

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "DB" NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**आ.अ.सं./I.T.A Nos.17 & 18/Agra/2021
निर्धारणवर्ष/Assessment Years:2014-15 & 2015-16**

M/s Uma Glass Works 22, Near Industrial Estate, Firozabad - 283203	बनाम Vs.	PCIT, Agra-1, Uttar Pradesh.
PAN No. AACFU5061D		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri Ranjan Chopra, CA
Revenue by	Shri Surende Pal, CIT DR

सुनवाईकीतारीख/ Date of hearing:	14.10.2022
उद्घोषणाकीतारीख/Pronouncement on	02.11.2022

आदेश /O R D E R

PER C.N. PRASAD, J.M.

These two appeals are filed by the assessee against different orders of the Ld. PCIT, Agra - 1, dated 8.3.2021, passed u/s 263 of the Act for the assessment years 2014-15 and 2015-16. As the issue in both the appeals is identical these two appeals are clubbed, heard and disposed off together with this common order for the sake of convenience.

2. The assessee in both these appeals has raised the following common grounds of appeal:

1. *“That having regard to facts and circumstances of the case, Ld. Pr. CIT, Agra-1 has erred in law and on facts in assuming jurisdiction under section 263 of the I.T. Act, 1961 by cancelling the assessment order dated 30.12.2017 passed under section 147/143(3) holding erroneous and prejudicial to the interest of Revenue.*
2. *That having regard to the facts and circumstances of the case, Ld. Pr. CIT, Agra-1 has erred in law and on facts in assuming jurisdiction under section 263 of the I.T. Act, 1961 without appreciating that the issue is a subject matter of appeal before CIT(A)-2, Agra now transferred to CIT(A) NFAC is not sustainable on various legal and factual grounds.*
3. *That having regard to the facts and circumstances of the case and in light of the finding of the Ld. Pr. CIT, Agra-1 that “failure to make proper enquiries/verification to arrive at the correct and complete facts and to apply the correct law...” read in light with the principle laid down in various decisions does not make the order erroneous and prejudicial to the interest of the revenue. The order passed by the Ld. Pr. CIT, Agra-1 is illegal and bad in law.*
4. *That having regard to the facts and circumstances of the case, the order of the Ld. Pr. CIT, Agra-1 under section 263 of the I.T. Act, 1961 setting aside the assessment framed with the directions to make fresh assessment after examining the issues. Non-issuance of specific directions for assessment to be framed clearly proves that it is a case of only change of opinion and the assessment framed is neither erroneous nor prejudicial to the interest of the Revenue.*
5. *That having regard to the facts and circumstances of the case, Ld. Pr. CIT, Agra-1 has erred in law and on facts in passing the order under section 263 of the I.T. Act, 1961, setting aside the assessment order to the file of Ld. Assessing Officer with the direction to pass fresh order after examining the issue is arbitrary, unjust, based on assumptions and presumptions and that no error existed nor prejudice was caused to Revenue, therefore, the order passed is bad in law and against the facts and circumstances of the case and deserves to be quashed.*

6. *That the appellant craves the leave to add, amend, modify, delete any grounds of appeal before or at the time of hearing and all the above grounds are without prejudice to each other.”*

3. Brief facts are that the assessee a partnership firm engaged in the business of manufacture and sale of glass products filed its return of income for A.Y. 2014-15 on 4.11.2014 declaring total income of Rs.11,66,380/-. The assessment was completed U/s 143(3) of the Act determining the income at Rs.13,79,320/-. Thereafter a survey was conducted on 3.8.2016 at the business premises of the assessee and during the course of survey various documents/loose sheets, laptop, hard disk (HD-1) were impounded. On the basis of the information contained in the impounded hard disk and comparing the same with the return of income filed by the assessee the assessment of the assessee for A.Y 2014-15 was reopened by recording reasons and issue of notice u/s 148 of the Act. In the reasons recorded the Assessing officer stated that income of Rs.19,83,32,367/- (being the difference in opening stock, purchases, sales and closing stock, GP/NP as per ITR and hard disk impounded) has escaped assessment for the assessment year 2014-15 and accordingly the reassessment was completed on 30.12.2017 u/s 143(3) r.w.s 147 of the Act by treating the net profit of Rs.19,90,13,470/- as per the stock summary taken from the hard disk impounded during the survey as income of the assessee and brought to tax accordingly. The assessee preferred appeal before the Ld. CIT(A) against the action of the assessing

officer in assessing net profit of Rs.19,90,13,470/- as assessed income of the Assessee which is pending adjudication till date.

4. Subsequently the Ld. PCIT, Agra issued notice dated 8.3.2021 u/s 263 of the Act stating that the difference in closing stock of Rs.21,87,38,966/- was undisclosed and should be added to the income of the Assessee and during the assessment proceedings the difference in closing stock was not added U/s 68 of the Act but net profit of Rs.19,90,13,469/- was assessed as income and therefore the assessment order dated 30.12.2017 passed U/s 143(3) r.w.s 147 of the Act appears to be erroneous as well as prejudicial to the interest of the revenue and the Assessee was asked to give explanation.

5. The Assessee filed its reply on 15.3.2021 before the Ld. PCIT objecting for treating difference in closing stock as addition U/s 68 of the Act stating as under:

“It must be appreciated that the alleged net profit of Rs.19,90,13,470 which has been worked out from the stock summary takes into account the impact of the figure of the so-called closing stock of Rs.30,31,62,405. This is evident from the reasons recorded reproduced in page 2 of the assessment order. The perusal of the same will reveal that under the column “As per stock summary taken from hard disks impounded during survey” reproduced in Para 1 above the alleged net profit is the resultant of the so called (Sales + Closing Stock) minus (Opening Stock + Purchases + Direct expenses + Indirect expenses). The last column in the said table i.e. difference is merely an arithmetical calculation between the figures as per the ITR and the figures taken from stock summary sheet generated from the impounded hard disk. This difference does not show that there was excess stock and even during the course of survey no material

in relation to the value of the closing stock for the impugned year was found to show that this alleged difference was actual. Hence on a mere hypothesis this working has been made and the so-called net profit which takes into impact the closing stock of Rs.30,31,62,405 has been already been taken as income of the assessee for the impugned year.”

6. It was also further submitted that the addition made on account of alleged net profit which is on account of resultant impact of the so-called closing stock of Rs.30,31,62,405/- the assessee filed an appeal before the Ld. CIT(A), Agra and therefore since the subject matter of impugned proceedings U/s 263 is already subject matter of appeal proceedings, the proceedings initiated u/s 263 are bad in law. The Assessee relied on the following decisions for the proposition that when the subject matter of addition/disallowance made by the Assessing Officer is a subject matter of appeal before the Commissioner of Income Tax (Appeals), no proceedings u/s 263 can be invoked.

- i) Smt. Renuka Philip Vs ITO (2018) 101 Taxman.com 119 (Mad)
- ii) CIT Vs. Vam Resorts & Hotels (P) Ltd. (2019) 111 Taxman.com 62 (All)
- iii) Pr.CIT Vs. Oil India Ltd. (2019) 103 Taxman.com 339 (Gauhati)
- iv) Haryana Paper Distributors P Ltd. (2018) 95 Taxman.com 152 (Guj)

7. The Ld. PCIT, however, by order dated 31.03.2021 cancelled the assessment order dated 30.12.2017 passed U/s 143(3) r.w.s 147 of the Act holding that the said order passed by the Assessing Officer is erroneous as well as prejudicial to the interest of the revenue and directed the Assessing Officer to pass a fresh order after examining the

issue as discussed in her order and after affording reasonable opportunity of being heard to the Assessee.

8. Similar order was passed by the Ld. PCIT for the assessment year 2015-16 holding that the assessment order dated 30.12.2017 passed U/s 143(3) of the Act by the Assessing Officer is erroneous as well as prejudicial to the interest of the revenue and directed the Assessing Officer to pass a fresh order after examining the issue as discussed in her order and after affording reasonable opportunity of being heard to the Assessee.

9. Against these orders of the Ld. PCIT dated 31.3.2021 passed u/s 263 of the Act for A.Y 2014-15 and 2015-16, the Assessee is in appeal before us.

10. The Ld. Counsel Shri Ranjan Chopra appearing for the assessee submits that the addition of net profit of Rs.19,90,13,470/- made by the Assessing Officer while completing the assessment U/s 143(3) r.w.s 147 is based on stock summary taken from hard disk impounded during survey and the alleged net profit is the resultant of the so called (Sales + Closing Stock) minus (Opening Stock + Purchases + Direct expenses + Indirect expenses). It is submitted that the said alleged difference is merely an arithmetical calculation between the figures as per the ITR and the figures taken from stock summary sheet generated from the impounded hard disk and this difference does not show that there was excess stock

and even during the course of survey no material in relation to the value of the closing stock for the impugned year was found to show that this alleged difference was actual. Therefore it is submitted that on a mere hypothesis the working has been made and the so-called net profit which takes into impact the closing stock of Rs.30,31,62,405/- has been already taken as income of the assessee for the impugned years. The Ld. Counsel submits that since entire addition of net profit on alleged difference in closing stock is the subject matter of appeal before the Ld.CIT(A), the assumption of jurisdiction by the Ld. PCIT is bad in law. Reliance was placed on the decision of the Jurisdictional High Court in the case of CIT Vs. Vam Resorts & Hotels (P) Ltd. (418 ITR 723) and the decision of the Hon'ble Supreme Court in the case of CIT Vs. Shri Arbuda Mills Ltd., (231 ITR 50). Reliance was also place on the following decisions for the above proposition.

- i) Smt. Renuka Philip Vs ITO (409 ITR 567 (Mad)).
- ii) CIT Vs. Ratilal Bacharilal & Sons (282 ITR 457 (Bom))
- iii) Parin Furniture Ltd. Vs. PCIT, ITA Ns.86 to 89/Rjt/2022 Dt: 20.07.2022
- iv) Kathivaran Ananthalakshmi Vs. PCIT, ITA No.30/Chny/2022 Dt:3.8.2022
- v) Rabi Pal Vs. ITO, ITA No.193/Kol/2022 Dt: 05.09.2022
- vi) R.M.Tradelink Vs. PCIT, ITA No.68/Rjt/2022 Dt: 16-09-2022

11. The Ld. Counsel submits that the Hon'ble Jurisdictional High Court in the case of CIT Vs. Vam Resorts & Hotels (P) Ltd. (supra) held that when an appeal is pending before the Commissioner (Appeals), the exercise of jurisdiction by the Commissioner is barred under clause (c) of Explanation 1 to section 263 of the Act. It is submitted that similar view has been taken in the other decisions. Therefore the Ld. Counsel contends that the decision of the Jurisdictional High Court squarely applies to the Assessee and the order passed by the Ld. PCIT U/s 263 is liable to be quashed.

12. The Ld. Counsel further submits that the Ld. PCIT held that the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interests of revenue. This conclusion was arrived at by the Ld. PCIT for the reason that the Assessing Officer did not make addition of alleged difference in closing stock under section 68 of the Act. The Ld. Counsel for the assessee submits that the entire order of 14 pages of the Ld. PCIT contains the submissions/objections of the assessee running into 11 pages and the conclusion of the Ld. PCIT is in one small para on last page. The Ld. Counsel submits that the Ld. PCIT in her entire order nowhere demonstrated as to how the assessment order passed U/s 143(3) r.w.s 147 of the Act in not making addition U/s 68 resulted in erroneous and prejudicial to the interests of revenue except stating that the Assessing Officer should have been made addition U/s 68

instead of treating the net profit as assessed income of the Assessee on account of alleged difference in closing stock.

13. The Ld. Counsel submits that the Ld. PCIT was of the view that the Assessing Officer had made no enquiries and therefore the assessment order passed by him is erroneous and prejudicial to the interests of revenue. The Ld. Counsel in this regard referring to page 6 para 5 of the reassessment order (page 30 of the paper book) submits that the Assessing Officer has given finding that in the course of assessment proceedings vide order sheet entry dated 20.12.2017, the Assessee was required to furnish explanation and justification regarding the difference in stock as per stock summary and as per ITR and Audit Report and the Assessee by written reply dated 29.12.2017 furnished along with charts showing reconciliation of the data between the stock summary impounded during the course of survey and the Audited Balance sheets of the assessee. The Ld. Counsel therefore submits that since the Assessing Officer made all enquiries and examined the evidences, submissions and replies filed, the allegation of the Ld. PCIT that the Assessing Officer has not made enquires is baseless and contrary to record.

14. The Ld. Counsel for the assessee submits that the Ld. PCIT has failed to point out which enquires the Assessing Officer failed to make during the course of assessment proceedings. The Ld. Counsel for the Assessee submits that if the Ld. PCIT is of the view that the Assessing Officer failed to make enquiries, then Ld.PCIT should have made at least

minimal enquiry on the issue before arriving at the conclusion that the assessment order passed u/s 143(3) was erroneous and prejudicial to interest of Revenue. The Ld. Counsel for the Assessee relying on the decision of the Hon'ble Delhi High Court in the case of DIT Vs. Jyothi Foundation (357 ITR388) submits that the High Court held that where revisionary authority opined that further inquiry was required such inquiry should have been conducted by revisionary authority himself to record finding that assessment order passed by Assessing Office was erroneous and prejudicial to revenue. The Ld. Counsel also relied on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Anil Kumar Sharma (194 Taxman 504). The Ld. Counsel for the assessee placing reliance on the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. Vs. CIT (109 Taxman 66) submits that when two views are possible and the Assessing Officer adopted one of the possible views with which the PCIT does not agree, Assessment Order cannot be treated as erroneous and prejudicial to interests of revenue unless the view taken by the AO is unsustainable in law.

15. On the other hand, the Ld. DR with respect to assumption of jurisdiction by the PCIT u/s 263 of the Act during pendency of appeal, submits that the issue before the Ld.CIT(A) is in respect of assessment made by the Assessing Officer on the working of net profit based on stock summary sheet retrieved from hard-disk impounded during the survey operation. While the issue raised during the proceedings u/s 263 is

altogether different. Ld. DR submits that as per stock summary taken from the hard-disk closing stock was Rs.30,31,62,406/-, however, the closing stock disclosed by the assessee in the ITR filed by the assessee was Rs.8,44,23,439/-. The excess closing stock of Rs.21,87,38,966/- was found undisclosed and, therefore, it was required to be added as an unexplained investment. Therefore, the Ld. DR submits that the contention of the assessee that the order passed by the AO is subject matter of appeal before the Ld. Commissioner(Appeals) and no proceedings u/s 263 of the Act can be initiated is not acceptable. The Ld. DR submits that the PCIT has rightly assumed jurisdiction u/s 263 on issues which are not at all subject matter of appeal much less considered and decided in appeal. Reliance was placed on the decision of the Allahabad High Court in the case of Mehra Brothers Partnership vs. CIT in WT No.185/2015 dated 11.03.2015. The decision of the Hon'ble Delhi High Court in the case of BSES Rajdhani Power Ltd. vs. PCIT in ITA No.387/2017 dated 08.11.2017. The Ld. DR placing reliance on this decision submits that the Hon'ble Delhi High Court held that non consideration of larger claim of depreciation and the consideration of only a part of it by the Assessing Officer who did not go into the issue with respect to the whole amount was an error that could be corrected u/s 263 of the Act.

16. The Ld. DR regarding order of AO being erroneous and prejudicial to the interest of Revenue submits that in the instant case no enquiry

into excess stock and unaccounted purchases has been made by the AO. Ld. DR submits that it is the duty of the AO to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an enquiry. Reliance was placed on the decision of the Delhi High Court in the case of Geevee Enterprise vs. Addl. CIT (99 ITR 375). Placing reliance on the decision of Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT (243 ITR 83). The Ld. DR submits that it has been held that the AO is not supposed to accept a claim in the absence of supporting materials without making an enquiry. The Ld. DR also placed reliance on the decision of the Hon'ble Supreme Court in the case of Ram Pyari Devi Sarogi vs. CIT (67 ITR 84) and Tara Devi Aggarwal vs. CIT (88 ITR 323).

17. In reply the Ld. Counsel for the assessee submits that the decisions relied on by the Ld. DR has been considered by the Hon'ble Delhi High Court in the case of DIT vs. Jyoti Foundation (supra) while holding that where revisionary authority opined that further enquiry was required such enquiry should have been conducted by revisionary authority itself to record finding that the assessment order passed by the AO was erroneous and prejudicial to interest of Revenue. The Ld. DR submits that the Hon'ble High Court considered a situation where an order passed by the AO was made without enquiry or investigation and orders which are passed after enquiry/investigation and it was held that where revisionary authority feels and opines that further enquiry/investigation

was required deeper or further scrutiny should be undertaken, if there is no enquiry/investigation made by the AO. Ld. DR submits that in its case it is a categorical finding given by the AO in the assessment order as submitted earlier that in the course of assessment proceedings the assessee was required to explain the difference in closing stock and the assessee has furnished its replies with charts, reconciliation of the closing stock differences and on making enquiries and verifications the AO treated the alleged difference in stock, difference in net profit as assessed income of the assessee while completing the assessment and, therefore, it cannot be said that there is no enquiry/investigation made by the AO while passing the assessment order.

18. We have heard the rival submissions, perused the orders of the authorities below and the decisions relied on and the material placed before us. The first contention of the assessee in ground nos. 1 & 2 is that the assumption of jurisdiction by the Ld. PCIT u/s 263 of the Act is bad in law for the reason that the subject matter of addition of net profit on account of difference in opening stock, purchases, sales, closing stock, GP and net profit are under appeal before the Ld. CIT(Appeals).

19. The assessee carrying on the business of manufacture and sale of glass products filed its return of income for AY 2014-15 on 04.11.2014 declaring income of Rs.11,66,380/- and the assessment was completed u/s 143(3) on 11.07.2016 determining the income at Rs.13,79,320/-. A survey operation u/s 133A of the Act was conducted at the business

premise of the assessee on 3rd August, 2016 and in the course of survey whereas documents/loose papers and hard-disk were impounded. On the basis of the information contained in the hard-disk the assessment was reopened by issue of notice u/s 148 of the Act. The reassessment was completed u/s 143(3) of the Act read with Section 147 of the Act determining the income of the assessee by making an addition of Rs.19,90,13,470/-. The said Rs.19,90,13,469/- represents the difference in opening stock, purchases, sales, closing stock and the net profit as shown by the assessee in its return of income and as per the stock summary taken from hard-disk impounded during the survey. The assessee challenged the order of the Assessing Officer in assessing Rs.19,90,13,469/- as net profit of the assessee and as assessed income for AY 2014-15.

20. On perusal of the grounds of appeal filed before the Ld.CIT(A) it is noticed that the assessee has challenged the addition of Rs.19,90,13,470/- which was arrived at on account of difference in opening stock, purchases, sales, closing stock and gross profit/net profit. We could see from the grounds of appeal that the assessee disputed the entire addition including the difference in closing stocks and, therefore, when the larger issue of whether there is any difference in closing stock at all is the subject matter of appeal before the Ld. CIT(Appeals) and is still pending adjudication the Ld. PCIT could not have assumed jurisdiction u/s 263 of the Act.

21. The jurisdictional High Court in the case of CIT Vs. Vam Resorts and Hotels Pvt. Ltd. (supra) held that when an appeal is pending before the Ld. Commissioner (Appeals) the exercise of jurisdiction u/s 263 of the Act by the CIT is barred as per clause (c) of Explanation 1 to Section 263 of the Act. While holding so the Hon'ble High Court held as under:

“25. As Clause (c) of Explanation 1 to Section 263 of the Act provides that when an appeal is pending before the Commissioner, the exercise of jurisdiction under Section 263 of the Act by CIT is barred. Thus, in the present case, the CIT wrongly exercised jurisdiction under Section 263 of the Act by remanding back the matter to assessing authority on 25.03.2013, while the appeal was decided by CIT(A) on 05.06.2013. Thus, the order passed by the ITAT does not suffer from any irregularity and needs no interference.”

22. We also observe that similar view has been taken by the Hon'ble Madras High Court in the case of Smt. Renuka Philip Vs. ITO (supra), wherein the Hon'ble High Court held as under:

“22. The above explanation makes it clear that when the appeal is pending before the Commissioner, the exercise of jurisdiction under Section 263 of the Act is barred. The Commissioner in the order dated 14.03.2012 states that the appeal pertains to the claim made by the assessee under Section 54 of the Act and it has got nothing to do with the order passed by the Assessing Officer under Section 54F of the Act. The said finding rendered by the Commissioner is wholly unsustainable, since the assessee went on appeal against the re-assessment order dated 31.12.2009 stating that his claim for deduction u/s 54 of the Act should be accepted.

23. Therefore, in the process of considering as to what relief the assessee is entitled to, the Assessing Officer held that the assessee is entitled to claim deduction under Section 54F of the Act and assigned certain reasons for that. Therefore, the larger issue was pending before the Commissioner of Appeals, and in such circumstances, the

Commissioner could not exercise power under section 263 of the Act on account of the statutory bar. Therefore, on this ground also, the assumption of jurisdiction under Section 263 of the Act was wholly erroneous.

24. *As noticed above, the Assessing Officer while completing the reassessment proceedings has assigned certain reasons for coming to a conclusion that the assessee is entitled for deduction under Section 54F and not under Section 54 of the Act. This reason assigned by the Assessing Officer has been found by us to show due application of mind. As observed, we cannot expect an Assessing Officer to write a judgment. In such circumstances, the view taken by the Commissioner in his order under Section 263 of the Act has to be termed as a change of opinion, or in other words, the Assessing Officer adopted one of the two views possible and in such circumstances, it cannot be stated that the order is prejudicial to the interest of the Revenue as well as erroneous. For the purpose of exercise of jurisdiction under Section 263 of the Act, the twin tests are to be satisfied and even assuming, the reassessment order is to be held as erroneous, it cannot be stated to be prejudicial to the interest of Revenue as every erroneous order cannot be subject matter of Revision under Section 263 of the Act. Furthermore, if the order passed by the Commissioner under Section 263 of the Act as confirmed by the Tribunal is allowed to stand, then the very purpose of the remand order against the original reassessment proceedings would become a fait accompli.*

25. *Thus, for the above reasons we are fully satisfied that the assumption of jurisdiction by the Commissioner under Section 263 of the Act was wholly without jurisdiction as the twin tests have not been satisfied and consequently, the order dated 14.03.2012 as confirmed by the Tribunal by order dated 13.07.2012 calls for interference.”*

23. Similar view has been taken by various Benches of the Tribunal which were relied on by the Ld. Counsel for the assessee. The ratio of the decisions of the Jurisdictional High Court in the case of CIT Vs. Vam Resorts and Hotels Pvt. Ltd. (supra) and the decision of the Madras High Court in the case of Smt. Renuka Philip (supra) squarely applies to the

facts of the assessee's case. The decisions relied on by the Ld. DR are distinguishable on facts. Thus, respectfully following the decision of the Jurisdictional High Court since the larger issue of whether there is any difference in closing stock at all is the subject matter of appeal before the Ld. CIT(A) we hold that the Ld. PCIT is barred in assuming jurisdiction u/s 263 of the Act.

24. We also further observe from the order of the Ld. PCIT the assessment order passed by the Assessing Officer was held to be erroneous and prejudicial to the interest of the Revenue stating that the AO has not made enquiries. The Ld. PCIT is also of the view that the difference in closing stock should have been added as income u/s 68 of the Act.

25. In so far as the AO not making enquiries in the course of assessment proceedings are concerned as we have already noted above that it is the categorical finding of the AO in para 5 page 6 of assessment order that in the course of assessment proceedings the assessee was required to explain the difference in closing stock and the assessee has furnished charts, reconciliation statement, explanations etc., which was examined by the AO and decision was taken to treat the difference in opening stock, purchases, sales, closing stock, GP/net profit as income of the assessee. Therefore, the observations of the Ld. PCIT that the AO has not carried out any enquiries are not borne out from record. We also observe that the Ld. PCIT having observed that the AO has not made an enquiry the Ld.

PCIT failed to point out any deficiency in enquiries and also not made any minimal enquiry by himself to prove that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue.

26. The Hon'ble Delhi High Court in the case of DIT Vs. Jyoti Foundation held that where revisionary authority opined that further enquiry was required such enquiry should have been conducted by revisionary authority himself to record a finding that the assessment order passed by the AO was erroneous and prejudicial to the interest of Revenue. In the case on hand before us enquiries were certainly made by the Assessing Officer as observed above and it is not a case of no enquiry at all. In view of the decision of the Hon'ble Delhi High Court in the case of DIT vs. Jyoti Foundation (supra), we hold that the Ld. PCIT should not have set aside the assessment order and directed the Assessing Officer to conduct enquiry.

27. In view of what is discussed above, we hold that the assumption of jurisdiction u/s 263 by the Ld. PCIT is bad in law and accordingly the order of the Ld. PCIT is set aside.

28. The assessee raised similar grounds for the AY 2015-16 and since facts are identical in both these years the decision taken for the AY 2014-15 applies *mutatis mutandis* to the appeal for the AY 2015-16. We order accordingly.

29. In the result, both the appeals of the assessee for AYs 2014-15 and 2015-16 are allowed.

Order pronounced in the open court on 02.11.2022

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 02.11.2022

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard
file of ITAT.

By order

Assistant Registrar, ITAT: Agra Benches-Agra