

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 144/JP/2022
निर्धारण वर्ष/Assessment Year : 2017-18.

Shri Arun Kumar Palawat, C/o M/s. Zari Silk India (P) Ltd., Narain Singh Circle, Jaipur.	बनाम Vs.	The PCIT, Jaipur-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAQPP 7460 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri R.K. Bhatra (CA) &
Shri S.R. Sharma (CA)

राजस्व की ओर से / Revenue by : Shri Ajey Malik, CIT D/R

सुनवाई की तारीख / Date of Hearing : 28/02/2023
उदघोषणा की तारीख / Date of Pronouncement : 11/04/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 27.03.2022 of
Id. PCIT, Jaipur-1, Jaipur passed under section 263 of the IT Act for the assessment
year 2017-18. The assessee has raised the following grounds :-

1. That on the facts and in the circumstances of the case impugned order passed by the Id. Pr. CIT, Jaipur-1 is wrong, unjust and bad in law and is without jurisdiction in as much as the Id. Pr. CIT, Jaipur-1 did not accepted plea of the appellant that in the assessment made by the A.O. u/s 143(3) of the I.T. Act, 1961, the Id. A.O. could not have travelled beyond reasons stated in limited scrutiny notice in view of CBDT Instruction No. 7/2014, 20/2015 and 5/2016 and also the CBDT letter dated 13.11.2017 and thus asking further details was beyond the purview of the assessment, and

2. That without prejudice the ground No. (1) above the Id. Pr.CIT, Jaipur-1 is further wrong and has erred in law in holding that the assessment order for AY. 2017-18 passed by the Id. A.O. u/s 143(3) of the I.T. Act, 1961 on 26.09.2019 is erroneous as well as prejudicial to the interest of revenue alleging that the A.O. has passed the assessment order without proper enquiries and verification with regard to:

- (a) Utilization of loans raised
- (b) Rate of interest on loan received and advanced
- (c) Nexus between loan taken and loan advanced and
- (d) Reason of excess interest paid to the extent of Rs.2270883/- over interest earned.

The impugned finding recorded by the Pr. CIT-1, Jaipur is wrong and bad in law in as much as appellant filed complete details of name, address and PAN number of persons from whom loan was raised and also details of interest paid and received. Further appellant also submitted that no claim of excess interest paid of Rs. 2270883/- was made by the appellant in ITR filed.

3. That the appellant craves the permission to add to or amend to any of the above grounds of appeal or to withdraw any of them.

2. The brief facts of the case are that the assessee is an Individual having income from Salary and Interest income under the head "Income from other sources". The assessee is a Director in M/s. Zari Silk India Pvt. Ltd. The assessee filed his original return of income under section 139 on 29.03.2018 declaring total income of Rs. 22,36,980/-. The assessment under section 143(1) was completed accepting the returned income. Thereafter, case of the assessee was selected for scrutiny under CASS and a notice under section 143(2) of the I.T. Act, 1961 was issued on 13.08.2018 for *Limited Scrutiny*. As per said notice issued under section 143(2) the case was selected for *limited scrutiny* on the following issue :

(a) Deduction against income from other sources.

In compliance to the notice aforesaid and points raised under section 142(1) of the IT Act, 1961, the assessee during the course of assessment proceedings filed the requisite details and assessment order passed by the then DCIT, Circle-1, Jaipur at returned income after verification of details and application of his mind. During the course of assessment proceedings on limited scrutiny, the assessee filed the written submissions in respect of queries raised. The AO after being satisfied with the submissions and the evidences furnished by the assessee completed the assessment under section 143(3) of the IT Act, 1961 vide order dated 26.09.2019 at the returned income. Thereafter, the Id. Principal CIT-1 called for the assessment record and after examining the assessment record, opined that the Assessing Officer failed to make inquiries with reference to the explanation offered by the assessee during the course of assessment proceedings. The Id. Principal CIT not being satisfied with the assessment order passed by the AO under section 143(3) of the IT Act, 1961 dated 26.09.2019, observed that the assessment order is erroneous in so far as it is prejudicial to the interest of the revenue and therefore, the Id. Principal CIT proposed to revise the said assessment order in respect of above point in exercise of power vested under section 263 of the IT Act, 1961 and issued a Show Cause notice under section 263 of the IT Act, 1961 to the assessee on 16.02.2022 to explain as to why the assessment order passed under section 143(3) on 26.09.2019 may not be revised under section 263 of the IT Act, 1961 in a suitable manner.

2.1. In reply to the Show Cause notice under section 263 of the IT Act, 1961 issued by the Id. Principal CIT, the assessee filed his detailed reply/submission on 11.03.2022. The assessee in his reply submitted the complete facts of the case along with documentary evidences of interest paid and confirmation letters of fresh

unsecured loans which were filed before the AO and accepted by him after application of his mind on evidences submitted during the course of hearing. As such it is quite wrong to allege that AO has failed to enquire into interest expenses claimed and new unsecured loans taken. The Id. PCIT considered the reply of the assessee dated 11.03.2022 but could not find favour, and on the findings given in Show Cause notice held that the assessment order dated 26.09.2019 for Asstt.Year 2017-18 passed by the AO is erroneous in so far as it is prejudicial to the interest of revenue and accordingly set aside the assessment on the issue discussed above and directed the AO to pass fresh assessment order on those issues. Aggrieved by the order of the Id. Principal CIT, passed under section 263, the assessee is in appeal before us.

3. Before us, the learned A/R of the assessee submitted his submissions as under :

" 1. As already submitted the case was selected for scrutiny under CASS for limited scrutiny for verification of only "deduction claimed against income from other sources". During the course of assessment proceedings, the assessee filed the written submission of query raised. For ready reference and sake of conveniences the relevant portion of said reply is reproduced herein below:-

Cass Reasons :-

With reference to your questioner dated 06-03-2019 and 03-07-2019 issued for the above said assessment year the assessee submits as follows:-

- 1. The assessee's sources of income are salary and interest income under the head income from other sources.*
- 2. Computation of total income is enclosed.*
- 3. Copy(s) bank account(S) maintained by assessee having the required particulars is enclosed.*

4. *Details of interest received and paid are enclosed. The interest paid to unsecured loan creditors claimed against the interest income under section 57 of the IT Act, 1961. During the year assessee has paid interest to parties Rs.65,69,325/-and received interest from parties for Rs.42,98,442/-. **The assessee claimed interest paid only up to interest income.** Remaining interest paid was not claimed as expenses against the interest income. There was direct nexus between interest income earned and interest paid on loans taken by the assessee. Thus the set off of interest income against interest paid is fully justified. The said fact and submission is also accepted by the I.T. Department in the preceding assessment year i.e. 2013-14 and 2016-17 completed u/s 143(3) of the I.T. Act, 1961.*
 5. *Confirmation letters of fresh loan creditors having completed addresses and IT PA No's are enclosed.*
 6. *No books of accounts maintained by assessee. However from the confirmation letters of loan creditors and bank statement of assessee it is verifiable that the loans taken from market were utilized for onwards loans given to sister concerns and due interest were charged from them.*
2. It is verifiable from above submission and details available on assessment record that assessee filed the complete details of interest paid on loan creditors claimed under head income from other sources. The assessee also filed name, complete address and IT PAN of persons to whom said interest paid alongwith their confirmation letters. For verification of submission made complete details interest paid having name, complete address, IT PA number etc. alongwith confirmation letters filed before lower authorities are enclosed herewith. The said details filed were duly examined by the Ld. AO and after verification of complete details/documents passed the assessment order accepting the returned income.

It is further submitted on the similar reasons preceding assessment years 2013-14 and 2016-17 were also completed by department u/s 143(3) of

the I T Act, 1961. The assessee does now know how the Ld. CIT self-drawn the conclusion that Ld. AO not verified the interest claimed.

- 3. Regarding verification of extra interest expenses Rs.22,70,883/- it is submitted that assessee only claimed interest expenses up to the interest income. The said fact is verifiable from the computation of total income available on assessment record that assessee claimed interest expenses only up to the interest income. The above said extra interest of Rs.22,70,883/- was not at all claimed by assessee. As no expenses claimed there is no point of verification of said extra interest expenses.**
4. It is also mentioned in the show cause notice that fresh loan of Rs. 1.22 crore has not been verified by the AO. In this connection it is submitted that assessee filed the confirmation letters of each fresh unsecured loan creditors having complete address and IT PA No's. The assessee discharged his onus to prove the genuineness and identity of said loan creditors.

Without prejudice to the above it is submitted case was selected for limited scrutiny to verify the deduction under the head income from other sources. In the limited scrutiny it is not in the purview of Ld. AO to verify the fresh loan creditors.

5. It is submitted that the ambit of the assessment for limited scrutiny under CASS was admittedly in relation to the verification of **“Deduction against income from other sources”** in response to which the assessee had furnished complete documents relating to interest expense claimed against the interest income u/s 57 of the T Act, 1961 under the head Income from other sources. The Learned Assessing Officer could not have travelled beyond inquiry into the interest expenses in view of the CBDT instruction No. [7/2014](#), [20/2015](#) and [5/2016](#) and also the CBDT letter dated 13 No.

2017, and thus, asking further details was beyond the purview of the assessment.

There is no dispute that the case of the assessee was picked up for scrutiny under the category of limited scrutiny. This fact is established from the assessment order and also the notice issued under section 143(2) of the Act. It is also not in dispute that the CBDT issued the instructions relied upon by the assessee and for the sake of convenience we extract the relevant portions thereof hereunder:

“CBDT Instruction No. 7/2014

The reason(s) for selection of cases under CASS are displayed to the Assessing Officer in AST application and notice u/s 143(2), after generation from AST, is issued to the taxpayer with the remark “.Selected under Computer Aided Scrutiny Selection (CASS)”. The functionality in AST is being modified suitably to flag the reasons for scrutiny selection in AIR/CIB/26AS cases. This functionality is expected to be operationalized by 15th October, 2014. Further, the Assessing Officer while issuing notice under section 142(1) of the Act which is enclosed with the first questionnaire would proceed to verify only the specific aspects requiring examination/verification. In such cases, all efforts would be made to ensure that assessment proceedings are completed expeditiously in minimum possible number of hearings without unnecessarily dragging the case till the time-barring date.

CBDT Instruction No. 20/2015

3. As far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial Year-one is ‘Limited Scrutiny’ and other is Complete Scrutiny’. The assessee concerned have duly been intimated about their cases falling either in ‘Limited Scrutiny’ or ‘Complete Scrutiny’ through notices issued under section 143(2) of the Income-tax Act, 1961 (‘Act’). The procedure for handling ‘Limited Scrutiny’ cases shall be as under:

(a)

*(b) The Questionnaire under section 142(1) of the Act in Limited Scrutiny * cases shall be confined only to the specific reasons/issues for which case has been picked up for scrutiny. Further, the scope of enquiry shall be restricted to the Limited Scrutiny’ issues.*

CBDT Instruction No. 5/2016

“4. It is further clarified that in cases under ‘Limited Scrutiny’ the scrutiny assessment proceedings would initially be confined only to issues under

'Limited Scrutiny' and Questionnaires, enquiry, investigation etc. would be restricted to such issues. Only upon coming of case to 'Complete Scrutiny' after following the procedure outlined above, the AO may examine the additional issues besides the issue(s) involved in 'Limited Scrutiny'. The AO shall also expeditiously intimate the taxpayer concerned regarding conducting 'Complete Scrutiny' in such cases.'

CBDT Letter dated 30.11.2017

Instances have come to notice of CBDT where some Assessing Officers are travelling beyond their jurisdiction while making assessments in Limited scrutiny cases by initiating inquiries on new issues without complying with mandatory requirements of the relevant CBDT Instructions dated 26-9-2014, 29-12-2015 and 14-7-2016. These instances have been viewed very seriously by the CBDT and in one case the Central Inspection Team of the CBDT was tasked with examination of assessment records on receipt of a letter at the offices of several irregularities. Amongst other irregularities, it was found that no reasons had been recorded for expanding the scope of limited scrutiny, no approval was taken from the PCIT for the conversion of the limited scrutiny case to a complete scrutiny case and the order sheet was maintained very perfunctorily. This gave rise to a very strong suspicion of mala fide intentions.'

The above CBDT instructions and the letter clearly establish that it's not open for the learned Assessing Officer to travel beyond the reason for selection of the matter for limited scrutiny and on that aspect the assessment order in this case is in accordance with the instructions governing the field. In such circumstances it is not justified in holding the view that the assessment order is erroneous insofar as it is prejudicial to the interest of the Revenue for the learned Assessing Officer not considering the aspects which are beyond the purview of limited scrutiny.

6. It is submitted that when the very basis of scrutiny the case was on account of limited issues which have been replied by the assessee and considered by the ld. AO, then how it can be said that the AO has failed to make the inquiry, where the scope of inquiry is limited only to the extent of that issue. And till date the position is same there is no change. It was not a complete assessment it was a scrutiny for the limited purpose or issue and on perusal of the entire record or detailed it cannot be said that the ld. AO has not made inquiries. In this proposition we would like to draw your kind attention to the latest decision of this **Honble Bench in the In the case of Mahendra Singh**

Dhankhar HUF vs. ACIT ITA No. 265/JP/2020 Jun 30, 2021 (2021) 62 CCH 0271 Jaipur Trib where It has been held that:-

“Revision—Ordering revision where case is selected for limited scrutiny—Assessee firm is a real estate firm engaged in colonizing and developing residential projects—Case of assessee was selected for limited scrutiny through CASS on account of mismatch of AIR and CIB data, and mismatch in sale turnover reported in audit report and ITR—An addition for wrong calculation of LTCG was made by A.O. which was not challenged by assessee—Subsequently, on basis of certain audit objections, PCIT issued notice u/s 263—Assessee submitted that it is a case outside jurisdiction of Commissioner of Income tax to raise objections outside scope of limited scrutiny—PCIT ordered for 'Denovo' assessment without considering reply filed by assessee—Held, there is no dispute that scope of enquiry in case of limited scrutiny is only to extent of issues for which case was selected for scrutiny under CASS—CBDT has issued instructions from time to time in this respect and has specifically instructed taxing authorities that scope of enquiry should be limited to verification of all particulars for which limited scrutiny was taken up under CASS—However, in case during assessment proceeding if AO is of view that substantial verification of other issue is also required then case may be taken up for comprehensive scrutiny with approval of Pr.CIT/DIT concerned—It is also instructed that such an approval shall be accorded by Pr.CIT/DIT in writing after being satisfied about merits of issue(s) necessitating wider and detailed scrutiny in case—AO is duty bound to follow instructions in case limited scrutiny assessment proceeding are proposed to be converted into complete scrutiny and without following said procedure and necessary approval of competent authority conducting an enquiry on issue which is outside limited scrutiny would be beyond jurisdiction of AO—As a necessary corollary, Pr. CIT u/s 263 cannot be permitted to traverse beyond jurisdiction that was vested with A.O while framing assessment as what cannot be done directly cannot be done indirectly—Therefore, where matter was selected for limited scrutiny, revisional jurisdiction cannot be exercised for broadening scope of jurisdiction that was originally vested with A.O while framing assessment—

As per PCIT, reason for which matter was selected for limited scrutiny i.e, mis-match of sales turnover vis-à-vis ITR, CIB & AIR has a direct bearing on opening and closing stock of cost of construction and W.I.P and in turn, on taxable income, therefore, AO was duty bound to examine these issues and AO having failed to examine these issues, AO has effectively failed to examine issues for which matter was selected for limited scrutiny—As far as matters for which case was selected for limited scrutiny in terms of mis-match of sales turnover, same has been duly examined by AO and even PCIT has not recorded any adverse findings in terms of lack of enquiry or inadequate enquiry on part of AO—Order passed by PCIT u/s 263 is set aside—Assessee's appeal allowed."

*In the case of **Paul Bharwaj vs. Pr.CIT in ITA No. 463/Chd/2019 May 13, 2021 (2021) 62 CCH 0120 Chd Trib Revision—Order erroneous or prejudicial to revenue—Over exercise of power**—Assessee an individual filed his return declaring income and agricultural income—Case was selected for limited scrutiny for reason that there was a substantial increase in capital during year relevant to assessment year under consideration—AO accepted return filed by assessee—Pr. CIT issued notice to assessee u/s 263 and directed AO to make assessment afresh on issues mentioned in notice—Held, Tribunal in case of *M/s Su-Raj Diamond Dealers Pvt. Ltd. CIT ITA No 3098/ Mum* has quashed order passed u/s 263 in case of limited scrutiny assessment, holding that Pr. CIT under garb of section 263, cannot exceed his jurisdiction holding that when case of assessee was selected for limited scrutiny for reasons viz. (i) Large other expenses claimed in P&L A/c; and (ii) Low income in comparison to High Loans/advance /Investment in shares, therefore, no infirmity could be attributed to assessment framed by A.O on ground that he had failed to deal with other issues which though did not fall within realm of limited reasons for which case was selected for scrutiny assessment—In other words, Pr. CIT in garb of his revisional jurisdiction u/s 263 cannot be permitted to traverse beyond jurisdiction that was vested with A.O while framing assessment—As A.O had aptly confined himself to issues for which case of assessee was selected for limited scrutiny, therefore, no infirmity can be attributed to his order, for reason, that he had failed to dwell upon certain*

other issues which did not form part of reasons for which case was selected for limited scrutiny under CASS—Case of assessee was selected for limited scrutiny under CASS for reason that there is substantial increase in capital in relevant year and AO passed assessment order and accepted return filed by assessee after examining issue regarding increase in capital account as assessee had credited his capital account with agricultural income and capital gain from sale of flat—Assessee has reflected that same in its capital account—Further in response to letter issued by AO during assessment proceedings, assessee submitted his reply explaining reason for increase in capital—However, Pr. CIT exercising jurisdiction under section 263, directed AO to make fresh assessment on issues which were not subject matter of limited scrutiny—Since, issue raised by assessee in this case has already been decided in favour of assessee Pr. CIT(A) has exceeded jurisdiction u/s 263 by directing AO to make fresh assessment on issues which were not subject matter of assessment framed on basis of limited scrutiny—Assessee’s appeal allowed. Thus in the present case the position are same and the principal of the above judgments are also applicable in the present case. Thus in the light of the facts and position the Pr. CIT cannot be said to be justified in holding that assessment order was passed without making inquiry or verification when firstly the case of reopened for the limited purpose secondary despite the same assessee has produced all the details which examined and deduction allowed.

In this connection we rely of following judgments:-

A) In the Deccan Paper Mills Co. Ltd. vs. CIT in ITA 1013 AND 1635/PUN/2015, Pune Bench of the Tribunal held, that,

“40. Now, coming to the aspect of book profits which was considered by the Commissioner and the order of the Assessing Officer was held to be erroneous and prejudicial to the interest of revenue. In this regard, it may be pointed out that the case of assessee was picked up for scrutiny under CASS for the limited purpose of verifying the Chapter VI-A deduction. Once the case is picked up for specific purpose under CASS, then it is outside the purview of the Assessing Officer to look into any other aspect other than the aspect for which it is picked up. Hence, the Assessing Officer has not formed any opinion in respect of computation of book profits in the hands of assessee. Once, no such opinion has been formed by the Assessing Officer, the Commissioner has erred in holding the order of the Assessing Officer to

be erroneous and prejudicial to the interest of revenue in this regard. Accordingly, we reverse the findings of the Commissioner.

Accordingly, we hold that the order passed by the Commissioner under section 263 of the Act is invalid and the same is quashed for both the assessment years.”

B) In M/s R.H. Property vs. PCIT, ITA No. 1906/Mum/2019 it was held that,-

*“As a matter of fact, what cannot be done directly cannot be done indirectly. Accordingly, in terms of our aforesaid observations, we are of the considered view that as the A. O had aptly confined himself to the issue for which the case of the assessee was selected for limited scrutiny, therefore, no infirmity can be attributed to his order for the reason. that he had failed to dwell upon certain other issues which were clearly beyond the realm of the reason for which the case of the assessee was selected for limited scrutiny as per the AIR information. We thus **not being able to concur with the view taken by the f^r. CIT that the order passed by the A.O under Sec. 143(3), dated 10.10.2016 is erroneous, therefore, set aside his order and restore the order passed by the A.O.** As we have quashed the order passed by the Pr. CIT under Sec. 263 on the ground of invalid assumption of jurisdiction by him, therefore, we refrain from advertng to and therein adjudicating the contentions advanced by the Id. A. Ron the merits of the case, which thus are left open. ”*

C) Hon’ble ITAT Delhi Bench Delhi in the case of Shri Balvinder Kumar Vs PCIT (ITA No. 485/Del/2020 held that :

“when the assessing officer is bound to follow the CBDT instructions and while following such instructions and after verification of the material furnished by the assessee on the aspect covered by the limited scrutiny, is not open for the Ld. PCIT to say that not advertng to the other aspects of the competition would render the assessment order erroneous and prejudicial to the interest of the Revenue.”

Further in the notice issued u/s 263 did not specifically furnish any reasons to say why original order passed u/s 143(3) is erroneous so far as prejudicial to the interest of revenue.

In view of the above submission, facts of the case, CBDT’s instructions and decided case laws it is grossly wrong, unjustified and bad in law in holding the view that the assessment order is erroneous insofar as it is prejudicial to the interest of the Revenue.

7. Without prejudice to the above submissions made it is evident/verifiable that Ld. A.O. made enquiries on the issue and assessee complied to the enquiries and filed all the required details. Thus it is not a case where that A.O. made no enquiry or verification which should have been made. It is clear from reading of notice u/s 263 of the Act, 1961 that the proceedings u/s 263 has been started on the same issue which have already been considered and examined by the then A.O. Thus the proceeding u/s 263 is a step to start again a second scrutiny/investigation of facts without there being any material to hold even prima-facie that the assessment order passed by A.O. is erroneous which is not valid in the eyes of law (CIT Vs. Trustees Anupam Charitable Trust (1987) 167 ITR (129) (Rajasthan), CIT Vs. Godawari Sugar Mills Ltd. (1993) 203 ITR 108 (Bom.) and CIT Vs. Shakti Charities (2000) 160 CTR 107 (Mad.). The facts and submissions are verifiable from the assessment record. The Supreme Court in case of CIT Vs. Green World Corporation (2009) 314 ITR 81 (Supreme Court) held that ‘The jurisdiction under section 263 can be exercised only when both the following conditions are satisfied (i) the order of the assessing officer should be erroneous and (ii) it should be prejudicial to the interest of the Revenue. These conditions are conjunctive. An order of assessment passed by the Assessing officer should not be interfered with only because another view is possible. “The Rajasthan High Court in a recent judgement in case of CIT Vs. Chambal Fertilizers and Chemicals Ltd. (2013) 258 CTR (Raj.) 540 has held “The law is that the CIT cannot invoke the powers to correct each and every mistake or error committed by the A.O. Every loss to the Revenue cannot be treated as prejudicial to the interest of the Revenue and if the AO has adopted one of the course permissible under the law or where two views are possible and the AO has taken one view which the CIT does not agree, it cannot be treated as an order erroneous and prejudicial to the interest of the Revenue, the AO exercises quasi judicial power vested in him and if he exercises such powers in accordance with law, arrives at a just conclusion such conclusion cannot be termed to be erroneous only because the

CIT does not feel satisfied with the conclusion. The Delhi High Court in case of CIT Vs. Kelvinator of India Ltd. (2011) 332 ITR 231 (Delhi) it has held that Assessing officer taking one of two possible views with which commissioner not agreeing the assessment order cannot be treated as an erroneous order prejudicial to the interest of revenue. The Karnataka High Court after considering various judicial pronouncement in the case of CIT Vs. Gokul Das Exports (2011) 333 ITR 214 (Kar) has held that assessing officer taking one out of two views the assessment order is not prejudicial to interest of revenue. In view of the above judicial pronouncements and various other judgements on the issue the assessment order passed by A.O. cannot be treated as an erroneous and prejudicial to the interest of revenue. In the case of CIT Vs. Vodafone Essar South Ltd. (2013) 2012 Taxman 184 Hon'ble Delhi High Court held that assessing officer before passing assessment order made an enquiry and directed his mind on all aspects. View adopted by him was clearly one among two plausible views that could have been taken. Commissioner did not specifically furnish any reasons to say why original order was unsupportable in law. Commissioner could not have validity exercised his revisionary power u/s 263 in instant case.

The order is not prejudicial to revenue as A.O. was correct in law and on the facts of the case. Thus the Ld. Pr. CIT is wrong in holding that A.O. did not make any enquiry or verification so as to invoke jurisdiction u/s 263. Even newly inserted Explanation 2 (a) to section 263 does not authorize or give unfettered powers to the Commissioner to revise each and every order, if in his opinion, same has been passed without making enquiries or verification which should have been made, since the Pr. CIT had not brought any material on record to substantiate his inference, and so the impugned revision order is only to carry out fishing enquiries with objective of substituting his views with that of the Assessing Officer which is not permissible in law (refer *Narayan Tatu Rane Vs. I.T.O.* (2016) 70 Taxman.com227 (Mumb-Trib)).

Further the your good self has not gone in to the merit of the assessee's case or argument or contentions available on assessment record, if so than how it can be said or found out whether any prejudice in fact has been caused to revenue or not by lack of inquiry on the part of the AO. If no loss of revenue is caused and the result remains the same even after conduct the inquiry. It is very settled principal and legal position by various courts or judgments that it will be wrong to say that merely because proper enquiry was not conduct, the assessment would become prejudicial also. It was incumbent upon the Pr. CIT to have shown as to how the order was prejudicial to the interest of the Revenue. In the present case the appellant had furnished a detailed reply with the details which were available in the record by making the reference to the facts of the case. Despite that the Pr. CIT did not prove or bring any material or circumstantial evidence on record in support of his contention.

Thus, he has not looked into the merit of the case in their true perspective and sense and not applied his mind on the same despite available before him. He was only of the view that the AO has not made proper & detailed i.e deep inquiry on the issue. He has only stated that the order of the AO is erroneous and prejudicial to the interest of the Revenue. Hence the conclusion of the Pr. CIT that the order is prejudicial to the interest of the Revenue is not a matter of subjective satisfaction of the Pr. CIT. He, therefore ought to have found out this on the basis of Objective material after assessing the contention raised by the assessee in its reply. He, however failed to do so and reached a conclusion that the order was prejudicial with a view that the present AO shall undertake that exercise after the assessment has been set aside for his consideration. Such a view or action is not well founded in the law or by various Hon'ble courts. Kindly refer direct decisions in case of Smt. Leela Choudhary v/s PR. CIT 289 ITR 226(Gau.) also refer, Saw Pipes Ltd v/s Add. PR. CIT 94 TTJ 1036(Del) Also refer Malabar Industrial Co. Ltd. v/s PR. CIT 159 CTR(1)(SC), PR. CIT v/s Rayn Silk Mills 221 ITR 155(Guj.)

Same view has been expressed in the case of Kamal Kumar Gupta v/s Pr. CIT 142 TTJ 9(Jp) wherein it has been held that “assessee was asked by the AO to file the details of trade creditors which are shown in the name of agriculturalist. In the reply, assessee filed written submission enclosing the list of creditors. Thus, the AO made the inquiry and it is not a case of lack of inquiry but can be case of insufficient enquiry. Pr. CIT was not justified in passing the order u/s 263.” In the present case also is the same position. And also followed in the case of Sh. Gyan Chand Jain v/s Pr. CIT 50 TW 109(Jp).

8. No fix formula or limit or extent of Inquiry: Thus, here it is not the case of the Pr. CIT that no inquiry or examine has been made by the AO on these issues. The AO has made the inquiry on the above issues although the very base of the scrutiny of the case was limited issue. On perusal of the assessment order our reply and query of the ld. AO shall reveal that the required details have been filed and explained to the AO. No one (AO) can read the mind of other person (Pr. CIT) while doing the work on its sprite and cannot guess the expectation or manner of his superior authority. Here the meaning is that non making of an enquiry may render the subject assessment erroneous, however the process of making enquiries may be endless. For someone, some enquiries may be sufficient (here AO), however, the same may be insufficient for the other (here Pr. CIT). There is no straight jacket formula or parameter to make inquiry in the assessment proceedings. What is required is that the AO should frame the assessment in accordance with the provisions of the Act, as interpreted and in the light of the relevant judicial pronouncements, as available on the date of framing the assessment or material available before him. The AO being a quasi-judicial authority can also take support from one set of the decisions, if there, in case is a diversions of opinion. He can't be directed to make an assessment in a particular manner, as specifically prohibited by S. 119.

Kindly refer recent judgment of Jodhpur Bench in the case of ***Ritesh Suhalka V/s Pr. CIT Udaipur in ITA No. 383/Jodh/2019 dt. 21.12.2020.***

On same plea we also would like to draw on the observation and finding In the case of ***Dorabji Tata Trust vs. DCIT (EXEMPTION) ITA No. 3909/Mum/2019 28th December, 2020 (2021) 209 TTJ 0409 (Mumbai)*** delivered by the honble President and vice president as under:

“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. The legal position is fairly well settled that when a public authority has the power to do something in aid of enforcement of a right of a citizen, it is imperative upon him to exercise such powers when circumstances so justify or warrant. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise a power which is invested in aid of enforcement of a right—public or private—of a citizen. [L Hirday Naran Vs Income Tax Officer [(1970) 78 ITR 26 (SC)]. As a corollary to this legal position, when a public authority has the powers to do something against any person, such an authority cannot exercise that power unless it is demonstrated that the circumstances so justify or warrant. In a democratic welfare state, all the powers vested in the public authorities are for the good of society. A fortiori, neither can a public authority decline to exercise the powers, to help anyone, when circumstances so justify or warrant, nor can a public authority exercise the powers, to the detriment of anyone, unless circumstances so justify or

warrant. 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 Vs ACIT [(1995) 99 ITR 375 (Del)]*, “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, 288]*, 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 watchdog, 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 bonafide 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 bonafide, and as long as the path adopted by the Assessing Officer is taken bonafide 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 Vs CIT [(2000) 243 ITR 83 (SC)], 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 bonafide in a real-life situation. It is also important to bear in mind the fact that lack of bonafides 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 coordinate bench of the Tribunal, in the case of Narayan T Rane vs 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.

On perusal of the order in the present case the ld. CIT has taken action u/s 263 only on the assumption and presumption that the no inquiry has been made by the AO on the issues and not verified. Kindly refer CIT v/s Paras Cotton Co. 288 ITR 211(Raj.) where held that CIT could not have acted on mere assumption. Mere suspicion cannot take place of proof and the order of CIT u/s 263 cannot be sustained.

It is further submitted that proceedings under s. 263 cannot be taken on the ground that the AO has not made sufficient enquiry. The learned PR. CIT can assume jurisdiction if there has been lack of enquiry. In the instant case, the enquiry has been made, though the enquiry may not be sufficient in the opinion of the learned PR. CIT. The reliance is placed upon the decision of Hon'ble Delhi High Court in the case of CIT v. Hindustan Marketing & Advertising Co. Ltd. [2010] 46 DTR (Del.) 109. The attention is drawn towards the decision of Hon'ble jurisdictional High Court in the case of PR. CIT v. Trustees Anupam Charitable Trust [1987] 65 CTR (Raj.) 30 : [1987] 167 ITR 129 (Raj.)

Thus, it is clear that Assessing Officer has made enquiry but sufficiency of enquiry can be depend upon from person to person. The AO cannot remain passive in the face of a return which is apparently in order but calls for further enquiry. It is the duty of the AO to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an enquiry.

Hence looking to the above facts legal position of law and circumstances of the case and material available on record. it cannot be said that the order of the Id. AO is erroneous in so far as it is prejudicial to the interest of the Revenue.

In view of above therefore no case for invoking Section 263 of I. T. Act, 1961 and proceedings being wrong and bad in law the same may kindly be dropped.”

5. On the other hand, the Id. D/R has submitted that the Id. Principal Commissioner may call for and examine the records of any proceeding under the Act. For this purpose, he does not need to show any reason. It is a part of his administrative control to call for records and examine them. He further submitted that the Id. Principal Commissioner may consider that any order passed under the Act by the AO is erroneous in so far as it is prejudicial to the interests of the revenue. This consideration, having regard to the language of section 263, apparently is a consideration which he exercises by calling for and examining the records as indicated above. During this particular stage of consideration, there is no question of the assessee appearing or making any submission. If after calling for and examining the records the Pr. Commissioner “considers” that the order of the AO is erroneous, in so far as it is prejudicial to the interests of the revenue. He has referred to the Explanation 2 and submitted that the order passed by the AO shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue if in the opinion of the Id. PCIT or Id. CIT the order is passed without making enquiry or verification which should have been made. Further, if the order is passed allowing any relief without enquiring into the claim. Thus, in the case in hand, the

AO has not conducted any enquiry on the issue of extra interest expenses of Rs. 22,70,883/- over the interest earned of Rs. 42,98,442/- and fresh loans of Rs. 1,22,00,000/- taken during the year. The Id. D/R submitted that the specific provisions of section 263 of the Act lays down that a satisfaction that an order passed by the Authority under the Act is erroneous and prejudicial to the interests of the revenue is the basic pre-condition for exercise of jurisdiction under section 263 of the Act. Both are twin conditions that have to be conjointly present. Once such satisfaction is reached, jurisdiction to exercise the power would be available subject to observance of the principles of natural justice which is implicit in the requirement cast by the section to give the assessee an opportunity of being heard. The above conditions have been fulfilled in the instant case. In view of the above submissions, it is requested that the order of Pr. CIT may kindly be upheld.

6. We have heard the Id. Counsels of both the parties and have perused the relevant material placed on record. We have carefully perused the assessment order passed by the AO under section 143(3), show cause notice issued by the Id. PCIT under section 263 of the IT Act, 1961 as well as the impugned order passed under section 263. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us. As per the facts of the case, the assessee is a Director in M/s. Zari Silk India Pvt. Ltd. and having income from Salary and Interest income under the head Income from other sources. The case of the assessee was initially selected for *Limited Scrutiny* for the reason "*Deduction against income from other sources*". The AO also issued notices under section 142(1) of the IT Act along with questionnaire on 06.03.2019, 03.07.2019 and 25.07.2019 through

ITBA-portal. These facts are also evident from the assessment order vide para 3, 4 & 5 as under :-

" 3. During the assessment proceedings, notices u/s 142(1) of the Act along-with questionnaire have been issued on 06.03.2019, 03.07.2019 and 25.07.2019 through ITBA-portal. In response to the notices, the assessee filed his submission on 30.07.2019, which has been placed on record.

4. In view of the above and looking to the facts of the submission made by the assessee, the returned income declared of Rs. 22,36,980/- so filed by the assessee in her returns of income for the year under consideration is hereby accepted.

5. Assessed accordingly. Give credit of prepaid taxes. Charge interest as per provisions of the Act. Issue Demand or refund as the case may be."

Thus in response to the notice issued under section 142(1), the assessee attended the proceedings through his A/R and also furnished the required details/documents as well as books of account which were examined by the AO. There is no dispute that the AO has conducted the enquiry on the issue for which the case was selected for scrutiny and after satisfying himself the AO finally concluded that " in view of the above and looking to the facts of the submission made by the assessee, the returned income declared of Rs. 22,36,980/- so filed by the assessee in her returns of income for the year under consideration is hereby accepted." Thus the assessment order was passed at the returned income. However, thereafter the Id. Principal CIT examined the assessment order of the assessee and opined that the AO failed to make enquiry with reference to the explanation offered by the assessee

during the course of assessment proceedings. For sake of convenience, the show cause notice issued by the Id. PCIT is reproduced below :-

" On examination of assessment record for A.Y. 2017-18, it has been noticed that your case was selected for scrutiny assessment. The assessment was completed and vide order dated 26.09.2019, return income of Rs. 22,36,980/- was accepted.

The case was selected for limited scrutiny under CASS for the reason of large deduction claimed u/s 57. During the year under consideration, interest payment of Rs. 65,69,325/- to parties was made and interest of Rs. 42,98,442/- was earned.

On going through the details submitted during assessment proceedings, it is noticed the activity of taking loans, i.e. how the amount is utilized, what is the rate of interest paid, what is the rate of interest charged. has not been verified/examined. The reasons of extra interest expenses of Rs. 22,70,883/- over the interest earned have not been examined. Further, the submission that there is direct nexus between the loans taken and loans given has been accepted without any verification. Personal loans and interest thereon, if any, have not been separately enquired into.

Further, despite scrutiny, it is not known what was the opening & closing balance of the loan account. The fresh loans of Rs. 1,22,00,000/- taken during the year are cash credit u/s 68 requiring detailed enquiry. Neither the fresh loans have been quantified nor any enquiry made in terms of section 68.

It has not been identified how old the various loans are and whether the payment of interest thereon is justified. Copy of loan account of M/s Zari Silk (India) Pvt. Ltd. is also not on record.

In view of the above, it appears that the assessment order passed u/s 143(3) of the I.T. act 1961 in your case for A.Y. 2017-18 on 26.09.2019 is erroneous in so far as it is prejudicial to the interest of the revenue.

I, accordingly, propose to modify the order on the above issue under the power vested with me u/s 263 of the I.T. Act, 1961. You are, hereby, allowed an opportunity to show cause as to why the order passed u/s 143(3) on 26.09.2019 may not be revised u/s 263 of the I.T. Act 1961 in a suitable manner.”

On the basis of above show cause notice, the Id. PCIT proposed to revise the said assessment order in respect of above point in exercise of powers vested under section 263 of the IT Act.

6.1. Now, before us, although the Id. A/R reiterated the same arguments which were raised before the Id. PCIT and after having gone through the entire facts and circumstances of the case, we noticed that the assessee had filed written submissions in respect of all the queries so raised by the AO during the course of assessment proceedings which was for *Limited Scrutiny* only to verify the "*Deduction against income from other sources*". The assessee had also filed, names, complete address, IT PAN of persons to whom said interest paid along with their confirmation letters. The said documents have also been placed on record before us in paper book and all the said details so filed before Revenue Authorities goes to show that those were examined by the AO and accordingly order of assessment accepting the returned income was passed. We also noticed that on similar reasons, preceding assessment years i.e. 2013-14 and 16-17 were also completed by the department under section 143(3) of the IT Act.

6.2. As far as, regarding verification of extra interest of Rs. 22,70,883/- is concerned, in this regard assessee has categorically submitted that he has only claimed interest expenses upto the interest income. On this aspect, we have also perused the Computation of Income which is in the paper book. Since the extra interest of Rs. 22,70,883/- was not at all claimed by the assessee, therefore, there was no reason for verification of the said extra interest expenses made by the assessee. Although, the Id. PCIT raised the issue of non verification of fresh loans of Rs. 1.22 crores by the AO, but in this context we further noticed that the assessee had filed confirmation letters of each of the fresh unsecured loan creditors having complete address and PAN number and that being so, assessee had already discharged his onus to prove the genuineness and identity of the said loan creditors, so the conduct of the assessee cannot be said to be found to be faulty. Even otherwise, the case of the assessee was selected for *Limited Scrutiny* to verify the "*Deduction against income from other sources*" only. Therefore, by any stretch of imagination it was out of purview of the AO to verify the fresh loan creditors.

6.3. We are conscious of the fact that the ambit of the assessment for *Limited Scrutiny* under CASS was admittedly in relation to the verification of "*Deduction against interest income from other sources*" in response to which the assessee had already furnished complete documents relating to interest expenses claimed against the interest income under section 56 of the IT Act under the head Income from other sources. Even otherwise, the AO could not have travelled beyond enquiry into the interest expenses in view of CBDT Instruction No. 7/2014, 20/2015 and 5/2016 and also the CBDT letter dated 30 Nov. 2017 and thus asking for further details was

beyond the purview of assessment. The CBDT instructions for this purpose are reproduced below :-

“CBDT Instruction No. 7/2014

The reason(s) for selection of cases under CASS are displayed to the Assessing Officer in AST application and notice u/s 143(2), after generation from AST, is issued to the taxpayer with the remark “.Selected under Computer Aided Scrutiny Selection (CASS)”. The functionality in AST is being modified suitably to flag the reasons for scrutiny selection in AIR/CIB/26AS cases. This functionality is expected to be operationalized by 15th October, 2014. Further, the Assessing Officer while issuing notice under section 142(1) of the Act which is enclosed with the first questionnaire would proceed to verify only the specific aspects requiring examination/verification. In such cases, all efforts would be made to ensure that assessment proceedings are completed expeditiously in minimum possible number of hearings without unnecessarily dragging the case till the time-barring date.

CBDT Instruction No. 20/2015

3. As far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial Year-one is ‘Limited Scrutiny’ and other is Complete Scrutiny’. The assessee concerned have duly been intimated about their cases falling either in ‘Limited Scrutiny’ or ‘Complete Scrutiny’ through notices issued under section 143(2) of the Income-tax Act, 1961 (‘Act’). The procedure for handling ‘Limited Scrutiny’ cases shall be as under:

(a)

*(b) The Questionnaire under section 142(1) of the Act in Limited Scrutiny * cases shall be confined only to the specific reasons/issues for which case has been picked up for scrutiny. Further, the scope of enquiry shall be restricted to the Limited Scrutiny’ issues.*

CBDT Instruction No. 5/2016

“4. It is further clarified that in cases under ‘Limited Scrutiny’ the scrutiny assessment proceedings would initially be confined only to issues under ‘Limited Scrutiny’ and Questionnaires, enquiry, investigation etc. would be restricted to such issues. Only upon conversion of case to ‘Complete Scrutiny’ after following the procedure outlined above, the AO may examine the additional issues besides the issue(s) involved in ‘Limited Scrutiny’. The AO shall also expeditiously intimate the taxpayer concerned regarding conducting ‘Complete Scrutiny’ in such cases.”

CBDT Letter dated 30.11.2017

Instances have come to notice of CBDT where some Assessing Officers are travelling beyond their jurisdiction while making assessments in Limited

scrutiny cases by initiating inquiries on new issues without complying with mandatory requirements of the relevant CBDT Instructions dated 26-9-2014, 29-12-2015 and 14-7-2016. These instances have been viewed very seriously by the CBDT and in one case the Central Inspection Team of the CBDT was tasked with examination of assessment records on receipt of a I lee at ions of several irregularities. Amongst other irregularities, it was found that no reasons had been recorded for expanding the scope of limited scrutiny, no approval was taken from the PCIT for the conversion of the limited scrutiny case to a complete scrutiny case and the order sheet was maintained very perfunctorily. This gave rise to a very strong suspicion of mala fide intentions.”

7. The above CBDT Instructions make it clear that it is not open for the AO to travel beyond the reason for selection of the matter for Limited Scrutiny, and while keeping in view the above CBDT instructions, the assessment order for the year under consideration was in accordance with the instructions governing the field. Therefore, for the sake of brevity, we conclude that once the very basis of scrutiny of the case was on account of limited issue which have been replied by the assessee and considered by the AO, then how it can be said that AO had failed to make enquiry, more particularly, where the scope of enquiry is limited only to the extent of that issue and till date the position is same and there is no change. We are further conscious of the fact that it was not a complete assessment but it was a scrutiny for limited purpose or issue and on perusal of the entire record or details, we cannot conclude that the AO had not made enquiries. Even otherwise, the CBDT instructions and letter clearly establish that it is not open for the AO to travel beyond the reasons for selection of the matter for Limited Scrutiny. On this proposition, we draw strength from the latest decision in the case of ***Mahendra Singh Dhankhar HUF vs. ACIT in ITA No. 265/JP/2020 dated June 30,***

2021, [(2021) 62 CCH 0271 Jaipur Trib] wherein it has been held

that:-

“Revision—Ordering revision where case is selected for limited scrutiny—Assessee firm is a real estate firm engaged in colonizing and developing residential projects—Case of assessee was selected for limited scrutiny through CASS on account of mismatch of AIR and CIB data, and mismatch in sale turnover reported in audit report and ITR—An addition for wrong calculation of LTCG was made by A.O. which was not challenged by assessee—Subsequently, on basis of certain audit objections, PCIT issued notice u/s 263—Assessee submitted that it is a case outside jurisdiction of Commissioner of Income tax to raise objections outside scope of limited scrutiny—PCIT ordered for 'Denovo' assessment without considering reply filed by assessee—Held, there is no dispute that scope of enquiry in case of limited scrutiny is only to extent of issues for which case was selected for scrutiny under CASS—CBDT has issued instructions from time to time in this respect and has specifically instructed taxing authorities that scope of enquiry should be limited to verification of all particulars for which limited scrutiny was taken up under CASS—However, in case during assessment proceeding if AO is of view that substantial verification of other issue is also required then case may be taken up for comprehensive scrutiny with approval of Pr.CIT/DIT concerned—It is also instructed that such an approval shall be accorded by Pr.CIT/DIT in writing after being satisfied about merits of issue(s) necessitating wider and detailed scrutiny in case—AO is duty bound to follow instructions in case limited scrutiny assessment proceeding are proposed to be converted into complete scrutiny and without following said procedure and necessary approval of competent authority conducting an enquiry on issue which is outside limited scrutiny would be beyond jurisdiction of AO—As a necessary corollary, Pr. CIT u/s 263 cannot be permitted to traverse beyond jurisdiction that was vested with A.O while framing assessment as what cannot be done directly cannot be done indirectly—Therefore, where matter was selected for limited scrutiny, revisional jurisdiction cannot be exercised for broadening scope of

jurisdiction that was originally vested with A.O while framing assessment— As per PCIT, reason for which matter was selected for limited scrutiny i.e, mis-match of sales turnover vis-à-vis ITR, CIB & AIR has a direct bearing on opening and closing stock of cost of construction and W.I.P and in turn, on taxable income, therefore, AO was duty bound to examine these issues and AO having failed to examine these issues, AO has effectively failed to examine issues for which matter was selected for limited scrutiny—As far as matters for which case was selected for limited scrutiny in terms of mis-match of sales turnover, same has been duly examined by AO and even PCIT has not recorded any adverse findings in terms of lack of enquiry or inadequate enquiry on part of AO—Order passed by PCIT u/s 263 is set aside—Assessee's appeal allowed."

In the case of **Paul Bharwaj vs. Pr.CIT in ITA No. 463/Chd/2019 May 13, 2021 [(2021) 62 CCH 0120 Chd Trib.]**

Revision—Order erroneous or prejudicial to revenue—Over exercise of power—Assessee an individual filed his return declaring income and agricultural income—Case was selected for limited scrutiny for reason that there was a substantial increase in capital during year relevant to assessment year under consideration—AO accepted return filed by assessee—Pr. CIT issued notice to assessee u/s 263 and directed AO to make assessment afresh on issues mentioned in notice—Held, Tribunal in case of M/s Su-Raj Diamond Dealers Pvt. Ltd. CIT ITA No 3098/ Mum has quashed order passed u/s 263 in case of limited scrutiny assessment, holding that Pr. CIT under garb of section 263, cannot exceed his jurisdiction holding that when case of assessee was selected for limited scrutiny for reasons viz. (i) Large other expenses claimed in P&L A/c; and (ii) Low income in comparison to High Loans/advance /Investment in shares, therefore, no infirmity could be attributed to assessment framed by A.O on ground that he had failed to deal with other issues which though did not fall within realm of limited reasons for which case was selected for scrutiny assessment—In other words, Pr. CIT in garb of his revisional jurisdiction u/s 263 cannot be permitted to traverse beyond jurisdiction that was vested with A.O while

framing assessment—As A.O had aptly confined himself to issues for which case of assessee was selected for limited scrutiny, therefore, no infirmity can be attributed to his order, for reason, that he had failed to dwell upon certain other issues which did not form part of reasons for which case was selected for limited scrutiny under CASS—Case of assessee was selected for limited scrutiny under CASS for reason that there is substantial increase in capital in relevant year and AO passed assessment order and accepted return filed by assessee after examining issue regarding increase in capital account as assessee had credited his capital account with agricultural income and capital gain from sale of flat—Assessee has reflected that same in its capital account—Further in response to letter issued by AO during assessment proceedings, assessee submitted his reply explaining reason for increase in capital—However, Pr. CIT exercising jurisdiction under section 263, directed AO to make fresh assessment on issues which were not subject matter of limited scrutiny—Since, issue raised by assessee in this case has already been decided in favour of assessee Pr. CIT(A) has exceeded jurisdiction u/s 263 by directing AO to make fresh assessment on issues which were not subject matter of assessment framed on basis of limited scrutiny—Assessee’s appeal allowed. Thus in the present case the position are same and the principal of the above judgments are also applicable in the present case. Thus in the light of the facts and position the Pr. CIT cannot be said to be justified in holding that assessment order was passed without making inquiry or verification when firstly the case of reopened for the limited purpose secondary despite the same assessee has produced all the details which examined and deduction allowed.

In this connection we rely on following judgments:-

D) In the Deccan Paper Mills Co. Ltd. vs. CIT in ITA 1013 AND 1635/PUN/2015, Pune Bench of the Tribunal held, that,

“40. Now, coming to the aspect of book profits which was considered by the Commissioner and the order of the Assessing Officer was held to be erroneous and prejudicial to the interest of revenue. In this regard, it may be pointed out that the case of assessee was picked up for scrutiny under CASS for the limited purpose of verifying the Chapter VI-A deduction. Once the case is picked up for specific purpose under CASS, then it is outside the

purview of the Assessing Officer to look into any other aspect other than the aspect for which it is picked up. Hence, the Assessing Officer has not formed any opinion in respect of computation of book profits in the hands of assessee. Once, no such opinion has been formed by the Assessing Officer, the Commissioner has erred in holding the order of the Assessing Officer to be erroneous and prejudicial to the interest of revenue in this regard. Accordingly, we reverse the findings of the Commissioner.

Accordingly, we hold that the order passed by the Commissioner under section 263 of the Act is invalid and the same is quashed for both the assessment years.”

E) In M/s R.H. Property vs. PCIT, ITA No. 1906/Mum/2019 it was held that,-

*“As a matter of fact, what cannot be done directly cannot be done indirectly. Accordingly, in terms of our aforesaid observations, we are of the considered view that as the A. O had aptly confined himself to the issue for which the case of the assessee was selected for limited scrutiny, therefore, no infirmity can be attributed to his order for the reason. that he had failed to dwell upon certain other issues which were clearly beyond the realm of the reason for which the case of the assessee was selected for limited scrutiny as per the AIR information. We thus **not being able to concur with the view taken by the f^r. CIT that the order passed by the A.O under Sec. 143(3), dated 10.10.2016 is erroneous, therefore, set aside his order and restore the order passed by the A.O.** As we have quashed the order passed by the Pr. CIT under Sec. 263 on the ground of invalid assumption of jurisdiction by him, therefore, we refrain from adverting to and therein adjudicating the contentions advanced by the Id. A. Ron the merits of the case, which thus are left open. ”*

F) Hon’ble ITAT Delhi Bench Delhi in the case of Shri Balvinder Kumar Vs PCIT (ITA No. 485/Del/2020 held that :

“when the assessing officer is bound to follow the CBDT instructions and while following such instructions and after verification of the material furnished by the assessee on the aspect covered by the limited scrutiny, is not open for the Ld. PCIT to say that not adverting to the other aspects of the competition would render the assessment order erroneous and prejudicial to the interest of the Revenue.”

Even on merits, it is evident from the record that the AO made enquiries on the issue and the assessee complied with the enquiry and filed all the required details.

Thus, it is not a case where the AO made no enquiry or verification which should

have been made. Thus the proceedings under section 263 is a step to start again a second scrutiny/investigation of facts without there being any material to hold even prima facie that the assessment order passed by AO was erroneous which was not valid in the eyes of law. In this regard we draw strength from the decision of CIT vs. Trustees Anupam Charitable Trust (1987) 167 ITR 129 (Rajasthan), CIT Vs. Godawari Sugar Mills Ltd. (1993) 203 ITR 108 (Bom.) and CIT Vs. Shakti Charities (2000) 160 CTR 107 (Mad.). The facts and submissions are verifiable from the assessment record. The Supreme Court in case of CIT Vs. Green World Corporation (2009) 314 ITR 81 (Supreme Court) held that 'The jurisdiction under section 263 can be exercised only when both the following conditions are satisfied (i) the order of the assessing officer should be erroneous and (ii) it should be prejudicial to the interest of the Revenue. These conditions are conjunctive. An order of assessment passed by the Assessing officer should not be interfered with only because another view is possible. "The Rajasthan High Court in a recent judgment in case of CIT Vs. Chambal Fertilizers and Chemicals Ltd. (2013) 258 CTR (Raj.) 540 has held "The law is that the CIT cannot invoke the powers to correct each and every mistake or error committed by the A.O. Every loss to the Revenue cannot be treated as prejudicial to the interest of the Revenue and if the AO has adopted one of the course permissible under the law or where two views are possible and the AO has taken one view which the CIT does not agree, it cannot be treated as an order erroneous and prejudicial to the interest of the Revenue, the AO exercises quasi judicial power vested in him and if he exercises such powers in accordance with law, arrives at a just conclusion such conclusion cannot be termed to be erroneous only because the

CIT does not feel satisfied with the conclusion. The Delhi High Court in case of CIT Vs. Kelvinator of India Ltd. (2011) 332 ITR 231 (Delhi) it has held that Assessing officer taking one of two possible views with which commissioner not agreeing the assessment order cannot be treated as an erroneous order prejudicial to the interest of revenue. The Karnataka High Court after considering various judicial pronouncement in the case of CIT Vs. Gokul Das Exports (2011) 333 ITR 214 (Kar) has held that assessing officer taking one out of two views the assessment order is not prejudicial to interest of revenue. In view of the above judicial pronouncements and various other judgments on the issue the assessment order passed by A.O. cannot be treated as an erroneous and prejudicial to the interest of revenue. In the case of CIT Vs. Vodafone Essar South Ltd. (2013) 2012 Taxman 184 Hon'ble Delhi High Court held that assessing officer before passing assessment order made an enquiry and directed his mind on all aspects. View adopted by him was clearly one among two plausible views that could have been taken. The Commissioner did not specifically furnish any reasons to say why original order was unsupportable in law. The Commissioner could not have validly exercised his revisionary power u/s 263 in instant case.

6.4. Even the newly inserted Explanation 2(a) to section 263 does not authorize or give unfettered powers to the Commissioner to revise each and every order, if in his opinion, same has been passed without making enquiries or verification which should have been made, since the Pr. CIT had not brought any material on record to substantiate his inference, and so the impugned revision order is only to carry out fishing and robbing enquiries with the objective of substituting his views with that of the Assessing Officer which is not permissible in law.

6.5. We are further of the view that there is no straight jacket formula or parameter to make enquiry in the assessment proceedings. What is required is that the AO should frame the assessment in accordance with the provisions of the Act, as interpreted and in the light of the relevant judicial pronouncements, as available on the date of framing the assessment or material available before him. The AO being a quasi-judicial authority can also take support from one set of the decisions, in case there is a diversion of opinion. He can't be directed to make an assessment in a particular manner, as specifically prohibited by Section 119. Reliance is made to the following decisions :-

Ritesh Suhalka vs. Principal CIT, Udaipur
ITA No. 383/Jodh/2019 dated 21.12.2020.

Dorabji Tata Trust vs. DCIT (Exemption)
ITA No. 3909/Mum/2019 dated 28th December, 2020.
(2021) 209 TTJ 0409 (Mumbai).

CIT vs. Paras Cotton Co.,
288 ITR 211 (Raj.)

CIT vs. Hindustan Marketing & Advertising Co. Ltd.
(2010) 46 DTR (Del.) 109.

PCIT vs. Trustees Anupam Charitable Trust
(1987) 167 ITR 129 (Raj.)

As we have discussed above, in case of limited scrutiny, the AO is duty bound to restrict himself to examine the matters for which matter was selected for limited scrutiny and where the AO takes a view and forms a reasonable belief that some other matters are required to be examined, the same will in effect be traversing beyond the scope of limited scrutiny which is not permissible unless the matter is converted into complete scrutiny and which has not happened during the course of

present assessment proceedings. Therefore, the issue of activity of taking loans, i.e. how the amount is utilized, what is the rate of interest paid, what is the rate of interest charged, which are held by the Id PCIT as matters not being examined by the AO, are matters which are not part of the reasons for which the case was selected for limited scrutiny, therefore, no fault lie on the part of the AO resulting in order being held as erroneous and prejudicial to the interest of revenue. As far as matters for which case was selected for limited scrutiny for the reason of "Deduction against income from other sources", the same has been duly examined by the AO and even the Id PCIT has not recorded any adverse findings in terms of lack of enquiry or inadequate enquiry on part of the AO. In light of aforesaid discussions, we hereby set-aside the order passed by the Id PCIT u/s 263 and the order of the AO is sustained.

7. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 11/04/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 11/04/2023.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Arun Kumar Palawat, Jaipur.

2. प्रत्यर्धी / The Respondent- The PCIT-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 144/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar