

IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" BENCH, MUMBAI

SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 861/MUM/2022  
(Assessment Year: 2017-18)

Devika Rajesh Jaggi,  
26, Blue Heaven Mount Pleasant Road,  
Malabar Hill, Mumbai - 400006  
[PAN: ADXPJ9746] ..... Appellant

Principal Commissioner of Income Tax, Vs  
Range – 19, Mumbai,  
Room No. 228, 2<sup>nd</sup> Floor, Matru Mandir,  
Tardeo Road, Mumbai - 400007 ..... Respondent

Appearances

For the Appellant/Assessee : Shri Yogesh Thar  
For the Respondent/Department : Smt. Riddhi Mishra

Date of conclusion of hearing : 29.11.2022  
Date of pronouncement of order : 24.02.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 25.03.2022, passed by the Ld. Principal Commissioner of Income Tax, Mumbai - 19 [hereinafter referred to as 'the PCIT'] under Section 263 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] whereby the Assessment Order, dated 14.12.2019, passed under section 143(3) of the Act was set aside as being erroneous in so far as prejudicial to the interest of revenue.
2. The Appellant has raised following grounds of appeal:

*"1. The Learned Principal Commissioner of Income Tax, Range 19, and Mumbai (hereinafter referred to as the PCIT) erred in passing an order u/s 263 setting aside original order u/s*

143(3).

*Your appellant submits that on the facts and in the circumstances of the case and in law, the PCIT erred in not considering the submissions of your appellant and holding that original assessment passed is erroneous and prejudicial in the interest of revenue and consistently setting aside an order u/s 143(3).*

*Your appellant submits that the original order was not erroneous and prejudicial to the interest of revenue and PCIT ought to have considered the submissions of your appellant and should not have set aside an original order u/s 143(3).*

*Your appellant submits that the order of PCIT may please be quashed.*

2. *The PCIT erred in treating an amount of Rs. 1,20,93,663/- as interest income under the head Income from Other Sources.*

*Your appellant submits that on the facts and in the circumstances of the case and in law, the said income is Business Income and it shall be treated as such under the head Business and Profession Income.*

*Your appellant submits that the PCIT may be directed to treat this as business income and not to set-aside the original order u/s 143(3)."*

3. The brief facts of the case are the Appellant is a resident individual engaged, inter alia, in the business of purchase/sale of property as a proprietorship concern operating under the name M/s Sanara Realtors, and the income arising therefrom has been offered to tax by the Appellant as business income. For the Assessment Year 2017-18, the Appellant filed return of income on 05.02.2017 declaring total income of INR.80,68,870/-. The aforesaid return was selected for limited scrutiny for verification of deduction/exemption claimed from capital gain, investment in immovable property and income from other sources. The Assessing Officer completed the assessment under Section 143(3) of the Act vide Assessment Order, dated 14.12.2019, accepting the return of income filed by the Appellant.

4. Subsequently, on perusal of the assessment records, the PCIT formed opinion that the Assessing Officer had failed to verify transaction in respect of a Flat No. 702, in Wing E of Building named 'Vivarea' being constructed on land bearing No. 21, Koramangala Industrial Layout, Ward No. 68, Bangalore (hereinafter referred to as 'Chalet Property') and the treatment of interest of INR 1,20,93,663/- received by the Appellant from the builder on account of cancellation of purchase deed and the consequent extinguishment of rights in the Chalet Property. The PCIT, vide order, dated 25.03.2022, passed under Section 263 of the Act set aside the Assessment Order, dated 14.12.2019, with the direction to the Assessing Officer to pass order afresh after examining the entire transaction in respect of the Chalet Property and after verifying the correct head of income under which the aforesaid interest amount received by the Appellant should be taxed.
5. Being aggrieved, the Appellant has preferred the present appeal on the grounds reproduced in paragraph 2 above which are taken up together hereinafter.
6. The Ld. Authorised Representative for the Appellant submitted taking us through the paper-book, submitted that the Appellant was engaged in the purchase/sale of properties. The Appellant had purchased Chalet Property, as under construction property, in the year 2010 by taking loan from bank (namely ICICI Limited). Since there was no satisfactory progress in the construction of the Chalet Property, the Appellant negotiated with the builder who agreed for cancellation of the purchase of the Chalet Property. Builder also agreed to refund the deposit amount of INR 1,92,60,612/- and pay compensation in the form of interest of INR 1,20,93,663/-. Thus, interest of INR 1,07,02,892/-, after deduction of tax at source @ 10%

amounting to INR 13,90,771/-, was received by the Appellant during the relevant previous year and was offered to tax as business profits. The return filed by the Appellant was taken for limited scrutiny. The Assessing Officer accepted the return of income and completed the assessment under Section 143(3) of the Act which was set aside by the PCIT in exercise of power of revision under Section 263 of the Act by invoking the provisions of Explanation 2 to Section 263(1) of the Act. Assailing the order passed by the PCIT, the Ld. Authorised Representative for the Appellant submitted that the Appellant had purchased the Chalet Property in the year 2010 in the name of the proprietorship concern (i.e. M/s Sanara Realtors) which was held by the Appellant as stock-in-trade. He submitted that in the Profit and Loss Account for the Assessment Year 2017-18, the 'Cost of Chalet Property' and the 'Sale of Stock (Chalet Property)' were disclosed at INR 2,20,60,058/- and INR 3,13,54,275/-. Thus, the income arising in the hands of the Appellant from the transaction related to the Chalet Property was offered to tax as business income since the Chalet Property was held as stock-n-trade. In support the Ld. Authorised Representative for the Appellant relied upon Balance Sheet of the Appellant for the Financial Year 2015-16 wherein value of Chalet Property has been disclosed at INR 2,03,41,226/- under the head current assets (and not under the head investments). Referring to the notices issued during the course assessment proceedings and replies filed thereto, placed at page 10 to 17 of the paper-book, the Ld. Authorised Representative for the Appellant submitted that specific queries were raised in relation to the sale of Chalet Property and the interest/compensation received by the Appellant during the assessment proceedings. He submitted that in response the Appellant filed all the relevant details and information and after taking the same into consideration the Assessing Officer concluded that no addition was required to be made to the returned

income. The assessment was framed after carrying out necessary enquiry/verification pursuant to which the Assessing Officer passed the Assessment Order. He submitted that the Assessing Officer had specifically asked for details of asset sold during the relevant previous year along with the copy of sale deed and directed the Appellant to submit reconciliation of income as per income tax return with the income reflected in Form 26AS vide notice dated 31.10.2019, issued under Section 142(1) of the Act. Referring to the letter dated 06.11.2019, he submitted that the aforesaid details/documents relating to transaction pertaining to Chalet Property (including cancellation letter) as well as the reconciliation statement giving details of the interest income were furnished to the Assessing Officer. Since the Assessing Officer was satisfied no further enquiries/verification was required and therefore, the Assessing Officer completed the assessment on the basis of material placed before him during the assessment proceedings. The Ld. Authorised Representative for the Appellant submitted that the PCIT had erred in invoking provisions of Explanation 2 to Section 263(1) of the Act without taking into account of the aforesaid facts. He further submitted that the PCIT had erred in placing reliance upon the provisions of Section 56(2)(viii) of the Act which are not applicable to the facts of the present case. In view of the aforesaid, he pleaded that the order dated 25.03.2022, passed by the PCIT be quashed. In support, the Ld. Authorised Representative for the Appellant placed reliance upon the following decisions/judgments – (i) Narayan Tatu Rane vs. Income Tax Officer, Ward 27(10(1), Mumbai :[2016] 70 taxmann.com 227 (Mumbai-Trib), (ii) Vipul Modi vs. Principal Commissioner of Income-tax : [2022] 139 taxmann.com 89 (Mumbai-Trib) and (iii) Sir Ratan Tata Trust vs. Deputy Commissioner of Income Tax, Exemption, Circle 2(1), Mumbai : [2020] 122 taxmann.com 273 (Mumbai-Trib)

7. In reply, the Ld. Departmental Representative submitted that the Assessing Officer failed to carry out necessary enquiry/verification in relation to transactions pertaining to the Chalet Property. She contended that only general queries were raised by the Assessing Officer during the assessment proceedings. Further, even the reply furnished by the Appellant in response to the same was not enquired into or verified by the Assessing Officer. According to the Ld. Departmental Representative this was apparent from the fact that the Assessing Officer raised no enquiries regarding opening/closing stock even though no opening or closing stock was reflected in the Balance Sheet of the Appellant as on 31.03.2017, whereas in the Profit & Loss Account the Appellant had shown the 'Cost of Chalet Property' and the 'Sale of Stock (Chalet Property)' was disclosed at INR 2,20,60,058/- and INR 3,13,54,275/-. The Balance Sheet for the financial year 2015-16 on which reliance has been placed by the Ld. Authorised Representative for the Appellant was not placed before the Assessing Officer and therefore, could not be relied upon to support the Assessment Order. The Assessing Officer failed to conduct necessary enquiry/verification regarding the claim of the Appellant that the Chalet Property was in the nature of stock-in-trade. She submitted that it had been had pointed out by the PCIT in paragraph 5.4 of his order that the aggregate consideration shown in the purchase agreement is INR 1.90 Crores, whereas the cost debited in Financial year 2016-17 was INR 2,20,60,258/-. The Assessing Officer clearly did not make any enquiry in this regard. The cancellation sheet on page 15/16 of the paper book clearly shows that the amount of INR 1,20,93,663/- is in the nature of interest, on which TDS has been made which is to be taxed as Income from Other Sources as per Section 56 read with Section 145A/145B of the Act. Since interest income was not taxed

under the head 'Income from Other Sources' the Assessment Order was erroneous order and prejudicial to the interest of Revenue. In view of the above, she submitted that the provisions of Section 263 read with Section Explanation 2 to the section are clearly applicable to the case. The Ld. Authorised Representative for the Appellant placed reliance upon the following decisions/judgments (i) CIT, Nagpur vs. Ballarapur Industries Ltd. : (85 taxmann.com 10 (Bombay) (2017), (ii) Jeevan Investment & Finance Pvt. Ltd. Vs Commissioner of Income Tax City-1, Mumbai : (2017) 88 taxmann.com 552 (Bombay) and (iii) Sify Software vs. Assistant Commissioner of Income Tax, Corporate Circle 6(2), Chennai : (2017) 80 taxmann.com 273 (Chennai-Trib).

8. We have heard the rival contention and perused the material on record including the judicial precedents cited during the course of hearing.

9. During the course of hearing, the Learned Authorized Representative for the Appellant had relied upon the decision of the Mumbai Bench of the Tribunal in the case of Sir Dorabji Tata Trust Vs. DCIT, (Exemption) Circle 2(1), Mumbai: [2020] 122 taxmann.com 274 (Mumbai - Trib.), wherein it has been held as under:

*"19. The question that we also need to address is as to what is the nature of scope of the provisions of Explanation 2(a) to Section 263 to the effect that an order is deemed to be "erroneous and prejudicial to the interests of the revenue" when Commissioner is of the view that "the order is passed without making inquiries or verification which should have been made".*

*20. Undoubtedly, the expression used in Explanation 2 to Section 263 is "when Commissioner is of the view," but that does not mean that the view so formed by the Commissioner is not subject to any judicial scrutiny or that such a view being formed is at the unfettered discretion of the Commissioner. The formation of his view has to be in a reasonable manner, it must*

stand the test of judicial scrutiny, and it must have, at its foundation, the inquiries, and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant- that an Assessing Officer is expected to be. If we are to proceed on the basis, as is being urged by the learned Departmental Representative and as is canvassed in the impugned order, that once Commissioner records his view that the order is passed without making inquiries or verifications which should have been made, we cannot question such a view and we must uphold the validity of revision order, for the recording of that view alone, it would result in a situation that the Commissioner can de facto exercise unfettered powers to subject any order to revision proceedings. To exercise such a revision power, if that proposition is to be upheld, will mean that virtually any order can be subjected to revision proceedings; all that will be necessary is the recording of the Commissioner's view that "the order is passed without making inquiries or verification which should have been made". Such an approach will be clearly incongruous. .... What essentially follows is that unless the Assessing Officer does not conduct, at the stage of passing the order which is subjected to revision proceedings, inquiries and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant- that an Assessing Officer is expected to be, Commissioner cannot legitimately form the view that "the order is passed without making inquiries or verification which should have been made". The true test for finding out whether Explanation 2(a) has been rightly invoked or not is, therefore, not simply existence of the view, as professed by the Commissioner, about the lack of necessary inquiries and verifications, but an objective finding that the Assessing Officer has not conducted, at the stage of passing the order which is subjected to revision proceedings, inquiries and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant that the Assessing Officer is expected to be.

21. That brings us to our next question, and that is what a prudent, judicious, and responsible Assessing Officer is to do in the course of his assessment proceedings. Is he to doubt or test every proposition put forward by the assessee and investigate all the claims made in the income tax return as deep as he can? The answer has to be emphatically in negative because, if he is

*to do so, the line of demarcation between scrutiny and investigation will get blurred, and, on a more practical note, it will be practically impossible to complete all the assessments allotted to him within no matter how liberal a time limit is framed. In scrutiny assessment proceedings, all that is required to be done is to examine the income tax return and claims made therein as to whether these are prima facie in accordance with the law and where one has any reasons to doubt the correctness of a claim made in the income tax return, probe into the matter deeper in detail. He need not look at everything with suspicion and investigate each and every claim made in the income tax return; a reasonable prima facie scrutiny of all the claims will be in order, and then take a call, in the light of his expert knowledge and experience, which areas, if at all any, required to be critically examined by a thorough probe. While it is true that an Assessing Officer is not only an adjudicator but also an investigator and he cannot remain passive in the face of a return which is apparently in order but calls for further inquiry but, as observed by Hon'ble Delhi High Court in the case of Gee Vee Enterprises v. Addl. CIT [1975] 99 ITR 375 "it is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. (Emphasis, by underlining, supplied by us). It is, therefore, obvious that when the circumstances are not such as to provoke an inquiry, he need not put every proposition to the test and probe everything stated in the income tax return. In a way, his role in the scrutiny assessment proceedings is somewhat akin to a conventional statutory auditor in real-life situations. What Justice Lopes said, in the case of Re Kingston Cotton Mills [(1896) 2 Ch 279,], in respect of the role of an auditor, would equally apply in respect of the role of the Assessing Officer as well. His Lordship had said that an auditor (read Assessing Officer in the present context) "is not bound to be a detective, or, as was said, to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watch-dog, but not a bloodhound.". Of course, an Assessing Officer cannot remain passive on the facts which, in his fair opinion, need to be probed further, but then an Assessing Officer, unless he has specific reasons to do so after a look at the details, is not required to prove to the hilt everything coming to his notice in the course of the assessment proceedings. When the facts as emerging out of the scrutiny are apparently in order, and no further inquiry is warranted in his bona fide*

*opinion, he need not conduct further inquiries just because it is lawful to make further inquiries in the matter. A degree of reasonable faith in the assessee and not doubting everything coming to the Assessing Officer's notice in the assessment proceedings cannot be said to be lacking bona fide, and as long as the path adopted by the Assessing Officer is taken bona fide and he has adopted a course permissible in law, he cannot be faulted- which is a sine qua non for invoking the powers under section 263. In the case of Malabar Industrial Co Ltd. v. CIT [2000] 109 Taxman 66/243 ITR 83, Hon'ble Supreme Court has held that "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 ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law." The test for what is the least expected of a prudent, judicious and responsible Assessing Officer in the normal course of his assessment work, or what constitutes a permissible course of action for the Assessing Officer, is not what he should have done in the ideal circumstances, but what an Assessing Officer, in the course of his performance of his duties as an Assessing Officer should, as a prudent, judicious or reasonable public servant, reasonably do bona fide in a real-life situation. It is also important to bear in mind the fact that lack of bona fides or unreasonableness in conduct cannot be inferred on mere suspicion; there have to be some strong indicators in direction, or there has to be a specific failure in doing what a prudent, judicious and responsible officer would have done in the normal course of his work in the similar circumstances. On a similar note, a co-ordinate bench of the Tribunal, in the case of Narayan Tata Rane v. ITO [2016] 70 taxmann.com 227 (Mum.) has observed as follows:*

*"20. 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-a-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 claimed 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.*"

22. *Having said that, we may also add that while in a situation in which the necessary inquiries are not conducted or necessary verifications are not done, Commissioner may indeed have the powers to invoke his powers under section 263 but that it does not necessarily follow that in all such cases the matters can be remitted back to the assessment stage for such inquiries and verifications. There can be three mutually exclusive situations with regard to exercise of powers under section 263, read with Explanation 2(a) thereto, with respect to lack of proper inquiries and verifications. The first situation could be this. Even if necessary inquiries and verifications are not made, the Commissioner can, based on the material before him, in certain cases straight away come to a conclusion that an addition to income, or disallowance from expenditure or some other adverse inference, is warranted. In such a situation, there will be no point in sending the matter back to the Assessing Officer for fresh inquiries or verification because an adverse inference against the assessee can be legitimately drawn, based on material on record, by the Commissioner. In exercise of his powers under section 263, the Commissioner may as well direct the Assessing Officer that related addition to income or disallowance from expenditure be made, or remedial measures are taken. The second category of cases could be when the Commissioner finds that necessary inquiries are not made or verifications not done, but, based on material on record and in his considered view, even if the necessary inquiries were made or necessary verifications were done, no addition to income or disallowance of expenditure or any other adverse action would have been warranted. Clearly, in such cases, no prejudice is caused to the legitimate interests of the revenue. No interference will be, as such, justified in such a situation. That leaves us with the third possibility, and that is when the Commissioner is satisfied that the necessary inquiries are not made and necessary verifications are not done, and that, in the*

*absence of this exercise by the Assessing Officer, a conclusive finding is not possible one way or the other. That is perhaps the situation in which, in our humble understanding, the Commissioner, in the exercise of his powers under section 263, can set aside an order, for lack of proper inquiry or verification, and ask the Assessing Officer to conduct such inquiries or verifications afresh.” (Emphasis Supplied)*

10. In the above decision, the Mumbai Bench of the Tribunal has held that the PCIT does not enjoy unfettered power of revision under Section 263 of the Act even after introduction of Explanation 2. Unless the Assessing Officer fails carry out necessary inquiries and verifications which is expected from a prudent, judicious and responsible Assessing Officer in the ordinary course of performance his duties, the PCIT cannot legitimately form the view that assessment order has been passed *‘without making inquiries or verification which should have been made’*. In scrutiny assessment proceedings, the Assessing Officer is required to analyze the income tax return and claims made therein to examine whether the same are in accordance with the law. In case the Assessing Officer has any reasons to doubt the correctness of a claim, or the facts & circumstances so require, the Assessing Officer is required to probe into the matter deeper and in detail. With the aforesaid understanding, we proceed to examine whether in the facts and circumstances of the present case, the Assessing Officer failed to make enquiries or verification which ought to have been made.
11. On perusal of record we find that the case of the Appellant was selected for limited for scrutiny for examination of income from other sources, deduction/exemption from capital gain and investment from immovable property. In the aforesaid context, notice, dated 31.10.2019 was issued by the Assessing Officer under Section 142(1) of the Act asking for details of sale of capital assets,

computation of capital gains and reconciliation of interest income as per income tax return and Form 26AS. Taking into consideration the fact that the case of the Appellant was selected for limited scrutiny coupled with the facts that queries specific to specified income or heads of income have been raised, we find merit in the contention advanced on behalf of the Appellant that the specific queries related to the purchase/sale of the assets and interest income were raised during the assessment proceedings. We note that vide letter dated 06.11.2019, required details/documents were furnished by the Appellant which included details/documents relating to the transaction pertaining to Chalet Property and reconciliation of interest income. The relevant extract of the aforesaid reply letter dated 06.11.2019, read as under:

*“With reference to the above I refer to your notice u/s 142(1) we here by enclosed the following*

*1. Details of Capital Assets Sold During the Year Are:*

<i>Description of Assets</i>	<i>Date of Sale</i>	<i>Consideration of Sale</i>	<i>Date of Purchase</i>	<i>Purchase Consideration</i>	<i>Details of TDS</i>
<i>Viviara Bangalore Flat</i>	<i>16/02/2017</i>	<i>3,13,54,275</i>	<i>15/10/2010</i>	<i>1,92,60,612</i>	<i>13,90,771</i>
<i>xxx</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>

*The Chalet Property was purchased in the year 2010 and the said property was shown as Stock in Trade. As the construction of the property was not progressing it was mutually decided to cancel the earlier agreement and the builder agreed to pay compensation in form of interest. The said amount was received as the assessee cancelled the agreement and extinguished her rights. In fact it is the compensation which was received, however the builder on the safe side did the TDS u/s 194A as there is no section on which TDS can be done on compensation. The cancellation letters are attached hereto. Accordingly the amount of compensation on cancellation is considered as part of Sale only and taken as business income as the property was shown as Stock in Trade.*

Even assuming for arguments, that it is interest than the same will be taxed under the head Income from other Sources and the Business Income as offered will reduce accordingly and the Net results will be the same.

2. *Computation of Total income of A.Y. 2017-18.*
3. *Proof of Investment in PPF is attached for your reference.*
4. *Reconciliation of income as per ITR & Form 26AS are as follows:*

Name of Party	Section under which TDS	Income as per 26AS	TDS as per 26AS	Income as per ITR	TDS as per ITR		Reason for Mismatch
Chalet Hotels Pvt. Ltd.	194A	1,20,93,663	13,90,771	3,13,54,275	13,90,771	-	The said income in ITR shown as Sale of Goods
xxx	xxx	xxx	xxx	xxx	xxx	-	-
xxx	xxx	xxx	xxx	xxx	xxx	-	-

...” (Emphasis Supplied)

12. On perusal of above reply letter dated 06.11.2019, it can be seen that the Appellant provided the relevant details pertaining to the Chalet Property. It was explained that the said property was held as stock-in-trade. Since there was a delay in construction, under a mutual agreement with the builder the Appellant and the builder had mutually agreed to cancel the purchase of the Chalet Property. The builder had agreed to refund the deposit/part payment along with interest. In reconciliation statement the details of the interest received from the builder along with the Explanation that the said interest income has been included as consideration for sale of goods in the income tax return was also furnished by the Appellant. It was also explained that the Assessing Officer that in case the income is to be taxed under the head income from other sources, the amount of business income would reduce and the net result would be the same. Copy of cancellation letter along with computation of

payments made to the builder and interest thereon was also provided to the Assessing Officer. Perusal of Profit & Loss Account for the previous year ended 31.03.2017 relevant to the Assessment Year 2017-18 shows that the Cost of Chalet Property of INR 2,20,60,058/- and the Sale of Stock (Chalet Property) of INR 3,13,54,275/- was disclosed by the Assessing Officer. All the aforesaid facts were placed before the Assessing Officer during the assessment proceedings and that the Assessing Officer accepted the contention of the Appellant that interest income of INR 1,20,93,663/- was in the nature of business income. While the Assessment Order does not contain any discussion on the issues on which the power of review has been exercised by the PCIT, Section 263 of the Act requires the PCIT to take into consideration the all the record relating to the assessment proceedings.

13. We note that there are two broad grounds on which the Ld. Departmental Representative had contended that the Assessing Officer has failed to make requisite inquiry/verification are that, Firstly, there was no mention of opening/closing stock in the Profit & Loss Account of the Appellant, and Secondly, the amount mentioned in the purchase agreement was less than the cost debited to the Profit & Loss Account. It is correct that the figure of opening stock and closing stock were not stated in the Profit and Loss Account. However, the Cost of Chalet Property of INR 2,20,60,058/- was debited to the Profit & Loss Account. It would be pertinent to note that the Appellant is not engaged in the manufacturing & sale of goods. The Appellant is engaged in the business of purchase/sale of the properties. Each property purchased and held by the Appellant for trading is disclosed as current asset in the balance sheet. Whereas the investments made by the Appellant are disclosed under the head 'Investments'. Therefore, in our view, the mere fact

that opening and/or closing stock figure is not mentioned in the Profit & Loss Account cannot be the sole reason to create a doubt in the mind of the Assessing Officer that the Chalet Property was not held by the Appellant as stock-in-trade. Thus, we hold that the facts and circumstances of the case did not warrant deeper inquiry into the issue of the Chalet Property being held as stock-in-trade. During the course of the arguments, the Ld. Departmental Representative had submitted that the Appellant could not place reliance upon the balance sheets of the preceding years as the same were not placed before the Assessing Officer. However, we find that in paragraph 5.4 of the order impugned relied upon by the Ld. Departmental Representative, the PCIT has relied upon the balance sheet of the Financial Year 2015-16. In case the same were not part of the record, even the PCIT was precluded from relying upon the same in case we accept the contention of the Learned Departmental Representative. On the other hand, in case balance sheet of the Financial Year 2015-16 formed part of the record, the same supports the stand of the Appellant that the Chalet Property was held as current asset and not as investment in the preceding years. Thus, obviating the requirement for further inquiry/verification. In either case, it would not advance the case of the Revenue.

14. Further, on perusal of the order passed by the PCIT under Section 263 of the Act as a whole, we find that the formation of belief by the PCIT that the necessary inquiry/investigation has not been conducted by the Assessing Officer during the assessment proceedings is based upon the understanding of the PCIT that the interest income INR 1,20,93,663/- was liable to be taxed under the head Income from Other Sources in terms of Section 56(2)(viii) read with Section 145A of the Act, whereas the Assessing Officer has erred in accepting the claim of the Appellant that the said interest

income is taxable as business income. We have examined the provisions contained in Section 56(2)(viii) of the Act and find that the same are applicable in respect of interest receipt on compensation or enhance compensation. The aforesaid provisions have no application to the facts of the present case where the interest received is neither interest on compensation nor interest on enhanced compensation. Further, we find that the reasoning given by the Ld. Departmental Representative in support of the order passed by PCIT in relation to the computation of the amount of interest does not find mention in the order passed by the PCIT and therefore, cannot be considered as valid reason for formation of opinion by the PCIT. It is not the case of Revenue that the Assessing Officer had not examined the claim made by the Appellant, the stand of the Revenue is that the Assessing Officer failed to make a deeper or detailed verification/inquiry. Therefore, the judgment of the Hon'ble Bombay High Court in the case of Ballarapur Industries Ltd. (supra) and Jeevan Investment & Finance Pvt. Ltd. (supra) would not come to the aid of the Revenue. In Ballarapur Industries Ltd. (supra) it was held by the Hon'ble Bombay High Court that allowing a claim in absence of examination renders the Assessing Order erroneous and prejudicial to the interest of Revenue, whereas in Jeevan Investment & Finance Pvt. Ltd. (supra) it was held that since in that case the assessee had failed to furnish the details of the method of valuation, it was a case of non-inquiry and not-adequate inquiry. Both the aforesaid judgments are not applicable to the facts of the present case as we have already concluded hereinabove that in view of the facts and circumstances of the present case it cannot be said that the claim made by the Appellant was not examined. Further, in the present case it cannot be said that the Assessment Order has been passed without application of mind, or on account of incorrect assumption of facts, or incorrect application of law. Thus,

the decision of Chennai Bench of the Tribunal in the case of Sify Software (supra) would also not advance the case of Revenue.

15. For the reasons stated hereinabove, we hold that the PCIT was not justified in exercising power of revision under Section 263 of the Act in the facts and circumstances of the present case. Thus, Ground No. 1 & 2 raised by the Appellant are allowed, the order dated, 25.03.2022, passed by the PCIT is set aside and Assessment Order, dated 14.12.2019, passed under Section 143(3) of the Act is reinstated.

In the result, the present appeal is allowed.

Order pronounced on 24.02.2023.

*Sd/-*  
(Amarjit Singh)  
Accountant Member

*Sd/-*  
(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 24.02.2023  
Alindra, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai