR 282
CIT V/s. DLF Power 329 ITR Pg.289 (Delhi)
CIT V/s. Krishna Capbox 372 ITR 310(All.)
CIT V/s. Govindram Sakseria Trust 166 ITR p.580 (MP)
CIT V/s. Ratlam Coal Ash Co. 171 ITR p.141 (MP)
CIT V/s. A.K. Timber 177 ITR p.486 (Punjab)
CIT V/s. Gabriel (India) Ltd. 203 ITR p.108 (Bom.)

The various Tribunals have also taken the same view in 57 TTJ p.257, 65 ITD p.1. The Indore Tribunal has also followed these judgments in many cases.

1. CIT V/s. Ratlam Coal Ash Co. 171 ITR p.141 (M.P.):-

An order of assessment was revised by the Commissioner u/s. 263, on the ground that the income tax officer had not made proper enquiries. The order of revision was set-aside by the Tribunal because it was found that the assessee had furnished requisite information and the income tax officer had completed the assessment after considering all facts.

Held, that the Tribunal was justified in Law reversing the order of the Commissioner u/s. 263.

2. CIT V/s. A.K. Timber 177 ITR p.486 (Punjab):-

The Income Tax Officer completed assessment u/s.144 and granted registration to the firm. The CIT held that the ITO should have cancelled the registration and failure on his part to do so,

constituted an error u/s.263. Held, if the assessee firm can satisfy the revenue that there was no willful default, the benefit of continuation of registration may not be denied. In the instant case, the Tribunal was right in law in holding that there was no error in the order of the income tax officer and therefore the commissioner had no jurisdiction u/s.263 in respect thereof.

3. CIT V/s. Gabriel (India) Ltd. 203 ITR p.108 (Bom.):-

Held, that the income tax officer had made enquiries in regard to the nature of the expenditure incurred by the assessee, the assessee had given a detailed explanation in that regard by a letter in writing, evidently the claim was allowed by the ITO on being satisfied with the explanation of the assessee. The decision of the income tax officer could not be held to be erroneous simply because in his order he did not make an elaborate discussion. The Tribunal was justified in setting aside the order passed by the CIT u/s.263.

In view of the above submission, it is humbly submitted that the action of the PCIT u/s 263 is bad in law and the order passed deserves to be quashed.

5. On the contrary, Ld. CIT(DR) opposed the submissions of the Ld. Counsel for the assessee and supported the order of the Ld. Principal CIT. Ld. CIT(DR) vehemently argued that the conduct of the assessee does not inspire confidence as the assessee himself has not come clean. He did not furnish the latest partnership deed and it appears that the partnership deed was made just to cover up the lacuna.

6. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. The basis of revising the concluded assessment by the Ld. Principal CIT is on a short ground that the assessing officer failed to examine the issue of allowability of remuneration to the partners when in the partnership deed there was no specific provision. During the course of hearing, Ld. Counsel for the assessee has drawn our attention to the audited

accounts and also various partnership deeds, one of the partnership deed dated 16.5.2008, which is enclosed at paper book page Nos.90 to 96, it is contended that this partnership deed was produced before the A.O., however, Ld. CIT(DR) opposed this contention of the assessee and submitted that there was no evidence suggesting that this partnership deed was placed before the assessing officer. The Ld. Counsel for the assessee drew our attention to the para Nos.2.5, wherein the Ld. Principal CIT has categorically recorded the fact that the partnership deed dated 16.5.2008 was furnished before him on 14.9.2017. However, the Ld. Principal CIT held that the partnership deed is not reliable.

7. We find that there is no dispute with regard to the fact that all the 3 partnership deeds were executed prior to initiation of assessment proceedings pertaining to the assessment year under appeal. There is no material

suggesting that the Ld. Principal CIT had summoned the partners for examining the veracity of the partnership deed dated 17.5.2008. We find that there is a specific provision in the partnership deed dated 17.5.2008, wherein it has been categorically stated as under:-

“6. That all the partners shall be the working partners of the firm and shall be entitled to remuneration. Such remuneration, payable to the working partners, shall be shared in the following proportions:-

<i>Name of working partners</i>	<i>Remuneration</i>
<i>1. Mr. Raj Kumar Khilwani</i>	<i>25%</i>
<i>2. Mr. Manoj Jain</i>	<i>3.75%</i>
<i>3. Mr. O.P. Gupta</i>	<i>18.75%</i>
<i>4. Mr. Anil Khilwani</i>	<i>20%</i>
<i>5. Mrs. Sonal Khilwani</i>	<i>17.50%</i>
<i>6. Mrs. Indu Agrawal</i>	<i>15.00%</i>

That the total remuneration payable to the working partners shall be specifically computed and calculated in the following manner:-

<i>(a) On first Rs.75,000/- of the book profit or in the case of loss</i>	<i>Rs.50,000/- or at the rate of 90% of the profit whichever is more</i>
<i>(b) On the next Rs.75,000/- of the</i>	<i>60% (Sixty Percent)</i>
<i>(c) On the balance of Book profit</i>	<i>40% (Forty Percent)</i>

Or as provided in section 40(b), hereinafter from time to time.

And that the term profit shall have the same meaning as defined in the explanation 3 of section 40(b) of the Income Tax Act, 1961.”

8. Admittedly, there is no material placed to disbelieve this partnership deed. The law is well settled that the proceedings u/s 263 of the Act can be initiated when twin conditions are satisfied. i.e. (1) the order proposed to be revised should be erroneous so far as it is (2) prejudicial to the interest of the revenue. In the case in hand, the assessment is revised solely on the basis that there was no specific provision regarding claim of remuneration of the partners in two partnership deeds executed on two different dates, however, the assessee has also furnished another partnership deed on 17.5.2008. It is noted by the Ld. Principal CIT that in the partnership deed dated 31.5.2007, there were 5 partners and there were no specific provisions in the partnership deed regarding payment of remuneration to the partners. Another partnership deed was executed on 1.4.2008. As per that deed, there were 6 partners and no specific provision was made in the said

partnership deed and also regarding payment of remuneration to the partners. However, it is clear that the partnership deed dated 17.5.2008, which was effective from 2.4.2008 had a provision regarding payment of remuneration to the partners. Ld. Principal CIT construed the partnership deed dated 17.5.2008 being not reliable. We are unable to affirm this view of the Ld. Principal CIT as to why the partnership deed dated 17.5.2008 do not inspire confidence. The Ld. Principal CIT should have his own made enquiry regarding veracity of the partnership deed dated 17.5.2008, which was placed before setting aside the order to the A.O. Ld. CIT(A) in para 2.8 has held as under:

“2.8 After careful examination of the facts placed on record, I am of the view that the Assessing Officer did not examine the facts of the case properly as was required from him. Considering the above facts, I am satisfied that the order passed by the Assessing Officer u/s 153A r.w.s. 143(3) for A.Y. 2009-10 on 18.3.2016 is erroneous and prejudicial to the interest of the revenue. Therefore, the order passed by the Assessing Officer u/s 153A r.w.s. 143(3) for A.Y. 2009-10 is set aside. The Assessing Officer is directed to reframe the assessment after examining the above said issue and after affording sufficient opportunity to the assessee of being heard.”

The Hon'ble Delhi High Court in the case of ITO Vs. DG Housing Projects Ltd. in ITA No.179/2011 has held as under:

“17. This distinction must be kept in mind by the CIT while exercising jurisdiction under Section 263 of the Act and in the absence of the finding that the order is erroneous and prejudicial to the interest of the Revenue, exercise of jurisdiction under the said section is not sustainable. In most cases of alleged “inadequate investigation”, it will be difficult to hold that the order of the Assessing Officer, who had conducted enquiries and had acted as an investigator, is erroneous, without CIT conducting verification/inquiry. The order of the Assessing Officer may be or may not be wrong. CIT cannot direct reconsideration on this ground but only when the order is erroneous. An order of remit cannot be passed by the CIT to ask the Assessing Officer to decide whether the order was erroneous. This is not permissible. An order is not erroneous, unless the CIT hold and records reasons why it is erroneous. An order will not become erroneous because on remit, the Assessing Officer may decide that the order is erroneous. Therefore CIT must after recording reasons hold that the order is erroneous. The jurisdictional precondition stipulated is that the CIT must come to the conclusion that the order is erroneous and is unsustainable in law. We may notice that the material which the CIT can rely includes not only the record as it stands at the time when the order in question was passed by the Assessing Officer but also the record as it stands at the time of examination by the CIT [see CIT Vs. Shree Manjunathesware Packing Products, 231 ITR 53 (SC)]. Nothing bars/prohibits the CIT from collecting and relying upon new/additional material/evidence to show and state that the order of the Assessing Officer is erroneous.

18. It is in this context that the Supreme Court in Malabar Industrial Co. Ltd. Vs. Commissioner of Income Tax, (2000) 243 ITR 83 (SC), had observed that the phrase ‘prejudicial to the interest of 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 interest of revenue. Thus, when the Assessing Officer had adopted one of the courses permissible and available to

him, and this has resulted in loss to Revenue; or two views were possible and the Assessing Officer has taken one view with which the CIT may not agree; the said orders cannot be treated as an erroneous order prejudicial to the interest of Revenue unless the view taken by the Assessing Officer is unsustainable in law. In such matters, the CIT must give a finding that the view taken by the Assessing Officer is unsustainable in law and, therefore, the order is erroneous. He must also show that prejudice is caused to the interest of the Revenue.”

Therefore, respectfully, following the same, we hereby set aside the order of the Ld. Principal CIT and allow the grounds of appeal of the assessee.

9. Now coming to in ITA Nos.176 to 180/Ind/2018 the assessee has raised identical grounds that read as under:

ITA No.176/Ind/2018:

- 1. “That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in initiating proceedings u/s 263 as the same was barred by limitation.*
- 2. That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the order passed is erroneous and prejudicial to the interest of the revenue when the A.O. could not have made the disallowance of the amount under consideration.*
- 3. That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the salary paid to partners was required to be disallowed disregarding the evidences brought on record.*

4. *That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the order was erroneous and prejudicial to the interest of the revenue.*
5. *That the assessee craves leave to add, amend, modify or alter any ground of appeal on or before the hearing.”*

ITA No.177/Ind/2018:

1. *“That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in initiating proceedings u/s 263 as the same was barred by limitation.*
2. *That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the order passed is erroneous and prejudicial to the interest of the revenue when the A.O. could not have made the disallowance of the amount under consideration.*
3. *That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the salary paid to partners was required to be disallowed disregarding the evidences brought on record.*
4. *That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the order was erroneous and prejudicial to the interest of the revenue.*
5. *That the assessee craves leave to add, amend, modify or alter any ground of appeal on or before the hearing.”*

ITA No.178/Ind/2018:

1. *“That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in initiating proceedings u/s 263 as the same was barred by limitation.*
2. *That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the order passed is erroneous and prejudicial to the*

interest of the revenue when the A.O. could not have made the disallowance of the amount under consideration.

3. *That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the salary paid to partners was required to be disallowed disregarding the evidences brought on record.*
4. *That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the order was erroneous and prejudicial to the interest of the revenue.*
5. *That the assessee craves leave to add, amend, modify or alter any ground of appeal on or before the hearing.”*

ITA No.179/Ind/2018:

1. *“That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the order passed is erroneous and prejudicial to the interest of the revenue when the A.O. could not have made the disallowance of the amount under consideration.*
2. *That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the salary paid to partners was required to be disallowed disregarding the evidences brought on record.*
3. *That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the order was erroneous and prejudicial to the interest of the revenue.*
4. *That the assessee craves leave to add, amend, modify or alter any ground of appeal on or before the hearing.”*

ITA No.180/Ind/2018:

1. *“That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the order passed is erroneous and prejudicial to the interest of the revenue when the A.O. could not have made the disallowance of the amount under consideration.*

2. *That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the salary paid to partners was required to be disallowed disregarding the evidences brought on record.*
3. *That on the facts and in the circumstances of the case of the assessee, the Ld. Principle Commissioner of Income Tax was not justified in holding that the order was erroneous and prejudicial to the interest of the revenue.*
4. *That the assessee craves leave to add, amend, modify or alter any ground of appeal on or before the hearing.”*

10. The Ld. representatives of the parties have adopted the same arguments as were in the ITA No.175/Ind/2018. In that appeal, we have decided the issue in favour of the assessee by observing as under:

8. *Admittedly, there is no material placed to disbelieve this partnership deed. The law is well settled that the proceedings u/s 263 of the Act can be initiated when twin conditions are satisfied. (1) The order proposed to be revised should be erroneous and prejudicial to the interest of the revenue. In the case in hand, the assessment is revised solely on the basis that there was no specific provision regarding claim of remuneration of the partners in two partnership deeds executed on two different dates, however, the assessee has also furnished another partnership deed on 17.5.2008. It is noted by the Ld. Principal CIT that in the partnership deed dated 31.5.2007, there were 5 partners and there were no specific provisions in the partnership deed regarding payment of remuneration to the partners. Another partnership deed was executed on 1.4.2008. As per that deed, there were 6 partners and no specific provision was made in the said partnership deed and also regarding payment of remuneration to the partners. However, by the partnership deed dated 17.5.2008, which was effective from 2.4.2008 had a provision. Ld. Principal CIT construed that the partnership deed dated 17.5.2008 is not reliable. We are unable to affirm this view of the Ld. Principal CIT as to why the partnership deed dated 17.5.2008 do not inspire confidence. The Ld. Principal CIT should have his own made enquiry regarding*

veracity of the partnership deed dated 17.5.2008, which was placed before setting aside the order to the A.O. Ld. CIT(A) in para 2.8 has held as under:

“2.8 After careful examination of the facts placed on record, I am of the view that the Assessing Officer did not examine the facts of the case properly as was required from him. Considering the above facts, I am satisfied that the order passed by the Assessing Officer u/s 153A r.w.s. 143(3) for A.Y. 2009-10 on 18.3.2016 is erroneous and prejudicial to the interest of the revenue. Therefore, the order passed by the Assessing Officer u/s 153A r.w.s. 143(3) for A.Y. 2009-10 is set aside. The Assessing Officer is directed to reframe the assessment after examining the above said issue and after affording sufficient opportunity to the assessee of being heard.”

‘The Hon'ble Delhi High Court in the case of ITO Vs. DG Housing Projects Ltd. in ITA No.179/2011 has held as under:

“17. This distinction must be kept in mind by the CIT while exercising jurisdiction under Section 263 of the Act and in the absence of the finding that the order is erroneous and prejudicial to the interest of the Revenue, exercise of jurisdiction under the said section is not sustainable. In most cases of alleged “inadequate investigation”, it will be difficult to hold that the order of the Assessing Officer, who had conducted enquiries and had acted as an investigator, is erroneous, without CIT conducting verification/inquiry. The order of the Assessing Officer may be or may not be wrong. CIT cannot direct reconsideration on this ground but only when the order is erroneous. An order of remit cannot be passed by the CIT to ask the Assessing Officer to decide whether the order was erroneous. This is not permissible. An order is not erroneous, unless the CIT hold and records reasons why it is erroneous. An order will not become erroneous because on remit, the Assessing Officer may decide that the order is erroneous. Therefore CIT must after recording reasons hold that the order is erroneous. The jurisdictional precondition stipulated is that the CIT must come to the conclusion that the order is erroneous and is unsustainable in law. We may notice that the material which the CIT can rely includes not only the record as it stands at the time when the order in question was passed by the Assessing Officer but also the record as it stands at the time of examination by the CIT [see CIT Vs. Shree Manjunathesware Packing Products, 231 ITR 53 (SC)]. Nothing bars/prohibits the CIT from collecting and relying upon new/additional material/evidence to show and state that the order of the Assessing Officer is erroneous.

18. *It is in this context that the Supreme Court in Malabar Industrial Co. Ltd. Vs. Commissioner of Income Tax, (2000) 243 ITR 83 (SC), had observed that the phrase 'prejudicial to the interest of 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 interest of revenue. Thus, when the Assessing Officer had adopted one of the courses permissible and available to him, and this has resulted in loss to Revenue; or two views were possible and the Assessing Officer has taken one view with which the CIT may not agree; the said orders cannot be treated as an erroneous order prejudicial to the interest of Revenue unless the view taken by the Assessing Officer is unsustainable in law. In such matters, the CIT must give a finding that the view taken by the Assessing Officer is unsustainable in law and, therefore, the order is erroneous. He must also show that prejudice is caused to the interest of the Revenue."*

Therefore, respectfully, following the same, we hereby set aside the order of the Ld. Principal CIT and allow the grounds of appeal of the assessee.

11. Therefore, taking a consistent view, we set aside the impugned order of the Ld. Principal CIT and the grounds raised in these appeals are allowed.

12. In the result, appeals of the assessee in ITA No.175 to 180/Ind/2018 are allowed.

Order was pronounced in the open court on 22 .07.2019.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIALMEMBER

Indore; दिनांक Dated : 22/07/2019
VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard
file.

By order

Assistant Registrar, Indore