

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 422/DEL/2022 [A.Y. 2012-13]

Shir Jasbir Singh  
IX/995, Near Laxmi Cinema  
Gandhi Nagar, East Delhi

Vs.

The P.C.I.T  
Delhi - 20

PAN: ABMPS 0071 N

(Applicant)

(Respondent)

Assessee By : Ms. Gunjan Jain, CA

Department By : Shri Waseem Arshad, CIT-DR

Date of Hearing : 17.07.2023

Date of Pronouncement : 20.07.2023

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the ld. PCIT, New Delhi- 20 dated 28.12.2021 framed u/s 263 of the Income-tax Act, 1961 [the Act, for short] pertaining to Assessment Year 2012-13.

2. The sum and substance of the grievance of the assessee is that the PCIT erred in assuming jurisdiction under section 263 of the Income-tax Act, 1961 [the Act, for short] and further erred in holding that the assessment order dated 25.12.2019, framed under section 143(3)/147 of the Act is not only erroneous but also prejudicial to the interest of the revenue.

3. The representatives of both the sides were heard at length, the case records carefully perused and we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules and have also perused the judicial decisions relied upon by both the sides.

4. Briefly stated the facts of the case are that as per the information available with the Assessing Officer, there was huge discrepancy in the turnover shown vis a vis cash deposits and credits appearing in the bank account for F.Y 2011-12. The Assessing Officer further noted that the assessee has shown nominal income against huge credits appearing in the bank account. Notice under section 148 of the Act was issued and served upon the assessee.

5. The assessee was engaged in import and sale of Chinese mobile phones and their accessories. Returned income of the assessee was assessed at Rs. 7,99,741/- after estimating the gross profit of the assessee. Assuming jurisdiction conferred upon the PCIT by provisions of section 263 of the Act, the PCIT issued notice as under:



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE PRINCIPAL  
COMMISSIONER OF INCOME TAX  
PCIT, Delhi-20

To, JASBIR SINGH 9/995,,MULTANI MOHALLA, GANDHI NAGAR, DELHI 110031,Delhi India	
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PAN: ABMPS0071N	Assessment Year: 2012-13	Dated: 10/11/2021	DIN & Notice No : ITBA/COM/F/17/2021-22/1036811096(1)
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Sir/ Madam/ M/s,

**Subject: Proceedings for set aside assessment - Notice**

**Subject: Notice u/s 263 of the Income Tax Act, 1961 for A.Y. 2012-13 in the case of Sh. Jasbir Singh (PAN: ABMPS0071N),reg.**

Assessment in your case was completed u/s 143(3) of the Income Tax Act,1961 on 25.12.2019 for A.Y. 2012-13 at an income of Rs.7,99,741/-.After an addition of Rs. 5,71,854/-

"You have filed your return of income for the A.Y. 2012-13 u/s 139 on 11.09.2012 declaring gross total income of Rs.2,27,887/- and shown sales/gross receipts at Rs.1,19,76,176/-. Your case was selected for scrutiny due to the following reasons:

- 1.Huge cash deposits in your bank account and the same being transferred to various interlinked accounts.
2. Huge discrepancy in your turnover declared in your ITR and the credits in your bank account.
3. Undisclosed income in your ITR.

Subsequently notice u/s 148 was issued to you on 28.03.2019 after taking due approval. However in response to notice u/s 147 dated 07.05.2019 you have revised the figures of sales/gross receipt to Rs.32,26,70,141/-.

For the A.Y.2012-13 information was received from DDIT (Inv.) Unit-4(2), New Delhi that the assessee Sh. Jasbir Singh Prop. M/s Sukhmani Enterprises, has deposited huge cash of **Rs.4,12,14,350/-** and has total receipts of **Rs.11,94,30,274/- in the F.Y. 2011-12**. Bank statements of the **IndusInd Bank, Ashok Vihar, Delhi and Axis Bank** were obtained. On perusal of the bank statements it is gathered that you have made cash deposits of **Rs.4,12,14,500/- and Rs.8,93,57,900/-** respectively in both the bank accounts (**totalling to Rs.13,05,72,250/-**). As per the bank statements for the F.Y.2011-12 the total amount of credits (cash/credit) is determined at Rs.49,64,00,848/-. Further the bank statements also reveals that you have provided multiple entries to different entities vis-a-vis M/s MAA Traders,

Note: If digitally signed, the date of digital signature may be taken as date of document.  
ROOM NO:106, VIKAS BHAWAN, I P ESTATE, DELHI, Delhi, 110002  
Email: DELHICIT20@INCOMETAX.GOV.IN

M/s. Crown Institute of Mobile Technology and others.

On perusal of return filed u/s 139 for the A.Y. 2012-13, it is seen you have shown **NIL** opening stock in ITR, however, in return filed in response to notice u/s 148 you have shown opening stock of Rs.28,21,65,354/-. This issue of opening stock **has not been taken** into consideration during assessment proceedings u/s 147/143(3) of the Act, for A.Y. 2012-13.

Various **mismatches and discrepancies** in your financials for A.Y. 2012-13 is observed as under:-

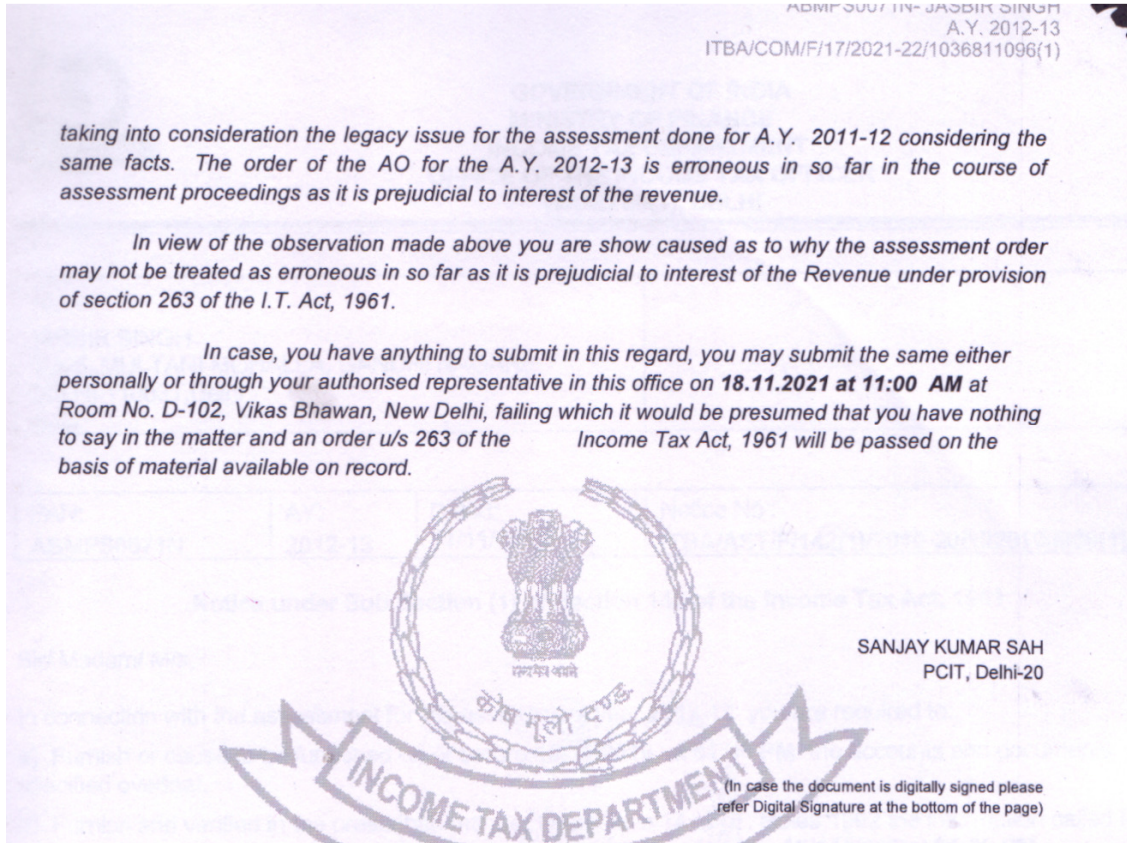
Sl. No	Particulars	As per ROI u/s 139	As per ROI u/s 148	As per VAT Return
1	Opening Stock	Nil	28,21,65,354/-	-
2	Closing Stock	9,37,820/-	Nil	-
3	Turnover	1,19,76,176/-	32,26,70,141/-	8,39,975/- (GTO)
4	Income declared	227890/-	227890/-	-

Furthermore, it is also evident from the records that your **VAT registration** was **cancelled** on **01.10.2012**. It is also worth mentioning that in the intimation letter dated 19.12.2018, issued by VAT department, it has specifically remarked after verification of the addresses that the operational address of the business premise is not sufficient enough to accommodate such a business with this quantum of huge turnover in a confined place as mentioned by you.

In your case, assessment for **A.Y.2011-12** was completed on **31.12.2018** at an assessed income of **Rs.11,54,01,156/-**. During the course of assessment proceedings for A.Y.2011-12 statement u/s 131 of Sh. Jasbir Singh was recorded on oath by the then AO where the assessee had stated that his partner Sh. Sanjay Singh has monitored his all import related work and assessee himself is unaware about all these transactions in his accounts of Indusind Bank account No.0143AQ1650050 and Crown Institute of Mobile Technologies 0143AQ16000050. All these transactions were allegedly done by Sh. Sanjay Singh, Prop. M/s Crown Institute of Mobile Technologies. During the A.Y.2011-12 the assessee had total cash deposits of Rs.11,52,41,311/-. After due examination and on the basis of facts of the case the then A.O. had made **addition of Rs.11,52,41,311/-** on account of Unexplained cash credits u/s 68 of the Act.

In view of the above facts, it is clear that the cash deposited in your bank during the F.Y. 2011-12 pertaining to A.Y. 2012-13 to the tune of Rs.13,05,72,250/- is unexplained cash credit transactions in your bank account. Thus it is observed that your claim being engaged in any business or profession is **bogus**.

In view of the above it is apparent that assessment in this case has been completed without



6. The sum and substance of the issues raised by the PCIT are:
1. huge cash deposits in the bank account;
  2. discrepancy in the turnover declared in ITR vis a vis credit in the bank account; and
  3. undisclosed income in his return of income.
7. Vide notice dated 11.11.2019, issued under section 142(1) of the Act, the Assessing Officer sought the following information:

## ANNEXURE

*Please Furnish the following:-*

1. Narration of all debit & credit entries in all bank accounts.
2. Computation of Income for original return & computation for Revised Return.
3. Audited Balance Sheet with all annexure of all your concerns from which you earned during the year for last 3 years.
4. Please provide details of sale/purchase, along with ledger and ledger confirmation, made in case during the year made by you in following format:

Name and Complete address party/person	PAN	Sale/Purchase during the year	Payment during the year	Nature of business with the party
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SANGEETA  
GUPTA  
WARD 60(1),  
DELHI

8. The assessee filed a detailed reply on 07.12.2019, which reads as under:

This is with reference to your notices dated 11.11.2019 issued u/s 142(1) of the Income Tax Act, 1961 & Show Cause Notice dated 05.12.2019, we are submitting as follows:

1. **COPY OF ALL BANK STATEMENTS:** - We have already provided copy of Bank statements of all the accounts maintained by the assessee during F.Y. 2011-12 vide our reply dated 04.10.2019. But we are again enclosing copy of all Bank statements & copy of all Bank Ledgers for your reference.
2. **COPY OF COMPUTATION OF INCOME:** - We have already provided copy of computation of income for A.Y. 2012-13 vide our reply dated 04.10.2019.
3. **AUDITED BALANCE SHEET AND PROFIT & LOSS A/C:** - We are enclosing herewith copy of Audited Balance Sheet alongwith all annexures and copy of Profit & Loss Account for the financial year 2012-13 & 2011-12.

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4. DETAILS OF PARTYWISE PURCHASES: -

S. No.	Name of Party	Purchase during the year	Payment during the year
1.	Ambalika International	50,000/-	50,000/-
2.	Bhawani Enterprises	3,30,000/-	3,30,000/-
3.	Gopal Ji Traders	4,00,000/-	4,00,000/-
4.	Hema Enterprises	9,84,000/-	9,84,000/-
5.	Him Logistics Pvt. Ltd.	30,56,625/-	30,56,625/-
6.	Kaalka Maa Traders	2,52,101/-	2,52,101/-
7.	Maa Traders	2,64,21,908/-	2,64,21,908/-
8.	Pragati Logistic	4,31,600/-	4,31,600/-
9.	Roy Shipping Agency	12,31,949/-	12,31,949/-
10.	Shakti Enterprises	7,30,760/-	7,30,760/-
11.	Shri Balaji Traders	2,50,000/-	2,50,000/-
12.	Vaishno Enterprises	8,75,000/-	8,75,000/-
13.	Zoom Exports	11,27,935/-	11,27,935/-
	<b>Total</b>	<b>3,61,14,878/-</b>	<b>3,61,14,878/-</b>

5. DETAILS OF PARTYWISE SALES: -

S. No.	Name of Party	Sale during the year	Payment received during the year
1.	Anmol International	1,20,56,650/-	1,20,56,650/-
2.	Cash Sale	12,86,29,882/-	12,86,29,882/-
3.	Crown Institute of Mobile Technologies	4,55,13,200/-	4,55,13,200/-
4.	Kalka International	84,000/-	84,000/-
5.	Maa Traders	2,13,150/-	2,13,150/-
6.	Master Light Co.	6,00,000/-	6,00,000/-
7.	Rishabh Udyog	9,73,640/-	9,73,640/-
8.	RP Enterprises	15,33,159/-	15,33,159/-
9.	Rudrani Impex	2,36,97,000/-	2,36,97,000/-
10.	Saraswati Tradex	2,99,98,000/-	2,99,98,000/-
11.	Sharma Agencies	2,43,90,000/-	2,43,90,000/-
12.	Singh & Co.	1,76,65,200/-	1,76,65,200/-
13.	SPA Impex International	3,29,31,500/-	3,29,31,500/-
14.	Zigma International	5,98,160/-	5,98,160/-
	<b>Total</b>	<b>31,88,83,541/-</b>	<b>31,88,83,541/-</b>

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Details of Compliances made by us & reply of show cause notice: -

Following are the details of compliances made by us in response to notices issued by the departments: -

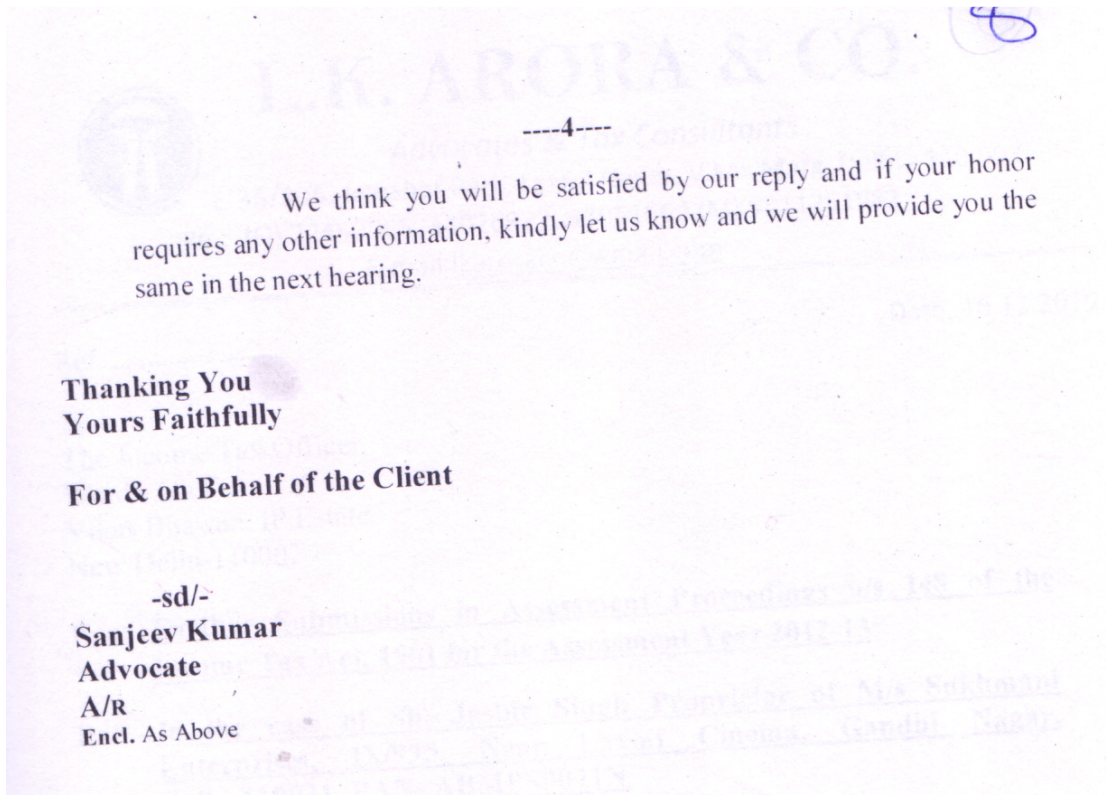
S. No.	Notice issued	Date of response filed	Documents submitted	Acknowledgement No. of Reply filed
1.	Notice dated 28.03.2019 issued u/s 148	07.05.2019	Copy of ITR	472113831070519
2.	Notice dated 29.07.2019 issued u/s 142(1)	04.10.2019	Copy of ITR, Computation of Income, Balance sheets, Bank Statements	04101911729736
3.	Notice dated 02.08.2019 issued u/s 143(2)	24.10.2019	As required	24101911919809
4.	Notice dated 11.11.2019 & 05.12.2019	07.12.2019 (now filing)	Details as asked in the notices	

Respected Madam, we have made compliance of each & every notice as issued by the department, therefore it would not be correct to say that no compliance has been made by us.

And in respect of cash deposits made by the assessee of Rs. 13,15,53,550/- (**not Rs. 12,95,92,850/- as mentioned in show cause notice**) in his Bank accounts maintained with Indusind Bank, Axis Bank & Oriental Bank of Commerce, we want to submit that in none of the previous notices any information about cash deposits was asked. **Now unfortunately your honor have suddenly issued show cause notice** that why in the absence of Details/Documents /Explanations etc. regarding cash deposited into your bank account during A.Y.2012-13 it should not be considered as unexplained income of yours and accordingly added to ascertain your taxable income for the year under consideration.

We want to submit before your honor that the source of cash deposited by the assessee in his Bank accounts was sale proceeds of Chinese Mobile Phones & accessories which was mostly imported by the assessee from China & Hong Kong and have opening stock of Rs. 28,21,65,354/- as on 01.04.2011. **We are enclosing copy of cash book for the period from 01.04.2011 to 31.03.2012 & copy of some sales invoices on sample basis for your reference.**

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9. Vide notice dated 05.12.2019, the Assessing Officer sought explanation regarding source of cash deposit into the bank account and show caused why in the absence of details, in respect of cash deposits into the bank account, the same should not be considered as undisclosed income and added to the taxable income?

10. This aspect has been duly considered by the assessee in its reply dated 07.12.2019, exhibited hereinabove. Once again, on 17.12.2019,

the AO sought information in respect of the following points:

**Please Furnish the following:-**

1. Please provide the documentary proof in support of your opening stock.
2. Please also provide the payments made against purchase made regarding opening stock.
3. Details of current year's purchase with documentary proof.
4. Details of current year's sale with documentary proof.
5. Details of imports made during the year.
6. Source of cash deposits in your bank accounts.
7. Details of sundry creditors with complete name, address and confirmation form party.

SANGEETA GUPTA  
WARD 60(1), DELHI

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

11. Detailed reply was filed on 18.12.2019 as under:

Ref. ....

Date. 18.12.2019

To,  
The Income Tax Officer  
Ward - 60(1),  
Vikas Bhawan, IP Estate  
New Delhi-110002

Reg: - **Further Submissions in Assessment Proceedings u/s 148 of the Income Tax Act, 1961 for the Assessment Year 2012-13**

Ref: - **In the case of Sh. Jasbir Singh, IX/995, Near Laxmi Cinema, Gandhi Nagar, Delhi-110031, PAN: ABMPS0071N**

Respected Madam

This is with reference to the abovementioned subject matter, we are submitting as follows:

1. **PROOF IN SUPPORT OF OPENING STOCK**: - That we are enclosing Stock summary for the period from 01.04.2010 to 31.03.2011 and copy of Audited Financial Statements for F.Y. 2010-11 as a proof in support of opening stock of Rs. 28,21,65,354/-.
2. **DETAILS OF PAYMENTS MADE AGAINST PURCHASES MADE REGARDING OPENING STOCK**: - That we are enclosing copy of Ledger account of M/s Kovtra from whom Goods were imported during previous financial year and payments were made in current financial year for the period from 01.04.2010 to 31.03.2011 & 01.04.2011 to 31.03.2012.
3. **DETAILS OF CURRENT YEAR PURCHASES**: - That in our earlier submission dated 16.12.2019; we have already provided List of Partywise Purchases alongwith their complete addresses for the period from 01.04.2011 to 31.03.2012. Now we are enclosing copy of Purchase register for F.Y. 2011-12 & copy of some purchase invoices for your kind reference.

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4. **DETAILS OF CURRENT YEAR SALES:** - That we have already provided copies of some sales invoices on sample basis vide our reply dated 07.12.2019 but again we are enclosing the same for your kind reference along with copy of sales register for the period from 01.04.2011 to 31.03.2012.
5. **DETAILS OF IMPORTS MADE DURING THE YEAR:** - That during the current financial year assessee have not made any imports, all the imports were made during the previous financial year. We are enclosing copy of import purchases and copies of some Bill of Entries for your reference.
6. **SOURCE OF CASH DEPOSITS IN BANK ACCOUNTS:** - That in our earlier submission dated 07.12.2019 we have submitted that the source of cash deposited in bank accounts was sale proceeds of Mobile Phones & accessories and cash withdrawals from bank and also submitted the cash book for the period from 01.04.2011 to 31.03.2012. And in our submission dated 16.12.2019 we have submitted the reconciliation of cash in hand.
7. **COMPLETE DETAILS OF SUNDRY CREDITORS:** - That as on 31.03.2012 no creditors were outstanding. But as on 31.03.2011 only one creditor namely Kovtra was outstanding from whom Goods were imported for an amount of Rs. 28,58,12,146/-. The address of the party was Flat/RM-C, 12, Arthur Street, Yauma, Tei, Hong Kong. We are enclosing copy of ledger account of the same for F.Y. 2010-11 & 2011-12 for your reference.

We hope your honor will be satisfied by our reply and if your honor requires any other information, kindly let us know and we will provide you the same in the next hearing.

**Thanking You**  
**Yours Faithfully**  
**For & on Behalf of the Client**

-sd/-  
**Sanjeev Kumar**  
**Advocate**

12. Stock summary from, 01.04.2010 to 31.03.2011 was filed which is placed at page 59 of the paper book. Stock as on 31.03.2011 became opening stock on 01.04.2011. Import of mobiles supported by bill of entry from home consumption is placed at pages 148 to 155 of the paper book.

13. Considering the afore-stated facts, we are of the considered view that the PCIT assumed jurisdiction on the assumption that the assessee has not shown detail of stocks properly and the cash deposit in the bank account are from unknown sources.

14. Facts on records show that specific queries were raised in respect of issues raised by the PCIT and specific replies have been furnished by the assessee with supporting documentary evidences. Therefore, it can be safely concluded that this is not a case of no enquiry by the AO.

15. The contention of the ld. DR is that the action of the Assessing Officer has provoked further enquiry to be conducted as explained by the PCIT. According to the ld. DR, the PCIT should have arrived at a finding on material as regards the lack of enquiry. Mere posing queries and not going into detailed examination only means non-application of

mind by the Assessing Officer and, therefore, the PCIT has rightly assumed jurisdiction. Drawing support from Explanation 2 to section 263 of the Act, the Id. DR concluded by stating that there is a distinction between inadequate enquiry and lack of enquiry which stands obliterated by Explanation 2 to section 263 of the Act and in his written synopsis, the Id. DR has placed reliance on several judicial decisions.

16. The Hon'ble Supreme Court in *Malabar Industrial Co. Ltd.*, 243 ITR 83, has laid down the following ratio:

"A bare reading of [section 263](#) of the Income-tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent--if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue--recourse cannot be had to [section 263\(1\)](#) of the Act. The provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order

is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous".

17. The Hon'ble Bombay High Court in the case of Gabriel India Ltd 203 ITR 108 has held as under:

"The power of suo motu revision under subsection (1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision under this sub-section, viz., (i) the order is erroneous; (ii) by virtue of the order being erroneous prejudice has been caused to the interests of the Revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous. We find that the expressions "erroneous", "erroneous assessment" and "erroneous judgment" have been defined in Black's Law Dictionary. According to the definition, "erroneous" means "involving error; deviating from the law". "Erroneous assessment" refers to an assessment that deviates from the law and is, therefore, invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, "erroneous judgment" means "one rendered according to course and practice of court, but contrary to law, upon mistaken view of law; or upon erroneous application of legal principles".

12. From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. It may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interests of the Revenue. But that by itself will not be enough to vest the Commissioner with the power of suo motu revision because the first requirement, viz., that the order is

erroneous, is absent. Similarly, if an order is erroneous but not prejudicial to the interests of the Revenue, then also the power of suo motu revision cannot be exercised. Any and every erroneous order cannot be the subject-matter of revision because the second requirement also must be fulfilled. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed. We, therefore, hold that in order to exercise power under sub-section (1) of [section 263](#) of the Act there must be material before the Commissioner to consider that the order passed by the Income-tax Officer was erroneous in so far as it is prejudicial to the interests of the Revenue. We have already held what is erroneous. It must be an order which is not in accordance with the law or which has been passed by the Income-tax Officer without making any enquiry in undue haste. We have also held as to what is prejudicial to the interests of the Revenue. An order can be said to be prejudicial to the interests of the Revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. There must be material available on the record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision. Exercise of power of suo motu revision under such circumstances will amount to arbitrary exercise of power.

It is well-settled that when exercise of statutory power is dependent upon the existence of certain objective facts, the authority before exercising such power must have materials on record to satisfy it in that regard. If the action of the authority is challenged before the court it would be open to the courts to examine whether the relevant objective factors were available from the records called for and examined by such authority.

The Income-tax Officer in this case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given detailed explanation in that regard by a letter in writing. All these are part of the record of the case. Evidently, the claim was allowed by the Income-tax Officer on being satisfied with the explanation of the assessee. Such decision of the Income-tax Officer cannot be held to be "erroneous" simply because in his order he did not make an elaborate discussion in that regard. Moreover, in the instant case, the Commissioner himself, even after initiating proceedings for revision and hearing the assessee, could not say that the allowance of the claim of the assessee was erroneous and that the expenditure was not revenue expenditure but an expenditure of capital nature. He simply asked the Income-tax Officer to re-examine the matter. That, in our opinion, is not permissible. Hence the provisions of section 263 of the Act were not applicable to the instant case and, therefore, the commissioner was not justified in setting aside the assessment order."

18. It is a settled position of law that powers u/s 263 of the Act can be exercised by the Commissioner on satisfaction of twin conditions, i.e., the assessment order should be erroneous and prejudicial to the interest of the Revenue. By 'erroneous' is meant contrary to law. Thus, this power cannot be exercised unless the Commissioner is able to establish that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Thus, where there are two possible views and the Assessing Officer has taken one of the possible views, no action to exercise powers of revision can arise, nor can revisional power be exercised for directing a fuller enquiry to find out if the view taken is erroneous. This power of revision can be exercised only where no enquiry, as required under the law, is done. It is not open to enquire in case of inadequate inquiry. Our view is fortified by the decision of Hon'ble High Court of Bombay in the case of CIT vs. Nirav Modi, [2016] 71 Taxmann.com 272 (Bombay).

19. The Hon'ble High Court of Gujarat in the case of [CIT vs. Nirma Chemical Works Ltd.](#) 309 ITR 67 has observed as under:

*"if assessment order were to incorporate the reasons for upholding the claim made by an assessee, the result would be an epitome and not an assessment order. In this case, during the assessment*

proceedings for both the Assessment Years, the Assessing . A.Y. 2009-10 Officer issued a query memo to the assessee, calling upon him to justify the genuineness of the gifts. The Respondent-Assessee responded to the same by giving evidence of the communications received from his father and his sister i.e. the donors of the gifts along with the statement of their Bank accounts. On perusal, the Assessing Officer was satisfied about the creditworthiness/capacity of the donors, the source from where these funds have come and also the creditworthiness/capacity of the donor. Once the Assessing Officer was satisfied with regard to the same, there was no further requirement on the part of the Assessing Officer to disclose his satisfaction in the Assessment Order passed thereon. Thus, this objection on the part of the Revenue cannot be accepted."

29. We find that the Hon'ble Delhi High Court in the case of CIT Vs Sunbeam Auto reported in 332 ITR 167 has held as held as under:

"12. We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the CIT under s. 263 of the IT Act. As noted above, the submission of learned counsel for the Revenue was that while passing the assessment order, the AO did not consider this aspect specifically whether the expenditure in question was revenue or

*capital expenditure. This argument predicates on the assessment order, which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the AO had not applied his mind on the issue. There are judgments galore laying down the principle that the AO in the assessing order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate that would not by itself give occasion to the CIT to pass orders under s. 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry" that such a course of action would be open".*

30. Considering the facts of the case in totality from all possible angles, we failed to persuade ourselves to accept the contention of the Id. DR who had strongly supported the findings of the PCIT. We are of the considered view that the order framed u/s 263 of the Act deserves to be set aside and that of the Assessing Officer deserves to be restored. We order accordingly."

20. Considering the facts of the case in hand, in totality, in light of judicial decisions discussed here in above, we set aside the order of the PCIT and restore that of the Assessing Officer dated 25.12.2019 framed under section 143(3)/147 of the Act.

21. In the result the appeal of the assessee in ITA No. 422/DEL/2022 is allowed.

The order is pronounced in the open court on 20.07.2023.

Sd/-

**[ANUBHAV SHARMA]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 20<sup>th</sup> JULY, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	