

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "B", CHANDIGARH

BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 145/CHD/2021

निर्धारण वर्ष / Assessment Year : 2014-15

M/s Namdhari Rice and General Mills, 1, Sri Jiwan nagar, Sirsa -125055 Haryana	बनाम	Pr. Commissioner of Income Tax, Rohtak
स्थायी लेखा सं./PAN NO: AABFN1595J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing though video Conferencing

निर्धारिती की ओर से/Assessee by : Sh. Gautam Jain, Advocate, and
Sh. Lalit Mohan, CA
राजस्व की ओर से/ Revenue by : Sh. Sarabjeet Singh, CIT DR
सुनवाई की तारीख/Date of Hearing : 20.12.2021
उदघोषणा की तारीख/Date of Pronouncement : 15. 03.2022

आदेश/Order

Per Sudhanshu Srivastava, Judicial Member:

This appeal is preferred by the assessee against the order passed u/s 263 of the Income Tax Act, 1961 (hereinafter called 'the Act') vide order dated 12.03.2021. This order has been passed by the Principal Commissioner of Income Tax, Rohtak [hereinafter referred to as ('PCIT')] and pertains to assessment year 2014-15.

2. The brief facts of the case are that the return of income filed declaring loss of Rs. 6,71,92,289/-. The assessee's case was selected for scrutiny and the assessment was completed at a loss of Rs. 6,69,32,289/-

Subsequently, information was received from the National Spot Exchange Limited (NSEL), Mumbai that the assessee firm had used the platform of NSEL for buying and selling of various commodities. The trading on this exchange platform was suspended on 31.7.2013 by the Government of India. At that point of time, as per the information, the assessee had an outstanding obligation to the tune of 10.75 cores rupees. As per the Department, the assessee failed to either deliver the equivalent commodities or to pay the outstanding amount. As per the information with the Department, the assessee had accepted this liability of Rs. 10.75 crores in a joint meeting held on 04.08.2013. Subsequently, on receipt of this information, notice u/s 148 of the Act was issued on 17.01.2018 requiring the assessee to file return of income. In response thereto, the assessee submitted that the return filed earlier on 29.11.2014 may be treated as return of income in pursuance of notice issued u/s 148 of the Act. Subsequently, during the course of re-assessment proceedings, the assessee produced books of account along with the relevant vouchers etc. and, thereafter, the Assessing officer reached the conclusion that the earlier assessed loss of Rs. 6,69,32,289/- was to be accepted.

2.1 Subsequently, notice u/s 263 of the Act was issued on 6.8.2019 mentioning instance of failure on the part of the Assessing officer, namely, that the assessment order had been completed without due verification of the issue of alleged out of books of account sale of

goods amounting to Rs. 10.75 crores. The Ld. PCIT concluded that the assessment order was prima facie erroneous and prejudicial to the interest of Revenue. The Assessing officer was directed to make proper verification and inquire into the information received from NSEL to check out of the books sale of goods. The Ld. PCIT also issued directions that detailed inquiries should be conducted on the issue since information in response to notice u/s 133(6) of the Act had been received from NSEL. Accordingly, the assessment order passed u/s 143(3) /147 of the Act was cancelled with a direction to pass an order afresh keeping in view the observations made by the Ld. PCIT.

2.2 Against this order passed u/s 263 of the Act, the assessee has now approached this Tribunal challenging the proceedings u/s 263 of the Act on the following grounds:-

- 1. That order dated 12.3.2021 u/s 263 of the Act by learned Principal Commissioner of Income Tax, Rohtak has been made without satisfying the statutory preconditions contained in the Act and is therefore without jurisdiction and thus, deserves to be quashed as such.*
- 2. That the conclusion of learned Principal Commissioner of Income Tax that "the AO has passed the order dated 29.12.2018 in a very casual manner without due diligence and without conducting any worthwhile enquiries. Therefore it is very clear that assessment proceedings completed u/s 143(3) of the Act are erroneous so far as prejudicial to the interest of revenue in terms of provisions of section 263 of the Act including Explanation 2 inserted by the Finance Act, 2015 w.e.f. 01.06.2015" is based on fundamental misconception of facts and provisions of law and thus not in accordance with law and, therefore untenable.*

- 2.1 That the finding that "AO has failed to verify the out of book sales of goods amounting to Rs. 10.75 crore" and also the observation that "the main information on which the case of the assessee was selected for scrutiny was not properly verified before passing the assessment order" are factually incorrect, legally misconceived, contrary to evidence on record; and in any case is vague, based on surmised considerations; and therefore unsustainable.
- 2.2 That the direction that "AO should make proper verification and inquire into the information received from NSEL to check the out of book sales of goods" and also detailed inquiries should be conducted on the issue since information in response to notice u/s 133(6) of the Act has been received from NSEL" is illegal, invalid and establishes that the learned Principal Commissioner of Income Tax has assumed jurisdiction on surmises, conjecture and suspicion and therefore the notice issued u/s 263 of the Act may kindly be quashed as such.
- 2.3 That the learned Principal Commissioner of Income Tax has erred in holding that it is a case of "lack of enquiry" and, further failing to appreciate that alleged inadequate enquiry in the manner suggested without any independent evidence and, without any further enquiries by him cannot be a basis for assumption of jurisdiction u/s 263 of the Act.
- 2.4 That the learned Pr. Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the facts on record and after making all possible enquiries had accepted claim of the appellant then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the interest of revenue merely because the learned Pr. Commissioner of Income Tax had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible view.
- 2.5 That the learned Pr. Commissioner of Income Tax has also failed to appreciate that, u/s 263 of the Act. an order of assessment cannot be set-aside to simply to make further enquiries and

thereafter pass fresh order of assessment and as such, impugned order is contrary to law and hence, unsustainable

2.6 That while passing the order u/s 263 of the Act the learned Principal Commissioner of Income Tax cannot travel beyond the show cause notice and therefore findings and observation and also the material relied upon not referred in the show cause notice but made part of the order could neither in law and nor on fact be made a basis to assume jurisdiction u/s 263 of the Act; and thus order on this ground alone deserve to be quashed as such.

3. That the learned Principal Commissioner of Income Tax has framed the impugned order without granting sufficient opportunity to the appellant and therefore the order made is illegal, invalid and, vitiated order

4. That since neither the initiation of proceedings u/s 147 of the Act and, nor order of assessment u/s 147/143(3) of the Act was in accordance with law, therefore the impugned order made u/s 263 of the Act is also void-ab-initio.

4.1 That since the notice u/s 148 of the Act had been issued mechanically without application of mind much less independent application of mind and without having any tangible, relevant credible material to form a reason to believe that income of the appellant has escaped assessment therefore the order of assessment u/s 147/143(3) of the Act was without jurisdiction and as such the impugned order is also without jurisdiction.

Prayer: It is therefore prayed that, impugned order dated 12.3.2021 under section 263 of the Act be held to be without jurisdiction and, therefore be quashed and appeal of the appellant be allowed.

3.0 At the outset, the Ld. Authorised Representative (AR) submitted that the assessee has received a show cause notice from the Registry of the Tribunal mentioning that the appeal has been filed belatedly by 27

days. The Ld. AR submitted that there is no delay in filing of the appeal in view of the order of the Hon'ble Apex Court vide dated 27.04.2021 in suo motu Writ Petition (Civil) No. 3 of 2020, wherein, judicial notice of steep rise in Covid-19 Virus cases was taken by the Hon'ble Supreme Court and it was directed by the Hon'ble Apex Court that the period(s) of limitation, as prescribed under any general or special law in respect of all judicial or quasi-judicial proceedings, whether condonable or not, would stand extended till further orders. So, it was submitted that accordingly in view of this order passed by the Hon'ble Apex Court, there was no actual delay in filing of the appeal. It was prayed that the appeal may be admitted for hearing on merits.

3.1 Per contra, the Ld. CIT DR could not controvert the averments of the Ld. AR.

3.2 Keeping in mind the averments of the Ld. AR and the binding order of the Hon'ble Apex Court as afore mentioned, we admit the appeal for regular hearing.

4.0 Arguing on ground Nos. 1, 2 & 3, the Ld. Authorised Representative (AR) drew our attention to the show cause notice dated 6.8.2019 issued u/s 263 of the Act. The same is being reproduced herein under:-

"2. The assessment record for the period under consideration was called upon and examined. On such

examination, it has been noticed that your case was reopened on the basis of information received from National Spot Exchange Ltd. (NSEL) that you have made out of books sale of goods of Rs. 10.75 crore during the period under consideration. To confirm the above information requisition u/s 133(6) was issued by the AO on 20.12.2018. As the reply from NSEL was not received before the completion of assessment, the AO accepted your claim.

3. The desired information confirming the transaction of out of book sale has been received from the NSEL after the completion of assessment i.e. on 10.01.2019. Therefore, the assessment order has been completed before the due verification of the issue involved."

4.1 The Ld. AR also drew our attention to the copy of the reasons recorded for the purpose of reopening vide dated 6.8.2018. The same are also being reproduced here-in under for a ready reference:-

"Brief facts of the case that assessee firm has filed its Income-tax Return for the Asstt. Year 2014-15 on 20.11.2014 showing income of Rs. (-) 6,71,72,289/- Assessment u/s 143(3) was also completed in this case on 13.12.2016 at income of Rs. (-) 9,69,32,289/-. Later on as per information and material available with the department it is noticed that the assessee was utilizing platform of NSEL (National Spot Exchange Limited) to sell its goods to the perspective buyers and receiving creditors of the same through its various bank accounts maintained with different banks. During the year under consideration the assessee firm has received credits of Rs. 10.75 Cr. through NSEL in its bank accounts, which is not found to be recorded as sales in the books of accounts. Thus, the assessee firm has made sale of goods amounting to Rs. 10.75 Cr. outside books of accounts during the FY 2013-14 relevant to assessment year 2014-15. In this way the assessee company has not disclosed all material fact to the department regarding receipts of Rs. 10.75 Cr. Further,

perusal of balance sheet show that receipt of Rs. 10.75 Cr. from NSEL has not been entered in the books of the assessee firm. This fact has not been examined during the course of assessment made u/s 143(3) of the Income tax Act.

Keeping in view the facts stated above, I have reasons to believe that income of Rs. 10.75 Cr. has escaped assessment along with any other income which may be noticed during the course of assessment has escaped assessment for the assessment year 2014-15 within the meaning of section 147(c) of the Income-tax Act, 1961.

Issue notice u/s 148 for the assessment year 2014-15”

4.2 The Ld. AR, thereafter, submitted that a perusal of the order of the Ld. PCIT would show that the proceedings u/s 263 of the Act had been initiated on identical grounds on which action was taken u/s 147 of the Act. The Ld. AR submitted that the main thrust of observations of the Ld. PCIT was that –

- i) The replies filed during the assessment proceedings were just placed on record and the Assessing Officer (AO) had failed to verify the out of the book sales of goods amounting to Rs. 10.75 crore;
- ii) The main information on which the case of the assessee was selected for scrutiny was not properly verified before passing the assessment order;
- iii) The AO had completed the assessment without due verification and enquiry of the issue involved, therefore, the assessment order was prima facie erroneous and prejudicial to the interest of revenue;

- iv) The A.O. should have made proper verification and inquired into the information received from NSEL to check the out of book sale of goods. Detailed inquiries should also be conducted on the issue since information in response to notice u/s 133(6) has been received from NSEL. The out of books sales should be added back to the assessee's income after conducting inquiries and bringing evidences on record.

4.3 The Ld. AR, thereafter, submitted that the Assessing officer had made the proper enquires vide notice dated 27.8.2019 (placed on paper book) on the solitary issue under consideration and the assessee had, thereafter, filed the detailed reply along with annexures vide reply dated 12.12.2018. It was submitted that even in the assessment order it had been duly mentioned that the books of account along with bills and vouchers had been produced by the assessee which were also checked by the Assessing officer. The Ld. AR also drew our attention to the office note forming part of the assessment order. For a ready reference, this office note is being reproduced herein under:-

“Brief facts of the case are that information received from the National Spot Exchange Limited, Mumbai that the assessee firm used the platform of NSEL for buying & selling of various commodities. Further, NSEL also informed that liability of Rs. 10.75 crore is outstanding against the M/s Namdhari Rice & General Mills, Sri Jiwannagar, Sirsa for trading of commodity at platform and also informed that assessee had admitted to pay the liability of Rs. 10.75 crore in a joint meeting held on August 4, 2013. However, examination of books of

accounts of the assessee firm, there is no such type of liability has been reflected

A letter u/s 133(6) of the I.T. Act, 1961 was issued on 20.12.2018 which was duly served through email (infor@nationalspotexchange.com) to the NSEL, Mumbai calling information i.e. copy of trading account alongwith copy of letter vide which assessee admitted to pay outstanding liability of Rs 10.75 crore. Subsequent reminders dated 25-12-2018 and 27-12-2018 were also issued to NSEL, but no compliance has been made by it. Therefore, in the absence of any evidence regarding above information, no adverse inference has been alled for on this issue. Further, if any information will be received from the NSEL, Mumbai in response to above letter, action u/s 148/263 of the I.T. Act, 1961 may be considered.

4.4 The Ld. AR submitted that it was evident from a plain reading of the office note that the allegation by the Ld. PCIT was misconceived and factually incorrect. The Ld. AR further argued that, undisputedly, the present case was not a case of either lack of enquiry or lack of investigation and, therefore, the assessment was neither erroneous nor prejudicial to the interest to Revenue for the simple reason that it was not based on any incorrect application of law or incorrect application of fact; or non-application of mind. It was argued that since the Assessing officer had made detailed inquiries during the course of assessment proceedings and the assessee had given detailed explanations to such inquiries and the Assessing officer, on being satisfied with the

explanations of the assessee, had accepted the assessed income, the order of the Assessing officer could not be revised u/s 263 of the Act.

4.5 The Ld. AR drew our attention to the direction of the Ld. PCIT in the impugned order that the Assessing officer should make proper verification and inquire into the information received from NSEL to check out of books sale of goods and that detailed enquiry should be conducted on the issue since the information in response to notice u/s 133(6) of the Act had been received from NSEL. Referring to these directions, the Ld. AR submitted that the Ld. PCIT should have come to such conclusion only after conducting necessary inquiries himself before passing the order u/s 263 of the Act and that directions for making further inquiries could not have been given to the Assessing officer even before the Ld. PCIT made any inquiries himself. It was submitted that, therefore, the order passed u/s 263 of the Act was bad in law and deserved to be set aside.

4.6 It was also submitted that the impugned order was based on highly vague and cryptic observations which do not satisfy the statutory pre condition contained in section 263 of the Act, in as much as, the response and the documents filed by the assessee were not duly considered by the Ld. PCIT and the Ld. PCIT had simply observed that the Assessing officer had not conducted the requisite inquiries / investigation. It was submitted that it was apparent that the impugned

order have been passed in a hasty manner without due application of mind and without taking into consideration the material placed by the assessee on the issue at hand.

4.7 The Ld. AR re-emphasised that the Ld. PCIT, unmindful of the various inquiries conducted by the Assessing officer during the course of re-assessment proceedings and the submissions made, had merely observed that the assessment order had been passed without making proper inquiries and that it was a matter of record that the Ld. PCIT had himself not undertaken any inquiry to reach a conclusion that the order passed by the Assessing officer was erroneous and prejudicial to the interest of Revenue. The Ld. AR relied on the numerous judicial precedents in support of his various contentions. Specific reliance was placed on the judgement to the Hon'ble Delhi High Court in the case of CIT Vs. Sunbeam Auto Ltd reported in [2010] 332 ITR 167 (Delhi), wherein, it has been held that if there was an inquiry, even inadequate, that would by itself not give occasion to the Commissioner to pass order u/s 263 of the Act merely because the Commissioner had a different opinion in the matter.

4.8 The Ld. AR further submitted that although there has been an amendment in the provisions of section 263 of the Act by which Explanation 2 has been inserted w.e.f. 01.06.2015, still this did not given unfettered powers to the Ld. Commissioner to assume jurisdiction

u/s 263 of the Act to revise each and every order of the Assessing officer to re-examine the issues already examined during the course of assessment proceedings. Our attention was drawn to the order of the ITAT Mumbai Bench in the case of Narayan Tatu Rane vs ITO reported in [2016] taxman.com 227 (Mumbai), wherein, it was held that the said Explanation cannot be said to have overridden liability as interpreted by the Hon'ble Delhi High Court, according to which the Commissioner has to conduct the inquiry and verification to establish and show that the assessment order was unsustainable in law. The Ld. AR submitted that in this case the ITAT Mumbai Bench had further held that the intention of the legislature could not have been to enable the CIT to find fault with each and every assessment order without conducting any inquiry 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 legal proceedings.

4.9 In an alternative plea, which has been taken by the assessee vide ground No. 4 of the appeal, the Ld. AR submitted that neither the initiation of proceedings u/s 147 of the Act, nor the order of assessment u/s 143(3) / 147 of the Act was in accordance with law and, therefore, the impugned order passed u/s 263 of the Act was also void-ab-initio. It was submitted that the plea challenging the proceedings u/s 147 of the Act can be raised even in subsequent proceedings and reliance was

placed on numerous judicial precedents in this regard which form the part of the written submissions and have been placed on record.

4.10 The Ld. AR summed up the argument by submitting that the conditions which were pre-requisite for enabling the Ld. PCIT to invoke his jurisdiction u/s 263 of the Act were not satisfied in the instant case. It was submitted that as per settled law, there should be positive material with the Ld. PCIT to consider objectively and not subjectively that the order of the Assessing officer was erroneous. The Ld. AR submitted that if all the necessary particulars have been furnished before the Assessing officer and he had applied his mind thereon, the Revision is not valid. It was also argued that merely because there is no elaborate discussion in the assessment order, the order cannot be said to be erroneous. The Ld. AR also highlighted the settled law that the proceedings u/s 263 of the Act have to be confined to the findings recorded by the Assessing officer and not beyond. Our attention was drawn to the show cause notice in this regard, from where it is apparent, that the Assessing officer himself had written to the NSEL to confirm the transactions but since no reply was received, and he had completed the assessment based on the record before him and, therefore, information received from NSEL subsequently cannot be the foundation for invoking the jurisdiction u/s 263 of the Act.

5.0 Per contra, the Ld. CIT DR supported the order of the Ld. PCIT and submitted that the Assessing officer had passed the assessment order without receiving the information from NSEL which itself would prove that the Assessing officer had not applied his mind to the facts of the case. It was submitted that unaccounted sales / purchases affect the interest of Revenue and, therefore, it was very much erroneous as well as prejudicial to the interest of Revenue. It was argued that the Assessing officer had failed to examine the dispute between the assessee and NESL and had also not examined the issue on merits so as to logically conclude the re-assessment. The Ld. CIT DR submitted that the impugned order passed u/s 263 of the Act deserved to be upheld.

6.0 We have heard the rival submissions and have also perused the material on record. It has been vehemently argued by the Ld. AR that the Ld. Ld. PCIT was legally wrong in assuming jurisdiction u/s 263 of the Act specially because the assessee's case had earlier been reopened on the same issue u/s 148 of the Act and the re-assessment proceedings had been completed after duly considering the submissions and explanations of the assessee and at the earlier assessed income. We note that the issue for which the Revisionary powers were invoked by the Ld. PCIT pertains to alleged out of books sales amounting to Rs. 10.75 cores through terminal of NSEL. It is seen that the original assessment which had

been completed earlier u/s 143(3) of the Act was reopened for the reason that the assessee had received credit of Rs. 10.75 crores through NSEL, which was not found recorded as sales in the books of account. It is the assessee's submissions that the assessee had given adequate explanation in this regard and during the course of re-assessment proceedings had submitted voluminous documents running into 176 sheets to demonstrate that all the sales through NSEL had been accounted for in the books of account. This is duly evidenced by copies of the documents filed before the Assessing officer during the closure of re-assessment proceedings. It was also pointed out by the assessee before the Assessing officer during the course of re-assessment proceedings that an FIR had been lodged by Mr. Pankaj Ramnaresh Saraf against NSEL and members of NSEL as NSEL had started to fault in discharging their payment obligations from July 2013 onwards. It was also submitted before the Assessing officer that during that time the NSEL had conducted physical verification of stock at warehouses located in different parts of the country and after such verification, the assessee had received email 6.9.2013 from the NSEL demanding Rs. 10.75 crores. It was also submitted that after the receipt of this e-mail, the company had been continuously contacting the NSEL and stating in the correspondences that the demand raised by the NSEL was false

as it was the assessee firm who had to recover Rs. 2.75 crores from NSEL. Thus, apparently, the assessee was challenging the amount of Rs. 10.75 crores being allegedly payable whereas the amount, as per the assessee, was receivable. These facts were brought to the notice of the Assessing officer during the course of re-assessment proceedings and it will be hard to infer that the Assessing officer had not given a thoughtful consideration to the submissions of the assessee before accepting its contention.

6.1 We also note from the assessment order passed u/s 147 / 143 (3) of the Act that in the office note (which has been reproduced in para 3.3 above), the Assessing officer has mentioned that a letter u/s 133(6) of the Act had been issued on 20.12.2018 which was duly served through email to NSEL, Mumbai calling information i.e. copy of trading account along with copy of the letter in which the assessee allegedly admitted to pay the outstanding liability of Rs. 10.75 crores. It has also been mentioned in this office note that subsequent reminders date 25.12.2018 and 27.12.2018 are also issued to the NSEL but no compliance had been made by the NSEL. It is also stated in the office note that, therefore, in the absence of any evidence regarding this information, no adverse inference was called for and the Assessing officer noted that, further, if any

information will be received, subsequently, suitable action u/s 148 / 263 of the Act may be considered. Thus, at the time of completion of re-assessment proceedings on 29.12.2018 (undisputedly, the re-assessment was getting time barred on 31.12.2018), the Assessing officer, after duly considering the explanation offered by the assessee and the documents furnished in this regard, arrived at one of the possible views which could be taken in the present case.

6.2 At this juncture, it will be relevant to refer to the judgment of the Hon'ble Delhi High Court in the case of CIT Vs. Sunbeam Auto Ltd reported in [2011] 332 ITR 167 (Del.). In paragraph 17, the Hon'ble High Court has ruled that one has to keep in mind the distinction between 'lack of inquiry' and 'inadequate inquiry' and further if there was any inquiry, even inadequate, that would not by itself give occasion to the Commissioner to pass orders u/s 263 of the Act, merely because he has a different opinion in the matter. It was further held by the Hon'ble Delhi High Court that if any Assessing officer, acting in accordance with law, makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately.

6.3 Similar were the observation of the Hon'ble Delhi High Court in the case of ITO Vs. DG Housing Projects Ltd [2012] 343 ITR 329 (Del). In this case, the Hon'ble Delhi High Court went on to observe that in case where there is in-adequate inquiry but no lack of inquiry, the CIT must give and record a finding that the order / enquiry made is erroneous and that this can happen only if an inquiry and verification is conducted by the CIT. The Hon'ble Delhi High Court in the case of ITO Vs. DG Housing Projects Ltd (supra) also held that in most cases of alleged 'inadequate inquires' it will be difficult to hold that the order of the Assessing officer, who had conducted enquiries and had acted as a Investigator, is erroneous, without the CIT conducting verification /inquiry himself. However, in the present case, no such inquiry has been carried out by the Ld. PCIT and he has simply directed the Assessing officer to carry out detailed inquires. In our considered opinion, the Ld. PCIT, without making further inquiry on his own account, has simply stated in the impugned order that the Assessing officer was required to make more inquiries. The Ld. PCIT has not pointed out as to what further inquiry was the Assessing officer required to make and as to how without those inquires the order of the Assessing officer was erroneous in so far as prrejudicial to the interest of the Revenue. As per the provisions of section 263(1) of

the Act, after getting the explanation of the assessee to the show cause notice, the Ld. PCIT is supposed to examine the contention of the assessee and before passing an order cancelling the assessment, he is supposed to conduct an inquiry himself or cause to make such an inquiry, as he deems fit / necessary.

6.4 As far as the invocation by the Ld. PCIT of Explanation 2 to section 263 of the Act is concerned, the Delhi Bench of the ITAT had an occasion to consider this aspect in the case of Amira Pure Foods Pvt. Ltd Vs. Principal CIT (2017) 51 CCH 0473 (Delhi-Tribunal) wherein, the Delhi Bench, while relying upon the judgement of the Hon'ble Delhi High Court in the case of PCIT Vs. Delhi Airport Metro Express Pvt Ltd (ITA No. 705/2017) has held that Explanation 2 cannot be stated to have overridden the law as interpreted by various High Courts, where the High Courts have held that before reaching the conclusion that the order of the Assessing officer is erroneous and prejudicial to the interest of Revenue. The Commissioner himself has to undertake some enquiry to establish that the assessment order is erroneous and prejudicial to the interest of Revenue. Similarly, the Coordinate Bench of ITAT, Mumbai in the case of Narayan Tatu Rane reported in TS-290-ITAT 2016 (Mumbai) has held that Explanation 2 to section 263 does not provide unfettered right to the PCIT to revise each and

every order. It was held that it is the responsibility of the PCIT to show that the enquiry for verification conducted by the Assessing officer was not in accordance with the enquires or verification that would have been carried out by a prudent officer.

6.5 On the entire factual matrix of the case, it is our considered opinion that the Assessing officer, after duly calling for required information and after duly considering the explanations and evidences before him, reached a conclusion which was a possible view to be taken by him and he cannot be faulted for not having waited for a response from NSEL which was not forthcoming even after two reminders. In our considered view, the Assessing officer took a view which was legally plausible and possible at that point of time. Subsequent information could be a basis for initiating new re-assessment proceedings but not the basis for a revisionary proceedings u/s 263 of the Act. Therefore, on an overall view of the facts of the case, we are of the considered opinion that the exercise of revisional jurisdiction by the Ld. PCIT is without any justification. As far as the alternate plea of the assessee challenging the re-assessment proceedings is concerned, we are not inclined to go into the same as we have already held the proceedings u/s 263 of

the Act to be bad in law. Accordingly, we set aside the order passed u/s 263 of the Act and allow the appeal of the assessee.

7.0 In the final result, the appeal of the assessee stands allowed.

Order pronounced on 15.03.2022.

Sd/-
(N. K. SAINI)
Vice President
Dated : 15.03.2022
"आर.के."

Sd/-
(SUDHANSHU SRIVASTAVA)
Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar