

**आयकर अपीलिय अधिकरण, कोलकाता पीठ 'ए', कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA**  
**श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र) एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष**  
[Before Shri Rajpal Yadav, Vice-President (KZ) & Shri Rajesh Kumar, Accountant Member]

**I.T.A. No. 192/Kol/2022**  
**Assessment Year: 2016-17**

Swaran Financial Pvt. Ltd. (PAN: AA ECS 4024 R)	Vs.	PCIT-2, Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	03.11.2022
Date of Pronouncement / आदेश उद्घोषणा की तिथि	14.12.2022
For the Appellant / निर्धारिती की ओर से	Shri N. S. Saini, Advocate
For the Respondent / राजस्व की ओर से	Shri Amol Kamat, CITDR

**ORDER/ आदेश**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the Ld. Principal Commissioner of Income Tax-2, Kolkata [hereinafter referred to as 'Ld. PCIT'] passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) dated 31.03.2021 for the assessment year 2016-17.

2. Though the Registry has pointed out that the appeal is barred by limitation, however, in view of the decision of the Hon'ble Supreme Court in Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020, the period of filing appeal

during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. In view of this, the appeal is treated as filed within the limitation period.

3. The only issue raised by the assessee in the various grounds of appeal is against the invalid exercise of jurisdiction u/s 263 of the Act by Ld. PCIT thereby wrongly setting aside the assessment framed u/s 143(3) vide order dated 28.12.2018.

4. Facts in brief are that the assessee filed the return of income u/s 139 of the Act declaring a loss of Rs. 11,37,14,654/-. The assessment was framed u/s 143(3) vide order dated 28.12.2018 assessing the total loss at Rs. 11,27,41,073/-. The Ld. PCIT upon perusal of the assessment record observed that the assessee has raised unsecured loans amounting to Rs. 42.00 crores during the instant financial year and has also paid interest amounting to Rs. 7,92,64,627/- thereon. The Ld. PCIT further observed that the AO has only obtained loan confirmations from the parties by issuing notices u/s 133(6) of the Act and no further enquiry/verification was carried out u/s 131 of the Act in order to verify the genuineness of the loans. Accordingly, the Ld. PCIT came to the conclusion that the AO has made incomplete enquiry and only accepted the loan transactions on the basis of loan confirmations which makes the assessment order as erroneous as well as prejudicial to the interest of the revenue. Accordingly, a show cause notice u/s 263 of the Act dated 22.03.2021 was issued to the assessee and also the subsequent letter dated 25.02.2021 calling upon the assessee to show cause as to why the assessment framed u/s 143(3) of the Act should not be revised/modified or set aside which according to the Ld. PCIT, was not replied by the assessee. Thereafter the Ld. PCIT revised the order framed u/s 143(3) dated 28.12.2018 by observing and holding as under:

*4. I have considered the facts of the case and details available on record. The assessee has failed to completely disclose its true and correct income by non-furnishing of details as required under provisions of I.T. Act, 1961. The A.O. has passed the assessment order without making enquiries or verification which should have been made in the instant case. Clause (a) of Explanation - 2 to Section 263(1) is attracted in this case. Accordingly, it is held that the assessment order is erroneous insofar as it is prejudicial to the interest of the revenue.*

5. *Hon'ble Delhi High Court in the case of GEE VEE Enterprise vs. Addl.CIT reported in 99 ITR 375, 386 (Del) has held that the CIT may consider the order of the Assessing Officer to be erroneous not only if it contain some apparent error of reasoning or of law or of fact on the face of it but also because the Assessing Officer has failed to make enquiries which are called for in the circumstances of the case and it is. an order which simply accepted what the assessee has stated in his return of income on the issue. It is not necessary for the CIT to make further enquiries before cancelling the assessment order. The Commissioner can regard the order erroneous on the ground that the Assessing Officer should have made further enquiries.*

6. *Hon'ble Karnataka High Court in the case of Thalibai F. Jain vs. ITO 101 ITR 1, 6 (Karn) has held that where no enquiries made by the Assessing Officer on the relevant issue, assessment must be held to be prejudicial to the interests of the revenue and what is prejudicial to the interest of the revenue must be held to be erroneous though the converse may not always be true.*

7. *Hon'ble Supreme Court in the case of Malabar Industrial Co. Pvt. Ltd vs. CIT reported in (2000) 243 ITR 83, 87-88(SC) affirming the Hon'ble Kerala High Court decision (198 ITR 611) has held that the phrase "Prejudicial to the Interests of the Revenue" is of wide import and is not confined to only loss of taxes. If the A.O. has accepted the claim of the assessee without any enquiries then such assessment order passed by the A.O. was held to be erroneous.*

8. *In this regard it is mentioned that mere non enquiry would also render a particular order passed by lower authority as erroneous and prejudicial to the interests of Revenue. This position has been clearly confirmed by Hon'ble Supreme Court in the case of Rampyari Devi Saraogi w. CIT [1968] 67 ITR 84 & Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC). The reasoning for this proposition has been explained by Hon'ble Delhi High Court in the case of Gee Vee Enterprise v. Addl. CIT [1975] 99 ITR 375 in the following para :-*

*"It is not necessary for the Commissioner to make further inquiries before cancelling the assessment order of the Income-tax Officer. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the case the Income-tax Officer should have made further inquiries before accepting the statements made by the assessee in his return. The reason is obvious. The position and function of the Income-tax Officer is very different from that of civil court. The statements made in the pleading proved by the minimum amount of evidence may be adopted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which come before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an enquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct."*

9. *Further to this it is noticed that there is no appeal right available to the Revenue from the order of assessment passed by Assessing Officer and i.e. why revisionary powers have been*

*given to the Commissioner and such-power were held to be of; wide amplitude by the Hon'ble Supreme Court in the case of CIT v. Shree Manjunatheswara Packing Products & Camphor Works [1998] 231 ITR 53/96 Taxman 1.' Therefore, normally when Assessing Officer has not made any enquiry on a particular issue, then such order in view of the above detailed discussion has to be construed as erroneous and prejudicial to the interest of Revenue and therefore, the impugned assessment order is erroneous and prejudicial to the interest of Revenue as Assessing Officer has failed to make any enquiry.*

10. *Having regard to the facts and circumstances of the case and in the light of the aforesaid decisions of Hon'ble Supreme Court and Hon'ble High Court, and in accordance with the amendment made in Section-263 of the Act with effect from 01.06.2015, I hold that the impugned assessment order dated 28.12.2018 passed by the A.O. is erroneous insofar as it is prejudicial to the interests of the revenue. I further hold, after giving the assessee an opportunity of being heard, that the impugned assessment order dated 28.12.2018 is liable to be set-aside. Therefore, I set-aside the said assessment order directing the A.O. to frame the assessment afresh after considering the aforesaid observations, Hon'ble Supreme Court and Hon'ble High Court decisions and as per law.*

11. *In the result, the assessment order u/s 143(3) dated 28.12.2018 for A.Y. 2016-17 is set-aside to the file of the Assessing Officer with a direction to pass a fresh assessment order after considering the issues discussed in Para 2 above, the aforesaid observations, as per law and after giving an opportunity of being heard to the assessee."*

5. The Ld. A.R. vehemently submitted that the assumption of jurisdiction u/s 263 of the Act by Ld. PCIT is invalid and is against the provisions of the Act and also the various judicial precedents. The Ld. A.R. submitted that the case of the assessee was selected for scrutiny under CASS and assessment was completed u/s 143(3) vide order dated 28.12.2018 after making an addition of Rs. 9,71,589/- u/s 14A of the Act. The Ld. A.R. submitted that during the course of assessment proceedings, the AO examined the issue of raising a fresh unsecured loan amounting to Rs. 42.00 crores by issuing notices u/s 142(1) dated 14.09.2018 and 29.10.2018 calling upon the assessee to furnish the details of loans, confirmation, and bank statements etc. The Ld. A.R. contended that the assessee has duly submitted a detailed reply dated 26.11.2018 furnishing therewith all the documents along with party-wise details of unsecured loans, copies of confirmations, PANs, balance sheets and bank statements etc. The Ld. A.R. contended that AO after having conducted detailed enquiry/investigation/verification by issuing notices u/s 133(6) of the Act requiring the lenders to furnish the evidences to prove these transactions which were duly responded by the lenders and after accepting the contentions of the assessee with regard to these loans, framed the assessment u/s 143(3) of the Act. The Ld. A.R. referred to

documents filed before the AO during the course of assessment proceeding which are also filed in the paper book from page 14 to 76. The Ld. A.R. ,while taking us through the explanation(2) to Section 263 of the Act, submitted that the conditions as envisaged in (a) &(b) mandate that if the order is passed without proper verification or enquiries then the revisionary jurisdiction of the Ld. PCIT can be invoked as the same renders the assessment framed u/s 143(3) as erroneous insofar as prejudicial to the interest to the revenue but since the AO has framed the assessment after making detailed enquiry and proper examination of evidences filed by the assessee as well as elicited from the lenders by issuing notice u/s 133(6) of the Act , the resort to revisionary jurisdiction u/s 263 of the Act is not invalid as the same is against the settled principle of law. The Ld. A.R submitted that before assumption of jurisdiction u/s 263 of the Act , the Ld. PCIT has to satisfy the twin conditions as laid down in Section 263(1) of the Act which provide that the order of AO which is sought to be revised has to be erroneous as well as prejudicial to the interest of the revenue. The Ld. A.R. submitted that if one of the two conditions is absent i.e after the order of AO is erroneous but not prejudicial to the interest of the revenue or vice versa , the revisionary jurisdiction u/s 263 of the Act cannot be invoked. The Ld. A.R. also submitted that where the assessee has produced all the material/details in response to notice issue u/s 142(1) of the Act and AO after considering the material and explanation of the assessee had come to the definite conclusion than the revisionary jurisdiction u/s 263 of the Act cannot be invoked merely because the AO has taken a particular view with which the Ld. PCIT did not agree. In defense of its arguments, the Ld. A.R relied on the decision of Hon'ble Gujarat High Court in the case of JCIT vs. Arvind Jewellers in [2003] 259 ITR 502 (Guj). The Ld. A.R also relied on the decision of Calcutta High Court in the case of PCIT vs. Kesoram Industries Ltd. in [2019] 109 taxman 390 (Cal) wherein the Hon'ble High Court has held that where the AO has made an enquiry with the respective to the issues raised in the revisionary proceedings then the exercise of jurisdiction u/s 263 of the Act cannot be invoked. The Ld. A.R. argued that the Ld. PCIT has not carried out any verification/enquiry as to how the assessment order is erroneous and prejudicial to the interest of the revenue and even

not taken into account the submissions of the assessee. The Id AR contended that the Id PCIT ,without giving any reason, came to the conclusion that the AO has not made any enquiry/verification which is wrong and against the spirit of the law. The action of the Ld. PCIT is whimsical and arbitrary which is contrary to the facts on records and against the provisions of the Act. In defense of its arguments the Ld. A.R. relied on the following decisions:

- Spectra Shares & Scrips P Ltd Vs CIT [2013] 36 taxmann.com 348 (Andhra Pradesh HC)
- CIT Vs Amit Corpn ([2012] 21 taxmann.com 64 (Gujarat HC).)
- CIT Vs Jain Construction Co ([2013] 34 taxmann.com 84)(Raj. HC)
- Malabar Industrial Co. Ltd vs CIT [2000] 109 Taxman 66 (SC)
- CIT Vs J.P. Goel (HUF) [2000] 113 Taxman 229 (Calcutta HC)
- CIT Vs Reconstruction Co [2008] 175 Taxman 165 (Gujarat HC)
- CIT Vs Sunbeam Auto Ltd [2010] 189 Taxman 436 (Delhi HC)
- CIT Vs Rajiv Agnihotri [2011] 13 taxmann.com 18 (Punjab HC)
- CIT Vs Anil Kumar Sharma [2010] 194 Taxman 504 (Delhi HC)
- CIT Vs Hindustan Marketing & Advertising Co. Ltd [2011] 196 Taxman 368 (Delhi HC)
- CIT Vs International Travel House Ltd [2010] 194 Taxman 324 (Delhi HC)

The Ld. A.R. submitted that in absence of any findings in the revisionary order passed u/s 263 of the Act to the effect that the assessment order is erroneous and prejudicial to the interest of the revenue, the exercise of jurisdiction u/s 263 is invalid and thus not sustainable. The Id AR argued that where in the Ld. PCIT's opinion the AO has carried out inadequate enquiry, then the Ld. PCIT has to conduct verification/enquiry in order to find out as to how the assessment order passed by the AO is erroneous and prejudicial to the interest of the revenue. The Ld. A.R relied on the decision of Hon'ble Delhi High Court in the case of ITO vs. D.G. Housing Projects Ltd. in [2012] 343 ITR 329 (Del) in defense of his arguments. Finally the Ld. A.R. submitted that in

view of the above facts particularly the investigation/enquiry being carried out by the AO during the course of assessment proceedings by calling information from the assessee and also from the lenders u/s 133(6) of the Act and taking a view on the issue with which the Ld. PCIT is not agreeing with, would not render the assessment as erroneous insofar as prejudicial to the interest of the revenue and therefore the appeal of the assessee may kindly be allowed. The Ld. A.R. also pointed out that non-application of mind of the Ld. PCIT to the facts on record by holding that the assessee has not paid Rs. 7,92,64,627/- as interest on loans of Rs. 42.00 Cr but as a matter of fact Rs. 4,84,23,454/- was paid on the said loans during the year from various parties. The Id AR also submitted that in the present case the AO has examined the issue and accepted the same without discussing the same in the assessment order. The AR argued that in that scenario, it is not open to the PCIT to invoke the jurisdiction u/s 263 of the Act unless the order is contrary to the facts on records or is not in accordance with law as has been held in the case CIT vs. Gabriel India Ltd. (1993) 203 ITR 108(Bom). The Id AR therefore prayed before the bench that for the foregoing reasons the revisionary order may kindly be quashed.

6. Per Contra, the Id DR vehemently opposed the arguments of the Id AR by submitting that the Id AO has not properly examined the issue of unsecured loans nonetheless the information were called for from the lenders by issuing notices u/s 133(6) of the Act but no further investigations were made by issuing summons u/s 131 of the Act and thus strongly defended the revisionary order passed u/s 263 of the Act.

7. We have heard the rival submissions and perused the material on record including the impugned order and various case laws relied by the parties. We observe that the assessee has raised unsecured loans amounting to Rs. 42 crores during the year from different parties and has paid interest on the said loans along with opening balances coming over from earlier years after duly deducted and depositing tax at source. We have also perused and examined the contents of the notices issued u/s 142(1) and the various queries raised by the AO dated 14.09.2018 and 29.08.2018 and find that in the annexure-1 to notice dated 14.09.2016, the details in respect of

loans creditors such as names, addresses, confirmations, bank statements etc. were called for which were submitted/furnished by the assessee before the AO vide written submissions dated 26.11.2018 vide para No. 13. We note that the assessee furnished the full details of loans along with confirmations in Annexure-13 and also filed ITRs, PANs, confirmations, audited balance sheets, and copies of bank accounts of the lenders justifying the genuineness of the transactions and proving the identity and creditworthiness of the loan creditors. We note that the assessee is a non-banking finance company engaged in the business of trading and investment in shares and securities and also providing inter-corporate loan facility and brokering the inter-corporating loans. We also note that the AO in order to independently verify the loan transactions has issued notices u/s 133(6) of the Act to the loan creditors and sought details/evidences from them which were duly filed by the loan creditors before the AO and the AO only after taking into account all the evidences and after examining and enquiring the matter chose to accept the explanation of the assessee on these loans and did not make any addition. Now the main reason assigned by the Ld. PCIT for exercise of jurisdiction u/s 263 of the Act is that the AO has only accepted the genuineness of transactions on the basis of details/confirmations received in response to notices u/s 133(6) of the Act without issuing any summons to these loan creditors u/s 131 of the Act. In our view the exercise of jurisdiction by the Ld. PCIT for the reason that the AO has carried out the inadequate enquiry and the AO has taken a possible view on the evidences filed by the assessee and also ones obtained from loan creditors u/s 133(6) with which the Ld. PCIT is not agreeing with. In our opinion, where the Ld. PCIT feels that the AO has made inadequate enquiries then the PCIT is duty bound to carry out the necessary enquiry/investigation and pinpointing on the basis of such investigation/enquiry as to how the order framed by the AO is erroneous as well as prejudicial to the interest of the revenue but merely cancelling the assessment on the basis of observations that AO has carried out in adequate enquiry is not permissible under the Act. The case of the assessee finds support from the decision of Hon'ble Delhi High Court in the case of ITO vs. D.G. Housing Projects Ltd. in [2012] 343 ITR 329 (Del) wherein it has held as under:

*Section 263 has been enacted to empower the Commissioner to exercise power of revision and revise any order passed by the Assessing Officer, if two cumulative conditions are satisfied. Firstly, the order sought to be revised should be erroneous and secondly, it should be prejudicial to the interest of the revenue. The expression 'prejudicial to the interest of the revenue' is of wide import and is not confined to merely loss of tax. The term 'erroneous' means a wrong/incorrect decision deviating from law. This expression postulates an error which makes an order unsustainable in law. [Para 10]*

*The Assessing Officer is both an investigator and an adjudicator. If the Assessing Officer as an adjudicator decides a question or aspect and makes a wrong assessment which is unsustainable in law, it can be corrected by the Commissioner in exercise of revisionary power. As an investigator, it is incumbent upon the Assessing Officer to investigate the facts required to be examined and verified to compute the taxable income. If the Assessing Officer fails to conduct the said investigation, he commits an error and the word 'erroneous' includes failure to make the enquiry. In such cases, the order becomes erroneous because enquiry or verification has not been made and not because a wrong order has been passed on merits. [Para 11]*

*In cases of wrong opinion or finding on merits, the Commissioner has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under section 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order passed is not sustainable in law and the said finding must be recorded. The Commissioner cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, again the Commissioner must give and record a finding that the order/inquiry made is erroneous. This can happen if an enquiry and verification is conducted by the Commissioner and he is able to establish and show the error or mistake made by the Assessing Officer, making the order unsustainable in Law. In some cases possibly though rarely, the Commissioner can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the Assessing Officer had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the Assessing Officer to conduct further enquiries without a finding that the order is erroneous. Finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction under section 263. In such matters, to remand the matter/issue to the Assessing Officer would imply and mean the Commissioner has not examined and decided whether or not the order is erroneous but has directed the Assessing Officer to decide the aspect/question. [Para 16]*

*This distinction must be kept in mind by the Commissioner while exercising jurisdiction under section 263 and in the absence of the finding that the order is erroneous and prejudicial to the interest of revenue, exercise of jurisdiction under section 263 is not sustainable. In most cases of alleged 'inadequate investigation', it will be difficult to hold that the order of the Assessing Officer, who had conducted enquiries and had acted as an investigator, is erroneous, without Commissioner conducting verification/inquiry. The order of the Assessing Officer may be or may not be wrong. Commissioner cannot direct reconsideration on this ground but only when the order is erroneous. An order of remit cannot be passed by the Commissioner to ask the Assessing Officer to decide whether the order was erroneous. This is not permissible. An order is not erroneous, unless the Commissioner hold and records reasons why it is erroneous. An order will not become erroneous because on remit, the Assessing Officer may decide that the order is erroneous. Therefore, the Commissioner must after recording reasons hold that the order is erroneous. The jurisdictional precondition stipulated is that the Commissioner must come to the conclusion that the order is erroneous and is unsustainable*

*in law. It may be noticed that the material which the Commissioner can rely includes not only the record as it stands at the time when the order in question was passed by the Assessing Officer but also the record. Nothing bars/prohibits the Commissioner for collecting and relying upon new/additional material/evidence to show and state that the order of the Assessing Officer is erroneous. [Para 17]*

*In the instant case, the findings recorded by the Tribunal are correct as the Commissioner has not gone into and has not given any reason for observing that the order passed by the Assessing Officer was erroneous. The finding recorded by the Commissioner is that 'order passed by Assessing Officer may be erroneous'. The Commissioner had doubts about the valuation and sale consideration received but the Commissioner should have examined the said aspect himself and given a finding that the order passed by the Assessing Officer was erroneous. He came to the conclusion and finding that the Assessing Officer had examined the said aspect and accepted the assessee computation figures but he had reservations. The Commissioner in the order has recorded that the consideration receivable was examined by the Assessing Officer but was not properly examined and, therefore, the assessment order is 'erroneous'. The said finding will be correct, if the Commissioner had examined and verified the said transaction himself and given a finding on merits. As held above, a distinction must be drawn in the cases where the Assessing Officer does not conduct an enquiry; as lack of enquiry by itself renders the order being erroneous and prejudicial to the interest of the revenue and cases where the Assessing Officer conducts enquiry but finding recorded is erroneous and which is also prejudicial to the interest of revenue. In latter cases, the Commissioner has to examine the order of the Assessing Officer on merits or the decision taken by the Assessing Officer on merits and then hold and form an opinion on merits that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue. In the second set of cases, the Commissioner cannot direct the Assessing Officer to conduct further enquiry to verify and find out whether the order passed is erroneous or not. [Para 19]*

8. Besides before exercising jurisdiction u/s 263 of the Act the Ld. PCIT has to satisfy the twin conditions as stipulated in Section 263 of the Act and even if one of the two conditions is satisfied even then the jurisdiction u/s 263 of the Act is not available. In the present case the Ld. PCIT has failed to demonstrate as to how the order is erroneous and prejudicial to the interest of the revenue more particularly when the issue proposed in the order u/s 263 of the Act has been examined by the AO on the basis of evidences furnished by the assessee as well as the evidences gathered from the loan creditors u/s 133(6) of the Act. The case of the assessee finds support from the decision of Hon'ble Supreme Court in the case of Malabar Industrial Company Ltd. vs. CIT reported in [2000] 243 ITR 83 (SC) wherein the Apex court has held that satisfaction of twin conditions as provided in section 263 of the Act is pre-requisite for assumption of jurisdiction u/s 263 of the Act. The Hon'ble Court has held that even if one of the two conditions is fulfilled the jurisdiction u/s 263 of the Act is

not available. In the case of Spectra Shares & Scrips Pvt. Ltd. vs. CIT (supra) the Hon'ble Andhra Pradesh has held that the AO is not required to give detailed reasons in the assessment order and once it is clear that there was an application of mind by the AO, the Commissioner cannot invoke his powers u/s 263 of the Act, merely because he entertains a different opinion in the matter. Similarly where the AO taken the possible view after examining the issues in the assessment proceedings, the recourse can not be had to the provisions of section 263 of the Act because the Id PCIT harbor another view. In the case of CIT vs. Max India Ltd. (supra) the Hon'ble Supreme Court has held that where two views are possible and the AO has taken one of the plausible views, the assessment so framed by the AO cannot be termed as erroneous insofar as prejudicial to the interest of the revenue. The Hon'ble Apex Court has considered the earlier decision passed by the Co-ordinate Bench in the case of Malabar Industrials Co. (supra). In the case of the assessee since the AO has taken one of the two possible view on all the issues after examining them during assessment proceedings to which the PCIT does not agree and therefore the revisionary proceedings cannot be justified and sustained. Likewise the the revisionary jurisdiction cannot be invoked where no elaborate discussion is made in the assessment order provided the assessment order is contrary to the facts or not in accordance with law. In the case of CIT vs. Gabriel India Ltd. (supra) the Hon'ble Bombay High Court has held that in order to invoke the jurisdiction u/s 263(1) of the Act there must be material before the Commissioner to consider that the order passed by the ITO was erroneous insofar as prejudicial to the interest of the revenue. The Hon'ble court has held that an erroneous order must be an order which is not in accordance with the law or which has been passed by the AO in undue haste without making any enquiry. The Hon'ble Court has further held that the order is said to be prejudicial to the interest of revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realized or cannot be realized. The Hon'ble Court held that such a decision of Income Tax Officer cannot be held to be erroneous simply because he has not made elaborate discussion in that regard in the assessment order.

9. Considering the facts of the case in the light of the various judicial precedents laid down by the Apex Court and various other judicial forms on the various propositions as discussed hereinabove , we hold that the revisionary jurisdiction has not been validly exercised by the Id PCIT. Accordingly we quash the revisionary proceedings initiated u/s 263 of the Act and the consequent order passed u/s 263 of the Act. The appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 14<sup>th</sup> December, 2022

Sd/-

(Rajpal Yadav /राजपाल यादव)  
Vice-President /उपाध्यक्ष

Sd/-

(Rajesh Kumar / राजेश कुमार)  
Accountant Member / लेखा सदस्य

Dated: 14<sup>th</sup> December, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Swaran Financial Pvt. Ltd., 24/26, Hemant Basu Sarani, 5<sup>th</sup> Floor, Room No. 507, Kolkata-700001.
2. Respondent – PCIT-2 Kolkata
3. PCIT- , Kolkata
4. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata