

IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH, MUMBAI  
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2485/Mum/2019

(A.Y: 2014-15)

M/s. Bee Pee Textiles 384-F, Room No. 4,5 &6 Dhabholkar, Wadi, Kalbadevi, Mumbai – 4000024.	Vs.	Pr. CIT – 18, Room No. 601, 6 <sup>th</sup> Floor, Earnest House, Nariman Point, Mumbai – 400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFFB3061R		
Appellant	..	Respondent

Appellant by :	Shri Mukesh Advani. AR
Respondent by :	Shri Rahul Raman. DR

Date of Hearing	18.08.2021
Date of Pronouncement	15.11.2021

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the Pr. Commissioner of Income Tax– 18, Mumbai order passed u/s 263 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

- “1. *The Learned Principal Commissioner of Income Tax - 18, has erred in passing the order u/s 263 of Income Tax Act 1961, wherein the Assessment Order which is passed by the Assessing Officer u/s 143(3) of the Income Tax Act 1961, is treated by the Principal Commissioner of Income Tax - 18 as erroneous, in so far as, it is prejudicial to the interest of Revenue.*

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*The Assessment Order is now set aside by the Principal Commissioner of Income Tax - 18 for verification about the genuineness & allowability of expenses.*

*The Assessing Officer, exercising its quasi-judicial power, had issued a detailed questionnaire u/s 142(1) of the Act which was duly answered by way of various details, explanations and letters. Complete books of account, details of sales/purchases, supported with documentary evidences were produced and examined by the Assessing Officer during the assessment proceedings. The appellant had appeared before the Assessing Officer and filed replies, however, the Learned Principal Commissioner of Income Tax - 18, has completely ignored the detailed enquiry conducted by the Assessing Officer and has, therefore, erred in exercising jurisdiction u/s 263 of the Income Tax Act 1961, in respect of the issues which were already examined by the Assessing Officer.*

*Relying on the decision of Apex Court in the case of Malabar Industrial Co. Ltd. V. CIT [(2000) 243 ITR 83], it is submitted that the power of Commissioner of Income Tax u/s 263 can only be exercised by the Principal Commissioner of Income Tax when the twin conditions of the order being erroneous as well as prejudicial to the interest of revenue, are satisfied and the same cannot be exercised to substitute its own finding in place of the Assessing Officer and therefore, the Principal Commissioner of Income Tax cannot re-examine the issues already inquired into by the Assessing Officer. Reliance is also placed on the Bombay High Court's decision in the case of CIT v. Gabriel India Ltd. [(1993) 203 ITR 108]. The power u/s 263 is to be exercised in the case of "no inquiry" and not in the case of "inadequate inquiry" or "lack of inquiry"*

*In light of the above said facts & circumstances of the case, we pray before your honours to delete the order which is passed by the Pr. CIT u/s 263 of the Act.*

2. The brief facts of the case are that the assessee firm is engaged in the business of manufacturing of sarees and reselling the same on wholesale basis. The assessee has filed the return of income for the A.Y 2014-15 on 26.11.2014 declaring a total income of Rs.39,07,810/-. The return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny under the CASS and notice u/s 142(1) of the Act along with questionnaire was issued. In compliance the Ld. AR of the assessee appeared from time to time and submitted the voluminous information and reply to notices and the case was discussed.

3. The A.O on perusal of the financial statements found that the assessee has claimed partner's remuneration in the Profit and Loss account and called for the partnership deed. The AO on verification of the partnership deed found that the partnership deed does not specified the amount/remuneration which has to be paid to partners every year. The Ld. Counsel for the assessee submitted the reply and relied on the judicial decisions. The A.O is of the opinion that the submissions made by the assessee cannot be acceptable as the provisions of Sec. 40(b) of the Act specifically mentions that the remuneration paid to each working partner has to be specified/ laid down the

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manner of qualifying such an remuneration. The A.O. has relied on the CBDT circular No.739 dated 25.03.1996, where it is specifically mentioned that no deduction u/s 40b of the Act will be admissible unless the partnership deed specified the amount of remuneration paid to each individual partner and based on the manner of quantifying the remuneration. The A.O was not satisfied with the explanations and made an addition of Rs.55,53,000/- as disallowance of remuneration and assessed the total income of Rs Rs.94,57,810/- and passed the order U/sec143(3) of the Act dated 29/07/2016.

4. The Pr.CIT on perusal of the record found that the order passed u/sec 143(3) of the Act on 27.07.2016 in limited scrutiny through CASS for examining the other expenses claimed in the profit and loss account. The A.O found that the assessee has claimed the other expenses to the extent of Rs.8,28,68,614 under various sub heads. The assessee made submissions by letter dated 04-01-2019 explaining the business operations of the assessee and the submissions before the Assessing officer made on 01-06-2016 in respect of schedule BP pertaining to other expenses in the assessment proceedings and also the TDS returns filed in respect of payment of brokerage and labour charges. The limited scrutiny was for

examining the large other expenses claimed in the profit and loss account. The Pr. CIT is of the opinion that the other expenses are not debited to the profit and loss account and all these expenses have been mentioned individually and claimed. But the A.O has called for the information in respect of the claims made in the profit and loss account and the assessee has submitted the details in the assessment proceedings on 21, 22 & 24 June 2016. The assessee has substantiated the details with the Tax Audit report and the Bank statements. The contentions raised by the assessee that all the details were submitted before the A.O and assessment order was completed after verification and examination of the supporting information. Whereas the A.O has made enquiries on claims and having satisfied has passed the order with the addition in respect of remuneration paid to partners. But the Pr. CIT is of the opinion that the order passed by the A.O is without enquiries and non application of mind and directed the A.O to redo the assessment afresh and passed the order u/s 263 of the Act dated 22.06.2019. Aggrieved by the Pr.CIT order, the assessee has filed an appeal before the Honble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the Revision order u/s 263 of the Act passed by the Pr. CIT is not valid and it does not satisfy the twin conditions of

erroneous and prejudicial to the interest of the revenue. Further, the assessee's case was selected for limited scrutiny and notice u/s 142(1) of the Act was issued calling for the details. The assessee has filed the voluminous details supporting the claims. The A.O having satisfied with the evidences has accepted the claim of expenses in respect of limited scrutiny and made addition of remuneration paid to partners. The Ld. AR emphasized that the Pr. CIT has not conducted any inquiry but only directed the Assessing officer to redo the assessment afresh. The Ld.AR supported the submissions with the judicial decisions and the voluminous paper book and prayed for allowing the appeal.

6. Contra, the Ld. DR submitted that though the case was selected for limited scrutiny, the A.O has not conducted further enquiry and supported the order of the Pr. CIT.

7. We heard the rival submissions and perused the material on record. The Ld.AR submitted that the sole matrix of the disputed issue that the Pr.CIT has erred in passing a revision order annulling the assessment order passed u/s 143(3) of the Act and directing the Assessing officer to redo the fresh assessment. The Ld.AR contentions are that the case was selected for limited

scrutiny and as per the limited scrutiny guidelines the reasons were informed to the assessee. The Ld. AR has demonstrated the notice issued u/s 143(2) and 142(1) of the Act along with questionnaire and compliance to the notice with requisite details which cannot be disputed. The Ld.AR referred to the explanations dated 14/06/2016 filed in response to the notice issued u/s 142(1) of the Act at page 81 to 83 of the paper book and bank statements substantiating the expenses claimed in the profit & loss account at page 84 to 150 of the paper book. The contentions of the Ld. AR are that when the assessee has complied with the directions issued u/s 142(1) of the Act, the Pr. CIT cannot observe that the order passed by the A.O is erroneous and the income has escaped assessment.

8. The Ld.AR demonstrated the income tax return ITR-5 filed electronically, where the assessee has clearly disclosed these facts and referred to the specific schedule at part A-P&L item s.no 38 other expenses mentioned in the income tax return (ITR). The assessee in compliance to the notices issued in the assessment proceedings has filed ledger account copies and party wise payments made to contractors in relation to labour charges at page 151 to 235 of paper book. Further additional details filed on 21-06-2016 referred at page 236 to 239. The assessee

has submitted the ledger account copies of courier & postage charges, car expenses, and electricity charges with documentary evidence at page 240 to 275 of paper book and cannot be disputed. The A.O has accepted the fact of limited scrutiny and the genuineness of the case and the expenditure claimed is not doubted. In the limited scrutiny, the A.O. s scope is limited to the extent of recorded reasons for selection of scrutiny and the assessing officer has examined the case. Therefore the order passed by the Pr. CIT is devoid of merits. We find the Co-ordinate bench of the Honble Tribunal in Mrs Sonali Hemant Bhavasar Vs Pr.CIT-29 in ITA.No.742/M/2019 dated 17-05-2019 has dealt on the scope of limited scrutiny and the revisionary jurisdiction at page 7 Para 6 of the order, which is read as under:

*6. After hearing both the parties and perusing the materials before us, we observe from the notice issued under section 143(2) of the Act for limited scrutiny dated 19.09.2016 and find merits in the contentions of the assessee that the said limited scrutiny can not be expanded unless the AO converted it into complete scrutiny with the approval of Ld. Pr. CIT and if the AO after considering the submissions of the assessee does not come to the conclusion of potential escapement the Ld. Pr. CIT can not hold the order to be erroneous on the ground that AO ought to have reached to such conclusion. The case of the assessee is squarely covered by the decision of Kolkata Bench in the case of Sanjeev Kr. Khemka vs. Pr. CIT in ITA No.1361/Kol/2016 A.Y. 2011-12 dated 02.06.2017 wherein the co-ordinate bench of the Tribunal has held as under:*

“4. We have heard the rival contentions of the parties and perused the materials on record. The primary issue in the case on hand revolves whether it is a case selected under CASS for limited scrutiny or regular scrutiny. It can be seen from the grounds of appeal that the assessee wants to contend that the very initiation of proceedings u/s 143(3) of the Act on the basis of regular scrutiny under the Act was bad in law. The proceedings under [section 143\(3\)](#) of the Act should have been limited to the extent of the information gathered through AIR. Accordingly the proceedings u/s 263 of the Act cannot be expanded beyond the issue raised in AIR. Thus the order u/s 143(3) of the Act beyond the points of AIR is invalid in law and so the same is with the order passed u/s 263 of the Act. It is the further contention of the assessee that in the items which are not subject matter of AIR cannot subject matter of scrutiny. Such matters include salary of the assessee, loans & interest on loans, payment of LIC, Commission & brokerage income etc. It is the case of the assessee that in the assessment order passed u/s 143(3) of the Act, the AO has travelled beyond the points of the AIR on the basis of which the case of scrutiny was selected under CASS module. It is the plea of the assessee that when no addition/disallowance can be made beyond the points mentioned in AIR in the assessment proceedings then same is the case with proceedings initiated u/s 263 of the Act.

4.1 The first aspect which needs to be examined is as to whether the assessee is entitled to challenge the validity of initiation expanded in the proceedings u/s 143(3) of the Act in the present appeals in which he has challenged the validity of expanded order passed u/s 263 of the Act covering the points which are not part of the AIR. The ld. Counsel for the assessee submitted before us that it is open to an assessee in an appeal against the order u/s 263 of the Act which seeks to revise an order passed u/s 143(3) of the Act, to challenge the validity of the expansion of order passed u/s.143(3) of the Act covering the points which are not part of the AIR. In this regard we find that Lucknow Bench of Hon'ble ITAT in the case of [Inder Kumar Bachani \(HUF\) vs ITO](#) 99 ITD 621 (Luck)

and ITAT Mumbai 'G' Bench in the case of M/s. Westlife Development Ltd. Vs Principal C.I.T. in ITA NO.688/Mum/2016 have taken a view that when an Assessment order passed u/s 147 of the Act was illegal the Ld.CIT cannot invoke the jurisdiction u/s 263 of the Act against such void or non-est order. In the second decision cited the Hon'ble Mumbai bench of the Tribunal has specifically framed the following questions :-

"1. Whether the assessee can challenge the validity of an assessment order during the appellate proceedings pertaining to examination of validity of order passed u/s 263?

2. Whether the impugned assessment order passed u/s 143(3) dated 24-10- 2013 was valid in the eyes of law or a nullity as has been claimed by the assessee?

3. If the impugned assessment order passed u/s 143(3) was illegal or nullity in the eyes of law, then, whether the CIT had a valid jurisdiction to pass the impugned order u/s 263 to revise the non est assessment order?"

On question no. 1 and 3 which is relevant to the present case the Hon'ble Mumbai bench of the Tribunal has taken the view that when the original assessment proceedings are null and void in the eyes of law for want of proper assumption of jurisdiction then such validity can be challenged even in collateral proceedings. The Mumbai bench took the view that the proceedings u/s 147 of the Act are primary proceedings and proceedings u/s 263 of the Act are collateral proceedings and in such collateral proceedings, the validity of initiation of the original proceedings u/s 147 of the Act can be challenged. The Mumbai bench of the Tribunal in this regard has placed reliance on several decisions, the principal decision being that of the Hon'ble Supreme Court in the case of [Kiran Singh & Ors. V. Chaman Paswan & Ors.](#) [1955] 1 SCR 117(SC) wherein the Hon'ble Supreme Court observed as follows :-

"It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a

*nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties."*

*Now coming to the facts of the instant case, we find that the instant case was selected on the basis of AIR Information as evident from the order of AO under [section 143\(3\)](#) of the Act. There is also no whisper in the order of the AO for expanding the scope of limited scrutiny after obtaining the permission from the Administrative CIT. The ld. DR has also failed to bring anything contrary to the argument of the ld. AR. Therefore in our considered view the scrutiny should have been limited only to the information emanating from the AIR. Admittedly, the assessee has claimed to have filed an appeal before Ld. CIT(A) challenging the jurisdiction exceeded by the AO while framing the assessment order u/s 143(3) of the Act. We find that the impugned issue being legal in nature and goes to the root of the matter therefore we are inclined to proceed with this issue first by holding that, from the above submission and after examining of the records, we find that the Ld. CIT in his impugned order u/s 263 of the Act has exceeded his jurisdiction while holding the order of AO as erroneous in so far prejudicial to the interest of Revenue. In view of the above we hold that the ld. CIT has in his order u/s. 263 of the Act exceeded the jurisdiction by holding the order of AO as erroneous in so far as prejudicial to the interest of Revenue on those items which are not emanating from the AIR. Thus, we are inclined to adjudicate only those matters which are emanating from the AIR as discussed above.*

*4.2 The assessment was framed by AO for the A.Y. 2011-12 under [section 143\(3\)](#) of the Act vide order dated 29.03.2014 after making certain additions/ disallowances to the total*

income of assessee. Subsequently, Ld. CIT u/s 263 of the Act observed certain errors in the order of AO, therefore, he was of the view tht the order passed by the AO is erroneous in so far as prejudicial to the interest of Revenue on account of no proper-enquiry before completing assessment as discussed below:-

(i) The assessee has deposited in its bank account in HDFC bank Goa for ₹17.56 lakh and out of that there was a withdrawal only for ₹1.50 lakh but the AO has made the addition only to the extent of ₹4 lakh on account of unexplained cash credit. Therefore, certain unexplained cash credit of the assessee has been under assessed by the AO.

ii) There was another bank account of the assessee in HDFC bank in Goa where total deposits of Rs. ₹19,31,750/- was made by the assessee but the AO found credited amount of Rs. ₹5,76,056/- only. Thus, total deposits made in the bank were not brought to tax;

(iii) There was transactions of ₹3 76,225/- through credit card which was not explained and thus the entire amount was liable to be added to the total income of assessee but the AO has added only a sum of ₹2,98,225/- to the total income of assessee. Thus, there was under assessment of income by ₹78,000/-;

(iv) The assessee during the year has sold property for ₹36 lakh and exemption of ₹19,74,763/- was claimed by assessee u/s. 10(38) of the Act. This fact was not verified by the AO at the time of assessment proceedings.

In view of above, the Ld. CIT found the order of AO is erroneous in so far as prejudicial to the interest of Revenue and therefore show-cause notice was issued u/s. 263 of the Act vide dated 13.10.2015 for the clarification of the above transactions.

*In compliance thereto, the assessee submitted as under :*

*i) The deposit in HDFC bank account No. 03151930000609 was duly reflected in his IT return. Therefore, no cause has happened to the Revenue which is prejudicial to the interest of Revenue.*

*ii) The deposit of ₹19,73,750/- was duly reflected in the IT return and therefore there was no error which is prejudicial to the interest of Revenue.*

*iii) Regarding the credit card payment, the addition on account of undisclosed cash deposit has already been added by the AO and therefore there is no error causing prejudice to the interest of Revenue*

*iv) There was no sale of the property and therefore no exemption u/s10(38) of the Act was claimed.*

*However the Ld. CIT after considering the submission of assessee has held the order of AO is error and prejudicial to the interest of Revenue by observing as under:-*

*"I have carefully considered the issues with specific reference to the relevant assessment records as well as written submission furnished by the A/R. The AO has not taken cognizance of the following issues, despite being apparent from record:-*

*(1) Addition of Rs. 4 lakhs only was made against total cash deposit of Rs.17,56,000/- without taking any explanation from the assessee.*

*(2) The balance deposits in another account with HDFC, Porvorim, Goa was not considered in assessment.*

*(3) Interest income from all savings accounts and FDRs was not considered at the time of assessment.*

*(4) Submission of assessee regarding explanation of credit card payment of Rs.3,76,225/- was partly accepted in assessment without proper verification.*

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(5) Although a salaried person, the assessee's bank account reflect huge transactions/transfer entries, which required further investigation. (6) Long term capital gain of Rs.19,74,763/- was not properly verified. (7) Loan transactions and interest on loans required proper verification. (8) Salary was received in cash without TDS, which should have been viewed adversely.

(9) LIC premium was paid for a minor but assessee's capital account did not reflect the same.

(10) Lastly, the assessee declared income from commission/brokerage in the previous two AYs but no such income was shown in this year.

"An incorrect assumption of facts or an incorrect application of law will always make the order passed by the Assessing Officer erroneous. The Assessing Officer has not made proper enquiry before completing assessment regarding above issues. By not checking the above issues and by not making adequate enquiry the Assessing Officer has not assessed the proper income and the order has become erroneous and prejudicial to the interest of the revenue. In view of the above, the order dated 29/03/2014 passed by ACIT, Circle-43, Kolkata is found to be erroneous and prejudicial to the interest of revenue and hence it is set aside with the direction to pass fresh assessment order after examining the evidences and documents in respect of the above issues raised after giving opportunity to the assessee and in accordance with law."

Being aggrieved by this order of Ld. CIT assessee is in appeal before us on the following grounds:-

"(1) For that the L'd Pr. Commissioner of Income Tax erred in exercising the power of revision for the purpose of directing the AO to hold another investigation when the order passed by the AO was neither erroneous nor prejudicial to the interest of revenue.

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(2) For that the L'd Pr.CIT erred and exceeded jurisdiction by giving direction in respect of the matters which are subject matters of appeal before the CIT(A), therefore order passed by Pr. CIT-15 is unlawful, beyond provision of law and therefore liable to be quashed.

(3) For that the L'd Pr. CIT had alleged arbitrarily irrelevant matters, factual and untrue position in the show cause notice u/s. 263 and therefore order passed by Pr. CIT-15 Kolkata u/s. 263 is nullity and liable to be quashed.

(4) For that L'd Pr. CIT has wrongly assumed the jurisdiction u/s. 263 by wrongly mentioning that deposits in HDFC Goa A/c & HDFC Porvorim Goa A/c were under-assessed by the AO despite these two a/cs were disclosed in the balance sheet and deposits were explained, therefore allegation so made is bad in law and void ab-initio.

(5) For that on the facts & in the circumstances of the case L'd Pr. CIT was not justified in initiating proceeding u/s. 263.

(6) For that your petitioner craves the right to put additional grounds and/or to alter/amend/modify the present grounds before or at the time of hearing."

The ld. AR before us filed two paper books which are running from pages 1 to 27 and 28 to 31. The ld. AR before us submitted that the necessary enquiries were made by the AO at the time of assessment. Thus the order of the AO cannot be held erroneous and prejudicial to the interest of Revenue on account of non enquiry whereas the ld. DR vehemently supported the order of the ld. CIT.

5. We have heard the rival contentions & perused the materials available on record. From the foregoing discussion, we find that order of AO has been treated erroneous and prejudicial to the interest of revenue on the ground that proper enquiry was not made by the AO. Therefore, Ld. CIT held that

*the order of AO is erroneous and prejudicial to the interest of revenue. However, after examining the order of Authorities Below and other relevant records our observations are as follows:-*

*a) deposit of cash of ₹17.56 lakh in HDFC bank a/c No.03151930000609 From the order or AO, we find that the AO at the time of assessment proceedings has applied his mind while determining the undisclosed income from the said bank account for Rs. 4 lacs. Thus the AO after considering the bank statements of the assessee has consciously made the addition of ₹ 4 lakh as unexplained cash credit against which assessee claimed to have filed appeal before Ld. CIT(A). Therefore, in our considered view, the allegation of Ld. CIT that proper enquiry was not made by the AO is not true.*

*b) Deposit of cash ₹19,31,750/- in HDFC bank A/c 0315100006743 From the order of AO we find that AO has already made the addition of the entire amount as unexplained cash credit. Therefore, the allegation of the ld. CIT-A that the order of AO is erroneous and prejudicial to the interest of Revenue is not true.*

*c) Credit card payment of ₹3,76,225/-*

*From the order of AO, we find that the AO has made the addition of ₹2,78,225/- out of total credit card payment of ₹3,76,225/-. Therefore, it is clear that AO has applied his mind while framing the assessment proceedings u/s. 143(3) of the Act. Thus, the allegation of the AO in the impugned order or Ld. CIT u/s. 263 of the Act that there was no proper enquiry conducted by AO at the time of assessment proceedings is not true.*

*d) Sale of property for consideration of ₹ 36 lakh.*

*On perusal of AIR information which is placed on page 1 of the paper book, we find that no immovable property has been sold by assessee in the year under consideration. Besides the above, there is also no whisper in the assessment order for*

any addition on account of capital gains. Therefore, we find that the allegation of Ld. CIT that AO has not conducted sufficient enquiry in relation to sale of immovable property is not true.

5.1 In view of the above we find that Ld. CIT has passed impugned order u/s. 263 of the Act by holding the order of AO as erroneous in so far as prejudicial to the interest of revenue on account of inadequate enquiry made by AO while passing order u/s. 143(3) of the Act. However, we find that proper and sufficient enquiries were conducted by the AO at the time of assessment as evident from the order of AO. Therefore it cannot be concluded that no proper enquiry has been conducted by the AO at the time of assessment proceedings. The AO has taken conscious view after considering the facts and circumstances of the case and giving proper opportunity to the assessee. Thus, the view expressed by AO in the form in his assessment order cannot be replaced with the view of Ld. CIT u/s 263 of the Act. In holding so, we find support and guidance from the judgment of Hon'ble jurisdictional High Court in the case of [CIT vs. M/s. J.L. Morrison \(India\) Ltd. \(ITA No 168 of 2011\)](#) in GA No 1541 of 2012 dated 15.05.2014, wherein it was held as under:-

"By sections 3 and 4, the [Indian Income-tax Act](#), 1922, imposes a general liability to tax upon all income. [But the Act](#) does not provide that whatever is received by a person must be regarded as income liable to tax. In all cases in which a receipt is sought to be taxed as income, the burden lies upon the department to prove that it is within the taxing provision."

We also rely on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Max India Limited reported in 295 ITR 282 wherein it was held as under :

"When the CIT passed the impugned order under [s. 263](#), two views were inherently possible on the word "profits" occurring in the proviso to s.80HHC(3) and therefore, subsequent amendment of [s. 80HHC](#) made in the ITA No.1361/Kol/2016 A.Y. 2011-12 S.K. Khemka Vs. Pr.

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*CIT-15 Kol. Page 12 year 2005, though retrospective, did not render the order of the AO erroneous and prejudicial to the interest of the Revenue, and CIT could not exercise powers under [s. 263](#)."*

*In view of the above proposition, and respectfully following principle laid down by the Hon'ble courts and keeping in view all these discussion, as also bearing in mind entirety of the case, we deem it fit and proper to uphold the grievance of the assessee and quash the impugned revision order as devoid of jurisdiction. The assessee gets the relief, accordingly.*

*6. In the result, assessee's appeal stands allowed."*

*7. We have perused the letter dated 09.11.2016 addressed by the DDIT (Inv.), Mumbai to ITO-29(3)(4), Mumbai wherein the details of on money in the case of Runwal Green (shops) were given and we find that on money was determined by taking the rate @ Rs.26,000/- per sqr. ft. while agreements were for lower amounts. However, in the case of the assessee we observe that the agreement value was executed @ Rs.26,000/- per sqr. ft. Thus we find merits in the contention of the assessee that there is no question of on money as the agreement value was even higher than the maximum rate which was taken by the DDIT (Inv.), Mumbai to ascertain the amount of on money received by the builder. Moreover, the case of M/s. Runwal Homes Pvt. Ltd. vs. DCIT in ITA No.5621/M/2017 A.Y. 2015-16 the issue of on money has been decided in favour of the M/s. Runwal Homes Pvt. Ltd. by deleting the addition on account of on money. In view of the aforesaid facts, we are of the view that the revisionary order passed by the Ld. Pr. CIT(A) is without jurisdiction and has to be quashed on legal issue as well as on merit. Accordingly, we quash the revisionary order passed under section 263 of the Act by Ld. Pr. CIT.*

*8. In the result, the appeal of the assessee is allowed.*

*Similarly in the case of M/s Su-Raj Diamond Dealers Pvt Ltd., Vs. Pr. CIT (ITA No. 3098/Mum/2019 dated 27-11-2019 has observed at page5 para 6 read as under:*

*6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Admittedly, the case of the assessee was selected for limited scrutiny through CASS for two reasons viz. (i). Large other expenses claimed in the P&L A/c.; and (ii). Low income in comparison to High Loans/advance /Investment in shares. Insofar the fact that the case of the assessee was selected for limited scrutiny for the aforesaid reasons is concerned, the same as observed by us hereinabove is not disputed and is clearly discernible from the order passed by the Pr. CIT under Sec. 263 of the Act. In fact, we find, that the Pr. CIT in his order had categorically observed that the case of the assessee was not selected for examination on the issue relating to „closing stock“, but was selected for limited scrutiny for the aforesaid two reasons viz. (i). Large other expenses claimed in the P&L A/c.;and (ii). Low income in comparison to High Loans/advance /Investment in shares. We find that as per the CBDT Instruction No. 20/2015, dated 29.12.2015, scrutiny in cases selected through Computer Aided Scrutiny Selection (CASS) is to be confined only to the specific reasons/issues for which the case has been picked up for scrutiny. In order to appreciate the issue under consideration, we deem it fit to cull out the CBDT instruction No. 20/2015, dated 29.12.2015., which reads as under:*

*“ INSTRUCTION NO. 20/2015, DATED: 29-12-2015  
29/12/2015*

*Subject : Scrutiny Assessments-some Important issues and scope of scrutiny in cases selected through Computer Aided Scrutiny Selection ('CASS') - Reg.-*

*The Central Board of Direct Taxes ('CBDT'), vide Instruction No. 7/2014 dated 26.09.2014 had clarified the extent of enquiry in certain category of cases specified therein, which are selected for scrutiny through CASS Further clarifications have been sought regarding the scope and applicability of the aforesaid instruction to cases being scrutinized*

*2. In order to facilitate the conduct of scrutiny assessments and to bring further clarity on some of the issues emerging from the aforesaid Instruction, following clarifications are being made:*

*i. Year of applicability: As stated in the Instruction No. 7/2014, the said Instruction is applicable only in respect of the cases selected for scrutiny through CASS-2014.*

*ii. Whether the said Instruction is applicable to all cases selected under CASS: The said Instruction is applicable where the case is selected for scrutiny under CASS only on the parameters) of AIR/CIB/26AS data. If a case has been selected under CASS for any other reason(s)/parameter(s) besides the AIR/CIB/26AS data, then the said instruction would not apply.*

*iii. Scope of Enquiry: Specific issue based enquiry is to be conducted only in those scrutiny cases which have been selected on the parameter(s) of AIR/CIB/26AS data. In such cases, the Assessing Officer, shall also confine the Questionnaire only to the specific issues pertaining to AIR/CIB/26AS data. Wider scrutiny in these cases can only be conducted as per the guidelines and procedures stated in Instruction No 7/2014*

*iv. Reason for selection: In cases under scrutiny for verification of AIR/CIB/26AS data, the Assessing Officer has to intimate the reason for selection of case for scrutiny to the assessee concerned*

*3. As far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial Year-- one is 'Limited Scrutiny' and other is 'Complete Scrutiny'. The assessees*

concerned have duly been intimated about their cases falling either in 'Limited Scrutiny' or 'Complete Scrutiny' through notices issued under section 143(2) of the Income-tax Act, 1961 ('Act'). The procedure for handling 'Limited Scrutiny' cases shall be as under:

a. In 'Limited Scrutiny' cases, the reasons/issues shall be forthwith communicated to the assessee concerned.

b. The Questionnaire under section 142(1) of the Act in 'Limited Scrutiny' cases shall remain confined only to the specific reasons/issues for which case has been picked up for scrutiny. Further, the scope of enquiry shall be restricted to the 'Limited Scrutiny' issues.

c. These cases shall be completed expeditiously in a limited number of hearings.

d. During the course of assessment proceedings in 'Limited Scrutiny' cases, if it comes to the notice of the Assessing Officer that there is potential escapement of income exceeding Rs five lakhs (for metro charges, the monetary limit shall be Rs. ten lakhs) requiring substantial verification on any other issue(s), then, the case may be taken up for 'Complete Scrutiny' with the approval of the Pr CIT/CIT concerned. However, such an approval shall be accorded by the Pr. CIT/CIT in writing after being satisfied about merits of the issue(s) necessitating 'Complete Scrutiny' in that particular case. Such cases shall be monitored by the Range Head concerned. The procedure indicated at points (a), (b) and (c) above shall no longer remain binding in such cases (For the present purpose, 'Metro charges' would mean Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Hyderabad and Ahmedabad),

4. The Board further desires that in all cases under scrutiny, where the Assessing Officer proposes to make additions or disallowances, the assessee would be given a fair opportunity to explain his position on the proposed additions/disallowances in accordance with the principle of natural justice. In this regard, the Assessing Officer shall issue an appropriate show-cause notice duly indicating the

*reasons for the proposed additions/disallowances along with necessary evidences/reasons forming the basis of the same. Before passing the final order against the proposed additions/disallowances, due consideration shall be given to the submissions made by the assessee in response to the show- cause notice.*

*5. The contents of this Instruction should be immediately brought to the notice of all concerned for strict compliance.*

*6. Hindi version to follow*

*Now, the case of the assessee before us was selected for limited scrutiny through CASS, for the reasons, that there were viz. (i). Large other expenses claimed in the P&L A/c.; and (ii). Low income in comparison to High Loans/advance /Investment in shares.. Accordingly, it can safely be concluded that the assessment framed by the A.O fell within the realm of the limited purpose for which its case was selected for scrutiny assessment viz. viz. (i). Large other expenses claimed in the P&L A/c.; and (ii). Low income in comparison to High Loans/advance /Investment in shares.*

*7.As observed by us hereinabove, as per the CBDT instruction No. 20/2015, dated 29.12.2015, in a case which had been selected for scrutiny assessment on the basis of Computer Aided Scrutiny Selection ('CASS'), the scrutinising of such case would be confined only to the specific reasons/issues for which the case has been picked up for scrutiny. However, the case may thereafter be taken up for complete scrutiny with the approval of the administrative Principal commissioner of income-tax/Commissioner of income-tax, where it is felt that apart from the CASS information there is potential escapement of income of more than Rs.10,00,000/-. Accordingly, the CBDT had in clear and unequivocal terms clarified that for broadening the scope of a case selected for limited scrutiny as per CASS information the approval of the administrative Principal commissioner of income-tax/Commissioner of income-tax would be required. In the case before us, it is an admitted fact that the case of the assessee*

was selected for "limited scrutiny" under CASS for the reasons, viz. (i). Large other expenses claimed in the P&L A/c.; and (ii). Low income in comparison to High Loans/advance /Investment in shares. In fact, it is neither a fact nor the case of the revenue that the said case was thereafter taken up for complete scrutiny with the approval of the administrative commissioner. In the backdrop of the aforesaid facts, we are of the considered view that as the scope of the assessment framed by the A.O under Sec. 143(3), dated 08.12.2016 was circumscribed by the limited reasons for which the case of the assessee was selected for scrutiny assessment, therefore, he was absolutely divested of his powers from traversing on issues which did not fall within the realm of the said limited purpose for which the said case was selected for being scrutinised.

8. We shall now in the backdrop of our aforesaid observations deliberate on the validity of the order passed by the Pr. CIT under Sec. 263. As observed by us hereinabove, the Pr. CIT had held the order passed by the A.O under Sec. 143(3), dated 08.12.2016 as erroneous, in so far it was prejudicial to the interest of the revenue, for the reason, that he had failed to carry out proper investigation as regards the issue of valuation of the „closing stock" as reflected in the audited accounts of the assessee. We are of a strong conviction that now when the case of the assessee was selected for limited scrutiny for the reasons viz. (i). Large other expenses claimed in the P&L A/c.; and (ii). Low income in comparison to High Loans/advance /Investment in shares, therefore, no infirmity could be attributed to the assessment framed by the A.O on the ground that he had failed to deal with other issues which though did not fall within the realm of the limited reasons for which the case was selected for scrutiny assessment. In other words, the Pr. CIT in the garb of his revisional jurisdiction u/s 263 cannot be permitted to traverse beyond the jurisdiction that was vested with the A.O while framing the assessment. In sum and substance, revisional jurisdiction cannot be exercised for broadening the scope of jurisdiction that was vested with the A.O while framing the assessment. As a matter of fact, what cannot be done directly cannot be done

*indirectly. Accordingly, in terms of our aforesaid observations, we are of the considered view that as the A.O had aptly confined himself to the issues for which the case of the assessee was selected for limited scrutiny, therefore, no infirmity can be attributed to his order, for the reason, that he had failed to dwell upon certain other issues which did not form part of the reasons for which the case was selected for limited scrutiny under CASS. We thus not being able to concur with the view taken by the Pr. CIT that the order passed by the A.O under Sec. 143(3), dated 08.12.2016 is erroneous, therefore, „set aside“ his order and restore the order passed by the A.O. As we have quashed the order passed by the Pr. CIT under Sec. 263 on the ground of invalid assumption of jurisdiction by him, therefore, we refrain from adverting to and therein adjudicating the contentions advanced by the ld. A.R on the merits of the case, which thus are left open.*

*9. The appeal of the assessee is allowed in terms of our aforesaid observations.*

*6. In the result, assessee’s appeal stands allowed.*

9. We considering the ratio of the judicial decisions on limited scrutiny and the facts submitted by the Ld.AR with the supporting evidences are of the substantive opinion that the Pr CIT has not made any specific observations or enquiry with respect to expenditure claims and made de-novo assessment and directed the A.O to pass fresh assessment order. We find the assessee has complied diligently to the notice issued u/sec 142(1) of the Act along with the questioner and the Ld.AR demonstrated the replies in the paper book on scheduled of Other Expenses dealt in the above paragraphs. Further we are of the view that the order of the Pr. CIT does not

demonstrated the replies in the paper book on scheduled of other expenses dealt in the above paragraphs. Further we are of the view that the order of the Pr. CIT does not satisfy the twin conditions of erroneous and prejudicial to the interest of the revenue. Accordingly, we set aside the order of the Pr. CIT and allow the grounds of appeal of in favour of the assessee.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 15.11.2021.

Sd/- (SHAMIM YAHYA) <b>ACCOUNTANT MEMBER</b>	Sd/- (PAVAN KUMAR GADALE) <b>JUDICIAL MEMBER</b>
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Mumbai, Dated 15.11.2021

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,