

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री संदीप गोसाईं, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 35 to 37/JP/2021
Assessment Years: 2010-11 to 2012-13

Palsana Gram Sewa Sahkari Samiti Limited, Village- palsana Main Market, Palsana, Dist.- Sikar- 332402 (Raj)	बनाम Vs.	Pr.CIT-2, Jaipur.
PAN No.: AABAP 8390 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shrawan Kr. Gupta (Adv)
राजस्व की ओर से / Revenue by : Shri B.K. Gupta (Pr.CIT-DR)

सुनवाई की तारीख / Date of Hearing : 04/08/2021
उदघोषणा की तारीख / Date of Pronouncement : 02/11/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

These are the appeals filed by the assessee against the separate order of the Id. Pr.CIT-2, Jaipur all dated 31/03/2021 passed U/s 263 of the Income Tax Act, 1961 (in short, the Act) for the A.Y. 2010-11 to 2012-13.

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.
3. All these appeals have common issues, therefore, all are clubbed and heard together and for the sake of convenience, a common order is being passed.

4. For deciding the appeals, we take ITA No. 35/JP/2021 for the A.Y. 2010-11 as a lead case. In this appeal, the assessee has raised following grounds of appeal:

- “1. That the impugned order u/s 263 dated 31/03/2021 as well as the notice u/s 263 are bad in law and on facts of the case for want of jurisdiction and for various other reasons and hence the same may kindly be quashed.
2. That the Id. Pr. CIT-2 Jaipur is grossly erred in law as well as on the facts of the case in invoking S. u/s 263 of the Act. The same is being purely contrary to the provisions of law, therefore the impugned order u/s 263 as well as notice u/s 263 of the Act may kindly be quashed.
3. That the Id. Pr. CIT Udaipur is grossly erred in law as well as on the facts of the case in taking the action u/s 263 of the Act on the allegations that:
 - (a). The assessee Co-operative Society had received interest of Rs.14,05,465/- from FDRs with Co-operative banks which are not Co-operative Society, therefore the deduction of Rs.1,08,464/- claimed u/s 80P(2)(d) is not allowable.

Which are contrary to the facts and such a finding being perverse, the impugned action is bad in law without jurisdiction and being void ab initio, the impugned order u/s 263 may kindly be quashed.
4. The appellant prays your honors indulgence to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing.”

5. The brief facts of the case are that the assessee is a Co-operative society registered under the Rajasthan Co-operative society Act, 1965 and derived income mainly from trading of fertilizers, seeds, pesticides, Pashu aahhar etc. to its members and providing loan facilities to its members. The Assessing Officer issued notice u/s 148 of the Act on 30.03.2017 on the basis of information from DDIT (System) on the reasons that “on perusal of

the ATS data, it is noticed that the assessee has deposited cash of Rs.50,55,800/- in the Bank account maintained in PNB, no return of income was filed by the assessee for the year under consideration. Therefore the A.O. reason believe that amount deposited in the savings Bank account to the tune of Rs.50,55,800/- chargeable to tax has escaped assessment u/s 147/148 of the Act. In response to notice u/s 148, the assessee has filed its return of income on 28.04.2017 declaring income of Rs.1,08,464/- after deduction u/s 80P(2)(a)(i) and 80P(2)(a)(iv) of the Act at nil income. Thereafter, the Assessing Officer had issued notice u/s 143(2) and also 142(1) dated 06.06.2017 raising queries in his query letters, in response thereto the assessee has filed replies and details. On perusal of the assessment order and paper book it is found that the Assessing Officer has considered, examined and verified the replies and details filed by the assessee and also examined books of accounts and completed assessment u/s 148 rws 143(3) of the Act on dt.30.06.2017. The Id. A/R stated that during the course of assessment proceedings the assessee had filed various details as required by the Assessing Officer. As noted by the assessing officer at page 1 of the assessment order that in response to the notices the assessee has filed details/information which were examined and the case discussed time to time. The Assessing Officer has also stated that assessee is a primary agricultural credit society and is entitled for deduction

u/s 80P(2)(a)(i) for carrying on business of banking of providing credit facilities to its members and 80P(2)(a)(iv) for sale of fertilizers, seeds, pesticides, Pashu aahhar etc to its members vide page 2 of the assessment order. The Assessing Officer has also stated that after examination of books of account and vouchers on test check basis claim for deduction as stated above is found correct, accordingly deduction claimed by the assessee is allowed vide page 2 of the assessment order. Further the Assessing Officer has also asked about expenditures debited in the P&L account in response to the assessee also filed the reply. The Assessing Officer has disallowed the expenditure of Rs.2,86,918/- on account of provisions and audit fees and computed the income of the assessee at Rs.3,95,382/- as against Rs.1,08,464/- and after deduction u/s 80P(2)(a)(i) and 80P(2)(a)(iv) at nil and completed the assessment at Rs. Nil vide assessment order u/s 148 rws 143(3) dt. 30.06.2017.

6. Thereafter the Id. Pr. CIT has issued the notice u/s 263 on dt. 25.03.2021 by alleging that the order passed by the AO is found to be erroneous as it is prejudicial to the interest of the revenue on the issue vide notice dt. 25.03.2021(PB22-23). In this notice the Id. Pr. CIT has alleged that:

Deduction of interest income of Rs.1,08,464/- has been claimed u/s 80P(2)(d). Besides, interest of Rs.14,05,446/- on FDR received from Sikar Central Co-operative Bank, PNB, RGB and SBI has been claimed and the same was allowed by the AO, which is not allowable u/s 80P(2)(d) of the

IT act. Hence the order dt. 30.06.2017 may not be treated as erroneous and prejudicial to the interest of revenue regarding the non-application of the law on the grant of deduction u/s 80P(2)(d) as the assessment order passed mechanically without application of mind for the reason mentioned in the notice.

Hence the Id. Pr. CIT has issued notice u/s 263 to the assessee on dt. 25.03.2021 for the date of 26.03.2021.

7. In response thereto the assessee has prepared the detailed reply explanation with details explaining all the facts, details on 26.03.2021 by stating all the details/information vide PB24-33 also summarily reproduced at page 2-3 of the Pr. CIT order. However, on the review of the assessment order, the Id Pr.CIT concluded during the course of proceedings U/s 263 of the Act' that the AO passed assessment order without examining the issue of deduction u/s 80P(2)(d) of the Act. Thus, the order passed by the A.O. was found to be erroneous in so far as it is prejudicial to the interests of the revenue.

8. Being aggrieved by the order of the Id Pr.CIT the assessee is in further appeal before the ITAT by taking the grounds mentioned above.

9. All these three grounds of appeal of the assessee are interrelated and interconnected and against challenging the order of Id. Pr. CIT passed U/s 263 of the Act. In this regard, the Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before

the Id. Pr.CIT and also relied upon the written submissions submitted before the Pr.CIT as well as before us and the contents of the same are reproduced below:

“1. Wrong order and action u/s 263: 1.1 At the very outset it is submitted that in the order u/s 263 in the very first Para the Id. Pr. CIT has stated that the case for A.Y. 2010-11 was selected for complete scrutiny through CASS the assessment u/s 143(3) was completed on 30.06.2017 by the ITO Ward-4, Sikar at Rs. Nil. This facts and observation of the Id. Pr. CIT are itself totally incorrect and wrong. Because the case of the assessee was neither selected for complete scrutiny through CASS the assessment nor completed u/s 143(3). The case of the assessee was reopened u/s 147/148 for the limited purpose on account of cash deposits in the bank and the assessment was completed u/s 143(3) rws 147. Thus when the very base of facts in the order for initiation of proceedings u/s 263 was wrong or incorrect or without application of mind, the action u/s 263 and consequent order is illegal, invalid void abinitio and liable to be quashed on this ground alone.

1.2. Further in the Id. PR. CIT in para-4 page 2 has stated that “a show cause notice u/s 263 was issued to the assessee vide this office letter No. ITBA/REV/F/REV1/2020-21/1031524300(1)DT.16.03.2021” It is absolutely incorrect and wrong. Because the show cause notice u/s 263 was issued to the assessee vide letter No. ITBA/REV/F/REV1/2020-21/10331748388(1) dt. 25.03.2021. Copy of notice is enclosed (PB22-23), which was received by email on 25.03.2021 at 1.52PM vide letter of the assessee (PB24) and assessee has objected the same. The hearing was kept just next day i.e on 26.03.2021. If the Id. Pr. CIT himself not applied his mind while passing the order u/s 263, then how he can blame or say that the Id. AO has not applied his mind while passing the assessment order. Hence also the action u/s 263 and consequent order is illegal, invalid void ab-initio and liable to be quashed on this ground alone.

2.1 Action of the Pr. CIT is invalid and without jurisdiction: It is submitted the action and direction of the Id. Pr. CIT is without jurisdiction and invalid on the facts and legal position because the Id. Pr. CIT has right or jurisdiction of revision u/s 263 only when the order of the AO (i) is erroneous in so far as (ii) it is prejudicial to the interests of the revenue. S. 263 provides as under

“263. (1) The Pr. 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 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.]*

2.2 On perusal of the order of the Id. AO as well as the order of the Id. Pr. CIT itself it is very clearly proved that the order of the AO has neither erroneous nor prejudicial to the interests of the revenue. Because as we would like to draw kind attention of the honble bench that in the above matter the case of the assessee has been reopened u/s 148 of the Act on the reason that” on perusal of the ATS data, it is noticed that the assessee has deposited cash of Rs.50,55,800/- in the Bank account maintained in PNB no return of income was filled by the assessee for the year. Therefore I have reason believe that amount deposited in the saving Bank account to the tune of Rs.50,55,800/- chargeable to tax has escaped assessment u/s 147/148.”. Vide copy of reasons recorded (PB1).

2.3 Thereafter the Id. AO has issued the detailed query letter to the assessee u/s 142(1) and asked to the assessee to produce the (i) detailed note on all the source of income(ii) details all the bank accounts(iii) details of cash deposits in the bank account(iv)cash book and bank Book (v) relevant books of accounts for verification. In response thereto the assessee has furnished all the details admittedly vide replies to AO (PB3-11) with the details. Also vide page 1-2 of the assessment order wherein he has stated that “ A/R attended the proceedings from time to time and submitted the details/information, the details furnished

were examined and case was discussed time to time, after examination of books of accounts and vouchers on test check basis claim for deduction as stated above is found correct. Accordingly, deduction claimed by the assessee is allowed. Thus during the course of assessment proceedings the AO verified the cash deposits and claim u/s 80P, bank book and other books of accounts on test check basis. And the AO did examine all these details, record and discussion with the assessee, after that the Id. AO had taken a possible view being a quasi judicial authority. That is why the Id. AO has noted same in the assessment order that at page 1-2. Thereafter he completed assessment at Rs. Nil vide assessment order u/s 147 rws143(3) dt. 30.06.2017 by taking a reasonable and possible view.

Here we want to say that if the Id. AO has not examined the issues and claim of deduction u/s 80P he could have not made the assessment. When the assessee has filed reply on deduction u/s 80P (PB8-11) with all the bank details and income and verified the same.

2.4 On these preposition kindly refer the recent decision of the Honble ITAT Jodhpur bench in the case of

Lodha Offset Ltd. vs. Pr. CIT ITA No. 155/Jodh/2018 19th March, 2020

Prateek Metals Pvt. Ltd. vs. Pr. CIT ITA No. 156/Jodh/2018 19th March, 2020

Nokha Agro Sevices vs. Pr. CIT ITA No. 171/Jodh/2018 20th March, 2020

2.5 Further the Id. Pr. CIT has not gone in to the merit of the assessee's case or argument or contentions, if so than how it can be said or found out whether any prejudice in fact has been caused to revenue or not by lack of inquiry on the part of the AO. If no loss of revenue is caused and the result remains the same even after conduct the inquiry. It is very settled principal and legal position by various courts or judgments that it will be wrong to say that merely because proper enquiry was not conduct, the assessment would become prejudicial also. It was incumbent upon the PR. CIT to have shown as to how the order was prejudicial to the interest of the Revenue. In the present case the appellant has furnished a detailed reply (PB22-33)with the details to the show cause notice by making the reference to the facts of the case and legal position. Despite that the Pr. CIT did not proved or bring any material or circumstantial evidence on record that the claims of the assessee on these issues are not genuine, bogus, not verifiable and not correct.

2.6 The order of the Id. Pr. CIT itself contradictory on its own version because in para 6 page 3 he has stated that Assessee Co-operative society had received interest of Rs.14,05,464/- from FDR's with Co-operative Banks which are not Co-

operative Society, therefore deduction of Rs.1,08,464/- was wrongly allowed u/s 80P(2)(d). During the course of proceedings u/s 263, society had claimed that interest earned by it was from Sikar kendriya Sahakari Bank Ltd, which is registered as a Co-operative Society certificate is enclosed, but assessee has not submitted any details of interest earned from it or any other bank. Therefore the facts of the Society could not be verified in absence of proper documents which have not been filed during the assessment proceedings or during the proceedings u/s 263. Here we want to say that one side the Pr. CIT has admitted that the Assessee Co-operative society had received interest of Rs.14,05,464/- from FDR's from Sikar kendriya Sahakari Bank Ltd, which is registered as a Co-operative Society certificate is enclosed. Just after he has stated that no details of interest is filed. Also vide our reply to Pr. CIT(PB26). Also vide PB 15 & 17 of Income and expenditure A/c.

2.7 Thus he has not looked merit of the case in their true perspective and sense and not applied his mind on the same despite available before him. He was only of the view that the AO has not made proper & detailed i.e deep inquiry on the issue. He has only stated that the order of the AO is erroneous and prejudicial to the interest of the Revenue. Hence the conclusion of the Pr. CIT that the order is prejudicial to the interest of the Revenue is not a matter of subjective satisfaction of the Pr. CIT. He, therefore ought to have found out this on the basis of Objective material after assessing the contention raised by the assessee in its reply to the show cause notice. He, however failed to do so and reached a conclusion that the order was prejudicial with a view that the present AO shall undertake that exercise after the assessment has been setaside for his consideration. Such a view or action is not well founded in the law or by various Hon'ble courts. Kindly refer direct decisions in case of Smt. Leela Choudhary v/s PR. CIT 289 ITR 226(Gau.) also refer, Saw Pipes Ltd v/s Add. PR. CIT 94 TTJ 1036(Del) Also refer Malabar Industrial Co. Ltd. v/s PR. CIT 159 CTR(1)(SC), PR. CIT v/s Rayn Silk Mills 221 ITR 155(Guj.)

Same view has been expressed in the case of Kamal Kumar Gupta v/s Pr. CIT 142 TTJ 9(Jp) wherein it has been held that "assessee was asked by the AO to file the details of trade creditors which are shown in the name of agriculturalist. In the reply, assessee filed written submission enclosing the list of creditors. Thus, the AO made the inquiry and it is not a case of lack of inquiry but can be case of insufficient enquiry. Pr. CIT was not justified in passing the order u/s 263." In the present case also is the same position. And also followed in the case of Sh. Gyan Chand Jain v/s Pr. CIT 50 TW 109(Jp).

3. Case reopened u/s 148 for limited issue: Further when the very basis of reopening of the case under section 148 was on account of cash deposits in the bank, then how it can be said that the AO has failed to make the inquiry, where the scope of inquiry is limited only to the extent of that issue and in the action u/s 148 the issue of deduction u/s 80P was not there. And till date the position is same there is no change. It was not a regular assessment it was a reassessment for the limited purpose or issue and on perusal of the entire record or detailed it cannot be said that the ld. AO has not made inquiries.

As admittedly the case of the assessee was reopened u/s 148 on the reason that” on perusal of the ATS data, it is noticed that the assessee has deposited cash of Rs.50,55,800/- in the Bank account maintained in PNB no return of income was filled by the assessee for the year. Therefore I have reason believe that amount deposited in the saving Bank account to the tune of Rs.50,55,800/- chargeable to tax has escaped assessment u/s 147/148.”. Vide copy of reasons recorded (PB1). If so then how the ld. Pr. CIT can assume the jurisdiction on the issue other than reasons recorded u/s 148 in this preposition we would like to draw your kind attention to the latest decision of this Honble Bench in the In the case of Mahendra Singh Dhankhar HUF vs. ACIT ITA No. 265/JP/2020 Jun 30, 2021 (2021) 62 CCH 0271 JaipurTrib where It has been held that

“Revision—Ordering revision where case is selected for limited scrutiny—Assessee firm is a real estate firm engaged in colonizing and developing residential projects—Case of assessee was selected for limited scrutiny through CASS on account of mismatch of AIR and CIB data, and mismatch in sale turnover reported in audit report and ITR—An addition for wrong calculation of LTCG was made by A.O. which was not challenged by assessee—Subsequently, on basis of certain audit objections, PCIT issued notice u/s 263—Assessee submitted that it is a case outside jurisdiction of Commissioner of Income tax to raise objections outside scope of limited scrutiny—PCIT ordered for 'Denovo' assessment without considering reply filed by assessee—Held, there is no dispute that scope of enquiry in case of limited scrutiny is only to extent of issues for which case was selected for scrutiny under CASS—CBDT has issued instructions from time to time in this respect and has specifically instructed taxing authorities that scope of enquiry should be limited to verification of all particulars for which limited scrutiny was taken up under CASS—However, in case during assessment proceeding if AO is of view that substantial verification of other issue is also required then case may be taken up for comprehensive scrutiny with approval of Pr.CIT/DIT concerned—It is also instructed that such an approval shall be accorded by Pr.CIT/DIT in writing after being satisfied about merits of issue(s)

necessitating wider and detailed scrutiny in case—AO is duty bound to follow instructions in case limited scrutiny assessment proceeding are proposed to be converted into complete scrutiny and without following said procedure and necessary approval of competent authority conducting an enquiry on issue which is outside limited scrutiny would be beyond jurisdiction of AO—As a necessary corollary, Pr. CIT u/s 263 cannot be permitted to traverse beyond jurisdiction that was vested with A.O while framing assessment as what cannot be done directly cannot be done indirectly—Therefore, where matter was selected for limited scrutiny, revisional jurisdiction cannot be exercised for broadening scope of jurisdiction that was originally vested with A.O while framing assessment—As per PCIT, reason for which matter was selected for limited scrutiny i.e, mis-match of sales turnover vis-à-vis ITR, CIB & AIR has a direct bearing on opening and closing stock of cost of construction and W.I.P and in turn, on taxable income, therefore, AO was duty bound to examine these issues and AO having failed to examine these issues, AO has effectively failed to examine issues for which matter was selected for limited scrutiny—As far as matters for which case was selected for limited scrutiny in terms of mis-match of sales turnover, same has been duly examined by AO and even PCIT has not recorded any adverse findings in terms of lack of enquiry or inadequate enquiry on part of AO—Order passed by PCIT u/s 263 is set aside—Assessee’s appeal allowed.”

In the case of Paul Bharwaj vs. Pr.CIT in ITA No. 463/Chd/2019 May 13, 2021 (2021) 62 CCH 0120 Chd Trib Revision—Order erroneous or prejudicial to revenue—Over exercise of power—Assessee an individual filed his return declaring income and agricultural income—Case was selected for limited scrutiny for reason that there was a substantial increase in capital during year relevant to assessment year under consideration—AO accepted return filed by assessee—Pr. CIT issued notice to assessee u/s 263 and directed AO to make assessment afresh on issues mentioned in notice—Held, Tribunal in case of M/s Su-Raj Diamond Dealers Pvt. Ltd. CIT ITA No 3098/ Mum has quashed order passed u/s 263 in case of limited scrutiny assessment, holding that Pr. CIT under garb of section 263, cannot exceed his jurisdiction holding that when case of assessee was selected for limited scrutiny for reasons viz. (i) Large other expenses claimed in P&L A/c; and (ii) Low income in comparison to High Loans/advance /Investment in shares, therefore, no infirmity could be attributed to assessment framed by A.O on ground that he had failed to deal with other issues which though did not fall within realm of limited reasons for which case was selected for scrutiny assessment—In other words, Pr. CIT in garb of his revisional jurisdiction u/s 263 cannot be permitted to traverse beyond jurisdiction that was vested with A.O while framing assessment—As A.O had aptly confined himself to issues for which

case of assessee was selected for limited scrutiny, therefore, no infirmity can be attributed to his order, for reason, that he had failed to dwell upon certain other issues which did not form part of reasons for which case was selected for limited scrutiny under CASS—Case of assessee was selected for limited scrutiny under CASS for reason that there is substantial increase in capital in relevant year and AO passed assessment order and accepted return filed by assessee after examining issue regarding increase in capital account as assessee had credited his capital account with agricultural income and capital gain from sale of flat—Assessee has reflected that same in its capital account—Further in response to letter issued by AO during assessment proceedings, assessee submitted his reply explaining reason for increase in capital—However, Pr. CIT exercising jurisdiction under section 263, directed AO to make fresh assessment on issues which were not subject matter of limited scrutiny—Since, issue raised by assessee in this case has already been decided in favour of assessee Pr. CIT(A) has exceeded jurisdiction u/s 263 by directing AO to make fresh assessment on issues which were not subject matter of assessment framed on basis of limited scrutiny—Assessee's appeal allowed.

Thus in the present case the position are same and the principal of the above judgments are also applicable in the present case.

Thus in the light of the facts and position the Pr. CIT cannot be said to be justified in holding that assessment order was passed without making inquiry or verification when firstly the case of reopened for the limited purpose secondary despite the same assessee has produced all the details which examined and deduction allowed.

4. Breach of natural justice: In the present case the Id. Pr.CIT has not provided proper opportunity of being heard to the assessee. As the Pr. CIT has issued the notice u/s 263 on dt. 25.03.2021 for the hearing on dt. 26.03.2021, despite the assessee has filed the reply on 26.03.2021 by stating that" With reference to above notice, we want to convey that today is Bharat Band/ Chakajham. The notice of revision proceedings was received on mail dated 25.03.2021 at 1.32 pm and provides very short period of time for submission of any reference documents and justification regarding on points raised in revision proceedings. (PB24)

As possible as the time is being so short and the assessee has to engaged the counsel and to collect the papers from the earlier counsel and also required the time to prepare the matter with the counsel. However the Id. Pr.CIT has after

receiving the reply has not issued any further show cause notice for the allegations which he made in the impugned order and decided the matter, without giving further opportunity of being heard. And passed the order on 31.03.2021. It is the violation of the principal of natural justice

Recently in the case of Jaidurga Minerals v/s Pr. CIT 200 DTR 205(Ctk)(Trb.) in ITA No. 276/Ctk/2015 dt. 10.08.2020 it has been held that “ right to fair hearing is a guaranteed right to an assessee and granting of effective opportunity is a sine qua non in Sec. 263 for unsetting a statutory order. It was the duty of the Pr. CIT to provide the assessee an effective opportunity to enable it to substantiate its claim. In any case, it is one of the fundamental principal of natural justice that no person can be condemned unheard i.e audi alteram partem, the impugned order was thus passed in violation of the principal of natural justice in absence of any effective/reasonable opportunity of hearing provided to the assessee. It is mandatory to apply the principal of natural justice irrespective of the act as to whether there is any statutory provision or not . In the present case, the assessee was not afforded opportunity much less sufficient opportunity to give the reply to the show cause notice. Therefore it is clear that the pr. CIT in a hurriedly manner without affording opportunity of hearing to the assessee had passed impugned order by violating principal of audi alteram partem. In view of above factual position the Pr. CIT has committed a gross error in not providing the any effective/reasonable opportunity of being heard to the assessee before passing the order. Accordingly the revisional proceedings framed u/s 263 by the Pr. CIT are quashed. – Jagannath Prasad Bhargva vs Lal Nathimal AIR 1943 All 17 Applied.

Here is exact same position and the present order is also liable to be quashed.

5.1 No fix formula or limit or extent of Inquiry: Thus, here it is not the case of the Pr. CIT that no inquiry or examine has been made by the AO on these issues. The AO has made the inquiry on the above issue although the very base of the reopening of the case was on different or limited issue. On perusal of the order sheet (PB 2) When the accounts of the assessee, cash book, bank book books of accounts all the transaction has been shown there and explained and the AO made inquiry and assessee filed all the details related thereto. No one (AO) can read the mind of other person (Pr. CIT) while doing the work on its sprite and cannot guess the expectation or manner of his superior authority. Here the meaning is that non making of an enquiry may render the subject assessment erroneous, however the process of making enquiries may be endless. For someone, some enquiries may be sufficient (here AO), however, the same may be insufficient for the other (here Pr. CIT). There is no straight jacket formula or parameter to make inquiry in the assessment

proceedings. What is required is that the AO should frame the assessment in accordance with the provisions of the Act, as interpreted and in the light of the relevant judicial pronouncements, as available on the date of framing the assessment or material available before him. The AO being a quasi-judicial authority can also take support from one set of the decisions, if there, in case is a diversions of opinion. He can't be directed to make an assessment in a particular manner, as specifically prohibited by S. 119.

Kindly refer recent judgment of Jodhpur Bench in the case of Ritesh Suhalka V/s Pr. CIT Udaipur in ITA No. 383/Jodh/2019 dt. 21.12.2020. On same plea

5.2. We also would like to draw on the observation and finding In the case of Dorabji Tata Trust vs. DCIT (EXEMPTION) ITA No. 3909/Mum/2019 28th December, 2020 (2021) 209 TTJ 0409 (Mumbai) delivered by the honble President and vice president as under:

"20. Undoubtedly, the expression used in Explanation 2 to Section 263 is "when Commissioner is of the view," but that does not mean that the view so formed by the Commissioner is not subject to any judicial scrutiny or that such a view being formed is at the unfettered discretion of the Commissioner. The formation of his view has to be in a reasonable manner, it must stand the test of judicial scrutiny, and it must have, at its foundation, the inquiries, and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant- that an Assessing Officer is expected to be. If we are to proceed on the basis, as is being urged by the learned Departmental Representative and as is canvassed in the impugned order, that once Commissioner records his view that the order is passed without making inquiries or verifications which should have been made, we cannot question such a view and we must uphold the validity of revision order, for the recording of that view alone, it would result in a situation that the Commissioner can de facto exercise unfettered powers to subject any order to revision proceedings. To exercise such a revision power, if that proposition is to be upheld, will mean that virtually any order can be subjected to revision proceedings; all that will be necessary is the recording of the Commissioner's view that "the order is passed without making inquiries or verification which should have been made". Such an approach will be clearly incongruous. The legal position is fairly well settled that when a public authority has the power to do something in aid of enforcement of a right of a citizen, it is imperative upon him to exercise such powers when circumstances so justify or warrant. Even if the words used in the statute are

prima facie enabling, the courts will readily infer a duty to exercise a power which is invested in aid of enforcement of a right—public or private—of a citizen. [L Hirday Naran Vs Income Tax Officer [(1970) 78 ITR 26 (SC)]. As a corollary to this legal position, when a public authority has the powers to do something against any person, such an authority cannot exercise that power unless it is demonstrated that the circumstances so justify or warrant. In a democratic welfare state, all the powers vested in the public authorities are for the good of society. A fortiori, neither can a public authority decline to exercise the powers, to help anyone, when circumstances so justify or warrant, nor can a public authority exercise the powers, to the detriment of anyone, unless circumstances so justify or warrant. What essentially follows is that unless the Assessing Officer does not conduct, at the stage of passing the order which is subjected to revision proceedings, inquiries and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant—that an Assessing Officer is expected to be, Commissioner cannot legitimately form the view that “the order is passed without making inquiries or verification which should have been made”. The true test for finding out whether Explanation 2(a) has been rightly invoked or not is, therefore, not simply existence of the view, as professed by the Commissioner, about the lack of necessary inquiries and verifications, but an objective finding that the Assessing Officer has not conducted, at the stage of passing the order which is subjected to revision proceedings, inquiries and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant that the Assessing Officer is expected to be.

21. That brings us to our next question, and that is what a prudent, judicious, and responsible Assessing Officer is to do in the course of his assessment proceedings. Is he to doubt or test every proposition put forward by the assessee and investigate all the claims made in the income tax return as deep as he can? The answer has to be emphatically in negative because, if he is to do so, the line of demarcation between scrutiny and investigation will get blurred, and, on a more practical note, it will be practically impossible to complete all the assessments allotted to him within no matter how liberal a time limit is framed. In scrutiny assessment proceedings, all that is required to be done is to examine the income tax return and claims made therein as to whether these are prima facie in accordance with the law and where one has any reasons to doubt the correctness of a claim made in the income tax return, probe into the matter deeper in detail. He need not look at everything with suspicion and investigate each and every claim made in the income tax return; a reasonable prima facie scrutiny of all the claims will be in order, and then take a call, in the light of his

expert knowledge and experience, which areas, if at all any, required to be critically examined by a thorough probe. While it is true that an Assessing Officer is not only an adjudicator but also an investigator and he cannot remain passive in the face of a return which is apparently in order but calls for further inquiry but, as observed by Hon'ble Delhi High Court in the case of Gee Vee Enterprises Vs ACIT [(1995) 99 ITR 375 (Del)], "it is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. (Emphasis, by underlining, supplied by us). It is, therefore, obvious that when the circumstances are not such as to provoke an inquiry, he need not put every proposition to the test and probe everything stated in the income tax return. In a way, his role in the scrutiny assessment proceedings is somewhat akin to a conventional statutory auditor in real-life situations. What Justice Lopes said, in the case of Re Kingston Cotton Mills [(1896) 2 Ch 279, 288], in respect of the role of an auditor, would equally apply in respect of the role of the Assessing Officer as well. His Lordship had said that an auditor (read Assessing Officer in the present context) "is not bound to be a detective, or, as was said, to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watch-dog, but not a bloodhound.". Of course, an Assessing Officer cannot remain passive on the facts which, in his fair opinion, need to be probed further, but then an Assessing Officer, unless he has specific reasons to do so after a look at the details, is not required to prove to the hilt everything coming to his notice in the course of the assessment proceedings. When the facts as emerging out of the scrutiny are apparently in order, and no further inquiry is warranted in his bonafide opinion, he need not conduct further inquiries just because it is lawful to make further inquiries in the matter. A degree of reasonable faith in the assessee and not doubting everything coming to the Assessing Officer's notice in the assessment proceedings cannot be said to be lacking bonafide, and as long as the path adopted by the Assessing Officer is taken bonafide and he has adopted a course permissible in law, he cannot be faulted- which is a sine qua non for invoking the powers under section 263. In the case of Malabar Industrial Co Ltd Vs CIT [(2000) 243 ITR 83 (SC)], Hon'ble Supreme Court has held 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, for example, when an ITO adopted 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." The test for what is the least expected of a prudent, judicious and responsible Assessing Officer in the

normal course of his assessment work, or what constitutes a permissible course of action for the Assessing Officer, is not what he should have done in the ideal circumstances, but what an Assessing Officer, in the course of his performance of his duties as an Assessing Officer should, as a prudent, judicious or reasonable public servant, reasonably do bonafide in a real-life situation. It is also important to bear in mind the fact that lack of bonafides or unreasonableness in conduct cannot be inferred on mere suspicion; there have to be some strong indicators in direction, or there has to be a specific failure in doing what a prudent, judicious and responsible officer would have done in the normal course of his work in the similar circumstances. On a similar note, a coordinate bench of the Tribunal, in the case of Narayan T Rane vs ITO [(2016) 70 taxmann.com 227 (Mum)] has observed as follows:

20. Clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-a-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have claimed out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made.

The above are also applicable in the present case.

In case of Chorma Business Ltd v/s DPR. CIT 82 TTJ 540(Cal) it has been held that "AO before making the assessment, having called for details and having discussed the matter with the A/R of the assessee, such an order cannot be called erroneous and prejudicial to the interest of the Revenue only because the AO made a brief assessment order without discussing such details therein. Further, the Pr. CIT also did not give any finding as to whether the share transaction loss claimed by the assessee was bogus or not genuine but merely stated that the transaction could have been verified by the contract notes from the brokers, challan etc. Revision order of the PR. CIT Set Aside. Also refer Subrata Kumar Nag v/s PR. CIT 127 TTJ 238(Kol), Rajiv Arora v/s PR. CIT (Supra).

We would like to refer the case of Kartik Financial Services Ltd V/s CIT 55 CCH170 (Mum. Tribunal)(2019). The principal of the case is also applicable here in the present case.

In the case of Nalco Company vs CIT 200 DTR 275(Pune-C) ITA No.1217/Kol/2017 dt. 05.02.2021 it has been held that if the AO makes inquiry, examines the issue which is born out from the record of the assessment proceedings, then reaches a conclusion in favour of the assessee which is legally possible, the assessment order cannot be characterized as erroneous and prejudicial to the interest of the Revenue. Since none of the four clauses of the Expln. 2 to s. 263(1) applies to the case under consideration, revisionary power, even under the enlarged scope of the Expl. 2, was not legally exercisable.

6. No requirement of deep investigation: Thus, on the perusal of the order of the Pr. CIT it is very clear that he was of the view that the AO must have made deep investigation and in the case of Arvind Bhartiya Vidhyalaya Samiti v/s ITO 94 TTJ 614(Jp). Where it is held that "Deep investigation is outside of the preview of assessment procedure". And also held there is no case laws which say for deep investigations because there is no limit of deep investigation. Also refer Gaberial India Ltd. 203 ITR 108 (Bom). That is why Hon'ble SC held in Malabar Fisheries Industries Ltd. 243 ITR 82 (SC) that in each and every type of mistake/ error cannot be made a basis to invoke Sec.263. The case laws available on the subject on this aspect, are distinguishable in as much as those were the cases where no inquiries at all (or very minor reflecting from a short assessment order), which is not at all a case here. Also refer Gyan Chand Gupta V/s Pr. CIT 135 TTJ 01(Jp), M/s. Om Rudra Priya Holiday Resort Pvt. Ltd. vs. Pr. CIT (2018) 54 CCH 0597 Jaipur Trib

In CIT v/s Jain Construction 257 CTR 336(Raj.) It has been held that Revision u/s 263—Order erroneous and prejudicial to interest of revenue—CIT issued a notice u/s 263 to assessee on ground that assessment order of AO passed u/s 143 (3) was an order erroneous and prejudicial to interest of revenue—Tribunal allowed appeal of assessee—Held, safeguard provided to assessee in section 263 is that mere erroneous orders are not revisable but revisional authority has to further establish with material on record that such erroneous order is also prejudicial to interest of revenue—Twin conditions of assessment order being erroneous and it also being prejudicial to interest of revenue, keeps initial burden on Commissioner, who invokes such jurisdiction—Premise for invoking revisional jurisdiction on the ground that the Assessing Authority made insufficient enquiry

or improper enquiry and failed to verify closing stocks in record of assessee, before passing assessment order, falls flat by a bare perusal of assessment order itself—Thus, Tribunal was justified in holding that Commissioner was in error in invoking revisional jurisdiction u/s 263—Mere alleged insufficiency of enquiry in opinion of Commissioner by Assessing Authority, could not permit him to invoke revisional jurisdiction u/s 263—Therefore, essential twin conditions for invoking revisional jurisdiction, were not satisfied.

In the case of V.B. Construction (P) Ltd. vs. CIT (2009) 28 CCH 0434 KolTrib held that Revision—Erroneous and prejudicial order—Lack of proper enquiry—There was a time of two years for investigation, the AO had issued questionnaire, the assessee had produced books of account, bills, etc. and replied to various issues raised by AO—Thus, it could not be said that order was passed in haste without making any inquiry on the issues—AO had taken one view where two views are plausible and such view cannot make the order erroneous and prejudicial to the interest of the Revenue—CIT's view cannot be invoked to substitute the view of the AO—Assessment also does not become erroneous where queries raised during the assessment proceedings are not recorded in the final assessment order.

6.1. On perusal of the order in the present case the Id. CIT has taken action u/s 263 only on the assumption and presumption that the no inquiry has been made by the AO on the issues and not verified. Kindly refer CIT v/s Paras Cotton Co. 288 ITR 211(Raj.) where held that CIT could not have acted on mere assumption. Mere suspicion cannot take place of proof and the order of CIT u/s 263 cannot be sustained.

7.1 In C IT V/s Girdhari Lal 258 ITR 331(Raj.) it has been held, "When the Assessing Officer after going through the material on record and after considering the explanation of the assessee, made some additions and rejected the books of accounts, it could not be said that he had not applied his mind. It is not always necessary that every assessee in the line of business should have the same rate of profit. The tribunal was correct in cancelling the order under sec 263 of Income Tax Act."

When the assessing officer had considered all the relevant material on record, it was basically a question of facts and it could not be interfered with unless the finding of the Tribunal was found perverse. Considering the material on record, it could be said that finding of the Tribunal was perverse. Therefore, the Tribunal was correct in cancelling the order under section 263."

7.2 Also refer CIT v/s Ganpat Ram Bishnoi 296 ITR 292(Raj.) The record of proceedings clearly shows that the AO has framed his assessment after due application of mind and holding enquiries into all areas, which, according to the CIT have not been at all enquired into and the AO has acted merely on furnishing evidence on one single date. The Tribunal noticed that as per the record of the proceedings, the AO required the assessee to produce documents or material in relation to 10 different items, which included the details of capital contributed by partners, details of purchases made in excess of Rs. 20,000 with evidence, confirmation of unsecured loans, amongst other matters, which the AO desired to enquire into. The assessee has produced desired information. The AO studied the sundry creditors, unsecured loans and desired to furnish affidavits of unsecured loans and details of interest paid. The AO again required the assessee to furnish the details of partners capital accounts and also to produce voucher for expenses and the matter was adjourned. After that, assessment was completed by passing assessment order. These matters clearly indicate that the AO particularly made reference to the matters, which the CIT has opined were not inquired. Thus, according to the Tribunal, the foundation to exercise power under s. 263 was not existing. In the aforesaid circumstances on the finding reached by the AO, no question of law really arises for consideration in this appeal. From the record of the proceedings, no presumption can be drawn that the AO had not applied its mind to the various aspects of the matter. In such circumstances, without even prima facie laying foundation for holding that assessment order is erroneous and prejudicial to interest in any matter merely on spacious ground that the AO was required to make an enquiry, cannot be held to satisfy the test of existing necessary condition for invoking jurisdiction under s. 263. When enquiry in fact has been conducted and the AO has reached a particular conclusion, though reference to such enquiries has not been made in the order of the assessment, but the same is apparent from the record of the proceedings the invocation of jurisdiction by the CIT was unsustainable. As the exercise of jurisdiction by the PR. CIT is founded on no material, it was liable to be set aside. Jurisdiction under s. 263 cannot be invoked for making short enquiries or to go into the process of assessment again and again merely on the basis that more enquiry ought to have been conducted to find something. The finding of the Tribunal that the ITO had passed assessment order after relevant enquiries and considering the aspects of the matter required by the CIT to be considered by him is a finding of fact.

Although in the present case the Id. AO has made the detailed inquiry on the very same issue being the reason of reopening the case u/s 148.

7.3 In the case of CIT V/s Anil Kumar Sharma 335 ITR 83(Del), held that “ Revision- Erroneous and Prejudicial order- lack of proper enquiry- Pr. CIT came to the conclusion that the issue relating to taxability of compensation received by the assessee was not examined by the AO and held that the order of AO is erroneous and prejudicial to the interest of the revenue- Tribunal has arrived at a conclusive finding that through the assessment order does not patently indicate that issue of the taxability of the compensation has been considered by the AO, the record shows that the AO has applied his mind-Thus, it is not a case of lack of enquiry even if the enquiry was inadequate and the CIT was not justified in passing the order under section 263- findings of the Tribunal quashing the order of the PR. CIT passed under Section 263 do not warrant any inference- CIT V/s Sunbeam Auto Ltd. (2009) 227 CTR (Del) 133: (2009) 31 DTR (Del) 1 followed”.

8. In the case of The Lake Palace Hotels & Motels Pvt Ltd v/s The PR. CIT Udaipur 48 TW 181(Jd). It has been concluded that :

The fundamental principles which emerge from the catena of judicial pronouncements may be summarized as under :

(i) The PR. CIT must record satisfaction that the order of the Assessing Officer is erroneous and prejudicial to the interest 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 is 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 for the requirement or 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 interest 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 under which the PR. CIT does not agree, it cannot be treated as an erroneous order, unless the view taken by the Assessing Officer is unsustainable under the 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 determines the income, the PR. CIT, 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 exercise quasi-judicial power vested in him and if he exercise such power in accordance with law and arrives as a conclusion, such conclusion cannot be termed to be erroneous simply because the PR. CIT does not feel satisfied with the conclusion.

(viii) The PR. CIT, 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 of assessment proceedings on the relevant issues and the assessee has given detailed explanation be a letter in writing and Assessing Officer allowed the claim on being satisfied with the explanation of the assessee, the decision of the Assessing Officer cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard.

9. It is submitted that when all the details submitted by assessee and AO framed the Assessment order thereon, reliance is placed on a case of High Court of Gujarat 21 Taxman. Comm. 64 (Guj) CIT V/s Amit Corporation it has been held “ When during course of framing of assessment, Assessing Officer had access to all records of assessee and after perusing said records, he framed assessment, said assessment could not be re -opened in exercise of revision power under section 263 for making further inquires .”

Reference has been made to the decision of Hon’ble Allahabad High Court in the case of Anil Bulk Carriers (P) Ltd. vs. PR. CIT (2005) 194 CTR (All.) 226 : (2005) 276 ITR 625 (All.).

It is submitted that department can assume jurisdiction under section 263 of Income tax Act if twin conditions of the order being erroneous and prejudicial to the interest of the revenue are satisfied. If the view taken by the A.O. is one of the possible views then learned CIT cannot assume jurisdiction. For this purpose reliance has been placed on the followings decisions:

1. Malabar Industrial Co. Ltd. v. PR. CIT [2000] 243 ITR 83 (SC)
2. PR. CIT VS MAX INDIA LTD.(2007)213 CTR 266(SC)

It is further submitted that proceedings under s. 263 cannot be taken on the ground that the AO has not made sufficient enquiry. The learned PR. CIT can assume jurisdiction if there has been lack of enquiry. In the instant case, the enquiry has been made, though the enquiry may not be sufficient in the opinion of the learned PR. CIT. The reliance is placed upon the decision of Hon’ble Delhi

High Court in the case of CIT v. Hindustan Marketing & Advertising Co. Ltd. [2010] 46 DTR (Del.) 109. The attention is drawn towards the decision of Hon'ble jurisdictional High Court in the case of PR. CIT v. Trustees Anupam Charitable Trust [1987] 65 CTR (Raj.) 30 : [1987] 167 ITR 129 (Raj.)

Thus it is clear that Assessing Officer has made enquiry but sufficiency of enquiry can be depend upon from person to person. The AO cannot remain passive in the face of a return which is apparently in order but calls for further enquiry. It is the duty of the AO to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an enquiry. The word 'erroneous' includes the failure to make enquiry. It is submitted that the AO made the enquiry and it is not a case of lack of enquiry. The Hon'ble Delhi High Court in the case of CIT v. Vikas Polymers [2010] 236 CTR (Del.) 476 had an occasion to consider the passing of order under s. 263 of the Act by the learned CIT when the AO made an enquiry and the assessee filed the reply. The Hon'ble Delhi High Court held that assumption of jurisdiction under s. 263 of the Act by learned CIT is not warranted. It will be useful to reproduce the head note from this decision:

"Provisions of s. 263 when read as a composite whole make it incumbent upon the PR. CIT before exercising revisional powers to : (i) call for and examine the record, and (ii) give the assessee and opportunity of being heard and thereafter to make or cause to be made such enquiry as he deems necessary. It is only on fulfillment of these twin conditions that the PR. CIT may pass an order exercising his power of revision. Minutely examined, the provisions of the section envisage that the PR. CIT may call for the records and if he prima facie considers that any order passed therein by the AO is erroneous insofar as it is prejudicial to the interest of the Revenue, he may after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify. The twin requirements of the section are manifestly for a purpose. Merely because the PR. CIT considers on examination of the record that the order has been erroneously passed so as to prejudice the interest of the Revenue will not suffice. The assessee must be called, his explanation sought for and examined by the CIT and thereafter if the CIT still feels that the order is erroneous and prejudicial to the interest of the Revenue, the CIT may pass revisional orders. If, on the other hand, the CIT is satisfied, after hearing the assessee, that the orders are not erroneous and prejudicial to the interest of the Revenue, he may choose not to exercise his power of revision. This is for the reason that if a query is raised during the course of scrutiny by the AO, which was answered to the satisfaction

of the AO, but neither the query nor the answer was reflected in the assessment order, this would not by itself lead to the conclusion that the order of the AO called for interference and revision. In the instant case, for example, the CIT has observed in the order passed by him that the assessee has not filed certain documents on the record at the time of assessment, assuming it to be so, this does not justify the conclusion arrived at by the CIT that the AO had shirked his responsibility of examining and investigating the case. More so, in view of the fact that the assessee explained that the capital investment made by the partners, which had been called into question by the CIT was duly reflected in the respective assessments of the partners who were income-tax assessee and the unsecured loan taken from SC (P) Ltd. was duly reflected in the assessment order of the said chit fund which was also an assessee. Merely on the basis that the AO has not examined the cash credits of the partners or deposits from SC (P) Ltd., PR. CIT was not justified in invoking his suomotu powers, especially where the assessee had explained that the capital investment made by the partners, which had been called into question by the PR. CIT was duly reflected in the respective assessments of the partners and the unsecured loan taken from the SC (P) Ltd. was duly reflected in the assessment order of the said person."

The reliance is also placed in the order of the Hon'ble High Court of Bombay in the case of PR. CIT v. Gabriel India Ltd. [1993] 71 TAXMAN 585 (BOM.). It will be useful to reproduce the held portion of the case:

Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interests of revenue - Assessment year 1973-74 - Assessee claimed a sum of Rs. 99,326 described 'as plant relay out expenses' as revenue expenditure and ITO, after making enquiries in regard to nature of said expenditure and considering explanation furnished by assessee in that regard, allowed assessee's claim- Subsequently, Commissioner, exercising powers under section 263, cancelled order of the ITO observing that order of ITO did not contain discussion in regard to allow ability of claim for deduction which indicated non-application of mind and that claim of assessee required examination as to whether expenditure in question was a revenue or capital expenditure and directed ITO to make a fresh assessment on lines indicated by him - Whether under section 263 substitution of the judgment of the Commissioner for that of the ITO is permissible - Held, no - Whether ITO's conclusion can be termed as erroneous simply because Commissioner does not agree with his conclusion - Held, no - Whether ITO's order could be held to be 'erroneous' simply because in his order he did not make an elaborate discussion - Held, no - Whether provisions of section 263 were

applicable to instant case and Commissioner was justified in setting aside assessment order - Held, no

In the case of CIT vs. Deepak Real Estate Developers (I)(P) Ltd. (2014) 367 ITR 0377 (Raj) It has been held that Revision—Revision by commissioner of orders prejudicial to revenue—AO observed that return submitted by Assessee was duly supported by necessary evidence and accepted Assessee's return—CIT in exercise of his power u/s 263, issued notice to Assessee being of opinion that assessment of AO was erroneous and prejudicial to interest of Revenue—ITAT viewed that CIT could not have formed any opinion that assessment order was erroneous and no reasons had been recorded to demonstrate that assessment order was prejudicial to interest of revenue—Held, perusal of Order of ITAT would testify that AO had consciously examined all relevant records in accepting return submitted by Assessee—CIT did not find fault with any findings of AO, culminating in ultimate conclusion that return of Assessee was acceptable—Decision of CIT authenticates that Assessee furnished all relevant records and documents in support of its return accepted by AO—CIT did not reject documents to be irrelevant—CIT only remanded matter to AO observing that documents ought to have been laid before him and examined at time of assessment—Revisional jurisdiction available to Commissioner u/s 263 subject to condition that Order of AO was erroneous and prejudicial to interest of Revenue—Any exercise of revisional jurisdiction, bereft of such satisfaction was impermissible rendering resultant order void—No interference with impugned order of ITAT was warranted—Appeal dismissed

In the case of Baberwad Shiksha Samiti v/s PR. CIT 134 DTR 65(Jp) It has been held that the AO accepted the returned income of the assessee. AO issued the query letter on both the issue which was replied by the assessee. Thus the AO made detailed enquiry and no adverse inference has been drawn by him. Hence the order u/s 263 is not sustainable.

In the case of Shree Salasar Overseas (P) Ltd. vs. PR. CIT (2012) 144 TTJ 0041 (UO) held Revision—Erroneous and prejudicial order—Lack of proper enquiry—CIT set aside the assessment order on the ground that the AO has not verified as to whether the provision for development expenses claimed as deduction by the assessee-developer was made on scientific basis having regard to the accrued liability incurred by the assessee—Not justified—Assessee had filed relevant details before the AO in a letter stating that such deductions was also allowed in earlier years—Hence, this is not a case where there was no enquiry—Action under s. 263 cannot be taken on account of inadequate enquiry—Therefore, CIT was not justified in setting aside the assessment order by exercising power under

s. 263—*Swapan Sakar Insurance Consultant & Marketing Services (P) Ltd. (ITA No. 117/JP/2010, dt. 6th Jan., 2011) followed.*

In the case of CIT vs. Ashish Rajpal 320 ITR 0674 (Del) it has been held that Revision—Erroneous and prejudicial order—Lack of proper enquiry—After issue of notice under s. 143(2), several communications were addressed by the assessee to the AO whereby the information, details and documents sought for were adverted to and filed—If upon a perusal of the record filed by the assessee with the AO the Tribunal formed a view that there had been an enquiry which had not been conducted with 'undue haste' surely one would be slow to hold otherwise—While the supervisory power of CIT is wide, it cannot be invoked to substitute the view of the AO—Fact that a query was raised during the course of scrutiny which was satisfactorily answered by the assessee but did not get reflected in the assessment order, would not by itself lead to a conclusion that there was no enquiry with respect to transactions carried out by the assessee.

10. On Merit our submissions are as under:

10.1 kindly refer our Submissions which has also been filed before the Id. CIT vide PB 24-33 ""as part of our WS before your honor .The same is being reproduced herewith as under:

Nature of Society and its Objects: *The society is a co-operative society registered under Rajasthan Cooperative society Act IV of 1953. The society deals in the trading & distribution of agriculture produce & agriculture implements in order to supply the same to its members and also provide credit facilities to its members to provide support in their agriculture production activities & to improve their financial condition. It is also a primary agriculture credit society. It works on the principle of self-help as well as mutual help. It works to serve its members and not for earning profits.*

The main objective is to provide support to the members. Nobody joins a co-operative society to earn profit. In this type of association people come forward as a group, pool their individual resources, utilize them in the best possible manner, and derive some common benefit out of it.

To achieve primary objective it provides easy credit facilities to the local farmers, small and medium scale farmers and other laborers to help them and improve their financial condition. To seek its objective, the society may co-ordinate their activities with other societies and can also work as agent of them.

The society is engaged in buying, collecting and distributing fodder for animals, fertilizers, insecticides, pesticides, agricultural implements and other important farm inputs.

The society transacts in providing the facility of godowns (owned/rented) to store farm inputs and agriculture produce. Also provides the facility of milkshaalas, cowsheds, goat farming and pig farming. The Society is mainly dealing in control items such as seeds, fertilizer, pesticides and other agriculture products etc. whose prices are decided by government and selling the same to its members on pre-determined government prices to its members. The Society is mainly dealing in such other works which are for the benefit of members and for the benefit of society and which are incidental to achieve the objectives.

Justification on Deduction in respect of income of co-operative societies U/s 80P

:-As Per Sec. 80P of Income tax Act, 1961-

(1) Where in the case of an society being a co-operative society, the gross total income referred to in sub section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2) in computing the total income of society.

(2) The sums referred to in sub section (1) shall be the following namely –

(a) In the case of a co-operative society engaged in –

(i) Carrying on the business of banking or providing credit facilities to its members, or

(iv) Purchase of agricultural implements, seeds, live stock or other articles intended for agriculture for the purpose of supplying them to its members.

The whole amount of profit and gains of business attributable to any or more of such activities

(d) In respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income:

(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation.—For the purposes of this sub-section,—

- (a) *"co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);*
- (b) *"primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluka and the principal object of which is to provide for long-term credit for agricultural and rural development activities.*

The Society is a registered co-operative society and claimed the deduction under section 80P complying with all the provisions within specified criteria.

The society had claimed deduction u/s 80P(2)(d) of Rs. 1,08,464.00 in respect of income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income. The total interest received by the society on its investments of Rs. 14,05,465.00. The total interest received from Sikar Kendriya Sahakari Bank Ltd. Rs. 14,05,465.00. The Sikar Kendriya Sahakari Bank Ltd. is a co-operative society and certificate of co-operative society is enclosing herewith.

The society is eligible to allow deduction u/s 80P(2)(d) as per above justification and same issue is also agree with decision of Honble Rajasthan High Court in case of CIT, Jaipur-II Vs. M/s Rajasthan Rajya Sahakari Kray Vikray Sangh Ltd under D.B. Income Tax Appeal's No.139/2002, 20/2004, 24/2004, 27/2004, 305/2005 & 59 / 2006.

This Court in aforesaid case has observed as under:

"1. All these appeals since involve identical substantial questions of law, therefore heard together & are being decided by this common judgment.

2. By way of these appeals, the department has assailed the judgment & order of the Income Tax Appellate Tribunal whereby tribunal has allowed the appeal of the assessee-company-Federal Society which is registered under the Cooperative Societies Act,1912.

2.1 The case of the department is that the assessee claimed benefit under Section 80P(2)(a)(iv) & 80P(2)(d)of the Income Tax Act, 1961 which reads as under:-

"80P(1)

(2) (a)... ..

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agricultural for the purpose of supplying them to its members, or"

3. It manifests from the material on record that the assessing officer while considering the law prevailing at the relevant point of time for the assessment years in question has rejected the claim of the assessee in view of the judgment in *Assam Cooperative Apex Marketing Society Ltd. Vs. Additional CIT: (1993) 113 CTR (SC) 58*, which came to be further confirmed by the CIT (Appeals) while dismissing the appeal preferred by the assessee against the order of the Assessing Officer. However, the tribunal has also thoroughly examined the matter in detail in the light of the decision of the Supreme Court in *Kerala State Cooperative Marketing Federation Ltd. & Ors. ETC. vs. Commissioner of Income Tax: (1998) 147 CTR 0029*. The Supreme Court in the judgment aforesaid in Paragraphs 5

& 7 has observed as under:-

“5. We have carefully considered the rival submissions of the parties perused the material placed on record and also the judgements relied upon by them. We find that the AO and the CTT(A) have rejected the claim of the assessee of allowing deduction u/s 80P(2)(iv) in view of the decision of Hon'ble Supreme Court in the case of *Assam Co-operative Apex Marketing Federation Ltd. 201 ITR 338 (supra)*. We also find that this judgement has been impliedly overruled by the Apex Court in the case of *Kerala State Cooperative Marketing Federation Ltd. & Others 231 ITR 814 (supra)*, wherein at Page No. 825 it was held as under:-

“We hold that the society engaged in the marketing of agricultural produce of its members would mean not only such societies which deal with the produce raised by the members who are individuals or societies which members thereof who may have purchased such goods from the agriculturists. Thus, we allow the civil appeal by setting aside the order made by the High Court and answering the question referred to us in the affirmative in favour of the assessee and against the Revenue”.

Respectfully following the above judgement, we direct the AO to consider the claim of the assessee as per provisions of Section 80P(2)(a) (iv) and allow the deduction according to law.

7. The Id. A.R. Submits that the assessee has received interest from other Cooperative Societies/Banks and after deduction the interest paid to State Government on loan, the net amount of interest amounting to Rs. 58,84,711.46 was shown as interest income and claimed as deduction u/s 80P(2)(d). This deduction was disallowed by the AO on the ground that the interest income has not been earned out of any investment but the same is a result of running current account with various Cooperative Banks, which cannot be held to be the investment. The CTT(A) has also confirmed the disallowance. He further submits

that the interest income has been earned from short-term deposits with Co-operative Banks and Cooperative Societies and is fully exempted u/s 80P(2) (d). The CTT(A), in the subsequent assessment year, i.e., assessment year 1993-94, has allowed the same. The reliance was also placed upon the judgement of Hon'ble Punjab & Haryana High Court in the case of CTT vs. Haryana State Co-operative Housing Society (1998) 234 ITR 714."

4. Counsel for the Department, Mr. Sanjay Jhanwar, has drawn our attention to the provisions contained in Section 80P(2)(a) (iv) of the Income Tax Act, 1961 which reads as under:-

"80P(1)

(2) (a)... ..

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agricultural for the purpose of supplying them to its members, or"

5. Counsel for the respondent in support of submission has relied on the decision of the Supreme Court in case of UP Cooperative Cane Union Federation Ltd. Vs. Commissioner of Income Tax: (1997) 11

SCC 287 and more particularly paragraph no 7, 8 and 9 which reads as under:-

"7. The relevant part of Section 80P(2)(a) (i) of the Act is reproduced as under: section 80P Deduction in respect of income of co-operative societies:

(2) The sums referred to in Sub-section (1) shall be the following, namely:

(a) in the case of a co-operative society engaged in

(i) carrying on the business of banking or providing credit facilities to its members, or...

6. The learned counsel further contended that the present substantial questions of law framed by this Court in examining the claim of the assessee are squarely covered by the judgments of the Supreme Court

(supra) and in the light thereof the assessee is not entitled for the benefit under Section 80P(2)(a)(iv), since the Parliament in its wisdom was conscious of the distinction between various types of cooperative societies and there appears no intention to grant exemption as being

claimed by the assessee and therefore this Court cannot go beyond that & there are also some stipulations in granting benefit of Sec.80P(2)(d) to the assessee and therefore, the view taken by the Assessing Officer and the CIT (Appeals) requires confirmation & tribunal decision may be reversed.

7. Applying the principles laid down by the apex Court to the facts of the present case, it is not in dispute that the apex society supplied/sold gypsum, seeds and fertilizers to its members. These goods were intended for agricultural purposes and, therefore, benefit of Section 80P(2)(a)(iv) of the Act was available.

9. In *Commissioner of Income Tax, Tamilnadu-I vs. Tamilnadu Co-operative Marketing Federation Ltd.* (1999) 151 CTR 0232 in para no.5, it has been held as under:-

"5. The other sub-sections not being material for the discussion, they are not referred to. As already stated, the marginal heading of S. 80P is "Deduction in respect of Income of Cooperative Societies."

10. In *Commissioner of Income Tax vs. Haryana Cooperative Sugar Mills Ltd.* (1989) 180 ITR 631 (P & H) in para no.8 which reads as under:-

"8. For the reasons recorded above, we answer both the questions in favour of the assessee, in the affirmative and hold that the Tribunal was right in coming to the conclusion that short-term call deposits were investments within the meaning of Sec. 80P(2)(d) of the Act and qualified for deduction under that provisions for both the years in question. The parties are left to bear their own costs."

12. In *Surat Vankar Sahakari Sangh Ltd. Vs. Assistant Commissioner of Income Tax.* (2016) 72 taxmann.com 169 (Gujarat) in para no.8.1 & 8.2 which reads as under:-

"8.1 Similarly, in the case of Doaba Cooperative Sugar Mills Ltd. (supra), the Punjab and Haryana High Court has held as under:

'5. The contention of Mr. Gupta, learned counsel appearing for the Revenue, is that the Tribunal was wrong in allowing deduction under Sec. 80P(2)(d) of the Act because it is not established that the assessee had derived the interest by investing all the amount of surplus funds. It is further contended by Mr. Gupta that the assessee has paid interest to Jalandhar Central Cooperative Bank and has also received interest from the said cooperative bank, thereby showing that the assessee has on the aggregate paid interest to the bank and, therefore, no deduction under Sec.80P(2)(d) can be allowed. To appreciate this argument, we have to look to the provisions of Section 80P(2)(d) of the Act, For facility of reference, it is reproduced as under:

"80P.(2)(d) in respect of any income by way of interest or dividends derived by the cooperative society from its investment with any other cooperative society, the whole of such income."

6. So far as the principle of interpretation applicable to a taxing statute is concerned, we can do no better than to quote the bynow classic words of Rowlatt J., in *Cape Brandy Syndicate v. IRC* (1921) 1 KB 64,

71:

"...In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to

a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used,”

7. The principle laid down by Rowlatt J., has also been time and again approved and applied by the Supreme Court in different cases including the one, Hansraj Gordhandas vs. H.H. Dave, Assistant Collector of Central Excise and Customs, AIR 1970 SC 755, 759.

8. Sec.80P(2)(d) of the Act allows whole deduction of an income by way of interest or dividends derived by the cooperative society from its investment with any other cooperative society. This provisions does not make any distinction in regard to source of the investment because this Section envisages deduction in respect of any income derived by the cooperative society from any investment with a cooperative society. It is immaterial whether any interest paid to the cooperative society exceeds the interest received from the bank on investments.

The Revenue is not required to look to the nature of the investment whether it was from its surplus funds or otherwise. The Act does not speak of any adjustment as sought to be made out by learned counsel for the Revenue. The provision does not indicate any such adjustment in regard to interest derived from the cooperative society from its investment in any other cooperative society. Therefore, we do not agree with the argument advanced by the learned counsel for the Revenue. In our opinion, the learned Tribunal was right in allowing deduction under Sec.80P(2)(d) of the Income Tax Act, 1961. In respect of interest of Rs.4,00,919/- on account of interest received from Nawanshaln Central Cooperative Bank without adjusting the interest paid to the bank. Therefore, the reference is answered against the Revenue in the affirmative and in favour of the assessee.'

The Hon'ble Hight court held that – “In view of the decision of Suprem Court in Kerala State Co-operative Marketing Federation Ltd. (supra), we are of the opinion that view taken by the tribunal is required to be upheld. 13.2 Regarding issue no.2, in view of the decision of the Gujarat High Court and more particularly para no. 8.1 & 8.2, we are of the opinion that the assessee is to be given the benefit of net income.

14. The view taken by the tribunal is required to be accepted, and therefore, both the issues are answered in favour of the assessee and against the Department.”

The copy of this case law is submitting herewith for your ready reference. The Society is a registered co-operative society and claimed the deduction under section 80P(2)(d) complying with all the provisions within specified criteria.

11. I also would like to submit a latest judgments of the honble In the case of Bardoli Vibhag Gram Vikas Co.Op. Credit Society Ltd. vs. Pr. CIT I.T.A No.283/SRT/2019 May 12, 2021(2021) 62 CCH 0114 SuratTrib. We pray to consider the same being the same issue.

12. Hence in view of the above facts, submission and legal positions of laws the order of the Pr. CIT u/s 263 may kindly may kindly be quashed and oblige.”

10. On the other hand, the Id. CIT DR has relied upon the order passed by the Id. PT.CIT and submitted that the A.O. has passed the assessment order U/s 147 r.w.s 143(3) of the Act thereby accepting the total income as declared in return of income filed u/s 148. However, the A.O. was required to examine the issue relating to the allowability the deduction u/s 80P(2)(d) but not examined the same by the A.O. Therefore. the order passed by the A.O. was correctly found to be erroneous in so far as it is prejudicial to the interests of the revenue.

11. We have heard the Id. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. From the record, we found that for the year under consideration, the A.O. on the basis of information from DDIT(System) issued notice U/s 148 of the Act on 30/03/2017 after

recording the reasons, as the reason was cash deposits of Rs.50,55,800/- in the bank account. In response of which the assessee filed its return of income on 28/04//2017 declaring total income of Rs.1,08,464/- and claimed the deduction u/s 80P. Thereafter, Scrutiny assessment was started by the A.O., who had issued statutory notice U/s 143(2) and also 142(1) of the Act dated 06/06/2017 thereby raising query and in his query letter which has been responded by the assessee vide filing reply which has already been placed on record at page No. 3-4 and 6-11 of the paper book. The A.O. thereafter considered, examined and verified the same and also examined the books of account which have been placed on record by the assessee. Thereafter, the assessment was completed U/s 148 r.w.s 143(3) of the Act by the A.O. vide his order dated 30.06.2017 after examining all the details.

12. We observed that the Id. PT.CIT or the Commissioner may call for and examine the record of any proceeding U/s 263 if he considers that any order passed therein by the A.O. is erroneous in so far as it is prejudicial to the interests of the revenue. However, on perusal of the order passed by the A.O. as well as order passed by the Id. Pr.CIT, we found that it is clearly manifest that in the present case, the case of the assessee was reopened U/s 148 of the Act on the ground that the A.O. had got information from the DDIT(System) that there was cash deposits

of Rs.50,55,800/- in the assessee's bank account maintained with Punjab national Bank of India during F.Y. 2009-10 relevant to A.Y. 2010-11 and the assessee has not filed return of income. Thereafter, the A.O. issued statutory notices and seeking queries from the assessee and in reply thereof, as discussed above, the assessee had produced all the details, copies of all the sources of income, submitted details of all the bank accounts, details of cash deposits in the bank accounts, cash book and bank book and relevant books of account for verification. In response thereto, the assessee had also furnished all the details admittedly vide replies to the A.O. which is at page No. 3 to 4 and 6 to 11 of the paper book and this fact has also not been disputed by the Id. PT.CIT in its order which goes to show that after examining all the documents, verifying all the details, the A.O. had taken a plausible view being a quasi judicial authority i.e. on the reason the A.O. in his order of assessment had categorically mentioned that "the assessee attended and submitted the requisite details, information and clarifications sought for as per notices and order sheet entries. The above specific finding recorded by the AO goes to show that the AO had taken a reasonable and plausible view after examining all the details as were required for surviving the A.O. in respect of the issue of cash deposits, which was under consideration before the A.O.

13. If so then how the Id. Pr.CIT can assume the jurisdiction u/s 263 on the issue of deduction u/s 80P(2)(d) which were not at all in the reasons recorded u/s 148 for the re-assessment u/s 148 and when the case of the assessee was reopened u/s 147/148 on the limited issue of cash deposit on which the Id. AO has made the inquiry and examined and passed the assessment order which has not at all the disputed even by the Id. Pr. CIT. When the case was reopened u/s 148 for limited and on specific issue, then how the AO can go beyond to that issues, when the scope of inquiry by the AO is limited to that issue and the Id. Pr. CIT also cannot go beyond that issue while exercising jurisdiction u/s 263 of the Act our view. The case of the assessee was more specific to the limited scrutiny or it is not case of the assessee for complete scrutiny u/s 143(3) for regular assessment and the very basis of reopening of the case under section 148 was on account of cash deposits in the bank, then how the Id. Pr. CIT can hold that the AO has failed to make the inquiry, where the scope of inquiry is limited only to the extent of that issue and in the action u/s 148 the issue of deduction u/s 80P was not there. Thus in the proceedings u/s 263 the Id. Pr. CIT cannot assume or except or direct to the Id. AO to examining the issue which was not subject matter of the reasons recorded u/s 148 and under the 148/147 assessment. Our this view found strength from the decision of Coordinate Bench of this

Tribunal in the case of **Mahendra Singh Dhankhar HUF vs. ACIT ITA No. 265/JP/2020 Jun 30, 2021 (2021) 62 CCH 0271 Jaipur Trib**

where it has been held that:

“Revision—Ordering revision where case is selected for limited scrutiny—Assessee firm is a real estate firm engaged in colonizing and developing residential projects—Case of assessee was selected for limited scrutiny through CASS on account of mismatch of AIR and CIB data, and mismatch in sale turnover reported in audit report and ITR—An addition for wrong calculation of LTCG was made by A.O. which was not challenged by assessee—Subsequently, on basis of certain audit objections, PCIT issued notice u/s 263—Assessee submitted that it is a case outside jurisdiction of Commissioner of Income tax to raise objections outside scope of limited scrutiny—PCIT ordered for 'Denovo' assessment without considering reply filed by assessee—Held, there is no dispute that scope of enquiry in case of limited scrutiny is only to extent of issues for which case was selected for scrutiny under CASS—CBDT has issued instructions from time to time in this respect and has specifically instructed taxing authorities that scope of enquiry should be limited to verification of all particulars for which limited scrutiny was taken up under CASS—However, in case during assessment proceeding if AO is of view that substantial verification of other issue is also required then case may be taken up for comprehensive scrutiny with approval of Pr.CIT/DIT concerned—It is also instructed that such an approval shall be accorded by Pr.CIT/DIT in writing after being satisfied about merits of issue(s) necessitating wider and detailed scrutiny in case—AO is duty bound to follow instructions in case limited scrutiny assessment proceeding are proposed to be converted into complete scrutiny and without following said procedure and necessary approval of competent authority conducting an enquiry on issue which is outside limited scrutiny would be beyond jurisdiction of AO—As a necessary corollary, Pr. CIT u/s 263 cannot be permitted to traverse beyond jurisdiction that was vested with A.O while framing assessment as what cannot be done directly cannot be done indirectly—Therefore, where matter was selected for limited scrutiny, revisional

jurisdiction cannot be exercised for broadening scope of jurisdiction that was originally vested with A.O while framing assessment—As per PCIT, reason for which matter was selected for limited scrutiny i.e, mis-match of sales turnover vis-à-vis ITR, CIB & AIR has a direct bearing on opening and closing stock of cost of construction and W.I.P and in turn, on taxable income, therefore, AO was duty bound to examine these issues and AO having failed to examine these issues, AO has effectively failed to examine issues for which matter was selected for limited scrutiny—As far as matters for which case was selected for limited scrutiny in terms of mis-match of sales turnover, same has been duly examined by AO and even PCIT has not recorded any adverse findings in terms of lack of enquiry or inadequate enquiry on part of AO—Order passed by PCIT u/s 263 is set aside—Assessee's appeal allowed."

We also draw strength from the decision in the case of **Paul Bharwaj vs. Pr.CIT in ITA No. 463/Chd/2019 May 13, 2021 (2021) 62 CCH 0120 Chd Trib** wherein it was held that:

Revision—Order erroneous or prejudicial to revenue—Over exercise of power—Assessee an individual filed his return declaring income and agricultural income—Case was selected for limited scrutiny for reason that there was a substantial increase in capital during year relevant to assessment year under consideration—AO accepted return filed by assessee—Pr. CIT issued notice to assessee u/s 263 and directed AO to make assessment afresh on issues mentioned in notice—Held, Tribunal in case of M/s Su-Raj Diamond Dealers Pvt. Ltd. CIT ITA No 3098/ Mum has quashed order passed u/s 263 in case of limited scrutiny assessment, holding that Pr. CIT under garb of section 263, cannot exceed his jurisdiction holding that when case of assessee was selected for limited scrutiny for reasons viz. (i) Large other expenses claimed in P&L A/c; and (ii) Low income in comparison to High Loans/advance /Investment in shares, therefore, no infirmity could be attributed to assessment framed by A.O on ground that he had failed to deal with other issues which though did not fall within realm of limited reasons for which case was selected for scrutiny assessment—In other words, Pr. CIT in garb of his revisional jurisdiction u/s 263 cannot be permitted to traverse beyond jurisdiction that was vested with A.O while framing assessment—As

A.O had aptly confined himself to issues for which case of assessee was selected for limited scrutiny, therefore, no infirmity can be attributed to his order, for reason, that he had failed to dwell upon certain other issues which did not form part of reasons for which case was selected for limited scrutiny under CASS— Case of assessee was selected for limited scrutiny under CASS for reason that there is substantial increase in capital in relevant year and AO passed assessment order and accepted return filed by assessee after examining issue regarding increase in capital account as assessee had credited his capital account with agricultural income and capital gain from sale of flat—Assessee has reflected that same in its capital account—Further in response to letter issued by AO during assessment proceedings, assessee submitted his reply explaining reason for increase in capital— However, Pr. CIT exercising jurisdiction under section 263, directed AO to make fresh assessment on issues which were not subject matter of limited scrutiny—Since, issue raised by assessee in this case has already been decided in favour of assessee Pr. CIT(A) has exceeded jurisdiction u/s 263 by directing AO to make fresh assessment on issues which were not subject matter of assessment framed on basis of limited scrutiny—Assessee's appeal allowed.

The present case of the assessee is more strong footing here being the assessment u/s 147/148. Therefore, in light of the above facts and position, the Id. PT.CIT could not be said to be justified in holding that the assessment order was passed without examining the issue of deduction u/s 80P(2)(d).

14. Further on merit, on perusal of the order of the Pr. CIT and reply filed by the assessee in response to the notice u/s 263 we found that the Id. Pr. CIT itself in para 6 page 3 he has stated that assessee Co-operative society had received interest of Rs.14,05,464/- from FDR's with Co-operative Banks which are not Co-operative Society, therefore deduction of Rs.1,08,464/- was wrongly allowed u/s 80P(2)(d). During the course of

proceedings u/s 263, society had claimed that interest earned by it was from Sikar Kendriya Sahakari Bank Ltd, which is registered as a Co-operative Society certificate is enclosed, but assessee has not submitted any details of interest earned from it or any other bank. Therefore the facts of the Society could not be verified in absence of proper documents which have not been filed during the assessment proceedings or during the proceedings u/s 263. On perusal of the order of the Id. Pr. CIT and reply and details we found here that the Id. Pr. CIT one side has admitted that the Assessee Co-operative society had received interest of Rs.14,05,464/- from FDR's from Sikar Kendriya Sahakari Bank Ltd, which is registered as a Co-operative Society certificate is enclosed the certificate is also placed before us at Page 33 of the paper book and during the course of hearing before us the Id. A/R has also drawn our attention at Page 26 of the reply to Id. Pr. CIT regarding the reply on the interest received from Co-operative Society and claim of deduction u/s 80P(2)(d) as under:

"The Society is a registered co-operative society and claimed the deduction under section 80P complying with all the provisions within specified criteria.

The society had claimed deduction u/s 80P(2)(d) of Rs. 1,08,464.00 in respect of income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income. The total interest received by the society on its investments of Rs. 14,05,465.00. The total interest received from Sikar Kendriya Sahakari Bank Ltd. Rs. 14,05,465.00. The Sikar Kendriya Sahakari Bank Ltd. is a co-operative society and certificate of co-operative society is enclosing herewith."

To support this reply, the assessee has also drawn our attention to the Page 15, 17 and 18 of the paper book which are P&L account and B/s from which it is also clear that the assessee has received FDR's interest only from Sikar Kendriya Sahakari Bank Ltd not from other bank and no investments or deposits in other banks and as per Sec. 80P(2)(d) the same is allowable. The Id. A/R has also drawn our attention to the decision of Honble Rajasthan High Court in case of **CIT, Jaipur-II Vs. M/s Rajasthan Rajya Sahakari Kray Vikray Sangh Ltd** under D.B. Income Tax Appeal's No.139/2002, 20/2004, 24/2004, 27/2004, 305/2005 & 59/2006. Thus also looking to the above facts and decisions of the Honble Rajasthan High Court in case of **CIT, Jaipur-II Vs. M/s Rajasthan Rajya Sahakari Kray Vikray Sangh Ltd (Supra)**, assessee is entitled to deduction u/s 80P(2)(d).

15. We noticed that during the course of assessment proceedings, the assessee had filed various details as required by the A.O. The A.O. in his order at page No. 1 and 2 has categorically admitted that all the required documents sought for from the assessee have been placed on record and the queries sought from the assessee vide notice u/s 143(2) and 142(1) of the Act dated 06.06.2017 and order sheet has already been placed on record by the assessee at page No.2 and 5 in its paper book. The reply filed by the assessee to the queries raised by the A.O. has already been

placed on record at page Nos 3-4 and 6-11 of the book, Apart from this, the assessee had also placed on record copy of cash book Profit & Loss Account B/s books of account which are page Nos. 14 to 20 of paper book.

16. We have also perused the copy of notice U/s 263 of the Act dated 25.03.2021 issued by the PT.CIT which is at page No. 22 and 23 of the paper book and copy of reply filed by the assessee to the Pr.CIT which is at page No. 24 to 33 of the paper book. We have also gone through the order of assessment passed by the A.O. by finalizing the assessment U/s 147 r.w.s. 143(3) of the Act dated 30.06.2017. The said order of the A.O. dated 30.06.2017 was passed after examining all the details submitted by the assessee before the A.O. We have also noticed that during the course of assessment proceedings, the assessee had filed various details as required by the A.O. on the issue of cash deposits and on deductions u/s 80P and the A.O. himself at page No. 1 of its assessment order had categorically mentioned that in response to the notices the assessee has filed details/information which were examined and the case discussed time to time. Thereafter the AO at page 2 noted that assessee is a primary agricultural credit society and is entitled for deduction u/s 80P(2)(a)(i) for carrying on business of banking of providing credit facilities to its members and 80P(2)(a)(iv) for sale of fertilizers, seeds, pesticides, Pashu aahhar

etc. to its members vide page 2 of the assessment order. The AO has also stated that after examination of books of account and vouchers on test check basis claim for deduction as stated above is found correct, accordingly deduction claimed by the assessee is allowed. vide page 2 of the assessment order. The AO has also asked about expenditures debited in the P&L account in response to the assessee also filed the reply. The AO has also disallowed expenditure of Rs.2,86,918/- on account of provisions and audit fees. Thus the AO at page 3 of assessment order computed the income of the assessee at Rs.3,95,382/- as against Rs.1,08,464/- and after deduction u/s 80P(2)(a)(i) and 80P(2)(a)(iv) at nil income. Thus the assessment was completed U/s 148 r.w.s. 143(3) of the Act on 30.06.2017 thereby taking a reasonable and plausible view. However, the Id. PT.CIT issued notice U/s 263 of the Act alleging that the order passed by the A.O. was found to be erroneous as it is prejudicial to the interests of the revenue on reason that the deduction of interest income of Rs.1,08,464/- has been claimed u/s 80P(2)(d). Besides, interest of Rs.14,05,446/- on FDR received from Sikar Central Co-operative Bank, PNB, RGB and SBI has been claimed and the same was allowed by the AO, which is not allowable u/s 80P(2)(d) of the IT act. Hence the order dated 30.06.2017 may not be treated as erroneous and prejudicial to the interest of revenue regarding the non-application of the law on the grant of

deduction u/s 80P(2)(d) as the assessment order passed mechanically without application of mind for the reason mentioned in the notice and fixed the matter for just next day on 26.03.2021. Despite very short span of time, the assessee had prepared a detailed reply alongwith details explaining all the facts on 26.03.2021 which is at page No. 24-33 of the paper book and the same has also been partly reproduced at page No. 2 and 3 of the order passed by the Id. PT.CIT U/s 263 of the Act. Further our this view also found strength from the decision of Coordinate Bench of Jodhpur ITAT in the cases of **Lodha Offset Ltd. vs. Pr. CIT in ITA No. 155/Jodh/2018 decision dated 9th March, 2020, Prateek Metals Pvt. Ltd. vs. Pr. CIT in ITA No. 156/Jodh/2018 decision doled 19th March, 2020 and Nokha Agro Services vs. Pr. CIT in ITA No. 171/Jodh/2018 decision 20th March. 2020.** Further in the case of **Dorabji Tata Trust vs. DCIT (EXEMPTION) ITA No. 3909/Mum/2019 28th December, 2020 (2021) 209 TTJ 0409 (Mumbai) bench** has dealt with the issue of u/s 263 delivered by the honble President and vice president as under:

“20. Undoubtedly, the expression used in Explanation 2 to Section 263 is “when Commissioner is of the view,” but that does not mean that the view so formed by the Commissioner is not subject to any judicial scrutiny or that such a view being formed is at the unfettered discretion of the Commissioner. The formation of his view has to be in a reasonable manner, it must stand the test of judicial scrutiny, and it must have, at its foundation, the inquiries, and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant- that an Assessing Officer is expected to be. If we are to

proceed on the basis, as is being urged by the learned Departmental Representative and as is canvassed in the impugned order, that once Commissioner records his view that the order is passed without making inquiries or verifications which should have been made, we cannot question such a view and we must uphold the validity of revision order, for the recording of that view alone, it would result in a situation that the Commissioner can de facto exercise unfettered powers to subject any order to revision proceedings. To exercise such a revision power, if that proposition is to be upheld, will mean that virtually any order can be subjected to revision proceedings; all that will be necessary is the recording of the Commissioner's view that "the order is passed without making inquiries or verification which should have been made". Such an approach will be clearly incongruous. The legal position is fairly well settled that when a public authority has the power to do something in aid of enforcement of a right of a citizen, it is imperative upon him to exercise such powers when circumstances so justify or warrant. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise a power which is invested in aid of enforcement of a right—public or private—of a citizen. [L Hirday Naran Vs Income Tax Officer [(1970) 78 ITR 26 (SC)]. As a corollary to this legal position, when a public authority has the powers to do something against any person, such an authority cannot exercise that power unless it is demonstrated that the circumstances so justify or warrant. In a democratic welfare state, all the powers vested in the public authorities are for the good of society. A fortiori, neither can a public authority decline to exercise the powers, to help anyone, when circumstances so justify or warrant, nor can a public authority exercise the powers, to the detriment of anyone, unless circumstances so justify or warrant. What essentially follows is that unless the Assessing Officer does not conduct, at the stage of passing the order which is subjected to revision proceedings, inquiries and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant- that an Assessing Officer is expected to be, Commissioner cannot legitimately form the view that "the order is passed without making inquiries or verification which should have been made". The true test for finding out whether Explanation 2(a) has been rightly invoked or not is, therefore, not simply existence of the view, as professed by the Commissioner, about the lack of necessary inquiries and verifications, but an objective finding that the Assessing Officer has not conducted, at the stage of passing the order which is subjected to revision proceedings, inquiries and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant that the Assessing Officer is expected to be.

21. *That brings us to our next question, and that is what a prudent, judicious, and responsible Assessing Officer is to do in the course of his assessment proceedings. Is he to doubt or test every proposition put forward by the assessee and investigate all the claims made in the income tax return as deep as he can? The answer has to be emphatically in negative because, if he is to do so, the line of demarcation between scrutiny and investigation will get blurred, and, on a more practical note, it will be practically impossible to complete all the assessments allotted to him within no matter how liberal a time limit is framed. In scrutiny assessment proceedings, all that is required to be done is to examine the income tax return and claims made therein as to whether these are prima facie in accordance with the law and where one has any reasons to doubt the correctness of a claim made in the income tax return, probe into the matter deeper in detail. He need not look at everything with suspicion and investigate each and every claim made in the income tax return; a reasonable prima facie scrutiny of all the claims will be in order, and then take a call, in the light of his expert knowledge and experience, which areas, if at all any, required to be critically examined by a thorough probe. While it is true that an Assessing Officer is not only an adjudicator but also an investigator and he cannot remain passive in the face of a return which is apparently in order but calls for further inquiry but, as observed by Hon'ble Delhi High Court in the case of *Gee Vee Enterprises Vs ACIT [(1995) 99 ITR 375 (Del)]*, "it is his duty to ascertain the truth of the facts stated in the return **when the circumstances of the case are such as to provoke an inquiry**. (Emphasis, by underlining, supplied by us). It is, therefore, obvious that when the circumstances are not such as to provoke an inquiry, he need not put every proposition to the test and probe everything stated in the income tax return. In a way, his role in the scrutiny assessment proceedings is somewhat akin to a conventional statutory auditor in real-life situations. What Justice Lopes said, in the case of ***Re Kingston Cotton Mills [(1896) 2 Ch 279, 288]***, in respect of the role of an auditor, would equally apply in respect of the role of the Assessing Officer as well. His Lordship had said that an auditor (read Assessing Officer in the present context) "is not bound to be a detective, or, as was said, to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watch-dog, but not a bloodhound.". Of course, an Assessing Officer cannot remain passive on the facts which, in his fair opinion, need to be probed further, but then an Assessing Officer, unless he has specific reasons to do so after a look at the details, is not required to prove to the hilt everything coming to his notice in the course of the assessment proceedings. When the facts as emerging out of the scrutiny are apparently in order, and no further inquiry is warranted in his bonafide opinion, he need not conduct further inquiries just because it is lawful to make further inquiries in the matter. A degree of reasonable*

*faith in the assessee and not doubting everything coming to the Assessing Officer's notice in the assessment proceedings cannot be said to be lacking bonafide, and as long as the path adopted by the Assessing Officer is taken bonafide and he has adopted a course permissible in law, he cannot be faulted- which is a sine qua non for invoking the powers under section 263. In the case of **Malabar Industrial Co Ltd Vs CIT [(2000) 243 ITR 83 (SC)]**, Hon'ble Supreme Court has held 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, for example, when an ITO adopted 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." The test for what is the least expected of a prudent, judicious and responsible Assessing Officer in the normal course of his assessment work, or what constitutes a permissible course of action for the Assessing Officer, is not what he should have done in the ideal circumstances, but what an Assessing Officer, in the course of his performance of his duties as an Assessing Officer should, as a prudent, judicious or reasonable public servant, reasonably do bonafide in a real-life situation. It is also important to bear in mind the fact that lack of bonafides or unreasonableness in conduct cannot be inferred on mere suspicion; there have to be some strong indicators in direction, or there has to be a specific failure in doing what a prudent, judicious and responsible officer would have done in the normal course of his work in the similar circumstances. On a similar note, a coordinate bench of the Tribunal, in the case of **Narayan T Rane vs ITO [(2016) 70 taxmann.com 227 (Mum)]** has observed as follows:*

20. *Clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-a-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have claimed out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made.*

17. The Id. PT.CIT has nowhere concluded that as to how any prejudice in fact has been caused to the revenue and in case, if no loss to the revenue is caused then in that eventuality the provision of Section 263 of the Act could not have been invoked. It was incumbent upon the Id. PT.CIT to have shown as to how the order of assessment was prejudicial to the interest of revenue. We have considered the detailed reply furnished by the assessee which is at page No. 24 to 33 of the paper book alongwith details submitted to the show cause notice by making reference to the facts of the case and legal position. However despite that the Pr. CIT did not prove or bring any material or circumstantial evidence on record that the claims of the assessee on these issues are not genuine, bogus, not verifiable and not correct. The Id. Pr. CIT has not decided the merits of the case as to whether any addition or disallowance was called for or not despite all the details, facts position of law available before him. He was only of the view that the AO has not examined the issue of deduction u/s 80P(2)(d). When he has issued the notice u/s 263 on 25.03.2021 and sought the reply on the very next day i.e on dt.26.03.2021, despite being very short span of time assessee filed the detailed reply and after receiving reply the Id. Pr. CIT has passed the order on 31.03.2021 straight way without confronting the issue or asking any query, question explanation on the issue. It was duty

of the Pr. CIT as per decision of **Dorabji Tata Trust vs. DCIT (EXEMPTION)** (Supra). However, the Id. PT.CIT failed to do so and summarily reach to the conclusion that the order was prejudicial to the interest of revenue. Such a view taken by the PT.CIT is not well founded in the law or by various Hon'ble courts. In this regard, we rely on decisions in cases of **Smt. Leela Choudhary v/s PR. CIT 289 ITR 226(Gau.)**, **Saw Pipes Ltd v/s Add. Pr, CIT 94 TTJ 1035(Del)**, **Malabar Industrial Co. Ltd. v/s PR.CIT 159 CTR(IXSC)** and **PR. CtT v/s Rayn Silk Mills 221 fTR 155(Guj.)**.

18. It is an admitted fact that there is no straight jacket formula or parameter to make inquiry in the assessment proceedings' What is required is that the AO should frame the assessment in accordance with the provisions of the Act, as interpreted and in the light of the relevant judicial pronouncements, as available on the date of framing the assessment or material available before him. In this regard, we draw strength from the decision in the case of **CIT v/s Girdhari Lal 258 ITR 331(Raj.)** wherein it has been held:

"When the Assessing Officer after going through the material on record and after considering the explanation of the assessee' made some additions and rejected the books of accounts, it could not be said that he had not applied his mind. It is not always necessary that every assessee in the line of business should have the same rate of profit The tribunal was correct in cancelling the order under sec 263 of Income Tax Act "

19. We further observe that the department can assume jurisdiction under Section 263 of the Act if twin conditions of the order being "erroneous and prejudicial to the interest of the revenue" are satisfied. If the view taken by the A.O. is one of the possible views then learned CIT cannot assume jurisdiction. Reliance may be placed on the followings decisions:

1, Malabar Industrial co. Ltd, v. PR. CIT [2000] 243 ITR 83 (sc)

2. PR. CIT vs MAX INDIA LTD. (2007)213 CTR 256(SC)

20. We further observe that the proceedings under s. 263 of the Act cannot be taken on the ground that the AO has not made sufficient enquiry. The Id. Pr.CIT can assume jurisdiction if there has been lack of enquiry. In the instant case, the enquiry has been made admittedly on the issue of reopening, though the enquiry may not be sufficient in the opinion of the Id Pr. CIT. In this regard, we rely on the decision of Hon'ble Delhi High Court in the case of **CIT v/s Hindustan Marketing & Advertising Co' Ltd' [2010] 45 DTR (Del')**.

21. We observe that the A.O. has made enquiry on the issue of reopening and not supposed to examination of the issue which is not the subject matter of reasons recorded, however sufficiency of enquiry can be depending upon from person to person. The AO cannot remain passive in

the face of a return which is apparently in order but calls for further enquiry. It is the duty of the AO to ascertain the truth of the facts stated in the return, when the circumstances of the case are such as to provoke an enquiry. The word 'erroneous' includes the failure to make enquiry. The Hon'ble Delhi High Court in the case of **CIT v/s Vikas Polymers t2010I 236 CTR (Del.) 476** had an occasion to consider the passing of order under s. 263 of the Act by the Id. PCIT when the AO made an enquiry and the assessee filed the reply. Therefore, considering all the documents' replies and submissions made by the assessee before the Id. Pr.CIT and also before us, we are of the view that the assessee has duly satisfied all the queries raised by the Id. Pr. CIT in his order passed U/s 263 of the Act, therefore, in such circumstances and keeping in view our above observations that the A'O' had made all the detailed enquiries and Verifications, therefore, no action U/s 263 of the Act was warranted' Accordingly' we quash the proceedings U/s 263 of the Act and allow the grounds raised by the assessee.

22. Now we take ITA No. 36 & 37/JP/2021 for the A.Y. 2011-12 & 2012-13.

In both these appeals, grounds, facts and circumstances as well as submissions of both the parties are identical to the grounds, facts and circumstances and submissions of both the parties in ITA No. 35/JP/2021

for the A.Y. 2010-11, therefore, our finding given in ITA No. 35/JP/2021 for the A.Y. 2010-11 shall apply mutatis mutandis in these appeals also.

23. In the result, all these three appeals of the assessee are allowed.

Order pronounced in the open court on 02nd November, 2021.

Sd/-

(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 02/11/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- Palsana Gram Sewa Sahkari Samiti Limited, Sikar.
2. प्रत्यर्थी / The Respondent- The Pr.CIT-2, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 35 to 37/JP/2021)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar