IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESEIDENT
AND
SHRI PADMAVATHY S, ACCOUNTANT MEMBER

ITA No.340/Bang/2022
Assessment year : 2017-18

R V Deshpande HUF, No.372, Nilay, R.T. Nagar Main Road, R.T. Nagar, Bangalore – 560 032. **PAN: AABHR 8684Q**	Vs.	The Principal Commissioner of Income Tax, Bangalore – 1, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri S V Ravishankar, Advocate
Respondent by	:	Shri V S Chakrapani, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	30.08.2022
Date of Pronouncement	:	.09.2022

O R D E R

Per Padmavathy S., Accountant Member

This appeal is against the order of the Principal Commissioner of Income Tax, Bengaluru-1, ['PCIT'] passed u/s. 263 of the Act dated 4.3.2022 for the AY 2017-18. The assessee raised the following grounds:-

> "1. The impugned Order of the learned Principal Commissioner of Income-tax, Bangalore-1, (in Short PCIT) passed under section 263 of the Act in so far as it is against the Appellant is opposed to law, equity, weight of evidence,

probabilities and the facts and circumstances in the Appellant's case.

2. The learned Principal Commissioner of Income-tax, Bangalore 1, has grossly erred in ordering revision of the order passed by the learned assessing officer without appreciating the fact that there is no error, much less prejudicial to the interests of the Revenue to warrant a revision and therefore the order passed by the learned Principal Commissioner of Income-tax, Bangalore 1, is ultra vires the scope of Section 263 and requires to be cancelled under the facts and circumstances of the Appellant's case.

3. The learned Principal Commissioner of Income-Tax is not justified in invoking the provision u/s 263 and holding that the order passed by the Assessing Officer u/s 143 (3) dated 5/11/2019 as erroneous and pre-judicial to the interest of the revenue by ignoring the fact that the Assessing Officer had applied his mind on the issues and had taken the view accepting and following judicial discipline. Therefore, the order u/s 263 does not survive and deserves to be cancelled.

4. The learned Principal Commissioner of Income-tax, Bangalore failed to appreciate the fact that the direction to make fresh assessment, tantamount to ordering for making fishing and roving enquires without any material in support thereof and consequently the impugned order u/s 263 of the Act passed by the authorities is bad in law is liable to be cancelled.

5. The learned PCIT is not justified in invoking the provision u/s 263 and passing the order u/s 263 of the Income Tax Act, 1961 holding that assessing officer passed an order without application of mind.

6. The learned PCIT failed to appreciate the fact that, once the AO has applied his mind and passed an order u/s 143(3) after making full enquiries into the subject matter, the order cannot be said to be erroneous.

7. Order u/s 263 of the Income Tax Act, 1961 has not satisfied the conditions as laid down in the provision of the

Income Tax Act, 1961 and failed to appreciate the fact that before passing an order u/s 263, the basic twin conditions namely

(i) the order of the assessing officer sought to be revised is erroneous and

(ii) it is prejudicial to the interest of the revenue and even one of the two requirement is absent, recourse cannot be had to section 263 of the Income Tax Act, 1961. Reliance placed in the case of Malabar Industrial Co. Ltd., (2000) 243 ITR 83 (SC).

8. The Principal Commissioner of Income Tax failed to appreciate the fact that when the Assessing Officer made proper enquiry and examined accounts, it could not be said that there was non-application of mind by him. Hence, the action under Section 263 was held invalid. Held in the following cases.

i.Fine Jewellery (India) Ltd. v. ACIT [2012] 19 ITR 746 (Mum.)(Trib).

ii. Roshan Lal Vegetable Products (P) Ltd. v. ITO, 51 SOT 1 (URO) (Asr.)(Trib.)

iii. Antala Sanjaykumar Ravjibhai v. CIT [2012] 135 ITD 506 (Rajkot) (Trib.)

9. The learned Commissioner of Income Tax erred in arriving at conclusion that the short-term losses carried forward from the previous years has not been examined by the AO, The Learned Principal Commissioner of Income-tax failed to appreciate the fact that the appellant has bona fide carried forward losses carried forward since 2009-10 which are eligible to set off against subsequent short term capital gains and hence the question of disallowance of set off of losses does not arise.

10. Without prejudice, assuming even for argument sake without conceding, when the assessment was carried out the only way the correctness of the loss brought forward would have been the filed returns or any assessment carried out for the preceding assessment years. The assessing officer during the course of

assessment cannot carry out another assessment for the year 2009-10 to verify the correctness of the claim.

11. If the claim for brought forward losses are to be verified the learned AO ought to have reopened the assessment for such year and could have verified the claim. Hence even at this juncture, during the revisory proceedings, the assessing officer can only verify if the loss is validly claimed and carried forward. The learned AO cannot carry out another assessment to verify the claim for 2009-10 to establish the genuinity of the claim of brought forward losses. Hence the order is bad in law.

12. Without prejudice, even assuming for the argument sake, without conceding now the Assessing officer does not have powers to conduct fresh assessment for assessment for AY 2009-10 and AY 2014-15. For verification of the veracity of the losses, the only thing that can be done is to see if the returns are filed on time and validly carried forward. The Assessing officer shall not have powers to verify if the claim is correct or wrong. If done so, will tantamount to fresh assessment and will defeat the purpose of specifying limitation and time period allowed under the law in contrary to the established position.

13. The learned Commissioner of Income Tax erred in directing the Assessing Officer to verify the STT paid on account of LTCG claimed exempt for A.Y. 2017¬18 and to determine allowability of same as per law which has already been duly examined by the AO before making the assessment order passed u/s 143(3) of the Act. The reason for carrying out the assessment was "Capital gains/loss u/s 111A" , Also copies of 142(1) have been submitted before the Hon'ble CIT in which it is clearly seen that the various documents on LTCG has been sought and details furnished.

14. Without prejudice to the above the learned CIT ought to have appreciated the fact that the aforesaid issue on which the learned CIT had sought to revise the assessment order is a conscious view adopted by the learned assessing officer, which is not shown to be erroneous and consequently, the jurisdiction

under section 263 of the Act stands ousted and accordingly the impugned order passed deserves to be cancelled.

15. The learned Principal Commissioner of Income Tax despite the fact that the assessment proceeding was completed after thorough scrutiny, erred in holding that, the Assessing Officer has failed to redraw the brought forward losses. set off allowed and carry forward losses being allowed. The Assessing Officer has also not verified the STT paid data and thus allowability of LTCG being claimed as exempt on account of STT paid is not verified. Therefore, the assessment order passed u/s. 143(3) of the Act dated 05-11-2019 is erroneous and in so far as it is prejudicial to the interest of Revenue u/s 263 of IT Act.

16. Reliance placed by the learned Principal Commissioner of Income Tax, Bangalore on the decision of the Hon'ble Supreme Court in the case of M/s Deniel Merchants P. Ltd. Vs Income Tax Officer is misplaced, in the case of the appellant the assessing officer has made proper enquires before passing the assessment order u/s 143(3) of the Act.

17. The appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds urged above.

18. In view of the above and any other grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeals may be allowed in the interest of justice and equity."

2. The assessee is a HUF and had filed the return of income for the AY 2017-18 on 28.7.2017 declaring a total income of Rs.1,22,72,360. The case was selected for limited scrutiny under CASS and the assessment proceedings were initiated by serving notice u/s. 143(2) of the Act. The AO called on various details from time to time and concluded the assessment by making an addition of Rs.14,90,000 as unexplained money u/s.69A. The PCIT on verification of assessment records noticed that the assessee has set off Rs.2,04,83,780 being short

term capital gain against the brought forward short term capital loss. The PCIT was of the view that the AO has not examined the veracity of the brought forward short term capital loss which is set off against the current year's short term capital again. Further, the assessee has claimed long term capital gain exempt income to the tune of Rs.5,74,00,974 on which STT is paid. The PCIT stated that no details of any transaction are available in the SFT data under ITS details in 360 degree view of the assessee and the AO did not verify the exempt income claim of the assessee. The PCIT issued a show cause notice to the assessee in this regard.

3. The assessee furnished year-wise details of brought forward loss from AY 2009-10 to 2017-18. The assessee also submitted the details of STT paid based on which the long term capital gain was claimed as exempt. After considering the submissions of the assessee the PCIT set aside the order of the AO by stating that

> "3.4 Thus, the assessee has only submitted complete set of return of income only for A.Y. 2015-16. However, in order to verify the brought forward losses, it is necessary to analyze the brought forward losses in the year of set off. Accordingly, the returns of income filed by assessee for A.Y. 2009-10 to A.Y. 2017-18 have been perused from e-filing portal and the observations as discussed above in para 2.3 & 2.4 have been noticed. Hence, the Assessing Officer has failed to redraw the brought forward losses, set off allowed and carry forward losses being allowed. The Assessing Officer has also not verified the STT paid data and thus allowability of LTCG being claimed as exempt on account of STT paid is not verified. Therefore, the assessment order passed u/s. 143(3) of the Act dated 05-11-2019 is erroneous and in so far as it is prejudicial to the interest of Revenue u/s 263 of IT Act."

4. Aggrieved, the assessee is in appeal before the Tribunal.

5. The ld. AR submitted that during the course of hearing, the assessee has submitted the computation of capital gains along with the details of brought forward loss which is set off against the current year capital gains. The ld. AR also drew our attention to the ITR filed for the AY 2017-18 (pg.2 of PB) where the year-wise break-up of brought forward loss is furnished. The ld. AR also drew our attention to the fact that the income tax return filed for AY 2009-10 (pg.98 of PB) has the details of the loss carried forward to future years is furnished. The ld. AR submitted that all these details have been submitted before the AO who has verified the same and has applied his mind in allowing the set off of brought forward loss against the current year short term capital gain. The ld. AR also submitted that the PCIT has set aside the order by stating that the AO failed to redraw the brought forward losses from AY 2009-10 which is beyond the scope of assessment u/s. 143(3) for the year under consideration. The ld AR also submitted that for the AY 2015-16, the assessment u/s. 143(3) was conducted for the limited purpose of verification of securities transaction wherein the losses including the brought forward losses were verified and accepted by the revenue.

6. The ld.DR supported the order of the PCIT.

7. We have considered the rival submissions and perused the material on record. The ld. AR also submitted a chart containing the details of brought forward and set off of losses from AY 2009-10 to 2017-18 (page 124 of PB) which is the summary of brought forward

loss of the assessee as per the return of income filed which is reproduced below:-

SI. No.	**Assessment year**	**Date of filing (DD/MM/Y**	**House Property Loss**	**Business or profession loss**	**Short term capital**	**Long term capital loss**	**Loss from owning and maintaining race horses**
I	2009-10	26-07-2009	0	0	316177650	0	0
ii	2010-11	26-07-2010	0	0	2108184	0	0
iii	2011-12	30-07-2011	0	0	13531141	0	0
iv	2012-13	31-07-2012	0	0	9959757	0	0
v	2013-14		0	0		0	0
vi	2014-15	23-07-2014	0	0	19731062	0	0
vii	2015-16		0	0		0	0
viii	2016-17		0	0		0	0
ix	Total of earlier years losses		0	0	361507794	0	0
x	Adjustment of above losses in Schedule BFLA		0	0	20483780	0	0
xi	2017-18 (Current year losses)		0	0	0	0	0
xii	Total loss carried forward to future years		0	0	45330144	0	0

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8. It is noticed from the above table that the assessee has declared in the return of income an amount of Rs.4,53,30,684 as the loss eligible to be carried forward to subsequent assessment years and thereby an amount of Rs.29,56,93,870 was declared to be not eligible for set off and carry forward as the same is beyond the period eligible for carry forward of losses.

9. Before proceeding further, it is apposite to take note of the relevant extract of section 263 and the Explanation (2) to section 263 of the Act, which read as under :-

"Revision of orders prejudicial to revenue.

263. (1) The [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer 89[or the Transfer Pricing Officer, as the case may be,] is erroneous in so far as it is prejudicial to the interests of the revenue, 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, pass such order thereon as the circumstances of the case justify, 90[including,—

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Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer 94[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 95[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."

10. Thus, from close scrutiny of the provisions of section 263, it is evident that twin conditions are required to be satisfied for exercise of revisional jurisdiction under section 263 of the Act i.e., firstly, the order of the Assessing Officer is erroneous; and secondly, it is prejudicial to the interests of the revenue on account of error in the order of assessment. The Bombay High Court in the case of *Gabriel India Ltd. (1993) 203 ITR 108* has explained as to when an order can be termed as erroneous as follows:-

> "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 the 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 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 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 a 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 the 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."

11. There is no dispute that u/s. 263 of the Act, the PCIT does have the power to set aside the assessment order and send the matter for a fresh assessment if he is satisfied that further enquiry is necessary and the assessment order is prejudicial to the interests of the Revenue. However, in doing so, the PCIT must have some material which would enable to form a *prima facie* opinion that the order passed by the AO is erroneous, insofar as it is prejudicial to the interests of the Revenue. In the present case, the PCIT has not brought out any material on record to substantiate that the brought forward losses set off against current year gain is not the right amount. The PCIT in his order has stated that the sale consideration for AY 2014-15 is much lower than the cost of acquisition and that the AO has not examined the veracity of the short term capital loss and has allowed the set off of the same from current year gains. This view of the ld. PCIT, in our opinion, is not the right reason for exercising revisionary powers u/s. 263 of Act as the error envisaged by Section 263 of the Act is not one that depends on possibility as a guess work, but it should be actually an error either of fact or of law. The ld PCIT has further held the order of the AO to be erroneous on the basis that the AO ought to have verified by the brought forward losses of earlier years. This, in our considered view, is not tenable since the verification of loss incurred in the years beginning AY 2009-10 is beyond the scope of scrutiny assessment of AY 2017-18. Further, from the perusal of facts, the security transactions have been scrutinized in the proceedings u/s.143(3) for AY 2015-16 and the

revenue has accepted the losses including the brought forward losses. This supports the contention of the ld AR that since the brought forward loss has already been verified and accepted by the revenue during the assessment proceedings of AY 2015-16 the order of the AO passed for the year under consideration cannot be considered as erroneous on this ground.

12. With regard to the argument that the assessee's case requires to be considered in the light of the explanation (2) to Section 263 of the Act that the AO has not made proper enquiry, we notice that the Hon'ble Gujarat High Court in the case of *Shreeji Prints (P) Ltd. (130 taxmann.com 293 – Guj)* while considering the explanation of Section 263 of the Act, has held that : -

> "4 Being aggrieved by the order passed by the PCIT under section 263 of the Act, 1961, the assessee went before the Tribunal. The Tribunal, after considering the submissions made by the assessee and after considering the scope of power to be exercised by the PCIT under section 263 of the Act, 1961 came to be conclusion that the Assessing Officer has made inquiries in detail about two unsecured loans taken by the respondent assessee and observed as under:
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> > "13 In the light of the aforesaid judicial precedents in the present case what has to be seen is whether the AO has made enquiries about two loans taken from GTPL and PAFPL. If the answer is affirmative, then second question arises whether the acceptance of the claim by the AO was a plausible view or on the facts of the finding on the facts that the said funding of the AO can be termed as sustainable in law. We find that vide notice issued u/s.142(1) dated 13-10-2015 placed at Page No. 1 of Paper Book shows the AO vide item no.(iii) has asked the information regarding details of unsecured loan outstanding as on 31-3-2013 and the loans were squared up amounts in the format prescribed therein. In compliance to thereof, the assessee has furnished complete details of the unsecured loans outstanding/ squared up vide

para 3 of his letter dated 2-11-2015 placed as Annexure-2 at page 4 of paper book. The assessee has also furnished details consisting of copy of ledger account, copy of acknowledgment of income filed for A.Y. 2012-13 and 2013-14 and copy of bank statement reflecting the payment received was paid during the financial year 2012-13 relevant to assessment year 2013-14 which are placed at paper book, page 9 to 49 in respect of GTPL as well as PAFPL. This indicate that the assessee has furnished account confirmation of the depositor, acknowledgment of income of the parties, audited balanced sheet and profit and loss account of the parties and bank pass book and bank statement of the parties. During the course of assessee proceedings, form these facts it is clear that the assessee has not only proved the from these facts it is clear that the assessee has not only proved the identity of the lenders but also the genuineness of the transactions and credit worthiness of the lenders. Accordingly, the Ld. AO after verifying the details of unsecured loans being satisfied, accepted the submissions of the assessee which leads to infer that the Assessing Officer had made full enquiries of unsecured loans by raising the queries and calling for the all information in respect of the loan taken along with details evidences in support thereof and the same were also duly replied by the assessee and on receipt of all the details of evidences, the unsecured loans received by the assessee were accepted by the Assessing Officer and the assessment was finalised u/s.143(3) of the Act on 15-3-2016. We also note that there was audit objection in the case of the assessee. The language of audit objection and show-cause notice under section 263 is same meaning thereby that the show cause notice u/s.263 has been issued by the PCIT Without going through assessment records and without exercising his own application of his mind. The assessee has not only filed complete details of Income-tax Return, audited balance sheet, profit and loss account and bank statement. The assessee further explained that both the these unsecured loans stands fully repaid as on the date and there is no capital creation by the assessee on this count. In view of these facts and circumstances, we are of the considered opinion that the order of the Assessing Officer is not erroneous nor it is prejudicial to the interest of revenue. It was also brought to the notice of the PCIT that entire share capital of GTPL being already tax, all the investment made by the said company recorded in its balance sheet stands explained tax in its hands itself and hence, "there is no question of adding the same amount in the hands of the assessee. As regards loans from PAFPL, it was submitted that assessee company has made voluntary disclosure of income of Rs.

1.5 crore under IDS 2016 in September 2016 and the said loan was repaid before making declaration. In view of these facts and circumstances, we find that the AO has made due enquiries. Since we find that the AO had made enquiries regarding unsecured loans and accepted the claim of the assessee after detailed enquiries."

15 The Pr.CIT had observed that Explanation 2 of section 263 of the Act is clearly applicable and it is clear that the Assessing Officer has passed the assessment order after making enquiries for verification which ought to have been made in this case. However, we find that the Pr. CIT has not mentioned in the show-cause notice issued under section 263 that he is going to invoke the Explanation 2 to 263 hence, invocation of Explanation in the order without confronting the assessee is not appropriate and sustainable in law in support of this contention, the ld. Counsel has placed reliance on the following decision:

CIT v. Amir Corporation 81 CCH 0069 (Guj.), CIT Mehrotra Brothem -270 ITR 0157 (MP,CIT v. Ganpet Ram Bishnoi - 296 ITR 0292 (Raj.), Cadila healthcare Ltd. v. Cl 7, Ahmedabadh-1 [ITA no. 1096/Ahd/2013 & 910/Ahd/2014], Sri Saí Contractors v. ITO [ITO no. 109Nizag/2002] and Pyare lal Jaiswal v. CIT, Vamnesi [(2014) 41 taxmann.com 27 & (AII Trib.)]. It was contended by the Learned Counsel that clause -(a) & (b) of Explanation 2 of Section 263 are not applicable as the Assessing Officer has made enquiry and verification which should have been made. Further, in the show cause notice, the Explanation-2 of section 263 was not invoked by the PCIT and it was referred in the order u/s.263 of the Act. Therefore, in the light of decision of the Co-ordinate Bench of Mumbai ga in the case of Narayan Tatu Rane - 70 taxmann.com 227 (Mum. Trt.) [PB 153-1561 wherein held that explanation cannot laid to have over ridden the law as interpreted/the various High Courts where the High Courts have held that before reaching the conclusion that the order of the Assessing Officer is erroneous prejudicial to the interest of Revenue. The CIT himself has to undertake some enquiry to establish that the assessment order is erroneous and prejudicial to the interest of Revenue. The ld. Counsel relied on the decision of M/s. Amira Pure Foods Pvt. Ltd., v. PCIT in ITA No.3205/Del/2017 and Ahmedabad Tribunal in the case of Torrent Pharmaceuticals Ltd. v. DCIT [2018] 97 taxmann.com 671 (Ahd. - Trib.). it is clear from the enquiries made by the Assessing Officer and submissions made by the assessee that the Assessing Officer has taken the plausible view which is valid in the eyes of law.

The Assessing Officer was satisfied consequent to making enquiry and after examining the evidences produced by the assessee, he accepted the assessee's claim of loan similar view were also expressed by the Hon'ble Delhi High Court in the case of CIT v. Vodafone Essar South Ltd. [2013] 212 taxman 0184. We observe the Pr.CIT has drawn support from newly inserted Explanation 2 below section 263(1) of the Act introduced by Finance Act, 2015 w.e.f. 1-6-2015 for his action. The Explanation 2 inter alia provides that the order passed without making inquiries or verification 'which should have been made' will be deemed to be erroneous insofar as it is prejudicial to the interest of the Revenue. It is on this basis, the assessment order passed by the AO under section 143(3) of the Act has been set aside with a direction to the AO to pass a fresh assessment order. It will be therefore imperative to dwell upon the impact of Explanation 2 for the purposes of section 263 of the Act. The aim and object of introduction of aforesaid Explanation by Finance Act, 2015 was explained in CBDT Circular No. 19/2015 [F.NO.142I14/2015T PL], Dated 27-11-2015 which is reproduced hereunder:

> "53. Revision of order that is erroneous in so far as it is prejudicial to the interests of revenue.
>
> 53.1 The provisions contained in sub-section (1) of section 263 of the Income-tax Act, before amendment by the Act, provided that if the Principal Commissioner or Commissioner considers that any order passed by the Assessing Officer is erroneous in so far as it/s prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making an enquiry pass an order modifying the assessment made by the Assessing Officer or cancelling the assessment and directing fresh assessment.
>
> 53.2 The interpretation of expression "erroneous in so far as it/3 prejudicial to the interests of the revenue" has been a contentious one. In order to provide clarity on the issue, section 263 of the Income-tax Act has been amended to provide that an order passed by the Assessing Officer 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 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, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

53.3 Applicability: This amendment has taken effect from 1st day of June, 2015."

"17 We thus find merit in the plea of the assessee that the Revisional Commissioner is expected show that the view taken by the AO is wholly unsustainable in law before embarking upon exercise of revisionary powers. The revisional powers cannot be exercised for directing a fuller inquiry to merely find out if the earlier view taken is erroneous particularly when a view was already taken after inquiry. If such course of action as interpreted by the Revisional Commissioner in the light of the Explanation 2 is permitted, Revisional Commissioner can possibly find fault with each and every assessment order without himself making any inquiry or verification and without establishing that assessment order is not sustainable in law. This would inevitably mean that every order of the lower authority would thus become susceptible to section 263 of the Act and, in turn, will cause serious unintended hardship to the tax payer concerned for no fault on his part. Apparently, this is not intended by the Explanation. Howsoever wide the scope of Explanation 2(a) may be, its limits are implicit in it. It is only in a very gross case of inadequacy in inquiry or where inquiry is per se mandated on the basis of record available before the AO and such inquiry was not conducted, the revisional power so conferred can be exercised to invalidate the action of AO. The AO in the present case has not accepted the submissions of the assessee on various issues summarily but has shown appetite for inquiry and verifications. The AO has passed after making due enquiries issues involved impliedly after due application of mind. Therefore, the Explanation 2 to section 263 of the Act do not, in our view, thwart the assessment process in the facts and the context of the case. Consequently, we find that the foundation for exercise of revisional jurisdiction is sorely missing in the present case.

18 In the light of above facts and legal position, we are of the considered view that the AO had made detailed enquiries and after applying his mind and accepted the genuineness of loans received from GTPL and PAFPL, which is also plausible view. Therefore, we find that twin conditions were not satisfied for invoking the jurisdiction

under section 263 of the Act. The case laws relied by the ld. CIT(D.R.) are distinguishable on facts and in law hence, by the ld. Counsel as well and we concur the same hence not applicable to present facts of the case. Therefore, in absence of the same, the ld. CIT ought to have not exercised his jurisdiction under section 263 of the Act. Therefore, we cancel the impugned order under section 263 of the Act, allowing all grounds of appeal of the Assessee."

5. The Tribunal has found that in the order passed by the PCIT, Explanation 2 of section 263 of the Act, 1961 is made applicable. The Tribunal observed that the PCIT has not mentioned in the show cause notice to invoke the Explanation 2 of section 263 of the Act 1961. Therefore, by invocation of Explanation in the order without confronting the assessee and giving an opportunity of being heard to the assessee is not appropriate and sustainable in law.

6. Thus, the Tribunal has considered in detail the aspect of revisional power to be exercised by the PCIT in the facts of the case and has given a finding of facts that the Assessing Officer has made inquiries in detail and after applying mind, accepted the genuineness of loans received by the respondent assessee from the aforesaid two companies and such view of the Assessing Officer is a plausible view, and therefore, the same cannot be said to be erroneous or prejudicial to the interest of the Revenue."

13. The SLP against the above order of the Hon'ble High Court was dismissed by the Hon'ble Supreme Court, thereby the issue, that the explanation (2) to Section 263 of the Act could be invoked only in a very gross case of inadequacy in enquiring or where the mandatory enquiries are not conducted, has reached finality.

14. In view of the above discussion, we are of the view, that the AO in the given case has conducted enquiry and perused the details submitted and has taken a decision to accept the brought forward loss based on explanation provided by the assessee after proper application of mind. We therefore hold that the PCIT is not justified in setting

aside the order of the AO with regard to the issue of verification of brought forward losses and accordingly the impugned order of the PCIT is quashed to the limited extend of this issue.

15. The PCIT has also held the order of the AO to be erroneous for non-verification of STT paid data before allowing the long term capital gain to be exempt. In this regard, the ld. AR submitted that the PCIT himself in para 3.1 of the order u/s. 263 has admitted that the assessee has submitted the STT paid details in Form 10DB. Further the ld. AR drew our attention to the notice issued u/s. 142(1) [pg. 134 of PB] where the AO specifically called for details pertaining to the claim as listed below and the assessee had submitted the details as called for by the AO [pg 137 of Pb] :-

> "1. Furnish Profit/Loss statement from your broker/trading platform to support the claim of short term capital gains.
>
> 2. Furnish Form 10DB for AY 17-18.
>
> 3. Furnish proof of STT paid to claim STCG u/s.111A for AY 17-18."

16. The ld. AR also submitted that the assessee has furnished the complete details of short term and long term capital gains details before the AO [pg. 55 to 74 of PB]. It is the submission of the ld. AR that the AO has verified the details furnished by the assessee and has applied his mind while accepting the exemption claimed towards long term capital gain.

17. The ld DR supported the order of the PCIT.

18. We have considered the rival submissions and perused the material on record. We notice that the PCIT in the order u/s 263 has noted the fact that the assessee has submitted the details of STT paid in From 10DB and hence there is no dispute with regard to the fact that the details are furnished before the AO. However, there is nothing noted in the order of the AO that he has verified the details furnished and has reconciled the long term capital gains claimed as exempt by the assessee with the amount furnished in Form 10DB. The PCIT for this specific reason has invoked the provisions of section 263 and to this extent, we are of the considered view that the action of the PCIT is justified. We therefore uphold the order of the PCIT setting aside the order of the AO to the limited extent of verification of long term capital gain claimed exempt on STT being paid. In view of the above discussion the order of the PCIT u/s. 263 is modified to the extent that order u/s.143(3) is set aside with regard to allowing the claim of exemption of long term capital gains based on payment of STT. It is ordered accordingly.

19. In the result, the appeal by the assessee is partly allowed.

Pronounced in the open court on this 9th day of September, 2022.

Sd/-	Sd/-
(N V VASUDEVAN)	(PADMAVATHY S)
VICE PRESIDENT	ACCOUNTANT MEMBER

Bangalore,
Dated, the 9th September, 2022.
/*Desai S Murthy /*

Copy to:

1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.