

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**  
**BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकरअपीलसं./ITA Nos.107 & 108/SRT/2020**

**(निर्धारणवर्ष / Assessment Year:(2015-16)**

**(Virtual Court Hearing)**

Shyam Corporation, S. No. 84/1, 885 Block No.137, T.P. No.58, F.P. No.38, b/h. Siddhivinayak Complex, Bamroli, Surat-394210.	<b>Vs.</b>	The PCIT-2, Surat.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACGFS7598M</b>		
<b>(Assessee)</b>		<b>(Respondent)</b>
Shivam Enterprises, TP. 43, Block No.50, FP.30, At Post Bhimrad, Althan, Surat-395017.	<b>Vs.</b>	The PCIT-2, Surat.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACDFS9748Q</b>		

Assessee by : Shri Mehul Shah, CA

Respondent by : Shri S. T. Bidari, Sr. DR

**सुनवाईकीतारीख/ Date of Hearing : 28/04/2021**

**घोषणाकीतारीख/Date of Pronouncement: 27/05/2021**

**आदेश / O R D E R**

**PER Dr. A. L. SAINI, ACCOUNTANT MEMBER:**

Captioned two appeals filed by the assessees, pertaining to Assessment Year (AY) 2015-16, are directed against the separate orders passed by the ld. Principal Commissioner of Income Tax -2, Surat [in short “the ld. PCIT”], under section 263 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’).

2. By way of these two appeals, the assessees have challenged correctness of the order passed by the Learned Principal Commissioner of Income Tax -2, Surat, under section 263 of the Income Tax Act, 1961. Since, common and identical issues are involved, therefore these two appeals have been clubbed and

heard together and a consolidated order is being passed for the sake of convenience and brevity. The facts, as well as grounds of appeal, raised by the assessee, in ITA No.107/SRT/2020 for AY 2015-16, in the case of Shyam Corporation, have been taken into consideration for deciding the above appeals *en masse*.

3. The grounds of appeals raised by the assessee in lead case in ITA No.107/SRT/2020 for AY 2015-16 are as follows:

*“1. On the facts and in circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in passing the order u/s 263, although the assessment order passed u/s 143(3) of the I.T. Act, 1961 was neither erroneous nor prejudicial to the interest of the revenue.*

*2. On the facts and in circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in setting aside the assessment with the direction to frame the assessment de novo after rejecting the allowance of claim of expenses u/s 37 of the Act and allowance of set off of carry forwarded losses.*

*3. It is therefore prayed that above order passed by Pr. CIT u/s 263 may please be quashed or modified as your honours deem it proper.*

*4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

4. The relevant material facts, as culled out from the material on record, are as follows. The assessee before us is a firm. The assessee is engaged in the business of construction. It filed its return of income for the A.Y. 2015-16 on 22.09.2015 declaring total income at Rs.7,88,56,573/-.

5. Learned Principal Commissioner of Income Tax (Id PCIT) has exercised his jurisdiction under section 263 of the Act. The Id PCIT noticed from the records that a survey action u/s 133A of the Income Tax Act was carried out on 16.12.2014 and statement of Shri Jigneshbhai Naranbhai Balar, one of the partners of the firm, was recorded on oath under section 131 of the Act. In his statement, the partner admitted receipt of unaccounted income of the firm, in the form of 'on money' at Rs.8,20,00,000/-. He disclosed the same as 'income over and above the regular income' of the firm for the F.Y. 2014-15, relevant to A.Y. 2015-16. The firm has shown the amount of Rs.8,20,00,000/- in the Profit

and Loss account under the head 'Income declared in Survey' and computed the income accordingly. Against the disclosed income of Rs.8,20,00,000/-, the firm has shown total income of Rs.7,88,56,573/- in the return of income for Assessment Year 2015-16, which is less by Rs.31,43,427/- (Rs.8,20,00,000-Rs.7,88,56,573). The Ld. PCIT took his view that assessee has claimed this amount of Rs.31,43,427/- as expenses against the disclosed income, which is irregular in view of the provisions of section 115BBE of the Act.

6. In view of the above facts, ld PCIT has issued a show cause notice under section 263 of the Act, bearing No. ITBA/COM/F/17/2019-20/1023571045(1) dated 02.01.2020, which is reproduced below:

*"..... It is seen from the records that survey action u/s 133A was carried out in your case on 16.12.2014. During the course of survey proceedings, statement of Shri Jigneshbhai Naranbhai Balar, partner was recorded on oath u/s 131 of the Act. In reply to Q. No. 19 and 20 of the statement, Shri Jigneshbhai Naranbhai Balar, has admitted receipt of unaccounted income of the firm, in the form of on money of Rs.8,20,00,000/- and disclosed the same as income over and above the regular income of the firm for F.Y. 2014-15 relevant to AY 2015-16. You have shown the amount of Rs.8,20,00,000/- in the profit and loss account under the head 'Income disclosed in Survey' and computed the income accordingly. However, against the disclosed income of Rs.8,20,00,000/-, the firm has shown total income of Rs.7,88,56,573/- in the return of income for A.Y. 2015-16 which is less by Rs.31,43,427/-. You have claimed this amount of Rs.31,43,427/- as expenses against the disclosed income, which is irregular in view of provisions of section 115BBE of the Act. As per the provisions of section 115BBE(2) of the I.T. Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of the Act in computing the income referred to in clause (a) of sub-section (1) i.e. the amount of income-tax calculated on income referred to in section 68, section 69A, section 69B, section 69C or section 69D, at the rate of thirty per cent. Despite such facts and circumstances and specific provisions of law in section 115BBE(2) of the Act, Assessing Officer has completed assessment determining total at Rs.7,88,56,573/- and thereby allowing your erroneous claim to the tune of Rs.31,43,427/-, rendering the assessment so completed as erroneous in so far it is prejudicial to the interest of revenue.*

*3. The undersigned, therefore, propose to pass an order u/s 263 of the Act against the assessment order passed u/s 143(3) dated 11.12.2017 by the Assessing Officer for the A.Y. 2015-16, in so far as it is erroneous as well as prejudicial to the interest of Revenue....."*

7. In response to the above said show cause notice, none appeared before the ld. PCIT as the show cause notice was not served on the postal address of

the assessee, therefore, Id. PCIT has issued another letter dated 17.02.2020. Against the said letter, the assessee appeared before the Id. PCIT and submitted the written submission which is reproduced below:

*".....In this regard, we strongly object to pass as order u/s 263 of the Act and it will not affect the revenue of the government because it is revenue neutral and the order passed by the AO is not erroneous. In this matter, we are submitting our reply as under:*

*We are engaged in the business of construction of the project in this firm and the firm was established for construction and sale of the project and hence there is no other activity other than the project on which the survey proceeding has been conducted by the income tax department. During the survey proceedings recorded statement and taken declaration of undisclosed income as on-money of the project which is sufficient evidence that declared income is a business income of the project. We have declared on-money of Rs.820,20,000/- for the A. Y. 201 5-1 6 of the projects which is a part of business income of this project. We are not engaged in any other business other than this project and income disclosed as on-money were received towards the sale of units in this project. We do not have other source of income and the excess income declared during the course of survey is nothing but the income arising from business of the builder & developers. The same is accepted by the Survey team at the time of Survey proceeding and proved from loose paper and material found during the survey. And hence whatever disclosed made by us it's our business income.*

*We would like to draw your kind attention that The Central and state department of the revenue has also considered the declared income as business income and also collected service tax and VAT and accordingly VAT department also has completed assessment for the year under consideration by considering declared income as income from real estate business income. Copy of VAT Assessment order is enclosed herewith for your kind consideration. Copy of letter filed with the service tax department for payment made on disclosed income is enclosed herewith in support of service tax paid by us and treated as a business income during the income tax survey was borne by us as it is inclusive of taxes and hence debited to the profit and loss account against amount of declared income credited to the profit and loss account. The indirect taxes i.e. service tax and VAT are directly related to the disclosed income which is credited to profit and loss account hence the claim of such taxes made by us against the income disclosed in the survey is correct and allowed in the natural justice.*

*During the survey proceeding, the statement recorded and the partner has stated that this income is on money received of the project of the partnership firm. Survey resulted in disclosing the additional income of Rs.8,20,00,000/- for the A.Y.2015-16. We have credited the same in the profit and loss account, Further, in the computation of income, the income from business and profession of the year is set off by the brought forward losses from earlier year Rs.2,79,361 (Rs.2,52,799 + Rs.26,592) by invoking the provisions of section*

70, 71 and 72 of the Income Tax Act, 1961. We have shown addition income as business income and treated as eligible income for such set off and the same is accepted by the Learned A.O. at the time of scrutiny assessment u/s 143(3) of the Income Tax Act. Further, the rule of principle of consistency applied as we have debited these expenses i.e. (Service Tax + VAT) in the year of payment and if you are not allow to set off against the additional business income disclosed in the income tax survey than it will be set off against the subsequent year profit of the business. Further, we would like to bring to your kind attention that the liability of such expenses arises because of income disclosed in the survey otherwise it will not be debited to the profit and loss account Further, the Hon'ble Supreme Court in the case of CIT vs. Realest Builders and Services Limited (2008) 307ITR202 held that:

*"In cases where the department wants to tax an assesses on the ground of the liability arising in a particular year, it Should always ascertain the method of accounting followed by the assessee in the past and subsequent year on the ground that profit is being underestimated under the impugned method of accounting. If the Assessing Officer comes to the conclusion that there is underestimation of profits, he must give facts and figures in that regard and demonstrate that the impugned method of accounting adopted by the assessee results m underestimation of profits.*

*Hence with due respect and most humble request to your honour that please accepted our returned income and drop the proceeding u/s 263 of the Income Tax Act, 1961 because it will not affect the revenue of the government and the entire exercise is revenue neutral.*

*Without prejudice to the above, we would like to bring to your notice that the partnership firm is paying income tax @ 30% subjected to the uniform rate of tax, the details of last four years total income and income tax paid by the partnership firm are as under*

<b>Particular</b>	<b>AY 15-1 6</b>	<b>AY 16-1 7</b>	<b>AY 17-18</b>	<b>AY 18-1 9</b>	<b>AY 19-20</b>
Total Income	7,88,56,573	1,08,40,065	23,58,202	1,91,612	12,519
Taxes Paid	2,89,47,163	40,07,122	8,06,307	59,213	3,908

*From the above details it is very much clear that the we have not availed or taken benefit of any incentive scheme of government hence it will not affect the revenue of the government, Further, Now there is no sale pending of flats in our project and hence if the department makes addition to our total income in the A.Y.2015-16, the amount disallowances has to be carried forward to the subsequent years in which we have already paid income tax on the total income and the benefit of set off of carried forward losses is not available as the project is completed and the firm has closed the business activity therefore we can set off this losses against the business income and hence it will create unnecessary dispute litigation in the future and not affect the revenue of the government.*

*Considering the above facts in case the department is not allowing such business expenses against the declared business income credited to the profit and loss account than the business loss of same amount will be carried forward*

*and eligible for set off against the business income of AY 2016-17 in which total taxable income is of Rs. 1,08,40,065/- which is more than the amount of total expenses debited to the profit and loss account and claimed against the declared income for the AY 2015-16 on which income tax duly paid therefore entire exercise is revenue neutral and therefore it is requested to your honour considered the facts and drop the proceeding u/s 263 of Act.*

*The addition, if any, is revenue neutral, if seen in a macro perspective and, therefore, no adjustment is called for. Reliance was placed on Nagri Mills Company Ltd.: 33 ITR 681 (Bom.): Triveni Engineering Industries Ltd.: 336ITR 374 (Del).*

*Copy of the Income tax return of the partnership firm from AY 2015-16 to AY 2019-20 is enclosed herewith for your record.*

*So, it is most humble submission that please do not pass the order u/s 263 of the Income tax act as it is revenue neutral and no prejudicial to the interest of revenue.*

*However, if you are not satisfied with our submission and wants to make addition to our total income than please given us a personal hearing before taking any decision in this matter....."*

8. However, the ld. PCIT rejected the contentions of the assessee and observed that assessee has claimed expenses towards total service tax paid of Rs. 25,33,800/-, total VAT of Rs.17,24,738/-. Further the firm has also set off carried forward losses of Rs.2,79,361/-, Business loss of Rs.2,52,799/- and unabsorbed depreciation of Rs.26,592/-. In view of such claims the assessee has returned income at Rs.7,88,56,573/- against the income disclosed at Rs.8,20,00,000/- during the course of survey under section 133A of the Act. Therefore, ld PCIT noticed that assessee has claimed this amount of Rs.31,43,427/-( Rs.8,20,00,000- Rs.7,88,56,573) as expenses against the disclosed income, which is irregular in view of the provisions of section 115 BBE of the Act. In view of the facts and circumstances of the case, the assessment order u/s 143(3) passed on 11.12.2017 (for A.Y. 2015-16) was found to be erroneous in so far as it is prejudicial to the interest of Revenue. Therefore, the assessment order passed by the AO u/s 143(3) of the Income tax Act dated 11.12.2017 for A.Y.2015-16, was 'set-aside' by the ld PCIT with the direction to frame the assessment *de novo*.

9. Shri Mehul Shah, Learned Counsel for the assessee begins by pointing out that assessee is a builder and he is constructing a project. In relation to his project, he received 'on-money' which is declared by him as income from business, "over and above" the money disclosed by him under the head business income. Learned Counsel took us through paper book page no.14, wherein computation of total income and details of taxes paid by assessee has been stated. The notice issued by the Id. PCIT under section 263 of the Act, is placed on paper book page No.11. Learned Counsel pointed out that Id. PCIT did not find any error in the assessment order and he stated that where two views are possible and the Assessing Officer has adopted one view on which the Id. PCIT does not agree, that does not mean that the order passed by the Assessing Officer is erroneous. Learned Counsel submitted that assessee disclosed the 'on money', under the head business income, therefore, he is entitled to claim the expenses relating to that income. The Id Counsel took us through paper book at page no.34 where under the head indirect expenses VAT expenses to the tune of Rs.17,24,736/- has been shown by the assessee. Learned Counsel submitted that assessee has only said project and he has income from that project only. Learned Counsel also took us through paper book page no.42 wherein answer and questions are mentioned which were taken by the survey team during the survey proceedings, wherein assessee has stated that "Nagad Rashi" was kept in Shrungal Residency office, which belonged to M/s. Shyam Corporation. Therefore, based on these facts, Id Counsel stated that the order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue and hence order of the PCIT under section 263 may be quashed.

10. On the other hand, Learned Departmental Representative (in short "the Id. DR") for the Revenue submitted that there is no whisper in the assessment order passed by the Assessing Officer under section 143(3) of the Act about the discussion of 'on money' whether it pertains to business income or other sources. The Id. DR pointed out that Assessing Officer has not examined whether the 'on money' relates to business income or other sources, so Id. PCIT exercised his jurisdiction under section 263 of the Act, correctly. The Id. DR for

the Revenue took us through page no.4 of the order of the Id. PCIT under section 263 of the Act and argued that the Assessing Officer has not examined the aspect of business receipt vs. other income, therefore order of Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Apart from this, the assessee has claimed the expenses on the 'on money' declared by him whereas at the time of survey proceedings, the assessee stated that this is the net income over and above the income declared in the profit and loss account, therefore no expenditure is connected with that income. However, the assessee has claimed the expenditure also against the 'on money' disclosed by him which is against the documentary evidences and the question -answer taken by survey team during survey proceedings. Therefore, assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue and the Id. PCIT has rightly exercised his jurisdiction under section 263 of the Act, hence order passed by the Id PCIT may be upheld.

11. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. PCIT and other material brought 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 precedents 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"**.

12. Taking note of the aforesaid dictum of law laid down by the Hon'ble Apex Court, let us examine whether order passed by the Assessing Officer, is erroneous and the prejudicial to the interest of Revenue. We note that statement of Shri Jigneshbhai Naranbhai Balar, partner was recorded by survey team on oath under 131 of the Act. In reply to Q. No. 19 and 20 of the statement, Shri Jigneshbhai Naranbhai Balar, has admitted receipt of unaccounted income of the firm, in the form of 'on money' of Rs.8,20,00,000/- and disclosed the same as income over and above the regular income of the firm for F.Y. 2014-15 relevant to AY 2015-16. The assessee has shown the amount of Rs.8,20,00,000/- in the profit and loss account under the head 'Income disclosed in Survey' and computed the income accordingly. However, against the disclosed income of Rs.8,20,00,000/-, the firm has claimed expenses to the tune

of Rs.31,43,427/- and shown total income of Rs.7,88,56,573/- (Rs.8,20,00,000-Rs.31,43,427) in the return of income for A.Y. 2015-16. We note that assessee is a builder and he has constructed only one project. There is no other project in the hands of the assessee to claim the expenses of Rs.31,43,427/-. The said project has substantially completed in the assessment year 2015-16 and after completion of the said project there is no other project in the hand of the assessee so that he can claim remaining expenses of Rs.31,43,427/-. Taking into account these factors, the assessing officer took the possible view that let the assessee should claim remaining expenses of Rs.31,43,427/- out of the Revenue income of Shrugal Residency. The statement taken by the survey team during the survey, vide answer to question no.3 (paper book page 37), where the assessee has stated clearly that he does not have any income other than “construction activities”, therefore, the assessee does not have any option but to set off remaining expenses of Rs.31,43,427/- from the construction income.

We note that Shri Jigneshbhai Naranbhai Balar, has admitted receipt of unaccounted income of the firm, in the form of ‘on money’ of Rs.8,20,00,000/- and disclosed the same as income over and above the regular income of the firm. The phrase “over and above the regular income of the firm” does not mean that it is not a business income of the firm. The ‘on money’ of Rs.8,20,00,000/- is business income of the firm and the assessee nowhere stated that it is the “net of expenses income”. Answer to question No.13, statement taken during the survey clearly says that “Nagad Rashi” (means “cash”) is kept in Shrugal Residency, which belonged to M/s Shyam Corporation, and related to the project which is going on. The Sum of Money of Rs.8,20,00,000/- is business income of the firm, although declared in survey statement as “over and above” the regular income, that does not mean that it is the income of net of expenses, thus, expenses connected to said income has been claimed by the assessee. The assessing officer, taking into account these facts allowed the claim of the assessee, therefore, order passed by the assessing officer cannot termed as erroneous and prejudicial to the interest of revenue.

In relation to his project, he received 'on-money' which is declared by him as income from business, "over and above" the money disclosed by him under the head business income. Learned Counsel took us through paper book page no.14, wherein computation of total income and details of taxes paid by assessee has been stated. The notice issued by the Id. PCIT under section 263 of the Act, is placed on paper book page No.11. Learned Counsel pointed out that Id. PCIT did not find any error in the assessment order and he stated that where two views are possible and the Assessing Officer has adopted one view on which the Id. PCIT does not agree, that does not mean that the order passed by the Assessing Officer is erroneous.

13. We note that assessee disclosed the 'on money', under the head business income, vide assessee's paper book page no.34, where under the head indirect expenses, the VAT expenses to the tune of Rs.17,24,736/- has been claimed by the assessee. The assessing officer has examined the same. The assessee does not have any other source of income except income from that project (Shrungal Residency) only. Vide assessee's paper book page no.42 wherein assessee has stated that "Nagad Rashi" was kept in Shrungal Residency office, which belonged to M/s. Shyam Corporation, this "Nagad Rashi" does not belong to other project. We note that assessee has submitted return of income and computation of total income vide paper book at page no.13 to 15. The assessee also submitted Tax Audit Report vide paper book at page no.16 to 35. The statements recorded during survey which is placed at paper book page no.36 to 42. The assessee's paper book page no.43, answer to question no.14, the assessee stated that Shyam Corporation has only one project which is 'Shrungal Residency' which has completed up to 70% level. 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. 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.

14. The Id Counsel submits before us that indirect taxes i.e. service tax and VAT are directly related to the disclosed income which is credited to profit and loss account hence the claim of such taxes made by assessee against the income disclosed in the survey is correct and allowed by the assessing officer, following the principle of natural justice. 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, return of income, tax audit report, profit and loss account, balance sheet etc. The assessing officer has examined the issue of 'on money' of Rs.8,20,00,000/- which is mentioned in para 4 of the assessment order and the same is reproduced below:

*“4. During the year, the assessee was engaged in the business of builder, to this case, a survey action U/S.133A of the I.T. Act was carried out by the Department on 16.12.2014. During the course of survey proceedings, a statement on oath u/s. 131 of the IT. Act of Shri Jigneshbhai Naranbhai Bator, partner of the firm was recorded and in reply to Question No. 19 & 20 of the statement, Shri Jigneshbhai Naranbhai Balar, partner of the firm had admitted receipt of unaccounted income of the firm in the form of 'On-Money' of Rs.8,20,00,000/- and disclosed the same over and above its regular income for F.Y.2014-15 relevant to A.Y.2015-16. The assessee firm has shown an amount of Rs.8,20,00,000/- in the Profit % Loss Account under the head "Income disclosed in survey and computed its income accordingly. The assessee firm has paid due taxes thereon.”*

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 Id. 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, bills & vouchers/invoices and the bank statements etc. and having satisfied himself about the correctness of the same and taking into account explanation of the assessee, 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.

15. 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 section 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 11.12.2017, 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 ld. PCIT cannot pass the order u/s 263 of the Act on the ground that further/thorough enquiry should have been made by Assessing Officer. We note that assessing officer has examined the issue of 'On-money' of Rs.8,20,00,000/-(vide para 4 of the assessment order passed under section 143(3) of the Act, dated 11.12.2017) and applied his mind, therefore such order passed by him is neither erroneous nor prejudicial to the interest of revenue. 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.

16. Similar and identical issues have been raised in other appeal in ITA No.108/SRT/2020 for AY.2015-16. Our observations and decision made in ITA No.107/SRT/2020 shall apply *mutatis mutandis* to the appeal in ITA No.108/SRT/2020 for AY.2015-16.

17. In the result, the appeals of the assesseees (in ITA Nos.107 & 108/SRT/2020 for AY.2015-16) are allowed.

Order is pronounced on 27/05/2021 by placing result on Notice Board.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

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

सूरत /Surat  
दिनांक/ Date: 27 /05/2021  
SAMANTA

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

**// TRUE COPY //**

By Order

Assistant Registrar/Sr.PS/PS  
ITAT, Surat