

**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI  
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.7615/Mum/2019  
(Assessment Year: 2014-15)**

K.R.Construction Basement, Hinal Residency Datta Mandir Road Dahanukar Wadi Kandivali(W) Mumbai-400 067	Vs.	Principal Commissioner of Income Tax-Central-3 19 <sup>th</sup> Floor Air India Building Nariman Point Mumbai-400 021
<b>PAN/GIR No.AANFK0144N</b>		
<b>Appellant)</b>	..	<b>Respondent)</b>

Revenue by	Shri Rajeev Harit, CIT-DR
Assessee by	Shri Naresh Jain, AR
<b>Date of Hearing</b>	<b>11/02/2020</b>
<b>Date of Pronouncement</b>	<b>28/02/2020</b>

**आदेश / ORDER**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the assessee is directed against order of the Learned Principal Commissioner of Income tax, Central-3, Mumbai, dated 06/11/2019 u/s 263 of the I.T.Act, 1961 for the AY 2014-15.

2. The assessee has raised the following grounds of appeal.

1. *That in the facts and circumstance of the case and in law, the show cause notice u/s 263 of the Act was issued with pre- mediated mind, as such, the show cause as well as consequential proceeding is bad-in-law and liable to be quashed.*
2. *That on the facts & circumstances of the case, the impugned order passed by the Ld. CIT u/s 263 is time barred as per the ratio laid down by the Hon'ble Apex Court in Alagendran Finance Limited [(2007) 293 ITR 1] in so far as the Ld. Pr. CIT set-aside the order for fresh enquiry with*

*respect expenses and unsecured loan, which was the subject matter of original scrutiny assessment proceedings and not re-assessment proceeding, as such, the order u/s 263 is bad-in-law and liable to be quashed.*

3. *That in the facts and circumstances of the case and in law, the impugned order is bad in law in so far as the Ld. Pr. CIT seeks to revise the reassessment order u/s 147 of the Act which is itself bad in law and liable to be quashed.*
4. *That in the facts and circumstances of the case and in law, the re-assessment order passed u/s 147 r.w.s 143(3) of the Act is bad in law in so far as the notice u/s 148 had been issued without the appropriate approval u/s 151 of the Act, as such, the revisionary proceedings with respect to the reassessment order which is itself non-est in law is not sustainable and is liable to be quashed. That the approval is taken from Additional CIT instead of Joint CIT as required u/s 151 of the Act.*
5. *That in the facts and circumstances of the case and in law, the reason to believe recorded for reopening of assessment u/s 148 is bad in law in so far as it has been recorded that sub-contract expenses amounting to Rs. 2,35,25,258/- has escaped assessment, whereas the same addition had also been made in the original scrutiny assessment proceedings as being bogus, as such, the impugned reasons are clearly without any application of mind, bad in law and liable to be quashed and also the consequential revision order u/s 263.*
6. *That in the facts and circumstances of the case and in law, without prejudice to the above, the sanction granted to reason to believe is bad in law in so far as the Addl. CIT failed to appreciate that the income alleged to have escaped assessment has already been the subject matter of addition in the original scrutiny assessment proceedings, as such, the said sanction granted without any due application of mind renders the entire proceedings as void as initio and the consequential proceedings as bad in law and liable to be quashed.*
7. *That in the facts and circumstances of the case and in law, the impugned order is bad in law in so far as the Ld. Pr. CIT erred in invoking jurisdiction u/s 263 of the Act without appreciating that if no addition is made on the issue for which reason were recorded, no other additions can be made with respect to issues for which no reasons were recorded. Therefore, direction for making other enquiry/addition is bad-in-law.*
8. *That in the facts and circumstances of the case and in law and without prejudice to the aforesaid ground, the Pr. CIT has grossly erred in directing the Ld. AO to examine the issue with respect to unsecured loan without appreciation the fact that she has already directed the Ld. AO to assess the income as per applicable net profit after rejecting the books of accounts, so no item of books can be examined after the income is to be computed on estimated net profit basis.*

9. *That in the facts and circumstances of the case and in law and without prejudice to the aforesaid ground, the Pr. CIT has grossly erred in directing the Ld. AO to examine the issue with respect to expense without appreciation the fact that she has already directed the Ld. AO to assess the income as per applicable net profit after rejecting the books of accounts, so no item of books can be examined after the income is to be computed on estimated net profit basis.*
10. *Your appellant prays for leave to add, alter and amend all or any of the above grounds of appeal*

3. The brief facts of the case are that the assessee is engaged in the business of Civil construction work, filed its return of income for AY 2014-15 on 29/11/2014, declaring total income of Rs.7,47,37,490/-. The assessment was completed u/s 143(3) of the I.T.Act, 1961 on 30/12/2016, determining the total income at Rs. 9,82,62,750/-. Subsequently, a survey action u/s 133A of the I.T.Act, 1961 was carried out at the business premise of the assessee on 30/08/2016. During the course of survey proceedings, a copy of the balance sheet for AY 2014-15 certified by the auditors on 31/08/2014 was found and as per the said balance sheet the turnover was found declared at Rs.219,25,42,121/-. Consequent to survey u/s 133A of the Act, the assessment has been reopened u/s 147 of the I.T.Act, 1961 by issuing notice u/s 148 of the Act, dated 02/02/2018. In response to notice u/s 148 of the Act, the assessee has filed return of income on 09/02/2018, declaring total income at Rs.9,82,62,750/-. The assessee had also requested for copy of reasons recorded for reopening of the assessment and as requested, the reasons for reopening of the assessment was supplied to the assessee, vide letter dated 12/02/2018. The assessee has filed its objections for reopening assessment on 26/02/2018, which has been reproduced at para 3 on pages 4 to 11 of assessment order. The Ld. AO has disposed -off objections filed by

the assessee, vide letter dated 27/02/2018. Thereafter, the assessment has been completed u/s 143(3), r.w.s. 147 of the I.T.Act, 1961 on 10/05/2018 and determined the total income at Rs.9,82,62,750/-, without making any additions towards suppression of gross receipts and bogus labour contract charges.

4. Subsequently, the Ld.PCIT, Central-3, Mumbai has issued show cause notice u/s 263 of the I.T.Act, 1961, dated 11/07/2019 and called upon the assessee to explain as to why the assessment order passed by the Ld. AO u/s 143(3), rws 147 of the I.T.Act, 1961, dated 10/05/2018 shall not be revised under the provisions of section 263 of the Act, for the reasons stated in his show cause notice. The Ld.PCIT, in the said show cause notice has taken up, the issue of suppression of gross receipts on the basis of reasons recorded for reopening of assessment, which is further supported by evidences found during the course of survey in form of second set of financial statements prepared by the assessee for the impugned assessment year. According to the Ld. PCIT although, the Ld. AO seems to have verified, the issue of suppression of gross receipts, during the re-assessment proceedings, but he has failed to take note of evidences gathered during the course of survey in form of second set of financial statements, as per which the turnover shown for the year under consideration was at Rs.219.25 crores, whereas the turnover declared in return of income filed for the year was at Rs.132.11 crores. The Ld.PCIT, further stated that although, both audit reports were duly signed by the partners and by the auditors the firm, but the audited financial statements showing lower receipts was filed before the income-tax department along with return of income. The Ld. AO during reassessment proceedings has failed to

take note of vital facts gathered during the course of survey, while concluding the assessment, which resulted in erroneous order passed, insofar as, it is prejudicial to the interest of revenue. The Ld.PCIT, further noted that although, there is a discrepancy in unsecured loans, which has been shown at Rs. 45.58 lacs in the financial statements filed before the department, but the same have been shown at Rs. 2.62 cores in the parallel financial statements, however no enquiry has been made regarding said discrepancy in unsecured loans, as per two set of financial statements. Therefore, he opined that the assessment order passed by the Ld. AO is erroneous, insofar as, it is prejudicial to the interest of the revenue and accordingly, issued a show cause notice.

5. In response to show cause notice, the assessee, vide letter dated 18/07/2019, 17/09/2019, 09/10/2019 and 22/10/2019 has submitted that the assessment order passed by the Ld. AO is neither erroneous, nor it is prejudicial to the interest of the revenue, because the issue of suppression of turnover has been thoroughly examined by the Ld. AO in reassessment proceedings, which is clearly evident from the fact that the assessment has been reopened for the purpose of verification of suppression of turnover on the basis of findings of survey proceedings initiated against the assessee u/s 133A of the I.T.Act, 1961. The assessee, further submitted that it has explained the discrepancy in turnover declared in two set of financial statements before the Ld. AO during the reassessment proceedings, as per which the accountant made a mistake, while taking out the printout of the trial balance, for the period from 01/04/2013 to 31/08/2014 instead of 01/04/2013 to 31/03/2014 and as a result of which, the gross turnover for the selected period was

at Rs. 219.25 crores. The auditor, who signed by the balance sheet has also, prepared the financial statements for a period of 17 months from 01/04/2013 to 31/08/2014 on the assumption that the assessee requires financial statements for a period of 17 months and accordingly, the turnover has been shown at Rs. 219.25 crores. But, fact remains that the assessee has reconciled difference between turnover shown in parallel set of financial statements along with necessary evidences, including copies of TDS certificates issued by the principles and AIR information available in income tax data base, as per which, the turnover for the impugned assessment year is at Rs.132.11 crores. The Ld. AO after considering relevant submissions of the assessee has completed the assessment without making any additions towards suppression in turnover. Therefore, it cannot be said that the assessment order passed by the Ld. AO is erroneous, insofar as, it is prejudicial to the interest of the revenue. The assessee further submitted that as regards, bogus labour contract charges, although the assessment has been reopened, in respect of bogus labour contract charges, but, fact remains that very same issue has been considered by the Ld. AO in original assessment proceedings u/s 143(3) of the Act, and made additions towards alleged bogus bills from certain parties, in respect of labour contract charges and accordingly, during the reassessment proceedings having noticed the fact that the issue has been considered in the original assessment proceedings, he has chosen not to make any additions on the issue. Therefore, it is incorrect on the part of Ld.PCIT to alleged that the Ld. AO has not verified the issue of labour contract charges, which resulted in erroneous order passed, insofar as, it is prejudicial to the interest of the revenue.

6. The Ld.PCIT after considering relevant submissions of the assessee and also taken note of various facts, including the survey proceedings conducted u/s 133A of the Act, and consequent evidences in form of parallel set of financial statements, opined that the assessment order passed by the Ld. AO is erroneous, insofar as, it is prejudicial to the interest of the revenue. He, further noted that although, the Ld. AO seems to have been verified issue of suppression of turnover, but, fact remains that the Ld. AO never ever has made any attempt to call for necessary details, even though there are large differences in expenditure claim to have incurred for payment to contractor and sub-contractor, power and fuel expenses, tender expenses and staff welfare expenses, which is evident from the fact that he has simply accepted the story of a mistake given by the assessee, in respect of parallel set of financial statements prepared for 17 months and concluded assessment u/s 143(3) r.w.s. 147 of the I.T.Act, 1961. The Ld.PCIT, further noted that the Ld. AO not even verified two set of financial statements with reference to unsecured loans, where there is a huge difference, in respect of unsecured loans shown in two balance sheets, however details of the date of the return of these loans and consequent application of provisions of 68 of the Act has not been examined by the Ld. AO. Therefore, he opined that the assessment order passed by the Ld. AO is erroneous, insofar as it is prejudicial to the interest of the revenue and accordingly, set aside the assessment order and direct the Ld. AO to re-do the assessment and determine the net profit by taking note of profit declared by the assessee for the year. Aggrieved by the Ld.PCIT order, the assessee is in appeal before us.

7. The Ld. AR for the assessee submitted that the Ld.PCIT has erred in invoking jurisdiction u/s 263 of the Act, without appreciating that if, no addition is made on the issue for which reason was recorded, no other addition can be made with respect to issues for which no reasons were recorded and consequently, directions for making other enquiries /additions is not permitted under the provisions of law. The Ld. AR, further submitted that it is a fact of matter, the assessment has been originally completed u/s 143(3) of the Act, where the Ld. AO has made additions towards alleged bogus expenditure in form of labor contract charges. The assessment has been subsequently reopened for the reasons recorded, as per which there is allegation of suppression of turnover on the basis of findings of survey conducted u/s 133A of the Act, and also in the aspect of bogus labor contract. During the course of reassessment proceedings, the assessee has explained the difference between turnover reported in two set of financial statements and also, explained the issue of bogus labour contract expenses with reference specific questionnaire issued by the Ld. AO along with notice u/s 142(1), dated 04/07/2016 and 20/07/2016, for which, the assessee has filed a detailed written submissions, vide letter, dated 29/07/2016 explaining the reasons for difference in turnover reported in two set of financial statements. The assessee had also explained the issue of bogus labour contract expenses and filed necessary evidences to prove that similar amount has been added in original assessment u/s 143(3) of the Act. The Ld. AO on being satisfied with explanation furnished by the assessee has completed assessment u/s 143(3) r.w.s. 147 of the Act, which cannot be termed as erroneous, insofar as it is prejudicial to the interest of the revenue.

8. The Ld. AR, further submitted that insofar as difference in turnover, as per two set of financial statements, the assessee has filed various details, including TDS certificates and reconciled turnover reported in financial statements to Form 26AS available in ITS data base and explained that the assessee has executed works contracts for government agencies, like BMC etc. The assessee has also filed various details, in respect of labour contract expenses incurred for the year. The Ld. AO after verification of necessary details filed by the assessee has completed the reassessment proceedings initiated u/s 147 of the Act, without making any addition/adjustments to total income declared for the year. He, further submitted that it is a settled position of law that once, the reasons recorded for reopening of assessment is fails and no addition is made on this aspect, then the Ld. AO is precluded from making any other additions, even though he has come across certain issues during the assessment proceedings. Once, the Ld. AO himself is precluded from making any additions, and then directing the Ld. AO to make enquiry/addition on other issues is outside the scope of provisions of section 263 of the Act. The Ld. AR, further submitted that, it is also settled position of law that an authority framing an assessment or revision of any proceedings shall confine its jurisdiction to the issues questioned in the reasons recorded for reopening of assessment or show cause notice issued for revision of proceedings without any modifications or improvement to show cause notice issued in assessment proceedings. The meaning thereby is that if, show cause notice is issued for making certain enquiries on certain issues, then proceedings should be confined to those issues only. In this case, the Ld.PCIT has issued show cause

notice to revise the assessment order on the issue of suppression of turnover and alleged bogus labour contract expenses, whereas in 263 proceedings, he has directed the Ld. AO to examine the issue of various expenses claimed in two set of financial statements, although the scope of his revisional powers is limited to the issues questioned in show cause notice. Therefore, he submitted that the initiation of proceedings u/s 263 is bad in law and liable to be set aside. In this regard, he relied upon the following judicial precedents:-

*CIT vs. Alagendran Finance Ltd (2007) (7) TMI 304*  
*CIT vs. JET Airways (195 Taxmann 117)*  
*Hindustan Lever Ltd vs. R B Wadkar (137 Taxmann 479)*  
*My Car (Pune) P. Ltd. vs. ITO 14(4) (104 taxmann.com IS)*  
*Multi Commodity Exchange of India Ltd vs. DCIT (WP 451/2018)*  
*Malabar Industrial Co. Ltd vs. CIT (243 ITR 83)*  
*Siemens Ltd, vs. State of Maharashtra (2006 (12) TMI 203)*  
*Kalpna Shantilal Haria vs. ACIT (2018 (1) TMI 195)*

9. The Ld. DR, on the other hand, strongly supporting order of the Ld.PCIT submitted that the Commissioner has brought out various facts in his 263 proceedings to prove that the assessment order passed by the Ld. AO is erroneous, insofar as, it is prejudicial to the interest of the revenue, which is evident from the fact that although, the evidence was found during the course of survey proceedings u/s 133A of the Act, in respect of difference in turnover reported for the year, but the Ld. AO has accepted the arguments of the assessee of the theory of mistake committed by an accountant in preparation of financial statement without any effort to find out the correct facts with regard to turnover reported in two set of documents. The Ld. DR, further submitted that it is a settled position of law that there is a vast difference between the reassessment and revision, where in cases of revision, if the commissioner satisfied that the assessment

order passed by the Ld. AO is erroneous, insofar as , it is prejudicial to the interest of the revenue, then he is very much within his powers to invoke jurisdiction to ascertain correct facts with regard to the proceedings to known, whether the Ld. AO has carried out required enquiries to be conducted in accordance with law. In this case, it is very clear from the facts brought out by the Ld.PCIT that the Ld. AO had committed an error in not making any further enquiry into details as regards difference in turnover reported, as per two set of audited financial statements and also, various expenses claimed in those set of financial statements, but simply accepted the arguments of the assessee and concluded the assessment, which resulted in erroneous order passed, which caused prejudice to the interest of the revenue. Therefore, the Ld.PCIT was right in invoking jurisdiction u/s 263 of the I.T.Act, 1961 and there is no reason to interfere in the findings recorded by the Ld.PCIT. In this regard, he relied upon the following judicial precedents:-

1. *Lalsingh Estate (P.) Ltd. vs. Commissioner of Income tax [1994] 74 taxman 525(Gau.)*
2. *Arvee International vs. Additional Commissioner of Income tax , Range 19(1) [2006] 101 ITD 495 (Mum.)*
3. *Pr.CIT-II vs. Braham Dev Gupta in ITA No.907/Mum/2017, C.M.Appl. 38789/2017(Delhi High Court), dated 20.07.2018*
4. *Kushi Conbuild Pvt.Ltd. vs CIT in ITA No. 1611/kol/2013, dated 03/11/2015*
5. *Laxmi Management vs CIT in ITA No.1632/Kol/2013, dated 03/11/2015*
6. *Royal Moran Plant & Machinery Pvt.Ltd. vs CIT in ITA No.1635/Mum/2013, dated 03/11/2015*
7. *Swarnsathi Academy Pvt.Ltd. vs CIT in ITA No.1638/Mum/2013, dated 03/11/2015*
8. *Bhabisya Rice Mill Ltd. vs CIT in ITA No.1920/Mum/2013, dated 03/11/2015*
9. *Adl.CIT vs Mukur Corporation [1978] 111 ITR 312 (Guj.)*
10. *Rising Tracom Pvt.Ltd. vs CIT in ITA No.1436/Kol/2013, dated 03/11/2015.*
11. *Garud Credit & holdings vs ITO,Ward-9(2) in ITA No.1270/Kol/2013,dated 03/11/2015*
12. *Guinea Dealcom Pvt.Ltd. vs ITO,Ward 6(1) in ITA No.1273/Kol/2013 dated 03/11/2015*

13. *Rajmandir Estates (P.) Ltd. vs Prl.CIT, Kolkatta-III, Kolkatta* [2016] 70 taxmann.com 124 (Calcutta)/[2016] 240 Taxman 306 (Calcutta)/[2016] 386 ITR 162(Calcutta)/[2016] 287 CTR 512 (Calcutta)
14. *Rajmandir Estates (P.) Ltd. vs Pr.CIT, Kolkatta-III* [2017] 77 taxmann.com 285 (SC)
15. *CIT v Toyota Motor Corpn* [2008] 174 Taxman 395 (Delhi)/[2008] 306 ITR 49 (Delhi) / [2008] 218 CTR 628 (Delhi)
16. *Toyota Motor Coproation vs CIT* [2018] 306 ITR 52(SC)/[2008] 218 CTR 539 (SC)
17. *Deniel Merchants Pvt.Ltd. & Anr vs ITO and Anr.(Supreme Court)* dated 29.11.2017.
18. *CIT vs. Deepak Kumar Garg* [2008] 299 ITR 435 (Madhya Pradesh)/[2007] 212 CTR 152 (Madhya Pradesh)
19. *Sripan Land Developmetn (P.) Ltd. vs CIT* [2011] 11 taxmann.com 429 (Mumbai)/[2011] 46 SOT 447 (Mumbai)
20. *Binod Kumar Agarwala vs CIT, W.B-XIX n ITAT No.22 of 2015, GA NO.436 of 2015 dated 21/06/2018*

10. We have heard both the parties, perused the material available on record and gone through orders of the authorities below along with plethora of case laws cited by both the parties. The provisions of 263 of the I.T.Act, 1961 provides inherent powers to the Commissioner or Principal Commissioner to invoke jurisdiction to revise the assessment order, if he considers that any order passed by the Ld. AO is erroneous, insofar as, it is prejudicial to the interest of the revenue. The language used by the Legislature in s. 263 is to the effect that the CIT may interfere in revision if he considers that the order passed by the ITO is erroneous in so far as it is prejudicial to the interests of the Revenue. It is quite clear that two things must co-exist in order to give jurisdiction to the CIT to interfere in revision. The order of the ITO in question must not only be erroneous but also the error in the ITO's order must be of such a kind that it can be said of it that it is prejudicial to the interests of the Revenue. In other words, merely because the officer's order is erroneous, the CIT cannot interfere. Again, merely because the order of the officer is prejudicial to the interests of the Revenue, then again, that is not

enough to confer jurisdiction on the CIT to interfere in revision. These two elements must co-exist. This is because, the first of the two requirements namely, (i) the order is erroneous and (ii) the same is also prejudicial to the interests of the Revenue, is not satisfied. Similarly, if an order is erroneous but not prejudicial to the interests of the Revenue, then also the power of suo-moto revision cannot be exercised. Any and every erroneous order cannot be the subject-matter of revision because the second requirement also must be fulfilled. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.

11. The phrase 'prejudicial to the interests of the Revenue' has to be read in conjunction with an erroneous order passed by the AO. Every loss of revenue as a consequence of an order of AO cannot be treated as prejudicial to the interests of the Revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the ITO is unsustainable in law. An order of assessment passed by the ITO without making necessary enquiries on certain important points connected with the assessment would be erroneous and prejudicial to the interests of the Revenue, when the ITO is expected to make an enquiry of a particular item of income and he does not make an enquiry as expected, that would be a ground for the CIT to interfere with the order passed by the ITO since such an order passed by the

ITO is erroneous and prejudicial to the interests of Revenue. Where the ITO had made enquiries in regard to the issues by a specific questionnaire for which the assessee has given detailed explanation in that regard by a letter in writing and all these are part of the record of the case and the claim was allowed by the ITO on being satisfied with the explanation of the assessee, such decision of the ITO cannot be held to be erroneous simply because in his order he did not make an elaborate discussion in that regard

12. In light of above legal position, if you examine the facts of present case, one needs to understand whether, the assessment order passed by the Ld. AO u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 is erroneous insofar as, it is prejudicial to the interest of the revenue. Admittedly, the assessment in question was originally completed u/s 143(3) of the I.T.Act, 1961, where the Ld. AO has made additions towards labour charges incurred by the assessee under the head labour contract expenses and made additions of Rs.2,35,25,258/-, in respect of payments made to six parties as listed by the Ld. AO in the reasons recorded for reopening of assessment. It is also not in dispute that the assessment has been reopened u/s 147 of the Act, for the reasons recorded, as per which the impugned assessment has been reopened, in respect of issues related to suppression of gross receipts on the basis of two parallel set of financial statements prepared by the assessee, which was found during the course of survey conducted u/s 133A of the Act. As per said two set of financial statements, the assessee has reported turnover of Rs.219.25 crores in one set of financial statements prepared for a period of 17 months 01/04/2013 to 31/08/2014 and in another set of financial statements prepared for period of 12 months

from 01/04/2013 to 31/03/2014, which was also part of return filed for the year, the turnover has been shown at Rs.132.11 crores. The assessee has explained difference between turnover shown in two set of financial statement, while filing objections to reopening assessment u/s 147 of the I.T.Act, 1961 and explained that the turnover reported in financial statements prepared and audited for the year for a period of 12 months is supported by necessary TDS certificates issues by principals and also, which is matched with data available in Form 26AS of IT data base. The assessee, further, clarified that it is executing works contract for government agencies and bills are certified by competent authority and after that payment has been made after deducting applicable TDS as per law. The TDS deducted by the principals and claimed by the assessee in return of income filed for the year is matched with data available in Form 26AS. The assessee has also clarified that the financial statements prepared for a period of 17 months is on the basis of trial balance generated by an accountant by mistake of facts, as per which the turnover was at Rs.219.25 crores and the auditor has also prepared and certified second set of financial statements on the pretext of assessee requires financial statements for a period of 17 months for some specified purpose. During reassessment proceedings, the said mistake has been clarified with necessary evidences. The Ld. AO after being satisfied with explanation furnished by the assessee has completed the assessment without making any additions towards suppressed turnover. Similarly, in respect of alleged bogus labour contract expenses, although the assessment has been reopened on said issue, but no addition has been made during the reassessment proceedings, for the reasons that this very same issue has been considered in original assessment proceedings and addition has

been made for an amount of Rs.2,35,25,258/-. These facts are undisputed by the lower authorities. In fact, the Ld.PCIT has accepted the fact that the Ld. AO seems to have verified the difference in turnover with reference to various documents filed by the assessee, including copies of TDS certificates, certified bills issued by principles, VAT audit report in Form 702 and other evidences, which is evident from the fact that in 263 proceedings, the Ld.PCIT had categorically accepted that the Ld. AO has carried out with necessary enquiries with regard to difference in turnover, however he has directed the Ld. AO to verify the issue of turnover declared in two set of financial statements and also, examine various expenses claimed in two set of financial statements.

13. In this factual background, if you examine revision order passed by the PCIT u/s 263 of the Act, one needs to understand, whether the exercise of powers by the Ld.PCIT is within the scope of provision of section 263 of the I.T.Act, 1961. It is a settled position of law that if, no addition is made on the issue, for which reasons were recorded for reopening, no other additions can be made with respect to issues for which no reasons were recorded. The Hon'ble Bombay High Court in the case of CIT vs Jet Airways India Ltd. (2011) 331 ITR 236 has categorically held that if, the Ld. AO accepts the contention of the assessee and holds that the income for which, he had initially formed a reason to believe that it had escaped assessment, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income and if, he intends do so, a fresh notice u/s 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee. A similar view has been expressed by the Hon'ble

Rajasthan High court in case of shri. Ram Singh (306 ITR 343) and Punjab & Haryana High Court in case of Atlas Cycle Industries (180 ITR 319). The Hon'ble Delhi High Court in case of Software Consultants (21 Taxmann.com 155) held that where the AO did not make any additions on issues in respect of which reasons were recorded for issue of notice u/s 148, a general inference is that the Ao could not have made addition on account new issue and, thus Commissioner could not have exercised revisional jurisdiction. The sum and substance of ratios laid down by Hon'ble High Courts is that if, reasons recorded for reopening of assessment on a particular issue and in reassessment proceedings, no addition is made on this count, then the Ld. AO is debarred from making any other additions, which he come across during reassessment proceedings. If you apply above legal principles to revision proceedings, the obvious inference is that when AO could not have made any additions other than the issues for which reopening is made, then the CIT could also have interfered with those issues which are not subject matter of reassessment proceedings.

14. In this legal and factual background, if you see the facts of present case, the assessment has been reopened, in respect of suppression of turnover reported in two set of financial statements. In reassessment proceedings, the Ld. AO has never made any additions towards suppression of turnover, as alleged by him in the reasons recorded for reopening of assessment. It is also an admitted fact that the Ld. AO has not made any other additions in respect of any other issues in reassessment proceedings. Therefore, once the Ld. AO himself is precluded from making any other additions, then it is not open for the Ld.PCIT to question some other issues in revision

proceedings which is not at all subject matter of reassessment. Further, it is also a matter of fact that any proceedings initiated under any provisions of this Act, i.e. whether it is reopening or revision, the proceedings shall be confined to the issues questioned in either, reasons recorded for reopening of assessment or show cause notice issued for initiating the proceedings u/s 263 of the Act. In other words, if the proceedings has been taken up under the provision of section 263 of the Act, to examine a particular issue, then Ld.PCIT should restrict himself to the issues questioned in his show cause notice, but he cannot proceed to enlarge the scope of proceedings to any other issues, which is not find place in show cause notice issued for this purpose. This view is fortified by the decision of Hon'ble Bombay High court in case of Hindustan Lever Limited (137 Taxmann 479) where it has been held that the reasons are required to be read as they were recorded by the Assessing Officer, and no substitution or deletion is permissible. In this case, the Ld.PCIT had taken up proceedings u/s 263 of the Act, for the purpose of examining the issue of difference in turnover reported in two set of financial statement and also, difference in unsecured loans reported in two set of financial statement prepared by the assessee. Admittedly, the issue of suppression of turnover was a subject matter of reassessment proceedings and the genesis of issue originated from survey proceedings conducted u/s 133A and which was followed by reasons recorded for reopening of assessment. However, in reassessment proceedings, there is no addition was made, in respect of suppression of turnover. It is also a matter of fact that it is not a case of the Ld.PCIT that the Ld. AO has never examined the issue of turnover in reassessment proceedings, in fact the assessee has filed detailed written submissions, while filing

objections for reassessment and the same has been reproduced by the Ld. AO in his assessment order. Therefore, it cannot be said that, the Ld. AO has not conducted required enquiries he ought to have been conducted under the law in respect of suppression of turnover. It is a settled position of law that once, the issues on which, the revision proceedings was initiated were already subjected to verification by the Ld. AO during assessment proceedings, then the same are outside the scope of jurisdiction of power of the commissioner u/s 263 of the I.T.Act, 1961, because the CIT cannot replace his views on the issues in guise of inadequate enquiry as held by the Hon'ble Bombay High court in case of CIT vs Gabriel India Limited (1993) 203 ITR 108. This view was further supported by the decision of Hon,ble Bombay High Court in case of CIT vs. Nirav Modi (2017) 390 ITR 292. In this case, on perusal of facts, we find that the Ld.PCIT has questioned the issue of suppression of turnover, which is also a matter of deliberation by the Ld. AO during the reassessment proceedings and hence, we are of the considered view that the Ld. PCIT was completely erred in invoking jurisdiction to revise the assessment order passed by the Ld. AO u/s 143(3) r.w.s. 147 of the I.T.Act, 1961, in respect of very same issue of suppression of turnover, which was very much deliberated by the Ld. AO during the assessment proceedings.

15. Coming back to other part of proceedings taken up by the Ld.PCIT. The Ld.PCIT has directed the Ld. AO to examine the expenses and determine the net profit after considering the profit declared by the assessee for the year under consideration, after taking note of the fact that there is large number of difference in certain expenses claimed in two set of financial statements. We find

that first and foremost the Ld.PCIT has exceeded his jurisdiction conferred upon by him u/s 263 of the Act, because the show cause notice is very clearly stated that the assessment order is erroneous, insofar as, it is prejudicial to the interest of the revenue, in respect of the issue of suppression of turnover. Therefore, once the Ld.PCIT having found that the issue of suppression of turnover was considered by the Ld. AO, at the time of assessment proceedings, he should have confined its scope of revisional powers to the issue of suppression of turnover instead of going to the issue of expenses claimed by the assessee and profit declared for the year under consideration. Because, the issue of various expenses claimed in two set of financial statements was neither, subject matter of reassessment proceedings u/s 147 of the Act, nor find place in show cause notice issued by the Ld.PCIT u/s 263 of the Act, 1961. Therefore, we are of the considered view that the Ld.PCIT having accepted the fact that the Ld.AO has examined the issue of suppression of turnover should have confined the scope of his revisional powers to the issue, which he had questioned in his show cause notice, rather than going to the issue of various expenditure, which is not at all a subject matter of proceedings u/s 147 of the I.T.Act, 1961. As, we have already stated in earlier paragraph, when AO himself is precluded from making any other additions in reassessment proceedings, when he failed to make additions on the issues on which reasons for reopening of assessment was recorded, then certainly in our consider view the Ld.PCIT is also precluded from taking those issues in revisional proceedings u/s 263 of the I.T.Act, 1961. Further, the issue of various expenses questioned by the Ld.PCIT was explained by the assessee during the assessment proceedings with reference to two set of financial statements and the

Ld. AO has accepted the claim of the assessee and completed assessment without making any additions on the issues. It is also a matter of fact that the two set of financial statement have been prepared for two different periods and the difference of income and expenditure recorded in said financial statements has been explained before the Ld. AO, during reassessment proceedings. Therefore, we are of the considered view that the Ld.PCIT was incorrect in coming to the conclusion that the Ld. AO ought to have carried out necessary enquiries with regard to various expenditure claimed in two set of financial statements and also, the profit declared by the assessee for the year under consideration in comparison with average profitability of certain comparables furnished by the assessee. We, therefore are of the opinion that the Ld.PCIT has gone beyond the scope of his revisional powers conferred on him by the provision of section 263 of the I.T.Act, 1961.

16. Coming back to the case laws relied upon the Ld. AR for the assessee. The assessee has relied upon the decision of Hon'ble Supreme Court, in case of Malabar Industrial Company Limited vs CIT (243 ITR 83). We find that Hon'ble Supreme Court, while considering issue of revisional powers of the commissioner u/s 263 of the I.T.Act, 1961 has held as under:-

*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 cine 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 case 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 me order passed by the*

*Assessing Officer accepting the same as such will be erroneous and prejudice to the interests of the Revenue. Rarnpyari Devi Saraogi v. CIT [1968] 67 ITR 84(SC) and in Smt. Tara Devi Aggarwal v. CIT[1973] 88ITR 323(SC).*

*In the instant, the Commissioner noted that the Income-tax Officer passed the order of nil assessment without application of mind. Indeed, the High Court recorded the finding That the income-Tax Officer failed to apply his mind to the case in all perspective and the order passed by him was erroneous. It appears that the resolution passed by the board of the appellant-company was no! placed before the Assessing Officer Thus, there was no material to support the claim of the appellant that the said amount represented compensation for loss of agricultural income. He accepted the entry in the statement of me account filed by the appellant in the absence of any supporting material and without making any inquiry On these facts the conclusion that the order of the Income-lax Officer was erroneous is irresistible We are, therefore, of the opinion that the High Court has rightly held that the exercise of the jurisdiction by the Commissioner under section 263 was justified.*

*The second contention has to be rejected in view of the finding of fact recorded by the High Court. It was not shown at any stage of the proceedings, That The amount in question was fixed or quantified a& loss of agricultural income and admittedly It is not so round by the Tribunal. The further question whether it will tie agricultural income within the meaning of section 2(1A) of the Act as elucidated by this court in CIT v Raja Benoy Kumar Sahas Roy 11957] 32 ITR 466, does not arise for consideration. it is evident from The order of the High Court that that the findings recorded by the Tribunal that the appellant stopped agricultural operation in November. 1982, and this receipt under consideration did not relate lo any agricultural operation carried on by The appellant, were not questioned before it. Though we do not agree with the High Court that the said amount was paid for breach o' contract as indeed it was paid in modification/relaxation of the terms of the contract, we hold that this High Court is justified m concluding that the said amount was a 'arable receipt under the head "Income from other sources".*

17. The Ld. DR has relied upon plethora of judicial precedents in support of his arguments and one such case law is the decision of Hon'ble Kolkatta High court, in the case of Vinod Kumar Aggarwal. We have gone through the decision cited by the Ld. DR and find that the decision is on limited issue as to whether addition could be sustained when two audited balance sheet were found, one for income tax purpose and one for procuring loan from banks. In the aforementioned decision, the assessee did not prove the duplicate

balance sheet as a mistake or wrong whereas in the present case, the assessee has proved with necessary evidences before the Ld. AO as well as the Ld.CIT(A) that turnover reported in second set of balance sheet was a mistake and not correct, but turnover reported in return of income was correct. But, the issue in the present case is altogether different, because when suppressed turnover for the impugned assessment years was an issue of reopening of assessment and assessee had substantiated the sales turnover reported in original return of income with TDS and work contract certificate, can revision proceedings be initiated for non examination of expenses and unsecured loans, which were subject matter of reopening. Therefore, the case law cited by the Ld. DR is clearly not applicable to present case. Further, the Ld. DR has relied upon plethora of decisions in which it was stated that in case of proper enquiry is not done by the Ld. AO, then revisionary jurisdiction can be exercised u/s 263 of the I.T.Act, 1961. The case laws cited by the Ld. DR are clearly distinguishable, firstly by the fact that the issue of suppressed turnover for reopening of assessment has been accepted as no suppression of turnover by the Ld. AO, as well as Ld.CIT(A) in view of judgments relied by the assessee, as stated above, in which it is clearly held that, when reason for reopening does not stand, then no other addition can be made. The issue is not of inadequate enquiry in present case as the Ld.CIT(A) herself does not disagree with the findings of Ld. AO with respect to issue of suppressed turnover, but issue is whether when no addition to taxable income is contemplated on issue of reopening, whether Ld.AO order can be held to be erroneous for his not holding enquiry on issues which were not subject matter of reasons to believe for reopening of assessment. As we have already stated in earlier part of this

paragraph, the PCIT has clearly exceeded his jurisdiction conferred upon him under the provisions of section 263 of the I.T.Act, 1961 and hence, the case laws relied upon by the Ld. DR are clearly not applicable to the facts of present case.

18. In this view of the matter and considering facts and circumstances of this case, we are of the considered view that the Ld.PCIT was erred in revision of assessment order u/s 263 of the I.T.Act, 1961, without satisfying the conditions prescribed under the provision of the Act, in order to invoke his jurisdiction. Hence, we set aside the order of the Ld.PCIT passed u/s 263 of the I.T.Act, 1961 and restored the assessment order passed by the Ld. AO u/s 143(3) r.w.s.147 of the I.T.Act, 1961.

19. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on this 28 /02/2020

**Sd/-**  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(G. MANJUNATHA)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 28/02/2020  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

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

6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**