

**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH KOLKATA**

**BEFORE SHRI S.S.GODARA, JM &DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.517/Kol/2019**

**(निर्धारणवर्ष / Assessment Year:2014-15)**

|   |            |                       |
|---|------------|-----------------------|
| <b>Gouri Shankar Goyal</b><br><br><b>Agrasen Road, Khalpara<br/>Siliguri-734005</b> | <b>Vs.</b> | <b>PCIT, Siliguri</b> |
| <b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ADGPG 0529 B</b>                            |            |                       |
| <b>(Appellant)</b>  | <b>..</b>  | <b>(Respondent)</b>   |

Appellant by :Shri Subash Agarwal, A.R.

Respondent by :Shri Dhrubajyoti Roy, JCIT

सुनवाईकीतारीख/ **Date of Hearing** : **15/01/2020**

घोषणाकीतारीख/**Date of Pronouncement** : **12/06/2020**

**आदेश / O R D E R**

**Per Dr. A.L. Saini, AM:**

The captioned appeal filed by the assessee, pertaining to assessment year 2014-15, is directed against the order passed by the Principal Commissioner of Income Tax-Siliguri, under section263 of the Income Tax Act, 1961 (in short the "Act") dated 21/01/2019.

2. The grounds of appeal raised by the assessee are as follows:

*1.That the ld. CIT erred in law as well as on facts while passing the order u/s 263.*

*2. That the ld. CIT misinterpreted himself while coming to a conclusion that the order passed by the Assessing Officer was erroneous and prejudicial to the interest of the revenue when all material facts were disclosed before the Assessing Officer and after duly verifying them were placed on record ignoring the decision of Apex Court in the case of Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83.*

3. That the ld. CIT erred in 'accepting the proposal for revising the assessment order' received from the new Assessing Officer (because of change in jurisdiction ) when so such provision exists in the Income Tax Act, 1961 where the Assessing Officer can send a proposal for revision u/s 263.

4. That as the order passed by the ld. CIT is bad in law, unlawful and unjustified, the same should be deleted and your appellant be given such relief(s) as prayed for.

5. That the appellant craves your ld. Permission to add, amend and modify the above on or before the date of hearing of the appeal.”

3. At the outset itself, ld. Counsel for the assessee informs the Bench that the assessee does not want to press ground No. 3 raised by him, therefore we dismiss the ground No. 3 as not pressed.

4. Now we adjudicate ground Nos. 1, 2 and 4 raised by the assessee wherein the assessee has challenged the correctness of the order dated 21.01.2019 passed by the learned Principal Commissioner of Income Tax ( for short 'PCIT') under section 263 of the Income Tax Act 1961( for short 'Act').

5. The appeal arises this way. The assessee filed its return of income for the assessment year (A.Y.) 2014-15 on 31.03.2015, declaring total income to the tune of Rs. 9,79,460/-. The assessee`s case was selected for complete scrutiny under compulsory category scrutiny Assessment. The assessment was completed u/s 143(3) of the Act on 29/12/2016 by determining the income at Rs.10,74,800/- by adding 10% of the cash payment towards carriage inwards and uploading &delivery charges.

Later on, ld PCIT noticed that the Assessing Officer had failed to examine the following issues:

“a) No proper verification has been done by the Assessing Officer with regard to the capital introduced of Rs.15 lakh in the proprietor's Capital account.

b) No verification is made by the Assessing Officer regarding transfer of assets and liabilities of Shri O P Agarwal to the assessee and inclusion in the Balance sheet of the assessee though the case was selected for complete scrutiny.”

6. Subsequently, the Assessing Officer, DCJT, Circle-1, Siliguri, sent a proposal for revising the Assessment Order u/s 143(3) passed on 29.12.2016 in the case of the assessee for the A.Y. 2014-15 on the ground that the above issues were not examined while completing the assessment u/s 143(3) of the Act. Finding the action of the Assessing Officer to be erroneous and prejudicial to the interest of Revenue, a show-cause notice was issued, vide letter dated 26.11.2018 to the assessee proposing to set aside the assessment order under section 263 of the I. T. Act, 1961 which inter-alia stated as under:

*“The Assessing Officer namely, the Asst. Commissioner of Income Tax Circle-1, Siliguri, has sent a proposal for setting aside the Assessment Order passed on 29.12.2016 in Your own case for the A.Y. 2014-15 u/s 143(3) of the I.T. Act, 1961, by the Income Tax Officer, Ward-1(3), Siliguri, as the Assessment Order is in his opinion erroneous and prejudicial to the Interest of Revenue.*

*2.The proposal sent as above has been examined and found to be actionable. Hence, this notice is being issued to you.*

*3.For the Assessment year 2014-15, it was seen that in the Proprietor's Capital account, there is an addition of Rs 15,00,000/-. In the Questionnaire dated 26.08.2016, at point number VI, the AO sought for production for source of Investment in respect of this Capital addition. Again, in the hearing dated 14.12.16, the AO had requested you to produce the details for the Capital Introduced. In the letter dated 21.12.2016 at para 2, You have filed some explanation, but no evidence is enclosed to substantiate the claim made about the sources.*

*The AO without making proper Verification completed the assessment. This action of the AO in not making proper verification has rendered the assessment erroneous in so far as it is prejudicial to the Interest of Revenue.*

*4.Further, it is seen that your Case was selected for Complete Scrutiny for the A Y 2014-15. However, the record indicates that the AO has failed to cause examination of the all issues that are available on record.*

*From the Balance sheet as at 31.03.2014, You have indicated Balances Transferred from Shri O P AGARWAL under the heads of Fixed assets, Investments and Cash and Bank balances as also Creditor. The record indicates that the AO has not made any verification with regard to the transfer of above accounts. This non verification also renders the Assessment made erroneous and prejudicial to the Interest of revenue.*

7. In view of the above-mentioned facts, the Id PCIT was of the view that the assessment order passed u/s 143(3) of the Act dated 29.12.2016, for A.Y. 2014-15 is erroneous in so far as prejudicial to the interest of revenue. Therefore, Id PCIT issued a notice to the assessee stating to show cause as to why the order u/s 143(3) of the Act dated 29.12.2016 should not be revised.

8. In response to the show cause notice, the assessee submitted written submissions before the Id PCIT, which is reproduced below:

*"I am in receipt of your letter intimating the proposal for revision of Assessment for A.Y. 2014-15 u/s 263 of the Income Tax Act, 1961. In respect of the same please find below my submission for your kind consideration.*

*The reading of the provisions u/s 263 makes it very clear that the power of revision u/s 263(1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision u/s 263, namely (i) the order is erroneous (ii) by virtue of being erroneous prejudice has been caused to the interests of the Revenue. Interpretation of Section 263 has been subject matter of consideration in various decisions including the decision in the case of Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 where the Hon'ble Apex Court while interpreting Section 263 at para 7 has observed as under:*

*"There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind."*

*Sir, in our case you have proposed, the revision on the following 03 grounds:*

- 1) The addition of Rs. 15,00,000/- to the Capital Account.*
- 2) The case being a complete scrutiny, the Assessing Officer failed to examine all the issues that are available on record.*
- 3) The Balance transferred from Shri O P Agarwal has not been verified with regard to transfer of such accounts.*

*I would now like to submit that the grounds as considered do not qualify to be erroneous and neither is prejudicial to the interest of the revenue.*

- A) In respect of the 1<sup>st</sup> point regarding addition to the Capital Account, the explanation was filed as also mentioned by you. The addition to the capital account was introduction of own funds from personal account to the account of the business M/s Goyal Enterprises whose proprietor is your assessee himself. The amount was introduced in Cash Rs. 6 lakhs & through Bank Rs. 9 lakhs. Since own funds were transferred, that did not entail any further enquiry or evidence. The book entry was the only evidence for such transaction. The Assessing Officer was satisfied with the explanation made as the addition did not have any impact on the revenue, he therefore did not call for any further evidence. It is prima-facie evident that the issue was duly examined and it was on his application of mind that he considered the explanation to be satisfactory. Therefore, this cannot be considered to be erroneous as the issue was duly examined. My views are also substantiated with the following judgments of the honorable Courts.*

*The Honourable Apex Court has held that 'When the Assessing Officer taken one of the two views permissible in law and which the Commissioner does not agree with and which results in a loss of revenue, it cannot be treated as erroneous order*

*prejudicial to the interest of revenue, unless the view taken by the Assessing Officer is completely unsustainable in law.' CIT vs. Max India Limited [2007] 295 ITR 282 (SC)*

*If the Assessing Officer allows the claim on being satisfied with the explanation of assessee, on an enquiry made during the course of Assessment proceedings, the decision of Assessing Officer cannot be held to be erroneous, on ground that there is no elaborate discussion in that regard in the order. It is the practice, that whenever any claim of the assessee is accepted, Assessing Officer may not discuss the same in his order. Anil Shah vs. ACIT (2007) 162 Taxman 39 (Mum) (Trib).*

*Where the Assessing Officer during the scrutiny assessment proceeding raised a query which was answered by the assessee to the satisfaction of the Assessing Officer but the same was not reflected in the assessment order by him, a conclusion cannot be drawn by the Commissioner that no proper enquiry with respect to the issue was made by the Assessing Officer, and enable him to assume jurisdiction under section 263 of the Act."*

- B) In respect to the 2<sup>nd</sup> para, regarding verification in case of complete scrutiny, I would humble like to submit that there were no specific guidelines by the CBDT or any authority as to what needs to be verified by the AO in the case of complete scrutiny. The extent of verification is left to the judgment of the AO.*
- C) The 3<sup>rd</sup> para regarding assets and liabilities being transferred from Late O.P. Agarwal, the para is neither erroneous nor prejudicial to the interest of revenue. The assets and liabilities were transferred on the death of father of Gouri Shankar Goyal. The last balance sheet of Shri O.P. Agarwal is on records. The last return of Shri O.P. Agarwal was filed by Sri Gouri Shankar Goyal as a representative assessee, which is on record of the Income Tax Department. The death certificate is also on record. Therefore, the same could not be termed as erroneous.*

9. The ld. PCIT has gone through the reply of the assessee and issued further show cause notice. The ld. PCIT, after taking into account facts and circumstances of the assessee`s case held that order passed by the AO is erroneous and prejudicial to the interest of Revenue. Therefore, ld PCIT had directed the AO to pass *de-novo* assessment after making proper verification of the issues discussed above.

10. Aggrieved by the order of the ld. PCIT, the assessee is in appeal before us.

11. Before us, the ld. Counsel for the assessee reiterated the submissions made during the revision proceedings.

12. On the other hand ld. DR for the revenue submitted before the Bench that assessing officer has not conducted sufficient hearings to examine the various issues. The assessing officer did not apply his mind properly to scrutinize the

various issue and failed to reach on logical conclusion therefore order passed by the assessing officer is erroneous as well as prejudicial to the interest of Revenue. Apart from this, Id DR has reiterated the stand taken by the Id. PCIT which we have already noted in our earlier para and the same is not being repeated for the sake of brevity.

13. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id PCIT and other material available on record. First of all, we have to see whether the requisite jurisdiction necessary to assume revisional jurisdiction is there existing before the Pr. CIT to exercise his power. For that, we have to examine as to whether in the first place the order of the Assessing Officer found fault by the Principal CIT is erroneous as well as prejudicial to the interest of the Revenue. For that, let us take the guidance of judicial precedent laid down by the Hon'ble Apex Court in *Malabar Industries Ltd. vs. CIT* [2000] 243 ITR 83(SC) wherein their Lordship have held that *twin* conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii) Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the AO has not investigated the issue before him; then the order passed by the Assessing Officer can be termed as erroneous order. Coming next to the second limb, which is required to be examined as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of *Malabar Industries* (supra) held that this phrase i.e. "*prejudicial to the interest of the revenue*" has to be read in conjunction with an *erroneous order* passed by the Assessing Officer. Their Lordship held that it has to

be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue **“unless the view taken by the Assessing Officer is unsustainable in law”**.

14. Taking note of the aforesaid dictum of law laid down by the Hon’ble Apex Court, let us examine, whether in assessee’s case order passed by the assessing officer is erroneous and prejudicial to the interest of Revenue. We note that Id PCIT has mainly exercised his jurisdiction under section 263 of the Act on two reasons namely:

(i).No proper verification has been done by the A.O. with regard to the Capital introduced of Rs.15 lakh in the proprietor's Capital account.

(ii).No verification is made by the AO regarding transfer of Assets and Liabilities of Shri O P Agarwal to the assessee and inclusion in the Balance Sheet of the Assessee though the case was selected for scrutiny.

In respect to the Capital introduced of Rs.15 lakh in the proprietor's Capital account, the Id Counsel submitted before us written submissions, which are reproduced below:

*“In respect of the addition to the capital account, it was submitted before the A.O. that the same was introduction of own funds from personal account to the account of the proprietorship concern “M/s. Goyal Enterprise”. Out of the total amount of Rs. 15,00,000/-, a sum of Rs.6,00,000/- was introduced in cash and the remaining amount of Rs.9,00,000/- was introduced through banking channel. The Ld. A.O. during the course of assessment proceedings was satisfied with the explanation offered by the assessee in respect of such capital introduction and did not make any addition in this regard.*

*The assessee submitted a letter dated 21.12.2016 (placed at page 7 of paper book) and explained the source of introduction in the capital account through account payee cheques as under –*

*"There was also an addition of Rs.9,00,000.00 on 31. 03.2016 by cheque. The said amount was added as cheque received from Purnima Goyal Rs.4,78,000/- (Ch. No. 208086 - Joint Account of Purnima Goyal. Babita Goyal, G.S. Goyal);*

*Sandeep Gupta - Rs.4,00,000/- (Ch. No. 331471) & Nirma Ltd. Rs. 1,12,500/- (refund). ”*

*Copies of ITR acknowledgements, computation of total income, bank statement, confirmation of account duly signed of the two parties viz., Sandeep Gupta and Purnima Agarwal are placed in the Paper Book from pages 35 to 44. It can be seen that the name of the assessee is appearing in their respective Balance Sheets against the amount advanced by them to the assessee. The said amounts are also appearing in their respective Bank Statements. Further, it was duly explained before the A.O. as per the above - mentioned letter that Rs. 1,12,500/- was received from M/s. Nirma Ltd.*

*It was explained to the A.O. that Nirma Ltd. had bought back its shares at Rs.225/-per share.The said information was also available in public domain (report published in Economic Times on 10.07.13 placed at Page 39 of Paper Book).As regards the introduction of cash in the proprietary concern M/s. Goyal Enterprises from time to time totalling to Rs.6 lacs as evident from the ledger account of the concern (at Page 27 of the Paper Book), it was explained that the said amounts were accumulated own funds of the assessee saved from the earlier years and since the A.O. was satisfied with the said explanation, it did not entail any further enquiry or evidence. This fact is also accepted by the CIT in his letter dated 17.12.18 (placed at Pg. 15 of the Paper Book).*

Regarding transfer of Assets and Liabilities of Shri O P Agarwal to the assessee, the Id Counsel submitted as follows:

*“As regards the issue of transfer of assets and liabilities of Late O. P. Agarwal, it is humbly submitted that the assets and liabilities were transferred after demise of assessee’s father, Late O. P. Agarwal. The last return of Late O. P. Agarwal was filed by the assessee being a representative of the assessee which is on record of the department. The Balance Sheet of Late O. P. Agarwal (at pages 45 to 49 of the Paper Book) as well as his death certificate (at page 50 of the Paper Book) is also on record of the department. Further, from the screenshot of the login page of the assessee's e-filing portal (placed at page 51 of Paper Book), it is apparent that the assessee had filed the return of income on self account and as legal heir of Late Omprakash Agarwal (father). It is submitted that the assessee’s account in e-filing portal is accessible and is accessed to by the A.O. at all times and particularly during assessment proceedings. So it cannot be said that the A.O. was not aware of the facts in this regard.*

*It can be seen from the Balance Sheet of the assessee (at page 30 of the Paper Book) that the assessee had merely incorporated the assets and liabilities of his late father in his Balance Sheet, being the legal heir. The Balance Sheet of the late father of the assessee (placed at Page 48) was also available in the e-filing portal of the assessee as demonstrated hereinabove, which is also a part of the record of assessment proceedings. The objection of CIT as stated at para 4.2.4 of his order is that –*

*(a).There was no evidence that the AO has made any enquiry with regard to the correctness of the Assets and liabilities of Shri O.P. Agarwal included in the Balance Sheet of the Assessee and the reason for such inclusion.*

*(b).There is no evidence on the record that the assessee has filed any material to substantiate the position of being the legal heir.*

*In regard to the above contention of CIT, it is submitted that both the Balance Sheets that is, of the assessee as well as of his late father were part of the assessment record and were also placed before the CIT. The CIT has failed to point out any discrepancy in the transfer of assets and liabilities made by the assessee in his Balance Sheet. Further, e-filing portal of the assessee (screen shot at page 51 of the Paper Book) duly recognizes the assessee as the legal heir of late*



Omprakash Agarwal. It is submitted that the entire process is done after due online verification and after the death certificate and other relevant documents are uploaded on the portal.

Therefore, the assessment order cannot be termed as erroneous since the assessee being the only son inherited all assets and liabilities of his deceased father which is very natural.

In the circumstances, it cannot be said that there was error in the A.O.'s order and prejudice is caused to the revenue when entire facts and documents alongwith the explanation were also placed before Pr. CIT and he failed to bring any adverse material on record."


Thus, Ld Counsel submitted before us that assessee furnished required documents and evidences, before the AO to substantiate his case during the assessment stage. The assessing officer having examined all the documents and evidences, framed the assessment order u/s 143(3) of the Act, therefore order passed by the AO is not erroneous.

15. We note that during the course of scrutiny assessment under section 143(3) of the Act, the assessee submitted the various documents and explanations as required by the Assessing Officer from time to time. The assessing officer also affirmed this fact that assessee submitted required documents and evidences, which is evident by the order sheet of the Assessing Officer which is placed in paper book page nos. 1 to 6, and the same is being reproduced below:

| ORDER SHEET |  |
|-------------|--|
| 22.5/15     | The case has been selected for scrutiny through CASS. Accordingly notice u/s 143(2) of the I.T. Act 1961 has been issued fixing date of hearing on 29/09/2015. |
| 14.5/16     | Issued notice u/s 143(1) of the I.T. Act, 1961 by fixing the case for hearing on 25/10/16 at 11:30 am.   |
| 25.5/16     | Shri G. Shankar Goyal, assessee himself appeared for the hearing and the case is discussed. Next date of hearing is fixed on 07/11/16 at 11 am.                |

100% TRUE COPY

Sd/- *Sd/-* **अजहर कबीर**  
Asst. Commissioner of Income Tax / असिस्टंट कमिश्नर आयकर  
Circle-1, Bhubaneswar, Odisha



**NOTE SHEET**

FILE NO. \_\_\_\_\_  
 VOL. NO. \_\_\_\_\_

25/8/16 - Shri Gouri Shankar Goyal, assessee himself appeared for the hearing and the case is discussed. Shri Goyal also submitted Audit Report for the A.Y. 2014-15, balance copy, list of sundry Creditors. Shri Goyal explain that he is in the business of contractor and not in the business of contractor. The case is partly heard. Next date of hearing is fixed on 14/9/16 at 1 Pm.

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26/8/16 The case is re-fixed for hearing on 09/9/16 at 5:30 Pm.

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CERTIFIED TO BE TRUE COPY  
 Shri. Jitendra Kumar / अजहर कबीर  
 Asst. Commissioner of Income Tax / असिस्टेंट कमिश्नर आयकर  
 Circle-1, Siliguri / सर्कल-१, शिलायुड़ी

**NOTE SHEET**

FILE NO. \_\_\_\_\_  
 VOL. NO. \_\_\_\_\_

27/8/16 - Seen the petition for adjournment of hearing as submitted by the assessee. The hearing is adjourned.

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14/9/16 Issued a letter ab. 123 (6) of the I.T. Act, 1961 to Sundry Creditors.

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18/9/16 Issue re-fixed letter, fixing the case for hearing on 26/10/16 at 12:30 Pm.

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23/10/16 Gouri Shankar Goyal, assessee himself appeared for the hearing and the case is discussed. Shri Goyal also submitted copy of balance for A.Y. 12-14 along with Audit Report. Case is partly heard. Next date of hearing is fixed on 26/10/16 at 1 Pm.

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CERTIFIED TO BE TRUE COPY  
 Shri. Jitendra Kumar / अजहर कबीर  
 Asst. Commissioner of Income Tax / असिस्टेंट कमिश्नर आयकर  
 Circle-1, Siliguri / सर्कल-१, शिलायुड़ी

**NOTE SHEET**

FILE NO. \_\_\_\_\_  
VOL. NO. \_\_\_\_\_

20/10/16. I issued reminder letter to Sundry Creditors requesting them to make a comparison to abate the 120 (B).  
 28/11/16. The case is ready for hearing on 20/11/16 at 11:30 AM.  
 20/11/16. Shri G. S. Goyal, assessee appeared for the hearing and the case is dismissed. Assessee submitted ledger of 2015 and purchased both from Bihar and Bengal. Assessee is requested to produce details of unsecured loan and TDS deduction. The case is partly heard. Next date of hearing is fixed on 09/12/16 at 1 PM.

T. T. O.

**CERTIFIED TO BE TRUE COPY**  
 Shri. Shakti अजहर कबीर  
 Asst. Commissioner of Income Tax / सहायक आयुक्त

**NOTE SHEET**

FILE NO. \_\_\_\_\_  
VOL. NO. \_\_\_\_\_

14/12/16. Shri Gouri Shankar Goyal, assessee himself appeared for the hearing and the case is dismissed. Shri Goyal produced ITR of unsecured loan, Bank statements, statement of TDS payment, ledger copy of Commission on sale & services earned. Shri Goyal is requested to produce details of Capital introduction and source, copy of ITR return filed 26/3, bank receipt, reconciliation statement of closing balance difference of Direct Chem and Bandwidth. The case is partly heard. Next date of hearing is fixed on 20/12/16 at 1 PM.

T. T. O.

**CERTIFIED TO BE TRUE COPY**  
 Shri. Shakti अजहर कबीर  
 Asst. Commissioner of Income Tax / सहायक आयुक्त  
 Circle-1, Siliguri / सर्किल-१, शिलिगुड़ी

Now we shall address the main grievance of the Id DR to the effect that the assessing officer has not conducted sufficient hearings and the assessing officer did not apply his mind properly to scrutinize the various issues. We note that

assessing officer has conducted thirteen (13) hearings as noted in the order sheet mentioned above.

It is evidently clear that during the assessment proceedings whatever the details asked by the Assessing Officer the assessee submitted the details and documents and made the compliance of notices issued by the Assessing Officer u/s 142(1) of the Act. The Assessing Officer after having gone through the documents and explanation furnished by the assessee has passed the order, therefore the contention and plea of the Id DR that assessing officer has not conducted sufficient hearings and did not apply his mind, is not acceptable.

16. We note that during the assessment proceedings, the assessee has submitted the reply to the Assessing Officer in response to the notice u/s 142(1) of the Act which is placed at paper book page no. 7 and 8 and the same is reproduced below:

Please find enclosed herewith the following information on issue raised during the course of scrutiny proceedings:

1. We would like to bring to your kind notice that there was addition of Rs. 6,00,000.00 by cash on various dates during the year 2013-14. However, we are unable to provide details of the same since my bag alongwith laptop, etc. has been lost at Kolkata on 29/04/2016. The copy of FIR is enclosed herewith for your reference. We would further like to inform you that we have also made a disclosure of above Rs. 6,00,000.00 in cash in IDS.
2. There was also an addition of Rs. 9,00,000.00 on 31/03/2016 by Cheque. The said amount was added as cheque received from Purnima Goyal – Rs. 4,78,000.00 (Ch. No. 208086 – Joint Account of Purnima Goyal , Babita Goyal, G. S. Goyal); Sandeep Gupta – Rs. 4,00,000.00 (Ch. No. 331471) & Nirma Ltd. Rs. 1,12,500.00 (refund).
3. Reconciliation Statement of Shri Badrinarain Alloys & Steels Ltd.  
Balance as per Shri Badrinarain Alloys & Steel Ltd. : Rs. 1,79,664.00  
Less: Balance as per our Books : Rs. 1,66,782.00  
**Difference** : **Rs. 12,882.00**  
The difference is due to the fact that we have booked commission of Rs. 12,882.00 in the year 2012 – 13 but the same was not reflected in the books of the company.
4. Reconciliation Statement of Shree Chemfood Pvt. Ltd.:  
Balance as per our Books : Rs. 3,02,952.00  
Less: Balance as per Shree Chemfood Pvt. Ltd : Rs. 2,82,552.00  
**Difference** : **Rs. 20,400.00**

There is an opening difference of Rs. 4,21,254.00 between our books & books of Shree Chemfood Pvt. Ltd. We have made payment of Rs. 4,21,254.00 to Sabar Flex Ltd. which was transferred to Shree Chemfood Pvt. Ltd. during the year 2012-13 (the payment was made against cost of bags manufactured by Sabar Flex Ltd.). The same entry was passed by Shree Chemfood Pvt. Ltd. on 15/05/2013.

Further there is a difference of Rs. 20,400.00 as we have not yet booked as discount in our books, but the company has adjusted the discount against the bill on 27/11/2013. We have passed the entry on 30/09/2014.

5. The details of rent paid is as follows:

|   |                          |
|---|--------------------------|
| Rent paid to Jiwanlal Agarwal & Sons (14,000 X 12)      | : Rs. 1,68,000.00        |
| Rent paid to Sri Darjeeling Siliguri Gosala (3191 x 12) | : Rs. 38,292.00          |
| Rent paid to Sri Darjeeling Siliguri Gosala (3191 X 12) | : Rs. 38,292.00          |
| Rent paid to Rohit Agarwal, Kishanganj (8500 X 12)      | : Rs. 1,02,000.00        |
| <b>Total</b>  | <b>: Rs. 3,36,584.00</b> |

6. The details of Carriage Inward Expenses are as follows:

|  |                           |
|--|---------------------------|
| Carriage Inward (spices & others) – Paid by Cash Voucher           | : Rs. 2,06,483.00         |
| Carriage Inward (Bihar – Salt A/c) – Paid directly to party        | : Rs. 62,73,946.50        |
| Carriage Inward (Bengal – Salt A/c) – Paid to Bajaj Salt Pvt. Ltd. | : Rs. 5,44,136.00         |
| Railway D. C. Paid   | : Rs. 18,324.00           |
| <b>Total</b>   | <b>: Rs. 70,42,889.50</b> |

7. Details of Delivery Charges are as follows:

|  |                           |
|--|---------------------------|
| Loading / Unloading / Transportation – By Cash | : Rs. 3,11,495.00         |
| Loading/ Unloading/Transportation – By Cheque  | : Rs. 21,11,043.00        |
| <b>Total</b>                                   | <b>: Rs. 24,22,538.00</b> |

This is for your information for necessary action at your end.

Thanking You,

Therefore, it is quite clear that the assessee had made the compliance during the assessment proceedings and submitted every type of document and explanation required by the assessing officer. The Assessing Officer after doing detailed examination of the documents and taking into account the submissions of the assessee, passed the assessment order. The assessment order was passed by AO with proper application of mind as he conducted thirteen hearings during scrutiny assessment. During the scrutiny proceedings, as we noticed that the assessee has submitted the income tax return copy for AY 2014-15, which is placed at page no. 19 to 20 of paper book. The assessee filed the balance sheet and profit and loss account of Goyal Enterprise for the AY 2014-15 (vide PB-21 to 26). The assessee filed ledger account of assessee in the books of Goyal Enterprises which is placed at page 27 of paper book. The assessee filed bank statement of Goyal Enterprises reflecting the amount received from the assessee (vide PB page 28 to 29). The assessee filed balance sheet with capital account of the assessee as on 31.03.2014 which is placed at Page 30 to 32 of paper book. The assessee filed the details of capital introduced of Rs. 15,00,000/-. The assessee filed bank statement reflecting the amount received as loan and refund (vide PB-33 to 34). The assessee also submitted income tax return copy, computation of income, bank statement and

loan confirmation of Sandeep Gupta for AY 2014-15 (vide PB-35 to 28). The assessee submitted screen shot of the article of buy back of shares of minority shareholders of Nirma Ltd. published in Economics Times on 10.07.2013, which placed at page No. 39 of paper book. The assessee filed income tax return copy, computation of income, bank statement and loan confirmation of Purnima Agarwal for AY 2014-15 which is placed at Pg. 40 to 44 of paper book. The assessee also submitted income tax return copy, computation of income and balance sheet of Shri O. P. Agarwal which is placed at Pg. 45 to 49 of paper book. The assessee submitted death certificate of Shri O. P. Agarwal vide page No. 50 of paper book. Therefore, these papers and documents submitted by the assessee clearly show that the assessee was very serious in submitting the documents before AO and making the compliance of notices under section 142(1) during the assessment stage and the Assessing Officer after doing detailed scrutiny of these documents and evidences, has passed the assessment order. Based on the facts and documents submitted by assessee during assessment stage, it can be said that Assessing Officer has applied his mind and hence the order passed by the Assessing Officer should not be erroneous.

17. We note that Ld Pr. CIT has taken support of the newly inserted Explanation 2(a) to sec. 263 of the Act. What is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorize or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquiries or verification that would have been carried out by a prudent officer. Hence, the said explanation, which was inserted by Finance Act 2015 w.e.f. 1.4.2015, would not be applicable to the year under consideration. For that we rely on the judgment of the Co-ordinate Bench of Mumbai in the case of Shri Narayan Tatu Rane vs. ITO in ITA Nos. 2690 &

2691/Mum/2016 for A.Y. 20108-09 dated 06.05.2016, wherein it was held as follows:

*“19. The law interpreted by the High Courts makes it clear that the Ld Pr. CIT, before holding an order to be erroneous, should have conducted necessary enquiries or verification in order to show that the finding given by the assessing officer is erroneous, the Ld Pr. CIT should have shown that the view taken by the AO is unsustainable in law. In the instant case, the Ld Pr. CIT has failed to do so and has simply expressed the view that the assessing officer should have conducted enquiry in a particular manner as desired by him. Such a course of action of the Ld Pr. CIT is not in accordance with the mandate of the provisions of sec. 263 of the Act. The Ld Pr. CIT has taken support of the newly inserted Explanation 2(a) to sec. 263 of the Act. Even though there is a doubt as to whether the said explanation, which was inserted by Finance Act 2015 w.e.f. 1.4.2015, would be applicable to the year under consideration, yet we are of the view that the said Explanation cannot be said to have over ridden the law interpreted by Hon’ble Delhi High Court, referred above. If that be the case, then the Ld Pr. CIT can find fault with each and every assessment order, without conducting any enquiry or verification in order to establish that the assessment order is not sustainable in law and order for revision. He can also force the AO to conduct the enquiries in the manner preferred by Ld Pr. CIT, thus prejudicing the independent application of mind of the AO. Definitely, that could not be the intention of the legislature in inserting Explanation 2 to sec. 263 of the Act, since it would lead to unending litigations and there would not be any point of finality in the legal proceedings. The Hon’ble Supreme Court has held in the case of Parashuram Pottery Works Co. Ltd Vs. ITO (1977)(106 ITR 1) that there must be a point of finality in all legal proceedings and the stale issues should not be reactivated beyond a particular stage and the lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity.*

*20. Further clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinizing the nature of enquiry or verification carried out by the AO vis-à-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquiries or verification that would have been carried out by a prudent officer. Hence, in our view, the question as to whether the amendment brought in by way of Explanation 2(a) shall have retrospective or prospective application shall not be relevant.*

*21. In the instant case, as noticed earlier, the AO has accepted the explanations of the assessee, since there is no fool proof evidence to link the assessee with the document and M/s RNS Infrastructure Ltd, from whose hands it was seized, also did not implicate the assessee. Thus, the assessee has been expected to prove a negative fact, which is humanely not possible. No other corroborative material was available with the department to show that the explanations given by the assessee were wrong or incorrect. Under these set of facts, the AO appears to have been satisfied with the explanations*

given by the assessee and did not make any addition. We have noticed that the Hon'ble Supreme Court has held in the case of Central Bureau of Investigation Vs. V.C. Shukla and Others (supra) that the entries in the books of account by themselves are not sufficient to charge any person with liability. Hence, in our view, it cannot be held that the assessing officer did not carry out enquiry or verification which should have been done, since the facts and circumstances of the case and the incriminating document was not considered to be strong by the AO to implicate the assessee. Thus, we are of the view that the assessing officer has taken a plausible view in the facts and circumstances of the case. Even though the Ld Pr. CIT has drawn certain adverse inferences from the document, yet it can be seen that they are debatable in nature. Further, as noticed earlier, the Ld Pr. CIT has not brought any material on record by making enquiries or verifications to substantiate his inferences. He has also not shown that the view taken by him is not sustainable in law. Thus, we are of the view that the Ld Pr. CIT has passed the impugned revision orders only to carry out fishing and roving enquiries with the objective of substituting his views with that of the AO. Hence we are of the view that the Ld Pr. CIT was not justified and was not correct in law in holding that the impugned assessment orders were erroneous.

22. We have also seen that, in order to invoke the provisions of revisional proceedings, it is required to be shown that the assessment order was not only erroneous, but also prejudicial to the interests of the revenue. At the time of hearing, it was pointed out to Ld D.R that there are references to various names such as Mumbai Naveen, Ravi Mumbai, Vijaya Mum, Sanjeev Shetty etc. Further the entries are dated from March 99 to February, 2012. Under these set of facts, a specific question was asked to Ld D.R as to how these entries can translate into income in the hands of the assessee, since the same lists out payments made to various persons on various dates. Unless it is established that these payments can be taken as income in the hands of the assessee, they cannot be assessed in his hands. In that case, it cannot be said that these entries would cause any prejudice to the interests of the revenue, if they are not assessable in the hands of the assessee. The Ld D.R replied that these aspects require examination at the end of the assessing officer. The said stand taken by the department clearly shows that they are also not sure as to whether these entries could be considered as income in the hands of the assessee. Further, we notice that the Ld Pr. CIT has not brought on record any material to show that these amounts were paid to the assessee or on his behalf. Even if it is considered for a moment that the assessee could be linked with it, without showing that the entries noted down in the impugned document result in income in the hands of the assessee, in our considered view, it cannot be said that the assessment orders passed by the AO could be taken as prejudicial to the interests of the revenue. Accordingly, we are of the view that the revision orders passed by Ld Pr. CIT falls on this ground also.

23. In view of the foregoing discussions, we are of the view that the Ld Pr. CIT has failed to show that the impugned assessment orders passed by the assessing officer were not only erroneous but also prejudicial to the interests of the revenue. It is a well established proposition that both the above said conditions are required to be satisfied before invoking the revisional powers given u/s 263 of the Act. In the instant case, we are of the view that the Ld Pr. CIT has failed to show that both the conditions exist in the instant case. Accordingly, we find merit in the contentions of the assessee that the revision orders passed by Ld Pr. CIT for the years under consideration are beyond the scope of sec. 263 and hence not valid. Accordingly we set aside the revision orders passed by Ld Pr. CIT for the two years under consideration."

18. On the similar issue the Co-ordinate Bench of ITAT Delhi in the case of M/s Amira Pure Foods Pvt. Ltd. vs. PCIT in ITA No. 3205/Del/2017 for AY 2014-15 dated 29/11/2017 held as follows:



*“18. The ld. counsel for the assessee submitted that even though there has been an amendment in the provisions of section 263 of the Act by which Explanation 2 is inserted, w.e.f. 01.06.2015 but the same does not give unfettered powers to the Commissioner to assume jurisdiction u/s 263 of the Act to revise every order of the AO to re-examine the issues already examined during the course of assessment proceedings. The Hon’ble Mumbai ITAT has dealt with Explanation 2 as inserted by the Finance Act, 2015 in the case of Narayan Tatu Rane v. Income Tax Officer [(2016) 70 taxmann.com 227] to hold that the said Explanation cannot be said to have overridden the law as interpreted by the Hon’ble Delhi High Court, according to which the Commissioner has to conduct an enquiry and verification to establish and show that the assessment order is unsustainable in law. The Tribunal has further held that the intention of the legislature could not have been to enable the ld. PCIT to find fault with each and every assessment order, without conducting any enquiry or verification in order to establish that the assessment order is not sustainable in law, since such an interpretation will lead to unending litigation and there would not be any point of finality in the legal proceedings. The opinion of the Commissioner referred to in section 263 of the Act has to be understood as legal and judicious opinion and not arbitrary opinion.”*

Since, the AO has passed the order after carrying out enquiries or verification, which a reasonable and prudent officer would have carried out, therefore Explanation 2(a) of section 263 does not apply to the assessee under consideration.

19. We note that assessing officer has himself acknowledged the books of accounts, documents and evidences submitted by the assessee during the assessment stage. The assessing officer has mentioned in his assessment order that assessee had submitted before him, books of accounts, cash book, Sales register, purchase register, bills, vouchers and invoices etc, vide page No. 1 of assessment order, which is reproduced below:

*“...During the relevant year the assessee derived income from retail of various items such as Bricks, Cement, Dal, Salt etc. In the course of assessment proceedings, assessee produced books of accounts namely cash book, Ledger, Bank Book, Purchase Book, Sales Registers, Stock Registers etc. which were verified and examined on test check basis with the relevant bills & vouchers/invoices and the bank statements produced and the following observation.....”*

Thus, it is abundantly clear that during the assessment stage, the assessee submitted the books of accounts and other documents, as mentioned in the assessment order, noted above. The books of accounts of the assessee are audited by a chartered accountant. The assessing officer examined the books of accounts, documents and evidences submitted by the assessee and applied his mind. The assessing officer conducted sufficient inquiry. To gather more information and

then prove the claim of the assessee wrong is not the object of section 263 of the Act. The object of section 263 is to examine whether order passed by the AO is erroneous as well as prejudicial to the interest of revenue. Therefore, based on this factual position, the order passed by the AO under section 143(3) should not be erroneous. We note that Coordinate Bench of I.T.A.T., Kolkata in the case of *Plastic Concern vs. ACIT* [61 TTJ 87 (Cal)] has held that mere possibility of gathering more material to prove the claim of the assessee wrong would not make the concluded assessment erroneous so long as the ld. A.O. had acted judiciously and conducted enquiries in the course of assessment proceedings.

We note that Ld. A.O. having examined the books of accounts namely cash book, Ledger, Bank Book, Purchase Book, Sales Registers, Stock Registers etc, bills & vouchers/invoices and the bank statements etc. and having satisfied himself about the correctness of the same and explanation of the assessee in regard to the capital introduced, completed the assessment and, therefore, there cannot be a reason to say that the A.O. has failed to conduct necessary enquiry before accepting the claim of the assessee.

20. We note that Ld. Pr. C.I.T. on analysis of assessment records derived satisfaction for issuing the impugned show-cause notice u/s. 263 of the Act. The expression '*record*' as used in section 263 of the Act is comprehensive enough to include the whole record of evidence on which the original assessment order is based. At the same time, if any information asked for by the assessing authority from the assessee or from others to whom he referred the matter during the course of assessment proceeding was not received but received subsequent to the completion of the assessment, in that situation the assessment order passed without receiving such report may appear to be erroneous within the meaning of sec.263 of the Act. In the case of the assessee, there is no denying the fact, as detailed above and acknowledged in the assessment order u/s. 143(3) dated 29.12.2016, that in response to notices u/s. 143(2)/142(1) and further requisitions made during the course of assessment proceeding, the A/R of the assessee appeared from time to time and produced/ submitted necessary details/documents as per requisitions in

relation to the issues raised by the Ld. Pr. C.I.T., which were examined by Assessing Officer. Therefore, it is the appraisal of the same records which are already with the Ld. A.O. and the Ld.Pr. C.I.T. took a different view than adopted by the A.O. on the same set of facts, which is not permissible u/s. 263 of the Act. In the above circumstances, the view taken by the A.O. was one of the possible views and the assessment order passed by him could not be held to be erroneous and prejudicial to the interests of revenue. There is difference between 'Lack of enquiry' and 'inadequate enquiry'. It is for the AO to decide the extent of enquiry to be made as it is his satisfaction as what is required under law. Reliance is placed on the decision of CIT v. Sunbeam Auto Ltd. [(2010) 332 ITR 167], wherein Hon'ble Delhi High Court has held that if there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass order u/s 263 of the Act, merely because the Commissioner has a different opinion in the matter and that only in cases where there is no enquiry, the power u/s 263 of the Act can be exercised. The Id. PCIT cannot pass the order u/s 263 of the Act on the ground that further/thorough enquiry should have been made by AO.

21. Further, it was settled by Hon`ble Supreme Court in the case of **Malabar Industrial Co. Ltd. vs. CIT [(2000) 243 ITR 83 (SC)]** wherein it was held that if the A.O. adopts one of the possible courses available in the scheme of the I.T. Act which results in any loss of revenue or when two views are possible and the A.O. adopts one of them with which the C.I.T. does not agree, then it would not be an order prejudicial to the interest of revenue for invoking the jurisdiction u/s. 263 of the Act. In other words, the Ld. Pr. C.I.T. on the same set of facts and evidences on record was of the opinion that the A.O. should have examined the capital introduced and balances transferred from Shri O.P Agarwal, as explained above, and Assessing Officer should have taken the stand which the Ld. Pr. C.I.T. hinted in the impugned order u/s 263 of the Act. This is not permissible under law. For better appreciation, the relevant portion of the judgment in the case of **Malabar Industrial Co. Ltd. vs. CIT** (supra) is quoted below :

*“The phrase “prejudicial to the interests of the Revenue” has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law”.*

22. We note that the Ld. Pr. C.I.T. by invoking his jurisdiction u/s. 263 of the Act is giving another opportunity to the Ld. A.O., which is not permissible. Hon’ble Bombay High Court in the case of Ranka **Jewellers vs. Addl. CIT (328 ITR 148)** relying on the decisions of Hon’ble Supreme Court in the cases of Malabar Industrial Co. Ltd. vs. CIT (supra) and CIT vs. Max India Ltd. [(2007) 295 ITR 282 (SC)], has held that once the issue was considered by the A.O., the remedy of the revenue could not lie in invoking of the jurisdiction u/s. 263 of the Act. Therefore, the order of the Ld. C.I.T. was definitely outside the purview of section 263 of the Act. As noted above, the exercise aimed at ascertaining the correct income of the assessee has been fulfilled by the Ld. A.O. by exercising his quasi-judicial functions vis-a-vis passing the assessment order u/s.143(3) of the Act. Therefore, certainly it is not a case wherein adequate enquiries at the assessment stage were not carried out or assessment was made in haste. However, what is an opinion formed as a result of these enquiries and verification of the materials is something which is in exclusive domain of the Assessing Officer, and even if Ld. Pr. Commissioner does not agree with the results of such enquiries, the resultant order cannot be subjected to revision proceedings. For that we rely on the decision of the Coordinate Bench of I.T.A.T., Kolkata in the case of Smt. Juthika Kar vs. ITO [I.T.A. No.1128/Kol/ 2009, dated 16.5.2012 ], wherein it has been held as under (relevant portion) :-

*“8.....However, what is opinion formed as a result of these enquiries is something which is in exclusive domain of the Assessing Officer, and even if Commissioner has such results of enquiries, the resultant order cannot be subjected to revision proceedings. The conclusions arrived at as a result of enquiries cannot be tinkered with in the revision proceedings. The conclusions being drawn up as a result of enquiry is a highly subjective exercise and as to what is appropriate conclusion is something on which perceptions vary from person to persons. These variations in the perceptions of the Assessing Officer vis-*

*a-vis that of the Commissioner, cannot render an order erroneous and prejudicial to the interest of the revenue.”*

The aforesaid position gets further strength from the decision of Hon’ble jurisdictional High Court in the case of **CIT vs. J.L. Morrison (India) Ltd. (2014) 366 ITR 593 (Cal)**, the relevant finding of which is applicable to the facts of the present assessee is quoted below :

*“85. Whether the assessment order dated March 28, 2008, was passed without application of mind is basically a question of fact. The learned Tribunal has held that the assessment order was not passed without application of mind. The records of the assessment including the order-sheets go to show that heard from time to time. In deciding the question the court has to bear in mind the presumption in law laid down in Section 114 clause (e) of the Evidence Act: “that judicial and official acts have been regularly performed.*

*86. Therefore, the court has to start with the presumption that the assessment order dated March 28, 2008, was regularly passed. There is evidence to show that the Assessing Officer had required the assessee to answer 17 questions and to file documents in regard thereto. If the Assessing Officer cannot be shown to have violated any form prescribed for writing an assessment order, it would not be correct to hold that he acted illegally or without applying his mind. ” [Emphasis given]”*

23. It is a settled position in law that provisions of sec. 263 of the Act do not permit substituting one opinion by another opinion. Therefore, the order of the Ld. Pr. C.I.T. cannot be sustained on the principle of ‘erroneous’ nature of the order of the A.O., as it is not erroneous. Further, in the instant case, to reiterate, there was no allegation by the Ld. revenue authorities that the evidences produced were fictitious or invented, thus accepted the authenticity of the same. Such an order cannot be called erroneous and prejudicial to interests of revenue only because the A.O. made the assessment without discussing such details therein, as held by the Coordinate Bench of ITAT Kolkata in the case of **Chroma Business Ltd. vs. DCIT (2004) 82 TTJ 540 (Cal)**. Further support in this connection is taken from the decision of Hon’ble Delhi High Court in the case of **CIT vs. Vikas Polymers (2012) 341 ITR 537 (Del)**. Relevant part of the observation in this regard reads as under :

*" This is for the reason that if a query is raised during the course of scrutiny by the Assessing Officer, which was answered to the satisfaction of the Assessing Officer, but neither the query nor the answer was reflected in the assessment order, that would not by itself lead to the conclusion that the order of the Assessing Officer called for interference and revision." [Emphasis supplied]*

Further, according to the decision of Coordinate Bench of I.T.A.T., Hyderabad in the case of Manisha Agri Biotech P. Ltd. vs. CIT (2014) 36 ITR (Trib.) 42 -, wherein it was held as follows:

*"The respondent had no different or new material to take a different view from the one taken by the Assessing Officer and the reasons given by him to reopen the assessment and sustain the revision are totally unacceptable. The respondent is not vested with any power under section 263 to initiate proceedings for revision in every case and start re-examination and fresh enquiries in matters which have already been concluded under the law. "*

Based on the above discussion on assessee`s facts as well as on various precedents applicable to assessee`s facts, we are of the view that revisionary jurisdiction exercised by the Ld. Pr. C.I.T. u/s. 263 of the Act was not in tune with the facts and evidences on record duly explained to the Ld. A.O. and verified by him and that being so the order passed u/s. 263 of the Act on such erroneous stand is liable to be quashed. Therefore, based on these facts and precedents narrated above, we quash the order of ld. PCIT u/s 263 of the Act.

24. Before parting, it is noted that the order is being pronounced after 90 days of hearing. However, taking note of the extraordinary situation in the light of the Covid-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, we rely upon the decision of the Coordinate Bench of the Mumbai Tribunal in the case of DCIT vs. JCB Limited in ITA No. 6264/Mum/2018 and ITA No. 6103/Mum/2018 for A.Y. 2013-14 order dated 14.05.2020.

25. In the result, the appeal of the assessee is allowed.

**Order pronounced in the Court on 12.06.2020**

**Sd/-**  
**(S.S.GODARA)**  
**न्यायिकसदस्य / JUDICIAL MEMBER**

**Sd/-**  
**(A.L.SAINI)**  
**लेखासदस्य / ACCOUNTANT MEMBER**

कोलकाता /Kolkata;

दिनांक/ Date: 12/06/2020

(SB, Sr.PS)

Copy of the order forwarded to:

1. Gouri Shankar Goyal
2. PCIT, Siliguri
3. C.I.T(A)-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

4. C.I.T.- Kolkata.

True copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches