आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL INDORE BENCH, INDORE

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.136/Ind/2020
Assessment Year: 2009-10

Jabbar Khan, Village-Siya, Tehsil-Dewas	**बनाम/** Vs.	Pr. CIT, Ujjain
(Appellant / Assessee)		(Respondent / Revenue)
PAN: CNDPK 0362 H		

Assessee by	Shri Ashok Mahajan, AR
Revenue by	None
Date of Hearing	26.09.2022
Date of Pronouncement	20.10.2022

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by revision-Order dated 13.03.2019 passed by learned Pr. Commissioner of Income-Tax, Ujjain **["Ld. PCIT"]** u/s 263 of the Income-tax Act, 1961 **["the Act"]**, which in turn arises out of assessment-order dated 15.11.2016 passed by learned ITO-1, Dewas **[Ld. "AO"]** u/s 148 read with section 143(3) of the act for Assessment-Year **["AY"]** 2009-10, the assessee has filed this appeal on following grounds:

> *"1. That having regard to the facts and circumstances of the case, the Ld. Pr. CIT has erred in law and on facts in assuming jurisdiction u/s 263 and further erred in holding the assessment order of AO dated.15.11.2016 passed u/s 143(3)/147 of the Act is erroneous and prejudicial to the interest of the revenue.*

2. That in any case and in any view of the matter action of Ld. Pr. CIT in assuming jurisdiction u/s 263 and passing the impugned order under this section is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case the Ld. Pr. CIT has erred in law and on facts in holding the assessment order as erroneous due to alleged lack of enquiry on the part of the AO for not examining the facts of the alleged cash deposit in his bank account by his nephew (sister's son) named Farook Khan R/o of Village Siloda who had deposited Rs.1700000/- in cash for security purposes for purchase of land in appellant's account as he does not have his own bank account and also the deposit of Rs. 504000/- in appellant's alleged bank a/c out of which Rs. 291200/- was from the sale of agricultural land which happens to be my share as well as my mother's share. The AO has accepted the transaction after complete and proper enquiry."

2. We have heard the Ld. AR appearing on behalf of assessee. Ld. DR sought for adjournment. Keeping in view that the physical Bench is held after more than 2 years and the issue involved in present appeal is small, we decline to allow such adjournment as prayed for. Accordingly, we proceeded to dispose of the appeal.

3. The Registry has informed that this appeal has been filed after a delay of about 391 days and therefore time-barred. Ld. AR submitted that the assessee has filed a condonation-application supported by a duly-sworn affidavit, seeking condonation of delay. Ld. AR submitted that Bhabhi (Brother's wife) of assessee had been suffering from cancer for so many years, the assessee had to take care of not only her but also all family members in difficult circumstances. Therefore, the assessee was not able to attend other works including filing of present appeal in time. The assessee has also filed medical documents in the form of investigation-reports and doctor prescriptions, which evident the factum of cancer. Ld. AR submitted

that the delay in filing appeal has occurred due to such onerous circumstances and not because of any lethargy, negligence or mala fide intention of assessee. Ld. AR submitted that by making delay in filing appeal, the assessee does not stand to derive any benefit, rather he is suffering. Placing reliance upon the decision of Hon'ble Supreme Court in **Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387**, Ld. AR prayed to take a judicious view *qua* the assessee, condone delay and proceed with appeal. We have perused the material produced before us and find sufficient merit in the condonation-application. Accordingly, the delay is condoned and the appeal is proceeding for hearing.

4. Briefly stated the facts are such that the revenue received an information from AIR that the assessee had made cash-deposit over Rs. 10 lack in bank account during F.Y. 2008-09 relevant to the AY 2009-10 under consideration. Ld. AO formed a belief that the impugned cash-deposit has escaped assessment and it was a fit case for taking action u/s 147. Accordingly, Ld. AO issued notice u/s 148 on 23.03.2016, in response to which the assessee filed return declaring a taxable income of Rs. 25,000 (+) agricultural income of Rs. 2,50,000/-. Finally, Ld. AO passed assessment-order accepting the returned income. Subsequently, Ld. PCIT examined the record of assessment-proceeding and observed that the assessment-order passed by Ld. AO is erroneous as well as prejudicial to the interest of revenue for the reason mentioned below in the show-cause notice dated 05.03.2019 issued u/s 263:

> *"On perusal and examination of record it is noticed that on amount of Rs. 22,04,000/- was deposited in cash in the saving banks account of the assessee. However, on going through the record, it is further noticed that-*
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> *(1) With regard to cash deposited in the bonk account, the assessee replied before the AO that his bhanja (sister's son) Shri Farookh Khan, Vill. Siloda has given Rs.17,OO,OOO/-. in cash for security purposes for purchase of land, which was deposited in his bank account, as his bhanja has no bank account*
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> *(2) The assessee filed the copy of the affidavit from Shri Farookh*

Khan dtd. 23.09.2016 *and also copy of affidavit dated 28.09.2016 in respect of cash-deposit in his bank account. The said affidavits were prepared, after receipt of notice u/ls 148, just to make a colorful device in respect of such cash deposit.*

(3) Except copy of affidavit, no details are available on record which can establish the capacity of Shri Farookh Khan for giving huge cash of Rs. 17,00,000/- to the assessee.

(4) The Assessing Officer has neither examined the assessee not Shri Farookh Khan in this respect.

In view of the above, the assessee has not properly explained the source of cash deposited in his bank accounts of Rs. 22*,04,000/- along with source thereof.*

In the light of entire facts discussed above, I am of the considered view that the assessment order passed uls 143(3)/147 *on* 15.*11.2016 for the A.Y. 2009-10 in your case is erroneous as well as prejudicial to the interest of revenue, which requires to be revised u/s 263."*

5. By the aforesaid show-cause notice, the assessee was asked to explain as to why the assessment-order may not be revised. In response thereto, the assessee made a detailed submission to Ld. PCIT vide reply dated 12.03.2019, which is re-produced in Para No. 3 of the revision-order as under:

"1. That the assessment has been completed by the income tax officer u/s 143(3) rws.147 of the IT. Act. 1961 after hearing such evidences produced by the assessee and after taking into account all material which AO has gathered and making detailed investigations for the purposes of making the assessment on the various dates of hearing given from time to time.

2. Sir, it is settled that where the assessee has furnished all the requisite information at the time of assessment and the ITO after considering all the facts had completed assessment then it could not be held that the ITO had made assessment order without proper inquiry and the assessment order was prejudicial and erroneous to the interest of revenue.

3. When the assessment order has not been passed in undue haste and without making any inquiries which are called for in the facts and circumstance of the case then such order is not erroneous and prejudicial to the interest of revenue.

4. It is well settled preposition that when two views are possible on an issue as facts and circumstance of the case and merely because the Ld. PCIT was not agreed to the view taken by the Assessing Officer and the Commissioner wants the Assessing Officer to take another view, this situation cannot provide valid jurisdiction to the commissioner to assume powers to revise such assessment order by invoking provision of section 263 of the Act.

5. That the order has been passed after inquiry or adequate inquiry or after examining the facts of the case properly on the issue.

6. That the same assessment order cannot be held as erroneous and prejudicial to the interest of the revenue.

7. During the course of assessment proceeding it was explained by the assessee before the AO in depth that Farookh khan S/o Late Jahur Khan R/o Village Siloda Bujurg, Post Solsinda, The. Sanwer & Dist. Indore (MP.) had Rs. 17,00,000/- kept deposited in his SBI, SB A/c No. 10742493087 Sanwer, Dist-Indore(MP.) which were kept in that bank a/c out of his past savings, capital resources etc. The same were kept in the bank a/c with his intention to buy agricultural land at village Siya, Teh. & Dist. Dewas (MP.) through assessee as assessee is his real maternal uncle. Farookh Khan S/o Late Jahur khan has withdrawn this sum of Rs. 17,00,000/- on 09.07.2008 from his SBI SB A/c No. 10742493087 Sanwer, Dist Indore (MP.) and the same was given to me as I am his maternal uncle to keep for safety and security purposes with his intention to buy agriculture land at village Siya, The. & Dist. Dewas (MP.) same were deposited in my NJGB bank A/c No. 010710100004382 of siya branch. For evidence of this, copy of Bank A/c SBI, SB A/c No. 10742493087 Sanwer, Dist Indore (MP.) of Farookh khan S/o Late Jahur Khan R/o village Siloda Bujurg, Post. Sisoda Bujurg, Post Solsinda, The. Sanwer & Dist Indore (MP.) is given as per Ann. 1. The same was withdrawn by me from my NJGB bank Ale No. 010710100004382 on 10.07.20018 & 14.07.2008 and given back to him by me to buy agricultural land at village Siya Teh. & Dist Dewas (MP.) Copy of my NJGB bank A/c No. 010710100004382 of Siya Brach is given as per Ann.2 Also with this for evidence and explaining the sequence of events on the part, copy of affidavit by me is given as per Ann.3. Further for evidence and explaining the sequence of events on the part of Farookh Khan S/o Late Jahur khan, copy of affidavit by him given as per Ann.4 In these sequences of events and evidences copy of purchase deed of agricultural land by Farookh khan S/o Late Jahur khan in the name of his wife Dukhtar Bee W/o Farookh Khan on 21.07.2008 is given as per Ann.5 Farookh khan S/o Late Jahur Khan has purchased agriculture land at Village Siya, The. & Dist. Dewas (MP.) on 21.07.2008 in the in the name of his wife Dukhtar Bee W/o Farookh Khan out of the amount given to him by me which were kept with me for emergency and security purposes and withdraw

by me on 10.07.2008 & 14.07.2008 from my NJGB bank Alc No. 010710100004382 of Siya Branch and given back to him with his intention to but agriculture land at village Siya, Teh. Dist Dewas (MP.)

8. Further it is to inform that along with my family members named Nawab Khan, Jakir khan and Bismillah Bai I have sold agricultural land of vill. Durgapura Teh. & Dist. Dewas MP. for Rs. 5,82,400/- on 25.07.2007 and have received Rs. 1,45,600/- for 1/4th share of me and Rs. 1,45,600/- for 1/4th share of Bismillah Bai (my mother). Out of these amounts and my relevant F'Y. 2008-09 income, Past savings, old capital resources and withdrawals from bank accounts etc. also I have deposited amount in my SB NJGB bank A/c No. 010710100004382 of Siya Branch during F.Y. 2008-09. From all the above explanations/ evidences/details it is now clear about the sources of deposits in my referred bank account.

9. That the same assessment order passed by the AO after verification of details and evidences given by me cannot be held as erroneous and prejudicial to the interest of the revenue and my humble request to kindly drop the wrong and invalid proceedings started u/s 263 of the Act."

6. However, Ld. PCIT was not satisfied with the submission of assessee. Ld. PCIT further observed that since the section 263 has been amended and Explanation 2, as reproduced below, had been introduced therein, the assessment-order is deemed to be erroneous and prejudicial to the interest of revenue if the same had been passed without inquiries or verification which should have been made:

"Explanation 2 – "For the purpose of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of 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) ….

(d) …"

Ld. PCIT was of the opinion that in the present case, Ld. AO has not carried out the inquiry/verification which he should have done and hence the assessment-order is to be deemed as erroneous in so far as it is prejudicial to the interest of revenue. Finally, Ld. PCIT passed revision-order whereby

the assessment-order was set aside to the file of Ld. AO with a direction to re-examine the issue of cash-deposit.

7. Aggrieved by such revision-order, the assessee has filed this appeal.

8. Before us, Ld. AR reiterated the same submissions as made before lower authorities. The crux of submission is that the deposits of Rs. 22,04,000/- were made from three sources, viz. (i) Rs. 17,00,000/- received from Shri Farookh Khan (nephew); (ii) Rs. 2,91,200/- received on sale of agricultural land; and (iii) remaining out of income of current-year, past savings, re-deposit of old withdrawals from bank account. Referring to the revision-order, Ld. AR pointed out that the Ld. PCIT is concerned with the receipt of Rs. 17,00,000/- claimed by assessee from Shri Farookh Khan. Ld. AR drew our attention to a Paper-Book containing 29 pages filed by him and submitted hat during the course of assessment-proceeding, Ld. AO has vehemently required the assessee to file details of the sources of deposit in Bank A/c and the assessee has filed enough details / documents to Ld. AO, which is very much evident from the following documents placed in the Paper-Book:

(i) Page No. 10 to 11 – Copy of the letter dated 04.10.2016 which contains a detailed submission about the sources of cash-deposit made in the Bank A/c, viz. Rs. 17,00,000/- received from Farookh Khan (nephew); Rs. 2,91,200/- received on sale of agricultural land; and remaining out of income of current-year, past savings, old withdrawals from bank account.

(ii) Page No. 12 – Copy of letter dated filed to Ld. AO in response to the letter F.No./ITO-1/2016-17/4921 dated 01/11/2016, wherein the assessee has again explained the sources of cash-deposit in Bank A/c.

(iii) Page No. 13 to 14 - Copy of affidavit dated 28.09.2016 duly sworn by assessee, notarised and stamp duty paid, to explain the sources of cash-deposits in Bank A/c.

(iv) Page No. 15 to 16 - Copy of affidavit dated 23.09.2016, duly sworn by Farook Khan, notarised and stamp duty paid, filed to Ld. AO during assessment-proceeding, containing an averment by Shri Farook Khan that he had withdrawn Rs. 17,00,000/- on 09.07.2008 from his Bank A/c and given to the assessee.

(v) Page No. 17 to 21 - Copy of bank pass book of assessee containing the entries of cash deposit of Rs. 17,00,000/- on 09.07.2008.

(vi) Page No. 22 – Copy of Bank Pass-Book of Shri Farook Khan showing a cash withdrawal on 09.07.2008.

8.1 Then Ld. AR argued that all these details / documents as filed by assessee were duly examined and considered by Ld. AO and having done so, the Ld. AO completed assessment of assessee, which is very much clear from a bare reading of Para No. 4 of the assessment-order itself:

> *"4. The assessee declared total income of Rs. 25,000 (+) Agri. Income Rs. 2,50,000/- the assessee show income from interest and Agri. Income.* ***During the year assesse submitted copy of his bank account maintained with State Bank of India, which is placed on records also produced proof and source of cash deposited and withdrawal from bank account. After taking into consideration, the details submitted by the assessee and the explanation offered by him assessment completed as under*** *.."*

8.2 Ld. AR also referred to Para No. 3.4 of the revision-order passed by Ld. PCIT, reproduced below:

> *"In view of the above, contentions raised during the course of proceedings u/s 263 are not acceptable. Thus, the AO is required to examine this issue in detail in order to ascertain true state of the facts. Therefore, the assessment-order is erroneous and prejudicial to the interest of revenue."*

Analysing this, Ld. AR contested that the Ld. PCIT is himself accepting that the assessee had filed all details / documents during the course of assessment. Therefore, this is not a case of "no enquiry" done by Ld. AO. According to Ld. AR, Ld. PCIT is trying to treat the assessment-order as erroneous-cum-prejudicial on the set of his own thinking, or, in other words

to substitute his own thinking in place of Ld. AO's conclusion. Ld. AR submitted that such an approach is not permissible u/s 263, therefore the order passed by Ld. PCIT is not in accordance with the law of section 263 and liable to be quashed.

9. We have considered submission of Ld. AR and also perused the material held on record, particularly the orders of lower authorities and the papers placed in the Paper-Book to which Ld. AR has invited our attention. From the records produced before us, it is very much evident that the Assessing Officer had made detailed inquiries regarding the sources of cash-deposits in bank account and, thereafter, having considered the replies submitted by assessee, accepted the sources of cash-deposits. This aspect is very much clear from the assessment-order itself where the Ld. AO has stated "***During the year assesse submitted copy of his bank account maintained with State Bank of India, which is placed on records also produced proof and source of cash deposited and withdrawal from bank account. After taking into consideration, the details submitted by the assessee and the explanation offered by him assessment completed as under ...".*** After such a careful and categorical noting by Ld. AO in assessment-order, the matters ends and the revenue could hardly rebut the factum of inquiries or verification having been done by Ld. AO. Thus, we can safely conclude that the Ld. AO has applied his mind to the issue of cash-deposits in bank account and it was only after having been satisfied with the correctness of the claim of assessee that the AO completed assessment. Therefore, the contention of Ld. PCIT that no inquiry / verification was done by Ld. AO is factually incorrect. We believe that it is not a case where no enquiry had been made by Ld. AO. Merely because Ld. PCIT felt that further inquiry should have been made in the matter, does not make the assessment-order as erroneous-cum-prejudicial to the interest of revenue.

10. Regarding introduction of Explanation 2 to section 263, as claimed by Ld. PCIT in his order, we only need to submit that the present case involves

AY 2009-10 and the said amendment introduced through Finance Act, 2015 w.e.f. 01.06.2015 is interpreted to be applicable prospectively and not to AY 2009-10. Hence in the first blush, Explanation 2 is not applicable to present case. Even otherwise, it is also held in several decisions that the said Explanation does not give unfettered power to the PCIT to assume revisional-jurisdiction to revise every order of the Assessing Officer to re-examine the issues already examined during assessment-proceeding. It is judicially interpreted in several decisions that the intention of legislature behind introduction of Explanation 2 could not have been to enable the PCIT to find fault with each and every assessment-order in unlimited terms, since such an interpretation would lead to unending litigation and there would not be any point of finality of assessment-proceeding done by Ld. AO.

11. At this stage, we refer a recent decision of **ITAT, Rajkot** in **M/s Pramukh Realty, Junagadh, ITA No. 93/Rjt/2022 dated 30.06.2022,** where the Hon'ble Bench has extensively dealt a similar case where (i) the assessee had filed details / documents to Assessing Officer during assessment-proceeding; (ii) the AO had considered the same and passed assessment-order thereafter; (iii) Ld. PCIT has made revision invoking Explanation 2 to section 263. After a thorough analysis, the Hon'ble Bench has held that in such circumstances, revision u/s 263 cannot be done. The relevant paragraphs of the decision are reproduced below:

> *"5. The learned AR before us filed a paper book running from pages 1 to 157 and contended that all the necessary details about the advances received from the parties, sales shown in the financial statement and details of the service tax returns were filed during the assessment proceedings. The learned AR further 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 pages 151 to 153 of the paper book where the copy of the notice under section 142(1) of the Act was placed. Likewise, the learned AR also drew our attention on pages 154 to 157 of the paper book where the reply of the assessee in response to the notice issued under section 142(1) of the Act 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 on account non-verification.*

6. On the contrary, the learned DR before us contended that reconciliation of the amount shown in the service tax return and financial statement was not available before the AO during the assessment proceedings. Accordingly the learned DR vehemently supported the order of the learned PCIT.

7. 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 AO without making inquiries or verification with respect to the difference in the figures as discussed above and hence the assessment is erroneous insofar prejudicial to the interest of the Revenue. Thus, requiring revision by Pr. CIT u/s 263 of the Act.

7.1 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.

7.2 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. ———*
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> *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 inquires rather than accepting the explanation. Therefore, it cannot be said that it is a case of 'lack of inquiry'."

7.3 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.

7.4 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 enquries 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."

7.5 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".

7.6 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"

7.7 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.

7.8 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, framed the assessment under section 143(3) of the Act without making the addition of the amount as note above. This fact can be verified from the notice under section 142(1) of the Act by the AO and submission in reply of the assessee against such notice.

XXX

7.9 From the above it is revealed that 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 cash deposited during the demonization period. It is not the case of the Pr. CIT 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 materials placed on record accepted the genuineness of the claim of the assessee.

7.10 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 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."

12. We are in respectful agreement with the aforesaid decision of Hon'ble ITAT which is on the similar set of facts and law as in the present-appeal. Therefore, we too hold that the revision-order passed in present case by Ld. PCIT is not a valid order in terms of section 263. We, thus, quash the revision-order and restore the original assessment-order passed by Ld. AO.

13. In the result, this appeal of assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 20/10 / 2022.

Sd/-	Sd/-
(MADHUMITA ROY)	(B.M. BIYANI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Indore
दिनांक /Dated : 20.10.2022
Patel/Sr. PS

Copies to: *(1)* *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	