

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAJKOT BENCH, RAJKOT**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

**ITA No. 85/Rjt/2022  
Assessment Year : 2012-13**

M/s. ICC Projects Private Ltd., 6-10, Golden Point, Sector-8, Plot No.31, Gandhidham-370201 PAN : AACCI 4895 E	Vs	The Pr. Commissioner of Income-tax, Rajkot-1
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Mehul Ranpura, AR
Revenue by :		Shri Sanjeev Jain, CIT-DR

सुनवाई की तारीख/**Date of Hearing** : 01/07/2022  
घोषणा की तारीख /**Date of Pronouncement**: 24/08/2022

**आदेश/O R D E R**

**PER BENCH :**

1. This appeal filed by the assessee is directed against the order of the learned Principal Commissioner of Income-tax, Rajkot-1 ["PCIT" in short] dated 04.02.2022 passed under Section 263 of the Income-tax Act, 1961 ["the Act" in short].
2. The only interconnected issue raised by the assessee is that the learned Principal CIT erred in holding the assessment framed under section 143(3) of the Act as erroneous insofar prejudicial to the interest of Revenue under the provisions of section 263 of the Act.
3. The brief facts are that the assessee is a Private Limited company and engaged in the business of civil Contract. The assessee has filed its income tax return for the AY 2012-13 on 09-09-2012, declaring an income of Rs.50,85,974/- only. In the case of the assessee, an information from the Assistant Director of Income-tax (Investigation), Gandhidham vide letter dated no. ADIT(Inv.)/GIM/survey report/c/2014-15 dated 20-01-2015 has

been received regarding the assessee. As per the letter, it is found that a survey u/s 133A of the Act has been carried out at the premises of the assessee and some incriminating documents were found during the survey operation.

3.1 Further it was found that during the assessment proceeding Shri Parvinbhai B Hadia director of M/s ICC Projects been admitted that the assessee had claimed bogus expenses in respect of bill amounting to Rs.72,22,453/- bearing bill no NIL dated 02-10-2012 which was issued by M/s Nehal Construction. It is also noticed that the assessee during the year under consideration i.e. FY 2011-12 claimed the expenses of Rs. 15,55,005/- in respect of the bill issued by the M/s Nehal Construction.

3.2 Similarly, the assessee has claimed the expenses of Rs. 8,92,640/- during the year under consideration in the name of M/s Harsh Construction. However, the proprietor namely Shri Sunil G pharmar, of M/s Harsh Construction in his statement recorded u/s 131(1A) of the Act has been admitted that bills amounting to Rs. 90,12,525/- bearing bill no NIL dated 01-10-2012 was not issued by M/s Harsh Construction. He further stated that he had never done work for ICC Project Pvt Ltd.

3.3 Accordingly, in view of the above, the AO observed that the assessee has claimed bogus expenses amounting to Rs. 15,55,005/- and Rs. 8,92,640/- in the year under consideration in AY 2012-13, in the name of M/s Nehal Construction and M/s Harsh Construction respectively. Therefore the AO reopened the assessment for year under consideration under section 147 of the Act and issued notice u/s 148 of the Act to the assessee.

3.4 In response to the notices issued by the AO, the assessee submitted the copy of ITR, Computation of income, copy of bill, service tax paid

details with challan, TDS deduction detail along with form 26AS of the parties to prove the genuineness of the transaction. The AO after considering the details filed by the assessee accepted the return income and completed the assessment for the year under consideration.

4. The PCIT on examination of the case records of the assessee, found that during the year under consideration assessee had claimed expenses of Rs. 24,47,645/- against the bill issued by M/s Nehal Construction and M/s Harsh Construction. However these firms admitted that they issued bogus bills for the AY 2013-14. However, the AO had not properly verified the claim of the assessee in respect of bogus expenses claim which have to be disallowed by adding to the total income of the assessee while finalizing the assessment proceeding. Therefore, the order of the AO is erroneous and prejudicial to the interest of the Revenue. Accordingly, the PCIT initiated the proceedings under section 263 of the Act vide show cause notice dated 17<sup>th</sup> January 2022.

4.1 The submissions of the assessee before the Ld. PCIT are summarized as under:

- 1) Assessee submitted that under the Income Tax Act each assessment year is distinct and separate to each other. The accounting documents found relating to subsequent year cannot be suo moto be applied on the earlier years treating it as gospel truth.
- 2) The assessee further submitted that the objection raised in the notice u/s 263 of the Act that due verification by the AO at the time of assessment proceedings was not carried out based on wrong assumptions of facts. As such, the verification was done by AO by issuing show cause notice u/s 142(1) of the Act where the assessee was asked to explain about the income admitted by M/s Nehal

construction and M/s Harsh construction along with the balance sheet, P&L Account, ITR, Bank statement which were duly complied by letter dated 18-09-2019.

- 3) Likewise, the assessee submitted that the above mention parties whose statements were recorded by ADIT(Inv) Gandhidham, further clarifies the fact that the specific bogus bills pertain to AY 2013-14 not pertain to AY 2012-13.
- 4) In the year under consideration, the assessee has made payment to both parties and deducted TDS. They filed their income tax return and claimed the TDS against income tax payable. Further M/s Nehal Construction falls under the service tax provision and levied service tax in its bill. Therefore the fact of the year under consideration is quite different from the fact of AY 2013-14.
- 5) Further, the assessee submitted that the principle of res-judicata does not apply to income tax proceedings.
- 6) Without prejudice to the above, the assessee further submitted that the action u/s 263 of the act has been taken up due to objection raised by the Audit party. However the Hon'ble Supreme court in the case of CIT vs Luca TVS Ltd reported in 249 ITR 306 (SC) held that an audit opinion in regard to the application or interpretation of law cannot be treated as information for reopening the assessment. The same analogy shall apply to the provision of section 263 of the Act.
- 7) The explanation 2 of the section 263 of the Act was inserted from the finance Act 2015 w.e.f. 01-06-2015 applicable to AY 2016-17. Thus the reference to such explanation is also not helpful to the PCIT.

4.2 However, the ld. PCIT after considering the assessment records and submission of the assessee observed that in view of the past history of the above mention two parties who have admittedly provided the bogus

purchase bills to the assessee. The AO ought to have examined the movement of goods, quantitative stock position, including the inward and outward of the materials and the other point to judge the veracity of the purchases shown through them. But he has failed to do so. However none of the above verification has been carried out by the AO while completing the assessment proceeding. Therefore it is clear that the assessment has been completed without conducting any inquiry/ verification or incorrect application of law tantamount to erroneous order which is prejudicial to the interest of Revenue. Thus the PCIT accordingly invoked the provision of section 263 read with explanation 2 of the Income Tax Act.

5. Being aggrieved by the order of the learned PCIT, the assessee is in appeal before us.

6. The learned AR before us filed a paper book running from pages 1 to 123 and contended that the assessment was framed by the AO after considering the necessary details and verification and application of mind. The learned AR in support of his contention drew our attention on page Nos. 40 & 41 of the paper book where the copy of the notice u/s 142(1) of the Act dated 17-09-2019 was placed where the assessee was asked about the explanation in respect of admission of income by two parties namely M/s Nehal Construction and M/s Harsh Construction. Likewise, the learned AR also drew our attention on page Nos. 43 to 47 of the paper book where the reply of the assessee in response to the notice issued to the assessee as mentioned above was placed. Thus, the learned AR contended that there cannot be said that the assessment order is erroneous and causing prejudice to the interest of Revenue in the given facts and circumstances.

6.1 The Ld. AR further submitted in respect M/s Nehal Construction, copy of ITR along with computation of income, Copy of bill, copy of profit

& loss account, copy of ledger account in the books of the party, 26AS and form 16A of the party, service tax return along with service tax payment challan and in respect of M/s Harsh Construction, Copy of ITR along with computation of income, Copy of bill, copy of form 26AS and form 16A of the Party were filed.

7. On the contrary, the learned DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the present case relates whether the assessment order has been passed by Ld. AO without making inquiries or verification with respect of the parties who issued bogus bill pertaining to AY 2013-14 as discussed above and hence the assessment is erroneous insofar prejudicial to the interest of the Revenue and thus requiring revision by Pr. CIT u/s 263 of the Act.

8.1 An inquiry made by the Assessing Officer, considered inadequate by the Commissioner of Income Tax, cannot make the order of the Assessing Officer erroneous. In our view, the order can be erroneous if the Assessing Officer fails to apply the law rightly on the facts of the case. As far as adequacy of inquiry is considered, there is no law which provides the extent of inquiries to be made by the Assessing Officer. It is Assessing Officer's prerogative to make inquiry to the extent he feels proper. The Commissioner of Income Tax by invoking revisionary powers under section 263 of the Act cannot impose his own understanding of the extent of inquiry. There were a number of judgments by various Hon'ble High Courts in this regard.

8.2 The Hon'ble Delhi High Court in the case of **CIT Vs. Sunbeam Auto 332 ITR 167 (Del.)**, made a distinction between lack of inquiry and inadequate inquiry. The Hon'ble court held that where the AO has made inquiry prior to the completion of assessment, the same cannot be set aside u/s 263 of the Act on the ground of inadequate inquiry. The relevant observation of Hon'ble Delhi High Court reads as under:

"12..... There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry", that such a course of action would be open. — — —

From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax 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. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. **The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure.** It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.

**15. Thus, even the Commissioner conceded the position that the Assessing Officer made the inquiries, elicited replies and thereafter passed the assessment order. The grievance of the Commissioner was that the Assessing Officer should have made further inquiries rather than accepting the explanation. Therefore, it cannot be said that it is a case of 'lack of inquiry'."**

8.3 The Hon'ble Bombay High Court in case of **Gabriel India Ltd. [1993] 203 ITR 108 (Bom)**, discussed the law on this aspect in length in the following manner:

"The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. **The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity.**

8.4 The Mumbai ITAT in the case of **Sh. Narayan Tatu Rane Vs. ITO, I.T.A. No. 2690/2691/Mum/2016, dt. 06.05.2016** examined the scope of enquiry under Explanation 2(a) to section 263 in the following words:-

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

8.5 The Hon'ble Supreme Court in recent case of **Principal Commissioner of Income-tax 2 v. Shree Gayatri Associates [2019] 106 taxmann.com 31 (SC)**, held that where Pr. CIT passed a revised order after making addition to assessee's income under section 69A in respect of on-money receipts, however, said order was set aside by Tribunal holding that

AO had made detailed enquiries in respect of such on-money receipts and said view was also confirmed by High Court, SLP filed against decision of High Court was liable to be dismissed. The facts of this case were that pursuant to search proceedings, assessee filed its return declaring certain unaccounted income. The Assessing Officer completed assessment by making addition of said amount to assessee's income. The Principal Commissioner passed a revised order under section 263 on ground that Assessing Officer had failed to carry out proper inquiries with respect to assessee's on money receipt. In appeal, the Tribunal took a view that Assessing Officer had carried out detailed inquiries which included assessee's on-money transactions and Tribunal, thus, set aside the revised order passed by Commissioner. The Hon'ble High Court upheld Tribunal's order. The Hon'ble Supreme Court while dismissing the SLP filed by the Department held as under:-

“We have heard learned counsel for the Revenue and perused the documents on record. In particular, the Tribunal has in the impugned judgment referred to the detailed correspondence between Assessing Officer and the assessee during the course of assessment proceedings to come to a conclusion that the Assessing Officer had carried out detailed inquiries which includes assessee's on-money transactions. It was on account of these findings that the Tribunal was prompted to reverse the order of revision. No question of law arises. Tax Appeal is dismissed”

8.6 The Supreme Court in the another recent case of **Principal Commissioner of Income-tax-2, Meerut v. Canara Bank Securities Ltd[2020] 114 taxmann.com 545 (SC)**, dismissed the Revenue's SLP holding that 263 proceedings are invalid when AO had made enquiries and taken a plausible view in law, with the following observations:

“Having heard learned counsel for the parties and having perused the documents on record, we see no reason to interfere with the view of the Tribunal. The question whether the income should be taxed as business income or as arising from the other source was a debatable issue. The Assessing Officer has taken a plausible view. More importantly, if the Commissioner was of the opinion that on the available facts from record it could be conclusively held that income arose from other sources, he could and ought to have so held in the order of revision. There was simply no necessity to remand

the proceedings to the Assessing Officer when no further inquiries were called for or directed”

8.7 From an analysis of the above judicial precedents, the principle which emerges is that the phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Assessing Officer adopts one of the course permissible in law and it has resulted in loss of revenue; or where two views are possible and the Assessing Officer has taken one view with which the Commissioner of Income-tax does not agree, it cannot be treated as an erroneous order causing prejudice to the interests of the Revenue unless the view taken by the Assessing Officer is unsustainable in law, or the AO has completely omitted to make any enquiry altogether or the order demonstrates non-application of mind.

8.8 Now in the facts before us, in the case of the assessee the AO during the course of assessment proceedings made enquiries on this issue and after consideration of written submissions filed by the assessee and documents / evidence placed on record, and then framed the assessment under section 143(7) of the Act. This fact can be verified from the notice issued by the AO and submission and reply of the assessee against such notices.

*Notice dated 17.09.2019*

*“1. You are required to submit proof for the income admitted by two parties namely M/s. Nehal Construction and M/s. Harsh Construction received from assessee M/s. ICC Projects Pvt . Ltd. with P&L accounts, ITR & balance sheet for A.Y. 2012-13 along with bank statements.*

*2. You are requested to furnish the above details on or before 19.09.2019 vide online e-assessment facility.*

*Bhuvaneshwary Jeevanandham  
ACIT, CIR-1, G'DHAM”*

Reply dated 18-09-2019

"From:  
M/s ICC Projects Pvt. Ltd,  
Shop N. 6 to 10, Golden Point,  
Plot No. 31, Sector-08,  
Tagore Road,  
Gandhidham (Kutch)  
PAN:AACC1489E

18th September, 2019.

To,  
The Deputy Commissioner of income Tax,  
Gandhidham Circle, Gandhidham.

Respected Medam,

Re: Notice u/s. 142(1) of the Income-tax Act, 1961 dated 17.09.2019.

Sub: Re-Assessment proceedings for A.Y. 2012-13.

We have been served with a notice u/s 142(1) of the Act dated 17.09.2019 requiring us to submit proof for the income admitted by two parties namely M/s Nehal Construction and M/s Harsh Construction with P&L account, ITR and balance sheet for AY 2012-13. In connection with ne above, we submit as under:

- 1.0 In the above connection your assessee at the outset submits that the assessment for the year under consideration was reopened on the basis of what was found in the course of survey u/s 133A of the Act on 03.11.2012 wherein the parties namely M/s Nehal Construction and M/s Harsh Construction have admitted to have carried out the contractual work for the assessee company but the same do not found in the books of the assessee company and as such income to the extent of Rs.72,22,453/- and Rs. 90,12,525/- respectively was admitted for the assessment yea 2013-14 as the specific evidence found were related to that year.
- 2.0 In the course of survey nothing was found which may remotely indicate that these parties have not carried out any work for the assessee company for the year under consideration. The statement recorded during the survey relates to the two bills found and admitted as unexplained. However, this cannot tantamount to be global practice to raise such bills in past as well.
- 3.0 This fact was further clarified before the ADIT (Inv), Gandhidham who had recorded the statement of these two parties on 03.11.2014. The relevant portion of replies given by these parties to the ADIT runs as under:

(i) Smt. Nehaben Ishwarbhai Hadiya Prop. Of Nehal Construction.

Q. 2. What is your source of income?

Ans. I am proprietor of M/s Nehal Construction and filing return of income since 6 years.

Q.3. I am showing your statement recorded u/s 131(1A) on 03.11.2012 wherein in reply to Q. 2 you had stated that you are a housewife and has no source of income and did not know about Nehal Construction. However, in today's statement it is contradictory.

Ans. On 03.11.2012 there were action of survey on M/s Nehal construction, ICC project and at that time I was at our resident where I and my father-in-law were present. As per prevailing customs in our cast we do not talk much with outsiders in the presence of father in law as also I was suffering from Blood pressure and pregnancy related problems and was under treatment of Ahmedabad doctor. Post survey after 7 months due to premature delivery out of twin one was died. Under the circumstances due to blood pressure and pregnancy problems t was not physically and mentally sound position and in the meantime, there was survey at home, I was frightened and could not give proper replies to questions. In fact, I am proprietor of Nehal construction and maintain regular books of accounts and filing income tax returns. In FY 2012-13 due to my indifferent health I did not do any work but in past years I did civil and labour contract work in the name of M/s Nehal Construction.

Q.4 Since how many years did you work as proprietor of Nehal Construction?

Ans. Since last 6-7 years I am working as proprietor of Nehal Construction and maintained all the books of accounts which are produce before you.

Q. 5 Explain the work done by Mehul Construction.

Ans. My firm M/s Mehul construction is carrying the civil work, civil earth work, labour work. I do the work under supervision of my husband Ishwarbhai Hadiya.

Q. 6 Do you want to say anything more?

Ans. Sir, I once again state that my statement dated 03.11.2012 was recorded under my indifferent mental and physical health and the replies were given under pressure and without verification and reconciliation. I do not want to say anything more.

- We attached herewith copy of statements recorded on 03.11.2014.

(ii) Shri Sunil G. Parmar Prop. of Harsh Construction

Q. 2. What is your source of income?

Ans. I am diploma holder in Civil Engineering. I am working as project Manager in ICC Projects and Ishwar Construction Co. since 1995. In addition to this I am proprietor of Harsh construction where in work related to construction, job-work is done.

Q. 3 Please give details of work done by Harsh construction.

Ans. My firm had carried out job work of ICC Projects and Ishwar construction in preceding years and payments had been received as per the work done. However, in FY 2012-13 Harsh construction was closed down and no work was done.

Q.4. I am showing your statement recorded on 03.11.2012 wherein in reply to Q. 9-11 you had stated that you did not work for ICC Projects whereas today you stated that except FY 2012-13 you did job-work for ICC Projects. Both the statements are contradictory. Please explain.

Ans. By keeping in mind my statement dated 03.11.2012 that I am proprietor of Harsh construction and I did work for ICC projects in past and received payment. In FY 2012-13 I had closed down Harsh construction. In reply to Q 2 and 7 of statement dated 03.11.2012 it was clearly stated that I had done job-work for Ishwar construction and ICC Projects. On that day I was shown bill dated 01.10.2012 for Rs. 90,12,525.10 which was not related to me and I did not work for the details shown in the bill. I had replied Q 9-11 by keeping in mind that bill. My statement is considered on wrong angle.

Q. 5 Are you filing return of income and maintain Books of accounts which include Harsh construction.

Ans. Sir, I had filed all my returns of income incorporating all source of Income. I had shown receipts from ICC Projects and other firms and paid tax thereon. For your verification I produce books of accounts and returns of income.

- We attached herewith copy of statements recorded on 03.11.2014.

4.0 Thus, the admission was for the specific bogus bill pertains to AY 2013-14 only. As far as AY 2012-13 is concerned the assessee company has made TDS on the payments made to both the parties and the sub contractors have filed their return of income and claimed the adjustment of TDS against the tax payable. Further M/s Nehal Construction falls under the provisions of service tax; necessary tax had been charged and paid by the Nehal Construction in its the bills raised. The facts of AY 2013-14 were quite different.

5.0 Further, the principle of res-judicata does not apply to income tax proceedings, where a fundamental aspect permeating through different assessment years has been found as a fact in an earlier period, it would not at all be proper to allow the position to be changed in a subsequent year. In the absence of any change in the circumstances, the department should have felt bound itself by the previous decision. However, it would have been a difference case where the facts are not identical. In this regard we draw your attention to the decision of the Hon'ble Supreme Court in Bharat Sanchar Nigam Ltd. v. Union of India (282 ITR 273) where it has been categorically observed as under (Emphasis supplied):

"Res judicata does not apply in matters pertaining to tax for different assessment years because res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is

*distinct. The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent or precedential value of the earlier pronouncement. Where the facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view. This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is per incuriam."*

- 6.0 *Hon'ble Delhi High court in the case of GIT vs. Neo poly Pack P. Ltd 245 ITR 492 held that; "The doctrine of res judicata does not apply to income tax proceedings since each assessment year is independent of the other but where an issue has been decided consistently in a particular manner for earlier assessment years, for the sake of consistency the same view should continue to prevail for the subsequent years unless there is material change in the facts."*
- 7.0 *However, in order to appreciate the facts in proper perspective copies of ITR of Shri Smt. Nehaben Ishwarbhai Hadiya Prop of Nehal Construction and Shri Sunil G. Parmar Prop of Harsh Construction for AY 2012-13 along with the copies of income ledgers, service tax return, service tax payment challan and bills raised, TDS details etc. are attached herewith. It may be appreciated that whatever work done by these two sub-contractors necessary tax was deducted at source and the contractors have claimed its adjustments in their returns. Hence question of any bogus bills raised by these parties for the year under consideration for which the assessment is reopened does arise.*
- 8.0 *Further in AY 2012-13 the assessee has paid service tax on the bills issued by the subcontractor and the sub-contractor have filed their return of service tax and duly paid the service tax on the income received from our company.*
- 9.0 *It is respectfully submitted that sub-contractor rind filed his service tax return and paid service tax on the income shown by them from ICC Projects Pvt Ltd. We attached herewith copy of service tax return and service tax paid challan for the AY 2012-13.*
- 10.0 *We also attached herewith copy of 26AS of both the sub-contractor for the AY 2012-13.*
- 11.0 *We also attached herewith copy of Quarterly Form No.16 issued by us to the above said contractor for the AY 2012-13.*
- 12.0 *We also attached herewith copy of bills issued by the subcontractor for the year under consideration.*
- 13.0 *We also attached copy of income ledger from the books of sub-contractor showing income from ICC Projects Pvt Ltd for the AY 2012-13.*

14.0 In view of the above the proceedings may kindly be finalised on merits. However, if your honour requires any further details, the same shall be furnished on hearing from you.

Thanking You,  
Yours Sincerely,

Authorised signatory,  
M/S. ICC Projects Private Limited"

8.9 From the above it is revealed it is not the case that the AO has not made any enquiry. Indeed the Pr. CIT initiated proceedings under section 263 of the Act on the ground that the AO has not made enquiries or verification which should have been made in respect of the bogus bill issued by the above mention two parties. It is not the case of that the Ld. AO did not apply his mind to the issue on hand or he had omitted to make enquiries altogether. In the instant set of facts, the AO had made enquiries and after consideration of material placed on record accepted the genuineness of the claim of the assessee.

8.10 At this juncture, it is also important to note that the learned PCIT in his order passed under section 263 of the Act has made reference to the explanation 2 of section 263 of the Act. It was attempted by the learned PCIT to hold that there were certain necessary enquiries which should have been made by the AO during the assessment proceedings but not conducted by him. Therefore, on this reasoning the order of the AO is also erroneous insofar prejudicial to the interest of revenue. In this regard, we make our observation that the learned PCIT has not invoked the explanation 2 of section 263 of the Act in the show cause notice dated 17<sup>th</sup> January 2022 about the same. Therefore, the opportunity with respect to the explanation 2 of section 263 of the Act was not afforded to the assessee. Thus, on this count the learned PCIT erred in taking the re-course of such provisions while

deciding the issue against the assessee. Secondly, the learned PCIT has also not specified the nature and the manner in which the enquiries which should have been conducted by the AO in the assessment proceedings. Thus, in the absence of any specific finding of the learned PCIT with respect to the enquiries which should have been made, we are not convinced by his order passed under section 263 of the Act.

8.11 In view of the above and after considering the facts in totality, we hold that there is no error in the assessment framed by the AO under section 143(3) of the Act, causing prejudice to the interest of revenue. Thus, the revisional order passed by the learned PCIT is not sustainable and therefore we quash the same. Hence the ground of appeal of the assessee is allowed.

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

Order pronounced in the open Court on 24 August 2022 at Ahmedabad.

Sd/-

Sd/-

**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad, Dated 24/08/2022