

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER

AND

Ms. MADHUMITA ROY, JUDICIAL MEMBER

VIRTUAL HEARING

ITA No.158/Ind/2020
Assessment Year: 2015-16

M/s. M.P. State Industrial Development
Corporation Ltd.

Bhopal

PAN:AACCM0327M

: Appellant

V/s

Pr. CIT -1, Bhopal

: Respondent

Appellant by	S/Shri Girish Agrawal, Ajay K. Chhajed & Ms. Nisha Lahoti, ARs
Revenue by	Shri Rajeeb Jain, CIT-DR
Date of Hearing	18.08.2021
Date of Pronouncement	08.10.2021

ORDER

PER MANISH BORAD, A.M

The above captioned appeal filed at the instance of the Assessee for Assessment Year 2015-16 is directed against the order of Ld. Pr. Commissioner of Income Tax(Appeals) (in short

Ld. CIT],-1 Bhopal dated 13.02.2020. The assessee has raised following grounds of appeal:

“1. That the order passed by the ld. Pr. CIT u/s 263 of the Income Tax Act is illegal and bad in law and is prayed to be quashed.

2. That the order passed u/s 263 of the Income Tax Act directing the Assessing Officer to reframe the assessment is vague, mechanical and without application of mind by the Ld. Pr. CIT which is bad in law and prayed to be quashed.

3. That the Ld. Pr. CIT grossly erred in passing the order when no issue was identified in the notices issued by the Pr. CIT, whereas the notice u/s 263 was based on the information as per the audit objection which the Pr. CIT having alleged that the order passed by the AO was erroneous and prejudicial to the interest of the revenue.

4. That the revision order passed u/s 263 pursuant to the amendment made w.e.f. 1st June 2015 is bad in law.

5. That the Pr. CIT grossly erred in law in holding that the order passed by the Assessing Officer was very casual and passed in a hurried manner did not examine all the material facts of the case and was erroneous and prejudicial to the interest of revenue.

6. That the order passed u/s 263 without giving a proper opportunity to the assessee and have not appreciated the issues which were explained on the various items identified by the Pr. CIT in his order is bad in law and prayed to be quashed.

7. the each grounds is dependent of and without prejudice to the other grounds raised herein

2. The registry has informed that the present appeal is delayed by 37 days. Ld. Counsel for the assessee submitted that the delay in filing the appeal is due to country-wide lockdowns imposed by the government in wake of Covid-19 outbreak. Taking cognizance of the same the government had introduced the taxation and other laws (Relaxation and Amendment of Certain Provisions) Act 2020 in order to relax/extend the statutory timelines for various

compliance under various laws including the Income Tax Act 1961. Prayer was made to condone the delay. Ld. DR opposed the request. We however under the given facts and circumstances of the case, are satisfied with the reason giving rise to delay in filing the instant appeal. We condone the delay and admit the appeal for adjudication on merits.

3. Brief facts of the case as culled out from the records are that the assessee company is engaged in the Financial Assistance for industrial development and infrastructure. It declared total loss at Rs.1,55,62,351/- in the return filed on 30.09.2015. The case was selected for limited scrutiny through CASS and the notices u/s 143(2) & 142(1) of the Act duly served upon the assessee, assessed total loss at Rs.1,55,63,351/-.

4. Subsequently, Ld. Pr. CIT, Bhopal invoked the provisions of section 263 of the Act and issued following show cause notice to the assessee (relevant extract is reproduced below):

“Please refer to the order u/s 143(3) of the IT Act, 1961 dated 18.12.2017 passed by the ITO -2(1), Bhopal for A.Y. 2015-16,

The assessee is engaged in the business of Financial Assistance. On perusal for the assessment order and case record, it is noticed that the assessee company had disclosed net profit for Rs.18,24,66,515/- and

credited an amount Rs.14,87,59,039/- under the head “ provision write off and extraordinary items”, out of this Rs.14,75,00,000/- (such amount was included in Rs.14,87,59,039/-) was deducted in the computation of income but such amount was not withdrawn from any reserve provision. As per note nO.15 below Sl. No.3 the Chartered Accountant Certified that there is an outstanding of Rs.14376.40 lakh (Principal Rs.14214.43 lakh and interest of Rs.161.97 lakh) under the ICD portfolio. The entire ICD portfolio has been classified as loss assets in accordance with the policy. During the financial year, Corporation has recovered Rs.1475.00 Lakh towards principal & Rs.245.13 Lakh towards interest.”

In view of section 41(1) of the Provision of the Act the recovered amount of Rs.14,75,00,000/- which was classified as loss assets and subsequently recovered during the previous year was required to be added back to the assessee’s income which was not done by the AO. The omissions resulted in under assessment of income to that extent resulted in notional tax effect of Rs.52,77,406/-.

Keeping in view of the above, the assessment order passed by the Assessing Officer is considered to be erroneous is so far as it is prejudicial to the interest of revenue, and therefore, I, propose to invoke powers vested u/s 263 of the Income Tax Act, 1961 in respect of the order referred to above. You are hereby given an opportunity of being heard as per section 263(1) of the Income Tax Act to present yourself in person or through an authorized representative on 28.01.2020 at 11:30 AM to explain your case. In case no reply is received by stipulated date, it will be presumed that you have nothing to say in the matter and a decision will be taken on the basis of material available in this office.

5. Now the assessee is in appeal before the Tribunal challenging the jurisdiction of Ld. PCIT assumed u/s 263 of the Act.

6. Ld. Counsel for the assessee apart from placing reliance on written submissions placed on record and relevant extract reproduced in the subsequent paras and also submitted that provision of section 41(1) cannot be the basis for initiating proceeding u/s 263 of the Act and the Ld. Pr. CIT was not justified in alleging that the order passed by the Assessing Officer was erroneous and prejudicial to the interest of the revenue because the Ld. AO has examined the details and applied his mind and after making due verification framed the assessment. Ld. counsel for the assessee referred to the following arguments mentioned in the written submissions:

This submission is being made as the impugned order passed u/s 263 is neither erroneous nor prejudicial to the interest of the Revenue. The issue stated by Ld. Pr.CIT in the show cause notice issued u/s 263 on 13.01.2020 has already been dealt and considered by Ld. AO while passing the assessment order u/s 143(3) on 18.12.2017.

The submission is placed on record for the following contentions raised by the assessee in the instant appeal –

<i>Sr. No.</i>	<i>Contentions of the assessee challenging the order u/s 263</i>
<i>A</i>	<i>Non application of mind by Ld. Pr.CIT</i>
<i>B</i>	<i>Enquiry conducted by Ld. AO – no lack of enquiry</i>
<i>C</i>	<i>Application of the mind by Ld. AO</i>

A. *Non – application of mind by Ld. Pr.CIT*

- 1. Show cause notice u/s 263 was issued on 13.01.2020 wherein Ld. Pr. CIT stated that in view of the provisions of section 41(1) the recovered amount of Rs. 14.75 cr which was classified as loss assets and subsequently recovered was required to be added back.*
- 2. During the revisionary proceedings, assessee explained that the provision for bad and doubtful debts on ICD and the interest thereon was made in the earlier years i.e. AY 2002-03 to 2004-05.*

3. While computing the total income of said years, the amount of provision for bad and doubtful debts on ICD and interest thereon was added back to the net profit debited in the audited profit and account. All the documentary evidences were placed on record. [PB 119-121]In AY 2002-03 income under the head 'Profits and Gains from Business or Profession was computed as under – [PB 89-90]

From the above table it is evident that while computing the total income for AY 2002-03, amount of provision of bad debts on ICD has been added back to the net profit for the purpose of computing income under the head 'Profits and Gains from Business or Profession'. Since it was a case of loss, the loss has been reduced to the extent of add back.

4. Accordingly, in the impugned year when the excess provision made for bad and doubtful debts on ICD was written back, the same was deducted from the net profit as per the audited financial statements while computing income under the head 'Profits and Gains from Business or Profession'. It is a fact on record that during the impugned year, assessee was engaged in the process of recovery of loans and interest which were granted earlier. No fresh lending was done. Before the Ld. Pr. CIT all the documentary evidences were placed on record. [PB 22 and 41]
5. The opening balance as on 01.04.2014 of ledger 'inter corporate deposits' is Rs. 156,89,42,845. Out of this, during the impugned year an amount of Rs. 14,75,00,000 was recovered from Som Distilleries Limited. This recovered amount has been reduced from net profit while computing the income under the head 'profits and gains from business and profession' for the impugned year. There is no benefit claimed by the assessee in terms of section 41(1) in respect of the impugned amount. There is no 'tax advantage' derived by the assessee in respect of the impugned amount which is a balance sheet transaction. Extract of the relevant ledger account reproduced as under –

M.P. State Industrial Development Corporation Ltd.
"AVN Towers" 192 Zone-1 MP Nagar
Bhopal

Cost Breakup of Ledger
1-Apr-2014 to 31-Mar-2015

Page 1

Particulars	Opening Balance	Ledger: Inter Corporate Deposits Transactions		Closing Balance
		Debit	Credit	
	1,56,89,42,845.00 Dr		14,75,00,000.00	1,42,14,42,845.00 Dr
Companies				28,45,00,000.00 Dr
Alpine Industries Ltd.	28,45,00,000.00 Dr			1,00,00,000.00 Dr
Bhopal Sugar Ltd	1,00,00,000.00 Dr			22,90,60,845.00 Dr
Entegra Ltd.	22,90,60,845.00 Dr			40,00,000.00 Dr
Flours & Foods Ltd	40,00,000.00 Dr			18,00,000.00 Dr
Gajra Bevel Gears Ltd	18,00,000.00 Dr			15,82,000.00 Dr
Garha Utibrocce Tools Ltd	15,82,000.00 Dr			15,00,00,000.00 Dr
Killick Nixon Ltd	15,00,00,000.00 Dr			2,00,00,000.00 Dr
Maya Spinners Ltd	2,00,00,000.00 Dr			11,00,00,000.00 Dr
Ritspin Synthetics Ltd	11,00,00,000.00 Dr			14,50,00,000.00 Dr
Siddharth Tubes Ltd	14,50,00,000.00 Dr			28,00,00,000.00 Dr
Snowcem India Ltd.	28,00,00,000.00 Dr			7,00,00,000.00 Dr
Som Distilleries & Breweries Ltd	7,00,00,000.00 Dr		14,75,00,000.00	
Som Distilleries P Ltd	14,75,00,000.00 Dr			2,00,00,000.00 Dr
Som Power Ltd	2,00,00,000.00 Dr			9,55,00,000.00 Dr
STI Products of India Ltd.	9,55,00,000.00 Dr			

M.P. State Industrial Development Corporation Ltd.
"AVN Towers" 192 Zone-1 MP Nagar
Bhopal

Breakup of Cost Centre
1-Apr-2014 to 31-Mar-2015

Page 1

Particulars	Cost Centre: Som Distilleries P.Ltd Transactions		Closing Balance
	Debit	Credit	
Investments		14,75,00,000.00	50,00,000.00 Dr
Inter Corporate Deposits		14,75,00,000.00	
Investment in Shares			50,00,000.00 Dr
Current Assets	5,03,874.00	34,68,828.00	1,10,614.00 Dr
Sundry Debtors		29,64,954.00	
Interest Accrued and Due		29,64,954.00	
Loans & Advances	5,03,874.00	5,03,874.00	1,10,614.00 Dr
Loans & Advances to Assisted Companies	5,03,874.00	5,03,874.00	1,10,614.00 Dr
Indirect Incomes		2,15,48,414.00	2,15,48,414.00 Cr
Interest Income From Borrower		2,15,48,414.00	2,15,48,414.00 Cr
Grand Total	5,03,874.00	17,25,17,242.00	1,64,37,800.00 Cr

6. Ld. Pr.CIT erred in not considering all the submissions and documentary evidences placed on record in proper perspective. Ld. Pr.CIT thereby erred in concluding that the order passed by Ld. AO u/s 143(3) is erroneous and prejudicial to the interest of revenue by resorting to the provisions of section 41(1).

7. Ld. Pr.CIT in the show cause notice issued on 13.01.2020 stated – [PB 01]

“In view of section 41(1) of the provision of the Act the recovered amount of Rs. 14,75,00,000/- which was classified as loss assets and subsequently recovered during the previous year was required to be added back to the assessee’s income which was not done by

the AO. The omission resulted in under assessment of income to that extent resulted in notional tax effect of Rs. 52,77,406/-.

8. *There was no cessation or remission of any liability on the part of assessee. In fact the amount of bad and doubtful debts on ICD recovered was deducted from the provisions made in the earlier years. The creation of provision for bad and doubtful debts on ICD represents that an amount which was actually due to be received is no longer received. This is not a liability which is no longer payable and if any amount of deduction or allowance was claimed for the same in the computation of income. Provisions of section 41(1) are not applicable in the instant case. In fact this amount represents the 'asset' side of the Balance Sheet.*
9. *Assessee submits that provisions of section 41(1) are attracted only when any allowance or deduction has been claimed in respect of loss, expenditure or trading liability and the assessee has obtained in cash or in any other manner any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof. Ld. Pr.CIT grossly erred in applying the provisions of section 41(1) in the instant case. Ld. Pr.CIT erred in assuming the jurisdiction u/s 263 by taking recourse to provisions of section 41(1) which in no situation is applicable in the facts of the present case.*
10. *In the show cause notice issued u/s 263 dated 13.01.2020, Ld. Pr.CIT stated that the notional tax effect is of Rs. 52,77,406.*

It is submitted that under the Income-Tax Act, tax is charged on the income earned by the assessee i.e. income when it is either accrued or is received by the assessee. There is no concept of notional income and hence there cannot be notional tax.

11. *Ld. Pr.CIT erred in stating that there was a notional tax effect of Rs. 52,77,406 making the order passed by Ld. AO erroneous and prejudicial to the interest of Revenue.*
12. *Ld. Pr.CIT has directed AO to decide the issue i.e. amount recovered out of the loss assets, on merits and as per law. No specific finding on merits has been given by Ld. Pr.CIT on examination of written submissions and all the documentary evidences placed on record. No specific enquiry or investigation has been made by Ld. Pr.CIT to establish and show the error or mistake made by the assessing officer making the order unsustainable in law.
Reliance is placed on the decision of Hon'ble Delhi High Court in the case of D G Housing Projects Ltd – [2012] 20 taxmann.com 587. [PB 148]*

- B. Enquiry conducted by Ld. AO – no lack of enquiry and
C. Application of the mind by Ld. AO

1. Assessee is a Government company in which 100% shareholding is of the Government of Madhya Pradesh. It is engaged in the business of financial assistance for Industrial Development and Infrastructure activity in the state of Madhya Pradesh.
2. The complete control and management is by the Board of Directors on the directives of Government of Madhya Pradesh. Currently, no fresh lending has been done instead assessee is under the process of recovery of loans, interest and investments which have been granted earlier.
3. Assessment u/s 143(3) for the impugned year was completed on 18.12.2017. Vide questionnaire issued on 17.04.2017, assessee was required to – [PB 128]
 - a. Explain large any other deduction claimed in sch. BP creating a loss without any income in Profit & Loss Account
 - b. Explain mismatch between income/receipt credited to Profit & Loss Account considered under other heads of income and income from heads of income other than business/profession
4. Assessee submitted details in respect of amount shown in the return for AY 2015-16 as per point no. 32 in BP i.e. computation of income from Business or Profession. Detailed item –wise break up of Rs. 20,01,58,544 includes the following – [PB 132 and 121]

Sr. No.	Details of the items, relevant to the issue stated by Ld. Pr.CIT, in point no. 32 in BP (Computation of income from business or profession)	Amount (Rs.)
1	Withdrawal of provision of Inter Corporate Deposit (ICD)	14,75,00,000
2	Withdrawal of provision of interest on ICD	29,64,954
	TOTAL	15,04,64,954

These amounts were credited in the profit and loss account. Since these do not form the part of income from business profession, the same were excluded for computation of income under the head income from business or profession.

5. Ld. AO after perusing the written submissions and the documentary evidences placed on record accepted the income returned by the assessee. Income was assessed same as returned income. Ld. AO conducted proper enquiry to verify the withdrawal of provision of ICD amounting to Rs. 14,75,00,000. [PB 136-137]

6. Ld. AO allowed the claim on being satisfied with the details and explanations given during the course of assessment proceedings. Thus, the decision of Ld. AO cannot be held to be erroneous. Ld. AO has applied his mind while conducting the assessment proceedings.
7. It is not a case of non application of mind by Ld. AO. It is also not a case where Ld. AO has allowed the claim without enquiring into the same. Invoking provisions of section 263 is not in accordance with the law. Ld. Pr. CIT has not pointed out any shortcomings in the verification so conducted by Ld. AO.
8. The twin conditions required to invoke the provisions of section 263 i.e. order should be erroneous and also prejudicial to the interest of revenue are not satisfied.
9. Being erroneous always refers to 'being an error of law / jurisdiction' i.e. an incorrect application of law. An order passed by an Assessing Officer can be treated as erroneous if the view taken by the assessing officer is unsustainable in law. Thus, when a plausible view sustainable in law has been taken by assessing officer the order so passed cannot be treated as erroneous.

In the instant case, Ld. AO has made the enquiries during the assessment proceedings on the issues raised by Ld. Pr.CIT in the proceedings u/s 263. Ld. AO has allowed the claim on being satisfied with the explanation given by the assessee. Thus, plausible view taken by the Ld. AO cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in this regard.

10. Without prejudice to the above and strictly in alternate, the assessee has unabsorbed brought forward loss of Rs. 127,77,68,266 which is available for set off. The tax liability on the addition, if any, made shall be set off against the above referred loss. Thus, there is no loss to the Revenue.
11. Reliance is placed on the following judicial precedents -
 - a. Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd. - [2000] 243 ITR 83
 - b. Hon'ble Jurisdictional High Court of Madhya Pradesh in the case of Ratlam Coal Ash Co. - [1987] 34 Taxman 443
 - c. Hon'ble Jurisdictional High Court of Madhya Pradesh in the case of Mehrotra Brothers - [2004] 270 ITR 157
 - d. Hon'ble Jurisdictional Bench of Indore ITAT in the case of Bhanwar Singh - ITA No. 659/Ind/2019 - order dated 29.07.2021 - Para 24
 - e. Hon'ble jurisdictional ITAT Indore Bench in the case of Vinod Bhandari - ITA 350/Ind/2017 & others, order dated 20.03.2020 - Para 43 to 46

- f. Hon'ble Jurisdictional Bench of Indore ITAT in the case of Narottam Mishra – [2015] 25 ITJ 206*
- g. Hon'ble Jurisdictional Bench of Indore ITAT in the case of Flexituff International Limited – ITA No. 282/Ind/2017 – order pronounced on 14.05.2019 – Para 18*
- h. Hon'ble Allahabad High Court in the case of Krishna Capbox (P) Ltd – [2015] 60 taxmann.com 243*
- i. Hon'ble Delhi High Court in the case of Vikas Polymers – [2010] 194 Taxman 57*
- j. Hon'ble Delhi High Court in the case of Ashish Rajpal – [2009] 320 ITR 674*
- k. Hon'ble Mumbai Bench of ITAT in the case of Anil Shah – [2007] 162 Taxman 39*

Considering the above facts and circumstances of the case, submissions made, judicial precedents and documents on record, appeal of the assessee be allowed, quashing the impugned order passed u/s 263 of the Act.

7. Per contra Ld. Departmental Representative vehemently argued supporting the order of Ld. PCIT.

8. We have heard rival contentions and perused the records placed before us carefully gone through the decisions relied by the Ld. counsel for the assessee. We observe that the assessee company is engaged in the Financial Assistance for industrial development and infrastructure. Assessee is a Government company in which 100% shareholding is of the government of Madhya Pradesh and complete control and management is by the Board of Directors on the directives of Government of Madhya Pradesh. We observe that it is on record that the details in respect of amount shown in the return for A.Y. 2015-16 as per point no.32 in BP i.e. computation of income from Business or

profession, item wise break up of Rs.20,01,58,544/- was given which included withdrawal of provision of Inter Corporate Deposit (ICD) and provision of interest on ICD totalling to Rs.15,04,64,954/-. We further observe that from the profit and loss account these amounts were credited and since they did not form part of income from business or profession the same were excluded for computation of income under the head income from business or profession.

9. We also observe that in the course of revisionary proceedings assessee had explained that the provision for bad and doubtful debts on ICD and interest thereon was made in the earlier years i.e. A.Y. 2002-03 to 2004-05 while computing the total income of these year. The amount of provision for bad and doubtful debts on ICD and interest was added back to the net profit in the Profit and loss account and is evident from the documentary evidences placed on record in the paper book which is summarized in the table below:

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>
1	<i>Net profit as per audited financial statements</i>		<i>(85,69,05,758)</i>
2	<i>Add:</i> <i>Provision of bad debts – Term Loan</i> <i>Provision of bad debts – ICD</i>	<i>1,60,70,000</i> <i>15,35,66,255</i>	

	<i>Depreciation as per books</i>	39,23,231	
	<i>Interest on Term Loan from IDBI</i>	18,39,42,917	35,75,02,403
3	[1-2]		(49,94,03,355)
4	<i>Depreciation as per Income Tax</i>		(41,52,794)
5	[3-4]		(50,35,56,149)
6	<i>Income considered separately</i>		
	<i>Dividend income</i>	21,91,060	
	<i>Rent received</i>	8,65,707	
	<i>Diminution in value of shares</i>	8,90,772	(39,47,539)
7	<i>Profit and Gains from Business or Profession [5-6]</i>		(50,75,03,688)

10. From the above table we observe that since it was a case of loss, the loss has been reduced to the extent of add back of provision for bad debts.

11. To examine this aspect whether Ld. PCIT was justified in holding the order of Ld. A.O as erroneous and prejudicial to the interest of revenue, we will first go through the relevant provision of Section 263 of the Act and settled judicial precedence:-

263. (1) *The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.*

Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

(a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include—

- (i) *an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;*
- (ii) *an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;*
- (b) *"record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner;*
- (c) *where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or] Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.*

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.*

(2) *No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.*

(3) *Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.*

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to [section 129](#) and any period during

which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

12. On a bare perusal of the sub-section (1) would reveal that the powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned Commissioner was not required the assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show-cause notice pointing out the reasons for the formation of his belief that action under section 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the

assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the fourth compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order.

13. It is well settled law that for invoking the provisions of section 263 of the Act both the conditions that the order must be erroneous and prejudicial to the interest of revenue needs to be satisfied. This ratio stands laid down by various Hon'ble Courts.

14. Hon'ble Apex Court in the case of *Malabar Industrial Co. Ltd.* – [2000] 243 ITR 83 – order pronounced on 10.02.2000 – HEAD NOTE – "Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interests of revenue - Assessment year 1983-84 - Whether in order to invoke section 263 Assessing Officer's order must be erroneous and also prejudicial to revenue and if one of them is absent, i.e., if order of Income-tax Officer is erroneous but is not prejudicial to revenue or if it is not erroneous but is prejudicial to revenue, recourse cannot be had to section 263(1) - Held, yes - Whether if due to an erroneous order of ITO, revenue is

losing tax lawfully payable by a person, it will certainly be prejudicial to interests of revenue - Held, yes - Assessee-company entered into agreement for sale of estate of rubber plantation - As purchaser could not pay installments as scheduled in agreement, extension of time for payment of installments was given on condition of vendee paying damages for loss of agricultural income and assessee passed resolution to that effect - Assessee showed this receipt as agricultural income - Resolution passed by assessee was not placed before Assessing Officer - Assessing Officer accepted entry in statement of account filed by assessee and accepted same - Commissioner under section 263 held that said amount was not connected with agricultural activities and was liable to be taxed under head 'Income from other sources' - Whether, where Assessing Officer had accepted entry in statement of account filed by assessee, in absence of any supporting material without making any enquiry, exercise of jurisdiction by Commissioner under section 263(1) was justified - Held, yes

15. At this stage, before considering the multi-fold contentions of the learned representatives, we deem it pertinent to take note of the fundamental tests propounded in various judgments relevant for judging the action of the Commissioner of Income-tax

taken under section 263. The Income-tax Appellate Tribunal in the case of *Mrs. Khaiiza S. Omerbhoy v. ITO [2006] 101 TIJ 1095 (Mum)*, analysed in detail various authoritative pronouncements including the decision of the Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83 (SC)* and has propounded the following broader principle to judge the action of the Commissioner of Income-tax taken under section 263.

(i) The Commissioner of Income-tax must record satisfaction that the order of the Assessing Officer is erroneous and prejudicial to the interests of the Revenue. Both the conditions must be fulfilled.

(ii) Section 263 cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer and it was only when an order is erroneous that the section will be attracted.

(iii) An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.

(iv) If the order is passed without application of mind, such order will fall under the category of erroneous order.

(v) Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the Assessing Officer has adopted one of the courses permissible under law or where two views are possible and the Assessing Officer has taken one view with which the Commissioner of Income-tax does not agree. It cannot be treated as erroneous order, unless the view taken by the Assessing Officer is unsustainable under law.

(vi) If while making the assessment, the Assessing Officer examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determine the income, the Commissioner of Income-tax, while exercising his power under section 263 is not permitted to

substitute his estimate of income in place of the income estimated by the Assessing Officer.

(vii) The Assessing Officer exercises quasi-judicial power vested in him and if he exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous simply because the Commissioner of Income-tax does not feel satisfied with the conclusion.

(viii) The Commissioner of Income-tax, before exercising his jurisdiction under section 263 must have material on record to arrive at a satisfaction.

(ix) If the Assessing Officer has made enquiries during the course assessment proceedings on the relevant issues and the assessee has detailed explanation by a letter in writing and the Assessing allows the claim on being satisfied with the explanation of the assessee, the decision of the Assessing Officer cannot be held to be simply because in his order he does not make an elaborate discussion in that regard.

16. After going through the settled judicial precedents and the principles laid down by the Hon'ble Courts and examining the facts of the case in light thereof, we observe that during the impugned year assessee was engaged in the process of recovery of loans and interest which was granted earlier and no fresh lending was done in the impugned year. Thus, in the impugned year when the excess provision made for bad and doubtful debts on ICD was written back in respect of recovery of ICD of Rs.14,75,00,000/- from Som Distilleries Limited, the same was deducted from the net profit as per the audited financial statements in computing income under the head profit and gains

from business or profession. We find that there is no benefit claimed by the assessee in terms of section 41(1) of the Act in respect of the impugned amount. It is also evident that there is no tax advantage derived by the assessee in respect of the impugned amount. It is worth noting that provisions of section 41(1) are attracted only when any allowance or deduction has been claimed in respect of loss, expenditure or trading liability and the assessee has obtained in cash or in any other manner any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof. We find that Ld. Pr.CIT has grossly erred in applying the provisions of section 41(1) in the present case which in no situation is applicable in the facts of the present case.

17. We further find that the Ld. Pr.CIT has directed AO to decide the issue i.e. amount recovered out of the loss assets, on merits and as per law but no specific finding on merits has been given by Ld. Pr.CIT on examination of written submissions and all the documentary evidences placed on record. No specific enquiry or investigation has been made by Ld. Pr.CIT to establish and show the error or mistake made by the assessing officer making the

order unsustainable in law. This action of Ld. Pr. CIT can stand only if it is found that the assessment order is erroneous so far as prejudicial to the interest of revenue and no enquiry has been conducted by the Ld. AO with regard to the issue raised in the show cause notice issued u/s 263 of the Act. For this proposition the Ld. counsel for the assessee relied upon the ratio laid down in the decision passed in the case of *D.G. Housing Projects Ltd. (2012) 20 taxmann.com 587*.

18. On consideration of above, we find that during the course of the assessment proceeding, the Ld. AO specifically asked Vide questionnaire issued on 17.04.2017, to explain large any other deduction claimed in sch. BP creating a loss without any income in Profit & Loss Account and explain mismatch between income/receipt credited to Profit & Loss Account considered under other heads of income and income from heads of income other than business/profession, which was replied. We find that Ld. AO conducted proper enquiry to verify the withdrawal of provision of ICD amounting to Rs.14,75,00,000/- and allowed the claim on being satisfied with the details and explanation. Thus, the decision of ld. AO cannot be held to be erroneous. We find that the ld. AO has applied his mind while conducting the

assessment proceedings. Under these circumstances, where a detailed enquiry has been conducted on particular issue and the Ld. AO has made proper application of mind on the details filed by the assessee and have conducted sufficient enquiry the assessment order cannot be held to be erroneous so far as prejudicial to the interest of revenue. We accordingly quash the impugned revisionary order framed u/s 263 of the Act and restore the assessment order u/s 143(3) of the Act dated 13.02.2020.

19. In result, grounds raised by the assessee are allowed and appeal filed by the assessee in ITANo.158/Ind/2020 is allowed.

Order was pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 08.10.2021.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 08.10. 2021

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/
DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore