IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A. Nos. 39 & 40/Asr/2019
Assessment Year: 2008-09

Sh. Manjit Krishan Malhotra Street No. 3, Jain Nagri, Abohar [PAN: ABOPM 0859N]	Vs.	Pr. Commissioner of Income Tax, Civil Station, Bathinda
(Appellant)		**(Respondent)**

Appellant by : Sh. Anil Puri, Adv.
Respondent by: Sh. Chandrajit Singh, CIT DR

Date of Hearing: 28.06.2022
Date of Pronouncement: 11.08.2022

ORDER

Per Dr. M. L. Meena, A.M.:

These two appeals have been filed by the assessee against the impugned order even dated 29.03.2016 passed by the Ld. Pr. Commissioner of Income Tax, Bathinda under section 263 of the Income Tax Act, 1961 in respect of the Assessment Year 2008-09, on commons

grounds of appeal except variation of the section of levy of penalty on the following grounds of appeal reproduced as under:

> *"1. That the learned Pr. Commissioner of Income Tax, Bathinda, erred both in law as well as in respect of the facts of the case while cancelling the penalty order, passed under section 271D, dated 10.02.2014, by the Jt. Commissioner of Income Tax, Range-2, Bathinda vide his order dated 29.03.2016, passed under section 263 of the Income Tax Act, 1961 without jurisdiction and without appreciating the facts of the case judiciously.*
>
> *2. That order dated 29.03.2016, passed under section 263 of the Income Tax Act, 1961 is bad in law, having been passed without jurisdiction under section 263 of the Income Tax Act, 1961.*
>
> *3. That the Pr. Commissioner of Income Tax, Bathinda was absolutely unjustified in cancelling the order dated 10.02.2014, vide which Jt. Commissioner of Income Tax, Range-2, Bathinda dropped the penalty under section 271D, after having appreciated the facts of the case judiciously and on merits.*
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> *4. That the Pr. Commissioner of Income Tax, Bathinda failed to appreciate the facts that the Appellant neither took nor accepted any loan or deposit from Mr. Rajiv Kumar Khanna on which the provisions of section 269SS could be invoked.*
>
> *5. That the worthy Pr. C.I.T. further erred in not appreciating the facts that the Appellant or Mr. Rajiv Khanna, both having Agricultural Income and neither of them had any income chargeable to Income Tax under the Income Tax Act, 1961, as per Second Proviso to Section 269SS, receipt of such amount could not be treated as contravention to Section 269SS, attracting penalty under section 271D of the Income Tax Act, 1961.*
>
> *6. That the Appellant reserves its right to add, amend or withdraw any grounds of appeal before the appeal is finally heard or disposed off."*

2. At the outset, the ld. counsel for the assessee has submitted that there has been a delay in 967 days in filing both the appeals in ITA Nos. 39

& 40/Asr/2019, as these appeals are filed on 21.01.2019 against the order even dated 29.03.2016 passed u/s 263 of the Act by the Pr. CIT, Bathinda. The counsel has filed an affidavit in support of the delay stating therein that there was a technical flaw initiating proceedings u/s 263 being beyond the jurisdiction of provisions of section 263 which was neither in the knowledge of the assessee or in the knowledge of its counsel Mr. Mahesh Chander Khungar, Adv. which consequently resulted in delay of 967 days in filing the appeal before the Income Tax Appellate Tribunal. He contended that the issue has been pointed out to the appellant by his newly appointed counsel Mr. Anil Puri, Adv. while preparing the Tribunal appeals in ITA No. 768/Asr/2017 against the order dated 13.10.2017 passed by the Commissioner of Income Tax (Appeals), Bathinda in appeal nos. 145 & 146 of 2016-17 filed against penalty orders dated 29.10.2016 passed u/s 271D & 271E in lieu of the order dated 29.03.2016 passed u/s 263 by the Pr. CIT(A), Bathinda.

3. In support the ld. AR placed reliance on the decision of ITAT Hyderabad Bench in the case of “M/s Srimaan Industries Pvt. Ltd., Hyderabad v. ITO Ward 3(3)”, Hyderabad order dated 24.03.2022 passed in ITA No. 50/Hud/2022 where the bench has condoned the delay of 1324 days vide para 3 by observing as under:

"3. At the start of hearing the Ld. AR submitted that the present appeal ought to have been filed by 17/07/2018 but the same could be filed only on 02/03/2022, after a delay of 1324 days. The Ld. AR submitted that the assessee has moved an application for condonation of delay supported by the requisite affidavit. The reason of delay, as submitted by the assessee, is that the order of Ld. CIT(A) was passed on 18/05/2018. But the counsel of the assessee to whom the work of first-appeal before Ld. CIT(A) was entrusted, had mentioned his own name, address, phone number and email in the space titled "Address to which notices may be sent to the appellant" in Form No. 35 [Form of Appeal to CIT(A)]. But neither the counsel appeared before the Ld. CIT(A) in appeal-proceeding nor informed the assessee about the fixation or disposal of the appeal. Thereafter it is on receipt of the notice of penalty on 20/01/2022 from National Faceless Assessment Centre that the assessee initiated enquiries in the matter and came to know that the appeal had already been disposed of on 18/05/2018. It is ITA No.50/Hyd/2022 further submitted that since the assessee was not aware of the "Date of Service of the order" of Ld. CIT(A), it has mentioned the same date i.e. 18/05/2018 against not only the space titled "Date of order" but also against the "Date of service or communication of the order" in the Form No. 36 [Form of Appeal to the Appellate Tribunal]submitted to this Bench. The Ld. AR submitted that being unaware of the disposal of first-appeal by the Ld. CIT(A), the assessee was not in a position to institute the present appeal to this Tribunal within 60 days from 18/05/2018, but immediately after becoming aware of it on 20/01/2022, the assessee engaged another counsel and filed the present appeal on 02/03/2022 which is well within 60 days from 20/01/2022. The Ld. AR submitted that by delayed filing, the assessee does not stand to derive any benefit or advantage. The Ld. AR also submitted that the delay is due to the sufficient cause and there is no malafides on the part of the assessee. In these circumstances, relying upon the decision of Hon'ble Apex Court in Collector, Land Acquisition Vs. MST Katiji and Others (1987) 167 ITR ITA No.50/Hyd/2022 471, Hon'ble Karnataka High Court in (2013) 263 CTR (Kar) 549 and Hon'ble ITAT in (2021) 212 TTJ

> *(Bang) 261 Natural Remedies (P) Ltd. Vs. ACIT, the Ld. AR prayed to condone the delay. We find sufficient strength in the submission of Ld. AR. We confronted the Ld.DR, who without demonstrating any objection, left the matter to the wisdom of the Bench. Taking into account that there was a sufficient cause of delay as explained by the assessee and having regard to the decision of Hon'ble Apex Court, we condoned the delay and proceeded for hearing of the appeal."*

In another case of Sh. Yuraj Mahajan v. Income Tax Officer, Ward 3(3), Chandigarh Bench in ITA No. 958/Chd/2014 vide order dated 17.03.2016 condoned the delay of 625 days by observing as under:

> *"It has been consistently held by the Hon'ble Apex Court in a number of cases that in the matter of condonation of delay, a liberal and pragmatic view should be taken by the Courts. Further, it is also equally well settled that when technicalities and substantial justice are pitted against each other, the Court will always lean in favour of substantial justice. The Income Tax Act has surely provided a limit for filing the appeal before the Income Tax Tribunal. However, as per provisions of section 253(5), the*
> *I.T.A.T. has also been given powers to condone the delay. In this way, the discretion has been given to the I.T.A.T. to condone the delay in cases where sufficient cause is proved by the defaulter"*

4. In the above view, when tactical intricacies and substantial justice are pitted against each other, the Court will always lean in favour of the substantial justice. Although, the Income Tax Act has provided a limit for filing the appeal before the Income Tax Appellate Tribunal, but as per the provisions of section 263(5); the ITAT has also given discretion to condone

the delay in cases where sufficient cause is proved by the defaulter. In the instant case, the appellant cannot be harmed/punished for the mistakes on the part of its counsel. Accordingly, finding sufficient cause for delay in filing these appeals by the appellant assessee, the delay of 967 days in filing these appeals is hereby condoned and appeals are admitted to be heard on merits.

5. The ld. Pr. CIT has observed that during the course of assessment proceedings in the case of M/s Tirath Ram Badri Nath, Abohar in respect of AY 2008-09, AO has noted that the appellant Sh. Manjit Krishan Malhotra has accepted the loan of Rs. 18,50,000/- in cash on various dates from Sh. Rajiv Khanna partner of M/s Tirath Ram Badri Nath, Abohar. Thus, the appellant's acceptance of loan was so made otherwise an by on account payee cheque or account payee bank draft is in contravention of provisions of section 269SS and 269T of the Act by the appellant assessee. Therefore, the matter was referred by the AO to the JCIT, Range-II, Bathinda for levy of penalty u/s 271D and 271E of the Income Tax Act, 1961. The JCIT, Range-II, Bathinda vide his order dated 10.02.2014 dropped the penalty proceeding u/s 271D of the Income Tax Act, 1961 by passing a once sentence order as under: (APB pg. no. 22 & 23)

"Penalty proceedings initiated in this case u/s 271D are being dropped." And that "penalty proceedings initiated in this case u/s 271E are being dropped."

6. The ld. Pr. CIT has further observed that the penalty proceedings had been dropped by the JCIT, Range-II, Bathinda without bringing any cogent material on record and thus the penalty orders were not only erroneous but prejudicial to the interest of the Revenue.

7. The ld. Pr. CIT further stated that after going to the submission filed by the appellant assessee before him and examination of judgment, he stated that, in fact, the promissory estoppels cannot be filed against the statute under the Income Tax proceedings. Accordingly, he has distinguished the Hon'ble Apex Court judgment in the case of Motilal Padampat Sugar Mills Pvt. Ltd. relied upon by the appellant assessee. After considering the reply of the assessee, the ld. PCIT has held that the assessee has accepted loan from Sh. Rajiv Khanna in cash otherwise than an account payee cheque or account payee bank draft, in contravention of provisions of section 269SS and repaid in cash in contravention to 269T of the Act. Accordingly, he held that the JCIT, Bathinda although initiated the penalty proceedings but dropped the penalty proceedings without assigning any reasons by exercising statutory powers in judicious manner in

accordance with the provisions of law and held that such an order was erroneous and prejudicial to the interest of the Revenue.

8. The ld. counsel for the assessee has submitted that PCIT has no power to exercise u/s 263(1) of the Act in respect of penalty order passed by the AO or any other Income Tax Authorities. He argued that the decision of assessment order can be taken for a revisionary processing u/s 263 of the Act with the support of written synopsis which is reproduced as under:

> *Both the appeals bearing Nos. 39 and 40/ASR/2019 were filed on 21.01.2019 against orders dated 29.03.2016 passed under section 263 passed by the Pr. Commissioner of Income Tax, Bathinda, cancelling the orders dated 10.02.2014 passed under section 271D & 271E by the Joint Commissioner of Income Tax, Range-II, Bathinda.*
>
> 1. *Both the orders passed under section 263 are perverse, having been passed without jurisdiction, as section 263 do not empower the Pr. Commissioner of Income Tax to recall or cancel the penalty orders that has been passed in performing Quasi Judicial Function.*
>
> 2. *The legal issue relating to the jurisdictional part was not within the sight of petitioner appellant and his regular counsel Mr. Mahesh Chander Khungar, who has been regularly appearing for all the Income Tax matters relating to Mr.Manjit Krishan Malhotra as stated and admitted in both the affidavits dated 21.01.2019 of Mr. Manjit Krishan Malhotra and Mr. Mahesh Chander Khungar, Advocate, filed along with the petition under section 253(5).*
>
> 3. *The issue involved relating to the jurisdiction vested in Pr.Commissioner of Income Tax under section 263, is a legal issue that could be realized and appreciated only after thoroughly reading between the lines of section 263 alongwith its Explanations 1 and 2 read with section 2(7A) defining "ASSESSING OFFICER"*

4. *The intricate legal issue relating to lack of jurisdiction vested in Pr.Commissioner of Income Tax under section 263 was not there in the knowledge of the petitioner appellant as well as his regular counsel Mr. Mahesh Chander Khungar, resulting need for filing of appeal against impugned order dated 29.03.2016 never cropped up in their mind, inter-alia no appeal was filed till 21.01.2019.*

5. *The contention of the petitioner appellant regarding jurisdictional part vested in the Pr. Commissioner of Income Tax under section 263 a supported by the principles laid down by their Lordships of Supreme Court in Commissioner of Income Tax Vs. Ralson Industries Ltd. (2007) 288 ITR 0322 (SC)*

> *"**When different jurisdictions are conferred upon different authorities to be exercised on different conditions, both may not be held to be overlapping with each other**"*
>
> ***"An administrative function and judicial function operate in two difference places. Whereas a judicial function must be exercised by the authority invested therewith in terms of the provisions of the statute and on the basis of the material on record; an administrative order may although inter alia have to be passed by a statutory authority but the same must be confined within the four corners of the statute. There may, however, have an element of discretion. Order by a judicial functionary is subject to appeal or revision. An administrative order may or may not be, A order of assessment is subject to exercise of an order of a revisional jurisdiction under section 263"***

9. The counsel argued that as per the provisions of section 263 r.w.s. 2(7A) and section 271D of the Income Tax Act, 1961 (supra), the Pr. CIT has no power to review the penalty order u/s 171D and 271E passed by the JCIT, Bathinda, wherein as per the section 271D and 271E, the JCIT is categorically empowered for the penalty performance, being the quasi judicial action; that the Ld. PCIT while cancelling the penalty order, passed

under section 271D and 271E, dated 10.02.2014, by the Jt. Commissioner of Income Tax, Range-2, Bathinda vide his order dated 29.03.2016, passed under section 263 of the Income Tax Act, 1961 are without jurisdiction and without appreciating the facts of the case judiciously; that the orders dated 29.03.2016, passed by the PCIT, under section 263 of the Income Tax Act, 19612 are bad in law, having been passed without jurisdiction under section 263 of the Income Tax Act, 1961; that the Pr. Commissioner of Income Tax, Bathinda was absolutely unjustified in cancelling the order dated 10.02.2014, vide which Jt. Commissioner of Income Tax, Range-2, Bathinda dropped the penalty under section 271D, after having appreciated the facts of the case judiciously and on merits; that the Pr. Commissioner of Income Tax, Bathinda failed to appreciate the facts that the Appellant neither took nor accepted any loan or deposit from Mr. Rajiv Kumar Khanna on which the provisions of section 269SS could be invoked and that the worthy Pr. C.I.T. further erred in not appreciating the facts that the Appellant was having Agricultural Income and neither had any income chargeable to Income Tax under the Income Tax Act, 1961, as per Second Proviso to Section 269SS, receipt of such amount could not be treated as contravention to Section 269SS, attracting penalty under section 271D of

the Income Tax Act, 1961. In support, he placed relianced on the following case laws:

STATE OF MADHYA PRADESH & ANR. vs. G.S. DALL & FLOUR MILLS

SUPREME COURT OF INDIA Sabyasachi Mukharji, C.J.I. & S. Ranganathan & K.N. Saikia, JJ.

Civil Appeal Nos. 2211 of 1988 with 4720 to 4725 of 1990

19th September, 1990 (1991) 187 ITR 0478

Interpretation of statutes—Contemporanea expositio—When applicable—Doctrine of contemporanea expositio applies in the cases where the plea is that, though the language of the statute may appear to be wide enough to seem applicable against the subject in particular situations, the State itself had not understood it in that way—Doctrine can be applied to limit the State to its own narrower interpretation in favour of the subject but not to claim its interpretation in its own favour as conclusive

Held :

The doctrine applies in cases where the plea is that, though the language of the statute may appear to be wide enough to seem applicable against the subject in particular situations, the State itself—which was the progenitor of the statute—had not understood it in that way. But, to apply the doctrine to widen the ambit of the statutory language would, however, virtually mean that the State can determine the interpretation of a statute by its ipsi dixit. That, certainly, is not, and cannot, be, the scope of the doctrine. The doctrine can be applied to limit the State to its own narrower interpretation in favour of the subject but not to claim its interpretation in its own favour as conclusive.

Conclusion :

Doctrine of contemporanea expositio can be applied to limit the state to its own narrower interpretation and not to widen the ambit of statutory language.

Interpretation of statutes—External aid—Instructions of Executives—Can supplement a statute or cover areas to which the statute does not extend but cannot run contrary to statutory provisions or whittle down their effect

COMMISSIONER OF INCOME TAX vs. MADHO PD. JATIA

SUPREME COURT OF INDIA	H.R. Khanna, R.S. Sarkaria & Jaswant Singh, JJ.
Civil Appeals Nos. 1540 to 1542 of 1971	17th August, 1976 (1976) 105 ITR 0179
Legislation Referred to	Section 24(1)(x)
Case pertains to	Asst. Year 1957-58, 1958-59, 1959-60
Decision in favour of:	Assessee

Interpretation of statutes—Ambiguous provisions—Admitting two interpretations—View which is favourable to subject should be adopted

Held : *It is well-settled that there is no equity about tax. It the provision of a taxing statute are clear and unambiguous, full effect must be given to them irrespective of any consideration of equity. Where, however, the provisions are couched in language which is*

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not free from ambiguity and admits of two interpretations a view which is favourable to the subject should be adopted. The fact that such an interpretation is also in consonance with ordinary notions of equity and fairness would further fortify the Court in adopting such a course.

Conclusion :

In case of ambiguous provisions admitting two interpretations, the view which is favourable to subject should be adopted.

C.I.T. vs. CELLULOSE PRODUCTS OF INDIA LTD.

SUPREME COURT OF INDIA	S. Rangnathan, V. Ramaswami & N.D. Ojha, JJ.
Civil Appeal No. 1314 of 1976	4th September, 1991 (1991) 192 ITR 0155 (SC)

Legislation Referred to — Sections 84, 84(7), 256

Case pertains to — Asst. Year 1966-67

Decision in favour of: — Revenue

Reference—Scope of powers of High Court—High Court does not sit in appellate, revisionary or supervisory jurisdiction—Findings of fact recorded by Tribunal not to be interfered with unless based on no evidence or are perverse or patently unreasonable

Held :

It is settled law that a High Court hearing a reference under the Act does not exercise any appellate or revisional or supervisory jurisdiction over the Tribunal and that it acts purely in an advisory capacity. If the Tribunal after considering the evidence produced before it on a question of fact records its finding it cannot be interfered with in a reference by the High Court unless of course such finding was not supported by any evidence, was perverse or patently unreasonable.

Conclusion :

High Court, in exercise of jurisdiction under s. 256, should not interfere with findings of fact unless they are based on no evidence or are perverse or unreasonable.

It is settled law that a High Court hearing a reference under the Act does not exercise any appellate or revisional or supervisory jurisdiction over the Tribunal and that it acts purely in an advisory capacity. If the Tribunal, after considering the evidence produced before it on a question of fact, records its finding, it cannot be interfered with in a reference by the High Court unless of course such finding was not supported by any evidence, was perverse or patently unreasonable. In our opinion, the finding of the Tribunal in the instant case did not suffer from any of these infirmities. The finding that the production of cellulose pulp during the month of March, 1961, was not a trial production and that cellulose pulp as manufactured by the respondent was a finished product which was a marketable commodity

was essentially a finding of fact based on appraisal of evidence. It is true that cellulose pulp constitutes raw material for manufacture of CMC but it has not been disputed before us by learned counsel for the respondent that it was even by itself a finished marketable commodity. The circumstance that the industrial licence granted to the respondent was for the manufacture of CMC and not of cellulose pulp is, in our opinion, keeping in view the nature of the two articles, not of much significance. In the same manner as a licence, for instance, for the manufacture of cloth includes the manufacture of cotton yarn, an intermediate product necessary for manufacturing cloth, the licence granted to the respondent for the manufacture of CMC included the manufacture of cellulose pulp which was an intermediate product to be used in its

turn as a raw material for the manufacture of CMC. The relevant clause of the memorandum of association of the respondent-company, already quoted above, is obviously wide in its amplitude.

COMMISSIONER OF INCOME TAX vs. SMT. RADHA DEVI PODDAR

HIGH COURT OF CALCUTTA	Suhas Chandra Sen & Baboo Lall Jain, JJ.
IT Ref. No. 99 of 1982	31st January, 1989 (1990) 185 ITR 0544
Legislation Referred to	Sections 143(3), 147, 273B
Case pertains to	Asst. Year1961-62, 1962-63, 1963-64, 1964-65
Decision in favour of:	Assessee

SUHAS CHANDRA SEN J

24. It was ultimately held by Chandurkar J. that :

"The words 'regular assessment' which were to be found in sub-s. (9) of s. 18A of the Indian IT Act, 1922, have, no doubt, been construed by a Division Bench of this Court in Deviprasad Kejriwal's case (supra), to cover cases of reassessment under s. 34(1). That decision cannot, however, be of any assistance now for construing s. 273. The distinguishing feature which would be enough to hold that the provisions in s. 273 of the 1961 Act should not be construed in the same manner as s. 18A(9) of the 1922 Act, which was construed in Deviprasad's case (supra) is that the words 'regular assessment' have now been specifically defined by the legislature. The 1922 Act did not define the words 'regular assessment'. In view of the definition of these words in s. 2(40) of the Act, under the accepted canons of construction, wherever those words are used, the meaning given in the definition clause must be substituted. This has also to be considered in the light of the fact that at several places the assessment under s. 143 or s. 144 has been used in contradistinction with reassessment under s. 147. We also do not find anything in the context of s. 273 which would require the words 'regular assessment' to be given a meaning different from the one given by the legislature when these words were defined."

25. I respectfully agree with the views expressed by Chandurkar J.

Moreover, there is another aspect to this case. This is a case of penalty under s. 273(b). The charge against the assessee is that he has failed to furnish an estimate of advance tax or failed to pay advance tax as required by s. 212. The ITO can take steps for imposition of penalty" in the course of any proceedings in connection with the regular assessment". **If there is any doubt about the meaning of the phrase " regular assessment" or if two equally good interpretations are possible, then the interpretation which is favourable to the assessee must be preferred.**

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COMMISSIONER OF INCOME TAX vs. RALSON INDUSTRIES LTD.

SUPREME COURT OF INDIA S.B. Sinha & Markandey Katju, JJ.

Civil Appeal 10 of 2007* 4th January, 2007 : (2007) 288 ITR 0322

Legislation Referred to Section 263,

Case pertains to Asst. Year 1992-93

Revision—Jurisdiction of CIT—Vis-a-vis rectification of assessment under s. 154—Scope and ambit of a proceeding for rectification of an order under s. 154 and a proceeding for revision under s. 263 are distinct and different—Order of rectification is to be passed only when there is an error apparent from record—It does not confer a power of review—On the other hand, an order under revisional jurisdiction can be passed if it is found that the order of assessment is prejudicial to the Revenue—When different jurisdictions are conferred upon different authorities to be exercised on different conditions, both may not be held to be overlapping with each other—Therefore, revisional authority is not denuded of its revisional jurisdiction under s. 263 merely because an order of assessment has undergone rectification at the hands of the AO—Doctrine of merger has no application in such a case—However, if a proceeding for rectification was initiated, the parties can bring the same to the notice of the CIT so as to enable him to take into consideration the subsequent events also—CIT is directed to take a fresh look at the matter in the light of the order of rectification passed by the assessing authority

Held :

The scope and ambit of a proceeding for rectification of an order under s. 154 and a proceeding for revision under s. 263 are distinct and different. Order of rectification can be passed on certain contingencies. It does not confer a power of review. If an order of assessment is rectified by AO in terms of s. 154, the same itself may be a subject-matter of a proceeding under s. 263. The power of revision under s. 263 is exercised by a higher authority. It is a special provision. The revisional jurisdiction is vested in the CIT. An order thereunder can be passed if it is found that the order of assessment is prejudicial to the Revenue. In such a proceeding, he may not only pass an appropriate order in exercise of the said jurisdiction but in order to enable him to do it, he may make such inquiry as he deems necessary in this behalf. When different jurisdictions are conferred upon different authorities to be exercised on different conditions, both may not be held to be overlapping with each other. Jurisdiction under s. 154 is only to be exercised by him when there is an error apparent on the face of the record. It does not confer any power of review. An order of assessment may or may not be rectified. If an order of rectification is passed by the assessing authority, the rectified order shall be given effect to. However, only because an order of assessment has undergone rectification at the hands of the AO, the same would not mean that revisional authority shall be denuded of exercising its revisional jurisdiction. Such an interpretation would run counter to the scheme of the Act. Power of review and/or rectification is not akin to an administrative power. **An administrative function and judicial function operate in two different places. Whereas a judicial function must be exercised by the authority invested therewith in terms of the provisions of the statute and on the basis of the materials on record;** an administrative order may although inter alia have to be passed by a statutory authority **but the same must be confined within the four corners of the statute**. There may, however, have an element of discretion. Order

by a judicial functionary is subject to appeal or revision. An administrative order may or may not be. An order of assessment is subject to exercise of an order of a revisional jurisdiction under s. 263. Doctrine of merger in such a case will have no

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application. Initiation of a proceeding under s. 263 cannot be held to have become bad in law only because an order of rectification was passed. No such hard and fast rule can be laid down. It would not be correct to contend that only because a proceeding for rectification was initiated subsequently, the revisional jurisdiction could not have been invoked under any circumstances whatsoever. If such a proceeding was initiated, the contesting parties could bring the same to the notice of the CIT so as to enable him to take into consideration the subsequent events also. It goes without saying that if and when the CIT takes up for consideration a subsequent event, the assessee would be entitled to make its submission also in regard thereto.—*CIT vs. Ralson Industries Ltd. (2005) 197 CTR (MP) 680 : (2005) 276 ITR 368 (MP)* ***set aside;*** *CIT vs. Vippy Solvex Products (P) Ltd. (1997) 228 ITR 587 (MP)* ***overruled;*** *Chunnilal Onkarmal (P) Ltd. vs. CIT (1996) 135 CTR (MP) 1 : (1997) 224 ITR 233 (MP)* ***distinguished.***

(Paras 7 & 11 to 14)

Conclusion :

Scope and ambit of a proceeding for rectification of an order under s. 154 and a proceeding for revision under s. 263 are distinct and different; revisional authority is not denuded of its revisional jurisdiction under s. 263 merely because an order of assessment has undergone rectification at the hands of the AO.

10. The Ld. CIT (DR) vehemently argued that the Ld. PCIT was Justified u/s 263 of the Act, in holding that the penalty orders passed under section 271D and 271E, dated 10.02.2014, by the Jt. Commissioner of Income Tax, Range-2, Bathinda dated 29.03.2016, by way of one line penalty dropping are erroneous and prejudicious to the interest of revenue after considering the facts of the case judiciously and prayed that same may be sustained.

11. We have heard both the sides and perused the material on record and case laws cited. Admittedly, The JCIT, Range-II, Bathinda vide his order dated 10.02.2014 dropped the penalty proceeding u/s 271D and 271E of the Income Tax Act, 1961 by passing an identical once sentence orders (APB pg. no. 22 & 23); as under:

'Penalty proceedings initiated in this case u/s 271D are being dropped.'

'Penalty proceedings initiated in this case u/s 271E are being dropped.'

12. From the above, it is evident, that the JCIT, Bathinda although initiated the penalty proceedings but dropped the penalty proceedings u/s 271D and 271E of the Act., by way of one sentence orders without assigning any reasons by exercising statutory powers in judicious manner in accordance with the provisions of law and therefore, in our view, the Ld. PCIT was justified in holding these orders erroneous and prejudicial to the interest of the Revenue. The PCIT has rightly distinguished the Hon'ble Apex Court judgment in the case of Motilal Padampat Sugar Mills Pvt. Ltd. relied upon by the appellant assessee, after considering the factual matrix of the case that the ld. DCIT has noted that the assessee has received loan from Sh. Rajiv Khanna in cash otherwise than by an account payee cheque or account payee bank draft, in contravention of provisions of section 269SS and paid in violation of section 269T of the Act and accordingly held

that such an orders were erroneous and prejudicial to the interest of the Revenue.

13. We have gone through the case law cited by the Ld. AR, and observed that all are distinguishable on peculiar facts of the instant case as in none of those cases, there was any transaction of payment and receipt of cash loan, involved in violation of section 269 SS and 269T of the Act. As regards to interpretation of judicial powers u/s 263 of the Act, we are of the view that the PCIT while invoking section 263 of the act, he has acted as quasi- judicial authority and has judicious powers at par to the other income tax authorities having quasi judicial powers under different section of the act and therefore, the orders dated 29.03.2016, passed by the PCIT, under section 263 of the Income Tax Act, 19612 cannot be held bad in law, having been passed with valid jurisdiction under section 263 of the Income Tax Act, 1961. We hereby reproduce the provisions of section 263 of the act for ready reference:-

> **Revision of orders prejudicial to revenue.**
>
> [81]**263.** (1) The [80][[82][Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or] Commissioner may call for and examine[83] the record[83] of any proceeding under this Act, and if he considers that **any order[84] passed therein by the [85][Assessing] Officer** [85a][*or the Transfer Pricing Officer, as the case may be,*] is erroneous[84] in so far as[84] it is [84]prejudicial to the interests of the revenue[84], he may, after giving the assessee an opportunity of being heard and after making or causing to be

made such inquiry as he deems necessary, [84]pass such order thereon as the circumstances of the case justify, [85b]**[***including,*—

(i)		*an order enhancing or modifying the assessment or cancelling the assessment*[84] *and directing a fresh assessment; or*
(ii)		*an order modifying the order under section 92CA; or*
(iii)		*an order cancelling the order under section 92CA and directing a fresh order under the said section***]**.

[86][[87][*Explanation 1*.]—For the removal of doubts[88], it is hereby declared that, for the purposes of this sub-section,—

(*a*)		an order passed [89][on or before or after the 1st day of June, 1988] by the Assessing Officer [89a]**[***or the Transfer Pricing Officer, as the case may be,***]** shall include—
(*i*)		an order of assessment made by the Assistant Commissioner [90][or Deputy Commissioner] or the Income-tax Officer on the basis of the directions issued by the [91][Joint] Commissioner under section 144A;
(*ii*)		**an order made by the [91][Joint] Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer** [89a]**[***or the Transfer Pricing Officer, as the case may be,***]** conferred on, or assigned to, him under the orders or directions issued by the Board or by the [92][Principal Chief Commissioner or] Chief Commissioner or [92][Principal Director General or] Director General or [92][Principal Commissioner or] Commissioner authorised by the Board in this behalf under section 120;
[92a]**[**(iii)		*an order under section 92CA by the Transfer Pricing Officer;***]**
(*b*)		[93]"record" [94][shall include and shall be deemed always to have included] all records relating to any proceeding under this Act available at the time of examination by the [92][Principal [95][Chief Commissioner or Chief Commissioner or Principal] Commissioner or] Commissioner;
(*c*)		where any order referred to in this sub-section and

		passed by the Assessing Officer [92a][*or the Transfer Pricing Officer, as the case may be,*] had been the subject matter[96] of any appeal [97][filed on or before or after the 1st day of June, 1988[96]], the powers of the[*][98][Principal Commissioner or] Commissioner under this sub-section shall extend [97][and shall be deemed always to have extended] to such matters as had not been considered and decided in such appeal.]

[99][*Explanation 2.*—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [99a][*or the Transfer Pricing Officer, as the case may be,*] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal [1][Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner,—

(*a*)		the order is passed without making inquiries or verification which should have been made;
(*b*)		the order is passed allowing any relief without inquiring into the claim;
(*c*)		the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
(*d*)		the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.]

[1a][Explanation 3.—*For the purposes of this section, "Transfer Pricing Officer" shall have the same meaning as assigned to it in the* Explanation *to section 92CA*.]

[2][(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.]

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, [3][National Tax Tribunal,] the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

14. In explanation 1(a)(ii) to section 263(1), it is clarified as above, that **an order made by the [91][Joint] Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer** [89a]**[***or the Transfer Pricing Officer, as the case may be,***]** conferred on, or assigned to, him under the orders or directions issued by the Board or by the [92][Principal Chief Commissioner or] Chief Commissioner or [92][Principal Director General or] Director General or [92][Principal Commissioner or] Commissioner authorised by the Board in this behalf under section 120;

15. Accordingly, we hold that the Pr. Commissioner of Income Tax, Bathinda was absolutely justified in cancelling the order dated 10.02.2014, vide which Jt. Commissioner of Income Tax, Range-2, Bathinda dropping the penalty under section 271D and 271E by separate orders, after having appreciated the facts of the case judiciously and on merits. As such, we find no infirmity in the orders passed by the Pr. Commissioner of Income Tax, Bathinda in holding the penalty orders of the Joint Commissioner of Income Tax as erroneous and prejudicial to the interest of revenue. Accordingly, the impugned orders are sustained.

16. In the backdrop of the aforesaid discussion, both the appeals of the assessee are disposed of in the terms indicated as above.

Order pronounced in the open court on 11.08.2022.

Sd/-	**Sd/-**
(Anikesh Banerjee)	**(Dr. M. L. Meena)**
Judicial Member	**Accountant Member**

GP/Sr.PS

Copy of the order forwarded to:

(1) The Appellant:
(2) The Respondent:
(3) The CIT(Appeals)
(4) The CIT concerned
(5) The Sr. DR, I.T.A.T.

True Copy
By Order