आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर

IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No.217/JP/2020
निर्धारण वर्ष/Assessment Year : 2015-16

Shri Om Prakash Badaya, HUF, 42, Agrasen Nagar, Jaipur	बनाम Vs.	Pr. CIT Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABHO0013L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by:Shri Manish Agrawal (AR)
राजस्व की ओर से/ Revenue by : Shri A.S. Nehra (ACIT-DR)

सुनवाई की तारीख/ Date of Hearing : 19/11/2020
उदघोषणा की तारीख/ Date of Pronouncement :19/11/2020

आदेश/ ORDER

PER: KUL BHARAT, J.M.:

This appeal by the assessee is directed against the order of the Learned Pr. Commissioner of Income Tax (Ld. Pr. CIT, Alwar, dated 23/01/2020 pertaining to the Assessment Year 2015-16. The assessee has raised following grounds of appeal: -

1. On the facts and in the circumstances of the case and in law, Ld. Pr. CIT erred in passing order u/s 263 of the Income Tax Act, 1961(the Act), when the assessment for the impugned assessment year had already been concluded by ld. AO u/s 143(3) of the Act, after seeking explanations and making all the enquiries relevant to the issue on which the proceedings u/s 143(3) are initiated and were necessary for completion of assessment. Appellant prays order so passed u/s 263 may please be held as bad in law.

1.1 That, the Ld. Pr. CIT has failed to establish as to how the said order was erroneous in so far as being prejudicial to the interests of revenue, particularly when the Ld. AO had made complete inquiries, thus the order passed deserves to be struck down.

1.2 That, Ld. Pr. CIT has erred in passing the order u/s 263 setting aside the assessment only on the basis of change of opinion whereas the assessment order has been passed by Ld. AO after complete explanation and required enquiries and thereby order u/s 263 deserves to be quashed.

2. On the facts and in the circumstances of the case and in law, ld. Pr. CIT erred in directing the AO to examine the issue of equity share transaction after using the information /material passed on by Investigation Directorate by ignoring the fact that all such material/information has already been considered and enquiries based on such material / information has already been carried out by ld. AO thus such directions of ld. Pr. CIT are devoid of merits and not in consonance with facts on record and thereby consequent order passed u/s 263 deserves to be quashed.

3. On the facts and in circumstances of the case and in law, Ld. Pr. C1T has grossly erred in ignoring the fact that the Id. AO has passed the assessment order accepting the long term capital gains declared by the assessee as genuine only after relying upon the binding decision of the jurisdictional high court on identical facts and thus the order so passed is neither erroneous nor prejudicial to the interest of the revenue and therefore, the consequent order passed u/s 263 deserves to be quashed.

4. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.

2. Briefly stated facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act 1961(hereinafter referred as the 'Act') was framed vide order dated 29.11.2017 while framing the assessment, assessing officer observed that the assessee had entered into share transactions and had claimed exemption u/s 10(38) of the Act on account of Long Term Capital Gain. The assessing officer issued a show cause notice seeking explanation regarding such transactions. In response thereto, the assessee had filed a reply, thereafter the assessing officer passed order u/s 143(3) of the Act accepting the return filed by the assessee. Ld. Pr. CIT found that the assessment order was erroneous

prejudicial to the interest of revenue. Hence, the order was *set aside* and assessing officer was asked to properly examine the issues and to verify the genuineness of the share transactions.

3. Aggrieved against this the assessee is in present appeal.

4. Ld. Counsel for the assessee vehemently argued that the action of the Ld. Pr. CIT is contrary to the settled principles of law and he further submitted that the exercise of the jurisdiction u/s 263 is not proper. The assessment order has been revised arbitrarily. Further, he relied upon various case laws i.e. Judgment of Hon'ble Supreme Court rendered in the case of *CIT vs. Malabar Industrial Co. Ltd. (2000) 243 ITR 83 (SC)*. Further, the decisions of the Coordinate Bench of this Tribunal in the case of *ITO vs. Shri Narayan Tatu Rane in ITANo.2690 & 2691/Mum/2016* and in the case of *Pr. CIT vs. Sanjeen Kr. Khemka in ITANo.1361/Kol/2016* and the judgment of Hon'ble Delhi High Court in the case of *ITO vs. Dg Housing Projects Ltd. in ITA No.179/2011* dated 1st March 2012. Ld. Counsel for the assessee further reiterated the submission as made in the written submission. The submission of the assessee are reproduced as under:

"Brief facts of the case are that assessee is a HUF and for the year under appeal has filed its return of income declaring total income at Rs. 4,90,900/- and claimed exempt income of Rs. 11,52,000/- towards the long term capital gains from the sale of shares. Thereafter the case of assessee was selected for scrutiny under CASS which was specifically for verifying the genuineness of the share transactions. Various query letters / show cause notice were issued by the Ld. AO from time to time and after due scrutiny, enquiries and verifications into the matter, the assessment was completed u/s 143(3) of the Act vide dated 29.11.2017 wherein the returned income was accepted.

*Thereafter, the Ld. CIT (Admn.) invoked the provisions of section 263 of the Income Tax Act, 1961 by alleging that the Ld. AO has not made proper enquiries and verification into the matter and issued Show Cause Notice u/s 263 to the assessee requiring him to show cause with regard to the proposed action u/s 263 (**APB 10-11).** In response to show cause notice replies were submitted alongwith necessary evidences **(APB 4-9)** and it was vehemently emphasized that all the aspects of the case were thoroughly examined by the Ld. AO during the course of assessment proceedings. It was further submitted before Ld. CIT(Admn.) that specific show cause notice was issued with respect to the verification of long terms capital gains from the sale of shares and was duly replied by the assessee. Ld. AO after duly considering the facts & circumstances of the case and the records as well as the details submitted by assessee and also after considering the judicial pronouncements including the pronouncements of the jurisdictional high court, passed the Assessment Order. On merits also, it was submitted that the issues which have been alleged by the Ld. CIT as not inquired into were not tenable and were examined by the ld. AO after issue of show cause notice and decided after due application of mind.*

However, the Ld. CIT(Admn.), completely brushed aside the submission of assessee and arbitrarily proceeded to pass the impugned order u/s 263 thereby directing the Assessing Officer to consider the matter afresh in light of the directions given by him in the impugned revision order, which is nothing but the change of opinion on the already decided issue.

Aggrieved by the aforesaid revision order of Ld. CIT (Admn.), the assessee has preferred the present appeal before this Hon'ble Tribunal. In support of and elaboration to the grounds of appeal already taken, ground-wise submission is made as under:

Grounds of Appeal Nos. 1 to 3:

Under all these grounds of appeal, the assessee has challenged the action of Ld. CIT(Admn.) in passing the impugned revision order u/s 263 of the Act arbitrarily and without in any manner establishing as to how the Assessment Order passed by Ld. AO was erroneous and prejudicial to the interest of revenue more particularly when the ld. AO has conducted the enquiry in the manner specified to verify the long term capital gains from the sale of shares.

As stated above, in the year under appeal assessee has claimed exempt income to the tune of Rs. 11,52,000/- from the sale of shares of M/s Jackson Investment Ltd. The ld. CIT(Adm.) in his order alleged that the capital gains declared is not genuine as M/s Jackson Investment Ltd. is detected to be penny stock listed company, and therefore the case was to be handled by the AO in accordance with the EFS instructions issued by the System Directorate of the department.

In this regard kind attention of the hon'ble bench is invited to the fact that during the course of assessment proceedings on 22.11.2017 ***(APB 16-18)*** *a detailed show cause notice running into 3 pages was issued by ld. AO wherein it was alleged that the transaction of purchases and sale of shares of M/s Jackson Investment ltd. entered*

into by the assessee is accommodated bogus entry carried out to obtain bogus long term capital gains. It is also relevant to state here that the said show cause notice is issued in accordance with the instructions issued by the System Directorate of the Income Tax department. From the perusal of the same, it can be seen that in the said notice ld. AO specifically referred certain enquiries carried out by the Director of Income Tax (Investigation) Kolkatta and further show caused the assessee as to why not the capital gains declared by it is held as unexplained credit and the same be not added u/s 68 of the Act. Ld. AO further proposed to make the addition towards the commission paid for obtaining such gain. However, after considering the evidences filed by the assessee and also after considering the judicial pronouncements which includes the decision of Hon'ble Jurisdictional High Court, Ld. AO was of the opinion that the capital gains declared by the assessee is genuine which is purely based on his wisdom and judgement.

However, by completely ignoring the above factual position, the Ld. CIT (Adm.) without any basis alleged that the Ld. AO had not made proper inquiry during the course of assessment proceedings, and therefore, he arbitrarily held the order of Ld. AO as erroneous and prejudicial to the interest of revenue vide the impugned revision order passed u/s 263 of the Income Tax Act, 1961.

In this regard, it is submitted that the main issue pointed out by the Ld. CIT in the impugned revision order pertains to the verification of genuineness of long term capital gains from the sale of shares. The Ld. CIT has framed an opinion that the issue of capital gains was enquired into by the Ld. Assessing Officer properly. In this connection, it is submitted that complete evidences pertaining to the purchases of shares, share transfer confirmation by the company, physical delivery of shares, credit of shares in demat account, sale of shares and finally debit of shares from demat account etc. were filed during the course of assessment proceedings. It is further submitted that

purchase of shares were made in October, 2011 and shares were with assessee for long more than 3 years as well as these were dematerialized in between. Demat accounts are held by independent third party of repute, which cannot be doubted. Moreover it is not a case where shares were dematerialized that before their sale giving doubt to the entire transactions of sale. In the instant case shares were in Demat account since 18th February, 2013 and sold after nearly about 2 years in January, 2015 from Demat date (and about 3¼ year from purchase date). Further the issue has been settled by the Hon'ble Rajasthan High court in the case of Pooja Agarwal ***(APB 26-33)*** *which is binding in nature and was submitted before the ld., AO. The Ld. AO after considering all the details, facts, evidences and legal position prevailing at the time of passing of order has found the gain to be not non-genuine.*

It is pertinent to submit before your honour that Ld. CIT(Admn.) also could not rebut any evidences filed by assessee before Ld. AO and also could not rebut the explanations and submissions made before him in proceedings u/s 263. Ld. CIT(A) had merely observed that Ld. AO had not made sufficient enquiries and he should have made more enquiries. The extent of in-depthness of enquiries differs from person's perception and cannot be made as a base to treat the order passed by Ld. AO as erroneous and prejudicial to the interest of revenue.

In view of the above factual background of the case, it is humbly submitted that essential elements necessitated for invoking section 263 are not fulfilled. The basic ingredients to be fulfilled before invoking section 263 have been explained by the Hon'ble Supreme Court in the case of ***Malabar Industrial Co. Ltd. Vs. CIT*** *reported in* ***243 ITR 83 (SC) (Case Law paper book APB 1-6)*** *in the following words:*

"A bare reading of section 263 of the Income Tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income Tax Officer is

erroneous is so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, ***(i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent –*** *if the order of the Income Tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue – recourse cannot be had to section 263(1) of the Act."*

It is thus submitted that the order of Ld. AO is neither erroneous nor prejudicial to the interest of revenue.

At this juncture, kind attention of Hon'ble bench is invited to Explanation 2 inserted in section 263 by Finance Act, 2015, w.e.f. 01.06.2015, which has widened the powers of CIT to revise the already completed assessment and has been taken shelter by the ld.CIT (Admn.) in the present case also, which reads as under:

Explanation 2*.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—*

(a) the order is passed without making inquiries or verification which should have been made;
(b) the order is passed allowing any relief without inquiring into the claim;
(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
*(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.****]***

A perusal of above clarifies that order passed by assessing officer shall be "deemed to be erroneous and prejudicial to the interest of the revenue if AO has passed such order without making ***inquiries or verification which should have been made;***

It is worthwhile to note here that the phrase "which should have been made" here in no way means that enquiries should have been made in manner as desired by CIT, rather it means that before holding an order to be erroneous, CIT should have conducted necessary enquiries or verification which brings on record certain material in order to show that the finding given by the assessing officer is erroneous. In this regard reliance is placed on the following decisions:
(1) ***Shri Narayan Tatu Rane vs ITO*** *ITA No.2690 & 2691/Mum/16* ***(case law paper book pages 7-27)*** *dated 06.05.2016*
"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 scrutinising 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 out 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 enquires 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."

(2) ***Sanjeev Kr. Khemka vs Pr. CIT (Kolkatta ITAT) (case law paper book pages 28-39)***

"5.1 In view of the above we find that Ld. CIT has passed impugned order u/s. 263 of the Act by holding the order of AO as erroneous in so far as prejudicial to the interest of revenue on account of inadequate enquiry made by AO while passing order u/s. 143(3) of the Act. However, we find that proper and sufficient enquiries were conducted by the AO at the time of assessment as evident from the order of AO. Therefore it cannot be concluded that no proper enquiry has been conducted by the AO at the time of assessment proceedings. The AO has taken conscious view after considering the facts and circumstances of the case and giving proper opportunity to the assessee. Thus, the view expressed by AO in the form in his assessment order cannot be replaced with the view of Ld. CIT u/s 263 of the Act. In holding so, we find support and guidance from the judgment of Hon'ble jurisdictional High Court in the case of CIT vs. M/s. J.L. Morrison (India) Ltd.(ITA No 168 of 2011) in GA No 1541 of 2012 dated 15.05.2014, wherein it was held as under:-

"By sections 3 and 4, the Indian Income-tax Act, 1922, imposes a general liability to tax upon all income. But the Act does not provide that whatever is received by a person must be regarded as income liable to tax. In all cases in which a receipt is sought to be taxed as income, the burden lies upon the department to prove that it is within the taxing provision."

We also rely on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Max India Limited reported in 295 ITR 282 wherein it was held as under :

"When the CIT passed the impugned order under s. 263, two views were inherently possible on the word "profits" occurring in the proviso to s. 80HHC(3) and therefore, subsequent amendment of s. 80HHC made in the year 2005, though retrospective, did not render the order of the AO erroneous and prejudicial to the interest of the Revenue, and CIT could not exercise powers under s. 263."

In view of the above proposition, and respectfully following principle laid down by the Hon'ble courts and keeping in view all these discussion, as also bearing in mind entirety of the case, we deem it fit and proper to uphold the grievance of the assessee and quash the impugned revision order as devoid of jurisdiction. The assessee gets the relief, accordingly."

In view of above, it is submitted that :

1. ***The Order of Ld. AO is not erroneous:***

It has already been established above that assessee has purchased the shares after making payment through banking channels and after sold them after a period of more than three years through online mode in the recognized stock exchange. Nevertheless, the Ld. AO had made inquiry on this aspect and complete details as asked for by the Ld. AO were submitted by assessee during the course of assessment proceedings and, as submitted above, the Ld. AO passed the assessment order after taking into consideration all those details and evidences. It is therefore, submitted that the Ld. AO has taken a legal and correct view of the entire material available before him and after due application of mind on law and on facts had reached to a reasonable satisfaction of concluding the assessment, without taking any adverse view on these

issues, thus the order of Ld. AO is not erroneous on any count nor prejudicial to the interest of revenue.

Indeed, in the instant case the Ld. AO has passed this order after considering entire material available on record, called for and submitted by assessee during the course of assessment proceedings. It is not the case that the Ld. AO had passed the order without conducting necessary and proper inquiries into the issue for which the case was taken up for scrutiny. As a matter of fact, the Ld. AO had raised specific queries with regard to the genuineness of the long term capital gains and he further show caused the assessee as to why the same be not treated as unexplained income of the assessee in view of the fact that there were survey and enquiries were conducted in this respect by the Investigation wing of the department at Kolkatta and further the company M/s Jackson Investment Ltd. was a penny stock company. After considering the entire material available on record in the shape of the submissions and judicial pronouncements, the Ld. AO has passed a reasoned order. Thus, the order of Ld. AO cannot at all be held as erroneous and thus the action of Ld. CIT(Adm.) in passing the impugned order concluding that the said order is erroneous and prejudicial to the revenue is bad in law.

It is further submitted that, the Hon'ble Bombay High Court in the case of ***CIT Vs. Gabrial India Ltd****., reported in* ***203 ITR 108****, has held that, "CIT cannot revise order merely because he disagrees with the conclusion arrived at by the ITO". Further, in the case of* ***CIT Vs. Sunbeam Auto Ltd.****, reported in* ***227 CTR 133****, the Hon'ble Delhi High Court drew a distinction between "Lack of inquiry" and "inadequate enquiry" and held that, 'in the case of inadequate enquiry, provisions under section 263 cannot be invoked.' It may however, be noted that the instance case is neither the case of inadequate enquiry nor lack of enquiry during assessment proceedings as it can be seen*

that due, necessary and most pertinent enquiries to all the issues emerging from the return filed by the assessee were conducted by the Ld. AO. Therefore, in view of such legal position, no action u/s 263 could have been taken.

It is a well established law by now that section 263 does not contemplate mere substitution of the opinion of AO with that of CIT. It has further been held by the Courts that where two views are possible in the matter and the AO has chosen any one of them, then revision cannot be made merely because the CIT is of the opinion that the other view should have been taken by the AO.

2. *The Order of Ld. AO is not prejudicial to the interest of revenue:*

*In light of the facts of the present case, it is submitted that the Ld. CIT (Adm.) has failed to appreciate the facts that the shares purchased by the assessee were through payees account cheque and after getting transfer, the same were lying in the DMAT account of the assessee for about 2 years when the same were sold through a member broker in recognized stock exchange. Further the assessee has submitted all these details before the Ld. AO in reply to the show cause letter **(APB 12-15)** and ld. AO could not found out any deficiency in the same. Rather the ld. CIT(Adm.) in his order asked the AO to make enquiries in specific manner by ignoring the fact that all such enquiries were conducted by the ld. AO while issuing the show cause letter. Therefore, the action of the Ld. AO was not at all prejudicial to the interest of revenue.*

*It has been held in the case of **CIT v. Max India Ltd.** reported in **295 ITR 282 (SC)** that 'every loss of revenue cannot be said to be prejudicial to the interests of revenue', however in this case interestingly, there has been no loss at all to the revenue, accordingly, it cannot be said that the action of Ld. AO was prejudicial to the interest of revenue. This submission of assessee is fortified from the*

*observations of Hon'ble Supreme Court in the case of **CIT Vs. Max India** (supra) wherein it was held as under:*
The phrase "prejudicial to the interests of the Revenue" in section 263 of the Income-tax Act, 1961, has to be read in conjunction with the expression "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 the Assessing Officer adopts one of two courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the Revenue, unless the view taken by the Assessing Officer is unsustainable in law.

Thus, it is submitted without admitting that the defect (if any) does not in anyway lead to supply the foundation for revising an otherwise valid order which can neither be said erroneous nor prejudicial to invoke section 263 of the Income Tax Act, 1961, which section cannot be permitted to be brought into play unless both the conditions i.e. the order has to be prejudicial as well as erroneous both, meaning thereby that the twin conditions are to be cumulatively satisfied before proceeding to revise an assessment order.

In light of the facts / circumstances of the case, submissions made above, and the case laws relied upon, it is very humbly prayed that the impugned revision order of Ld. CIT(Admn.) may please be quashed and held bad in law, thereby restoring the assessment order of Ld. AO.

Further, reliance is placed on the following case laws:

1. CIT Vs. M/s Chambal Fertilizers & Chemicals Ltd. (Raj HC) (2014) 51 TW (III) 157

Therefore, it is clear the CIT does not have unfettered and un-checked discretion / power to reverse the order. He can do so within the bounds of the law and has to satisfy the need of fairness in action and fair play with due respect to the principle of Audi Alterem Partem as envisaged in the Constitution. The law is well settled that the CIT cannot invoke the powers to correct each and every mistake or error committed by the AO. Every loss to the Revenue, cannot be treated as prejudicial to the interest of the Revenue and if the Assessing Officer has adopted one of the course permissible under the law or where two views are possible and the AO has taken one view which the CIT does not agree with, it cannot be treated as an order erroneous and prejudicial to the interest of the revenue. The AO exercises quasi judicial power vested in him and if he exercises such powers in accordance with law, arrives at a just conclusion such conclusion cannot be termed as erroneous only because the CIT does not feel satisfied with the conclusion.

2. CIT Vs. M/s Deepak Real Estate Developers P. Ltd. (Raj HC) (2014) 51 TW (IV) 186

It is no longer res-integra that the revisional jurisdiction available to a Commissioner u/s 263 of the Act, is essentially circumscribed by the determinant that the order of the Assessing Officer is erroneous so much so that it is prejudicial to the interest of the revenue. This statutory enjoinment carves out an extremely constricted ambit of such discretionary jurisdiction. The word 'considers' applied in the statutory provision involved, signifies a genuine satisfaction of that authority that the order of the Assessing Officer is erroneous and that the interest of revenue is prejudicing thereby. Any exercise of the revisional jurisdiction, bereft of such satisfaction and / or finding that the order of the Assessing Officer is erroneous and that it is prejudicial to the interest of the revenue and that too, based on tangible materials on record, is impermissible rendering the resultant order void.

3. CIT Vs. Green World Corporation 314 ITR 81 (SC)

The Income-tax Officer, while passing an order of assessment performs a judicial function. A revision application lies before the Commissioner. It is trite that the jurisdiction exercised by the revisional authority pertains to his appellate jurisdiction. The jurisdiction under section 263 can be exercised only when both the following conditions are satisfied (i) the order of the Assessing Officer should be erroneous, and (ii) it should be prejudicial to the interests of the Revenue. These conditions are conjunctive. An order of assessment passed by the Assessing Officer should not be interfered with only because another view is possible.

4. M/s Emgee Cables & Communication Ltd. Vs. CIT (2014) 51 TW (IV) 197

*Section 263 – power of revision by commissioner – AO completed assessment at NIL – assessee involved in manufacture / trading of cable/copper/wire – declared income from interest & commission as business income – accepted by AO – CIT invoked sec 263 and set-aside the order of AO directing him to consider the said income as income from other sources and not from business – whether CIT justified in invoking sec 263? **Held : No** – CIT only wanted AO to make re-verification – cannot be said that that order of AO was without making proper enquiry – AO having taken one of the possible view – cannot be said that assessment order was erroneous and prejudicial to the interest of revenue.*

CIT Vs. Ganpat Ram Bishnoi, 296 ITR 292 (Raj.)

Revision: S. 263 of Income tax Act, 1961: A.Y. 1993-94: Powers of Commissioner: No power to make short enquiries or to go into process of assessment again and again: Finding that AO made assessment after relevant enquiries: Jurisdiction assumed by Commissioner unsustainable.

It is thus submitted that for the sake of clarification and at the cost of repetition it is submitted that twin conditions as laid down u/s 263 i.e. erroneous and prejudicial to the interest of the revenue have to be cumulatively satisfied and in the absence of one of the conditions, not being attracted the other would become nonest for the purposes of revision.

Therefore, in view of the above it is prayed that the impugned order of Ld. CIT(Admn.) be quashed and held bad in law.

5. Per contra, Learned. Departmental Representative (DR) vehemently opposed these submissions and supported the impugned order. Ld. CIT-DR has taken through impugned order and also the assessment order. The argument of the Ld. CIT-DR is that the *ex-facie* there is a lack of enquiry by the assessing officer as he failed to make proper investigation in respect of the material gathered by the investigation wing. He further contended that after amendment in the law when the explanation (2) section 263 has been inserted and the Ld. Pr. CIT is empowered to revise the orders where he finds that there is a lack or inadequate enquiry. He further relied upon the decisions as relied by the Ld. Pr. CIT in the impugned order.

6. We have heard rival contentions and perused the material available on records. The only issue is with

regard to exercise of jurisdiction u/s 263 for revising the assessment order. The basis of passing of impugned order is the notice issued u/s 263 where the reasonings are given as under:

> *(A) Your case was selected on the specific reason that you had shown suspicious sale transaction in shares and exempt long term capital gains shown in return (Penny Stock Tab in ITS),*
>
> *(B) You had sold shares of scrip of M/s Jackson Investment Ltd, which is a penny stock company as per specific investigation made by the department. Summary of the investigation is as under:-*
>
> *"Of late, Searches have been conducted by the Investigation Wing o the Department at various places throughout the country. During th searches & as per the information made public by the SEBI, it discovered that various syndicates have arranged accommodation entry of Bogus LTCG, Bogus STCG, Bogus Long/Short term Capital Loss through trading of shares of Penny Stocks. The modus operandi found is th.t the investors/beneficiaries hold these shares for one year or so ant' then. sale it to one of the shell private limited companies of the operator. These facts were confirmed by the stake holders viz. Operator/Syndicate members/Brokers which were providing accommodation entries in statements recorded during action u/s 133A of the Income-tax Act. It has been manifestly accepted by them that such penny stock companies are the conduit for converting untaxed money brought on record by paying no taxes in the garb of exempted income. It is further detected that M/s Jackson Investment Ltd, is a penny stock listed company. It has very small capital base but its mark*

capitalization is multifold to its capital base. Further, information in respect of trading in penny stock i. e. M/s. Jackson Investment Limited is also available at ITS Data / AIR.

(C)The AO inadvertently not considered the investigation made by the department in respect of M/s Jackson Investment Ltd, and allowed the claim of the assessee and he could not make proper enquiries a' assessment was becoming time barred.

(D)The AO allowed exempt long term capital gains u/s 10(38) of the Income tax Act, 1961 of Rs. 11, 52, 000/- without making proper enquiries and not considering investigation made by the department.

As the AO has not made proper enquiries and not considered the report of investigation made by the department in respect of trading in penny stock i. e. M/s Jackson Investment Ltd , and allowed exempt long term capital gains u/s 10(38) of the Income-tax Act, 1961, of Rs. 11, 52, 000/-. Therefore, the order passed by the AO on 29. 11. 2017 is erroneous and prejudicial to the interest of the revenue.

7. There is no dispute with regard to the fact that the assessing officer had issued show cause notice dated 22.11.2017. The relevant contents of the notice are as under:

From the perusal of details filed during the course of scrutiny proceedings and on examination of material available on record, it is seen that that you have claimed Exempt Income under sec. 10(38) being Long Term Capital Gain of Rs. 11,52,000/- on sale of shares of M/s Jackson Investments Limited. during the year under consideration. In this regard, you

are required to furnish following details with respect to your investment in the share M/s Jackson Investments Limited...:-

i. Amount of Investments made by you in the share;
ii. Source of investment;
iii. Mode of payments made to Share Broker with evidence;
iv. Contract note for purchase of shares/investment made and sale of investment/ shares;
v. Bank statement reflecting payment and receipt of sale of investments;
yi. Demat statement to prove Inward & Delivery of shah es ;

vii. Ledger copy of share broker a/c ;
viii. Please justify the reason to buy shares of M/s Jackson Investments Limited.
ix Name and address of the person who has recommended the purchase of these shares.

x. Analysis of financial performance before purchase of share, if any made by you.
xi. Copy of share purchase agreement, if any.
xii. Reason for selling the shares. Business of the investor/ company investing the shares?

xiii. How did you place the purchase orders with broker? To whom did you speak/ instruct for placing the orders?
xiv. How was the payment made/received to/from broker?
xv. Date of purchases of shares and date of actual deposit in Demat account. In case of delay in dematerialization of shares, please justify the same.

2. Please state whether you are a regular investor in shares and if yes, please furnish details of

Investments/ trading done by you in shares for 3 years and regularity of investing in shares.

3_ As per information received from the Director of Income tax (Investigation), Kolkata, a survey u/ s 133A had been carried out on various share brokers. During the Survey, Various enquiries have been conducted by the Directorate o Investigation, Kolkata, on a project basis, which has resulted into th unearthing of a huge syndicate of Entry Operators, share brokers and mone launderers, involved in providing bogus accommodation of Long Term Capit Gain, Short term capital loss.

4. It has come to light that large scale manipulation has been done in mark price of shares of certain companies listed on the Bombay Stock Exchange certain persons working as a syndicate in order to provide entries of tax ex- pt bogus Long Term Capital Gains to large number of persons in lieu of unaccounted cash. The basic objective of this racket is to convert black money into white without payment of Income Tax. The unaccounted cash of such persons [beneficiaries] is utilized to purchase shares of such companies at a very high artificially inflated market price.

5. This practice is generally called, Accommodation Entry Scam, as the activities of such persons are carried out with prime objective of accommodating unaccounted cash of beneficiaries into their regular books of accounts without paying any tax on the same.

6. During the Survey, the statement of Directors/ entry operators had been recorded and they admitted that the various companies are being run on paper only and they do not exist in reality. Some of them were formed

to provide accommodation entries only in the form of share capital.

7. The statement of various key persons of share brokers were recorded during the course of survey proceedings conducted by the Investigation Wing, Kolkatta and they admitted that various companies are being run on paper only and they do not exist in reality.

8. As per Report of Investigation Wing, Kolkatta, the company Kis Jackson Investments Limited. is also one of the penny stock companies. You have also sold out shares of above company and claimed exemption u/s 10(38) for Rs.11,52,000/-.

9. In view of the above facts and circumstances, the transactions entered into by you for purchase and sale of shares of Mis Jackson Investments Limited... are found to be bogus as the said company accommodated bogus entries and is used cheques for bogus Long-term Capital Gains. It is therefore proposed to treat the said amount of Rs. 11,52,000/-, as unexplained credit as found in the books of account under sec. 68 tc the returned income. You are requested to show cause as to why the above amount towards Long-term Capital Gain should not be added u/s 68 to the income returned.

10. As per above report, during the survey proceedings, the various key persons of share brokers were admitted that they had taken commission or brokerage @ 0.5 to 8% on the penny stock transactions made by share holders. In this regard, you are hereby also requested to show cause as to why the commission or brokerage paid by you on above transactions should not be added u/s 69C to the income returned.

11. You are hereby requested to furnish your explanation as regards the above alongwith supporting documentary evidences and other material evidence which you may rely upon alongwith books of accounts to the office of the undersigned on the date fixed for hearing on 27.11.2017 at 11:00 A.M. The above information has been called for in terms of provisions of section 142(1) of the I.T. Act, 1961. Notice under sec. 142(1) of the I.T. Act, 1961 is enclosed herewith.

*12. In addition to the above information you are also required to furnish the following information/details:-
Please note that no further adjournment shall be given as this is a time barring case. Non-compliance, part compliance or incomplete compliance may entail penal action, and/or adverse inference in respect of the said issue and/or taking recourse to rejection of book results and assessment u/s 144 of the Income Tax Act, 1961 without any further reference to you in this regard*

8. In response thereto, the assessee stated as under:

1. (I). That the assesee has invested Rs. 40000/- for purchases of shares as per enclosed copy of contract not for sale & latter of transfer of share dated 20/10/2011.

(II) That the assessee has invested Rs. 40000/- out of his income fromcommission/brokerage earn on the sale of agriculture goods.

(iii) That the assessee paid Rs.40000/- through M/s Pleasant Dealcom Pvt Ltd as per enclosed sale bill.

(iv) That requisite copy of contract note for sale & purchases enclosed.

(v) That requisite copy of bank statement reflecting receipt of sale of investments enclosed.
(vi) That requisite copy of Demat A/c statement to prove inward & delivery of shares enclosed herewith.

(vii) That we heard from our friend & other investor that the investment in shares of M/s Jackson investment Limited will be a Gold Investment from the point of long terms investment, hence we also like to invested in these shares.

(viii) That the assessee has forget the name & Address of the person who has recommended the purchases these share.

(ix) That assessee having primary school knowledge, hence he was unable to made analysis of financial performance before purchases of shares.
(x) That copy of shares allotment and transfer latter enclosed.
(xi) That being earning of good profit as per assessee's expectation the assessee sold out his shares.
(xii) That the assessee place the purchases orders with broker/ authorized person on phone.
(xiii) That the assessee paid Rs. 40000/- & Received Rs.1187082.08/-.
(xiv) That the date of purchases of shares 13/10/2011 & the date of Demat 18/02/2013.

2. *That the assessee is not a regular investor.*
3. *That assessee's transaction in shares is genuine and the assessee in not liable for the allegation of the third party which are fake & false statement based on mere presumption, suspicion or surmise and supposition.*
4. *That the assessee has not made any manipulation of converting black money into white, as the assessee's transaction is genuine. The allegation as stated in your*

notice is totally fake and false based on mere presumption, suspicion or surmise and supposition.

5. That an stated above the assessee's transaction is genuine and the allegation in the notice is denied being fake & false & based on mere presumption, suspicion or surmise and supposition.
6. That the admission of directors/entry operators as stated by you in the notice if any is fake & false based on mere presumption, suspicion or surmise and supposition.
7. That the statement of various key person of share as stated by you in the notice if any is fake & false based on mere presumption, suspicion or surmise and supposition.
8. That as alleged by you M/s Jackson Investment Ltd. is also one of the penny stock companies which is fake & false on mere presumption, suspicion or surmise and supposition, as to the best of assessee's knowledge the Jackson Investment Ltd. is a genuine company to whom assessee received payment through bank as per enclosed bank statement and the delivery of the shares has been taken & given through Demat account, Contract Notes for sale & purchases of shares enclosed, share transfer
latter from M/ s Jackson Investment Ltd. dated 20/11/2011 enclosed.
9. That long term capital is genuine for the reasons (a) Payment for the sale of shares received Rs. 1187082.08 through Neft in the assessee's bank as per copy of the bank statement enclosed. (b) Delivery of the shares taken & given through Demat A/c as per enclosed copy of the same. (c) Contract Notes for Sale & purchases of the broker who are members of recognize stock exchange as per copy of the same enclosed. The assessee's Long term Capital Gain is genuine. The following cases of our jurisdictional High Court as well as High Court of the other state and tribunal support the

case of the assessee in which it is held that such that where aseessee proved genuineness of share transactions by contract notes for sale and purchases, bank statement, demat account showing transfer in and out of shares can not be treated unexplained cash credit u/ s 68 of the I.T. Act 1961:-

(i).High Court of Rajasthan at Jaipur in case of CIT Vs. Smt. Pooja Agarwal (D.13, Income Tax Appeal No 385/2011, decided on 11/ 09/ 2017)

(ii) High Court of Rajasthan at Jodhpur in case of CIT Vs. Smt Sumitra Devi in ITA 54/2012

(iii) High Court of Gujrat in case of CIT Vs. Maheshchandra G. Vakil {2013) 40 taxmann.com 326 (Gujrat)

(iv) High Court of Allahabad in case of CIT Vs. Udit Narain Agarwal in ITA 560 of 2009

(v) Tribunal at Kolkata in Case of SCIT vs Sunita Khema in ITA nos 714 to 718/ kol/ 2011

(vi) High Court of Bombay in case of Commissioner of Income Tax-13 vs Mr. Shyam R. Pawar

10. That the assessee is not made any commission or brokerage & 0.50% to 8% on the alleged penny stock as the assessee not made any investment in penny stock, however the assessee has paid commission/brokerage, service tax, STT, and Trxn. Charges etc for sale of these shares to M/s Shri Parasram Holding Pvt. Ltd. as per enclosed Net Obligation dated 01/01/2015, hence the commission or brokerage paid on above transactions should not be added U/s 69C of the I.T. Act 1961.

*It is, therefore, requested to you to drop the proceedings i/s 68 & 69C of the I.T. Act **1961.***

9. Ld. Counsel for the assessee has relied upon the judgment of Delhi High Court in the case of *ITO vs. Dg Housing Projects Ltd.(supra)* wherein the Hon'ble Court after examining entire law on the issue held as under:

> *"16. Thus, in cases of wrong opinion or finding on merits, the CIT has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under Section 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order passed is not sustainable in law and the said finding must be recorded. CIT cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, again the CIT must give and record a finding that the order/inquiry made is erroneous. This can happen if an enquiry and verification is conducted by the CIT and he is able to establish and show the error or mistake made by the Assessing Officer, making the order unsustainable in Law. In some cases possibly though rarely, the CIT can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the Assessing Officer had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the Assessing Officer to conduct further enquiries without a finding that the order is erroneous. Finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction under Section 263 of the Act. In such matters, to remand the matter/issue to the Assessing Officer would imply and mean the CIT has not examined and decided whether or not the order is erroneous but has*

directed the Assessing Officer to decide the aspect/question.

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

18. It is in this context that the Supreme Court in Malabar Industrial Co. Ltd. vs. Commissioner of Income Tax, (2000) 243 ITR 83 (SC), had observed that the phrase „prejudicial

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

19. In the present case, the findings recorded by the Tribunal are correct as the CIT has not gone into and has not given any reason for observing that the order passed by the Assessing Officer was erroneous. The finding recorded by the CIT is that "order passed by the Assessing Officer may be erroneous". The CIT had doubts about the valuation and sale consideration received but the CIT should have examined the said aspect himself and given a finding that the order passed by the Assessing Officer was erroneous. He came to the conclusion and finding that the Assessing Officer had examined the said aspect and accepted the respondent"s computation figures but he had reservations. The CIT in the order has recorded that the consideration receivable was examined by the Assessing Officer but was not properly examined and therefore the assessment order is "erroneous". The said finding will be correct, if the CIT had examined and verified the said transaction himself and given a finding on merits. As held above, a distinction must be drawn in the cases where the Assessing Officer does not conduct an enquiry; as lack of enquiry by itself renders the order being erroneous and

prejudicial to the interest of the Revenue and cases where the Assessing Officer conducts enquiry but finding recorded is erroneous and which is also prejudicial to the interest of the Revenue. In latter cases, the CIT has to examine the order of the Assessing Officer on merits or the decision taken by the Assessing Officer on merits and then hold and form an opinion on merits that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. In the second set of cases, CIT cannot direct the Assessing Officer to conduct further enquiry to verify and find out whether the order passed is erroneous or not.

10. Further reliance is placed on the decision of the Coordinate Bench of this Tribunal in the case of M/s. Arun Kumar Garg, HUF, vs. Pr. CIT in ITA No. 3391/Del/2018 wherein the Tribunal has considered the amended law and held as under:

5.6 Although, there has been an amendment in the provisions of section 263 of the Act by which Explanation 2 has been inserted w.e.f. 1.6.2015 but the same does not give unfettered powers to the Commissioner to assume jurisdiction under section 263 to revise every order of the Assessing Officer to re-examine the issues already examined during the course of assessment proceedings. The Mumbai ITAT Bench has dealt with Explanation 2 as inserted by Finance Act, 2015 in the case of Narayan Tatu Rane vs. ITO reported in (2016) 70 taxman.com 227 to hold that the said Explanation cannot be said to have overridden the liability as interpreted by Hon'ble Delhi High Court, according to which the Commissioner has to conduct the inquiry and verification to establish and show that the ITA No. 3391/Del/2018 Assessment year 2014-15 assessment order was unsustainable in law. The ITAT

Mumbai Bench has further held that the intention of the legislature could not have been to enable the CIT to find fault with each and every assessment order without conducting any inquiry 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 ITAT Mumbai Bench of the Tribunal went on to hold that 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.

5.7 We also note that it has been held by the ITAT Mumbai Bench in the case of M/s Indus Best Hospitality & Realtors Pvt. Ltd. in ITA No. 3125/Mum/2017 vide order dated 19.01.2018 that Explanation 2 to Section 263 of the Act introduced by Finance Act, 2015 is retrospective in nature. Since the year under consideration is AY 2014-15, we are afraid that Explanation 2 to section 263 will not come to the aid of the department in this case. Similar view has been taken by the various Coordinate Benches of the ITAT in the following cases:- ITA No. 3391/Del/2018 Assessment year 2014-15

(a) AV Industries v. ACIT [ITA No. 3469/Mu m/2010] dated 06.11.2015

(b) Metacaps Engineering and Mahendra Constructions Co. (JV) v. CIT [ITA No. 2895/Mum/2014] dated 11.09.2017

(c) Reliance Money Infrastructure Ltd. v. PCIT [ITA No. 3259/Mum/2017] dated 06.10.2017.

(d) Shantikrupa Estate Pvt. Ltd. [ITA No. 1252/Ahd/2015] dated 09.09.2016

(e) Amira Pure Foods Pvt. Ltd. v. PCIT [ITA No. 451/Del/2017] dated 29.11.2017.

5.8 Accordingly, respectfully following the ratio of the various judgments as referred to in the preceding paragraphs, we have no hesitation in holding that the Ld. Pr.CIT had wrongly invoked the revisionary powers u/s 263 of the Act and we have no option but to quash the same. It is so ordered accordingly. 6.0 In the result, the appeal of the assessee stands allowed.

11. Ld. AR has also taken us through the decision of the Mumbai Bench of this Tribunal rendered in the case of ITO vs. Shri Narayan Tatu Rane(supra) wherein the Tribunal in paras 19 to 21 has decided the issue as under:

"19. The law interpreted by the High Court 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 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 enquries 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 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 was not correct in law in holding that the impugned assessment orders were erroneous.

12. We find that Ld. Pr. CIT has relied upon the various case laws i.e. Puja Gupta vs. Pr. CIT in ITANo.4057/Del/2018 and also heavily relied upon the amendment made in the law. We find that the coordinate Bench of this Tribunal in the case of ITO vs. Shri Narayan Tatu Rane(supra), M/s. Arun Kumar Garg, HUF, vs. Pr. CIT(supra) have ruled that the Pr. CIT can not pass the order u/s 263 of the Act on the ground that thorough enquiry should have been made by the Assessing Officer. In the present case the assessing officer had given a specific notice regarding the disputed transactions and the assesseee also gave specific reply to the show cause notice issued by the assessing officer. Therefore, it is not a case where the assessing officer has not made any enquiry regarding impugned transactions but the Ld. Pr. CIT invoked the provisions of section 263 of the Act on the ground that the enquiry was not made in the manner, it

ought to have been done. In the light of the ratio laid down in the judgment of the Hon'ble Delhi High Court in the case ITO vs. Dg Housing Projects Ltd.(supra) and other decisions of the Coordinate Benches of this Tribunal i.e. ITO vs. Shri Narayan Tatu Rane(supra), M/s. Arun Kumar Garg, HUF, vs. Pr. CIT(supra). In our considered view Ld. Pr. CIT himself ought to have made some enquiry regarding the impugned transactions before setting aside to the file of the assessing officer. Hence, the action of the Ld. Pr. CIT is contrary to the ratio laid down by the binding precedence. We, therefore, hold accordingly, impugned order is quashed. Grounds raised in this appeal are allowed.

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

Order pronounced in the open court on 19.11.2020.

Sd/-	Sd/-
(VIKRAM SINGH YADAV)	**(KUL BHARAT)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Jaipur
Dated:- November, 2020
*Patel

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant-
2. प्रत्यर्थी/ The Respondent-
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar