

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' MUMBAI  
BENCH**

**BEFORE: SHRI MAHAVIR SINGH, VICE PRESIDENT  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.1919/Mum/2020  
(Assessment Year :2015-16)**

M/s. Concern India Foundation 3 <sup>rd</sup> Floor, Adhor House-6 K. Dubash Marg Fort, Mumbai-400 001 Maharashtra	Vs.	Dy. Commissioner of Income Tax (Exem)-1(1) Mumbai Piramal Chambers, 5 <sup>th</sup> Floor Lalbaug, Parel Mumbai – 400 012 Maharashtra
<b>PAN/GIR No. AAATC1152H</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri J.D. Mistry, Senior Advocate
Revenue by	Shri C.T. Mathew
<b>Date of Hearing</b>	<b>22/10/2021</b>
<b>Date of Pronouncement</b>	<b>19/01/2022</b>

**आदेश / ORDER**

**PER M.BALAGANESH (AM):**

This appeal in ITA No.1919/Mum/2020 for A.Y.2015-16 preferred by the assessee against the revision order of the Commissioner of Income Tax (Exemptions) in appeal dated 02/03/2020 u/s.263 of the Act.

2. The only effective issue to be decided in this appeal is as to whether the Id. PCIT was justified in invoking revisionary jurisdiction u/s.263 of the Act by treating the order passed by the Id. AO as

erroneous in as much as it is prejudicial to the interest of the Revenue in the facts and circumstances of the instant case.

2.1. At the outset, the Registry had given defect notice to the assessee that the appeal is time barred by 200 days. But we find that the appeal has been filed before us on 17/11/2020. The order u/s.263 of the Act was received by the assessee on 02/03/2020. Hence, the due date for filing of appeal falls on 01/05/2020. We find that assessee has filed a delay condonation petition explaining the fact that due to Covid-19 pandemic, lockdown was imposed from 24/03/2020 and by placing reliance on the Government of India of notification No.218979 dated 31/03/2020 in Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance 2020 (No.2 of 2020) dated 31/3/2020 as per Clause 3(1)(b) extending the time limit specified in Income Tax Act which falls during the period from 20th day of March 2020 to 29th June 2020 for the purpose of filing appeal, till 30/06/2020 or such other date as the Central Government by notification specify in this behalf. Subsequently, the Government vide Notification No.35/2020 dated 24/06/2020, has extended the said time limit up to 31/03/2021. In view of the same, we are inclined to condone the delay of 200 days in filing the appeal of the assessee. We hold that there is no delay in filing of appeal by the assessee. Accordingly, the appeal of the assessee is hereby admitted and taken up for adjudication.

3. We have heard rival submissions and perused the materials available on record. We find that assessee institution is a charitable organization duly registered with Id. CIT (Exemption), Mumbai u/s.12A of the Act vide Registration No.TR/27461 dated 02/02/1990. The assessee is also registered with the Charity Commissioner, Mumbai vide registration

No.12384 dated 08/09/1989. The assessee had electronically filed its return of income for the A.Y.2015-16 on 21/09/2015 declaring total income of Rs. Nil after claiming exemption u/s.11 of the Act. The main activities of the assessee are in the field of slum development, promoting education aid, medical relief, housing for needy, upliftment of destitute women and abandoned children etc., The assessee has branches at Mumbai, Kolkata, Hyderabad, Chennai, Bangalore and Delhi. The gross receipts of the assessee during year under consideration was Rs.11,16,57,789/-. The Id. AO during the course of assessment proceedings observed on perusal of the objects of the trust and the financial statements of the assessee, that the activities of the trust are charitable in nature and claim of exemption u/s.11 of the Act was allowed after due examination. The Id. AO also observed in assessment order completed u/s.143(3) of the Act dated 28/06/2017 that assessee had incurred expenditure on objects of the trust and establishment expenses of Rs.13,56,67,481/- during the year under consideration which has been restricted to the amount of gross receipts of Rs.11,16,57,789/-. Accordingly, the total income of the assessee was determined at Nil by the Id. AO. This assessment was sought to be revised by the Id. PCIT by invoking revisionary jurisdiction u/s.263 of the Act.

3.1. The main grievance of the Id. PCIT seems to be as under:-

- a) The assessment has been completed a perfunctory and routine manner without any verification, cross checks and even test checks. The total receipt of non corpus Donations of Rs.9,98,53,492/- and Corpus donation of Rs.19,92,430/- have been accepted without any verification, or confirmation from donors on test check basis, or any letters from donors with the necessary directions.*
- b) There is lack of application of mind by the AO in completing the assessment proceedings. The total expenditure claimed is of*

*Rs.12,64,36,953/- which include expenses on account of Project expenses of Rs.2,31,46,291/- (Commission on Donations), Communication and Public Awareness of Rs.8,86,726/-, Relationship and Salaries of Rs.4,46,69,433/- and Expenditure on objects of the Trust of Rs.5.75 Crores and the same has been accepted as such without any verification. Except for the breakup of expenses, the AO has not obtained any other details or verified the expenses, even on test check basis.*

3.2. Accordingly, the Id., PCIT sought to invoke his revisionary jurisdiction u/s.263 of the Act by issuing show-cause notice to the assessee as to why the order passed by the Id. AO be set aside.

3.3. We find that assessee had submitted before the Id. PCIT that several queries were raised by the Id. AO during the course of assessment proceedings and all the queries were duly replied by the assessee by filing the requisite details. The Id. AO after examination of those details together with the accounts of the assessee and after making necessary enquiries and after due application of mind had accepted the return of income of the assessee. Accordingly, primarily, invocation of revision jurisdiction u/s.263 of the Act was objected to by the assessee. It was pointed out that assessee had indeed furnished the details of corpus donations as well as non-corpus donations before the Id. AO together with the details of total expenditure of Rs.12,64,36,953/-. The Id. PCIT however, observed that the case of the assessee trust was selected only for limited scrutiny to examine the following issues:-

- a) Accumulation of income by the Trust
- b) Receipts of the Trust
- c) Deposits in Co-operative Banks
- d) Verification of charity expenses.

3.4. Accordingly, the Id. PCIT observed that, apart from the above four items, the Id. AO could not have verified anything other than the above. But we find the aforesaid four items broadly covers the entire assessment of a charitable organization, including whatever items which the Id. PCIT wanted to examine. We find that whatever the Id. PCIT wanted the Id. AO to examine is duly covered in the aforesaid four items itself. Now, what is to be seen is whether the Id. AO had indeed carried out requisite enquiries with regard to the aforesaid four items which had been mandated by the CBDT on him while carrying out limited scrutiny assessment. In this regard, we find that assessee had furnished the copy of the trust deed before the Id. AO together with the detailed note on objects of the trust and activities carried out by the trust along with other relevant details called for by the Id. AO vide letter dated 20/02/2017. This letter is enclosed together with its annexures from pages 1-86 of the paper book submitted before us. In the said letter, the assessee furnished the following details:-

- i) Note of the Trust together with the activities carried out by it.
- ii) Copy of Trust Deed
- iii) Details of corpus and non-corpus donations received during the year containing the name and address of the donor, amount of donation, PAN of the donor, mode of receipt of donation including the Cheque No. and whether the donation is towards corpus or non-corpus donation. The assessee has also furnished the summary of total non-corpus donation received as under:-

Sr. No.	Particulars	Amount
1	Individuals	71,66,112.00

2	Corporate	3,84,93,464.00
3	Marathon	23,98,119.00
4	Trust	81,52,416.00
5	Donation – HO	33,14,723.00
6	Donation support	3,40,67,098.00
7	Donation Retention	61,02,172.00
8	Donation Online	1,59,388.00
		9,98,53,492.00

Further, the assessee in respect of 'donations received from individuals', further submitted the name of the donors together with their PAN and amount of donations branchwise. Similarly, the assessee furnished the 'donations received from corporates' above Rs.50,000/- containing the name of the donor, PAN and the amounts received branchwise. Similarly, the assessee had furnished partywise details of 'donations received through Delhi Branch (Marathon)' containing name of the donor, their PAN and the amount of donation. Similarly, the assessee furnished the details of 'donations received in various branches from various charitable organisations' containing name of the donor, public trust registration details, their PAN and amounts of donation. Similarly, assessee furnished the details of 'donations received in head office' containing the name of the donors, their PAN and amount of donation. Similarly, the assessee furnished the details of 'donation - support direct' containing name of the persons, their PAN and the amount of donations. In the said list, the donations less than Rs.50,000/- itself amounted to Rs.3,29,57,098/-, for which the details were not given as it ran into innumerable numbers. Accordingly, the assessee had furnished details of donors who had paid more than Rs.50,000/- as called for by the Id. AO. Similarly, the assessee had furnished details of 'donations -retention

(head office)' containing the name of the donor and their PAN. In the said list, donation less than Rs.50,000/- amounting to Rs.60,52,172/- for which list was not provided in view of the innumerable number of parties. Similarly, the assessee furnished the details of 'online donations received at head office' which are less than Rs.50,000/-, for which list was not provided in view of innumerable numbers.

iv) The assessee furnished headwise expenses together with the comparative chart of AY 2014-15 vis-à-vis A.Y.2015-16 (i.e. year under consideration) in tabular form.

v) The assessee separately gave details of expenditure incurred on objects of the trust headwise. In the said details under the head 'educational objects', the assessee indeed gave the details of parties to whom payments were made together with their addresses both in head office as well as in its branches. Similar details were furnished for other objects of the trust namely 'medical objects' and 'relief to poverty'.

vi) The assessee also gave the details of fixed assets purchased during the year containing the name of the supplier, details of assets, value of the asset together with the place of location of that asset i.e. whether situated at head office or at respective branches. Assessee also enclosed the depreciation schedule for each block of fixed assets before the Id. AO.

vii) The assessee also furnished the details of accumulation made u/s.11(1) of the Act for the last 10 years and their utilization for A.Y.2015-16 in a tabular form as under:-

Financial Year / Previous Year	Amount	Year of Application	Amount Utilised	Purpose of Accumulation	Purpose of Utilisation	Balance Amount utilised
2004-05	17,957,196.00	2005-06	17,957,196.00	Objects of the Trust	Objects of the Trust	NIL
2005-06	38,625,633.00	2006-07	38,625,633.00	Objects of the Trust	Objects of the Trust	NIL
2006-07	44,075,771.00	2007-08	44,075,771.00	Objects of the Trust	Objects of the Trust	NIL
2007-08	49,905,096.00	2008-09	49,905,096.00	Objects of the Trust	Objects of the Trust	NIL
2008-09	43,029,019.00	2009-10	43,029,119.00	Objects of the Trust	Objects of the Trust	NIL
2009-10	41,5170,057.0	2010-11	41,517,057.00	Objects of the Trust	Objects of the Trust	NIL
2010-11	40,999,043.00	2011-12	40,999,043.00	Objects of the Trust	Objects of the Trust	NIL
2011-12	38,500,000.00	2012-13	38,500,000.00	Objects of the Trust	Objects of the Trust	NIL
2012-13	27,000,000.00	2013-14	27,000,000.00	Objects of the Trust	Objects of the Trust	NIL
2013-14	26,175,000.00	2014-15	26,175,000.00	Objects of the Trust	Objects of the Trust	NIL

viii) The assessee gave an audit report issued by the auditor in respect of foreign contributions received during the year by the assessee trust, its

utilization thereon and the unutilised portion duly certifying that the assessee had maintained the accounts of the foreign contribution in the manner specified in Section 19 of the Foreign Contribution Regulation Act 2010 r.w.r. 17 of Foreign Contribution Regulation Rules 2011 together with balance sheet, income and expenditure account and the statement of receipts and payments. The assessee also furnished Form FC-6 which was submitted to competent authority in respect of foreign contributions together with its annexures.

ix) The assessee furnished a complete list of bank accounts maintained by it together with the name of the bank, account number, branch name and the address of the branch with head office as well as its branches.

x) The assessee furnished the complete re-conciliation of TDS as per form 26AS with the income reflected in the income and expenditure account.

xi) The assessee furnished the copy of scrutiny assessment order passed u/s.143(3) of the Act for A.Y.2014-15 dated 25/06/2016 wherein the returned income was accepted (enclosed in pages 85-86 of the paper book).The assessee furnished the copy of scrutiny assessment order for A.Y. 2012-13 u/s. 143(3) of the Act dated 07/11/2014 (enclosed in pages 184-185 of the paper book); scrutiny assessment order u/s.143(3) of the Act dated 15/02/2016 for A.Y.2013-14 enclosed in pages 186-188 of the paper book; scrutiny assessment order u/s.143(3) of the Act dated 25/10/2016 for A.Y. 2014-15 enclosed in pages 193-194 of the paper book.

xii) Apart from the above, the assessee also furnished the reconciliation of investments reflected in AIR with the books of accounts of the assessee and also the summary of major receipts and expenses on the objects of the trust for all the five years as specifically called for by the Id. AO. The assessee also furnished the confirmation letter of donors containing the donor forms duly mentioning their name, address, telephone details, fund raiser's ID, purpose of donation amount together with their signature. These details were furnished before the Id. AO vide letter dated 12/06/2017 which are enclosed in pages 87-128 of the paper book.

3.5. With regard to the observation made by the Id. PCIT in para 4A of his order that assessee had not furnished confirmation from donors is concerned, we find that the Id. AR argued that no confirmation from donors was sought for by the Id. AO during the course of assessment proceedings. In any case, we find that there is no requirement in law that confirmation from donors should be filed. From the aforesaid list, we could also find that some confirmations were indeed voluntarily filed by the assessee before the Id. AO. We find that the Id. AO had sought for details of donors in respect of donations above Rs.50,000/- which was duly provided before him. Even the entire expenditure incurred on objectives of the trust totaling to Rs.12,64,36,953/- which was mentioned in para 4C in page 3 of the order of the Id. PCIT were duly furnished by the assessee as stated in the aforesaid list before the Id. AO. In fact the aforesaid details were furnished by the assessee before the Id. AO in response to notice u/s.142(1) of the Act dated 04/01/2017 in the format called for by the Id. AO. While this is so, it could not be accepted that no

enquiries were made by the Id. AO during the course of assessment proceedings. From the questionnaire dated 04/01/2017 which are enclosed in pages III to V of the paper book filed before us, we find that the Id. AO had asked as many as 21 questions to the assessee during the course of assessment proceedings. All these questions were duly replied by the assessee from time to time during the course of assessment proceedings. The said replies and details were thoroughly examined by the Id. AO and only after due application of mind, the Id. AO had resorted to accept the return of income of the assessee by allowing exemption u/s.11 of the Act. Moreover, the Id. AO in para 3 of his assessment order had categorically stated that the objects of the trust remain unchanged during the year. No contrary fact in this regard has been brought by the Id. PCIT in his order u/s.263 of the Act. We find that assessee had indeed furnished the scrutiny assessment orders framed in the hands of the assessee for A.Yrs. 2012-13 to 2014-15 wherein similar claim of exemption u/s.11 of the Act in respect of very same charitable activities had been examined and allowed by the Id. AO u/s.143(3) of the Act. When the activities of the trust and the modus operandi of the assessee in carrying out the said charitable activities had remained unchanged during the year under consideration, when compared with the earlier years, there could be no occasion for the Id. AO to take a divergent stand during the year under consideration by disbelieving the details furnished by the assessee. Then how the order of the Id. AO could be termed as erroneous? In any case, the Id. AO based on the complete details filed by the assessee before him and on due examination of the same, had indeed arrived at a possible view duly taking into account the past conduct and income tax behaviour of the assessee trust. Once, a possible view has been taken by the Id. AO, the same cannot be subject matter of revision

u/s.263 of the Act by the Id. PCIT merely because he is not in agreement with the said view. Reliance in this regard is placed on the decision of the Hon'ble Jurisdictional High Court in the case of Gabriel India Ltd., reported in 203 ITR 108 and in case of Nirav Modi reported in 390 ITR 292. Moreover from the perusal of the entire order of the Id. PCIT, we find that nowhere the Id. PCIT had stated that assessee had not furnished any details before the Id. AO during the course of assessment proceedings and that the such details were incorrect thereby making the order of the Id. AO erroneous. In other words, the Id. PCIT does not state categorically how the order framed by the Id. AO was erroneous. The Id. AR made a statement from the Bar that there is not even a single donation which has been received in cash and that the donations received were either made by way of online transfer or by account payee cheque or account payee demand draft. In fact the Id. AR also drew our attention to pages 195 to 287 of the paper book (duly admitting that the same were not filed before the lower authorities) wherein, in pages 200-230 of the paper book, the entire brochures that are part and parcel of the annual report of the assessee trust are enclosed. In other words, the said documents enclosed in pages 200-230 of the paper book though not filed before the lower authorities, merely contained the profile and various activities carried out by the assessee trust together with photos thereon. These are nothing but appeal papers to be given to various philanthropists who could go through the activities carried out by the assessee and come forward to voluntarily make donations to the assessee trust. In any case, we find that the gross receipts of the assessee during the year under consideration was Rs.11.16 Crores and total application of funds for objects of the trust including administration expenses were Rs.13.56 Crores. Hence, it could be safely concluded that the total

application of funds for charitable purposes are much more than gross receipts. Hence, in any case, there cannot be any prejudice that could be caused to the interest of the revenue in the instant case. Then how the revision jurisdiction u/s. 263 of the Act could at all be invoked by the Id. PCIT. The law is very well settled that for the purpose of invoking revision jurisdiction u/s 263 of the Act, the Id . PCIT should bring on record that the order passed by the Id. AO is both erroneous and prejudicial to the interest of the revenue. Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd reported in 243 ITR 83 (SC).

3.6. It is also a fact that assessee had raised several donations through certain marketing agents to whom the brochures together with appellate forms are distributed by the assessee in various branches across the country. Those marketing agents are indeed paid commission after due deduction of tax at source by the assessee for donations procured through them. Pages 231-270 contain the draft marketing commission agreements entered into by the assessee, that these details were not filed before the lower authorities as fairly admitted by the Id. AR. Out of these marketing agreements, the agreement enclosed in pages 261-270 of the paper book would be relevant for the year under consideration and the other agreements were meant for earlier years.

3.7. Infact, we find that assessee had also furnished the detailed explanation of all the points raised by the Id. PCIT in his show-cause notice vide letter dated 07/02/2020 both on the assumption of jurisdiction u/s.263 of the Act and also furnishing the necessary details on merits. This letter dated 07/02/2020 is enclosed in pages VIII to XVIII of the

paper book filed before us. In the said letter, the assessee had indeed referred to the page numbers of the paper book containing the details filed before the Id. AO in the course of assessment proceedings. Nowhere the Id. PCIT had stated all these details filed were wrong.

3.8. We find that in case if the Id. PCIT is of the opinion that the Id. AO had not made requisite enquiries, then he should have made the requisite enquiries and brought on record where the Id. AO had gone wrong. Admittedly, this has not been done in the instant case. We find that the Id. AR in this regard had rightly placed reliance on this on the Hon'ble Delhi High Court in the case of PCIT vs. Delhi Airport Metro Express Pvt. Ltd., in ITA No.705 of 2017 dated 05/09/2017. For the sake of convenience, the said order is reproduced hereunder:-

1. *"The Revenue is in appeal against an order dated 12<sup>th</sup> January 2017 passed by Income Tax Appellate Tribunal ('ITAT') in ITA No. 2813/De1/2016 for the Assessment Year ('AY') 2011-12.*
2. *The short question urged by the Revenue is whether the ITAT was justified in setting aside the order of the Principal Commissioner of Income Tax ('PCIT') passed under Section 263 of the Income Tax Act, 1961 ('Act') setting aside the original assessment order dated 31<sup>st</sup> December 2013 passed by the Assessing Officer ('AO') under Section 143 (3) of the Act.*
3. *The background facts are that the Assessee is a Concessionaire of the Airport Metro Express Project of the Delhi Metro Rail Corporation Ltd. ('DMRC') under a Build-Operate-Transfer ('BOT') Scheme. The Assessee had accepted the concession for a period of 30 years. During the AY in question, the Assessee claimed depreciation of Rs. 112,29,74,447/- on fixed assets of Rs. 1560,48,17,189/- at 50% of the eligible depreciation rates since, during the AY in question, the assets were used for less than 180 days.*
4. *The case of the Revenue is that the assets were developed under the BOT scheme and the Assessee was not eligible to claim*

*depreciation as it was not the owner of the assets. The Revenue contended that the land for the project was handed over by the DMRC to the Assessee as Concessionaire without actual transfer of ownership. The design and construction of the basic structure was also done by the DMRC.*

5. *The case of the Assessee, on the other hand, is that during the AY in question it had purchased and installed plant and machinery and such plant and machinery was legally owned by it. It is further contended that since such assets were used for the purposes of Assessee's business, it was entitled to claim depreciation under Section 32 of the Act.*

6. *It appears that during the original assessment proceedings, the AO issued a questionnaire to the Assessee specific to the above issue. It is only after considering the assessee's replies thereto that the AO framed the assessment under Section 143 (3) of the Act allowing depreciation as claimed by the Assessee.*

7. *The PCIT, in exercise of powers under Section 263 of the Act, issued a show cause notice (SCN) dated 16<sup>th</sup> March 2015 to the Assessee pointing out that if the value of these fixed assets were to be amortized evenly over a period of 30 years, the amount to be amortized would only be Rs. 52,01,60,572/- for each year. Therefore, the depreciation allowed to the Assessee was in excess by Rs. 60,28,13,875 and, to that extent, the order passed by the AO was prejudicial to the interest of the Revenue. In reply to the SCN, the Assessee took the stand that, during the AY in question, it "had purchased the assets from independent vendors, out of its own funds for setting up the project."*

8. *Thereafter the impugned order dated 30<sup>th</sup> March 2016 was passed by the PCIT. It is seen that one of the factors that weighed with the PCIT in exercising jurisdiction under Section 263 of the Act was Circular No. 9 of 2014 dated 23<sup>rd</sup> April 2014 issued by the Central Board of Direct Taxes which stated that "under the BOT arrangement an assessee would only be allowed amortization in respect of expenditure incurred in creation of the infrastructure facility over the period of BOT arrangement and no depreciation would be allowed on such infrastructure under provisions of the Act". The case of the Assessee was that such a Circular could not dictate to the AO how he should frame his assessment and, to the extent the Circular was prejudicial to the Assessee, its application would be beyond the scope and ambit of the powers conferred on the Board under Section 119 of the Act.*

9. *It is seen, in the order dated 30<sup>th</sup> March 2016, the PCIT has*

*proceeded by setting out the contents of the SCN and the contents of the reply given by the Assessee. It appears that no inquiry, as such, was undertaken by the PCIT to come to the conclusion that the original assessment order was erroneous and prejudicial to the interests of the Revenue.*

*10. For the purposes of exercising jurisdiction under Section 263 of the Act, the conclusion that the order of the AO is erroneous and prejudicial to the interests of the Revenue has to be preceded by some minimal inquiry. In fact, if the PCIT is of the view that the AO did not undertake any inquiry, it becomes incumbent on the PCIT to conduct such inquiry. All that PCIT has done in the impugned order is to refer to the Circular of the CBDT and conclude that "in the case of the Assessee company, the AO was duty bound to calculate and allow depreciation on the BOT in conformity of the CBDT Circular 9/2014 but the AO failed to do so. Therefore, the order of the AO is erroneous insofar as prejudicial to the interest of revenue".*

*11. In the considered view of the Court, this can hardly constitute the reasons required to be given by the PCIT to justify the exercise of jurisdiction under Section 263 of the Act. In the context of the present case if, as urged by the Revenue, the Assessee has wrongly claimed depreciation on assets like land and building, it was incumbent upon the PCIT to undertake an inquiry as regards which of the assets were purchased and installed by the Assessee out of its own funds during the AY in question and, which were those assets that were handed over to it by the DMRC. That basic exercise of determining to what extent the depreciation was claimed in excess has not been undertaken by the PCIT.*

*12. Mr. Asheesh Jain then volunteered that the PCIT had exercised the second option available to him under Section 263 (1) of the Act by sending the entire matter back to the AO for a fresh assessment. That option, in the considered view of the Court, can be exercised only after the PCIT undertakes an inquiry himself in the manner indicated hereinbefore. That is missing in the present case.*

*13. Therefore, the Court is of the view that the ITAT was not in error in setting aside the impugned order of the PCIT under Section 263 of the Act. No substantial question of law arises.*

*14. Liable with the The appeal is dismissed."*

3.9. In our considered opinion, the Id. PCIT in the instant case had merely directed the Id. AO to make fishing and roving enquiries on the existing details already available in the assessment records by merely directing him to re-verify the same details. In this regard, the Hon'ble Delhi High Court in the case of PCIT vs. Modicare Ltd., in ITA No.759 of 2017; ITO vs. DG Housing Projects Ltd., reported in 343 ITR 329; DIT vs. Jyothi Foundation reported in 357 ITR 388, had uniformly held that the exercise of jurisdiction u/s.263 of the Act by the Id. PCIT cannot be outsourced by the Id. PCIT to the Id. AO. In either case, there is a huge difference between 'lack of enquiry' and 'inadequate enquiry'. It is for the Id. AO to decide the extent of enquiry to be made as it is his satisfaction what is required under law. In this regard, reliance has been rightly placed on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Sunbeam Auto Ltd., reported in 332 ITR 167.

3.10. The Id. DR vehemently relied on the Explanation 2 to Section 263 of the Act which has been brought in the statute w.e.f. 01/06/2015 to support the action of the Id. PCIT. In this regard, we find that the Id. PCIT had not invoked Explanation 2 to Section 263 in his entire order passed u/s.263 of the Act. Despite this fact, for academic reasons, we proceed to address the arguments of the Id. DR in this regard. The said explanation does not confer unfettered powers to the Id. PCIT to assume jurisdiction u/s.263 of the Act to revise every order of the Id. AO to re-examine the orders already examined during the course of assessment proceedings. In this regard, we find that the Co-ordinate Bench of Mumbai Tribunal had dealt the very same explanation in detail in the case of Narayan Tatu

Rane vs. ITO reported in 70 Taxmann.com 227, wherein it was held that the said explanation cannot be said to have over-ridden the law as interpreted by the Hon'ble Delhi High Court, according to which, the Commissioner has to conduct an enquiry and verification to establish and show that the assessment order is unsustainable in law. In fact the Tribunal had further held that the intention of the legislature could not have been to enable the Id. PCIT to find fault with each and every assessment order, without conducting any enquiry or verification in order to establish that the assessment order is not sustainable in law, since such an interpretation will lead to unending litigation and there would not be any point of finality in the legal proceedings. The opinion of the Id. Commissioner referred to Section 263 of the Act has to be understood as legal , judicious opinion and not arbitrary opinion.

3.11. Even the Hon'ble Jurisdictional High Court in the case of Nirav Modi reported in 390 ITR 292 in para 10 thereon had categorically stated that the Id. PCIT should conduct enquiry on his own to find out whether there is any error in the details furnished by the assessee. This decision assumes greater significance in view of the fact that SLP filed by the Revenue against this order had been dismissed by the Hon'ble Apex Court which is reported in 244 Taxman 194 dated 28/11/2016.

3.12. In view of the aforesaid observations, we have no hesitation in holding that the order passed by the Id. PCIT u/s.263 of the Act deserves to be quashed and is hereby quashed. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced on 19/01/2022 by way of proper mentioning in the notice board.

**Sd/-**  
**(MAHAVIR SINGH)**  
**VICE PRESIDENT**

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 19/01/2022  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai