

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F" : DELHI
[THROUGH VIDEO CONFERENCING]

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA.No.534/Del./2021
Assessment Year 2015-2016

Pawansut Media Services Pvt. Ltd., Delhi – 110019. PAN AA ECP2155J C/o. Shri Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi – 110 085.	vs.	The Principal Commissioner of Income Tax-7, C.R. Building, ITO, I.P. Estate, New Delhi - 110 002.
(Appellant)		(Respondent)

For Assessee :	Shri Kapil Goel, Advocate & Shri Sandeep Goel, Advocate
For Revenue :	Smt. Sushma Singh, CIT-DR

Date of Hearing :	19.07.2021
Date of Pronouncement :	14.10.2021

ORDER

PER R.K. PANDA, A.M.

This appeal filed by the Assessee is directed against the order dated 30.03.2021 of the Ld. PCIT-7, Delhi, passed under section 263 of the I.T. Act, 1961, relating to the A.Y. 2015-2016.

2. Facts of the case, in brief are that the assessee is a company and is stated to have not done any business activity during the year. It filed its return of income on 29.10.2015 declaring loss of Rs.30,439/-. The A.O. completed the assessment on 15.12.2017 under section 143(3) of the I.T. Act, 1961, accepting the returned loss of Rs.30,439/-.

2.1. Subsequently, the Ld. PCIT examined the records and noted that the case was selected for limited scrutiny on the following reasons :

- i) Low income in comparison to very high investments.
- ii) Large increase in investment in unlisted equities during the year.
- iii) Low income in comparison to high loans/ advances/investment in shares.

2.2. He noted that during the year under consideration the assessee has invested in equity shares of the following

companies which is hit by the provisions of Section 56(2)(viia) of the Income Tax Act, 1961 :

Sl. No.	Name of the company	Amount
1.	Aura Buildwell Pvt. Ltd	30,15,000/-
2.	Bharti Containers Pvt Ltd	20,00,000/-
3.	Bluebell Agencies Pvt Ltd	7,00,000/-
4.	Dharmesh Textiles Ltd	25,00,000/-
5.	Hitech Grain Pvt Ltd	1,72,15,500/-
6.	Hyman Advertising and Marketing Pvt. Ltd	1,80,05,000/-
7.	Natraj Capital Ltd	2,00,000/-
8.	Shokeen Jewellery Pvt Ltd	15,00,000/-

2.3. However, the A.O. during the course of assessment proceedings has not examined the issue of applicability of provisions of Section 56(2)(viia) of I.T. Act for basis of determination of Fair Market Value ["FMV"]. Similarly, the other reason for scrutiny was investment in unlisted equity shares during the year. However, although the A.O. has examined with regard to source of investment

and income derived from this investment, however, the A.O. has not examined the fair market value of investment. He, therefore, was of the opinion that the order passed by the A.O. on 15.12.2017 under section 143(3) of the I.T. Act, 1961 appears to be erroneous in so far as it is prejudicial to the interests of revenue. He, therefore, issued a show cause notice to the assessee to explain as to why the order passed by the A.O. should not be set aside.

2.4. It was submitted by the assessee that the A.O. after considering the various written submissions filed by the assessee from time to time has completed the assessment. Relying on various decisions, it was submitted that the order of the A.O. is neither erroneous nor prejudicial to the interest of Revenue as the parameters laid down by the Hon'ble Supreme Court have never been crossed and no loss to the Revenue has ever caused due to the same. It was also submitted that the provisions of Section 56(2)(viia) of the I.T. Act, 1961 is grossly inapplicable to the transactions subjected for revisional powers under section 263 of the I.T. Act, 1961. The A.O. had already

examined the valuation provided by the assessee company during the course of on-going proceedings to his satisfaction. It was argued that the proceedings initiated under section 263 of the I.T. Act, 1961 should be dropped.

2.5. However, the Ld. PCIT was not satisfied with the arguments advanced by the assessee. After going through the assessment order and the assessment records, he noted that the aspect of valuation of Shares/Fair Market Value as required for the purposes of Section 56(2)(viiia), which is intrinsically connected with the issue of investment in unquoted equity shares has not been enquired into at all. Therefore, the judicial precedents cited in support of its claim by the assessee and the A.O. do not apply to the facts of the present case, since there is a lack of enquiry on the aspect of valuation of the shares in terms of Section 56(2)(viiia) read with Rules 11U/11UA of the Income Tax Rules. Therefore, the PCIT observed that the assessment order is erroneous as well as prejudicial to the interests of Revenue to this extent. He further noted that ideally the Assessment Order should be a self-contained speaking order

explaining the reasons of acceptance or rejection of the contention of assessee, summarising the enquiries conducted and the findings therein. However, from perusal of the Assessment Order dated 15.12.2017, it is seen that all such required elements are missing therein and it is not reflected if any enquiry relevant to the issue under consideration in the present proceedings has been conducted. The Ld. PCIT relying on various decisions held that since there was no enquires conducted by the A.O. on the issue of valuation of shares in terms of Section 56(2)(viia) read with Rules 11U/11UA of the Income Tax Rules the order passed by the A.O. without making any enquiry or verification which should have been done has made the order erroneous in so far as it is prejudicial to the interests of Revenue. He, therefore, set aside the order passed by the A.O. under section 143(3) of the I.T. Act, 1961 and directed him to pass necessary consequential order, after giving due opportunity of being heard to the assessee.

3. Aggrieved with such order of the Ld. PCIT the assessee is in appeal before the Tribunal by raising the following grounds :

GROUND OF APPEAL

- 1. That in the given facts order of Ld PCIT passed u/s 263 of the Act is passed without authority of law and is ultra vires to the provisions of the Act including section 263 of the Act and is further based on non existing, incorrect and erroneous facts that is wrong /incorrect assumption made by Ld PCIT in Show cause notice dated 15.05.2018 (also on 14.02.2020) and impugned order u/s 263 that no inquiry is made in assessment proceedings on issue of valuation of shares acquired by assessee is factually incorrect as glaring and manifest from assessee's reply in assessment dated 01.12.2017 (annexure 2 thereof) which despite being pointed clearly to Ld PCIT has been overlooked and glossed over for reasons best known to Ld PCIT in impugned order passed u/s 263. Ergo impugned order passed u/s 263 based on incorrect , erroneous and non existing fact deserves to be quashed.*
- 2. That in the given facts order of Ld PCIT passed u/s 263 of the Act is passed without authority of law and is ultra vires to the provisions of the Act including section 263 of the Act as mandatory jurisdictional fact of underlying assessment order to be i) erroneous and ii) prejudicial to interest of revenue is no where established to be cogently present in instant case which is clear from seminal fact that shares acquired by assessee are well above*

prescribed/notified value as per applicable rule corresponding to section 56(2)(viiia) of the Act which was also explained to Ld PCIT in assessee's response filed in impugned revision proceedings u/s 263, which is nowhere overruled /controverted by Ld PCIT, ergo assumption of jurisdiction u/s 263 by Ld PCIT is invalid and unlawful.

3. That in the given facts order of Ld PCIT passed u/s 263 of the Act is passed without authority of law and is ultra vires to the provisions of the Act including section 263 of the Act as Ld PCIT has indirectly sought to expand the restricted/limited scope of underlying scrutiny proceedings which nowhere embraced the stated issue of share valuation u/s 56(2)(viiia) as wrongly interpreted by Ld PCIT in instant proceedings u/s 263 which provision nowhere allows the authority of Ld PCIT to expand the scope of limited scrutiny, that too in violation of binding CBDT instructions and precedents available on this proposition. Ergo impugned order passed u/s 263 is jurisdictionally defective and void ab initio.

4. That in the given facts order of Ld PCIT passed u/s 263 of the Act is passed without authority of law and is ultra vires to the provisions of the Act including section 263 of the Act as Ld AO has clearly mentioned in assessment order sought to be revised at paragraph 3 of the assessment order that all requisite /necessary

details relevant to issue of limited scrutiny selection were called for and duly examined which jurisdictional aspect has not been objectively appreciated by worthy Ld PCIT in impugned order passed u/s 263 thus impugned order passed u/s 263 is jurisdictionally defective and void ab initio.

5. *That in the given facts order of Ld PCIT passed u/s 263 of the Act is passed without authority of law and is ultra vires to the provisions of the Act including section 263 of the Act as Ld PCIT has simply directed Ld AO to verify the share valuation aspect u/s 56(2)(viiia) which verification on basis of available details could have been done at end of Ld PCIT (with end result that no prejudice is caused to revenue) , thus impugned order passed u/s 263 without necessary verification made by Ld PCIT in face of available details on case records (these details showing no prejudice to revenue), is fundamentally flawed and defective.*
6. *That in the given facts order of Ld PCIT passed u/s 263 of the Act is passed without authority of law and is ultra vires to the provisions of the Act including section 263 of the Act as impugned order is passed in biased/premeditated manner.*
7. *That the appellant craves leave to add add/alter any/all grounds of appeal before or at the time of hearing of the appeal.*

3.1. Learned Counsel for the Assessee referring to the assessment order submitted that the case was selected for limited scrutiny and was never converted to full scrutiny. Referring to the Office Note attached to the assessment

order, he submitted that the case was selected for scrutiny for the following reasons :

1. Low income in comparison to very high investments.
2. Low income in comparison to high loans/ advances/investment in shares.
3. Large increase in investment in unlisted equities during the year.

3.2. He submitted that the A.O. has made due enquiries before completing the assessment and the Revenue has not proved anything to be wrong. Referring to the reply given before Ld. PCIT, copy of which is placed at Pages 6 and 8 of the paper book, he submitted that he has never stated that the reply given by the assessee is wrong. Further the Ld. PCIT has not done any enquiry himself. Referring to pages 23 and 24 of the paper book, Learned Counsel for the Assessee drew the attention of the Bench to the queries put by the A.O. during the course of assessment

proceedings and specifically drew the attention of the Bench to Question Numbers.8, 9 and 10 at Page No.24 which are as under :

- “8. Please furnish detail & justification of low income in comparison to high loans/advances/investments in shares and explain the reason thereof.*
- 9. Please furnish detail and justification of low income in comparison to very high investments.*
- 10. Please furnish details of large increase in investments in unlisted equities during the year. Also file details of funds deployed for such investment.”*

3.3. Referring to the reply given by the assessee, copy of which is placed at Page Numbers 25 to 27 of the paper book, he submitted that assessee has given the list of investment during the year with valuation as on 31.03.2015. He submitted that the limited scrutiny was never converted

to full scrutiny. Referring to the decision of Hon'ble Delhi High Court in the case of PCIT vs., M/s. Brahma Centre Development Pvt. Ltd., vide ITA.No.116 & 118/2021 Dated 05.07.2021, the Learned Counsel for the Assessee drew the attention of the Bench to Page Numbers 7 to 16 of the order and submitted that the Hon'ble Delhi High Court in the said decision has held that the standard to be adopted while dealing with the issue as to whether or not an A.O. has carried out an enquiry or verification, all that the Court is required to ascertain is as to whether the A.O. applied his mind. The fact that the A.O. has not given reasons in the assessment order is not indicative, always, of whether or not he has applied his mind. He submitted that it has been held that inadequacy in conduct of enquiry cannot be the reason based on which powers under Section 263 of the I.T. Act can be invoked to interdict an assessment order. He submitted that it has further been held that the error should be one that is not debatable or a plausible view. Section 263 of the Act invests a power of revision in a superior officer and, therefore, by the very nature of the power, does not allow for

supplanting or substituting the view of the A.O. The appreciation of material placed before the A.O. is, exclusively within his domain which cannot be interdicted by a superior officer while exercising powers under Section 263 of the Act only on the ground that if he had appraised the said material, he would have come to a different conclusion. He accordingly submitted that the issue stands decided in favour of the assessee by the recent decision of the Hon'ble Delhi High Court in the case of PCIT vs., M/s. Brahma Centre Development Pvt. Ltd., (supra) and, therefore, the order of the PCIT is to be set aside and the grounds raised by the assessee should be allowed.

4. The Ld. D.R. on the other hand heavily relied on the order of the Ld. PCIT. He submitted that in the instant case the Ld. PCIT has recorded a finding that it is a case of lack of enquiry for which he resorted to revisional powers as per the provisions of Section 263 of the Act. He submitted that Explanation-2 has been inserted in Section 263 of the I.T. Act by the Finance Act, 2015 w.e.f. 01.06.2015. He also relied on the following decisions :

1. Jalgaon People's Co-op Bank Ltd., vs., PCIT [2021] 127 taxmann.com 243 (Pune-Tribu.).
2. Vedanta Ltd., vs., CIT [2021] 124 taxmann.com 435 (Bombay).
3. Babulal S. Solanki vs., ITO, Ward-7(1)(1) [2019] 104 taxmann.com 155 [Ahmedabad – Tribu.].
4. Kerala State Electricity Board Ltd., vs., DCIT [2019] 111 taxmann.com 353 [Cochin-Tribu.].
5. PCIT vs., Venus Woollen Mills [2019] 105 taxmann.com 287 [Punjab & Haryana].
6. Jeevan Investment & Finance (P.) Ltd., vs., CIT [2017] 88 taxmann.com 552 [Bombay].
7. Anuj Jayendra Shah vs., PCIT [2016] 67 taxmann.com 38 [Mumbai-Tribu.].
8. Nagal Garment Industries (P.) Ltd., vs., CIT [2020] 113 taxmann.com 4 [M.P.].

9. Subhlakshmi Vanijya (P.) Ltd., vs., CIT [2015] 60 taxmann.com 60 [Kolkata-Tribu.].
10. S. Manickavasagam vs., ITO vide ITA.No.382/Mad./2007 Dated 17.12.2008.
11. Deniel Merchants Pvt. Ltd., vs., ITO vide Appeal No.2396/2017 dated 29.11.2017.
12. Malabar Industrial Co. Ltd., vs., CIT [2000] 243 ITR 83 [SC].
13. Rajmandir Estates (P.) Ltd., vs., PCIT [2016] 386 ITR 162 (Cal.)
14. Rajmandir Estates (P.) Ltd., vs., PCIT [2017] 245 Taxman 127 [SC].
15. CIT vs., Infosys Technologies Ltd., 341 ITR 293 (Kar.)
16. Gee Vee Enterprises vs., Addl. CIT 99 ITR 374 (Del.)

17. Order of ITAT, Delhi Bench in the case of Perfetti Van Melle India Pvt. Ltd., vide ITA.No.3046/Del./2016 dated 11.01.2019.
18. Order of ITAT, Delhi Bench in the case of Ramesh Kumar vide ITA.No.1982/Del./2018 dated 25.01.2019.
19. Order of ITAT, Delhi Bench in the case of Shanker Tradex Pvt. Ltd., vs., PCIT vide ITA.No.2999/Del./2017 dated 16.04.2018.
20. Order of ITAT, Delhi Bench in the case of Surya Financial Services Ltd., vs., PCIT [2018-TIOL-74-ITAT-DEL] Order Dated 08.01.2018.
21. CIT vs., Ashok Logani [2011] 347 ITR 22 (Del.).
22. Order of ITAT, Delhi Bench in the case of Pooja Gupta in ITA.No.4057/Del./2018 Dated 31.01.2019.

23. Shree Manjunathesware Packing Products & Camphor Works vs., CIT [1998] 231 ITR 53 [SC].

24. Order of ITAT, Delhi Bench in the case of PTC Impex (India) Pvt. Ltd., vs., CIT vide ITA.,No.2860/Del./2010 dated 03.04.2018.

5. We have considered the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. PCIT and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before me. We find the case of the assessee was selected for limited scrutiny for the following reasons :

1. Low income in comparison to very high investments.
2. Low income in comparison to high loans/advances/investment in shares.
3. Large increase in investment in unlisted equities during the year.

5.1. We find the A.O. vide notice dated 142(1) dated 03.08.2017 has asked the assessee, *inter alia*, to furnish the following details :

- “8. Please furnish detail & justification of low income in comparison to high loans/advances/investments in shares and explain the reason thereof.
9. Please furnish detail and justification of low income in comparison to very high investments.
10. Please furnish details of large increase in investments in unlisted equities during the year. Also file details of funds deployed for such investment.”

5.2. We find the assessee vide reply dated 01.12.2017 had filed the details of investment for the A.Y. 2015-2016 as per the Annexure. The summary sheet of list of investment appearing at Page No.27 reads as under :

Pawansut_SCN Reply u/s 263_29-08-2020_Page 21 of 2

PAWANSUT MEDIA SERVICES PRIVATE LIMITED
List of Investment during the year with valuation as on 31.03.2015

Sr.No.	Name of Share Holders	Date of Incorporation	Date of Investment	Networth as on 31-03-2014 (Book Value)	NO OF SHARES ISSUED	Book value	Amount of Investment	No of Share Purchased	Value per Share Purchased/ sold	Remarks
				(A)	(B)	(B)	(C)	(D)	(E)	
1	Aura Buildwell Pvt. Ltd	26-06-2014	31-03-2015	1,00,000.00	10,000	10.00	30,15,000.00	30,150	100.00	Purchase
2	Bihari Ji Containers Pvt. Ltd.	12-01-2012	28-12-2014	1,15,95,006.00	12,10,000	9.58	20,00,000.00	20,000	100.00	Purchase
3	Bluebell Agencies Pvt. Ltd.	20-01-2009	31-10-2014	5,00,000.00	50,000	10.00	7,00,000.00	7,000	100.00	Purchase
4	Dharmesh Textiles Ltd	09-07-1998	05-01-2015	22,79,11,552.88	33,43,310	68.17	25,00,000.00	25,000	100.00	Purchase
5	Hi Tech Grain Processing Pvt. Ltd	10-12-2001	21-03-2014	54,47,59,917.00	30,08,000	181.10	-1,72,15,500.00	-1,72,155	100.00	SALE
6	Hymn Advertising and Marketing Pvt.	07-02-2009	10-03-2015	1,45,48,677.00	50,000	290.97	1,80,05,000.00	36,000	500.14	Purchase
7	Natraj Capital and Credit Pvt. Ltd	19-04-1995	19-04-2014	2,31,45,279.03	2,39,600	96.60	2,00,000.00	2,000	100.00	Purchase
8	Shokeen Jewellers Pvt. Ltd	14-03-2014	19-04-2014	1,00,000.00	10,000	10.00	15,00,000.00	15,000	100.00	Purchase

5.3. We find before the Ld. PCIT the assessee had filed the date-wise chart of notice issued by the A.O. as well as the submission of the assessee to such notice as per Para-2.2 of the reply dated 20.07.2020 which reads as under :

SL No	Particulars	Date of issue/ submission	Descriptions
1	Notice u/s 143(3) issued	09-04-2016	Limited Scrutiny selected under CASS
2	Notice u/s 143(3) issued	09-05-2016	Limited Scrutiny selected under CASS
3	Notice u/s 142(1) Issued	17-10-2016	7 Point Questionnaire issued
4	Notice u/s 142(1) Issued	04-08-2017	10 Point Questionnaire issued
5	Notice u/s 142(1) Issued	24-08-2017	Same Questionnaire as issued on 04-08-2017
6	Notice u/s 142(1) Issued	26-09-2017	Same Questionnaire as issued on 04-08-2017
7	Final SCN u/s 142(1) issued	27-10-2017	Final Show Cause Notice issued
8	Notice u/s 142(1) Issued	03-11-2017	Same Questionnaire as issued on 04-08-2017
9	Reply u/s 142(1), letter dated 27/11/2017	27-11-2017	Written Submission containing basic documents & list of Loan & advances, Investment, Shareholders and directors in complete compliance to notice dated 24-08-2017
10	Reply u/s 142(1), letter dated 01/12/2017	01-12-2017	Written Submission containing detailed List and valuation of Investments submitted.
11	Reply u/s 142(1), letter dated 04/12/2017	06-12-2017	Explaining source of Investment and ledgers A/c of loan received accompanied the submission
12	Reply u/s 142(1), letter dated 08/12/2017	08-12-2017	List of loan & advances received and their ledger accounts annexed with submission
13	Reply u/s 142(1), letter dated 13/12/2017	14-12-2017	Details of sale of share and copy of share certificate attached with submission
14	Assessment Order u/s 143(3) passed	15-12-2017	This is the order sought to be brought under revisional jurisdiction

5.4. Further the submission of the Learned Counsel for the Assessee that limited scrutiny was never converted to full scrutiny could not be contradicted by the Ld. D.R.

5.5. We find a somewhat identical issue had come-up before the Hon'ble Delhi High Court in the case of PCIT vs., M/s. Brahma Centre Development Pvt. Ltd., (supra). In that case the order under section 143(3) was passed on 31.01.2017 and 27.09.2017 for the A.Ys. 2012-13 and 2013-14 wherein the A.O. accepted the interest earned by the assessee against the fixed deposits were adjusted i.e., deducted from the value of the inventory and not credited to the P & L A/c. The Ld. PCIT noted that the Tax Auditor in the Report filed in Form No.3CD had observed that interest earned on fixed deposits pertain to "Other Income" and had not been credited to the P & L A/c. The interest earned on fixed deposits in A.Y. 2012-13 was Rs.9,47,04,585/- whereas in A.Y. 2013-14, the interest earned on fixed deposits was Rs.4,32,91,517/-. The Ld. PCIT invoking the powers under section 263 of the Act held that the orders had been passed without making any enquiries as to whether the

interest earned by the assessee had any nexus with the real estate project, the construction of which was undertaken by the assessee. He accordingly held that the orders passed by the A.O. were erroneous in so far as they were prejudicial to the interests of the Revenue. The assessee filed an appeal before the Tribunal and the Tribunal set aside the order passed under section 263 and allowed the appeal filed by the assessee. When the Revenue preferred an appeal before the Hon'ble Delhi High Court, the Hon'ble High Court in ITA.Nos.116 & 118/2021 order dated 05.07.2021 dismissed the appeal filed by the Revenue by observing as under :

“Issue no. (ii) :

10. The standard to be adopted while dealing with the issue as to whether or not an AO has carried out an enquiry or verification, all that the Court is required to ascertain is as to whether the AO applied his mind.

10.1. The fact that the AO has not given reasons in the assessment order is not indicative, always, of whether or not he has applied his mind. Therefore, scrutiny of the record, is necessary and while scrutinising the record the Court has to keep in mind the difference between lack of enquiry and perceived inadequacy in enquiry. Inadequacy in conduct of enquiry cannot be the reason based on which powers under Section 263 of the Act can be invoked to interdict an assessment order. The observations made in this behalf, by the Division Bench of this Court, in *Commissioner of Income-tax vs. Sunbeam Auto Ltd.*, [2010] 189 Taxman 436 (Delhi) / [2011] 332 ITR 167 (Delhi) being apposite, are extracted hereafter.

“12. We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income - tax under section 263 of the

Income-tax Act. As noted above, the submission of learned counsel for the revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry", that such a course of action would be open. In Gabriel India Ltd.'s case (supra), law on this aspect was discussed in the following manner :

". . . From a reading of sub-section (1) of section, it is clear that the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the Income-tax Officer is 'erroneous insofar as it is prejudicial to the interests of the revenue'. It is not an arbitrary or unchartered power. It can be exercised only on fulfilment of the requirements laid down in sub-section (1). The consideration of the Commissioner as to whether an order is erroneous insofar as it is prejudicial to the interests of the revenue must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that 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. [See : *Parashuram Pottery Works Co. Ltd. v. ITO*[1977] 106 ITR 1 (SC) at page 10].

From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income

either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. . . . There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.

We may now examine the facts of the present case in the light of the powers of the Commissioner set out above. The Income-tax Officer in this case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given detailed explanation on that regard by a letter in writing. All these are part of the record of the case. Evidently, the claim was allowed by the Income-tax Officer on being satisfied with the explanation of the assessee. Such decision of the Income-tax Officer cannot be held to be "erroneous" simply because in his order he did not make an elaborate discussion in that regard . . ." (pp. 113-117)

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15. Thus, even the Commissioner conceded the position that the Assessing Officer made the inquiries, elicited replies and thereafter passed the assessment order. The grievance of the Commissioner was that the Assessing Officer should have made further inquiries rather than accepting the explanation. Therefore, it cannot be said that it is a case of 'lack of inquiry'."

10.2. This view was followed by another Division Bench of this Court in *Commissioner of Income-tax vs. Anil Kumar Sharma*, (2010) 194 taxman 504 (Delhi).

Issue no. (iii):

11. The assessment order can be interdicted under Section 263 of the Act, if two conditions are met, i.e., that the order is erroneous and is prejudicial to the interests of the revenue. [See *Malabar Industrial Co. Ltd. vs. Commissioner of Income-tax*, [2000] 109 Taxman 66 (SC)/[2000] 243 ITR 83 (SC) and *CIT vs. Max India Ltd.*, (2007) 295 ITR 282 (SC)]

nature valid

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g Date: 06.07.2021

11.1. Therefore, the error should be one that is not debatable or a plausible view. Section 263 of the Act invests a power of revision in a superior officer and therefore, by the very nature of the power, does not allow for supplanting or substituting the view of the AO. The appreciation of material placed before the AO is, exclusively within his domain which cannot be interdicted by a superior officer while exercising powers under Section 263 of the Act only on the ground that if he had appraised the said material, he would have come to a different conclusion. [See *Parashuram Pottery Works Co. Ltd. v. ITO*, [1977] 106 ITR 1 (SC)]

5.6. Since in the instant case the A.O. had indeed made enquiries as per the reasons for which the case was selected for limited scrutiny and the case was not converted to full scrutiny, therefore, respectfully following the decision of the Hon'ble Delhi High court in the case of PCIT vs., M/s. Brahma Centre Development Pvt. Ltd., (supra), we hold that the Ld. PCIT was not justified in assuming the jurisdiction under section 263 of the I.T. Act, 1961. We, therefore, set aside the Order of the Ld. PCIT and allow the grounds raised by the assessee on this issue.

5.7. So far as various decisions relied on by the Ld. D.R. are concerned, we are of the considered opinion that these are distinguishable and not applicable to the facts of

the present case especially when the case of the assessee which was selected for limited scrutiny was never converted to full scrutiny and the assessee had submitted all the details as called for by the A.O. from time to time for the reasons for which the case was selected for limited scrutiny. The grounds raised by the assessee are accordingly allowed.

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

Order pronounced in the open Court on 14.10.2021.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Delhi, Dated 14th October, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'F' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.