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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.514/Bang/2022
Assessment Year: 2017-18

Heritage Grape Winery Pvt Ltd. No.18, Manish Mansion 2nd Floor, 3rd Main, NR Colony Bangalore 560 019 **PAN NO : AABCH4403N**	**Vs.**	Principal CIT-3 Bangalore & ITO Ward-3(1)(2) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Shri H. Guruswamy, A.R.
Respondent by	:	Shri Manjunath Karkihalli, D.R.

Date of Hearing	:	01.12.2022
Date of Pronouncement	:	12.01.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against order passed by the Principal CIT-3, Bangalore u/s 263 of the Income-tax Act,1961 ['the Act' for short] dated 25.3.2022 for the assessment year 2017-18. The assessee has raised following grounds of appeal:-

1. *The impugned Order u/s. 263 of the Act dated: 25-03- 2022 passed by the Ld. Pr.CIT, Bangalore-3 is opposed to law, facts and circumstances of the case.*
2. *The Ld. PCIT Bangalore-3, has erred ininitiating the proceedings u/s. 263 of the Act without jurisdiction and without appreciating the fact that the Assessment completed by the AO Ward - 3(1)(2) u/s. 143(3) of the Act on 28-12- 2019 was neither erroneous nor prejudicial to the interest of revenue.*

3. *The Ld. Principal CIT has erred in initiating the proceedings u/s 263 of the Act merely on the basis of a preliminary Revenue Audit Objection which does not confer lawful jurisdiction to the Principal CIT for initiating proceedings u/s 263 of the Act.*

4. *The Ld. PCIT has erred in assuming the jurisdiction u/s. 263 4, of the Act and to pass an order u/s. 263 of the Act dtd: 25-032022 in which it is evident that the assessment order dtd: 2012-2019 was said to be set-aside with a direction to the AO to verify the issue of slump sale which establishes the fact that the issue of slump sale is yet to be decided by the AO and therefore the erroneous nature of assessment and its prejudicial effect on revenue was not evident from the records at the time of initiating the proceedings u/s. 263 of the Act*

5. *Without prejudice to the legal grounds urged above, it is further urged that the Ld. PCIT has erred in holding that the assessment made u/s. 143(3) of the Act dtd: 28-12-2019 was erroneous and prejudicial to the interest of the revenue which is an afterthought opinion without appreciating the fact that the AO has passed the Order after considering the agreement dated 19.5.2017.*

6. *The Ld. PCIT has erred in passing the order u/s. 263 of the Act dtd: 25-03-2022 without appreciating the fact that the agreement dtd: 19-05-2017 was an unregistered agreement which has no legal existence for the A.Y 2017-18 even though the effective date was mentioned as 1.2.2017.*

7. *The Ld. PCIT has erred in holding that the allegedly agreed transfer of assets on the basis of an unregistered agreement dtd: 19-05-2017 constituted a slump sale within the meaning of section 2(42C) of the Act without appreciating the fact that in the relevant A.Y 2017-18 neither ongoing concern was transferred as a whole nor the assets at a single stretch*

8. *The Ld. PCIT has erred in holding that the transfer of assets on the basis of an unregistered agreement dtd: 19-05-2017 constituted a slump sale which gave rise for exigibility of capital gain tax without appreciating the fact that the assets of the company were transferred on a phased manner depending upon the financial need of the business.*

9. *The Ld. PCIT has erred in holding that the transfer of assets on the basis of an unregistered agreement dtd: 19-05-2017 without appreciating the fact that the company despite the agreement has continued the business in the subsequent years in the normal course.*

10. *The Ld. PCIT ought to have appreciated the fact that in spite of unregistered agreement dtd: 19-05-2017, the transfer of ongoing concern as a whole has not taken place in view of the litigation relating to the land*

and the major chunk of consideration was related to sale of agricultural lands held by one of the directors of the Company.

11. The Ld. PCIT has erred in holding that the ratio laid down by the Hon'ble Supreme Court in the case of CIT v/s. Balbir Singh relating to unregistered Agreements is not applicable but in para 6 of the Show Cause Notice dtd: 15-02-2022 held that the transfer took place as per TP Act which is self. contradictory.

2. The assessee has raised following additional ground along with petition for admission of additional ground as follows:

"The Appellant begs to submit the following additional ground of Appeal for adjudication without prejudice to the grounds of Appeal already urged in the Appeal Memorandum.

Additional Ground and submissions on additional grounds:-

1) The Order dtd: 25-03-2022 u/s. 263 of the Act, uploaded into the System (portal) was without any valid signature of the authority as a result of which the said order suffers from nullity and ab-initio-void."

2) The Appellant Company submits that the additional ground urged is absolutely necessary for the cause of substantial justice and equity, since the adjudication is required to be considered in accordance with law, facts and natural justice.

3) The Appellant Company submits that the admission of additional ground do not cause any prejudice to the revenue since the matter in appeal needs to be adjudicated on merits of the case in accordance with law. On the other hand if the additional ground is not admitted the Appellant Company would be put to hardship and denial of justice admissible in accordance with law.

4) The Appellant begs to place reliance on the decision the Hon'ble Supreme Court in the case of National Thermal Power Corporation Ltd v/s. CIT 229 ITR 383 (SC) and jurisdictional High Court of Karnataka in the case of Gundathur Thimmappa and Sons v/s. CIT (1968) 70 ITR 70.

Therefore, the Appellant Company respectfully prays that this Hon'ble Bench be pleased to admit the Additional Ground of Appeal for adjudication in the interest of equity and substantial justice."

3. The ld AR for the assessee submitted that the order passed u/s 263 of the Act dated 25.3.2022 is invalid in law, since the said order was not signed by any competent authority as required in instruction No.1/2018 dated 12.2.2018 of CBDT. The assessee has also filed a petition for admission of additional ground stating that inadvertently the assessee has not raised this ground in earlier occasion and submitted that this ground may be admitted as there was no necessity of investigation of any fresh facts otherwise on record by placing reliance on the judgement of Hon'ble Supreme Court in the case of NTPC Vs. CIT (229 ITR 383). In this regard a new provision u/s. 282A was inserted w.e.f 01-06-2008 by the Finance Act 2008, according to which only the designated authority is exempted from signing any notices/ documents/ orders/ communications and the same is applicable only for the CPC. However, the PCIT - 3 Bangalore, is not a designated authority and therefore the unsigned order u/s. 263 of the Act dtd: 25-03-2022 is not enforceable in law and the same is ab-initio-void and liable to be set-aside/annulled/cancelled. In this regard the assessee placed reliance on the decision of this Tribunal dtd: 03-02-2021 in the case of Yeshoda Electricals, Star Electricals and M/s. Maruthi Transformers Manufacturing Company v/s. ACIT in ITA No. 1175 to 1180/Bang/2022, wherein it was held that the Unsigned Notice u/s. 148 of the Act was bad in law and consequently the Assessments made thereupon were quashed.

4. On the other hand, on the additional ground the ld. D.R. submitted that the assessee has raised this ground for the first time before this Tribunal, which may not be admitted even if it is admitted, the issue to be decided against the assessee as the order passed u/s

263 of the Act is valid and there was a participation by assessee before PCIT and the order has to be confirmed on this ground.

5. We have heard the rival submissions and perused the materials available on record. In our opinion, all the facts are already on record and there is no necessity of investigation of any fresh facts for the purpose of adjudication of above ground. Accordingly, by placing reliance on the judgement of Hon'ble Supreme Court in the case of NTPC Vs. CIT 229 ITR 383 (SC) we inclined to admit the additional ground for the purpose of adjudication as there was no investigation of any fresh facts otherwise on record and the action of the assessee is bonafide.

Facts of the case:

6. Now coming to the brief facts of the case are that the Assessee Company was engaged in manufacture and sale of Wine manufactured out of the Black Grapes since 2004. The Assessee Company for the promotion and development of the Business needed more funds which could not be mobilized. However, with the persistent efforts the company came into contact with a company called M/s. Sula Vineyards Pvt Ltd., (SVPL) Bombay and the company has put-forth its claim for financial assistance and in lieu of such request the Bombay Company has proposed to invest funds in the On-going Assessee Company. In this regard the Bombay Company has offered the financial assistance subject to sale of company assets in phased manner and also the agricultural lands measuring 12.15 Acres owned by the one of the Directors Sri. P.L Venkatarama Reddy. In view of the mutual understanding the Bombay Company advanced some amount in anticipation of the sale of Company Assets and the agricultural lands owned by Sri. Venkatarama Reddy one of the Directors of the Assessee Company.

6.1 As a First Step the Director named above has sold the agricultural lands overall measuring 12 Acres 15 Guntas situated at Koorangere Village, Maluru Hobli, Channapatna Taluk, Ramanagara District on 28-10-2017. However, the Sale of Agricultural lands has locked up in litigation with the District Registrar and Deputy Commissioner, Detection of Undervaluation of Stamps, Ramanagara. The Bombay Company has filed an Appeal against the Order passed by the Deputy Commissioner, Detection of Undervaluation of Stamps and the same was adjudicated as per Order dtd: 24-07-2018 determining the Sale Consideration of agricultural lands at Rs. 34,51,00,000/-.

6.2 The Bombay Company (SVPL) has challenged the orders of the District Registrar and Deputy Commissioner (Stamps), Ramanagar District before the Hon'ble Court of the Regional Commissioner and Appellate Authority Bangalore Division, Bangalore and the order passed by the Deputy Registrar dtd: 24-07-2018 was confirmed. In View of the said litigation the sale of assets as agreed mutually was held-up and the Assets of the Company as an On-going Concern were not transferred during the F.Y 2016-17 relevant to the A.Y 2017-18. However, the Financial assistance extended by the Bombay Company (SVPL) amounting to Rs. 34.62 Crores was adjusted against the Sale Consideration of the Agricultural Lands owned by one of the Directors, as a result of which the Appellant Company has not transferred any of its assets as per Business Transfer Agreement (BTA) dtd: 17-05-2017.

6.3 The assessee had e-filed its return of income for the impugned A.Y 2017-18 on 31-03-2018 declaring income of Rs. 89,60,740/-. The return of income so filed was selected for scrutiny to verify the issues relating to Large Claim of refund and the depreciation. In the

course of the Assessment Proceedings, the AO has issued a Notice u/s. 142(1) dtd: 29-10-2019 calling for details as per Annexure and the same was complied. Subsequently the AO has issued a second Notice u/s. 142(1) dtd: 25-11-2019 and the same was complied with. The AO has examined the documents and the submissions of the assessee and completed the assessment u/s. 143(3) dtd: 28-12-2019 determining the total income at Rs. 90,76,990/-. The AO in para 4 of the Assessment Order has held that the Bombay Company has advanced a sum of Rs. 18,98,49,469/- but the transfer as negotiated did not materialise during the previous year ending 31-03-2017. The relevant para is reproduced as under

> *4 The details and the documents furnished are examined and found that M/s. Sula Vineyards Pvt Ltd, Bombay has advanced a sum of Rs. 18,98,49,469/-. However the transfer as negotiated did not materialize during the previous year ending 31-03-2017 relevant to the A.Y 2017-18, but in lieu of the advance payment assets such as Bank Balance of Rs. 1,38,400/-, Amount receivable from Debtors of Rs. 3,90,66,608/- and Stock-in-Trade of Rs. 1,88,13,272/- were transferred as-is-where basis as on 31.01.2017.*

6.4 The assessee has produced before the AO in the course of the Assessment proceedings a Business Transfer Agreement dtd: 17-05-2017 made between the assessee and the Bombay Company (SVPL) on the basis of a Letter of Intent dtd: 11-11-2016 for acquisition of the entire Winery Unit Comprising of fixed assets including the land measuring 11.75 Acres. The Letter of Intent was produced before the AO and the same was examined.

6.5 On completion of the Assessment, the Directors of the assessee company were called by the AO in the month of March 2021 to clarify the issue raised by the Revenue Audit Party and the same was clarified on the issue relating to the Business Transfer Agreement dtd: 17-05-2017 on the basis of which there were transfer of Assets alleged to be slump sale.

6.6 However, the assessee company was served with a Notice u/s. 263 of the Act dtd:15-07-2021 issued by the Ld. PCIT Bangalore - 3, Bangalore on the ground that the Assessment Completed u/s. 143(3) of the Act dtd: 20-12-2019 was erroneous and prejudicial to the interest of Revenue for the reasons stated in para 1,2 and 3 of the said Notice.

6.7 The Ld. PCIT Bangalore - 3, Bangalore, who has issued a Notice u/s. 263 of the Act dtd: 15-07-2021 was transferred and a new PCIT has stated to have assumed the Change of PCIT Bangalore - 3 who has issued a Letter dtd: 20-12-2021, u/s. 129 of the Act for the change of incumbent of the office and simultaneously posting the case for hearing on 29-12-2021. Subsequently the Ld. PCIT Bangalore - 3 has issued one more letter dtd: 27-01-2022 posting the case on 08-02-2022 to attend and produce supporting documents in support of the issues involved (as mentioned below). In compliance with the said Letter the assessee submitted that no issues were mentioned in the Letter dtd: 27-01-2022 as stated in 3rd line within the brackets.

6.8 Later, the Ld. PCIT has issued another letter dtd: 15-02-2022 stating that the Capital Gains chargeable to tax on a slump sale basis was escaped assessment in view of the agreement for transfer of business dtd: 19-05-2017. In compliance with the Notice dtd: 15-02-2022 the assessee furnished a detailed submissions on 04-03-2022 against the Proceedings initiated u/s. 263. Later the assessee on an enquiry came to know on 04-04-2022 that the Ld. PCIT has passed an Order u/s. 263 of the Act dtd: 25-03-2022 and the same was uploaded to the portal which was downloaded by the assessee on 04-04-2022 and found that the said Order u/s. 263 dtd:

25-03-2022 was unsigned.

6.9 The Impugned Order u/s. 263 of the Act dtd: 25-03-2022 was not sustainable in law for the reason that the said Order was found to be unsigned as per the CBDT Instruction No. 01/2018 dtd: 12-02-2018. As per clause 4.2 all departmental orders/communications or Notices were required to be signed digitally by the respective authorities. Therefore, the ld AR submitted that the Order passed u/s. 263 of the Act dtd: 25-03-2022 is not enforceable in law as it did not bear the signature of the Ld. PCIT Bangalore-3, Bangalore.

6.10 Against this order, assessee is in appeal before us by way of various above grounds. First, we will take additional ground:

Adjudication of Additional ground:

Arguments of the ld. AR:

7. The Order u/s. 263 of the Act dtd: 25-03-2022 is invalid in law, since the said order was not signed by any competent authority as required in Instruction No. 1/2018 dtd: 12-02-2018. In this regard a new provision u/s. 282A was inserted w.e.f 01-06-2008 by the Finance Act 2008, according to which only the designated authority is exempted from signing any notices /documents /orders /communications and the same is applicable only for the CPC. However, the PCIT - 3 Bangalore, is not a designated authority and therefore the unsigned order u/s. 263 of the Act dtd: 25-03-2022 is not enforceable in law and the same is ab-initio-void and liable to be set-aside/annulled/cancelled. In this regard the assessee placed reliance on the decision of the Hon'ble ITAT "C" Bench Bangalore Decision dtd: 03-02-2021 in the case of Yeshoda Electricals, Star Electricals and M/s. Maruthi Transformers Manufacturing Company v/s. ACIT in ITA No. 1175 to 1180/Bang/2022, wherein it was held

that the Unsigned Notice u/s. 148 of the Act was bad in law and consequently the Assessments made thereupon were quashed.

8. Ld. CIT, DR strongly opposed the submissions made by the Ld. Counsel and stated that this is a mere procedural irregularity which cannot render the impugned order passed u/s. 263 of the Act as *'invalid or deemed to have never been issued'* as claimed by the Ld. Counsel in terms of CBDT Circular No. 19/2019. He referred to the exceptional circumstances which are listed in the circular itself and stated that there are technological and other difficulties which are faced on certain occasions in generating/allotting/quoting the DIN which can in no way make the lawful proceeding conducted and completed by the Income-tax Authority, as invalid. Ld. CIT, DR further submitted that the case records can be referred to ascertain if the DIN was actually generated or not and it is merely an inadvertent mistake because of which it remained to be quoted in the impugned order. He thus strongly opposed to the contentions made by the Ld. Counsel claiming to hold the impugned order as *'invalid or deemed to have never been issued'*.

8.1 Further, the ld. DR submitted that the assessee has raised another Ground before the ITAT, during the course of hearing proceedings, which relates to the order u/s. 263 passed by the Ld. PCIT not being signed and hence the order is invalid. In this regard the ld. DR submitted that in the order u/s. 263 dtd. 25.03.2022, passed by the Ld. PCIT, DIN has been mentioned on the first and last page (i.e, page 1& 7 of the order u/s. 263) and also the name of PCIT and jurisdiction of PCIT has been clearly stated as PCIT, Bengaluru -3, on the last page of the order. Hence he submitted that the order u/s. 263 passed by the Ld. PCIT is a valid order. In this regard he

relied on Sec.282A of the IT Act. For the purpose of clarity the Sec 282(A)(2) is reproduced below as:

"Every notice or other document to be issued, served or given for the purpose of this Act by any income-tax authority, shall be deemed to be authenticated if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon."

The ld. DR relied on the judgement of the Hon'ble Kerala High Court in the case of CIT Vs. TO Abraham (2011) 333 ITR 182, where in it is clearly stated that lack of signature in the order will not make the Assessment Order null and void. In this order the Hon'ble Kerala High Court has also discussed on Sec. 292(B) of the IT Act, in relation to validity of the orders.

Findings on additional ground:

9. We have heard the rival submissions and perused the materials available on record and given our thoughtful consideration to the submissions made by both the parties. Before adverting on the issue in hand, the CBDT Circle No. 19/2009 dated 14.08.2019, which is reproduced hereunder for ready reference:

Circular No. 19 **/2019**

Government of lndia
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, dated the **14th** August, 2019

Subject: Generation/Allotment/Quoting of Document Identification Number in Notice/Order/Summons/letter/correspondence issued by the Income-tax Department – reg.

With the launch of various e-governance initiatives, Income-tax Department is moving toward total computerization of its work. This has led to a significant improvement in delivery of services and has also brought greater transparency in the functioning of the tax- administration. Presently, almost all notices and orders are being generated electronically on the Income Tax Business Application (ITBA) platform. However, it has been brought to the notice of the Central Board or Direct Taxes (the Board) that there have been some instances in which the notice, order, summons, letter and any correspondence (hereinafter referred to as

"communication") were found to have been issued manually, without maintaining a proper audit trail of such communication.

2. In order to prevent such instances and to maintain proper audit trail of all communication, the Board in exercise of power under section 119 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act"), has decided that no communication shall be issued by any income- tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry. investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the I st day of October, 2019 unless a computer-generated Document Identification Number (DIN) has been allotted and is duly quoted in the body or such communication.

3. In exceptional circumstances such as, -

(i) when there are technical difficulties in generating/allotting/quoting the DIN and issuance or communication electronically; or

(ii) when communication regarding enquiry, verification etc. is required to be issued by an income-tax authority, who is outside the office, for discharging his official duties; or

(iii) when due to delay in PAN n1igration PAN is lying with non-jurisdictional Assessing Officer; or

(iv) when PAN or assessee is not available and where a proceeding under the Act (other than verification under section 131 or section 133 of the Act) is sought to be initiated; or

(v) When the functionality to issue communication is not available in the system,

The communication may be issued manually but only after recording reasons in writing in the file and with prior written approval of the Chief Commissioner/ Director General of income- tax. In cases where manual communication is required to be issued due to delay in PAN migration, the proposal seeking approval for issuance of manual communication shall include the reason for delay in PAN migration. The communication issued under aforesaid circumstances shall state the fact that the communication is issued manually without a DIN and the date of obtaining of the written approval of the Chief Commissioner/ Director General or Income-Tax for issue of manual communication in the following format-

" .. *This communication issues manually without a DIN on account of reason/reasons given in*
para 3(i)/3(ii)/3(iii)/3(iv)/3(v) of the CBDT Circular No ...dated..... (strike off those which are not applicable) and with the approval of the Chief Commissioner I Director General of Income Tax vide number .... dated

4. Any communication which is not in conformity with Para-2 and Para-3 above, shall be treated as invalid and shall be deemed to have never been issued.

5. The communication issued manually in the three situations specified in para 3- (i), (ii) or
(iii) above shall have to be regularised within 15 working days of its issuance, by -

i. uploading the manual communication on the System.
ii. compulsorily generating the DIN on the System;
iii. communicating the DIN so generated to the assessee/any other person as per electronically generated pro-forma available on the System.

6. An intimation of issuance of manual communication for the reasons mentioned in para 3(v) shall be sent to the Principal Director General of Income-tax (Systems) within seven days from the date of its issuance.

7.Further, in all pending assessment proceedings, where notices were issued manually, prior to issuance of this Circular, the income-tax authorities shall identify such cases and shall upload the notices in these cases on the Systems by 31th October, 2019.

8. Hindi version to follow.

(Sarita Kumari)
Director (ITA.II),
CBDT

(F.No. 225/95/2019-ITA.II)

9.1 From the perusal of above circular, we note that CBDT came out with this circular to mitigate the issues/instances where certain notices, orders, summons, letters and other correspondences which have been issued manually do not have proper audit trail of their communication despite various e-governance initiatives and computerization of its work. Therefore, in order to prevent such instances and to maintain proper audit trail of all the communications, CBDT directed that no communication shall be issued by any Income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 01.10.2019 unless a computer generated DIN has been allotted and is duly quoted in the body of such communication. We note that para 3 of the said circular provides for certain exceptional

circumstances when the communication is issued manually, in which case such manually issued communications should contain the fact that the said communication is issued manually without a DIN and the date of obtaining of the written approval of the Chief Commissioner/Director General of Income-tax for issue of said manual communication in the prescribed format. Thus, it is observed from the said circular that all the communications mentioned therein have to be either generated and issued electronically with DIN or in certain exceptional circumstances the communication may be issued manually without DIN, fact of which along with its written approval has to be stated in the body of the said communication, failing which, para 4 of the said circular states that such communication shall be treated as *'invalid' and shall be deemed to have never been issued'*.

9.2 On a specific query by the bench to the Ld. CIT, DR to point out if there was any exceptional circumstance which led to the manual issue of the order u/s. 263 of the Act, he pointed out that the only possibility of exceptional circumstance as mentioned in the CBDT Circular, could be as listed in para 3(i) which mentioned that "*when there are technical difficulties in generating /allotting/quoting the DIN and issuance of communication electronically".* For this he requested for verification of the case records.

9.3 On this aspect, Ld. Counsel for the assessee submitted that it is undisputed and verifiable fact that the impugned order is an electronic communication but not a manual order as is evident from

the perusal of the order itself. **It is an order which has been passed electronically and page 7 of the said order does not refer digital signature of the Ld. Principal CIT, Bangalore-3 at the bottom of the page 7** and therefore, the exception pointed out by the Ld. CIT, DR does not apply in the present case. He further pointed out that within this para 3 of the CBDT Circular, it is mentioned that when the communication is issued manually, such communication in its body must state the fact that the said communication is issued manually without a DIN and the date of obtaining of the written approval of the prescribed authority for issue of manual communication in the prescribed format has to be stated therein. In the present case, no such fact of issuing the present order manually without a DIN by obtaining an approval from prescribed authority in the prescribed format is mentioned/quoted in the body of the impugned order and, therefore, even if the case records are verified, it will not serve any purpose since the impugned order itself does not contain any such factual notation as contemplated in para 3 of the CBDT circular.

9.4 In order to demonstrate how a communication issued electronically, containing a DIN would look like at this stage it is appropriate to refer the relevant page of the assessment order of the assessee passed u/s 143(3) of the Act dated 28.12.2019, which is as follows:-

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD 3(1)(2), BANGALORE

To, HERITAGE GRAPE WINERY PRIVATE LIMITED NO.18, MANISH MANSION, 2ND FLOOR,,3RD MAIN ROAD N R COLONY BENGALURU 560019,Karnataka India	

PAN:	AY:	DIN & Order No:	Dated:
AABCH4403N	**2017-18**	**ITBA/AST/S/143(3)/2019-20/1023326080(1)**	**28/12/2019**

Name of the assessee	**HERITAGE GRAPE WINERY PRIVATE LIMITED**
Address of the assessee	**NO.18, MANISH MANSION, 2ND FLOOR,, 3RD MAIN ROAD N R COLONY, BENGALURU 560019, Karnataka, India**
Status	**COMPANY**
Range/Circle/Ward	**WARD 3(1)(2), BANGALORE**
Resident/Resident but not Ordinary resident/ Non-resident	**Resident**
Date of Hearing	**05/10/2018, 24/09/2019, 05/11/2019, 02/12/2019, 10/12/2019**
Section/Sub-section under which assessment is made	**143(3)**
Date of Order	**28/12/2019**

ASSESSMENT ORDER

The Assessee Company is engaged in the business of Manufacture and Sale of Wine produced out of Black Grapes. The Assessee Company e-filed the return of income for the A.Y 2017-18 on 31-03-2018 declaring the total income at Rs. 89,60,740/- The return of income was processed u/s 143(1) and thereafter the case was selected for scrutiny under CASS to verify:

1. Refund Claim
2. Depreciation Claim

2. A Notice u/s. 143(2) was issued on 24-09-2018 to furnish the details in support of the return of income filed. Subsequently, since there was a change in incumbent, Notice u/s. 142(1) r.w.s 129 dated 17-09-2019 was issued calling for details. In response to the Notice

CERTIFIED COPY
H. GURUSWAMY
Authorised Representative

AABCH4403N- HERITAGE GRAPE WINERY PRIVATE LIMITED
A.Y. 2017-18
ITBA/AST/S/143(3)/2019-20/1023326080(1)

Calculation sheet enclosed.

MINI VARGHESE
WARD 3(1)(2), BANGALORE

Copy to:

Assessee

MINI VARGHESE
WARD 3(1)(2), BANGALORE

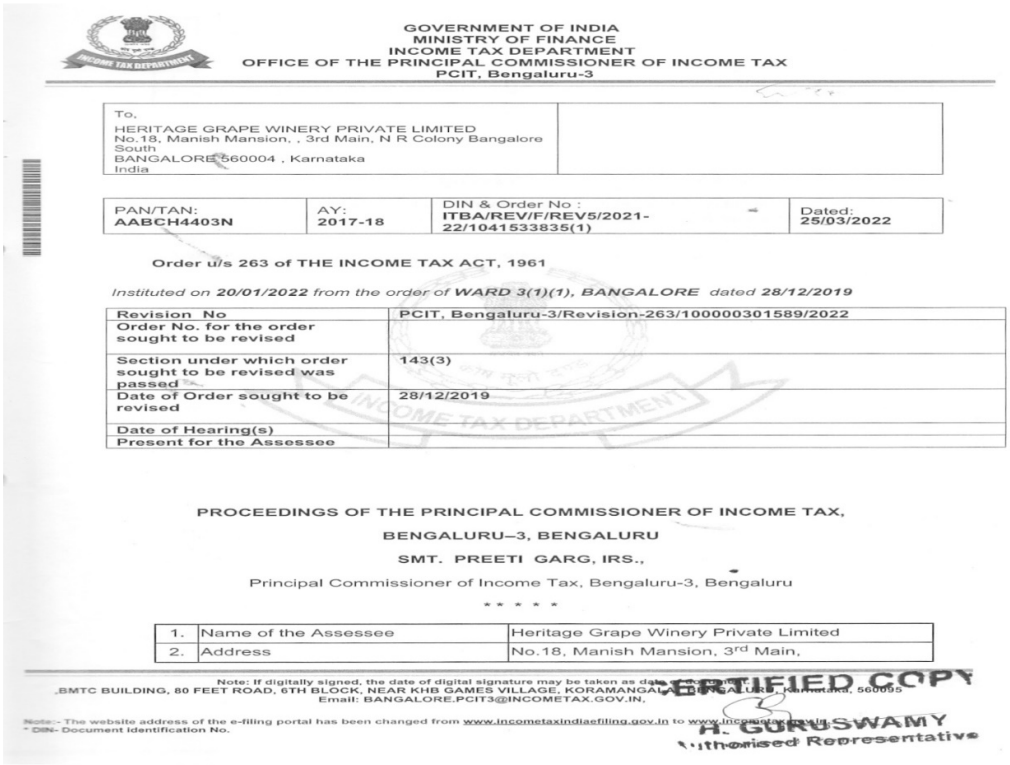
(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

CERTIFIED COPY
H. GURUSWAMY
Authorised Representative

This document is digitally signed
Signer: MINI VARGHE
Date: 28 December 2 3 18:24
Location: BANGALO , India

9.5 From the above, it is clear that on the top of left corner, it bears a bar code. Further, on the top of righthand side it bears a DIN and assessment order number. Also, in the body of the order, it mentioned about the fact that document is digitally signed. Further, in the left bottom of the said assessment order, there is a legend put with an asterisk (*) mark which says "DIN" .

9.6 In the impugned order passed u/s 263 of the Act by Principal CIT dated 25.3.2022, which does not bear any reference to DIN in term of CBDT circular in the impugned order passed u/s 263 of the Act as required in bottom of page 7 of the last page of the order passed by the ld. Principal CIT u/s 263 of the Act. For clarity, we reproduce the first and last page i.e. 1st page & 7th page of the circular as below:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX
PCIT, Bengaluru-3

To,
HERITAGE GRAPE WINERY PRIVATE LIMITED
No.18, Manish Mansion, , 3rd Main, N R Colony Bangalore South
BANGALORE 560004 , Karnataka
India

PAN/TAN:	AY:	DIN & Order No :	Dated:
AABCH4403N	2017-18	ITBA/REV/F/REV5/2021-22/1041533835(1)	25/03/2022

Order u/s 263 of THE INCOME TAX ACT, 1961

Instituted on ***20/01/2022*** *from the order of* ***WARD 3(1)(1), BANGALORE*** *dated* ***28/12/2019***

Revision No	PCIT, Bengaluru-3/Revision-263/100000301589/2022
Order No. for the order sought to be revised	
Section under which order sought to be revised was passed	143(3)
Date of Order sought to be revised	28/12/2019
Date of Hearing(s)	
Present for the Assessee	

PROCEEDINGS OF THE PRINCIPAL COMMISSIONER OF INCOME TAX,
BENGALURU–3, BENGALURU
SMT. PREETI GARG, IRS.,
Principal Commissioner of Income Tax, Bengaluru-3, Bengaluru

* * * * *

1.	Name of the Assessee	Heritage Grape Winery Private Limited
2.	Address	No.18, Manish Mansion, 3rd Main,

Note: If digitally signed, the date of digital signature may be taken as date of ...
,BMTC BUILDING, 80 FEET ROAD, 6TH BLOCK, NEAR KHB GAMES VILLAGE, KORAMANGALA, BENGALURU , Karnataka, 560095
Email: BANGALORE.PCIT3@INCOMETAX.GOV.IN,

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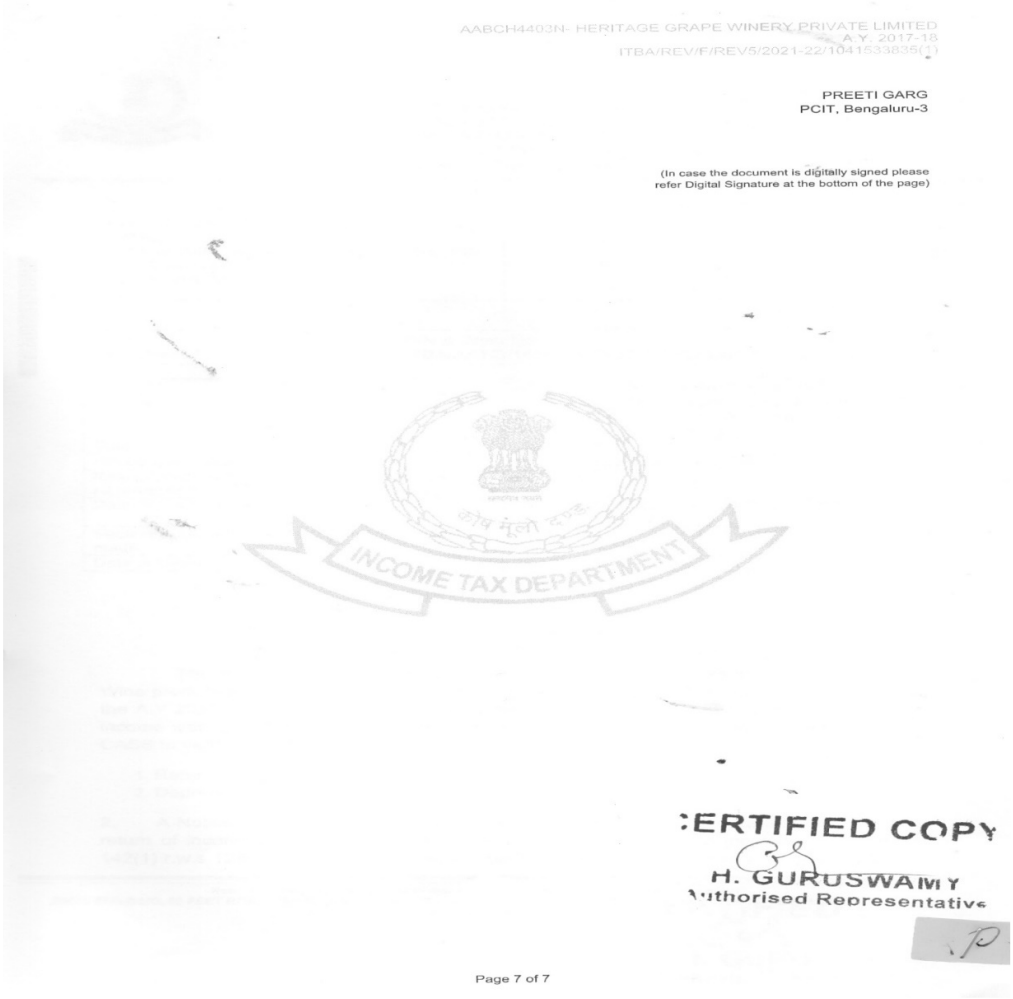
A. GURUSWAMY
Authorised Representative



9.7 From the above, we note that it is an undisputed fact that the impugned order u/s 263 of the Act ha been issued does not bear digital signature at the bottom of last page i.e. page 7 of the authority passing the order as required by the CBDT Circular. Further, there is no dispute that the order was not passed manually but passed digitally for which DIN is mandatory and there is no reference of fact that this order was issued manually without a DIN for which written approval of Chief Commissioner/Director General of Income-Tax was required to be obtained in the prescribed format in terms of CBDT circular. We also note that in terms of para 4 of CBDT circular, such lapse render the impugned order as invalid or NOT deemed to have

been issued.

9.8 It is also important to note about the binding nature of CBDT circular on the Income-tax Authorities for which gainful guidance is taken from the decision of Hon'ble Supreme Court in the case of CIT v. Hero Cycles [1997] 228 ITR 463 (SC) wherein it was held that circulars bind the ITO but will not bind the appellate authority or the Tribunal or the Court or even the assessee.

9.9 In the case of UCO Bank [1999] 237 ITR 889 (SC), Hon'ble Supreme Court while dealing with the legal status of such circulars, observed thus (page 896):

> *"Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 of the Income-tax Act, which are binding on the authorities in the administration of the Act. Under section 119(2)(a) , however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forgo the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorized as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities."*

9.10 In the matter of Nayana P. Dedhia [2004] 270 ITR 572 (AP), the Hon'ble Andhra Pradesh High Court held that *the guidelines issued by the Board in exercise of powers in terms of section 119 of the Act relaxing the rigours of law are binding on all the officers responsible for implementation of the Act and, therefore, bound to*

follow and observe any such orders, instructions and directions of the Board.

9.11 In the decision of DCIT v. Sunita Finlease Ltd. [2011] 330 ITR 491 (CG,) it was held by the Hon'ble High Court of Chhattisgarh in para 16 that *the administrative Instruction No. 9/2004 issued by the Central Board of Direct Taxes is binding on administrative officer in view of the statutory provision contained in section 143(2), which provides for limitation of 12 months for issuance of notice under section 143(2).*

While giving its finding, the Hon'ble High Court of Chhattisgarh placed reliance on the decisions in the case of UCO Bank (*supra*) and Nayana P. Dedhia (*supra*).

9.12 Hon'ble Kolkata High Court in the case of Amal Kumar Ghosh [2014] 361 ITR 458 (Cal) dealt with the issue relating to CBDT circular which according to the Department cannot defeat the provisions of law. While giving its observations and finding on the issue, the Hon'ble Court referred to the decision of Hon'ble Chhattisgarh High Court in the case of Sunita Finlease Ltd (*supra*), which are as under:

> *7. We have considered the rival submissions advanced by the learned Advocates. Even assuming that the intention of CBDT was to restrict the time for selection of the cases for scrutiny within a period of three months, it cannot be said that the selection in this case was made within the aforesaid period. Admittedly, the return was filed on 29th October, 2004 and the case was selected for scrutiny on 6th July, 2005. It may be pointed out that Mrs. Gutgutia was, in fact, reiterating the views taken by the learned Tribunal which we also quoted above. By any process of reasoning, it was not open for the learned Tribunal to come to a finding that the department acted within the four corners of Circulars No.9 and 10 issued by CBDT. The circulars were evidently violated. The circulars are binding upon the department under section 119 of the I.T. Act.*

8. Mrs. Gutgutia, learned Advocate submitted that the circulars are not meant for the purpose of permitting the unscrupulous assessees from evading tax. Even assuming, that to be so, it cannot be said that the department, which is State, can be permitted to selectively apply the standards set by themselves for their own conduct. If this type of deviation is permitted, the consequences will be that floodgate of corruption will be opened which it is not desirable to encourage. When the department has set down a standard for itself, the department is bound by that standard and cannot act with discrimination. In case, it does that, the act of the department is bound to be struck down under Article 14 of the Constitution. In the facts of the case, it is not necessary for us to decide whether the intention of CBDT was to restrict the period of issuance of notice from the date of filing the return laid down under section 143(2) of the I.T. Act. [emphasis supplied by us by underline]

9.13 Further, the Coordinate Bench of the Kolkata Tribunal in ITA No.238/Kol/2021 for A.Y. 2016-17 in the case of Tata Medical Centre Trust vide order dated 18.7.2022 quashed the order passed u/s 263 of the Act in similar circumstances.

9.14 In view of the above, we are of the opinion that the impugned order passed by ld. Principal CIT is not in accordance with the CBDT circular and judicial precedents cited above. Hence, we are inclined to hold that the said order is bad in law and deemed to have never have been issued as it fails to mention DIN. Accordingly, we quash the order of PCIT passed u/s 263 of the Act dated 25.3.2022.

Main Grounds:

10. Now coming to the ground-wise adjudication of the appeal:

The ground No.1 is general in nature which does not require any adjudication.

11. Ground No.2 of the appeal is reproduced as under:

The Ld. PCIT Bangalore-3, has erred ininitiating the proceedings u/s. 263 of the Act without jurisdiction and without appreciating the fact that the Assessment completed by the AO Ward - 3(1)(2) u/s. 143(3) of the Act on 28-12- 2019 was neither erroneous nor prejudicial to the interest of revenue.

11.1 The ld AR submitted that the Ld. PCIT was not justified to pass an order u/s. 263 of the Act dtd: 25-03-2022 on the basis of the Notice issued u/s. 263 of the Act dtd: 15-07-2021 by the predecessor PCIT Bangalore -3, who has not examined the assessment records but mechanically and routinely issued the Notice on the basis of the proposals submitted by the successor AO in office. The predecessor PCIT has not called for the records as is evident in para 4 of the 263 Order dtd: 25-03-2022 where the successor PCIT has held that the records were called for and examined which establishes the fact that the predecessor PCIT has issued the Notice u/s. 263 dtd: 15-07-2021 without examination of the records. It appears that the said Notice was issued at the instance of the AO and not by suo-moto by the predecessor PCIT and therefore the successor PCIT was not justified in passing the order on a Notice u/s. 263 of the Act dtd: 15-07-2021 which was not sustainable in law and hence the order u/s. 263 is liable to be annulled/cancelled/quashed.

12. The ld DR submitted that in this ground the assessee has raised a contention that proceedings u/s. 263 were initiated, when the assessment completed by the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue. The condition required for initiation of proceedings u/s. 263 is that the order should be erroneous and prejudicial to the interest of revenue. The ld DR drawn our attention to the assessment order, wherein the Assessing Officer has neither called for nor discussed any details regarding the sale of winery to M/s. Sula Vineyards, as seen from the details called by the Assessing Officer in the questionnaire dtd. 29/10/2019 & 25//11/2019, which are available in the page no. 2 & 18 of the Paper Book filed by the assessee on 28.11.2022. From the same, the Assessing Officer has not made any enquiry with respect to the contentions question of the Sale of Winery, accrual of

income and appropriate Asst. Year for taxation. This issue has also been clearly highlighted by the Ld. PCIT in the paras 4.8, 5, & 7 of the order dated 25.03.2022. In this regard the ld DR relied on the following judicial pronouncements where in it was held that if no proper enquiry is conducted by Assessing Officer, the order is erroneous and prejudicial to the interest of the Revenue.

a. In para 6.11, of the order of the Hon'ble ITAT, B Bench, Bengaluru, in case of Mr. Mallikarjun Virupakshappa Yarasi, in ITA No.437/Bang/2022 dated 30.08.2022.
b. In para 7.6 of the order of the Hon'ble ITAT, Cochin, in case of M/s. Cochin International Airport Ltd in ITA No.501/Coch/2016 dated 15.03.2018.
c. In paras 7 & 7.1 of the order of the Hon'ble ITAT, B Bench, Bengaluru, in case of Mr. Baidoddi Eshappa, in ITA No.459/Bang/2022 dated 22.08.2022.
d. In para 6 of the order of the Hon'ble ITAT, B Bench, Bengaluru, in case of Mr. Gundami Shankar, in ITA No.421/Bang/2022 dated 22.08.2022.

13. We have heard the rival submissions and perused the materials available on record. In this case, the ld. Principal CIT issued a notice u/s 263 of the Act on 15.7.2021. Thereafter, one more notice was issued to the assessee on 20.12.2021. The contention of the ld. AR is that the said Principal CIT, who issued the notices have not passed the present impugned order. However, the same has been passed by his successor on 25.3.2022. The successor Principal CIT Bengaluru-3 who has passed the present impugned order u/s 263 of the Act has not given any fresh notice so as to pass this impugned order and he continued the proceedings with the earlier notice issued by his predecessor. According to the ld. A.R., the earlier Principal CIT who issued the notice on 15.7.2021 has not

at all examined the records since the present Principal CIT recorded in para 4 of his order as below:

"Whereas the assessment records in this case of the assessee for the assessment year 2017-18 were called for examination by the undersigned. During the course of examination of the assessment records, it is observed that the assessee has agreed to sell and convey the immovable & movable assets, transfer of its Winery Unit situated at Chennapattana Taluk, Ramanagar district with effect from 1.2.2017 to M/s. Sula Vineyard Pvt. Ltd. in pursuant to letter of intent dated 11.11.2016, Addendum dated 21.11.2016 and Memorandum of Understanding dated 18.1.2016 for a lump sum consideration of Rs.34.62 crores. Subsequently, the assessee had entered into an agreement for Transfer of Business with M/s. Sula Vineyards Pvt. Ltd. on 19.5.2017."

13.1 As such, according to the ld. A.R., the impugned order suffers from infirmity and same is to be quashed. In our opinion, this argument of the assessee counsel is misconceived. The assessee has not brought on record any material to suggest that earlier Principal CIT has not examined the records before issue of notice u/s 263 of the Act on 15.7.2021. There was no material to suggest that the earlier Principal CIT took up the present case for revision u/s 263 of the Act at the instance of AO. Similar issue came for consideration before the coordinate bench of Kolkata Tribunal in the case of Karabi Dealers Pvt. Ltd. in ITA No.389/Kol/2021 vide order dated 2.11.2022, wherein held as under:-

"14. We have carefully considered the rival submissions and perused the material available on record and given our thoughtful consideration to the submissions made by both the parties. On the contention of the Ld. Counsel of the assessee that the impugned assessment has been held to be erroneous in so far as it is prejudicial to the interest of revenue by the ld. Pr. CIT on the basis of proposal of the Ld. AO, it is appropriate to understand the role of proposal of ld. AO made before the ld. PCIT. To our understanding, it is nothing more than a 'stimuli' for the ld. PCIT which could be either an internal or external source. It is 'suggestive' in nature on which the ld. PCIT is required to apply his independent mind to draw his own consideration. It is a source or a clue which tinkers the ld. PCIT to look into a particular case and probe into its records to arrive at a consideration if the order is erroneous in so far as it is prejudicial to the interests of the revenue so as to set in motion, the revisionary provisions of section 263 of the Act.

14.1. What is important is the application of mind by the ld. PCIT on the records of the case. This aspect of application of mind by the CIT has been succinctly dealt by the Hon'ble Delhi High Court in the judgment of DG Housing Finance Co. Ltd. [2012] 20 taxmann.com 587 (Del).

14.1.1.While adverting on the issue, Hon'ble High Court held that the CIT has to come to the conclusion and himself decide that order is erroneous, by conducting necessary enquiry, if required and necessary before the order u/s 263 of the Act is passed. In such cases, the order of the AO will be erroneous because the order passed is not sustainable in law and the said finding must be recorded by CIT who cannot remand the matter to the assessing officer to decide whether the findings recorded are erroneous.

14.1.2.In cases where there is inadequate enquiry but not lack of enquiry, again the CIT must give and record a finding that the order/enquiry made is erroneous. This can happen if an enquiry and verification is conducted by the CIT and he is able to establish and show the error or mistake made by the AO, making the order unsustainable in law.

14.1.3.In some cases, possibly though rarely, the CIT 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 AO 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 AO to conduct further enquiries without a finding that the order is erroneous, the condition or requirement which must be satisfied for exercise of jurisdiction u/s 263 of the Act. In such matters, to remand the matter/issue to the AO would imply and mean that the CIT has not examined and decided whether or not the order is erroneous but has directed the AO to decide the aspect/question.

14.1.4.The Hon'ble Court further held that this distinction must be kept in mind by the CIT while exercising jurisdiction u/s 263 of the Act and in the absence of the finding that the order is erroneous and prejudicial to the interest of revenue, exercise of jurisdiction under the said section is not sustainable. In most cases of alleged "inadequate investigation", it will be difficult to hold that the order of the AO, who had conducted enquiries and had acted as an investigator, is erroneous, without CIT conducting verification/enquiry himself. The order of the AO may be or may not be wrong. CIT cannot direct reconsideration on this ground but only when the order is erroneous. An order of remit cannot be passed by the CIT to ask the AO to decide whether the order was erroneous. This is not permissible. An order is erroneous, unless the CIT holds and records reason why it is erroneous. Therefore, CIT must after recording reasons, hold that order is erroneous. The jurisdictional pre-

condition stipulated is that CIT must come to the conclusion that the order is erroneous and is unsustainable in law.

14.1.5.It was further observed by the Hon'ble High Court that the material, which the CIT can rely up on includes not only the records as it stands at the time when the order in question was passed by the AO but also records as it stands at the time of the examination by the CIT. Nothing prohibits CIT from collecting and relying new/additional material which evidence to show and state that the order of the AO is erroneous.

14.2. In the present case before us, we note that what the Ld. Pr. CIT has recorded in para 2 is his prima facie observation on the perusal of the proposal of the AO. After keeping in mind, the observation that the Ld. AO failed to take a logical action on the information available with him, Ld. Pr. CIT on examination of assessment records and by applying his mind, embarked upon the journey of revisionary proceeding by issuing a notice u/s. 263 of the Act by pointing out and observing the discrepancies detected in the assessment proceedings as available from the assessment record.

In the absence of any evidence in support of claim of the assessee that the ld. PCIT has failed to apply his mind to the facts of the case on verification record, we are not in a position to appreciate this submission of the ld. A.R. Accordingly, we dismiss this ground of appeal taken by the assessee.

14. Ground No.3 of the appeal of the assessee is reproduced as under:

> *The Ld. Principal CIT has erred in initiating the proceedings u/s 263 of the Act merely on the basis of a preliminary Revenue Audit Objection which does not confer lawful jurisdiction to the Principal CIT for initiating proceedings u/s 263 of the Act.*

15. The ld AR submitted that the successor PCIT has continued the proceedings-initiated u/s. 263 of the Act by issue of Notice u/s. 263 dtd: 15-07-2021 without appreciating the fact that the said Notice was issued at the instance of the AO based on the preliminary revenue audit objection. The revenue Audit party has raised a query regarding assessability of Capital Gains on a Slump Sale Basis in view

of Business Transfer Agreement dtd: 19-05-2017 said to be effective w.e.f 01-02-2017. The assessee in the course of the proceedings u/s. 263 has made submissions vide para 3.a of letter dtd: 04-03-2022 (placed at page No. 36 and 37 of the Paper Book) that the Proceedings u/s. 263 were not justifiable on the basis of Audit Objection on which the proposal was submitted by the successor AO in Office. However, the Ld. PCIT has conveniently avoided to say anything about the Audit Objection even though it was specially brought to the Notice. The successor PCIT deliberately remained silent about the Audit Objection without making any reference in the Order u/s. 263 of the Act.

15.1 In this regard the assessee placed reliance on the decision of the ITAT Amritsar Bench in the case of Surtaj Singh v/s. PCIT Batinda in ITA No. 154/ASR/2015 and decision dtd: 07-03-2019 of ITAT "A" Bench Pune in ITA No. 932/PUN/2016 also on the decision of Mumbai Bench in ITA No.1964/Mum/2019 dtd: 24-05-2021 in the case of Grasim Industries Ltd v/s. PCIT, Central (1).

15.2 The ld AR for the assessee further submitted that the proceedings u/s. 263 of the Act were initiated on the borrowed satisfaction of the Audit Party and not independent application of mind. The Audit Party without proper appreciation of the evidence on record has raised the preliminary audit objection suggesting that the Capital Gains arising out of the alleged slump sale were not brought to tax without appreciating the fact that the assessee company in spite of the agreement dtd: 19-05-2017 has not transferred the assets on slump sale basis as is evident from the records produced by the assessee that the transfer of assets were made in a phased manner subsequent to the date of agreement and the consideration of

Rs.34.62 crores was not related to any of the assets of the assessee company but it was related to the sale of agricultural lands owned by Sri. P.L. Venkatarama Reddy one of the directors in his personal capacity. Therefore the Ld. PCIT erred in passing the Order u/s. 263 of the Act dtd: 25-03-2022 merely on a reference made by the successor AO on the basis of Audit Objections which is verifiable from the records. The ld. PCIT has not made any rebuttal reference in the Order passed u/s. 263 of the Act on objection raised by the assessee company that the Audit Objection could not have been used a ground for initiating Proceedings u/s. 263 of the Act. In fact the assessee company has not transferred any of the assets on payment of Rs. 34.62 Crores which was not related to the assets of the assessee company and therefore the ld AR for the assessee stated that in the absence of any consideration attributable to the transfer of assets, the question of tax liability of Capital Gains would not arise.

16. The Ld. DR submitted that the assessee's contention is that the proceedings u/s. 263 of the IT Act is primarily based on the audit objection raised and hence does not confer any lawful jurisdiction to the PCIT. The contention of the assessee is not acceptable for the reason that a proper notice u/s. 263 was issued by the Ld. PCIT on 15.07.2021 and subsequently another notice on 20.12.2021 was issued, as there was change of incumbent. Thereafter, the details were called for, the assessee was given an opportunity of being heard and proper hearings have been conducted as seen by the notice dtd. 27.01.2022. Also considering the reply from assessee and following due procedure as prescribed under the IT Act, final order u/s. 263 dtd. 25.03.2022 was passed by the Ld. PCIT. The ld DR submitted that the assessment records were called by the Ld. PCIT and due application of mind has been carried out before the issue of order u/s.263. On this principle ld DR relied on the order of

ITAT, Kolkata, in the case of M/s. Karabi Dealers Pvt. Ltd in ITA No.389/Kol/2021 dated 02.11.2022, wherein, the issue regarding application of mind and origin of 263 proposal has been clearly dealt at paras 10 & 14, which clearly differentiated the earlier judicial precedence in favour of the assessee.

17. We have heard the rival submissions and perused the materials available on record. In this case, as discussed earlier, the first notice for invoking jurisdiction u/s 263 of the Act was issued by ld. Principal CIT on 15.7.2021. The second notice was issued on 20.12.2021 after due examination of records by the ld. Principal CIT and the case was fixed for hearing on 27.1.2022. The assessee has filed the objections for initiating the revision u/s 263 of the Act. However, ld. Principal CIT passed order on 25.3.2022 u/s 263 of the Act. It cannot be said that the ld. Principal CIT has not applied his mind to the issue took up by him in proceedings u/s 263 of the Act and he has not exercised revisionary power on account of audit objections. Further, similar issue came for consideration before the coordinate bench of Kolkata Tribunal case of Karabi Dealers Pvt. Ltd. in ITA No.389/Kol/2021 vide order dated 2.11.2022, wherein held as under:-

"14.3. Subsequent to the reply furnished by the assessee on the show cause notice issued by the Ld. Pr. CIT u/s. 263(1) of the Act, he carefully considered the facts of the case and the submissions made by the assessee and made several observations as noted in para 6 of the impugned order specifically pointing out the discrepancies vis-à-vis noting in the order sheet of the assessment proceedings and the submissions claimed to have been made by the assessee in the assessment proceedings to demonstrate that AO has not done verification on the issues for which the case was taken up for scrutiny and has passed the order without applying his mind to the material on record.

14.4. On the case law relied on by the Ld. Counsel in Rupayan Udyog (supra), we note that the Ld. AO himself has expressed his opinion that the assessment order is erroneous and prejudicial to the interest of revenue since no verification could be

done about the source of receipt of advance and, therefore, is required to be set aside to frame de novo assessment on receiving direction from the Ld. Pr. CIT. On the decision of Hon'ble Jurisdictional High Court of Calcutta in the case of Sinhotia Metals & Minerals Pvt. Ltd. (supra), we note that the distinguishing fact is that Ld. Pr. CIT himself had called for a proposal from the JCIT/AO to exercise jurisdiction u/s. 263 of the Act. In the case of Alfa Laval Lund (supra), the important observation made is that the consideration for holding the order as erroneous and prejudicial to the interest of revenue should flow and be the consequence of examination of record of proceedings by the Ld. Pr. CIT.

14.5. On the aspect of limited scrutiny, in the case laws referred to by the Ld. Counsel, it is held that in limited scrutiny assessment, scope of verification is limited to the issues for which the selection is made and Ld. Pr. CIT cannot revise the assessment order on the issues other than the issues considered by the AO in the assessment proceedings. We note that there is a discrepancy emanating from the noting made in the order sheet of the assessment proceedings (reproduced supra) and the submissions claimed to have been made by the assessee dated 21.09.2017 which demonstrates that ld. AO has not applied his mind and executed the due verification and examination on the two issues (supra) for which the case was selected for limited scrutiny.

14.6. It is a fact on record that the discussion and hearing of the assessment was concluded on 19.09.2017 for which both the Ld. AO and the authorized representative of the assessee, Ms. Manisha Patwari had put their signatures on the order sheet (reproduced supra). Ld. Counsel has repeatedly claimed that all the submissions were made vide letter dated 11.09.2017 and 21.09.2017, more importantly all the relevant submissions and explanations relating to the two issues for limited scrutiny criterion forms part of the submission dated 21.09.2017 as placed on record in the paper book.

14.6.1. In the written submission dated 21.09.2017, placed at page 36 of the paper book, it is submitted by the assessee it is producing the bills and vouchers for the claim of expenses of Rs.13,00,098/-. The relevant para is reproduced as under –

> *"We are enclosing herewith the details of other expenses of Rs 13,00,098/- claimed in the profit and loss account of ITR along with their ledger copy for the financial year ended 31st March 2015 relevant to the assessment year 2015-16 for your record and perusal. <u>We also producing bills and vouchers related to the aforesaid other expenses were produced before you for verification</u>."*
> *[emphasis supplied by us by underline]*

14.6.2. Also, in the same written submission, reply in reference to S/No:12, assessee submitted that it is producing the books of accounts of the year for verification. The relevant para is reproduced as under –

"We are enclosing herewith Form no 26AS for your record and perusal and submit that all the income on which TDS is deducted as per Form no 26AS are accounted for in the books of accounts of the assessee company and can be verified from the Profit & loss account for the year ended 0n 31st March, 2015 relevant to assessment year 2015-16 of the assessee company. We also producing the books of accounts of the year under consideration before you for verification at the time of hearing."
[emphasis supplied by us by underline]

14.6.3. There is no entry in the order sheet of the assessment proceedings of the above submission of 21.09.2017 wherein assessee has claimed to produce bills, vouchers and books of accounts for verification at the time of hearing. The last entry is on 19.09.2017 wherein it is recorded that the case was discussed and heard under the signatures of both, the ld. AO and the Authorized Representative of the assessee. These facts evidently demonstrate that Ld. AO has failed to conduct required verification and examination and has not applied his mind before passing the assessment order and accepting the returned income as assessed income.

14.7. Ld. Pr. CIT also referred to the insertion of explanation 2 to section 263 of the Act w.e.f. 01.06.2015 which is reproduced below:

"Explanation 2.-For the purposes 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 interests of the revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner:-

(a) the order is passed without making inquiries or verification which should have been made;
(b) the order is passed allowing any relief without inquiring into the claim;
(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."

15. We note that Ld. Pr. CIT on his own examination of the assessment records has carefully and elaborately surfaced out the discrepancies in the assessment proceedings as evident from the order sheet entries (reproduced supra) and has called for the required explanations from the assessee in the revisionary proceedings. In the revisionary proceedings also, assessee asserted to have made all the submissions before the ld. AO on the issues raised by the ld. Pr. CIT vide its submissions dated 11.09.2017 and 21.09.2017. Considering the facts on record and the submissions made by both the parties as elaborately discussed above, we have no hesitation in upholding the revisionary order passed by the ld. Pr. CIT u/s. 263 of the Act. Accordingly, grounds taken by the assessee are dismissed."

17.1 Keeping in view of the above order of the Tribunal, this ground of appeal of the assessee is dismissed on similar lines.

18. Ground No.4 of the assessee's appeal is reproduced below:

> *The Ld. PCIT has erred in assuming the jurisdiction u/s. 263 4, of the Act and to pass an order u/s. 263 of the Act dtd: 25-032022 in which it is evident that the assessment order dtd: 2012-2019 was said to be set-aside with a direction to the AO to verify the issue of slump sale which establishes the fact that the issue of slump sale is yet to be decided by the AO and therefore the erroneous nature of assessment and its prejudicial effect on revenue was not evident from the records at the time of initiating the proceedings u/s. 263 of the Act*

19. The ld AR for the assessee submitted that the Ld. PCIT has erred to assume the jurisdiction u/s. 263 and to pass the consequential order with a direction to the AO to verify the issue of slump sale by providing a second innings to the AO without appreciating the fact that the issue was already decided by the AO in para 4 of the Assessment Order in which it was admitted that the agreement for transfer of assets was not materialized. Therefore the same issue ought to have not been referred to the AO for reconsideration since the AO has already held that the agreement was not materialized after conducting detailed enquiry and also on examination of the documents which were referred by the PCIT in para 4 of the 263 Order relating to Letter of intent dtd: 11-11-2016 Addendum dtd: 21-11-2016 and MOU dtd: 18-10-2016 and also the Business Transfer Agreement dtd: 19-05-2017 without appreciating the fact that all these documents were already produced before the AO in the course of the assessment proceedings and on the basis of the same documents, the Ld. PCIT has passed the order u/s. 263 by interpretation on change of opinion to substitute her view as against the view already taken by the AO. The Ld. PCIT has given the directions in para 7of the Order u/s. 263 with a direction to verify

the issue of slump sale and determine the capital gains. The findings of the Ld. PCIT in para 7 of the order establishes the fact that the assessment order was neither erroneous nor prejudicial to the interest of Revenue and the issue of slump sale is directed to be verified which was already verified by the AP and came to a definite conclusion that the transfer agreement was not materialized as a result of which the question of Capital Gain Tax would not arise. Therefore, the ld AR for the assessee stated that the order passed by the Ld. PCIT is against to the law and facts of the case.

20. The ld DR submitted that the Ld. PCIT has correctly observed that as per agreement for transfer of business dtd. 19.05.2017, the letter of intent dtd. 11.11.2016, addendum dtd. 21.11.2016 and MOU dtd. 18.01.2016, clearly indicate that there is a transfer of business for lump sum consideration of Rs. 34.62 crores. The Ld. PCIT has clearly stated that these issues were not enquired/ examined at the time of assessment proceedings and hence the order passed by the Assessing Officer is erroneous and prejudicial to the interest of revenue.

21. We have heard the rival submissions and perused the materials available on record. In this case, the case has been selected for scrutiny u/s 143(2) of the Act and notice was issued to the assessee on 24.9.2018 calling for details with reference to following two items:-

1) Refund claim
2) Depreciation claim

21.1 In response to this assessee e-filed details on 5.11.2019 relating to the information sought for vide notice u/s 142(1) of the Act on 29.10.2019. The assessee filed following details:

"Furnishing of Reasons for Large claim of Refund of Rs. 1,34,29,600/-:-

The Assessee Company was engaged in manufacture and sale of Wine manufactured out of the Black Grapes since 2004. The Assessee Company for the promotion and development of the Business was in need of more funds which could not be mobilized. However with the persistent efforts the company came into contact with a company called M/s. Sula Vineyards Pvt Ltd., Bombay and the company has put-forth its claim for financial assistance and in lieu of such request the Bombay Company has proposed to invest funds in the On-going Assessee Company. In this regard the Bombay Company has offered the financial assistance subject to sale of company assets in phased manner. In view of the mutual understanding the Bombay Company advanced some amount in anticipation of the sale of Company Assets and also the agricultural lands owned by Sri. Venkatarama Reddy one of the Directors of the Assessee Company. As a First Step the Director named above has sold the agricultural lands overall measuring 12 Acres 15 Guntas situated at Koorangere Village, Malluru Hobli, Chenapatana Ta/uk, Ramanagara District on 28-10-2017. However the Sale of Agricultural lands has locked up in litigation with the District Registrar and Deputy Commissioner, Detection of Undervaluation of Stamps, Ramanagara. The Bombay Company has filed an Appeal against the Order passed by the Deputy Commissioner, Detection of Undervaluation of Stamps and the same is still pending for adjudication. In View of the said litigation the sale of assets as agreed mutually was held-up and as a conciliatory measure the Assessee Company has transferred the following Movable Assets at the Book Value in the F.Y 2016-17 relevant to the A. Y 2017-18 to instil confidence in the Bombay Company who has agreed to extend financial assistance.

1. Bank Balance	Rs. 1,38,400/-
2. Amount receivable from Debtors	Rs. 3,90,66,608/-
3. Stock-in-trade	Rs. 1,88,13,272/-

The Assessee Company submits that the negotiated deal of sale of company assets has not taken place in the relevant F. Y 2016-17 relevant to the A.Y 2017-18 except the movable assets mentioned above. The Assessee Company in anticipation of sale assets of the company has estimated the income and paid the Self Assessment Tax. The anticipated sale has not taken place in the relevant A.Y 2017-18 and therefore Assessee Company has not derived the anticipated income on which the Self Assessment tax was paid with bonafide intention as a measure of abundant caution to meet the liability of tax likely to arise in the relevant A. Y 2017-18. Therefore the payment of self assessment tax was claimed by way of refund"

21.2 The details and the documents furnished are examined and it was observed by the ld. AO that M/s. Sula Vineyards Pvt Ltd, Bombay has advanced a sum of Rs. 18,98,49,469/-. It was also observed by the AO that the transfer as negotiated did not

materialize during the previous year ending 31-03-2017 relevant to the A.Y 2017-18, but in lieu of the advance payment assets such as Bank Balance of Rs. 1,38,400/-, amount receivable from Debtors of Rs. 3,90,66,608/- and Stock-in-Trade of Rs. 1,88,13,272/- were transferred as-is-where basis as on 31.01.2017. The Assessee company has e-filed the details of expenditure on random basis and copies of ledger extracts pertaining to Rates and Taxes, Marketing expenses and Interest paid were furnished in respect of the expenditure incurred and the same are examined. The ld AO observed from the return of income and financial statements that a sum of Rs. 1,16,250/- being Donation classified under other operating expenses is not an allowable expenditure u/s. 37(1) of the Act as the Assessee company has not furnished any supporting document and hence the same was brought to tax by the AO. Finally, the assessing officer passed the order u/s 143(3) of the Act.

21.3 As seen from the above facts herein, the assessment has been selected only to examine two issues i.e. Refund claim & Depreciation claim under CASS system. In other words, it is a limited scrutiny case. It is an admitted position of law that in case of limited scrutiny assessments, scope of verification is limited to the issues mentioned in the notice issued under CASS system. The AO cannot transfer beyond the issue of assessment which has been taken up for scrutiny. Then obviously, the ld. Principal CIT cannot term the assessment order passed by the AO as erroneous in so far as it is prejudicial to the interest of the revenue on other than the issues taken up by the AO in scrutiny assessment proceedings. If the AO wanted to examine any other issues, other than the issues taken up for limited scrutiny, he should have taken permission from the competent

authority. In the present case, the AO took up the case for limited scrutiny to examine only two issues as stated above and he examined those two issues under limited scrutiny system and the ld. Principal CIT cannot expect him to make further enquiry other than the issues taken up for limited scrutiny. For this purpose, we rely on the order of the Chennai Tribunal in the case of Yuvraj vs. ITO in ITA No.1722/Chny/2019 dated 7.3.2022, wherein held as under:-

> *"6. We have heard both the parties, perused material available on record and gone through orders of the authorities below. We find that the assessment for the impugned assessment year has been taken up for limited scrutiny to verify large cash deposits into savings bank account and the Assessing Officer has completed assessment after verifying cash deposits in savings bank account and has made additions, when the assessee was unable to explain source for part of cash deposits. It is an admitted position of law that in limited scrutiny assessments, scope of verification is limited to the issues mentioned in the notice issued under CASS system. The Assessing Officer cannot travel beyond the issues on which assessment has been taken up for scrutiny. Therefore, once the Assessing Officer does not have power to go beyond the issues on which he has taken up case for scrutiny, then obviously, the learned PCIT cannot term the assessment order passed by the Assessing Officer as erroneous, insofar as it is prejudicial to the interests of revenue on issues other than the issue taken up by the Assessing Officer in scrutiny assessment proceedings. In this case, on perusal of materials available on record, we find that the learned PCIT has revised assessment order on the issues other than the issue considered by the Assessing Officer in assessment proceedings. Therefore, we are of the considered view that the learned PCIT has exceeded her jurisdiction in examining issues other than the issues which is subject matter of limited scrutiny assessment proceedings before the Assessing Officer. Hence, we are of the considered view that revision order passed by the learned PCIT u/s.263 of the Act is invalid and not sustainable. Hence, we quash order passed by the learned PCIT u/s.263 of the Act."*

21.4 Same view was taken up by Amritsar bench of Tribunal in the case of Paradise Rubber Industries Vs. Principal CIT in ITA No.115/ASR/2020 dated 24.9.2021 on this issue. Hence, we are of the opinion that the ld. Principal CIT is precluded from exercising his jurisdiction u/s 263 of the Act in this facts and circumstances of the case. This ground of appeal of the assessee is allowed.

22. Ground No.5 of the assessee's appeal is reproduced below:

Without prejudice to the legal grounds urged above, it is further urged that the Ld. PCIT has erred in holding that the assessment made u/s. 143(3) of the Act dtd: 28-12-2019 was erroneous and prejudicial to the interest of the revenue which is an afterthought opinion without appreciating the fact that the AO has passed the Order after considering the agreement dated 19.5.2017.

23. The ld AR for the assessee submitted that the Order passed u/s. 263 of the Act by the PCIT dtd: 25-03-2022 holding that the Assessment made u/s. 143(3) of the Act dtd: 20-08-2019 was erroneous in so far as prejudicial to the interest of revenue was based on mere suspicion and surmise without appreciating the fact that the AO has already held in clear terms in para 4 of the assessment order that the transfer agreement of assets did not materialize during the A.Y 2017-18 and therefore the Order u/s. 263 of the Act is not sustainable in law since the AO has already concluded the issue on examination of the documents placed on records.

23.1 The ld AR further submitted that the Ld. PCIT has not brought on record any material evidence in support of the transfer of assets on slump sale basis without appreciating the fact that the transfer of assets did not take place during the A.Y 2017-18 and by misreading the facts that the consideration of Rs. 34.62 crores was related to the transfer of business assets which is factually incorrect since the said amount represented the sale consideration attributable to the sale of agricultural lands owned by one of the Directors and the assessee company was in no way connected to the said agricultural lands and therefore the amount of Rs. 34.62 crores was not chargeable to tax on the ground of transfer of assets on slump sale basis.

24. The ld DR submitted that as per Assessment order dtd. 28.12.2019 and questionnaires sent by the Assessing Officer, that neither details were called for, nor examination of agreements have been done. The entire discussion on the issue is limited to 5 lines of para 4 of the Assessment Order, which itself makes the order erroneous and prejudicial to the interest of revenue and as held by the various case laws as quoted for the Ground of Appeal No.2.

25. We have heard the rival submissions and perused the materials available on record. The provisions of section 263 of the Act could be invoked by ld. Principal CIT if the order passed by the AO is erroneous in so far as it is prejudicial to the interest of revenue. So it was incumbent upon the ld. Principal CIT to find that the assessment order is both erroneous and prejudicial to the interest of revenue. However, we are of the opinion that the ld. Principal CIT cannot give direction for further examination without pointing out that the order is both erroneous and prejudicial to the interest of revenue. In the present case, as discussed in earlier paras, the ld. AO selected a case under CASS system for limited scrutiny and he examined the issues for which it was selected and passed the assessment order and the ld. Principal CIT was of the opinion that the AO ought to have examined the issues from another angle with regard to the gain arising out of Agreement to Sell movable or immovable property and transfer of Winery situated at Chennapattna, Ramnagar district w.e.f. 1.2.2017 to M/s. Sula Vineyards Pvt. Ltd. in pursuance of letter of intent dated 11.11.2016, Addendum dated 21.11.2016 and Memorandum of Understanding dated 18.1.2016 for a lumpsum consideration of Rs.34.62 crores read with Agreement for transfer of business dated 19.5.2017. According to the ld. Principal CIT, the agreement for transfer of business dated 19.5.2017 referred that effective date of agreement

shall come into effect from 1.2.2017. Admittedly, the agreement for transfer of business dated 19.5.2017, which was not at all related to the assessment year under consideration as financial year relating to 2016-17 (ending on 31.3.2017) relevant assessment year is 2017-18. Hence, the ld. Principal CIT fixed the effect of the said agreement in the assessment year 2017-18 itself and similarly ld. Principal CIT cannot thrust upon the AO to consider the agreement entered by assessee subsequent to the end of the financial year relevant to the assessment year 2017-18 and also he cannot force the AO to convert the limited scrutiny into unlimited scrutiny. The ld. Principal CIT cannot put himself in the shoe of the AO so that what he ought to have been done if he would have been AO. In our opinion, merely because the ld. Principal CIT has a different opinion in this assessment, he cannot ask the AO to make further enquiry though such issue was not before the AO. At this point we take support from the judgement of Hon'ble Bombay High Court in the case of CIT Vs. Gabriel India Ltd. (1993) 203 ITR (108) wherein held as under:

> *"From a reading of sub-section (1) of section 263, it is clear that / the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the Income-tax Officer is 'erroneous in so far as it is prejudicial to the interests of the Revenue'. It is not an arbitrary or unchartered power, it can be exercised only on fulfilment of the requirements laid down in sub-section (1). 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. (See*

Parashuram Pottery Works Co. Ltd. v. ITO [1977] 106 ITR 1 (SC) at page 10) . . .

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 a conclusion and such a conclusion cannot be formed 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 . . .

We may now examine the facts of the present case in the light of the powers of the Commissioner set out above. The Income-tax Officer in this case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given detailed explanation in that regard by a letter in writing. All these are part of the record of the case. Evidently, the claim was allowed by the Income-tax Officer on being satisfied with the explanation of the assessee. Such decision of the Income-tax Officer cannot be held to be 'erroneous' simply because in his order he did not make an elaborate discussion in that regard."

25.1 In the present case, we find that the AO has called for explanation on the issues taken for limited scrutiny from the assessee and the assessee has furnished details. He examined the

same and taken a view on such issues. Now, according to ld. Principal CIT, the ld. AO ought to have examined the impugned issue, as he decided in his revision order. In our opinion, this exercise cannot be done by ld. Principal CIT since it was not subject matter of assessment in limited scrutiny in AY 2017-18. Being so, the assessment order cannot be held to be prejudicial to the interest of revenue so far as it is erroneous. Hence, in our opinion, the order of AO could not be subject to revision u/s 263 of the Act and on this basis also the order passed by ld. PCIT u/s 263 of the Act cannot stand on its own legs and to be quashed. Accordingly, this ground of appeal of the assessee is allowed.

26. Ground Nos.6 to 11 of the assessee's appeal are reproduced below:

6. *The Ld. PCIT has erred in passing the order u/s. 263 of the Act dtd: 25-03-2022 without appreciating the fact that the agreement dtd: 19-05-2017 was an unregistered agreement which has no legal existence for the A.Y 2017-18 even though the effective date was mentioned as 1.2.2017.*

7. *The Ld. PCIT has erred in holding that the allegedly agreed transfer of assets on the basis of an unregistered agreement dtd: 19-05-2017 constituted a slump sale within the meaning of section 2(42C) of the Act without appreciating the fact that in the relevant A.Y 2017-18 neither ongoing concern was transferred as a whole nor the assets at a single stretch*

8. *The Ld. PCIT has erred in holding that the transfer of assets on the basis of an unregistered agreement dtd: 19-05-2017 constituted a slump sale which gave rise for exigibility of capital gain tax without appreciating the fact that the assets of the company were transferred on a phased manner depending upon the financial need of the business.*

9. *The Ld. PCIT has erred in holding that the transfer of assets on the basis of an unregistered agreement dtd: 19-05-2017 without appreciating the fact that the company despite the agreement has continued the business in the subsequent years in the normal course.*

10. *The Ld. PCIT ought to have appreciated the fact that in spite of unregistered agreement dtd: 19-05-2017, the transfer of ongoing concern as a whole has not taken place in view of the litigation relating to the land and the major chunk of consideration was related to sale of agricultural lands held by one of the directors of the Company.*

11. *The Ld. PCIT has erred in holding that the ratio laid down by the Hon'ble Supreme Court in the case of CIT v/s. Balbir Singh relating to unregistered Agreements is not applicable but in para 6 of the Show Cause Notice dtd: 15-02-2022 held that the transfer took place as per TP Act which is self. contradictory.*

Ld. A.R's submissions on ground Nos. 6 to 11:

27. With regard to ground Nos.6 & 7, the ld AR submitted that the Ld. PCIT has relied upon the agreement dtd: 19-05-2017 which did not possess the evidentiary value as the said agreement was not registered as required under amended provision of section 17A of the Registration Act. The assessee submitted that as per clause 21.1 (page 105 of paper Book) the implementation of the agreement and interpretation agreed to be governed by the Laws of India. In this regard the assessee submitted that the Hon'ble Supreme Court in the case of CIT v/s. Balbir Singh Maini (2017) 398 ITR 531 (SC) has clearly held that no transfer takes place on unregistered documents since the transaction not having effect of transferring/enabling or enjoyment of immovable property. The assessee company submitted that the assets included the immovable properties such as factory land and building and administrative building which were not liable to the transferred without registration under the Registration Act and the said immovable properties were not transferred during the A.Y 2017-18 as is evident from the sale deeds executed later vide side deed dtd: 20-12-2018 relating to the sale of land and building of the factory and sale of office building in favour of one of the Directors of the Appellant Company vide sale deed dtd: 18-01-2019 which establishes the fact that the assessee company has not transferred

the office building to Sula Vineyards Pvt Ltd and therefore the question of slump sale would not arise.

27.1 The assessee in its submissions dtd: 04-03-2022 has placed reliance on the appellate order dtd: 28-03-2019 in the case of Kammanahalli Pilla Reddy Nagesh passed by the Ld. CIT(A) Bangalore - 9 who has clearly held that in para 35 that on the basis of unregistered sale deed, it cannot be concluded that the property was purchased by the appellant. The said decision was brought to the Notice of the Ld. PCIT vide para (i) of the submissions dtd: 04-03-2022. However, the Ld. PCIT has conveniently omitted which establishes the fact that each authority in the department are passing conflicting order with inconsistency. The Ld. PCIT has misdirected on misreading the facts that the Agreement dtd: 19-05-2017 constitutes a slump sale within the meaning of section 2(42C) of the Act without appreciating the fact that the said provision is not applicable to the assessee's case as the assessee has never transferred "an Ongoing Concern" and more so the assets were not agreed to be transferred for a lumpsum consideration and each asset was individually valued and transferred separately in a phased manner. In this regard the assessee placed reliance on the decision dtd: 16-03-2016 of the ITAT "C" Bench Kolkata in the case of Hindustan Engineering and Industries Ltd v/s. Additional Commissioner of Income Tax Range 5 Kolkata, in ITA No. 330/KOL/2013 for the A.Y 2009-10. The assessee placed reliance on para 17 of the above decisions which is reproduced as under.

> *"17. In view of the above facts and circumstances of the case, we find that Section 50B of the Act provides that any profit or gain arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gain arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place. Further, Section 2(42C) of the Act defines 'slump sale' as a transfer of one or more undertakings as a result of the sale for a lump sale consideration without values being*

assigned to the individual assets and liabilities in such sales. The Explanation I to section 2(42C) of the Act further provides that 'undertaking' shall have the meaning assigned to it in the Explanation I of clause (19AA) of section 2 of the Act, whereby an undertaking means, in an inclusive sense, any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity. The Explanation 2 to section 2(42C) of the Act further provides that the determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities."

28. With regard to ground No.8, the ld. A.R. submitted that the Ld. PCIT has erred in holding that the assets were transferred on the basis of the unregistered agreement dtd: 19-05-2017 said to be constituted a slump sale without appreciating the fact that the agreement dtd: 19-05-2017 was not at all implemented in the A.Y 2017-18 and more so the Assets of the Company were not transferred on the basis of a slump sale since the assets were transferred in a phased manner in the subsequent period depending upon the financial needs of the company. Therefore, the ld AR stated that the Ld. PCIT has made a wrong interpretation by suspicion that the assets were transferred on a slump sale basis.

29. With regard to ground No.9, the ld AR submitted that the ld. PCIT has erred in passing the impugned order u/s. 263 of the Act on the basis of an unregistered agreement dtd: 19-05-2017 (which is not implemented) without appreciating the fact despite the said agreement dtd: 19-05-2017, the Assessee continued to do the business in the subsequent year, but the Ld. PCIT has disagreed with the said submissions on the ground that the assessee company has not disclosed any turnover without appreciating the fact that the goods were purchased from Karnataka State Beverages Corporation Ltd (KSBCL) a Unit owned by the Government of Karnataka as is evident that the said company deducted TCS on the purchased made

by the assessee company in the F.Y 2017-18 relevant to the A.Y 2018-19.

29.1 Therefore in view of the continued business, it cannot be said that the assessee company was transferred as an Ongoing Concern as erroneously interpreted by the PCIT without appreciating clause 15 of the Agreement dtd: 19-05-2017 relating to the non compete clause in respect of carrying on any business. In this regard if the assessee were to have transferred an ongoing concern, the assessee would not have purchased the goods in the subsequent year and therefore, the ld DR argued that the order u/s. 263 of the Act is not in accordance with the provision of section 2(42C) r.w.s 50B of the Act.

30. With regard to ground No.10, the ld AR for the assessee submitted that the contention of the Ld. PCIT as to the alleged transfer of Ongoing Concern is factually incorrect since no consideration was stated to have been paid in the agreement dtd: 19-05-2017 relating to the assets of the assessee company and the consideration of Rs. 34.62 Crores represented the sale consideration of the agricultural lands owned by the director in his individually capacity and hence the consideration was not related by the transfer of assets of the assessee company and therefore the question of slump sale did not arise.

31. With regard to ground No.11, the ld AR for the assessee submitted that the Ld. PCIT has passed an impugned order u/s. 263 of the Act without following the ratio laid down by the Hon'ble Supreme Court in the case of CIT v/s. Balbir Singh Maini by holding that the transfer took place as per TP Act as mentioned in para 6 of Show Cause Notice dtd: 15-02-2022 which was not the basis for

initiating the Revisionary Proceedings vide Notice dtd: 15-07-2021 issued by the predecessor PCIT. The question of deemed transfer under the TP Act is not applicable in view of section 2(42C) of the Act r.w.s 50B where the transfer should take place as an ongoing concern to constitute a slump sale. In this regard the ld AR submitted that the assets of the Company was not transferred in the A.Y 2017-18 as an ongoing concern as is evident from the documents placed on records that the assets of the company were transferred in a phased manner subsequent to the agreement dtd: 19-05-2017 and the AO on appreciation of the evidence has clearly held in para 4 of the Assessment order that the said agreement dtd: 19-05-2017 was not materialized. The Ld. PCIT has attempted to substitute her view as against one of the possible views adopted by the AO. Therefore, the ld AR argued that the Order passed u/s. 263 of the Act dtd: 25-03-2022 on a substituted view of the PCIT other than the possible view of the AO is not in accordance with law.

31.1 The ld AR for the assessee submitted that despite the agreement dtd: 19-05-2017, no consideration was received for agreed transfer of the movable and immovable assets of the assessee company. The Ld. PCIT in the Order u/s. 263 dtd: 25-03-2022 has mentioned the consideration at Rs. 34.62 Crores which is related to the Sale Consideration attributable to the agricultural lands owned by Sri. P.L. Venkatarama Reddy one of the directors of the Company in his Individual Capacity and the consideration so mentioned at Rs. 34.62 Crores is in no way related to the transfer of movable and immovable assets of the assessee company.

31.2 In this view of the matter, the ld AR for the assessee submitted that the question of sale said to be slump sale does not arise and therefore the order passed u/s. 263 of the Act dtd: 25-03-2022 is on

misreading the actual facts of the case. The Ld. PCIT has not brought on record the receipt of consideration attributable to the transfer of movable and immovable assets of the assessee company. The Consideration of Rs. 34.62 Cores was received by One of the Directors for sale of his Agricultural lands and therefore the ld AR submitted that the question either normal sale or slump sale would not arise for the impugned A.Y 2017-18 in the absence of receipt of any consideration attributable to movable and immovable assets of the assessee company. The ld AR stated that Ld. PCIT has not examined the records in proper perspective but mechanically and routinely relied upon the proposal submitted by the successor AO on the basis of Revenue Audit Objection which cannot constitute a lawful or justifiable ground for initiating the proceedings u/s. 263 of the Act.

31.3 The ld. A.R. for the assessee submitted that in view of the above submissions supported by judicial decisions the impugned order u/s 263 of the Act dated 25.3.2022 is liable to be annulled/cancelled or quashed in the interest of equity and justice.

Ld. D.R.'s arguments on ground Nos.6 to 11:

32. With regard to ground No.6, the ld. D.R. highlighted that the agreement for transfer of business dtd. 19.05.2017, was signed by both the parties involved and different clauses clearly highlights that this agreement is for sale of entire business and the effective date of transfer is 01.02.2017 as per clause 3 of the agreement. The ld DR further highlighted that clause (D) in page 2 of this agreement clearly stated that the assessee has agreed to sell and convey immovable and movable assets, transfer its winery unit w.e.f 01.02.2017 along with various operational licenses, consent and approvals. For clarity clause (D) is reproduced as follows:

"Pursuant to the mutual discussions, the Letter of Intent dated 11th November, 2016, Addendum dated 21st November, 2016 and the Memorandum of Understanding dated 18th January, 2017 executed between the Parties (hereinafter collectively referred to as the "Understanding"), HGWPL has agreed to sell and convey the immovable and the Movable Assets (as set out in Annexure-5), transfer its Winery Unit with effect from 1st February, 2017, along with various operational licenses, consents and approvals (by whatsoever term name), its permanent employees and the various Trademarks owned by HGWPL on or before the Closing Date and the specific particulars of which are more particularly set out in Annexure-2, Annexure-3 and Annexure-4 hereto SVPL on the terms and conditions contained herein."

This issue has also been discussed by the Ld. PCIT in Para 6.3 of the order dtd. 25.03.2022.

33. With regard to ground No.7, the ld. DR submitted that the effective date of slump sale as mentioned in the agreement dtd. 19.05.2017, is the effective date for taxation purposes. He also stated whether consideration received in full or partly, but the entire amount agreed needs to be taxed in the previous year in which the Capital Gain is arising from the transfer of the Long-Term Capital Assets and shall be deemed to be included in previous year in which the transfer took place as per the Sec 50 (b) of the Act. In this regard the ld DR relied on the case law in the order of the ITAT, B Bench, Bengaluru, in case of M/s. Bhoruka Aluminium Ltd, in ITA No.2551/Bang/2019 dated 16.08.2022.

34. With regard to ground No.8, the ld DR submitted that the Ld. PCIT has only stated that the issue regarding slump sale as per the agreement dtd 19.05.2017 needs to examined in detail, which the Assessing Officer has failed to do so. It is also mentioned that these details were neither called by Assessing Officer nor submitted by the assessee. Hence, the Ld. PCIT is correct in holding the order of Assessing Officer as erroneous and prejudicial to the interest of

revenue. In this regard ld DR relied on the case law in the order of the ITAT, B Bench, Bengaluru, in case of M/s. Bhoruka Aluminium Ltd, in ITA No.2551/Bang/2019 dated 16.08.2022, where in it was held that the date of transfer of agreement is the date for taxation of capital gains u/s.50B of IT Act.

35. With regard to ground No.9, the ld DR further submitted that on this issue the Ld. PCIT has clearly stated in the para 6.5 of the order that the Return of Income filed by the assessee for the subsequent FY 2017-18 relevant to the AY 2018-19, the assessee has not reported any sales/turnover as against sale/turnover of Rs.24.12 crore declared for the AY 2017-18, showing that the business has been transferred. None the less this issue also needs to be examined by Assessing Officer, which was failed to do at the time of assessment proceedings.

36. With regard to ground No.10, the ld DR submitted that on this issue any litigation relating to transfer of land was only related to under valuation of lands to be transferred to the buyer, which in any case is not the dispute between the buyer and seller. He also stated that other disputes are not condition precedent for the slump sale transfer as stated in the agreement dtd. 19.05.2017. Hence, the transfer has taken place as per section 50(B) of the Act, on effective date on 01.02.2017. In this regard, the ld DR relied on the case law in the order of the ITAT, B Bench, Bengaluru, in case of M/s. Bhoruka Aluminium Ltd, in ITA No.2551/Bang/2019 dated 16.08.2022.

37. With regard to ground No.11, the ld DR submitted that the assessee's reliance on the judgement of the Hon'ble Supreme Court in the case of CIT Vs. Balbir Singh relating to unregistered

agreement is not applicable for the present case as the ratio laid by Hon'ble Supreme Court was with regard to the transfer of immovable property for the purpose of sec 53(A) of Transfer of Property Act and in relation to declared Sale consideration u/s. 2(47)(v)of IT Act. Whereas, the issue in the case of assessee is within the provisions of sec 50(B) and hence not relevant to present case. This issue has also been discussed in the para 6.4 of the order by the Ld. PCIT.

Findings on ground Nos.6 to 11 of the appeal:

38. We have heard the rival submissions and perused the materials available on record. We are of the opinion that in the present case, the ld. Principal CIT has not decided the issue on taxability of capital gain arising out of agreement of terms of business dated 19.5.2017 and on account of slump sale and he only set aside this issue to the file of AO with the direction to determine the capital gain in accordance with law after affording sufficient opportunity of being heard to the assessee. Hence, it is premature to decide these grounds on merit. More so, we have already quashed the revisionary order passed by the ld. Principal CIT u/s 263 of the Act dated 25.3.2022 by allowing the legal grounds raised by the assessee. Hence, these grounds i.e. from ground Nos.6 to 11 do not require any adjudication as they become infructuous.

39. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 12th Jan, 2023

Sd/-	**Sd/-**
(Beena Pillai)	**(Chandra Poojari)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 12th Jan, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.