

**आयकरअपीलीयअधिकरण,सुरतन्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

**आ.अ.सं./ITA No.104 & 106/SRT/2022** (AY 2017-18)

(Hearing in Physical Court)

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| K.N. Diamond,<br>5/4299, Ground Floor,<br>Soniwad, Bilimora, Dist.<br>Navsari, Gujarat-396321<br><b>PAN No. AADFK 3167 H</b><br><br>Labdhi Jewellerd Pvt. Ltd.<br>Soniwad, Bilimora, Dist.<br>Navsari, Gujarat-396321<br><b>PAN No. AABCL 1645 A</b> | Vs | Principal Commissioner of<br>Income-tax, Valsad, Room<br>No. 301, 3 <sup>rd</sup> Floor,<br>Income-tax Office, Palak<br>Arcade, Pali, Shantinagar,<br>Tithal Road, Valsad,<br>Gujarat-396001 |
| <b>अपीलार्थी/</b> Appellant  |    | <b>प्रत्यर्थी /</b> Respondent   |

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| निर्धारितकीओरसे /Assessee by            | Shri Jayraj M Naik, C.A &<br>Shri Darshit J Naik, C.A |
| राजस्वकीओरसे /Revenue by                | Shri Ashok B.Koli, CIT-DR                             |
| सुनवाई की तारीख/Date of hearing         | 10.11.2022  |
| उद्घोषणा की तारीख/Date of pronouncement | 22.12.2022  |

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. These two appeals by different assesseees are directed against the separate orders of Id. Principal Commissioner of Income-tax, Valsad [for short to as “Ld.PCIT”] passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’ for the sake of brevity) even dated 30.03.2022 for assessment year i.e. 2017-18, in revising assessment orders passed by Assessing Officer under

section 143(3) of the Act on 31.12.2019. In both the appeals, the assessee has raised certain common grounds of appeal, facts in both the appeals are almost similar except variance of amount. Therefore, with the consent of both the parties, both the appeals were clubbed heard together and are decided by consolidated order to avoid the conflicting decisions. For appreciation of facts, facts in **ITA No.104/SRT/2022** in the case of **K.N.Diamond**, is treated as “lead” case The assessee has raised the following grounds of appeals:-

*“1. The learned Pr.CIT erred in passing an order u/s 263, when the jurisdictional conditions were not satisfied.*

*2. The learned Pr.CIT erred in assuming jurisdiction u/s 263 even though a detailed inquiry was carried out by the Assessing Officer on the issue pertaining to the cash deposits made by the Appellant firm during the year under consideration.*

*3. The learned Pr.CIT erred in assuming jurisdiction u/s 263 merely on the basis of a difference of opinion with the Assessing Officer.*

*4. On the facts and in the circumstances of the case as well as law on the subject, the learned Pr.CIT has erred in invoking his powers / authority under section 263 of the Income Tax Act, 1961, and the order passed by him u/s 263 is without jurisdiction.*

*5. On the facts and in the circumstances of the case as well as law on the subject, the learned Pr.CIT has failed to appreciate that the assessment order passed by the ACIT, Navsari Circle, Navsari*

*(hereinafter referred to as the AO) was neither “erroneous” nor “prejudicial to the interest of the revenue” and thus the very invocation of power under section 263 is wholly illegal and beyond jurisdiction.*

6. *On the facts and in the circumstances of the case as well as law on the subject, the learned Pr.CIT has erred in invoking powers under section 263 and passing order holding the assessment order to be “erroneous” and “prejudicial” without even justifying, which of the two phraseology used in section 263 is applicable and as to how the order of assessment is “erroneous” causing “loss to the revenue”.*

7. *On the facts and in the circumstances of the case as well as law on the subject, the learned Pr.CIT has erred has failed to make proper enquiry into the facts of the u/s 143(3), is erroneous as well as prejudicial to the interest of Revenue and in cancelling the assessment with the direction to the AO to reframe the assessment.*

8. *On the facts and in the circumstances of the case as well as law on the subject, the learned Pr.CIT has failed to appreciate that assessment in accordance with the law and the learned CIT could not have held the said order to be “erroneous and prejudicial to the interest of Revenue” within the meaning of Section 263.*

9. *On the facts and in the circumstances of the case as well as law on the subject, in any event, in response to the notice under Section 263, the appellant had made detailed submissions on the issue that had been taken up in the notice u/s 263 and for the reason that the learned Pr.CIT has failed to carry out his statutory obligation to deal with and decide such issue, the order under Section 263 stands wholly vitiated and the same deserves to be quashed.*

10. *For various reasons and on different grounds, the order u/s 263 passed by the Pr.CIT is bad in fact and law of the case and requires to be cancelled.*

*11. The above Grounds of Appeal are without prejudice to and are independent of each other.”*

2. Brief facts of the case are that assessee is a partnership firm and engaged in the business of manufacturing, trading of diamond jewellery and exports of diamonds. The assessee filed its return of income for assessment year (AY) 2017-18 on 20.09.2017 declaring total income of Rs.3,51,320/-. The case was selected for scrutiny. During assessment, the Assessing Officer noted that assessee has made cash deposited of Rs.77.00 lakhs in HDFC bank during demonetization period. The assessee asked to furnish the details regarding source of such huge cash amount during such demonetization period. The assessee in response such show cause notice submitted that cash was deposited from the sales made during the year. The assessee furnished the required details and contended that Rs.29,31,752/- was deposited in cash from the sale in the month of October, 2016 and Rs.49,57,789/-was on account of cash sale from the period of 01.11.2016 to 08.11.2016 respectively. The Assessing Officer compared such details with earlier year and found to be abnormal. On such discrepancy, the Assessing Officer issued fresh show cause notice to the

assessee to furnish complete details of customers to whom the sales were made in cash from 01.10.2016 to 08.11.2016. The assessee was also asked to furnish supportive evidence to explain the genuineness of such sales for such period. The assessee filed its reply, vide reply dated 17.12.2019. The contents of reply of assessee is recorded by Assessing Officer in **para-3.4** of assessment order. The assessee in its reply stated that there is nothing abnormal about cash sales, which took place in the current year, just there was a currency note demonetization during the assessment under consideration should not lead to presumption that this transaction is abnormal and suspicious. However, the assessee stated that they have already given the particulars on the date of sales, name of customers, address of customers, description of sales gross weight of jewellery, diamond weight and amount utilized on such sales. The assessee further submitted that as per Rule 114B of the Income Tax Rules, 1963, the assessee is not under obligation to obtain PAN of the customers, in case the sale was not exceeding rupee two lakh in any of the case. The assessee stated that independent inquiry may be made.

The assessee furnished the stock register, audited accounts.

The sales were disclosed in the month of October, 2016 VAT returns, before VAT authority under statutory obligation, copy of VAT return of the month of October and November, 2016 were filed along with sales register respectively. The assessee also furnished cash book, sale book for the month of October and November, 2016, wherein stock register showing the entries of sales and names and complete address of the customers to whom cash sales were made.

The assessee stated that they have organized an exhibition in the month of October, 2016 from 01.10.2016 to 08.11.2016 the showroom has increased sales on such exhibition. The assessee stated that there is no scope of any doubt that assessee has furnished names and addresses of such customers, sales invoices, statutory VAT return. The Assessing Officer recorded that reply of assessee was considered whether same was not found tenable for the reasons that there were abnormal increases in the cash sales compared to the earlier years. On the contention of assessee that cash sales were below Rs.2.00 lakhs and assessee was not under obligation to collect PAN, Assessing

Officer held that this contention of the reply of assessee has no merit, as genuineness of transaction is not proved. The assessee has narrated a make-believe story and accounted of such cash sales to create a cash on-hand in support of cash deposit during currency note demonetisation period. The Assessing Officer compiled the cash sales for the financial years 2015-16 and 2016-17 respectively and noted that there were cash sales of Rs.6,61,202 in financial year 2015-16, however, in financial year 2016-17 cash sales is at Rs.81,98,017/-. The Assessing Officer also examined the turn-over & gross profit ratio of last four years as reported by assessee. On comparison of such figures, the Assessing Officer was of the view that cash sales in October and November, 2016 were seemed to be highly abnormal as the case were not verifiable and the figures of cash sales are inflated on the ground. By taking such view, the Assessing Officer rejected the books of account. After rejection of books of account, the Assessing Officer noted that gross profit of current year of assessee is 14.99%. The assessee has already offered gross profit on turnover of cash deposits. However, as there were abnormal cash deposits in the bank

account of assessee, the assessee must have earned profit over the above book profit. The Assessing Officer accordingly estimated @ 10% Rs. 78,89,541/-, as profit on alleged inflated sales for the period from 01.10.2016 to 08.11.2016. Accordingly, added Rs.7,88,954/- as an extra profit of such inflated sales and made addition in the assessment order dated 31.12.2019 passed under section 143(3) of the Act.

3. The assessment order was revised by Ld. PCIT vide order dated 30.03.2022 by exercising his jurisdiction under section 263. Before revising the assessment order, the Ld. PCIT issued show cause notice dated 19.03.2022 to the assessee. In the said show cause notice, Ld. PCIT recorded that on perusal of assessment, it was noted that assessment order was passed without making inquiries and verification, which should have been made by Assessing Officer and grant relief to the assessee without making inquiries into the claim that assessee has made specified bank notes (SBN) cash deposits in specified demonetization period of Rs.77.00 lakh. During the assessment, the assessee was asked to submit details regarding source of such cash deposits. The assessee submitted that cash was out of sales

proceed and cash sales during the month of October, 2016 to 08.11.2016 at Rs.78,89,541/- whereas there were no such cash sales during same period in earlier financial year. The assessing officer held that the assessee furnished the party-wise details, which was not complete but only area name is mentioned and PAN was not provided. Sales bills / vouchers were not verified. The assessee made various cash deposits on 10.11.2016, 11.11.2016 and 17.11.2016 of Rs.19.50 (lakh), Rs.55.50 (lakhs) and Rs.2 (lakhs). The Ld. PCIT held that Assessing Officer passed assessment order without making proper inquiries and verifications and cash sales were not made in accordance with law as per Instruction of Central Board of Direct Taxes Circular No.4/2017 dated 03.03.2017. The source of cash deposits remained unexplained, which should not be charged by applying under section 115BBE of the Act. The Assessing Officer wrongly considered the explanation of assessee and estimated profit @ 10% on inflated bills in the month of October and November, 2016 respectively. The ld. PCIT further asked the assessee as to why the assessment order should not be set aside by invoking the provisions of Section

263 of the Act. The assessee was directed to file its reply on or before 25.03.2022.

4. The assessee filed its reply through ITBA portal as recorded in **para-6** of the order of ld. PCIT. The ld. PCIT has not recorded the contents of reply filed by assessee. The ld. PCIT recorded that he has gone through the reply of assessee and held that Assessing Officer did not call for information from the assessee and without analysing it simply kept with record. The auditor has remarked the stock had been valued at average cost and at another point it was shown as cost price and assessee in its reply has pointed out that closing stock is valued as at cost price and no inquiry was done by the Assessing Officer on the closing stock. The Assessing Officer has not gone through the profit and loss account. In the details of purchase, the assessee has shown purchased of Rs.7.07 crores, however in other details, it is shown at Rs.3.03 crores and VAT of Rs.2,87,501/-. Thus totalling Rs.7,06,40,635/- and there is difference of Rs. 63,325/- in the purchase that took in the audited accounts. The Assessing Officer has not verified such vital aspects. The ld. PCIT further noted that out of total cash sales, during the

relevant financial year, (Rs.81,98,017/-) cash sales took place in the month of October and November, 2016 respectively. The ld. PCIT also made passing remark that stock record does not match with export sales and export return. The ld. PCIT set aside the assessment order with the direction to frame the assessment as de novo after making proper inquiries on the aforesaid issues after giving reasonable opportunities to the assessee.

5. Aggrieved by the order of ld. PCIT, the assessee has filed present appeal before the Tribunal.
6. We have heard the submissions of learned Authorized Representative (Ld.AR) for the assessee and Ld. Commissioner of Income-Tax Departmental Representative (ld. CIT-DR) for the Revenue and have gone through the order of ld. PCIT carefully. The ld. AR for the assessee submits that assessee is a partnership firm engaged in the business of manufacturing and trading of diamond / gold jewelleryes. During the demonetization period, the assessee deposited cash of Rs.77.00 lakhs in its bank account. The assessee filed its return of income for assessment year 2017-18 on 20.09.2017 declaring income of Rs.3,51,324/-.

Thereafter case was selected for scrutiny. During assessment, Assessing Officer issued various show cause notice and in response thereto assessee furnished detailed reply thereof. The Ld. AR for the assessee submits that Assessing Officer vide notice dated 30.30.01.2019 asked the assessee to furnish details of business activities, income tax return for assessment years 2016-17 and 2017-18, books of account for assessment year 2016-17 and 2017-18, bank account respectively. The assessee furnished such complete details. Thereafter, Assessing Officer further asked the assessee vide notice dated 07.12.2019 to furnish the details of bank account, wherein in the specified bank statement with narration of entries and deposits, cash deposits during demonetization period and the reply furnished on-line for such cash deposits at the relevant period, details regarding source of cash deposits. The Assessing Officer also asked the assessee to furnish cash with narration of entry month-wise sales and purchase in specified month-wish cash sales, cash deposits, details of stock and party-wise or from whom sales or purchases were made and month-wise details with the stock for assessment years 2014-15 to 2016-17

respectively. The assessee furnished all such details on-line which includes details with relevant bank accounts in the specified form, cash deposits during demonetization period, details of cash deposits source of cash during such demonetization period, cash account with narration of entry month-wise cash sales cash deposits from 01.04.2015 to 31.03.2016; month-wise sales from 01.04.2016 to 31.03.2017. The Assessing Officer again asked the assessee vide notice dated 18.11.2019 to furnish party-wise details of sales made in cash; details of major expenses, employees remuneration. The assessee furnished party-wise details, sales, detail of major expenses and details of employee's remuneration after signatures of details. The Assessing Officer issued notice under section 133(6) to HDFC Bank to verify the cash deposits after making all such details inquiries and investigation. The Assessing Officer issued show cause notice as to why cash deposits of Rs.77.00 lakhs should not be considered as unexplained cash credit under section 68 of the Act. In response to such show cause notice, the assessee furnished its reply dated 17.12.2019 and furnished documentary evidence of cash-in-hand, sales

book for month of October and November, 2016, cash flow statement, VAT return for October and November, 2016, names and addresses of customers from whom sales exceeding Rs.1.00 lakh were made. The ld. AR for the assessee further submits that copies of all such details are filed e before Tribunal in the form of paper book. The Ld. AR for the assessee submits that ultimately the Assessing Officer after considering the details, furnished by assessee added @ 10% of cash sales by estimating profit of such cash sales. The Ld. AR for the assessee submits that Assessing Officer passed assessment order after making full-fledged investigation and considering the reply and evidence produced by assessee and took a reasonable, plausible and legal sustainable view and added @ 10% of profit on the impugned cash deposits. The assessment order passed after such details discussion cannot be branded erroneous as the same is legally sustainable and one of the possible view taken by assessing officer in the assessment order.

7. The Ld. AR for the assessee further submits that ld. PCIT issued show cause notice dated 19.03.2022. The assessee furnished its reply dated 25.03.2022; copy of show cause

notice and reply of assessee thereto is already placed on record. The assessee furnished a very details and exorbitant reply to substantiate the fact that assessment order was passed after full deliberation on the issue identified by ld. PCIT. The relevant contents of assessee's reply even has not referred by ld. PCIT in his order. The Ld.AR for the assessee submits that the invocation the revisionary jurisdiction, the twin conditions as enunciated under section 263 must be satisfied since the order is not erroneous though for the sake of argument made by ld.AR for the assessee, if it is considered that it is a prejudicial even the twin conditions are not satisfied. Thus, assessment order cannot be revised and the revision order passed by Ld. PCIT is liable to be quashed. To support his submission, Ld. AR for the assessee relied upon the decision of Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC).

8. The Ld. AR for the assessee submits that the impugned issue was fully examined by Assessing Officer at the stage of assessment proceedings then it is not open before the ld. PCIT to invoke his jurisdictional power under section 263 of

the Act. The Ld. AR for the assessee submits that assessee has learnt that assessment order pertaining to cash deposits during demonetization period were completed after obtaining necessary direction from Ld. Joint Commissioner of Income-tax under section 144A. Thus, two officers of the Revenue have applied their mind before passing assessment order. The ld.AR for the assessee submits that where an issue has been examined at the original assessment stage but the same does not reflect in the final assessment, then that by itself would not lead to a conclusion that order of Assessing Officer calls for interference by ld. PCIT under section 263 of the Act. To support his submission, ld. AR for the assessee relied upon following decisions:

- CIT vs. Nirma Chemicals Works (P.) Ltd. 309 ITR 67 (Guj)
- Rayon Silk Mills vs. CIT 221 ITR 155 (Guj)
- Hari Iron Trading Co. vs. CIT 263 ITR 437 (P&H)
- CIT vs. Gabriel India Ltd. 203 ITR 108 (Bom)
- CIT vs. Vikas Polymears 341 ITR 537 (Del)
- CIT vs. Honda Siel Power Products 333 ITR 547 (Del)

9. The ld. AR for the assessee submits that if two views are possible, revision under section 263 is not justified as the Assessing Officer has taken one of the possible view thus, the Assessing Officer is merely on different view could not

have taken on different view, the order passed by ld. PCIT under section 263 cannot be revised. To support his submission, ld. AR for the assessee relied upon following decision:

- Malabar Industrial Co. Ltd. vs. CIT 243 ITR 83 (SC)
- Kwality Steel Suppliers vs. CIT 395 ITR 1 (SC)
- CIT vs. Mehsana District Co-Op.Milk Producers Union Ltd. 263 ITR 645 (Guj)
- CIT vs. D.P.Karia 266 ITR 113 (Guj)
- CIT vs. Arvind Jewellers 259 ITR 502 (Guj)
- Sir Dorabji Tata Trust vs. DCIT€ (2921) 188 ITD 38 (Mum-Trib)
- Torrent Pharmaceuticals vs. DCIT (2921) 173 ITD 130 (Ahd)
- Minal Shah vs. PCIT 57 CCH 140) (Ahd)

10. The Ld. AR of the assessee submits that though the assessing officer made adequate inquiry, yet inadequacy of inquiry by Assessing Officer cannot be ground for proceedings under section 263 of the Act. To support of his submission, Ld. AR for the assessee relied upon following decision:

- ❖ CIT vs. Sunbeam Auto Ltd. 332 ITR 167 (Del)
- ❖ CIT vs. Anil Kumar Sharma 335 ITR 83 (Del)
- ❖ CIT vs. Vikas Polymers 341 ITR 537 (Del)

11. On merit, ld. AR for the assessee submits that cash deposits of Rs.77.00 lakhs in the form of HDFC bank during such demonetization period were detailed opening cash balance

at the beginning of demonetization period, which, in turn was on account of cash sales made by assessee and earlier withdrawal of amount. To support such fact, Ld.AR for the assessee submits that he has placed on record the bank statement and bank account on-line response with regard to cash deposits, details of cash deposits and source thereof, month-wise cash received in response and deposits, stock register details of purchased made during the year and details sales of exceeding Rs.1.00 lakh during the impugned period. The Ld. AR for the assessee submits that ld PCIT has not brought on record any cogent material even remotely demonstrated cash deposits in question were not out of cash balance on account of sales /earlier withdrawal amount. The Ld. PCIT allegedly in his show cause notice that Assessing Officer has not carried out any inquiry on cash deposits as per CBDT's Circular No.4/2017 dated 03.03.2017, such observation is factually incorrect. The Assessing Officer sought complete details as per format of cash transaction in the year of 2016, wherein the assessee furnished complete details and copy of such details

furnished in response to show cause notice is filed at page 222 of paper book.

12. The Ld. AR for the assessee submits that there is no case made out of trading cash deposits as unexplained addition under section 68 of the Act on the passing remark / observation of ld. PCIT in his order under section 263 of the Act that there is a difference of Rs.63,325/- and the figure of purchased of the assessee between details of purchase furnished by assessee. The ld. AR for the assessee submits that said difference is nothing but a figure of purchase return of Rs.62,698/- which is clearly reflected in the trading account, details of such is available at page 79 of the paper book and VAT @ 1% thereof i.e. 627/- which aggregates to Rs.63,325/- thus, there is no difference or discrepancy in respect of such issued. The ld.AR for the assessee submits that such issue was not the subject-matter of show cause notice or any of such issue was confronted with the assessee to explain such fact, the passing remarks with the difference of stock record vis-à-vis export sales return is not enquired and does not reflect any specific error and such passing reference is made without

proper verification. The ld. AR for the assessee finally submits that there is no error in the assessment order passed by Assessing Officer that on similar / identical issue a strong reliance is also placed of co-ordinate Bench of Rajkot in the case of Premji Valji & Sons in ITA No.125/RJT/2022 based on similar set of fact quashed the order of ld. PCIT passed under section 263. The Ld. AR for the assessee submits that ld. PCIT himself ought to have examined the order passed by Assessing Officer on merit and then ought to have established that assessment order is erroneous and prejudicial to the interest of Revenue without doing so, ld. PCIT could not have set aside the issue to the file of Assessing Officer with the direction to conduct further inquiries. To support his submission, Ld. AR for the assessee relied on the decision of Hon'ble Delhi High Court in the case of ITO vs. D.G. Housing Projects Ltd (2012) 343 ITR 329 (Del) on the addition of aforesaid submission, Ld. AR for the assessee prayed before the Bench to set aside / quash the impugned order of ld. PCIT passed under section 263 of the Act.

13. On the other hand, ld. CIT-DR for the Revenue submits that Assessing Officer completed the assessment proceedings without raising required question and had not carried out proper verification and examination of the issues which clearly rendered the assessment erroneous as well as prejudicial to the interest of Revenue. The ld. CIT-DR for the Revenue submits that Assessing Officer instead of making addition entire cash deposits by assessee in HDFC bank and added only @ 10% of such cash deposits being income component. The Assessing Officer instead of verifying the cash sales presumed that assessee inflated the sales to create cash-in-hand. The Assessing Officer erred in making assumption on the basis rejecting the books of account of assessee that there was no application of mind by Assessing Officer at the time of passing assessment order. The Assessing Officer failed to apply his mind rightly at the time of framing assessment order as in absence of proper verification of sales made in cash the assessment order is erroneous. The case law relied by Ld. AR for the assessee in the case of Premji Valji & Sons (supra) is not based on

similar set of fact and the ratio of such case law is not appreciated on the facts of the present case.

14. In short rejoinder, Ld. AR for the assessee submits that assessee has already declared gross profit @ 15% plus 10% of the impugned cash deposits, which were part of sale proceeds, was already added by Assessing Officer. Thus, assessment order in cannot be branded as erroneous and prejudicial to the interest of Revenue.
15. We have considered the rival submission of both the parties and have gone through the order of Assessing Officer as well as ld. PCIT passed under section 263 of the Act. Before advertng to the facts of the present case, we may refer the scope of provisions of section 263 of Income tax Act. The Supreme Court in case of Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 832 (SC), held that the prerequisite for the exercise of jurisdiction by the Commissioner *suo-motu* is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests

of the revenue. If one of them is absent - if the order of the Income-tax Officer is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue - recourse cannot be had to section 263(1) of the Act. It can be exercised only when an order is erroneous, the section 263 will be attracted.

16. Further, Hon'ble Bombay High Court in CIT Vs Gabriel India Ltd (233 ITR 108 Bom /71 Taxman 585) held that the power of *suo-motu* revision under sub-section (1) of section 263 is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision under this sub-section, viz., (i) the order is erroneous; and (ii) by virtue of the order being erroneous prejudice has been caused to the interests of the revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous. One finds that the expressions 'erroneous', 'erroneous assessment' and 'erroneous judgment' have been defined in Black's Law Dictionary. According to the definition, 'erroneous' means 'involving error; deviating from the law'.

'Erroneous assessment' refers to an assessment that deviates from the law and is, therefore, invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, 'erroneous judgment' means 'one rendered according to course and practice of Court, but contrary to law, upon mistaken view of law, or upon erroneous application of legal principles. The Hon'ble High Court also held that from the definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an assessing 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 visualize a case of substitution of the judgment of the Commissioner for that of the ITO, who passed the order, unless the decision is held to be erroneous. Cases may be visualized where the ITO 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 ITO. 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 ITO has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. It may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interests of the revenue. But that by itself will not be enough to vest the Commissioner with the power of *suo-motu* revision because the first requirement, viz., that the order is erroneous, is absent. Similarly, if an order is erroneous but not prejudicial to the interests of the revenue, then also the power of *suo-motu* revision cannot be exercised. Any and every erroneous order

cannot be the subject-matter of revision because the second requirement also must be fulfilled. 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. Therefore, in order to exercise power under section 263(1) there must be material before the Commissioner to consider that the order passed by the ITO was erroneous insofar as it is prejudicial to the interests of the revenue and that it must be an order which is not in accordance with the law or which has been passed by the ITO without making any enquiry in undue haste. An order can be said to be prejudicial to the interests of the 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. There must be material available on the record called for by the Commissioner to satisfy him *prima facie* that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision. Exercise of power of *suo-motu* revision under such

circumstances will amount to arbitrary exercise of power. It is well-settled that when exercise of statutory power is dependent upon the existence of certain objective facts, the authority before exercising such power must have materials on record to satisfy it in that regard. If the action of the authority is challenged before the Court, it would be open to the Courts to examine whether the relevant objectives were available from the records called for and examined by such authority. The decision of the ITO could not be held to be 'erroneous' simply because in his order he did not make an elaborate discussion in that regard. Moreover, the Commissioner himself, even after initiating proceedings for revision and hearing the assessee, could not say that the allowance of the claim of the assessee was erroneous, he simply asked the ITO to re-examine the matter, which was not permissible.

17. Again advertent to the facts of the present case. As recorded above during the assessment the assessing officer examined the issue in depth as recorded in para -2 (supra). The assessing officer noted that assessee has made cash deposited of Rs.77.00 lakhs in HDFC bank during

demonetization period. Show cause notice to explain the deposit of cash was issued to the assessee and was asked to furnish the details regarding source of such huge cash amount during such demonetization period. The assessee in response such show cause notice submitted that cash was deposited from the sales made during the year. We find that the assessee furnished the required details and contended that Rs.29,31,752/- was deposited in cash from the sale in the month of October, 2016 and Rs.49,57,789/-was on account of cash sale from the period of 01.11.2016 to 08.11.2016 respectively. Further, the Assessing Officer compared such details with earlier year and find certain discrepancy. The Assessing Officer issued fresh show cause notice to the assessee to furnish complete details of customers to whom the sales were made in cash from 01.10.2016 to 08.11.2016 and was asked to furnish supportive evidence to explain the genuineness of such sales for such period. The assessee filed its reply, vide reply dated 17.12.2019. The assessee in its reply explained that there is nothing abnormal about cash sales, which took place in the current year, just there was a currency note

demonetization during the assessment under consideration should not lead to presumption that this transaction is abnormal and suspicious. The assessee provided the details with date of sales, name of customers, address of customers, description of sales gross weight of jewellery, diamond weight and amount utilized on such sales. The assessee took plea that as per Rule 114B of the Income Tax Rules, 1963, the assessee is not under obligation to obtain PAN of the customers, in case the sale was not exceeding rupee two lakh in any of the case. The assessee stated that independent inquiry may be made. We find that assessee also provided sales made in the month of October, 2016 VAT returns, filed before VAT authority under statutory obligation, copy of VAT return of the month of October and November, 2016. The assessee also furnished cash book, sale book for the month of October and November, 2016, wherein stock register showing the entries of sales and names and complete address of the customers to whom cash sales were made. The assessee stated that there is no scope of any doubt that assessee has furnished names and addresses of such customers, sales invoices, statutory VAT

return. We further find that after considering the material before assessing officer, the assessing officer made addition of 10% of the total cash deposit during the month of October and November 2016. On the basis of aforesaid factual discussions and on the basis of details called for by Assessing Officer, we find that the Assessing Officer after calling the details of cash deposit, while making addition of 10% of cash deposit of Rs. 77.00 lacs, being income component, which is a reasonable addition. The addition made by assessing officer is plausible and legally sustainable view, which cannot be branded as erroneous.

18. The coordinate bench of Rajkot Tribunal in Premji Valji & Sons in ITA NO. 125/Rjt) 2022, while considering the appeal against the order under section 263, wherein the assessment order was revised by ld PCIT on the similar issue of deposits of cash during demonetisation period held that when the assessing officer made inquiries and after considering the material accepted the genuineness of the claim of the assessee, the assessment order is not erroneous. However, the appeal in hand is on better footing, as the assessing officer has made addition of 10% of such

deposits to tax the profitability as if such transaction was a result of inflated sales.

19. The Hon'ble Jurisdictional High Court in *Aryan Arcade Ltd., Vs PCIT* (2019) 412 ITR 277 (Gujarat) held that merely because Commissioner held a different belief that would not permit him to take the order in revision, it if further held that when Assessing Officer made full enquiry, he made up his mind, the notice of revision is not valid. In *CIT Vs Nirma Chemical Works (P) Ltd* (supra), the Hon'ble High Court also held that when assessing officer after making due inquiries had adopted one of the view and granted partial relief, merely because Commissioner took a different view of the matter, it would not be sufficient to permit commissioner to exercise his powers under section 263. The Hon'ble Court in para 22 of its order on the objection of the revenue that there is no discussion of the issue in the assessment order held that the contention on behalf of the revenue that the assessment order does not reflect any application of mind as to the eligibility or otherwise under section 80-I of the Act requires to be noted to be rejected. An assessment order cannot incorporate reasons for making/granting a claim of

deduction. If it does so, an assessment order would cease to be an order and become an epic some. The reasons are not far to seek. Firstly, it would cast an almost impossible burden on the Assessing Officer, considering the workload that he carries and the period of limitation within which an order is required to be made; and, secondly, the order is an appealable order. An appeal lies, would be filed, only against disallowances which an assessee feels aggrieved with.

20. Thus, in view of the aforesaid factual and legal discussions, in our view, the investigation conducted and the view adopted by the assessing officer in the present case, if not accepted by the Ld. PCIT, is nothing but change of opinion. It is settled position in law that no revision of assessment order is permissible on mere change of opinion.
21. As we have already held that on the basis of material before the assessing officer, he took reasonable, plausible and legally sustainable view, which cannot be branded as erroneous. There is no doubt that while accepting the claim in the assessment, there may be some loss of revenue, tax can be levied only with the authority of law, and 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 unless the view adopted by assessing officer permissible in law. Once the assessing officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the assessing officer is unsustainable in law. In our view the observation of Ld. PCIT held that Assessing Officer passed assessment order without making proper inquiries and verifications and cash sales were not made in accordance with law as per Instruction of Central Board of Direct Taxes Circular No.4/2017 dated 03.03.2017, or the source of cash deposits remained unexplained, is not correct. In the result, the grounds of appeal raised by the assessee is allowed.

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

**ITA No. 106/Srt/2022 by Labdhi Jewellers Private Limited.**

23. As noted above the assessee in this appeal has raised similar grounds of appeal, facts of this appeal is also similar, therefore, following the principle of consistency, the grounds of appeal raised by the assessee in the present

appeal is allowed with similar directions. In the result, this appeal is also allowed.

24. In the result, both appeal of the assessee are allowed.

25. A copy of instant common order be placed in the respective case file(s).

Order pronounced in the open court on 22/12/2022.

Sd/-  
**(Dr ARJUN LAL SAINI)**  
[लेखा सदस्य/ACCOUNTANT MEMBER]  
**MEMBER]**

Surat, Dated: 22/12/2022

*Dkp. Out Sourcing Sr.P.S*

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

// True Copy //

Sd/-  
**(PAWAN SINGH)**  
[न्यायिक सदस्य JUDICIAL

By order

Sr.P.S./Assistant Registrar, ITAT, Surat