IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No.90 & 91/SRT/2021 (AY 2016-17 & 2017-18)

(H*earing in Virtual Court)*

Satyam Textile Park, Block No.430,Moje Hathoda, TA-Magrol, Surat – 394380. PAN: ACXFS 1576 L	Vs	The Principal Commissioner of Income Tax (Central), Surat.
Assessee / appellant		Revenue /respondent

Assessee by	Shri Rasesh Shah – CA
Revenue by	Shri Ritesh Mishra – CIT-DR
Date of hearing	15.09.2021
Date of pronouncement	25.10.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by assessee are directed against the separate orders of ld. Principal Commissioner of Income Tax [ld. PCIT, Central, Surat passed under section 263 of the Act dated 22.03.2021, for the Assessment Year (AY) 2016-17 & 2017-18. In both the appeals, the assessee has raised certain common grounds of appeal, the ld. PCIT revised assessment order on common issues, therefore, with the consent of parties, both appeals were clubbed, and was heard with other connected appeals of this group. Both the appeals are decided by a

consolidated order to avoid the conflicting decision. The assessee in both appeals have raised following identical grounds of appeal;

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) rws 153C 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 passing ex-parte order u/s. 263 without providing reasonable opportunity of being heard to the assessee. It was practically impossible to file the reply in bulk cases of the group in short time when the proceedings u/s. 263 was initiated at the fag end of limitation period in month of March, 2021. The first notice u/s. 263 was issued only on 05.03.2021.*

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, later or delete any ground(s) either before or in the course of hearing of the appeal."*

2. Brief facts of the case are that the assessee is a partnership firm. The assessee is engaged in the business of construction and development of housing projects. The assessee firm has four partners namely Ashok Narsibhai Patel , Kamlesh Babuhbai Bhesaniya, Navinbhai Gordhanbhai Topia and Rameshkumar Gordhanbhai Kathiria having share of 25% each. A survey action under section 133A of the Act was carried out on assessee's business premises. A search and survey action was carried out in SRK Group, Surat on 19.07.2016. The assessee is part of SRK Group. During the course of search and survey proceedings certain incriminating documents

were found and seized. During the search, certain entries pertaining to the assessee were also found. Consequent upon, notice under section 153C dated 03.12.2018 was issued on assessee firm for various assessment years including for the subject assessment years for filing return of income. In response to notice under section 153C of the Act, the assessee filed its return of income for the A.Y. 2016-17 & 2017-18 on 07.12.2018 declaring nil income. The Assessing Officer (AO) recorded that notice under section 142(1) along with detailed questionnaires were issued to assessee on 04.12.2018 which was duly served upon the assessee. In response thereto, the assessee filed detailed reply. The assessee also furnished relevant details and information as required by the AO. The AO after providing adequate opportunity and hearing the submission of the assessee accepted the return of income filed by assessee. The AO passed the assessment order under section 143(3) r.w.s 153C of the Act for AY 2016-17 after obtaining prior approval of Joint Commissioner of Income Tax (ld. JCIT) Central /Range on 29.12.2018. Similarly the assessment for AY 2017-18 was also passed under section 143(3) on 29.12.2018 on the basis of material placed before him.

3. Subsequently, the assessment order in both the assessment years were revised by ld. PCIT by exercising his power under section 263 vide order dated 22.03.2021. The ld. PCIT before passing the order under section 263

of the Act, issued separate show cause notices under section 263 of the Act dated 05.03.2021. In the show cause notice, the ld. PCIT identified following common issues;

- Under statement of income of the project,
- Non-initiation of penalty under section 271D of the Act,
- Disallowance under section 40(a)(ia) and 40A(3),
- Validity of declaration made under IDS.

4. The ld. PCIT recorded that the assessee was given opportunity of hearing on 12.03.2021 and 18.03.2021, however, the assessee neither attended the hearing nor filed written submission in respect of proposed revisions proceedings under section 263. The Ld. PCIT, accordingly presumed that the assessee has nothing to say and he decided to pass order on the basis of material available on record for both years i.e. AY 2016-17 & 2017-18. The ld. PCIT after considering the record of assessment held that in the search and survey of SRK group and its related parties, of which the assessee is also part, has resulted in to impounding of documents/ books of accounts and evidence related with evidence of undisclosed receipt and expenses in respect of Satyam Textile Park. The ld. PCIT also held that AO passed assessment order in haste and without making proper inquiry and verification of documents found in the documents seized and initiated proceedings at the fag end of the limitation period and completed in short

time. The AO has passed assessment order in haste without making due inquiries and verification in respect of entries found in the seized documents. The Assessing officer (AO) issued common show cause notice referring various seized material reflecting the various cash loan and the interest paid therein. The AO made no efforts whether the declaration made under IDS has co-relation with the financial transaction reflecting in the incriminating documents. The assessee has shown to have taken unsecured loan. The AO before completing the assessment has not verified details nor made any inquiries nor made additions under section 68 of the Act. It was further noted that on cash loan provisions of section 269SS and 269T were attracted. There was non-application of mind the AO not made full inquiry and assessment is made without making due disallowances / additions under section 37, 40A(3), 40(a)(ia), 68 and other provisions of the Act. Thus, clause (a) of Explanation 2 of section 263(1) is also applicable. The assessment order passed under section 143(3) r.w.s 153C in AY 2016-17 and assessment order for AY 2017-18 passed under section 143(3) suffer from lack of application of mind and cancelled. The ld. PCIT held that assessment order to be erroneous insofar as prejudicial to the interest of the Revenue and accordingly annulled the same directing the AO to take necessary action for fresh assessment keeping in view the issue of limitation.

Aggrieved by the order of the ld. PCIT, the assessee has availed present appeal before this Tribunal.

5. We have heard the submissions of the learned authorised Representative (ld.AR) of the assessee and learned Commissioner of income Tax - Departmental representative (CIT-DR) for the revenue and have gone through the revision order passed by ld PCIT and the assessment orders passed by AO in both assessment years. The ld AR for the assessee submits that assessee is a partnership firm engaged in the business of construction and development of housing project/ textile park. A search and survey action was carried out by the Revenue on assessee and its group on 19.07.2016. On the business premises of assessee, only survey took place. During the course of search proceedings in assessee group, certain incriminating material in the form of papers and documents were found. The assessee and its group i.e. Radhika Construction, Radhika Corporation, Radhika Infrastructure, and Shyam Textile Park all are engaged in construction and development of various projects. On the basis of material found in the course of search and survey action, the assessee prepared books of accounts. The books of accounts so prepared were produced during the course of assessment proceedings. Before issuing the notice under section 153C of the Act, the assessee made disclosure under income disclosure

scheme (IDS) 2016. The ld AR for the assessee filed the following bifurcation of amount disclosed in IDS;

Name of firms	Discloser amount	AY's
Radhika Construction	Rs. 3.50 Crore	2015-16
	Rs. 53 Lakhs	2016-17
Total (1)	Rs. 4.03 Crore	
Amrut Sarovar	Rs. 2.05 Crore	2014-15
	Rs. 1.55 Crore	2015-16
	Rs. 1.90 Crore	2016-17
Total (2)	Rs. 5.50 Crore	
Satyam Textile Park	**Rs. 5.00 Crore**	2016-17
Total (3)	**Rs. 5.00 Crore**	
Radhika Corporation	Rs. 1.00 Crore	2016-17
Total (4)	Rs. 1.00 Crore	
Radhika Infrastructure	Rs. 1.70 Crore	2015-16
	Rs. 1.80 Crore	2016-17
Total (5)	Rs. 3.50 Crore	
Vallabhai B. Paghdal	Rs. 60 Lakhs	2012-13
Total (6)	Rs. 1.20 Crore	
Total (1+2+3+4+5+6)	Rs. 19.63 Crore	

6. In the IDS, the assessee declared income of Rs.5.00 crore for the A.Y. 2016-17. The disclosure made by assessee was accepted by ld. PCIT vide Form No.4 under Rule 4(5) of IDS, vide receipt No. 352844280020118 dated 02.01.2018. The income declared by assessee under IDS was accepted without any variation or objection. The ld. AR for the assessee submits that the AO issued notice under section 153C of the Act on 03.12.2018 requiring the assessee to file return of income for the A.Y. 2011-12 to 2016-17 as per Rule 12 of Income-tax Rules. In response to notice under section 153C of the Act, the assessee filed its return of income for the A.Y. 2016-17 & 2017-18 on 07.12.2018 declaring Nil income. The AO thereafter issued notice

under section 142(1) of the Act. In the notice under section 142(1), the AO required various details on various issues. The ld.AR submits that copy of notice under section 142(1) is filed on record. The assessee filed its detailed reply. The copy of detailed reply filed by the assessee before AO is also placed on record. The AO after considering the various submissions and evidence furnished by the assessee passed the assessment order and accepted the returned income. The AO passed the assessment order after proper approval of ld. JCIT as required under section 153D of the Act. These facts are clearly ascertainable by the contents of para 6 of the assessment order dated passed under section 143(3) r.w.s. 153C dated 29.12.2018 of AY 2016-17 and for AY 2017-18 under section 143(3). The ld AR for the assessee further submits that ld. PCIT stated that the AO initiated assessment proceedings at fag end of limitation, the PCIT himself exercised its power under section 263 of the Act at fag end of limitation period for revising the assessment orders. The copies of show cause notice for both the years are also placed on record. In the show cause notice for both assessment years, the ld. PCIT basically identified four basic issues.

5. On the first and third issues identified by ld. PCIT, which relates to understatement of income of the project and disallowance under section 40(a)(ia) and 40A(3), the ld AR for the assessee submits that ld PCIT in the

show cause notice noted that although, assessee worked out the net profit of Rs. 2,27,88,724/- but, in the IDS disclosure, the assessee made disclosure of Rs. 5,00,00,000/- as unaccounted cash / receivables. The ld. PCIT further noted that the AO should have made the assessment in the light of provision of section 28 to 43 and section 68 to 69 of the act. The ld. PCIT also noted that the assessee in addition to on money must have generated some profit from allotment of plots to customers. On the various observation made by ld. PCIT, the ld AR for the assessee submits that assessee has duly accounted each and every entry of the impounded materials and prepared the books of accounts on day to day basis including unaccounted transactions. The books of accounts were produced before the AO. In the books of accounts all the unaccounted sale value received in cash and also the unaccounted cash expenses have been recorded. The assessee filed a detailed submission during assessment proceedings explaining the impounded materials found during the course of survey, copies of which are placed on record at page No 32 to 40 of PB. The assessing officer raised a specific query regarding the 'on money' receipts of Annexure AI-7 and also annexure AI-4, and A-3. The assessee explained these papers vide its reply before AO, copy of which is filed at page No 43 to 45 of PB. As per provisions of Section 292C, the materials collected in course of search and

survey proceedings are presumed to be true unless rebutted otherwise. Accordingly, the income detected on the basis of the seized / impounded materials should be accepted as true. It was also submitted vide this letter (reply to AO) that net profit on basis of seized material comes to Rs. 2,27,86,724/- and assessee made declaration of Rs. 5,00,00,000/- under IDS which is far in excess of the actual income. In course of assessment proceedings, assessee filed Exhibit 2A showing working of IDS at Para No 3 of this reply /letter, copy of which is placed on record. The ld AR for the assessee explained that in form of the IDS, assessee is required to shown only the undisclosed asset and not the source of the income as explained by the Circular 25 of 2016 issued by CBDT dated 30.04.2016 by Question and Answer No 9 of the said circular. Although the assessee was not required to disclose source of earning undisclosed income, the source is evident from the seized material and the revised books of accounts produced by the assessee in the course of assessment proceedings on the basis of impounded material. The assessing officer accordingly, made the assessment considering the provisions of Section 28 to 43 of the Act, although it is not applicable as per Section 195 of Finance Act 2016.

6. The ld AR for the assessee submits that Hon'ble jurisdictional Gujarat High court in various decision held that only net profit of suppressed receipts is

required to be estimated as income. The rate of 15% is most reasonable in the construction or housing projects, particularly when in course of search and survey operation, no unexplained investment or unexplained expenditure were detected. The reliance is places on decision of Gujarat High Court in case of Abhishek Corporation [I.T. Reference No 15 of 2003] pronounced on 07.11.2014**,** in which other decision of the Gujarat High Court were cited. It is to be noted that assessee had paid more tax than the normal rate under IDS, so even in normal assessment, the income assessed would have been less than the declaration made under IDS. On the issues of applicability of sec. 40(a)(ia) and 40A(3) raised by the PCIT vide Para No 9 of the Show Cause notice (Page No 24 and 25 of the PB) , the ld AR for the assessee submits that when income is estimated, these provisions are not applicable. Reliance is made on the decision of Gujarat High Court in case of PCIT Vs Juned B. Memon [95 taxmann.com 20 (Guj HC)]. Further it was submitted that when income is declared under IDS, the provisions of Income Tax Act is not required to be considered as per Section 195 of the Finance Act, 2016 except provision of Chapter XV, Section 119, Section 138 and section 189 of the Income Tax Act. On the basis of the above submissions the ld AR for the assessee submits that the assessment order for both the years cannot be branded as erroneous, thus, cannot be subject to revision under section 263.

7. On the second issue identified by ld PCIT, which relates to non-initiation of penalty under section 271D, the ld AR for the assessee submits that the assessee made declaration under IDS, the provisions of section 271D are not applicable. On merits it is submitted that the assessee did not take any loan and therefore, the provisions of section 271D are not applicable in both the years under dispute. The amount involved was booking advances and not loan. The ld AR for the assessee submits that for non-initiation of penalty proceedings, the revision proceedings under section 263 cannot be made as held by Hon'ble Gujarat High Court in case of CIT Vs Suresh G. Shah [289 ITR 110 (Guj)] and CIT Vs Parmanand M. Patel [287 ITR 3 (Guj)]. Thus, no revision order under section 263 can be passed.

7. On fourth issue identified by ld PCIT, which relates to validity of discloser under IDS-2016, the ld AR for the assessee submits that when the IDS declaration was made, the notice under section 153C was not issued to the assessee and therefore, the proceedings were not pending. Further it is submitted that IDS-2016, declaration was accepted by the PCIT and therefore, the AO, or supervisory Joint Commissioner of Income tax (JCIT) could not reject IDS declaration. The IDS declaration was not made by misrepresenting facts and therefore it is perfectly valid. The certificate issued by PCIT was not revoked and tax paid under IDS was not refunded to

the assessee. Even otherwise, assessee declared more income and paid more tax than payable as per normal provisions of the Act. Even the PCIT was not sure about validity of the declaration when he observed at Para No 6 of the show cause notice that the validity of declaration made under IDS- 2016 was doubtful.

8. The ld AR for the assessee submits that assessee made declaration on estimated basis of Rs. 5.00 Crore for AY 2016-17 by offering more than the reasonable income for the entire project, although the income as per seized material was computed at Rs. 2,27,88,724/- only. The ld AR for the assessee furnished the working , which is extracted below;

Sr.No.	Particulars	AY 2016-17
A	**Income as per Seized Material** **Net profit**	**Rs.2,27,86,724/-**
B	Asset as per seized material Cash Sundry debtors	 Rs.1,48,12,078/- Rs. 312,55,210/- Total –**Rs. 4,60,67,288/-**
C	Net profit as per Square feet Industrial plotting 139832 Sq Yrds X Rs. 350/- per Sq mtr	 **Rs.4,89,41,200/-**
Higher of A,B & C		**Rs.4,89,41,200/-**
Income declared under IDS-2016		**Rs.5,00,00,000/-**

9. It was submitted that the amount of Rs. 5.00 Crore, includes the declaration for assessment years 2016-17. In the show cause notice issued by the same assessing officer on 04.12.2018, he raised specific issue that assessee collected amount in cash against booking receipts in the said notice, the

assessee filed satisfactory reply stating that the said transactions were duly covered in the income offered under IDS for the year ended 31.03.2016 in the form of "Receipt" and "expenses" as at the year end. Accordingly, assessing officer has duly considered the issue. The ld AR for the assessee submits that the jurisdictional Gujarat High court in various decision held that only net profit of suppressed receipts is required to be estimated as income. The income declared by the assessee is most reasonable in the construction/ housing project, particularly when in course of search and survey operation, no unexplained investment or unexplained expenditure were detected. The ld AR made reliance on decision of Gujarat High Court in case of Abhishek Corporation [I.T. Reference No 15 of 2003] pronounced on 07.11.2014**,** in which other decision of the Gujarat High Court were cited.

10. It was argued that the assessee had paid more tax than the normal rate under IDS, so even in normal assessment, the income assessed would have been less than the declaration made under IDS. Thus, assessing officer has duly considered the issue and took reasonable, plausible and legally sustainable view. Therefore, the assessment on this issue is neither erroneous nor prejudicial to the interest of the Revenue.

11. The ld.AR submits that when the IDS declaration was made, notice under section 153C of the Act was not issued for both assessment years and

therefore, proceedings were not pending. The IDS declaration was accepted by ld. PCIT and therefore, the AO or supervision ld. JCIT could not reject the IDS declaration. The IDS declaration was not made by misrepresentation of fact and therefore, it was perfectly invalid. The certificate issued by the ld. PCIT was not revoked and the tax paid under IDS was not refunded. Hence, IDS cannot be questioned at this stage, which is otherwise valid. The assessee declared more income in IDS and paid more tax than the tax payable under normal provision of the Act.

12. The ld AR for the assessee submits that the transaction reflected in impounded material were duly accounted on day to day basis by preparing books of accounts and the P&L account and balance sheet and all ledgers were filed before the assessing officer. It is submitted that the entire impounded material stands explained and no adverse cognizance can be taken in respect thereof since an income of Rs. 5.00 Crore stands offered under IDS which is much above the income reflected in the impounded material.

13. The ld.AR for the assessee submits that assessment in AY 2016-17 case is completed under section 143(3) r.w.s 153C of the Act after taking prior approval of ld. JCIT and no revision of such order is permissible as has been

held by various Tribunals and Higher Courts. To support his submission, the ld.AR relied upon the various decision;

- Rasiklal M. Dhariwal (HUF) Vs CIT in ITA No.1102 to 1104/ PUN/2014 dated 28.12.2016,
- B. U. Bhandari Schemes Vs PCIT in ITA No.637 to 641/PUN/2018 dated 14.11.2018,
- Vishwa Infraways Pvt. Ltd., Vs CIT in ITA No.596, 597 and 599/PUN/ 2015 dated 28.11.2018 and,
- CIT Vs Dr. Ashok Kumar in ITA No. 192 of 2000 dated 06.08.2012 (Allahabad High Court).

14. So far as assessment for AY 2017-18 is concerned, the assessment was completed under section 143(3), the ld.AR for the assessee further submits that the AO during the course of assessment made detailed enquiry, the assessee given detailed explanation in writing, all the questions and answers furnished by the assessee are part on record of the case and claims of assessee are allowed by AO being satisfied with the explanation of assessee. Such order of the AO cannot be held to be erroneous, simply because in his order, the AO did not make elaborate discussion. The ld. PCIT himself even after initiating the proceedings have not given any finding as to how the claims are not allowable. The ld. PCIT has not given any finding as to what other enquiry was required to be made by the AO. If the assessment order is revised in such an approach, there would no end for such enquiries. The ld.AR of the assessee further submitted that assessee made declaration under

IDS which is more than the income that can be accessed on the basis of impounded / seized materials. The assessee was eligible to make declaration under IDS as declaration was filed before issue of notice under section 153C. By declaring the income under IDS, the assessee in fact paid more tax than the tax payable as per normal provision. The assessing officer is not competent to disregard the IDS declaration which was accepted by the PCIT. The declaration under IDS was neither revoked nor the tax paid by the assessee, was refunded to it. It is well settled that the whole suppressed gross receipts cannot be taxed; only profit element embedded in such receipts can be estimated. Assessee's declaration at reasonable basis which was accepted by the assessing officer considering the nature of business of the assessee. The ld AR for the assessee states that as per CBDT Circular No 25 of 2016, the assessee is not required to give information regarding the source of income, assessee disclosed the source of income at the time of assessment by incorporation all the entries of impounded / seized materials in the books of accounts. The assessee also filed the calculation in support of declaration filed under IDS at the time of filing the declaration as well as in the course of assessment proceeding. The survey and search action is ultimate weapon with the department to unearth the black money. In this case, the survey actions were conducted in case of firms and search actions were conducted

in the case of the partners of the firms. Even after these actions, the discrete inquiry was made by the assessing officer and the assessments were made in the group cases on the basis of incriminating materials impounded / seized in course of search / survey action. In the course of these actions, no unexplained valuables were found. Accordingly, assessments were framed considering all these facts and circumstances of the case and therefore, they are not liable for revision. Accordingly, it is a case of sufficient and proper inquiry made by the assessing officer. The ld PCIT did not make any inquiry although in his opinion, the inquiry was insufficient. Accordingly, the PCIT arrived at subjective satisfaction. Needless to say the satisfaction must be one which is objectively justifiable and cannot be the mere ipse dixit of the PCIT. The assessee has placed following documents on record.

- Notice under section 263 dated 05.03.2021 for both the impugned AYs,
- Notice issued under section 153C dated 03.12.2018,
- Return of income with computation of total income for both AYs,
- Notice issued under section 142(1) dated 03.12.2018 with its Annexure,
- Reply filed in response to notice under section 142(1) for AY 2016-17 & 2017-18, along with annexure,
- Exhibit – Showing calculations under IDS Scheme,
- Form- 1& 4 of IDS-2016
- Copy of Form – 4 IDS, 2016 for AY 2016-17 and 2017-18,

15. In support of all his all submissions, the ld.AR of the assessee relied upon the following decisions:

- CIT Vs Max India Ltd. [295 ITR 0282 (SC)],
- Malabar Industries Co. Ltd. Vs CIT [243 ITR 0083] (SC)'
- CIT Vs M. Mittai Stainless Steel Pvt Ltd [263 ITR 0255] (SC),
- CIT Vs Amit Corporation [81 CCH 0069] (Guj HC),
- CIT Vs Arvind Jewellers [259 ITR 05021 (Guj HC),
- Bilag Industries Pvt. Ltd. Vs CIT(A) [SCA No. 24128 of 2005] (Guj HC),
- CIT Vs R K Construction Co. [313 ITR 0065] (Guj HC),
- CIT vs. Nirma Chemicals Works. Pvt. Ltd. [309 STR 0067] (Guj HC),
- Rayon Silk Mills vs. CIT(A) [221 ITR 0155] (Guj HC),
- PCIT vs. Shreeji Prints Pvt. Ltd. [Tax Appeal No. 828 of 2019] (Guj),,
- CIT Vs Nirav Modi [390 ITR 0292 (Bom. HC)],

16. The ld. CIT-DR for the revenue, on the other hand supported the order of ld. PCIT. The ld. CIT-DR submits that in the show cause notice under section 263 of the Act, the ld. PCIT has elaborately discussed the non-examination of various issues. In show cause notice, the ld. PCIT clearly held that in spite of having relevant evidence on record and calling for explanation in detailed questionnaire, the AO has not made any further effort to verify the same or carried out necessary enquiries thereof and accepted the submission on the issues identified by ld. PCIT. The AO accepted the explanation of assessee without elaborately discussing the issue. Failure on the part of AO to carry out proper verification on the various issues, which were taken for

enquiries at the initial stage by AO himself, shown lack of application of mind or proper appreciation of facts. It was the duty of the AO to ascertain all the facts on the basis of material available on record. The AO in not carrying out further verification or enquiries to assess total income of the assessee as evident from the incriminating material and to verify if it has any co-relation with the disclosure made in the IDS as claimed by assessee. Failure on the part of AO to carry out such enquiries as discussed shown that assessment order passed by AO is erroneous insofar as prejudicial to the interest of the Revenue. The ld. CIT-DR for the revenue submits that the twin condition as enunciated in section 263 are fulfilled in the present case. The ld. CIT-DR for the revenue prayed for upholding the order of ld. PCIT and to dismiss the appeals of the assessee.

17. In rejoinder submission, the ld.AR of the assessee submits that on careful perusal of show cause notice under section 263 of the Act issued by the ld. PCIT, it is clearly discernible that the ld. PCIT identified issues only on the basis notice issued by AO under section 142(1) of the Act. No new issues are identified by ld. PCIT. The ld. PCIT has not made any enquiry of his own before holding that assessment order is erroneous or erroneous and insofar as prejudicial to the interest of the Revenue on any of the issue. The ld. PCIT has not specified as to what kind of information or further details or

questionnaire or effort was required to be made by AO. The AO before accepting the submission of assessee obtained prior approval of range head. The approval granted by range head is in accordance with law. No deficiency is pointed out by ld. PCIT in the approval granted by range head. In absence of any finding as to how the order on particular issue is erroneous, the revision order under section 263 of the Act is not allowable. The ld.AR of the assessee reiterated that if the validity of approval granted by Range head is not disputed by ld. PCIT, then it would not be justified in interfering in the approval granted by Range head for framing assessment order; therefore, there is no reason for setting aside the assessment order for the subject assessment years.

18. We have considered rival submission of the parties and have gone through the order of authorities below. We have also perused the documents filed by the assessee on record. Further we have deliberated on the various case laws filed on behalf of the assessee.

19. Before adverting to the facts of the present appeals, we may refer certain leading case laws on the scope of revisionary jurisdiction of ld. PCIT. The Supreme Court in the case of Malabar Industrial Co. Ltd. v. CIT[2000] 243 ITR 832 held that a bare reading of section 263 of the Income-tax Act, 1961, makes it clear that the prerequisite for the exercise of the jurisdiction by the

Commissioner *suo-motu* under it, is that the order of the Income-tax Officer is erroneous insofar as it is prejudicial to the interests of the revenue. The Commissioner has to be satisfied of twin conditions, namely, (*i*) the order of the Assessing Officer sought to be revised is erroneous; and (*ii*) it is prejudicial to the interests of the revenue. If one of them is absent - if the order of the Income-tax Officer is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue - recourse cannot be had to section 263(1) of the Act. * The provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer; it is only when an order is erroneous, that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase 'prejudicial to the interests of the revenue' is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the revenue. If due to an erroneous order of the Income-tax Officer, the revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the revenue. The phrase 'prejudicial to the interests of the revenue' has to be read

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

20. The Hon'ble Bombay High Court in CIT Vs Gabriel India Ltd (233 ITR 108 Bom /71 Taxman 585) held that the power of *suo-motu* revision under sub-section (1) of section 263 is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision under this sub-section, viz., (i) the order is erroneous; and (ii) by virtue of the order being erroneous prejudice has been caused to the interests of the revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous. One finds that the expressions 'erroneous', 'erroneous assessment' and 'erroneous judgment' have been defined in Black's Law Dictionary. According to the definition, 'erroneous' means

'involving error; deviating from the law'. 'Erroneous assessment' refers to an assessment that deviates from the law and is, therefore, invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, 'erroneous judgment' means 'one rendered according to course and practice of Court, but contrary to law, upon mistaken view of law, or upon erroneous application of legal principles. The Hon'ble Court further held that from the above said definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an assessing 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 visualize a case of substitution of the judgment of the Commissioner for that of the ITO, who passed the order, unless the decision is held to be erroneous. Cases may be visualized where the ITO 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 ITO. 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 ITO has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. It may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interests of the revenue. But that by itself will not be enough to vest the Commissioner with the power of *suo-motu* revision because the first requirement, viz., that the order is erroneous, is absent. Similarly, if an order is erroneous but not prejudicial to the interests of the revenue, then also the power of *suo-motu* revision cannot be exercised. Any and every erroneous order cannot be the subject-matter of revision because the second requirement also must be fulfilled. 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. Therefore, in order to exercise power under section 263(1) there must be material before the Commissioner to consider that the order

passed by the ITO was erroneous insofar as it is prejudicial to the interests of the revenue and that it must be an order which is not in accordance with the law or which has been passed by the ITO without making any enquiry in undue haste. An order can be said to be prejudicial to the interests of the revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realized or cannot be realized. There must be material available on the record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision. Exercise of power of *suo-motu* revision under such circumstances will amount to arbitrary exercise of power. It is well-settled that when exercise of statutory power is dependent upon the existence of certain objective facts, the authority before exercising such power must have materials on record to satisfy it in that regard. If the action of the authority is challenged before the Court, it would be open to the Courts to examine whether the relevant objectives were available from the records called for and examined by such authority. The decision of the ITO could not be held to be 'erroneous' simply because in his order he did not make an elaborate discussion in that regard. Moreover, the Commissioner himself, even after initiating proceedings for revision and hearing the assessee, could not say that the allowance of the

claim of the assessee was erroneous, he simply asked the ITO to re-examine the matter, which was not permissible.

21. The Hon'ble Jurisdictional High Court in CIT Vs Arvind Jewellers (259 ITR 502), while relying on the decision of Hon'ble Apex Court has taken a view that the provisions of section 263 cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous, that section will be attracted and incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. The Supreme Court has also made it clear that the phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer and that every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue. It was further emphatically stated that when an ITO adopts one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law.

22. The Hon'ble Jurisdictional High Court in Aryan Arcade Ltd., vs PCIT (2019) 412 ITR 277 (Gujarat) held that merely because Commissioner held a different belief that would not permit him to take the order in revision, it if further held that when Assessing Officer made full enquiry, he made up his mind, the notice of revision is not valid. (*emphasis added by us*). Further, Hon'ble Madras High Court in CIT Vs Mepco Industries Ltd., (2007) 207 CTR 462 (Madras) held that when two views are possible on an issue and it is not the case of the Commissioner that the view taken by Assessing Officer is not permissible in law, Commissioner cannot invoke his jurisdiction under section 263 of the Act. (*emphasis added by us)*

23. The Hon'ble Delhi High Court in CIT Vs Vikas Polymers (341 ITR 537 Delhi) held that it is a pre-requisite that the Commissioner must give reasons to justify the exercise of *suo-motu* revisional powers by him to reopen a concluded assessment. A bare reiteration by him that the order of the Income-tax Officer is erroneous insofar as it is prejudicial to the interest of the revenue will not suffice. The exercise of the power being quasi-judicial in nature, the reasons must be such as to show that the enhancement or modification of the assessment or cancellation of the assessment or directions issued for a fresh assessment were called for, and must irresistibly lead to the conclusion that the order of the Income-tax Officer was not only

erroneous but was prejudicial to the interest of the revenue. Thus, while the Income-tax Officer is not called upon to write an elaborate judgment giving detailed reasons in respect of each and every disallowance, deduction, etc., it is incumbent upon the Commissioner not to exercise his *suo-motu* revisional powers unless supported by adequate reasons for doing so*. It was further held that applying the aforesaid law to the facts of the present case, we are of the view that the exercise of revisional power by the Commissioner in the instant case was uncalled for and unjustified. It was more in the nature of roving and fishing enquiry. The Commissioner has proceeded on the assumption that no such information, as was furnished to him, was furnished at the time of assessment. The Commissioner has mentioned that the Income-tax Officer has not examined the cash credits of the partners or deposits of Chit Fund. Assuming this to be so (though there does not appear to be any justification for the aforesaid observation), this may make the order erroneous, but how it is prejudicial to the interest of the revenue has not been stated by the Commissioner as he did not deal with the explanation given by the assessee in the course of section 263 proceedings. (**underline by us).*

24. Now adverting to the facts of the present case. We find the there is no dispute that the AO while passing the assessment order for both the AYs

accepted the claims of the assessee in non- speaking order. It is not the case of ld PCIT that the AO cannot accept the return of income in non-speaking order. We have seen that the AO while passing the assessment order recorded that *"..... Authorized representative of the assessee, attended from time to time and filed details called for. The case was discussed with them. The details filed by the assessee have been verified and placed on record. The authorized representative of the assessee vide various order sheet entries have furnished the relevant details and information called for. 4. After affording ample and adequate opportunities of being heard to the assessee, assessment proceedings have been completed on the basis of the submissions and details collected and in consequence upon the conclusion of proceeding and hearing of evidences, assessment is made by this order".* A perusal of show cause notice under section 263 dated 05.03.2021, clearly demonstrate that the ld PCIT identified all the issues which were the subject matter of the notice under section 142(1) and the questionnaire attached thereto, were issued by the assessing officer, except the issue of initiation of penalty 271D. The ld PCIT in his show cause notice (SCN) under section 263 has accepted that the AO made detailed questionnaire dated 04.12.2018. Thus, the ld PCIT identified all the issues on perusal record and details /evidences available on record. Further, the PCIT noted that AO has not

made further inquiry. Thus, the ld. PCIT has not made a case that there was "no enquiry" or "lack of inquiry" rather recorded that the AO called detailed inquiry. We find that the ld. PCIT has not specified that what kind of further inquiry was required, when the income disclosed in IDS was duly accepted by higher authority. And the acceptance of IDS was never questioned by Board or other superior authority then PCIT.

25. We find that in SCN the ld PCIT failed to mentioned, if any misrepresentation was made while making declaration under IDS-2016. In the show cause notice the ld PCIT recorded that the assessment proceeding was initiated by AO at the fag end of the limitation period for passing the assessment. We find the ld PCIT, himself initiated revision action at the fag end of limitation period for passing the order under section 263. Further, the ld. PCIT failed to give any specific finding on his various observations in the SCN, while revising the assessment orders. After going through the entire material, we find that the AO had taken a conscious decision on the basis or explanation furnished by assessee. Furthermore, the assessment order for AY 2016-17 was duly approved by the ld JCIT. There is no finding of ld PCIT that the approval granted by the JCIT is not proper or non-application of proper procedure.

26. We find that in the case in hand the AO has made required inquiry and came to a plausible, reasonable and legally sustainable conclusion in allowing the claims to the assessee. So far as non-initiation of penalty under section 271D/ 271E is concerned, We find that Hon'ble jurisdictional High Court in case of CIT Vs Suresh G. Shah [289 ITR 110 (Guj)] and CIT Vs Parmanand M. Patel [287 ITR 3 (Guj)] it was held that CIT cannot exercise his jurisdiction under section 263 for the purpose of initiation of penalty proceedings. Other also we find that the assessee has specifically in its reply to the SCN to the ld PCIT has stated that the cash was received only against the booking and no loan or such transaction was undertaken by them. The ld PCIT failed to specify the transaction on which initiation of penalty either under section 271D or 271E was warranted. And on the issues of validity of discloser in IDS, the ld PCIT has not specified that while making declaration the assessee made any misrepresentation of any facts. Once the IDS in all cases were accepted by ld. PCIT, the AO or the Range head no authority to relook or power to revoke or to examine its validity. We further find that the ld PCIT while directing the AO has not himself revoked the IDS nor directed to refund the payment of tax to the assessee. Further, we find that in the IDS the assessee has paid more tax to the revenue then the rate of normal tax, so there is no loss of revenue. At the cost of repetition, we note that the AO

while passing the assessment order in both impugned years have made inquiry and took reasonable, plausible and legally sustainable view. The Hon'ble Delhi High Court in CIT Vs Kelvinator of India Ltd (supra) held that if the AO has adopted one of the course permissible in law, which resulted in loss of revenue or where two view is possible and the AO has taken one view with which the CIT does not agree, it cannot be treated as erroneous order prejudicial to the interest of revenue unless view taken by the AO is not sustainable in law. At the cost of repetition, we may note that the ld PCIT neither in his show cause notice nor in ultimate / final order has held that the order passed by the AO is unsustainable in law.

27. In view of the aforesaid discussions, we are of the considered view that the ld PCIT was not justified in subjecting the assessment order for both assessment years to revision proceedings by taking view that the AO has not made further inquiry, therefore we quash the revision order (s) in both the assessment years.

28. In the result the ground No. 1& 3 of appeal raised by the assessee in both assessment years are allowed. We find that no submissions were made by the ld AR for the assessee on ground No.2, hence, the same is treated as not pressed and dismissed.

29. In the result the appeal for AY 2016-17 & 2017-18 is partly allowed. No order as to cost.

Order announced on 25 October 2021 by placing the result on the notice board.

Sd/-	**Sd/-**
(Dr ARJUN LAL SAINI)	**(PAWAN SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Surat, Dated: 25/10/2021 / *SGR**

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

/ / TRUE COPY / / Sr. Pvt. Secretary, ITAT, Surat