आयकरअपीलीयअधिकरण,इंदौरन्यायपीठ,इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.108/Ind/2022
Assessment Year: 2017-18

Shri Nitin Bothra Indore	बनाम/ Vs.	Pr. CIT-1 Indore
(Appellant / Assessee)		(Respondent / Revenue)
PAN: ABQPB0064J		
Assessee by	Shri Anil Kamal Garg, AR	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	18.11.2022	
Date of Pronouncement	09.02.2023	

आदेश/O R D E R

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

Feeling aggrieved by revision-order dated 09.03.2022passed by learned Pr. Commissioner of Income-Tax-1,Indore**["Ld. PCIT"]**u/s 263 of Income-tax Act, 1961 **["the Act"]**, which in turn arises out of assessment-order dated 27.12.2019 passed by learned DCIT/ACIT-1(1), Indore**["Ld. AO"]**u/s 143(3) for Assessment-Year **["AY"]** 2017-18, the assessee has filed this appeal on the grounds raised in the Appeal-Memo.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts are such that the assessee is engaged in a manufacturing business named as M/s Bothra Creations. A survey was conducted during the relevant year on 23.09.2016. The assessee submitted

his return declaring a total income of Rs. 6,06,51,160/- [inclusive of the additional income of Rs. 4,07,04,688/- disclosed during surveywhich had two components, viz. (i) excess-stock of Rs. 3,02,04,688/-, and (ii) receivables of Rs. 1,05,00,000/- from various persons]. The case of assessee was subjected to scrutiny-proceeding and the assessment was framed u/s 143(3) wherein the Ld. AO accepted the returned-income. Subsequently,the Ld. PCIT examined the record of assessment-proceeding and viewed that the assessment-order passed by Ld. AO is erroneous in so far it is prejudicial to the interest of revenue, which attracts revisionary-jurisdiction u/s 263. The Ld. PCIT found two-fold discrepancies in the assessment-order:

(i) The assessee had disclosed the additional income of Rs. 4,07,04,688/- surrendered during the survey at normal rate of tax and not u/s 115BBE. Neither the AO has made any enquiry in this regard nor the assessee had filed any relevant details to justify and explain the correct chargeability of the additional income disclosed during survey.

(ii) The assessee had taken loans from four persons, detailed below, who had given loans immediately after cash-deposits in their respective bank accounts, but the Ld. AO has not verified the identity, genuineness and creditworthiness as required u/s 68.

1	Kamal Chand Bothra HUF	2,75,000
2	Kamal Chand Bothra Individual	4,12,000
3	Anita Bothra	2,00,000
4	Kusum Bothra	6,00,000

4. The Ld. PCIT asked the assesseeto explain as to why the assessment-order may not be revised. In response thereto, the assessee made a detailed

submission vide written-reply, which is re-produced in Para No. 3 to 5 of the revision-order.

5. However, none of those submissions impressed the Ld. PCIT. The Ld. PCIT further observed that since the section 263 has been amended and Explanation 2, as reproduced below, had been introduced therein, the assessment-order is deemed to be erroneous-cum-prejudicial to the interest of revenue if the same had been passed without inquiries or verification which should have been made:

> *"Explanation 2 – "For the purpose of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue, if in the opinion of the Principal Commissioner or Commissioner -*
>
> *(a) The order is passed without making inquiries or verification which should have been made;*
>
> *(b) The order is passed allowing any relief without inquiring into the claim;*
>
> *(c) ….*
>
> *(d) …"*

6. Finally, the Ld. PCIT concluded that the Ld. AO has not carried out the inquiry/verification which he should have done and hence the assessment-order is erroneous in so far as it is prejudicial to the interest of revenue. Accordingly, the Ld. PCIT passed revision-order u/s 263 whereby the assessment-order was set aside to the file of Ld. AO for a de novo assessment with a direction to examine the issues raised by Ld. PCIT.

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

8. By means of various grounds raised in the Appeal Memo which are not being reproduced for the sake of brevity, the appellant-assessee requires us to adjudicate whether or not the revision-order passed by Ld. PCIT u/s 263 is valid in the eyes of law?

Submission of Ld. AR:

9. Ld. AR straightaway carried us to a Paper-Book filed by him and submitted that during the course of assessment-proceeding, the Ld. AO has made specific queries to assessee *qua* the twin-issues raised by Ld. PCIT in the show-cause notice u/s 263 and the assessee has also filed enough details/documents in response thereto, which is very much evident from the following details/documents forming part of assessment-record available with the department:

(i) Issue No. 1 – Applicability of section 115BBE to surrendered income:

For this issue, Ld. AR submitted thatduring the course of assessment-proceeding, the Ld. AO raised specific query through order-sheet with regard to the applicability of section 115BBE. In response to AO's query, the assessee filed a detailed reply dated 18.12.2019 running over 14 pages specifically over the issue of section 115BBE itself, which is placed at Paper Book Page No. 96 to 109.Referring to various paragraphs of the reply, Ld. AR submitted that the assessee has given a detailed narration to Ld. AO as to how the impugned excess-stock / receivable did not attract the provisions of section 69, 69A, etc. and therefore section 115BBE was not applicable. We reproduce below a few paragraphs for immediate reference:

"4.03 Sir, it is further submitted that, although during the course of making the statement the assesee could not spell out clearly, but the fact remains that the assessee has not carried out any other activity then its regular business activity of manufacturing and trading of readymade garments and cloth. It is submitted that the assessee is carrying out the business since the year 1996 and in the initial years, beside manufacturing the readymade garments, the assessee was also trading in the cloth which is a major raw material or the garments. However, gradually the activity of trading in the cloth got reduced and the assessee focused more on manufacturing of readymade garments. As the assessee had not got complete detached from the business of cloth, during the previous year under consideration, some out stationed wholesale cloth merchants contacted the assessee and made an offer before him to carry out the business of trading in cloth in volume, as at the relevant time, there was a lucrative margin of profit in the cloth trading due to substantial difference in rates of cloth in other cities and that in Indore. Accordingly, the assessee made purchases of cloth from the wholesale cloth merchants hailing from Delhi, Surat Bhilwara, Ahmedabad, Mumbai etc. Who used to sale cloth, in grey

market to the assessee at the whole sale rates andin turn, the assessee used to sale such cloth to various very small readymade garments manufacturers on semi-wholesale rated. However, both the transactions of purchases and sales were carried out on cash on delivery basis, on recording of such transactions were made in the regular books of account of the assessee. It is submitted that for such transaction of purchases and sales no pakka bill used to be used by any of the parties and all the transactions were carried out on Kachi slips only which used to be destroyed from time to time. Further, none of the parties to the transactions used to disclose their full identity to other party. From carrying out such trading in cloth, the assessee earned a substantial sum if the date of survey, whichwas partly invested for purchasing the material or manufacturing of readymade garments and partly in the activities of income some excess stock in the form of raw materials, packing materials and finished goods of readymade garments was found and further, some cash advances to the extent of Rs.1,05,00,000/- were found. It is submitted that after the date of survey, the assessee had completely discontinued the out of books trading of cloth and after the date of survey every transaction relating to the business, whether related to the cloth trading or readymade garments manufacturing is being fully and truly recorded in the regular books of accounts of the assessee. In order to establish the veracity of our claim, that the assessee had carried out the activities of purchasing and trading of cloth, in his regular business, we are submitting herewith some specimen of Kachi slips through which good were purchased by the assessee as Annexure C-1.01 to C-1.04. similarly, we are also submitting herewith copies of Kachi slips through which sales were effected, as Annexure C-2.01 to C-2.03. it is further submitted that in order to establish the veracity of the assertions, made hereinabove, the assessee is prepared to produce some buyers of cloth before your good self for making necessary verification from them.

4.04 Sir although the assessee could notmaintain the regular books of account in respectof trading activities in cloth, which by all means, is an incidental activity to the corebusiness of manufacturing ofreadymade" garments on real time basis, but theassessee was inclined to maintain separate books of accounts in respect of such transactions. The assessee was in the process of seeking advice from his counsel as to how the income from such additional activitiesin the existing business could be incorporated in the return of income. But before he could have taken any call, the survey operations got initiated in his case. Since, the assessee had duly disclosed the income emanating from such activities before the survey party and further since he had discontinued such activities, after the survey, he did consider it necessary to maintain regular books in respect of such activities.

5.01 Sir, in view of the facts stated above, it shall be appreciated that the sources of excess stock found during the co0urse of the survey proceedings are fully explained and therefore the same would not fall within the mischief of the provision of section 69/69B of the Act. And consequently, the provisions of section 115BBE cannot be made applicable qua such income.

5.02 Sir, likewise the sources of advancing money aggregating to Rs.1,05,00,000/- being out of the unrecorded business of trading in cloth are fully explained, now the therefore, the same would also not fall withinthe

mischief of the deeming provisions of section 69/69B of the Act and consequently, the provisions of section 115BBE cannot be made applicable qua such income too.

5.03 In view of the above facts, it shall be appreciated by your good self that the assessee, having satisfactorily explained the nature as well as sources of the unaccounted income, as found during the course of survey proceedings, being emanated from definite source of income being business income and which in its tur, are duly supported by documentary evidences, the deeming provisions of section 68, 69,69A,69B & 69D cannot be invoked in his case.

6. Since once it is held that during the previous year relevant to A.Y. 2017-18 the assessee had earned income from certain explainable sources, thereby overruling the applicability of provision of sections 68,69,69A, 69B 69C & 69D, the question of invoking the provisions of section 115BBE in his case could be completely out of question."

Ld. AR also relied upon the decision of **ITAT Bangalore in ITA No. 466/Bang/2020 Sri Ashish Prasanna Kumar Jain L/R of BN Prasanna Kumar Vs. PCIT, Mysore dated 19-07-2022**, a copy of which is filed in the Paper-Bookand pleaded that the Hon'ble ITAT has quashed revision-proceeding in similar situation.

(ii) Issue No. 2 – Unsecured loans:

For this issue, Ld. AR carried us to Paper Book Page No. 74 where Point No. 6 of the notice dated 11.09.2019 u/s 142(1) issued by the Ld. AO queried the assessee as under:

"6. Details of unsecured loans including squared up loans accepted during the year including squared up loan and establish genuine of transactions, capacity of lenders and their identity with cogent evidences besides their confirmation of loan accounts. Please note that as per col. 31, audit report is silent whether loans accepted were through account payee cheques / drafts or not and therefore establish the same were accepted through account payee cheques / drafts with evidences."

In response to the above queries, the assessee filed reply dated 02.12.2019, copy of which is placed at Page No. 79 and 80 of the Paper-Book. The submission made by assessee is extracted below:

"6. ***DETAILS OF UNSECURED LOANS:***

As regard the unsecured loans, we are submitting herewith the following

documents:

i. A statement showing complete name, address and PAN of the persons from whom unsecured loans were taken/repaid by the assessee company during the relevant previous year (Annexure A-3.00).On a perusal of such statement, it would be appreciated by your good self that all the persons from whom loans were taken by the assessee company are regularly assessed to Income Tax. It is also worthwhile to note that all the transactions of the loans have taken place through account payee cheques only.

ii. Copy of confirmation letters duly signed by creditors for the year under review,

iii. Copy of acknowledgement of income tax return of the lenders, in evidence of their identity and creditworthiness and

iv. Copy of relevant bank passbook of the loan creditors, in evidence of the creditworthiness & genuineness of loans.

All the aforesaid documents are enclosed herewith for kind perusal and record of your good self, as Annexure A-3.01 to A-3.42"

Further, the assessee filed a complete "Statement showing details of the unsecured loans" in a tabular format comprising the information such as S.No., Name of the depositor, Address, PAN, Opening balance as on 01.04.2016, loans taken during the year, interest, total, repayment during the year, closing balance as on 31-03-2017 and a brief reference of the documentary evidences, a copy of the Statement is placed at Page No. 136 to 137 of the Paper-Book. Ld. AR demonstrated that the documents relating to the 4 persons, noted by Ld. PCIT, were filed to Ld. AO and copies of the same are placed at Page No. 138 to 161 of the Paper-Book. These documents are in the form of Confirmation letter, ITR and Bank statements of the persons. The loans have been taken through banking channel. The Ld. AO has verified these documents which clearly prove the identity, creditworthiness and genuineness of transactions.

10. Ld. ARthen argued that all these details / documents as filed by assessee were duly examined and considered by Ld. AO and having done so, the Ld. AO completed assessment of assessee.

11. Clearly therefore, the Ld. AR contended, the assessee had filed all details / documents during the course of assessment. Therefore, this is not a case of "no enquiry" as understood by Ld. PCIT.He further submitted that the Ld. AO has taken one of the possible view on the issues, therefore also the assessment-order cannot be said be erroneous as per judicial rulings. Ld. AR also argued that the Ld. PCIT has conducted revision only because the Ld. AO has not discussed the issues in assessment-order. Ld. AR submitted that such an approach of Ld. PCIT is not permissible u/s 263, therefore the order passed by Ld. PCIT is not in accordance with the law of section 263 and liable to be quashed.

Submission of Ld. DR:

12. Per contra, Ld. DR supported the revision-order. He submitted that mere raising queries before assessee and keeping response of assessee in the departmental file cannot be treated as conduct of enquiries by AO. According to Ld. DR, had the Ld. AO analysed the replies of assessee, he would have certainly made a detailed noting in the assessment-order but this is not so in present case. He submitted that the assessment-order is a very small order and absolutely silent on the issues raised by Ld. PCIT.

13. On the first issue of section 115BBE, Ld. DR drew our attention to the statement of assessee recorded during survey, which are also embodied in the revision-order and submitted that the assessee himself admitted in reply to Q.No. 10 and 11raised by survey-team that he was unable to explain the source of the impugned excess-stock / receivables and further admitted the same as undisclosed income. Ld. DR reiterated Para No. 6, 6.1 to 6.8 of the revision-order and made a strong submission that the Ld. PCIT has rightly observed that the section 115BBE was applicable in the present case.

14. On the second issue of unsecured loans, the Ld. DR supported the observation of Ld. PCIT that the depositors had made cash-deposits in their bank accounts immediately before giving loans to the assessee, hence there

arise suspicion on the genuineness of transactions, still the Ld. AO had not verified the same resulting into error in the assessment-order.

15. Finally, Ld. DR relied upon the Explanation 2 to section 263 (re-produced above) according to which if the "assessment-order is passed without making inquiries or verification which should have been made", it is deemed to be erroneous.

16. With these submissions, the Ld. DR argued that the revision-action of Ld. PCIT is very much in accordance with the mandate of section 263 and must be upheld.

Our analysis:

17. We have heard the rival contentions, perused the material on record and duly considered the facts of the case in the light of applicable legal positions. On a careful consideration of various documents placed in the Paper-Book, as noted in the foregoing discussion, we find that during thecourse of assessment-proceeding, there were specific queries raised by Ld. AO with regard to the issues contemplated by Ld. PCIT and the assesseetoo made detailed replies / submissions. To this extent, there is no dispute or rebuttal by revenue. Clearly, therefore, it is discernible that the Ld. AO has considered those replies / submissions and thereafter taken a plausible view. Further, the action of Ld. AO in accepting the replies / submissions of assessee does not lack bonafides and cannot be said to be faulty. Thus, everything hinges on the point as to whether the assessment-order can be said to be erroneous-cum-prejudicial to the interest of revenue merelyfor the reason thatthe Ld. AO has not discussed those issues in the assessment-order or in other words not written his assessment-order as a perfectionist. In our considered view, the writing of assessment-order is a task of AO and the same is neither controlled nor helped by the assessee. In fact, the assessee has no hand or mind in writing the assessment-order. Being so, we are afraid to accept the pleading of Ld. DR that the

assessment-order could be said to beerroneous-cum-prejudicial for that reason. We are consciously aware of the decision taken by Hon'ble ITAT, Mumbai in **Reliance Payment Solutions Ltd. Vs. Pr. CIT (2022) 136 taxmann.com 277** where the same view was upheld:

> *"9. Clearly, therefore, as long as the action of the Assessing Officer cannot be said to be lacking bonafides, his action in accepting an explanation of the assessee cannot be faulted merely because it could have been lawful to make mere detailed inquiries or because he did not write specific reasons of accepting the explanation. As for learned PCIT's observations regarding accepting the explanation "without appropriate evidence", there is nothing to question the bonafides of the Assessing Officer or to elaborate as to what should have been 'appropriate' evidence.* ***The fact remains that the specific issue raised, in the revision order was specifically looked into, detailed submissions were made and these submissions were duly accepted by the Assessing Officer. Merely because the Assessing Officer did not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under section 263, and non-mentioning of these reasons do not render the assessment order "erroneous and prejudicial to the interest of the revenue****".*
>
> ***[Emphasis supplied]***

18. Regarding applicability of Explanation 2 to section 263, as claimed by Ld. PCIT in his orderand also relied upon by Ld. DR, we only need to mention that it has been held in several decisions that the said Explanation does not give unfettered power to the PCIT to assume revisional-jurisdiction to revise every order of the Assessing Officer to re-examine the issues already examined during assessment-proceeding. It is judicially interpreted in several decisions that the intention of legislature behind introduction of Explanation 2 could not have been to enable the PCIT to find fault with each and every assessment-order in unlimited terms, since such an interpretation would lead to unending litigation and there would not be any point of finality of assessment-proceeding done by Ld. AO.

19. Hon'ble **ITAT, Rajkot** in **M/s Pramukh Realty, Junagadh, ITA No. 93/Rjt/2022 dated 30.06.2022,** has extensively dealt a case where theAO raised queries during assessment-proceeding and the assessee filed details /

documents. After a thorough analysis, the Hon'ble Bench has held that in such circumstances, revision u/s 263 cannot be done. The relevant paragraphs of the decision are reproduced below:

> *"5. The learned AR before us filed a paper book running from pages 1 to 157 and contended that all the necessary details about the advances received from the parties, sales shown in the financial statement and details of the service tax returns were filed during the assessment proceedings. The learned AR further contended that the assessment was framed by the AO after considering the necessary details and verification and application of mind. The learned AR in support of his contention drew our attention on pages 151 to 153 of the paper book where the copy of the notice under section 142(1) of the Act was placed. Likewise, the learned AR also drew our attention on pages 154 to 157 of the paper book where the reply of the assessee in response to the notice issued under section 142(1) of the Act was placed. Thus, the learned AR contended that there cannot be said that the assessment order is erroneous and causing prejudice to the interest of Revenue in the given facts and circumstances on account non-verification.*
>
> *6. On the contrary, the learned DR before us contended that reconciliation of the amount shown in the service tax return and financial statement was not available before the AO during the assessment proceedings. Accordingly the learned DR vehemently supported the order of the learned PCIT.*
>
> *7. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the present case relates whether the assessment order has been passed by AO without making inquiries or verification with respect to the difference in the figures as discussed above and hence the assessment is erroneous insofar prejudicial to the interest of the Revenue. Thus, requiring revision by Pr. CIT u/s 263 of the Act.*
>
> *7.1 An inquiry made by the Assessing Officer, considered inadequate by the Commissioner of Income Tax, cannot make the order of the Assessing Officer erroneous. In our view, the order can be erroneous if the Assessing Officer fails to apply the law rightly on the facts of the case. As far as adequacy of inquiry is considered, there is no law which provides the extent of inquiries to be made by the Assessing Officer. It is Assessing Officer's prerogative to make inquiry to the extent he feels proper. The Commissioner of Income Tax by invoking revisionary powers under section 263 of the Act cannot impose his own understanding of the extent of inquiry. There were a number of judgments by various Hon'ble High Courts in this regard.*
>
> *7.2 Delhi High Court in the case of CIT Vs. Sunbeam Auto 332 ITR 167 (Del.), made a distinction between lack of inquiry and inadequate inquiry. The Hon'ble court held that where the AO has made inquiry prior to the completion of assessment, the same cannot be set aside u/s 263 of the Act on the ground of inadequate inquiry. The relevant observation of Hon'ble Delhi High Court reads as under:*

"12. ….. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry", that such a course of action would be open. ———

From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.

15. Thus, even the Commissioner conceded the position that the Assessing Officer made the inquiries, elicited replies and thereafter passed the assessment order. The grievance of the Commissioner was that the Assessing Officer should have made further inquires rather than accepting the explanation. Therefore, it cannot be said that it is a case of 'lack of inquiry'."

7.3 The Hon'ble Bombay High Court in case of Gabriel India Ltd. [1993] 203 ITR 108 (Bom), discussed the law on this aspect in length in the following manner: "The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be

based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasijudicial controversies as it must in other spheres of human activity.

7.4 The Mumbai ITAT in the case of Sh. Narayan Tatu Rane Vs. ITO, I.T.A. No. 2690/2691/Mum/2016, dt. 06.05.2016 examined the scope of enquiry under Explanation 2(a) to section 263 in the following words:-

> *"20. Further clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-à-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquries or verification that would have been carried out by a prudent officer. Hence, in our view, the question as to whether the amendment brought in by way of Explanation 2(a) shall have retrospective or prospective application shall not be relevant."*

7.5 The Hon'ble Supreme Court in recent case of Principal Commissioner of Income-tax 2 v. Shree Gayatri Associates[2019] 106 taxmann.com 31 (SC), held that where Pr. CIT passed a revised order after making addition to assessee's income under section 69A in respect of on-money receipts, however, said order was set aside by Tribunal holding that AO had made detailed enquiries in respect of such on-money receipts and said view was also confirmed by High Court, SLP filed against decision of High Court was liable to be dismissed. The facts of this case were that pursuant to search proceedings, assessee filed its return declaring certain unaccounted income. The Assessing Officer completed assessment by making addition of said amount to assessee's income. The Principal Commissioner passed a revised order under section 263 on ground that Assessing Officer had failed to carry*

out proper inquiries with respect to assessee's on money receipt. In appeal, the Tribunal took a view that Assessing Officer had carried out detailed inquiries which included assessee's on-money transactions and Tribunal, thus, set aside the revised order passed by Commissioner. The Hon'ble High Court upheld Tribunal's order. The Hon'ble Supreme Court while dismissing the SLP filed by the Department held as under:-

> *"We have heard learned counsel for the Revenue and perused the documents on record. In particular, the Tribunal has in the impugned judgment referred to the detailed correspondence between Assessing Officer and the assesseeduring the course of assessment proceedings to come to a conclusion that the Assessing Officer had carried out detailed inquiries which includes assessee's on-money transactions. It was on account of these findings that the Tribunal was prompted to reverse the order of revision. No question of law arises. Tax Appeal is dismissed".*

7.6 The Supreme Court in the another recent case of Principal Commissioner of Income-tax-2, Meerut v. Canara Bank Securities Ltd[2020] 114 taxmann.com 545 (SC), dismissed the Revenue's SLP holding that 263 proceedings are invalid when AO had made enquiries and taken a plausible view in law, with the following observations: "Having heard learned counsel for the parties and having perused the documents on record, we see no reason to interfere with the view of the Tribunal. The question whether the income should be taxed as business income or as arising from the other source was a debatable issue. The Assessing Officer has taken a plausible view. More importantly, if the Commissioner was of the opinion that on the available facts from record it could be conclusively held that income arose from other sources, he could and ought to have so held in the order of revision. There was simply no necessity to remand the proceedings to the Assessing Officer when no further inquiries were called for or directed"

7.7 From an analysis of the above judicial precedents, the principle which emerges is that the phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Assessing Officer adopts one of the course permissible in law and it has resulted in loss of revenue; or where two views are possible and the Assessing Officer has taken one view with which the Commissioner of Income-tax does not agree, it cannot be treated as an erroneous order causing prejudice to the interests of the Revenue unless the view taken by the Assessing Officer is unsustainable in law, or the AO has completely omitted to make any enquiry altogether or the order demonstrates non-application of mind.

7.8 Now in the facts before us, in the case of the assessee the AO during the course of assessment proceedings, made enquiries on this issue and after consideration of written submissions filed by the assessee and documents / evidence placed on record, framed the assessment under section 143(3) of the Act without making the addition of the amount as note above. This fact can be

verified from the notice under section 142(1) of the Act by the AO and submission in reply of the assessee against such notice.

XXX

7.9 From the above it is revealed that it is not the case that the AO has not made any enquiry. Indeed the Pr. CIT initiated proceedings under section 263 of the Act on the ground that the AO has not made enquiries or verification which should have been made in respect of cash deposited during the demonization period. It is not the case of the Pr. CIT that the Ld. AO did not apply his mind to the issue on hand or he had omitted to make enquiries altogether. In the instant set of facts, the AO had made enquiries and after consideration of materials placed on record accepted the genuineness of the claim of the assessee.

7.10 At this juncture, it is also important to note that the learned PCIT in his order passed under section 263 of the Act has made reference to the explanation 2 of section 263 of the Act. It was attempted by the learned PCIT to hold that there were certain necessary enquiries which should have been made by the AO during the assessment proceedings but not conducted by him. Therefore, on this reasoning the order of the AO is also erroneous insofar prejudicial to the interest of revenue. In this regard, we make our observation that the learned PCIT has also not specified the nature and the manner in which the enquiries which should have been conducted by the AO in the assessment proceedings. Thus, in the absence of any specific finding of the learned PCIT with respect to the enquiries which should have been made, we are not convinced by his order passed under section 263 of the Act."

20. We have also perused the decision of Hon'ble **ITAT Bangalore in ITA Sri Ashish Prasanna Kumar Jain L/R of BN Prasanna Kumar Vs. PCIT (supra)** relied upon by Ld. AR, in which the revision-order was quashed by observing and holding thus:

"9.2 In the instant case, the assessee has offered the entire cash seized as part of the income and paid duly the taxes thereon. The A.O. had taken a conscious decision while passing the assessment order u/s 143(3) r.w.s. 153A of the I.T.Act. When two views are possible and the A.O. adopts one of the views, the PCIT cannot treat the assessment order as erroneous and prejudicial to the interest of the revenue. In support of the above proposition, we rely on the judgment of the Hon'ble Apex Court in the case of CIT v. Max India Limited reported in (2007) 295 ITR 282 (SC). The Hon'ble Delhi High Court in the case of CIT v. Sunbeam Auto Limited reported in (2011) 332 ITR 167 (Delhi) had held that lack of inquiry or inadequate inquiry by the A.O. cannot be a reason to invoke the revisionary powers u/s 263 of the I.T.Act. The relevant finding of the Hon'ble Delhi High Court reads as follows:-

> *"..... therefore one has to see from the record whether there was application of mind before allowing the expenditure in question as revenue expenditure. If there was an enquiry, even inadequate that*

would not by itself give occasion to the CIT to pass order u/s 263, merely because he has different opinion in the matter. It is only in cases of lack of enquiry that such a course of action would be open. (p14a 12 to 15).... In sum and substance the accounting practice of the assessee is questioned.....It is clear that view taken by the A.O. was one of the possible views and therefore, the assessment order passed by the A.O. could not be held to be prejudicial to the Revenue. Thus from whatever angle the matter is to be looked into, the conclusion could be that the order of the Tribunal does not call for any interference (paras 16, 18 & 21). ....the A.O. having made enquiries, elicited replies and thereafter allowed the expenditure....it cannot be said that it is a case of lack of enquiry."

9.3 In the instant case, on perusal of the assessment order, it is clear that the enquiry was made by the Assessing Officer, and accordingly, the assessment order was concluded. The shortfall of enquiry or inadequacy of enquiry cannot be termed as total lack of enquiry. Hence, the order of the assessment cannot be held to erroneous."

21. In view of above discussion and for the reasons stated therein and having regard to the judicial rulings cited above, we are persuaded to hold that the facts of the present case do not warrant application of section 263. Therefore, the revision-order passed by Ld. PCIT is not a valid order. We, thus, quash the revision-order and restore the original assessment-order passed by Ld. AO. The assessee succeeds in this appeal.

22. Resultantly, this appeal of assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 09/02/2023
Order pronounced in the open court on ...../...../2023

Sd/- Sd/-

(CHANDRA MOHAN GARG) (B.M. BIYANI)
JUDICIAL MEMBER ACCOUNTANT MEMBER

Indore
दिनांक/Dated : 09.02.2023
Patel/Sr. PS

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

By order

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

1.	Date of taking dictation	16.1.23
2.	Date of typing & draft order placed before the Dictating Member	16.1.23
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	16.1.23
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	