आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्रीसंदीपगोसाई,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 205/JP/2023
निर्धारणवर्ष/AssessmentYear : 2018-19

M/s. Agrani Buildestate 35/60, Rajat Path, Mansarovar Jaipur – 302 020 (Raj)	बनाम Vs.	The Pr. CIT-1 Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ABCFA 7893 G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Rajeev Sogani, CA
राजस्व की ओर से/Revenue by: Shri A.S. Nehra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 17/05/2023
उदघोषणा की तारीख/Date of Pronouncement: 03/07/2023

आदेश/ORDER

PER: SANDEEP GOSAIN, JM

The assessee has filed an appeal against the order of the ld. Pr. CIT-1, Jaipur dated 21-03-2023 for the assessment year 2018-19 wherein the assessee has solitary ground as under:-

> ''In the facts and circumstances of the case and in law, the ld. Pr.CIT has erred in assuming jurisdiction u/s 263 when the order of the AO is neither erroneous nor prejudicial to the interest of the Revenue. The action of the ld. Pr. CIT is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the order passed u/s 263.''

2.1 Apropos solitary ground of the assessee, the facts as emerges from the order of the ld. Pr. CIT are as under:-

> ''10. During the course of proceedings u/s 263 of the Act the assessee also filed the lease document for renting of property to Vibrant Academy (India) Pvt. Ltd. The said document has been signed for the period of three years from the period 01/10/2016 to 30/09/2019. The rent for initial one year previous is Rs.2,70,000/-. For the subsequent, the rent has been fixed at Rs. 2,83,500/- and which would Increase to Rs.2,97,675/- in the third year of lease. The lease document also talks about deduction of tax at source, submission of Form-16A to the lessor by the lessee etc. It has been specified in the said lease document that the property would be used only for educational purposes and that the lessor would also receive Rs.20,000/- per month on account of maintenance. The lease has been registered in the office of Sub-Registrar, Jaipur-V. Perusal of the lease document also shows that the said property has been leased to Vibrant Academy (India) Pvt. Ltd. on similar terms and conditions as per any other property the income from which income is chargeable to tax as rental income. Thus the income from property under reference is in the nature of rental income and not business income.
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> 11. The assessee has not submitted release agreement signed with Patanjali IAS Classes Pvt. Ltd.
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> 12 Thus the assessee has shown income from the property under reference as income from business & profession and charge the same to tax under the presumptive tax scheme outlined in section 44AD of the Act instead of rental income. The income of the assessee is not

covered by the Circular No.16/2017 dated 25.04.2017. Therefore, the rental income of the assessee from aforesaid concems was required to be taxed under the head "Income from House Property but the AO failed to do so.

13 As discussed above, the AO failed to apply his mind and failed to invoke the applicable provisions of law. This in turn has resulted in passing of an erroneous order by the AO in the case due to non-application of mind to relevant material and an incorrect assumption of facts which is prejudicial to the interest of the revenue and hence liable for revision under section 263 of the Act The Hon'ble Supreme Court in the case of Malabar Industrial Limited Vis CIT 243 ITR it has held as under-

> ... An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind."

14. Considering all the facts and circumstances of the case and for the reasons discussed above. the assessment order dated 15.02.2021 for A.Y. 2018-19 passed by the AO is held erroneous in so far as it is prejudicial to the interest of the revenue for the purpose of section 263 of the Act. The said order has been passed by the AO in a routine and casual manner without applying the applicable sections of the Act. The AO has not verified the details which were required to be verified under the scope of scrutiny. The order of the AO is, therefore, liable to revision under the explanation (2) clause (a) & clause (b) of section 263 of the Act. The assessment order is set aside to be made afresh in

the light of the observation made in this order. The AO is required to make necessary verification in respect of the observations made in this order after allowing reasonable opportunity to the assessee.''

2.2 During the course of hearing, the ld. AR of the assessee has prayed that the ld. Pr. CIT erred in exercising jurisdiction for revisionary proceedings u/s 263 of the Act and the order of the AO is neither erroneous nor prejudicial to the interest of Revenue for which the ld. AR of the assessee filed the following submissions.

1.1. The assessee firm was engaged in the business of letting out of properties. The firm also rendered various services like provision of security services, lift maintenance, upkeep of properties and cleaning services, etc.

1.2. Since income eamed was from letting out of properties along with various services to lessees, the income was offered for tax, under the head, Income from business and profession.

1.3. It is submitted that the partnership as defined in Indian Partnership Act, 1932 is a contract between two parties who have joined hands to carry on some business. Thus, the very basis for partnership was to carry on business. The partnership deed also categorically provided for carrying on the business of leasing, managing, and maintaining the property.

1.4. During the course of assessment proceedings, a detailed questionnaire was issued by Id. AO vide notice u/s 142(1) dated 20.11.2020 [PB 5-6] seeking pinpointed queries about the nature of business activities as well as verification of such receipts. The same was done, obviously, to verify the issue for which the case was selected for scrutiny.

1.5. The detailed reply to the said notice was furnished by the assessee firm vide its letter dated 06.12.2020 [PB 7-10]. The nature of the business was explained, partnership deed was submitted (PB 11-18], and complete explanation was rendered regarding income falling under the head "Income from business and profession''.

1.6. Reference was also drawn to CBDT Circular No. 16/2017 dated 25.04.2017 and also the fact of department having accepted the judgement in the case of CIT vs. Information Technology Park Ltd [2014] 47 taxmann.com 239 (Karnataka) wherein, instructions were given to lower authorities, that the business of lease rent received from letting out the properties along with other amenities was chargeable to tax under the head, Income from business and not under the head "Income from house property''.

1.7. Ld. PCIT has erred in placing a restrictive interpretation to CBDT Circular No. 16/2017 dated 25.04.2017. Ld. PCIT has missed the principal enumerated in the said circular. The said circular emphasizes that lease rent received by the assessee from letting out buildings along with other amenities in a software technology park would be chargeable to tax under the head "Income from business and not under the head "Income from house property" Therefore, every case of "letting out buildings along with other amenities" will fall in income from business and it will not be merely restricted to Software Technology Park as has been wrongly understood by ld. PCIT.

1.8. During assessment proceedings, attention was also drawn of Id. AO towards the fact of deduction of TDS u/s 194C towards rendering, managing and maintaining services by the assessee firm. Ld. AO on being convinced for the facts and legal position accepted the explanation of the assessee firm and assessed the income under the head "Income from business and profession"

1.9. During the course of proceedings u/s 283 before Id. PCIT, decision of Hon'ble Supreme Court in the case of Chennal Properties & Investments Ltd. Vs. CIT [2015] 56 taxmann.com 456 (SC) was brought to his notice,

1.10. Hon'ble Supreme Court in this case has held that where object as per object clause of the company was to do business of letting out, the same has to be taxed under the head income from business and profession. It was further held "It was highlighted and stressed that the objects of the company must also be kept in view to interpret the activities [Para 8 of the order]

1.11.Finally, in Para-11 of the order, Hon'ble SC taking into consideration the fact that as per object clause of memorandum of association of the

company, its object was letting out of properties held that "letting of the properties is in fact is the business of the assessee"

1.12. Ld. PCIT has neither distinguished the case of Hon'ble SC nor has followed the same. The order of Ld. PCIT is contrary to the law laid down by Hon'ble SC and, therefore, deserves to be quashed.

1.13. Regarding wrongful assumption of jurisdiction by Id. PCIT, in the present case,following judicial precedents are relied upon:

Contention	Case Laws
Assessment was completed by AO on the basis of exhaustive enquiries and detailed submissions filed by the assessee firm and even otherwise Explanation 2 to Section 263, inserted vide Finance Act, 2015,cannot override the basic requirements of sub-section (1) of Section 263	1. Torrent Pharmaceuticals Ltd. [2018) 173 ITD 130 (Ahd.- Trib) 2. Eveready Industries India Ltd.[2020] 181 ITD 528 (Kolkata Trib) 3. M/s. Smira Pune Food Pvt. Ltd(ITA No.3205/DEL/2017, ITAT Delhi Bench. 4. Shri Narayan Tatu Rane, ITA No2690/Mum/2016, ITAT Mumbai Bench
Case was selected for scrutiny for specific purpose for verification of refund claim and income from house property and therefore, there cannot be any presumption of lack of enquuiry	Smt. Lala Phulwani ITA No246/JP/2020
Where AO has exercise the quasi judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be considered erroneous simply because the PCIT does not feel satisfied with the conclusion. Provisions of Section 263 nowhere allows to challenge the judicial wisdom of the AO or to replace the wisdom in the guise of revision, unless theview taken by the AO is not at all sustainable in law. Extent of enquiry cannot be stretched to any level by forcing the AO to go through the assessment process again and again.	Ganpat Ram Vishnoi, 296 ITR 292 (Raj)

1.14. Hon'ble ITAT, Jaipur Bench, in the case of Annu Agrotech Private Limited, ITA No. 09/JP/2021, apropos assumption of jurisdiction under Section 263 by the Id. PCIT, laid down the following ratio:-

1.14 (i). Every loss of Revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. If the AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with which the PCIT does not agree, it cannot be treated as an erroneous order and it is prejudicial to the interest of the Revenue, unless the view taken by the AO is totally unsustainable in law;

1.14 (ii). The law is well settled that the assessment order cannot be held to be erroneous simply on the allegation of inadequate enquiry. Unless there is an established case of total lack of enquiry;

1.15. It is pertinent to note that the assessment in the case of assessee firm for the year under consideration was carried out in the "faceless manner" by the NFAC. Any faceless assessment is carried out through a teamwork of Assessment Unit, Technical Unit, Review Unit, Verification Unit. Also, officers of level of Additional Commissioners are involved. The different units are headed by Principal Commissioner of Income tax. Accordingly, in a faceless regime, there cannot be a case of prejudice or lack of enquiry, for the reason that there is application of mind by multiple officers of Department and not by a single officer.

1.16. Where the assessee firm has fumished the requisite information and the NFAC has completed the assessment after considering all the facts, the order cannot be termed as erroneous. Reliance is placed on the following judicial pronouncements:

1. CIT v Ratlam Coal Ash Co (1988) 171 ITR 141 (MP)
2. Ashok Kumar Parasramka v ACIT (1998) 65 ITD 1 (Cal)
3. CIT v Mehrortra Brothers (2004) 270 ITR 157 (MP)
4. CIT v Parameshwar Bohra (2004) 267 ITR 698 (Raj) .
5. Paul Mathews & Sons v CIT (2003) 263 ITR 101 (Ker)
6. CIT v Arvind Jewellers (2003) 259 ITR 502 (Guj)
7. CIT v Hastings Properties (2002) 253 ITR 124 (Cal)
8. CIT v Goal (JP) (HUF) (2001) 247 ITR 555 (Cal)

1.17 From the facts on record (PB 22-27), it is crystal that the order was passed by AO after full enquiries and therefore, the case is not falling within clause (a) and (b) of Explanation 2 to Section 263.

In view of the above factual and legal position, ld. PCIT has grossly erred in assuming jurisdiction u/s 263. Thus, the entire order by ld.PCIT deserves to be quashed.''

2.3 On the other hand, the ld. DR supported the order of the ld. PCIT and also filed the submission alongwith case laws in which main thrust of the case law was on the decision of Hon'ble Madras High Court dated 11-11-2014 in the case of Keyaram Hotels (P) Ltd. vs DCIT, Circle-II(4), Chennai, 373 ITR 494 and also the decision of Hon'ble Supreme Court in the case of Keyaram Hotels (P) Ltd. vs DCIT, Circle-II(4), Chennai [2-15] 63 taxmann.com 301(SC).

2.4 We have heard both the parties and perused the materials available on record. The Bench noted that Scope of revision jurisdiction under section 263 is very specific and limited and also different from appellate jurisdiction. Law, contained in section 263, does not allow CIT to impose his view over the judicious view adopted by AO unless the view adopted by AO is established to be not at all sustainable in law. The AO, in the present case, on appreciation of facts, found that assessee firm was receiving the rent from letting out the properties along with other amenities and, accordingly, using his judicial wisdom, taxed the income under the head business and profession. The view of AO was also supported by

the CBDT Circular wherein also the principle laid down was that **"letting out buildings along with other amenities"** will fall in income from business. Ld. AO was duty bound to follow the directions of CBDT more so when specifically brought to his notice by the assessee during the assessment proceedings. It may be noted that Explanation to section 44AD defines **"eligible assessee"** as well as **"eligible business"**. There is no bar, under both the definitions, for the rental income, earned by the assessee firm as business income, to be assessed on presumptive basis under section 44AD. Therefore, once the income is held to be business income applicability of section 44AD is a natural consequence. Attention was drawn of the ld. PCIT, during proceedings under section 263, towards the judgment of **Chennai Properties & Investments Ltd. v. CIT [2015] 56 taxmann.com 456 (SC).** Ld. PCIT although has not distinguished the case of Hon'ble Supreme Court yet has not followed the same. Similar to Chennai Properties case*(Supra)* the object as contained in the object clause of the partnership deed of the assessee firm was letting out the properties together with other amenities. The decision of Hon'ble Madras High Court in the case of **Keyaram Hotels (P) ltd. v. Dy. CIT, Co. Circle- II (4), Chennai [373 ITR 494 Madras]**has no relevance in view of the judgment of the Hon'ble Apex Court in the case of Chennai Properties *(Supra*). It is also to be noted that judgment of Hon'ble Madras High Court was delivered on 11/11/2014 whereas the decision of

the Hon'ble Supreme Court in Chennai Properties was delivered on 09/04/2015. The fact of rejection of assessee's SLP by the Hon'ble Supreme Court against the order of Keyaram Hotels *(Supra)*does not merge the decision of the Madras High Court into that of Supreme Court. The Hon'ble Supreme Court dismissed the SLP in the following words:

"The Special Leave Petitions are dismissed"

It is pertinent to mention that mere dismissal of SLP without commenting on the correctness or otherwise of the order from which leave to appeal is sought what the court means is that it does not consider it to be a fit case for exercise of its jurisdiction under Article 136 of the Constitution. Therefore, to argue that the order of the Hon'ble Madras High Court has been upheld by the Hon'ble Supreme Court is wrong. Reliance is placed on the following judicial pronouncements:

1. **V.M. Salgaocar& Bros. (P) Ltd. and ors. v. CIT [2000] 160 CTR (SC) 225**.

   "10. Different considerations apply when a special leave petition under article 136 of the Constitution is simply dismissed by saying 'dismissed' and an appeal provided under article 133 is dismissed also with the words 'the appeal is dismissed'. In the former case it has been laid by this court that when special leave petition is dismissed this court does not comment on the correctness or otherwise of the order from which leave to appeal is sought. But what the court means is that it does not consider it to be a fit case for exercise of its jurisdiction under article 136 of the Constitution. That certainly could not be so

when appeal is dismissed though by a non-speaking order. Here the doctrine of merger applies. In that case, the Supreme Court upholds the decision of the High Court or of the Tribunal from which the appeal is provided under clause (3) of article 133, This doctrine of merger does not apply in the case of dismissal of special leave petition under article 136. When appeal is dismissed order of the High Court is merged with that of the Supreme Court. We quote the following paragraph from the judgment of this court in the case of Supreme Court Employees' Welfare Association v. Union of India &Anr. MANU/SC/0582/1989."

2. **State of Punjab v. Davinder pal Singh Bhullar and Ors. AIR 2012 SC 364**

"A large number of judicial pronouncements made by this Court leave no manner of doubt that the dismissal of the Special Leave Petition in limine does not mean that the reasoning of the judgment of the High Court against which the Special Leave Petition had been filed before this Court stands affirmed or the judgment and order impugned merges with such order of this Court on dismissal of the petition. It simply means that this Court did not consider the case worth examining for a reason, which may be other than merit of the case. An order rejecting the Special Leave Petition at the threshold without detailed reasons, therefore, does not constitute any declaration of law or a binding precedent."

3. **Employees' Welfare Association v. Union of India and Anr. AIR 1990 SC 334**

"22. It has been already noticed that the Special Leave petitions filed on behalf of the Union of India against the said judgments of the Delhi High Court were summarily dismissed by this Court. It is now a well settled principle of law that when a Special Leave Petition is summarily dismissed under Article 136 of the Constitution, by such dismissal this Court does not lay down any law, as envisaged by

Article 141 of the Constitution, as contended by the learned Attorney General. In Indian Oil Corporation Ltd. v. State of Bihar it has been held by this Court that the dismissal of a Special Leave Petition in limine by a non-speaking order does not justify any inference that, by necessary implication, the contentions raised in the Special Leave Petition on the merits of the case have been rejected by the Supreme Court. It has been further held that the effect of a non-speaking order of dismissal of a Special Leave Petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that the Supreme Court had decided only that it was not a fit case where Special Leave Petition should be granted. In Union of India v. All India Services Pensioners Association. this Court has given reasons, for dismissing the Special Leave Petition. When such reasons are given, the decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all the courts within the territory of India. It, therefore, follows that when no reason is given, but a Special Leave Petition is dismissed simliciter, it cannot be said that there has been a declaration of law by this Court under Article 141 of the Constitution."

Thus the AO, after adequate enquiry, has taken a judicious view. Revision under section 263 is not permissible merely because ld. PCIT may entertain a different view on the issue. The stand adopted by ld. AO is one which is plausible supported by CBDT Circular and Supreme Court decision and, therefore, cannot be said to be erroneous in terms of the provisions of section 263. From the records on merit of the case, we noticed that as per facts of the present case the assessee is a partnership firm which was incorporated on 15-05-2015. The object and business of the assessee firm was to purchase, sell, acquire, develop, construct and to give

on rent / lease of building etc. The return for the year under consideration was made on 28-09-2018. Since the assessee has earned income from letting out of the properties alongwith various services to the lessees, therefore, the said income was offered to tax under the head ‘’income from business and profession ‘’. The case of the assessee was selected for scrutiny for verification of the following issues.

1. Refund Claim
2. Income from House Property

During the course of assessment proceedings, a detailed questionnaire was issued by the AO vide notice u/s 142(1) dated 20-11-2020 seeking pin pointed queries about the nature of business activities as well as verification of such receipts. The said notice was previously issued by the AO to verify the issue in question for which the case was selected for scrutiny. In reply to the said notice, the assessee furnished letter dated 06-12-2020 and explained the nature of the business and in this regard complete explanation was rendered regarding income falling under the head ‘’Income from Business and Profession’’. Apart from this, a reference was also drawn to CBDT Circular No. 16/2017 dated 25-04-2017 and also the fact of Department having accepted the judgement in the case of CIT vs Information Technology Park Ltd. (2014) 47 taxmann.com 239 (Karnataka) wherein instructions were given to lower authorities that the business of lease rent received from letting out the properties alongwith other amenities was chargeable to tax

under the head ‘’Income from Business and not under the head ‘’Income from House Property’’. During the course of assessment proceedings, it was pointed out by the AO that TDS u/s 194C was deducted towards rendering, managing and maintaining services by the assessee firm. Consequently, the AO accepted the explanation of the assessee firm and assessed the income under the head ‘’Income from Business and Profession’’. However, ld. PCIT while invoking the provisions of Section 263 of the Act erred in placing a restrictive interpretation to CBDT Circular No. 16/2017 dated 25-04-2017 wherein the ld. PCIT has missed the principal enumerated in the said circular. The said circular emphasizes that lease rent received by the assessee from letting out the building alongwith other amenities in a Software Technology Park would be chargeable to tax under the head ‘’Income from House Property’’. Therefore, in this way, every case of ‘’letting out buildings alongwith other amenities’’ would automatically fall in the income from business and it will not be merely restricted to Software Technology Park only as has been wrongly understood by ld. PCIT. It is important to mention here that the AO after detailed enquiries and verification on completed the assessment u/s 143(3) dated 15-02-2021 at the return income of Rs.6,68,250/-. However, the assessment order was revised by the ld. PCIT by placing restrictive interpretation to CBDT Circular No. 16/17 dated 25-04-2017 by holding that the said circular is only applicable in the case of Software Technology Park. We also

noticed that during the course of proceedings u/s 263 of the Act before ld PCIT, the decision of Hon'ble Supreme Court in the cse of Chennai Properties & Investments Ltd. Vs CIT [2015] 56 taxmann.com 456 was brought to the notice of the ld.PCIT wherein the Hon'ble Supreme Court in this case has held that where object as per object clause of the company was to do business of letting out, the same has to be taxed under the head income from business and profession. It was further held… *"It was highlighted and stressed that the objects of the company must also be kept in view to interpret the activities [Para 8 of the order]. Finally, in Para-11 of the order, Hon'ble SC taking into consideration the fact that as per object clause of memorandum of association of the company, its object was letting out of properties held that …."letting of the properties is in fact is the business of the assessee". Ld, PCIT has neither distinguished in the case of Hon'ble SC nor has followed the same. The order of ld. PCIT is contrary to the law laid down by the Hon'ble Supreme Court*. Thus from the totality of the discussion, we are of the view that in the present case since the assessment was completed by the AO on the basis of exhaustive enquiries and detailed submissions filed by the assessee firm and even otherwise Explanation 2 to Section 263 inserted vide Finance Act, 2015 cannot override the basic requirements of Sub-section (1) of Section 263. In this regard, we draw strength from the following case laws.

1. Torrent Pharmaceuticals Ltd. [2018) 173 ITD 130 (Ahd.- Trib)
2. Eveready Industries India Ltd.[2020] 181 ITD 528 (Kolkata Trib)
3. M/s. Smira Pune Food Pvt. Ltd (ITA No.3205/DEL/2017, ITAT Delhi Bench.
4. Shri Narayan Tatu Rane, ITA No2690/Mum/2016, ITAT Mumbai Bench

In the present case, the case of the assessee was selected for scrutiny for specific purpose for verification of refund claim and income from house property and, therefore, there cannot be any presumption of lack of enquiry more particularly when the detailed questionnaire was issued by the AO during the assessment proceedings and in this regard the assessee had also furnished all the details alongwith decision of Chennai Properties & Investments Ltd. vs CIT (supra). Therefore, it cannot be presumed that there was lack of enquiry on the part of the AO. In this regard, we draw strength from the decision of Coordinate Bench in the case of Smt. Lata Phulwani (ITA No. 246/JP/2020). It is a settled law by now that where the AO has exercised the quasi judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be considered erroneous simply because the ld. PCIT does not feel satisfied with the conclusion. In this regard, we take into consideration the decision of Hon'ble Rajasthan High Court in the case of CIT vs Ganpat Ram Vishnoi, 296 ITR 292. Even otherwise, provisions of Section nowhere allow to challenge the judicial wisdom of the AO or to replace the wisdom in the guise of revision unless the view taken by the AO is

not at all sustainable in law. We are of the view that extent of enquiry cannot be stretched to any level by forcing the AO to go through the assessment process again and again. We have also gone through the decisions of the Coordinate Bench in the cases Annu Agrotech Private Ltd. (ITA No. 9/JP/2021), apropos assumption of jurisdiction u/s 263 by the ld. PCIT laid down the following ratio:-

> ‘’1.14 (i). Every loss of Revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. If the AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with which the PCIT does not agree, it cannot be treated as an erroneous order and it is prejudicial to the interest of the Revenue, unless the view taken by the AO is totally unsustainable in law;
>
> 1.14 (ii). The law is well settled that the assessment order cannot be held to be erroneous simply on the allegation of inadequate enquiry. Unless there is an established case of total lack of enquiry;’’

It is pertinent to mention here that assessment in the present case of the assessee firm for the year under consideration was carried out in the ‘’faceless manner’’ by NFAC. It is a fact that any faceless assessment is carried out through a teamwork of assessment unit, technical unit, review unit, verification unit etc. Since different

units are headed by Principal Commissioner of Income Tax, therefore, in a faceless regime, normally there cannot be a case of prejudice of lack of enquiry for the reason that there is application of mind by multiple officers of Department and not by a single officer and thus at the end of our discussion, we are of the view that the assessee firm had furnished the requisite information and the NFAC has completed the assessment after considering all the facts, therefore, the order passed by the AO cannot be termed as erroneous. In this regard, we draw strength from following decisions.

1. CIT v Ratlam Coal Ash Co (1988) 171 ITR 141 (MP)
2. Ashok Kumar Parasramka v ACIT (1998) 65 ITD 1 (Cal)
3. CIT v Mehrortra Brothers (2004) 270 ITR 157 (MP)
4. CIT v Parameshwar Bohra (2004) 267 ITR 698 (Raj) .
5. Paul Mathews & Sons v CIT (2003) 263 ITR 101 (Ker)
6. CIT v Arvind Jewellers (2003) 259 ITR 502 (Guj)
7. CIT v Hastings Properties (2002) 253 ITR 124 (Cal)
8. CIT v Goal (JP) (HUF) (2001) 247 ITR 555 (Cal)

Therefore, after considering the totality of the facts of the case and keeping in view the legal position as discussed herein above, it is clear that the assessment order passed by the AO was after full enquiry and, therefore, the case does not fall within the clause (a) and (b) of Explanation 2 to Section 263 of the Act. Hence, the ld. PCIT has erred in assuming jurisdiction u/s 263 of the Act and the order passed by him stands quashed. Our view in this case is restricted only to the invocation of Section 263 of the Act by the ld. Pr. CIT and our findings are restricted only to this

case considering the peculiar facts contained therein. Therefore, our this decision may not become precedent upon the merits of contemplated additions by the ld. Pr. CIT. Since we have not adjudicated or commented upon the merits of contemplated additions and have decided only invocation of provisions of Section 263 of the I.T. Act under peculiar circumstances of this case alone. Thus keeping view the above deliberations, the appeal of the assessee is allowed.

3.0 In the result, the above appeal of the assessee is allowed.

Order pronounced in the open court on 03 /07/2023.

Sd/- Sd/-

(राठोडकमलेश**जयन्तभाई**)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 03/07/2023
*Mishra
आदेश की प्रतिलिपिअग्रेशित / Copy of the order forwarded to:
1. The Appellant- M/s. Agrani Buildestate, Jaipur
2. प्रत्यर्थी / The Respondent- The Pr. CIT-1, Jaipur
3. आयकरआयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.205/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar