

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T. A. No. 185/Asr/2019
Assessment Year: 2014-15

Sh. Gurjinder Singh,
Prop. Apex Marketing,
58, City Center, Amritsar
143001

[PAN: AKPPS 8265G]

(Appellant)

V. Pr. Commissioner of Income
Tax -1, Amritsar

(Respondent)

Appellant by : Sh. Ashwani Kalia, CA

Respondent by : Smt. Balwinder Kaur, CIT DR

Date of Hearing : 15.03.2023

Date of Pronouncement : 30.03.2023

ORDER

Per Dr. M. L. Meena, AM:

The present appeal has been filed by the assessee against the order of the Ld. Pr. Commissioner of Income Tax-1, Amritsar dated 08.02.2019 in respect of Assessment Year 2014-15 wherein the assessee has challenged the validity of the impugned order being passed based on presumption,

assumption, speculation and probabilities by way of following grounds of appeal:

- “1. *On the facts and in the circumstances of the case, the learned Principal CIT-1, Amritsar has erred in invoking the provisions of section 263 of the Income tax Act, 1961 on issues of minuscule importance and that too based on mere presumptions, conjectures and speculation that the assessment framed is erroneous and thus prejudicial to the interests of the revenue.*
2. *The learned PCIT-1, Amritsar has not controverted the submission of the assessee that the AO had issued a detailed questionnaire dated 28.06.2018 wherein all probable issues which the AO deemed ought to be looked into and investigated, had been raised. The PCIT-1, Amritsar's failure to deal with the submission of the assessee render his action totally unwarranted and uncalled for and deserves to be richly set aside.*
3. *The PCIT-1, Amritsar had mentioned six points in the show cause notice which were in the realm of speculation, presumption and in none of the points, he has brought out even prima facie any tangible erroneousness which may be said to be prejudicial to the interests of the revenue. Each of the six points raised is not erroneous as under:-*
 - (i) *It is not erroneousness if the GP rate of two separate concerns dealing with the same goods is somewhat higher or lower unless the PCIT records the finding that any particular expenditure is disproportionately excessive as compared to the party dealing in the goods. The IT authorities cannot sit in the arm chair of the assessee to decide as to how much GP an assessee should charge.*
 - (ii) *There is no definite basis mentioned in this point which may be said to have caused erroneousness. This is sheer vague basis and cannot be the basis for invoking the provisions of section 263.*
 - (iii) *In this point, the PCIT's contention is that the AO has failed to verify the contention of the assessee with reference to accounting entries passed by the assessee in his books of account. This appears to be the figment of*

the learned PCIT's imagination as there is nothing on record to infer what the worthy PCIT has inferred.

- (iv) *The PCIT has failed to appreciate that no adverse cognizance of cash sale can be taken and the customer is under no legal obligation to give his/her address. Therefore, this could not constitute the basis for his invoking the provisions of section 263.*
 - (v) *The payments have been received from Radha Swami Satsang Beas and not made by the assessee which may cause prejudice to the interests of the revenue in any way. This information could at best be passed on to the AO holding jurisdiction over the case of Radha Swami Satsang but it certainly is not erroneous to receive the payment on regular daily basis if the party chooses to do so.*
 - (vi) *The PCIT has failed to appreciate that it is trade practice that hire charges are received by the truck drivers at the time of delivery of goods. The payment is made in piecemeal and it is not the contention of the PCIT that any payment has been made in excess of the limit prescribed u/s 194C. The PCIT cannot have a case unless he holds that some ingenuine claim has been made or the manner in which the expenses have been claimed have caused any leakage of revenue or could have caused any leakage of revenue. Unless, he opines so, the AO's action cannot be said to be erroneous.*
4. *The PCIT-1, Amritsar has given no positive basis for forming an opinion that the assessment made is erroneous and his opinion is based merely on conjectures, presumptions and speculation.*
 5. *The learned PCIT has erred in law in setting aside the observation made by the AO in his order that the assessment had been made after discussion with the Principal Commissioner of Income tax-1, Amritsar by observing that the same is factually incorrect as there is no evidence on record to substantiate the claim of thee AO as mentioned by him in para No.04 of the assessment order.*
 6. *The PCIT could not summarily dismiss this vital observation of the AO without bringing on record the explanation of the AO as to how he made the said observation which, prima facie, seems to be maintainable as*

discussion has reportedly been made with reference letter No.5266 dated 29.12.2016 of Addl. CIT, Range 3, Amritsar.

7. *The PCIT has clearly erred in invoking the provisions of section 263 in the face of the fact that the assessment had been made by the AO after discussion with him.”*

2. The Ld. PCIT hold the assessment order dated 30.12.2016 passed under section 143(3) of the Income Tax Act, 1961 as erroneous in so far as it is prejudicial to the interests of the revenue by observing as under.

“2. On perusal of assessment order it is observed that "the Assessing Officer has passed a very cryptic and non-speaking order without application of mind. The AO has failed to make inquiries/verification which should have been made before passing the order, thus, making the order erroneous in so far as prejudicial to the interest of the revenue.

3. As per records, the assessee is proprietor of M/s Apex Marketings and M/s Pioneer sales. In M/s Apex Marketing, the assessee has acted as wholesaler of food items like confectionary goods of famous brand “Haldiram’s”. Similar trading work has also been done in another proprietary concern named as Pioneer Sales. Thus, as per submissions on record, the nature of business activities in both the concerns is same. Since, the assessment order passed by the Assessing Officer was erroneous in so far as it is prejudicial to the interest of revenue, therefore, a show cause notice u/s 263 of the Income Tax Account Act, 1961 dated 07.01.2019 was issued to the assessee as under:

- (i) It is observed that the assessee has declared income under xhe heads “Income from House property, Income from Business/Profession” and ‘Income from other sources”. Though, the nature of activities in both the proprietorship concerns is same i.e. wholesale trading of products of “Haldiram’s” but in M/s Pioneer Sales, the gross profit has been shown @ 3.47% whereas in M/s Apex Marketing it is 4%. The AO has failed to verify the reasons for difference in gross profit in two concerns having similar nature of business activities.
- (ii) On perusal of lists of sundry creditors and sundry debtors of M/s Pioneer Sales and M/s Apex Marketing, it is observed that there are many parties

which are appearing both as debtor as well as creditor. The record shows that the AO has failed to verify the nature of transactions and the accounts of such parties and he has failed to ascertain as to why there is both debit and credit balance in the name of same party.

- (iii) As per the list of sundry creditors of M/s Apex Marketings, the assessee has shown credit balance of Rs. 1,28,66,154/- *ⁿ the name of M/s Haldiram Mfg. Co. Pvt. Ltd. The AO called for the information from M/s Haldiram Mfg. Co. Pvt. Ltd. which stated that there is no such balance of Rs. 1,28,66,154/- in their books of account in the name of assessee. Though, the assessee has tried to explain the difference of balance with M/s Haldiram Mfg. Co. Pvt. Ltd., but the AO has failed to verify the contention of the assessee with reference to accounting entries passed by the assessee in his books of account and the AO has also failed to apply his mind that even after considering the reply of the assessee as to how M/s Hal diram Manufacturing Co. Pvt.Ltd. Could be the creditor of the assessee by Rs. 1,28,66,154/-.
- (iv) The records shows that the AO had issued a questionnaire dated 28.06.2016 to the assessee. In Question Number-13, he has asked for details of cash purchases and sales with complete addresses PAN,/Identity of the parties. In response, the assessee's Authorized Representative has replied that "the assessee had not made any cash sale/purchase during the year under consideration. But on perusal of cash book of M/s Apex Marketings it is observed that the assessee has claimed cash sales of Rs. 50,00,000/- in the name of "Neha" from 02/12/2013 to 15/02/2014. The AO has failed to make necessary verification and enquiries from "Neha". Even the complete detail of address etc. of "Neha" is not there on record.
- (v) Further, the cash book of M/s Apex Marketings shows that the assessee has claimed receipt of cash of Rs. 20,000/- each almost every day from M/s Radha Swami Satsang, Beas against debit balance of Rs. 11,72,332/- . The AO has failed to make enquiries from Radha Swami Satsang that they have made payment of cash of Rs. 20,000/- everyday to the assessee.
- (vi) The assessment records shows that the assessee has made payment of Rs. 21,62,937/- in M/s Apex Marketings under the head "Truck Hire Charges". Similar nature of payment of Rs. 20,80,160/- has been made in M/s Pioneer Sales. The assessee has not deducted tax u/s 194C of the I.T. Act on payment of Truck Hire Charges and the entire payment has been made in cash. On being questioned it was submitted by the

assessee that whenever there was need for transportation of goods, the assessee used to engage trucks through transporters and a certain sum of consideration was charged by the truck owners/operators for the same. The hire charges were paid by the assessee directly to the truck owners/drivers and there was no contract with any of the transporters. It appears that the AO has accepted the contention of the assessee without verification and without application of mind. The AO has failed to examine that as per cash books of proprietorship concerns of the assessee, the payment of truck hire charges has been shown on the last day of every month. If, the assessee had engaged trucks as and when required and payment made to that particular truck owner/driver, then the payment would have been shown on that particular date. Thus, either the contention of the assessee is not correct or the cash book has not been written properly on day to day basis.

06. I have considered the submission of the Ld. AR. However, the same is not acceptable. It has been argued by the Ld. AR that in the course of assessment proceedings questionnaire was issued by the AO wherein all the probable issues were covered and that the assessee had filed voluminous details and explanation from time to time and the AO was fully convinced with the said replies and explanations and, therefore, the AO was not having any other option but to pass an order in the manner in which he has passed the same. It is also argued by the Ld. AR that since the assessment proceedings continued for over a period of time and every explanation was furnished, therefore, it cannot be said that the AO has not applied his mind before passing the assessment order. But, the contention of the Ld. AR is not acceptable because merely for the reason that in the course of the assessment proceedings voluminous details were filed and the assessment proceedings conducted for a longer period, it does not mean that the AO has conducted necessary verification/enquiries or he has applied his mind on the issues involved before passing the assessment order. It is not enough to just call for the details and explanations and keep them in the record. The AO is duty bound to conduct necessary enquiries and verification in respect of details and explanations called for from the assessee or, the information gathered by him. As mentioned in the Point No. 3(i), 3(ii), 3(iii), 3(iv), 3(v) and 3(vi) above, it is apparent that the AO has not made necessary enquiry and verification before passing the assessment order dated 30.12.2016. Thus, the order dated 30.12.2016 passed under section 143(3) of the Income Tax Act, 1961 is erroneous in so far as it is prejudicial to the interests of the revenue. By the

Finance Act, 2015, w.e.f. 01.06.2015, Explanation 2 to Section 263 of the Income Tax Act, 1961 was inserted.”

3. The Ld. AR submitted that the Ld. PCIT-1, Amritsar has not controverted the submission of the assessee that the AO had issued a detailed questionnaire dated 28.06.2018 wherein all probable issues which the AO deemed ought to be looked into and investigated, had been raised; that the six points raised in the show cause notice were in the realm of speculation, and presumption without even prima facie support of any tangible material to hold the assessment order erroneous or prejudicial to the interests of the revenue on account of the GP rate of two separate concerns; statement of account in reference to books of account; no adverse cognizance of cash sale; receipts from Radha Swami Satsang Beas and that the hire charges are received by the truck drivers. The AR further submitted that the Principal Commissioner of Income tax-1, Amritsar observation are factually incorrect and devoid of merits in the absence of corroborative evidence on record to substantiate the allegation as the AO has made the assessment order after discussion as per para No.04 of the assessment order. Thus, the PCIT has clearly erred in invoking the provisions of section 263 in the face of the fact that the assessment had been made by the AO after discussion and enquires on the vital issues of

scrutiny. In support, He filed, a written synopsis, relevant part is reproduced as under:

1 First of all it is submitted that the Id. Pr.CIT is absolutely wrong in holding that the order was passed by AO without application of mind and without making enquiries/verification.

*2 The Id.AO had issued a very detailed and lengthy questionnaire dated 28.6.2016 along with notices u/s 143(2) and 142(1). Copy of the same is enclosed at **Page 16 to 17.***

3 During the course of assessment proceedings the Id.AO fixed the case for hearing at very short intervals and large number of queries were raised in addition to the above questionnaire which were all duly replied by the appellant along with the necessary details and explanations.

*4 The assessment proceeding which were initiated on 28.6.2016 got concluded on 15.12.2016 and during this period the AO required the assessee to submit large number of details and information which were duly supplied by the appellant which is evident from copy of Order Sheet at **Page 18 to 27***

5 Further, all the books of account, bills, vouchers and other supporting documents were produced before AO and the same were duly verified and examined by the AO which is evident from the Order Sheet entries.

6 It is further submitted that Id.AO made enquiries from third parties also wherever he found it necessary which is evident from the following letter issued by the AO:-

*i) Notice dated 29.11.2016 u/s 133(6) issued to Haldiram Mfg Co Pvt Ltd Gurgaon seeking information in respect of credit balance of RS.12866154 marked as "very urgent" by the AO. Copy of the same is enclosed at **Page 28***

*ii) Copy of the reply dated NIL sent by Haldiram Mfg Co Pvt Ltd to the above notice is enclosed at **page 29***

The above notice was issued by the AO in respect of balance of Rs.12866154 appearing in the list of sundry creditors which is one of the reason for initiating the proceedings u/s 263 by Pr.CIT

7 Further we are enclosing herewith copies of the following replies furnished by the appellant to AO during the assessment proceedings submitting various details, information and explanations to the various queries raised by AO:-

1	Reply filed on 10.11.2016 - Vide Para 2 of this letter the point no.1 of Pr.CIT's order u/s 263 stand covered. Page 30 to 33
2	Reply filed on 28.11.2016 in which the following points raised by Pr.CIT stand covered:- Page 34 to 37 a) Vide para 1(B) point no.3 of Pr. CIT's order u/s 263 stand covered. b) Vide Para 3 of reply point no.4 & 5 of Pr. CIT's Order u/s 263 stand covered. c) Vide Para 4 of reply point no.6 of Pr. CIT's Order u/s 263 stand covered.
3	Reply filed on 6.12.2016- following points stand covered Page 38 to 40 a) Para 1 of this letter covers point no.3 of Pr. CIT's Order u/s 263 b) Para 2 of this letter covers point no.6 of Pr. CIT's Order u/s 263
4	Reply filed on 7.12.2016 further explanation of the assessee on point no.3 of Pr.CIT's Order u/s 263 stands covered Page 41 to 42
5	Point No.2 was explained to AO from the list of sundry debtors and creditors filed with Balance Sheets of the two units. Lists are submitted at sr.no.43 to 52

It may be submitted that in the above letters various other details and explanations sought by the AO were also given.

8 From the perusal of above replies of the assessee filed before AO during the course of assessment it will be observed the all the issues taken up by the Pr.CIT in his order u/s 263 had already been taken up by the AO and reply to same were duly given by the appellant. The AO framed assessment order only after being fully satisfied on all these issues as well as all other aspects of the case.

9 Further, from the perusal of Order Sheet it will be observed that the AO has thoroughly examined each and every aspect of the case and after being fully satisfied with the assessee's replies that the assessment order was passed by him. He had

already covered all the points raised by Pr.CIT on the basis of which proceedings u/s 263 were initiated.

10 Further it is submitted that all the books of accounts with bills and vouchers along with requisite details were produced before the AO which were duly examined by him. Refer Order Sheet entry dated 2.12.2016.

11 Further, your honor's kind attention is invited to the following entries of the Order Sheet:-

8.7.2016	Counsel appeared and furnished written submissions
22.7.2016	Counsel appeared and furnished some of the information
5.8.2016	Counsel appeared. Furnished some of the information and asked to furnish certain more information
18.8.2016	Counsel appeared and asked to produce cash account.
24.8.2016	Counsel appeared and furnished copy of summary of Cash A/c. Asked to produce detail of investment made with AGR Pvt. Ltd and copy of account with the company.
25.8.2016	Counsel appeared and furnished the Balance Sheet of AGR Pvt Ltd and copy of A/c of Apex Marketing
23.9.2016	Counsel appeared. Asked to produce the account books, Leger/Cash Book etc.
28.9.2016	Counsel appeared. Asked to furnish the total debits/credits in all the bank accounts maintained during the year
13.10.2016	Show Cause Notice again issued as final opportunity to furnish explanation as to why the amount credited in the bank a/c in cash may not be assessed as unexplained income.
24.10.2016	Letter received from Haldiram Mfg Co Pvt Ltd Gurgaon as per which Nil balance shown in the assesee's account opening and closing balance
10.11.2016	Counsel appeared. Furnished the written submissions to show cause notice and furnished copy of Cash A/c. Asked to explain the discrepancies with books of accounts. Explanation with narration cash withdrawn not explained. Asked to explain with books of account and

	<i>narration. Purpose of cash withdrawals. Asked to explain the amount deposited in the Capital A/c of the assessee with AGR Hospitality Pvt Ltd.</i>
<i>30.11.2016</i>	<i>Counsel appeared. Asked to furnish the documentary evidence of claim of damage of goods amounting to Rs.1,28,661,54</i>
<i>2.12.2016</i>	<i>Counsel appeared. Produced Ledger, Cash Book, Documentary evidence for claim of damaged goods to company not produced and neither any evidence of claim of damaged goods from customers produced. Vouchers in respect of Truck Hire charges were produced</i>
<i>6.12.2016</i>	<i>Counsel appeared. Furnished the written submission and copy of company a/c since financial year 2011-12 and 1012-13. Asked to furnish copy of Sale Return. This is in connection with Point No.3</i>
<i>7.12.2016</i>	<i>Counsel appeared. Furnished copy of Sale A/c for the previous year as per which sale has been reduced during the previous years (at Rs.7268230 for the financial year 2011-12) and Rs.5597904 during the financial year 2012-13 and debit the sale A/c credit company A/c. This pertained to Ground No./3</i>
<i>14.12.2016</i>	<i>Counsel appeared Asked to explain the amount with (source thereof) which is credited in the account of Apex Market and Pioneer Sales with AGR Hospitality</i>
<i>15.12.2016</i>	<i>Counsel appeared. Furnished copy of a/c of assessee company M/s. AGR Hospitality Pvt. Ltd in assessee's books and case discussed.</i>

From the above submissions it will be appreciated that the Id. Pr. CIT was absolutely wrong in his order that the order framed by AO is without making enquires/verification and without application of mind.

Now each ground wise rebuttal is submitted hereunder: -

Rebuttal of Ground No.1

1 Ground No.1 taken by Pr.CIT is that G.P. rate of the two units varies whereas nature of business activities is the same and the AO failed to verify the reasons.

2 In rebuttal it is submitted that the appellant vide its letter filed on 10.11.2016 has filed complete detail of main expenses of the two units. No expense has been pointed out by CIT as unreasonable.

3 The assessee has also filed comparative detail of sales, g .p. and n.p. rate in two units. It was explained by the assessee during the course of proceedings that in the Pioneer Sales this year huge sales amounting to R\$.1.9 crore was made to Radha Swami Satsang Beas against which special discount of Rs.4500571 was allowed to them as a result there was fall in g.p rate in this unit. No such discount was allowed in the case of Apex Marketing. If we do not consider amount of this discount the g.p. rate will be more than the other unit.

4 It was for this reason that no adverse view was taken by AO. Moreover, the margin of profit is not the same in all the items. It varies from product to product. Accordingly the gross margin cannot be the same in the two units.

Rebuttal to Ground NO.2

In the second ground the CIT has stated that in the list of sundry creditors and sundry debtors of the two units there are many parties which are appearing both as debtors as well as creditors and the AO failed to verify the nature of transactions.

We may submit that this is not the case with many parties. It was only in the case of accounts of Haldiram group concerns in whose accounts there are mainly credit balances and there are only small debit balances which are on accounts of certain claims for shortages and damaged goods which are debited to separate accounts for the purposes of proper identification and are shown in the bills as such. The assessee had explained this position to the AO. There is nothing abnormal about it. Against the debit balances the word "Clear" is duly mentioned. Copies of list of Debtors and Creditors of the two units are enclosed at **Page to 43 to 52** .

Rebuttal to Ground NO.3

1 In the third ground taken by the Pr.CIT is the credit balance on 12866154 in the name of Haldiram Mfg Co Pvt Ltd in the books of Apex Marketing which was not confirmed by said company and the AO failed to verify the contention of the assessee and the AO did not apply his mind.

2 This issue was duly raised by the AO during assessment proceedings and assessee had made detailed written submissions on this issue. Refer Para 1(B) of assessee's reply filed on 28.11.2016. Copy of the same is filed at sr. No. 34 to 37 of Paper book. Also refer copy of assessee's reply filed on 7.12.220. Para 1 on this issue.

3 Moreover, M/s. Haldiram Mfg Co Pvt. Ltd in their reply to AO in response to notice u/s 133(6) had stated that the said amount of rs.12866154 pertain to claims received form Apex Marketing on account of damaged goods returned to them in earlier years. It has further stated that they neither gave the assessee claims in the shape of goods or by making payments of the said amount nor did it acknowledge the said claim which is our normal practice.

4 It was also explained to the AO that the said claim pertained to the preceding two years i.e. Rs.7268230 for the financial year 2011-12 and Rs.5597904 for the financial year 2012-13 and it did not affect the profitability of the year under assessment. It was also explained that in the succeeding year the claims of the customers were reversed since M/s. Haldiram Mfg Co Ltd did not accept the claim of damaged goods as it exceeded the normal damage percentage.

5 From the above submissions it will be appreciated that this issue was thoroughly enquired into by the AO and the appellant duly explained in detail to the AO. The AO even had made enquiries from the Haldiram Mfg Co Ltd.

Rebuttal to Ground NO.4

The Pr.CIT has stated that AO failed to make necessary verification and enquiry for the cash sale of Rs.5000000 to Neha and even complete address etc of Neha is not there on record.

In rebuttal to above it is submitted that NEHA is the brand name of Hena (Mehandi) and is not the name of any customer. Since this was a new product and the assessee had never dealt in the same earlier the customers were also new. Hence the total sale of this product was made in cash. The CIT misunderstood "Hena" as name of a customer. Complete detail of sale of this product was filed with AO vide para 3 of assessee's reply dated 28.11.2016.

Rebuttal to Ground NO.5

In this ground the Id. Pr.CIT has mentioned that the AO failed to verify the cash receipt of Rs.1172332 from Radha Swami Satsang Beas.

This receipt was from the various customers who have small counters to sell these products inside and outside the premises of Dera Beas. Most of these customers are very small and make payments mostly in cash which is shown by the appellant in the books. Complete detail of cash receipts during the year was filed before the AO during the course of assessment proceedings as required by the AO and duly verified by him before framing the assessment. Please refer para 1 of assessee's reply filed on

28.11.20163 vide which complete copy of cash a/c as per the books of two units was submitted.

Rebuttal to Ground NO.6

In this ground the Id. Pr .CIT has mentioned that the AO failed to verify the payments of Truck Freight paid by the assessee without deduction of TDS u/s 194C.

This issue was duly discussed by the AO during assessment proceedings and detailed reply was submitted by the assessee vide Para 4 of reply filed on 28.11.2016. Complete detail of freight payments was filed and it was verified by the AO that freight payments to each truck was within the limit of TDS and for this reason tax was not deducted at source. Complete detail of freight payment in the two units is enclosed for your ready reference.

The Explanation 2 to Section 263 reads as under:-

“For the purpose of section 263 of Income Tax Act an order passed by the AO shall be deemed to be erroneous so far as it is prejudicial to the interest of the revenue, if, in the opinion of the Pr. Commissioner or Commissioner:-

- a) The order is passed without making enquiries or verification which should have been made;***
- b) The order id passed allowing any relief without enquiry into the claim***

Now coming to above Explanation 2 to Section 263 it will be observed that the AO had already made due enquiries and verification of all those points on the basis of which the Pr.CIT has passed the order u/s 263. Hence the assessment order framed by AO after making all the requisite enquiries and verification and with full application of mind was neither erroneous nor prejudicial to the interest of the revenue. Hence the order of Pr.CIT needs to be quashed as the CIT cannot impose his own judgment over the decision of the AO which he had made after due verification and enquiry. The order of the AO cannot be termed as having been made without enquiry or verification which is the basic requisite of provisions of 263. At the maximum the CIT could have termed it as inadequate enquiry on the basis of which proceedings u/s 263 could not be initiated. There are large number of decisions of various High Courts and ITAT Benches where it has been held that where the AO made enquires and elicited response and there

after framed the assessment the same cannot be revised by CIT u/s 263. The courts even have held that if there is an enquiry even though inadequate that would not by itself give occasion to CIT to pass order u/s 263.

Your honor's kind attention is invited to the following judgments:-

CIT V Sunbeam Auto Ltd 332 ITR 167 (Del)

"Revision—Erroneous and prejudicial order—Lack of proper enquiry—There is a distinction between "lack of enquiry" and "inadequate enquiry"—If there is an enquiry, even inadequate, that would not by itself give occasion to the CIT to pass order under s. 263, merely because he has a different opinion in the matter—Such a course of action is open only in cases of "lack of enquiry"

CIT V Anil Kumar Sharma 335 ITR 83 (Del)

"Revision—Erroneous and prejudicial order—Lack of proper enquiry—CIT came to the conclusion that the issue relating to taxability of compensation received by the assessee was not examined by the AO and held that the order of the AO is erroneous and prejudicial to the interest of the Revenue—Tribunal has arrived at a conclusive finding that though the assessment order does not patently indicate that issue of the taxability of the compensation has been considered by the AO, the record shows that the AO had applied his mind—Thus, it is not a case of lack of enquiry even if the enquiry was inadequate and the CIT was not justified in passing the order under s. 263—Findings of the Tribunal quashing the order of the CIT passed under s. 263 do not warrant any interference"

CIT V Vikas Polymers 341 ITR 537 (Del)

"If a query is raised during the course of scrutiny by the AO, which was answered to the satisfaction of the AO, but neither the query nor the answer was reflected in the assessment order, this would not by itself lead to the conclusion that the order of the AO called for interference and revision—Assessee explained that the capital investment made by the partners, which had been called into question by the CIT was duly reflected in the respective assessments of the partners who were income-tax assesseees and the unsecured loan was duly reflected in the assessment order of the said creditor which was also an assessee—Provisions of s. 263 have not been rightly invoked"

CIT V Development Credit Bank Ltd 323 ITR 206 (Bom)

“Revision—Erroneous and prejudicial order—Lack of proper enquiry—Assessee had furnished the details called for by the AO with regard to the capital gain and break up of investments on which depreciation was claimed—AO had considered the same and assessment order was passed under s. 143(3)—CIT wrongly assumed jurisdiction under s. 263 on the ground that there was failure of the AO to examine the issue of earning of capital gain and transaction relating to investments—Observation of the CIT that the AO had arrived at his finding without conducting an enquiry was erroneous—Tribunal was justified in coming to the conclusion that recourse to the powers under s. 263 was not warranted”

CIT V Munjal Casting 303 ITR 23(2008) (P&H)

“Revision—Validity—AO taking a possible view—AO having taken a possible view, CIT cannot acquire revisional jurisdiction under s. 263 merely because another view is also possible—No substantial question of law arises warranting admission of appeals”

CIT V Sohana Woollen Mills 296 ITR 238 (2008)

“Revision—Erroneous and prejudicial order—AO taking possible view—Mere audit objection, and merely because a different view can be taken are not enough to hold that the order of the AO is erroneous or prejudicial to the interest of the Revenue—AO accepted the case of the assessee that out of sale consideration of the machinery sold by it, sum of Rs. 1 lakh was received for the sale of permit in respect of 1,200 spindles—There was no error in the view taken by the AO—CIT not justified in invoking jurisdiction under s. 263 on the strength of an audit note”

CIT V Arvind Jewellers 259 ITR 502(2003)

“Revision—Erroneous and prejudicial order—Enquiry by ITO—Finding of fact given by the Tribunal that the assessee had produced relevant material and offered explanation in pursuance of the notices issued under s. 142(1) as well as s. 143(2)—ITO has come to a definite conclusion after considering those material and explanation—Mere fact that a different view could be taken cannot be a basis for an action under s. 263—Tribunal was justified in setting aside the order passed by the CIT under s. 263”

CIT V Ratlam Coal Ash Co. 171 ITR 141 (1988)

“Revision—Erroneous and prejudicial order—Lack of proper enquiry by ITO—Assessment made by ITO after proper enquiry—Where the ITO makes assessment in undue hurry without making any enquiries, the CIT can hold the order to be erroneous—However, in the present case, Tribunal has found that assessee had furnished all the requisite information and ITO completed assessment after considering all the facts, though assessment was made just two days after filing of return—Tribunal has further observed that it could not be said that ITO made assessment without making proper enquiries—Revision by CIT was not, therefore, justified”

Dharam Pal V PR.CIT (2016) 181 TTJ (Asr)/0001

“It is another matter that the enquires made by the AO were inadequate in the opinion of CIT- Inadequate enquires itself cannot give powers to CIT to intervene – As regard the genuineness of unsecured loans the assessee had duly filed confirmation for the unsecured loans-Further the copies of account filed by the assessee indicate that the assessee had credited interest on these unsecured loans and had deducted tax wherever it was required-Therefore the allegation of CIT with respect to unsecured loans is not justified specifically keeping in view the fact that the assessee had provided necessary details during assessment proceeding and most of unsecured loans were old outstanding payments”

Vardhman Ind Ltd V DCIT (2016) 181 TTJ ((Chd)(40)/17

“Erroneous and prejudicial order-Lack of property enquiry -An order can be said to be erroneous if the AO has not made enquiry on a relevant issue An enquiry made by the AO conserved inadequate by CIT cannot make the order of the AO erroneous CIT by invoking revisionary powers under section 263 cannot impose his own understanding of the extent of enquiry. Further, in this case the CIT held the order of the AO to be erroneous and directed the AO to make assessment de novo-This approach is not correct in law If the CIT directs the AO to make assessment after further enquiry, this act of the CIT shows that he is not sure whether the original order was erroneous or not - If the CIT holds that there is any error in the order of the AO he should give a categorical finding in this regard and for this purpose, he himself has not make enquiries and investigations whatsoever he deems fit in the circumstances - IN the present case the CIT has not given any concrete finding as to the merits of the case-Therefore, the assumptions of jurisdiction u/s 263 by the CIT is bad in law”

4. Per contra, the Ld DR although supported the impugned order, however, he has failed to rebut the contention raised by the counsel.
5. Heard rival contentions, perused the material on record, impugned order, written submission and case law cited before us. Admittedly, the appellant deals the marketing of Haldiram products and the Assessment Order was passed U/s 143(3) after making necessary enquiries on the points of scrutiny and after detail deliberation as evident from the entries of the order sheet as above and the discussion made in the assessment order.
6. It is evident from the impugned order that the Ld. PCIT-1, Amritsar has not appreciated the facts of the case by controverting the submission filed by the assessee in rebuttal to the queries raised by him and that the AO had issued a detailed questionnaire dated 28.06.2018 wherein all probable issues which the AO deemed ought to be looked into are being investigated and that allegation raised in the show cause notice were in the realm of speculation, and presumption without even prima facie support of any tangible material to hold the order erroneous or prejudicial to the interest of revenue.

7. On perusal of the order sheet as above, it is seen that the AO has examined each point in the scrutiny proceeding, as mentioned in the show cause notice by the Ld. PCIT, and after being fully satisfied with the assessee's replies, he has passed the assessment order u/s 143(3) of the Act. Since, the AO has examined and investigated the case of the assessee on the points of issue for selection of case under scrutiny, in our view, Ld. Pr. CIT is not justified to invoke proceedings u/s 263 of the Act on the similar issues merely on the basis of presumption and assumption.

8. In the case of "CIT V Munjal Casting", (Supra) the Hon'ble Jurisdictional High Court observed on validity of revision U/s 263 of the act that Where the AO having taken a possible view, CIT cannot acquire revisional jurisdiction under s. 263 merely because another view is also possible.

9. Similarly, in another case, "CIT V Sohana Woollen Mills", (Supra) the Hon'ble Jurisdictional High Court observed on Erroneous and prejudicial order for revision U/s 263 of the act that when the AO taken a possible view Mere audit objection, and merely because a different view can be taken are not enough to hold that the order of the AO is erroneous or prejudicial to the interest of the Revenue.

10. The Hon'ble Delhi High Court in case of "**CIT vs. Sunbeam Auto Ltd**", **332 ITR 167 (Del.)** held as under: -

"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 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".

11. In the above view, we hold that the impugned order passed by the PCIT is perverse to facts on record in holding assessment order erroneous and prejudice to the interest of revenue on account of lack of enquiry. Accordingly, the order passed by the PCIT -1, Jalandhar u/s 263, is cancelled being bad in law.

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

Order pronounced in the open court on 30.03.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr./P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By Order