

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 117/Ind/2022**  
**(Assessment Year:2017-18)**

Maa Narmada Agrotech and Infrastructures Limited UG-47, Trade Centre, Kanchan Bagh Main Road, Indore	Vs.	PCIT Indore -1
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: AAFCM6285 P</b>		
Assessee by	Shri S.N. Goyal & Shri Pranay Goyal, ARs	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	31.05.2023	
Date of Pronouncement	11.07.2023	

**ORDER**

**Per Vijay Pal Rao, JM:**

This appeal by the assessee is directed against the order dated 15.03.2022 of Pr. Commissioner of Income Tax(Appeal)-Indore, passed u/s 263 of the Act for Assessment Year 2017-18. The assessee has raised following grounds of appeal:

*“1. That, the appellate order passed by Ld. PCIT, Indore-1 is erroneous on the facts and in law.*

*2. That, the appellate order passed by Ld. PCIT, Indore-1 is contrary to the weight of evidence on record, perverse, unjustified and, therefore the additions are liable to be struck down.*

*3. That, the Ld. PCIT, Indore - 1 erred to initiate the revisionary proceedings wherein fact, the appellant has submitted all the necessary information and explanation as required by the Ld.AO during the assessment proceedings.*

*4. That, the Ld. PCIT, Indore - 1 erred to pass an order u/s 263 of the Act, without issuance of show cause notice and in hurriedly manner within a time of 20 days from the issuance of first notice dt. 25.02.2022.*

*5. That, the appellant, carves leave to add, amend or modify any of the grounds of the appeal.”*

2. The assessee company is engaged in the business of infrastructure activity of construction of road, bridge, building and other works as well as sale of agricultural produce and giving the machinery on hire. The assessee filed its return of income u/s 139(1) of the Act on 29.10.2017 declaring total income of Rs. 74,73,400/-. E-return was selected for scrutiny under CASS and assessment u/s 143(3) of the Act was completed on 26.12.2019 at the total income of Rs.76,68,400/-. Subsequently, the AO also passed a rectification order dated 30.07.2020 and rectified the mistake of double disallowance of Rs.1,20,000/- in respect of Tipper Transportation penalty which was also added back to the total income by the assessee itself. Thereafter, the Pr. CIT on examination of the assessment record noticed certain discrepancies and issued show cause notice u/s 263 of the Act dated 25.02.2022. In the show cause notice Pr. CIT has pointed out various items of claim on which the AO allegedly did not conduct any inquiry while passing the assessment order. In response to the show cause notice the assessee filed written submissions and explained the issues raised in the show cause notice. However, the Pr. CIT was not satisfied with the reply/explanation of the assessee and consequently he set aside the assessment order passed u/s 143(3) by holding the same as erroneous so far as the prejudicial to the interest of revenue for want of inquiry conducted by the AO. The Pr. CIT asked the AO to frame the assessment *de-novo* with the direction to examine the issues specified in the revision order. Aggrieved by the impugned order passed by the Pr. CIT the assessee filed the present appeal.

3. Before the Tribunal the Ld. AR of the assessee has submitted that the first issue raised by the Pr. CIT in the show cause notice is regarding the discrepancy in the receipts shown by the assessee in the books of account in comparison to the receipts shown in form 26AS which has been duly explained by the assessee in his reply and the difference was also reconciled. He has pointed out that due to the nature of infrastructure business of the assessee there is a time difference in recognizing the revenue by the assessee based on the amount of the work done whereas the contractee books the expenditure of the said amount and deducts the TDS based on the invoices generated by assessee. This time difference has led to such difference in the receipts as per the books of the assessee and form 26AS. Therefore, the alleged discrepancy in the receipts is only due to the different policy adopted by the assessee and the contractee which is only timing difference and does not result any revenue loss. He has further submitted that the assessee has submitted reconciliation before the AO as well as before the Pr. CIT giving all the relevant details of the amounts which was already declared as receipt by the assessee for A.Y.2016-17 but the contractee M/s Prakash Asphaltting and Toll Highway (India) Ltd. (PATH India) has deducted TDS in A.Y.2017-18 which is reflected in form 26AS. Similarly, bill for an amount of Rs.1.25 Cr. booked by the assessee in the A.Y.2017-18 was also booked by the PATH India and deducted TDS on the same in A.Y.2016-17. The Ld. AR has referred to the Form no.26AS for both assessment years i.e. A.Y.2016-17 & 2017-18 to show that the assessee has declared the entire amount as turnover if the consolidated figure of two years as shown in form 26AS is taken into consideration.

4. He has further submitted that all these details were produced before the AO in response to show cause notice issued by the AO u/s 142(1) and this exercise of verifying the difference in the receipt appearing in form no.26AS and in the books of account of the assessee was also done by the AO during the assessment proceeding for the year under consideration as well as during the assessment proceedings for the preceding assessment

years. The Ld. AR has submitted that this issue is a recurring issue for the past several years due to the difference for recognizing the revenue by assessee and expenditure booked by the contractee at different point of time. He has referred to the notice issued by the AO u/s 142(1) and submitted that AO has specifically asked all the relevant details regarding the receipts declared by the assessee for assessment years 2014-15 as well as 2015-16. The Assessing Officer has also examined the identical issue while framing assessment u/s 143(3) for those assessment years. The copies of the assessment orders passed u/s 143(3) for A.Y.2014-15 placed at page no.51 of the paper book and for assessment year 2015-16 is placed at page no.55 of the paper book. He has also referred to the reply filed by the assessee to the queries raised by the AO along with notice u/s 142(1) dated 31.10.2019 and submitted that the assessee furnished all the relevant details along with bills raised by the assessee to the contractee PATH (India). Thus, Ld. AR has submitted that once the assessee has duly explained the difference in the receipts declared in the books of account in comparison to the receipts appearing in form 26AS and also reconciled the difference before the AO and Assessing Officer has passed the scrutiny assessment only after he was satisfied with the explanation of the assessee as this issue is recurring issue for last several assessment years then the Pr. CIT is not justified in invoking the provisions of section 263 of the Act on this issue and setting aside the order of the Assessing Officer.

5. As regards the issue regarding trade payable and trade receivable shown in the balance sheet the Ld. AR submitted that during the course of assessment proceedings the assessee produced all the relevant details of debtors and unsecured loan receipts. Ld. AR has referred to the reply filed by the assessee to the show cause notice issued by the AO placed at page no.5 to 9 of the paper book and submitted that all the relevant details were furnished by the assessee. He has specifically referred the details of debtors as well as creditors at page no.7 of the paper book and contains name, address and PAN of all the parties. The details of the fixed

assets purchased during the years were also produced before the AO and placed at page no.8 of the paper book. Ld. AR has submitted that the AO has raised specific inquiry in Annexures to notice u/s 142(1) for furnishing the details of debtors in the specific format provided therein and the assessee has furnished all the relevant details. Therefore, the AO has conducted a due inquiry and after verification of the details the AO was satisfied with the explanation and details furnished by the Assessee. The assessee also furnished the details of the entire direct expenses incurred as well as higher charges of machinery which was subject to TDS. The value of closing stock (work in progress) was calculated by the assessee company on the basis of work completed and amount of material purchased and consumed. The bills in respect of the purchases were required to be submitted to the concerned department only when the work is completed till the stage of 10% of the work completion of total work. Therefore, as per agreement the assessee was not allowed to submit the bills till the stage of 10% of total work completed is achieved.

6. He has referred to the details of the payments to the contractors at page no.112 to 123 of the paper book which contains the particulars of payment along with ledgers, bills and vouchers duly produced before the AO. The AO specifically called the details regarding material consumption while issuing show cause notice u/s 142(1) dated 22<sup>nd</sup> December 2019 and therefore, the issue of disproportionate expenditure in comparison to the preceding year has been duly examined by the AO. The assessee explained the reasons for higher percentage of expenditure to the turnover for the year under consideration in its reply placed at page no.127 to 129. Ld. AR has submitted that during the year under consideration site was under development for construction of civil road in Dhar District and to facilitate such road development, the assessee has taken a temporary electricity connection at village Khichipura and therefore, during the year under consideration there is a huge electricity expenses in comparison to the preceding year. The assessee produced all the details of the electricity expenses along with electricity bills and therefore, the genuineness of the

expenditure cannot be questioned. The AO after verification of these details was satisfied with the claim of these expenses. Hence the Ld. AR has contended that once the AO has conducted an inquiry and also verified the details, accounts and bills of the expenditure then the order of the AO cannot be held as erroneous for want of inquiry.

7. As regards the food and refreshment expenses of Rs.3113,391/- the assessee produced all the details with supporting evidence before the AO as well as before the Pr. CIT for verification, therefore, once the AO is satisfied with the reply and explanation submitted by the assessee then he need not to give a detail finding on the issue. Ld. AR has relied upon the decision of Coordinate Bench of this Tribunal in the case of *Rakesh Khandelwal vs. Pr. CIT (Central) Bhopal 8 TTJ 213* and submitted that the Tribunal has considered the identical issue where the AO has conducted an inquiry then the commissioner cannot remit the matter for fresh decision to the AO without giving definite finding that view taken by the AO is not sustainable in law. He has also relied upon the decision of the Jaipur Bench of the Tribunal dated 06.10.2020 in case of *Smt. Lata Phulwani vs. Pr. CIT in ITANo.246/JP/2020*.

8. On the other hand, Ld. DR has submitted that the total turnover declared by the assessee is less than the receipts appearing in form no.26AS. The assessee has not produced any evidence to show that the differential amount is already declared in the preceding year as referred to the fining of the Pr. CIT in para 4.1 and submitted that Pr. CIT has noted various glaring discrepancies in the claim of the assessee on which the AO has not conducted any inquiry as the assessment order is completely silent about the examination of these issues. He has further submitted that even the total debtors as given in the details furnished before the AO are not matching with the debtors shown in the balance sheet. Ld. DR has further submitted that the assessee has explained the details vide letter dated 24.12.2019 just two days prior to the assessment order was passed. This shows that no proper inquiry was conducted by the AO on these issues. The AO has discussed only disallowance made u/s 14A of the Act

and there is no discussion on other issues as pointed out by the Pr. CIT in the show cause notice. Therefore, it is a case of lack of inquiry on the part of the AO while passing the assessment order. He has relied upon the impugned order of the Pr. CIT.

9. We have considered the rival submissions as well as relevant material on record. The Pr. CIT issued show cause notice u/s 263 on 25.02.2022 and passed the impugned order on 15.03.2022. The assessee was given only seven days to file the reply to the show cause notice. In compliance to the show cause notice the assessee filed reply and also requested the Pr. CIT to allow the assessee to produce the voluminous record in the physical form but due to paucity of time as the limitation was gone to expire on 31.03.2022 the Pr. CIT passed the impugned order without considering the explanation and replied filed by the assessee whereby the assessment order was set aside and matter was remanded for *de novo* assessment. Therefore, at the outset it appears to be a case of violation of principal of natural justice. The issue taken up by the Pr. CIT in the show cause notice are reproduced in the impugned order in para 2 as under:

*“2. Subsequent to the assessment, assessment records were examined and certain discrepancies were noticed. Accordingly a detailed show cause notice was issued by the undersigned on 25.02.2022 mentioning as under-*

*01. On perusal of the relevant case records, it is observed that the return of income in the case of the assessee for AY 2017-18 was filed on 29.10.2017 declaring total income of Rs. 74,73,400/- The case was selected for complete scrutiny. In the case of the assessee notice u/s 143(2) was issued on 23.08.2018 and notice u/s 142(1) was issued on 31.10.2019*

*02. In response, replies were filed by the assessee and after considering the submissions made the assessee, the assessing officer after disallowing Rs 75,000/- u/s 14A and Rs. 1,20,000/- under the head Tipper Transportation Expenses passed assessment order on 26.12.2019 at assessed income of Rs 76,68,400/- 03. On examination of the assessment records, following discrepancies are noticed*

03.1 On examination of the case records, it was found that as per 26AS of the assessee for the period under consideration, the total receipts of the assessee was Rs. 24,06,84,479/- However on perusal of the P&L Account it was found that the assessee has shown receipts of Rs. 22,08,86,852/- only. Thus, the assessee had suppressed his receipts to the tune of Rs. 1,97,97,627/- during the year under consideration and the assessing officer while passing assessment order has overlooked this suppression of receipts.

03.2 Further on the perusal of the balance sheet as on 31.03.2017, it was noticed that the assessee company has shown trade payable and trade receivable at Rs. 5,26,24,158/- and Rs. 6,65,46,869/- respectively. During the course of assessment proceedings neither the assessee company filed the details regarding trade payables and trade receivables nor the assessing officer conducted any enquiry/investigation regarding t trade payables and trade receivables.

03.3 On perusal of the P&L account of the assessee company for the period under consideration, it was found that the assessee had claimed Rs: 11,85,50,529/- under the head Material Consumed expenses as against total turnover of Rs. 22,08,86,850/- during the year under consideration whereas during the previous year turnover of the company was Rs. 10,35,02,751/- and the assessee company has claimed Rs. 2,08,15,446/- under the same head. thus, it is clear that turnover of the company just doubled but surprisingly the expenses under the same head was increased by six times approximately. The assessing officer has not verified these expenditures during the course of assessment proceedings neither the assessee had furnished supporting documents in support of his claim. Similarly, Rs. 33,92,359/- was claimed as site expenses which almost three times from the amount which was claimed in previous year, Rs. 50,17,438/- was claimed under the head electricity expenses however no such expense was claimed during the previous year, Rs. 10,32,070/- was claimed as freight expenses which is almost five times of the amount which was claimed during the preceding year, Rs. 2,63,53,247/- was claimed as Food & Refreshment expenses which is four times of amount which was claimed during the previous year. During the assessment proceedings the assessing officer has not examined that whether exorbitant increase in these expenses are justified and genuine or not.

03.4 On further perusal of the P&L account of the assessee company, it was noticed that the assessee had debited Rs. 5,94,59,303/- under the head Changes in inventories of finished goods, work-in-progress and Stock-in- trade" During the course of assessment proceedings neither the assessee has furnished explanation nor the assessing officer has sought any explanation as to why this amount had been debited in P&L account. Therefore, the assessment order passed by

*the AO is erroneous in the sense that it is prejudicial to the interest of revenue.*

*4. For the reasons stated hereinabove, the order u/s 143(3) dated 26.12.2019 passed by the Assessing Officer in your case for the A. Y. 2017-18 appears to be erroneous in so far as it is prejudicial to the interest of the revenue. Accordingly, by virtue of the power vested in the undersigned as per the provisions of section 263 of the Income Tax Act 1961, the said order is proposed to be revised under the said section.*

*5. You are hereby given an opportunity of being heard to explain as to why the proposed revision should not be carried out. For this purpose, your case is posted for hearing on 03.03.2022 at 3.00 pm. On the scheduled date of hearing, you may either appear in person or get yourself represented by a representative duly authorized by you as per section 288 of the Act. You may also make your written submissions in lieu of personal appearance. If such written submissions are received on or before the scheduled date of hearing, the same shall be duly considered for the purpose of the proceedings u/s 263 of the Act.*

*6. Kindly note that you may also file your reply through mail along with all relevant records and documents. It is not necessary to attend the office for this purpose and the reply/details may be filed by email. In case of non compliance, the matter will be decided on merits of the case and information available on record.”*

10. Therefore, various points were raised by the Pr. CIT in the show cause notice but the show cause notice was issued at the fage end of the limitation period to pass the revision order u/s 263 of the Act. The sole ground for setting aside the order passed by the AO is lack of inquiry on the part of the AO in respect of these issues. However, we find that the AO issued show cause notice u/s 142(1) and specifically asked the assessee to furnish details and evidence in respect of these issues as taken up by the Pr. CIT while invoking provision of section 263 of the Act. For ready reference we reproduced the notice issued by the AO u/s 142(1) dated 06.12.2019 along with annexures as well as notice dated 24.12.2019 as under:



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX  
DCIT/ACIT 3(1), IND

To,  
MAA NARMADA AGROTECH AND  
INFRASTRUCTURES LIMITED  
UG47 TRADE CENTRE, KANCHAN BAGH MAIN ROAD  
INDORE 452001, Madhya Pradesh  
India

PAN: AAFCM6285P	AY: 2017-18	Dated: 31/10/2019	Notice No : ITBA/AST/F/142(1)/2019-20/1019609869(1)
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Notice under Sub Section (1) of Section 142 of the Income Tax Act, 1961

Sir/ Madam/ M/s,

In connection with the assessment for the assessment year 2017-18 you are required to:

- Furnish or cause to be furnished on or before 05/11/2019 at 11:00 AM the accounts and documents specified overleaf.
- Furnish and verified in the prescribed manner under Rule 14 of I.T. Rules 1962 the information called for as per annexure and on the points or matters specified therein on or before 05/11/2019 at 11:00 AM.
- The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in 'e-filing' website of Income Tax Department.
- Para(s) (a) to (c) are applicable if you have an account in e-filing website of Income Tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).
- In cases where order has to be passed under section 153A/153C of the Income Tax Act, 1961 read with section 143(3), assessment proceedings would be conducted manually.

Yours faithfully,

AMIT KUMAR SONI  
DCIT/ACIT 3(1), IND

Note: If digitally signed, the date of digital signature may be taken as date of document.  
ROOM NO:306,3rd Floor, AAYAKAR BHAWAN, OPP. WHITE CHURCH, WHITE CHURCH ROAD, RESIDENCY AREA, INDORE, Madhya Pradesh,  
452001  
Email: INDORE.DCIT3.1@INCOMETAX.GOV.IN, Office Phone:07312494018

\* The Notice/Letter/Order No. mentioned above may be treated as DIN for the purpose of procedure for issuance of Income Tax Notice prescribed by Circular No.19/2019 dt. 14 August 2019.

ANNEXURE

1) Furnish a detailed note on the business activity including modus operandi of operations/businesses, nature of business, and semi-finished and finished goods, and other relevant details. Give name and address of all business premises, branch offices, godowns etc. from where business is carried out.

2) Please furnish:

(a) Copy of Tax Audit Report

(b) Copy of Annual Report with P & L a/c., Balance Sheet, Schedules and annexure thereof.

(c) Computation of Income, Proof of all taxes paid e.g. TDS, Advance tax etc

(d) Any other enclosure attached/referred to in your return (Form No.29B, Form No.3CEB, Form No.3CEA, Form No. 3CD etc.)

(e) Details of all your bank accounts which were maintained during the previous year in the following format:-

S.No.	Account No.	Name of Bank	Address of Branch	Type of account	Names & Designation of Authorized person operating bank A/c
1	2	3	4	5	6

(f) Kindly provide details of summary/regular assessment of your income done in past 3 years in the following format:-

A.Y.	U/s 143(3) or 143(1)	Returned income	Accumulated losses and accumulated depreciation, any	Additions Made and Descriptions of additions (if brief)	Gone in appeal? If yes, Status of the appeal

*(Handwritten mark)*

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Also provide the copy of previous assessment orders and appeal orders.

g) Provide the copy of Form 26AS for AY 2017-18. Please reconcile the receipts as per 26AS and receipts shown as per ROI filed by you.

3. Please give full details of debtors in your case in the following format:

Sr. No.	Name & address of the debtor	PAN	Amount

4. Please give the unsecured loan received by you in the following format:-

Sr.No.	Name & address of the party	PAN	Rate	Amount of unsecured loan received	Mode of payment	Return of income filed by the lender	Amount of repayment

Please also furnish the confirmation letter along with bank statement of the lender.

5. Please give the details of short term and Long Term Loan and Advances given by your concern in the following format:-

Sr.No.	Name, & address of the party	PAN	Amount of loans and advances given	Rate of interest (%)	Commercial expediency	Reason for not charging Interest, if any

6. Please furnish the details of Contractual amount paid in the following format:

Name, Address, PAN of the Party	Contractual amount (Rs.)	TDS Paid	Rate of TDS	Nature of service rendered	Reason for non deduction of TDS , If any
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7. Please furnish the details of Fixed assets purchased by your concern during the year under consideration alongwith the bill/vouchers for verification of the same.
8. Please give the details of direct expenses of land cost of sold flats.
9. Please furnish the valuation of closing stock WIP alongwith the documentary evidences.
10. Please justify the reason for high Refund to TDS for the period under consideration.
11. The assessee is running real estate business and disclosing high closing stock. Please justify the same.
12. Please furnish books of accounts for verification.

AMIT KUMAR SONI  
DCIT/ACIT 3(1), IND

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



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX  
DCIT/ACIT 3(1), IND

To, MAA NARMADA AGROTECH AND INFRASTRUCTURES LIMITED UG47 TRADE CENTRE, KANCHAN BAGH MAIN ROAD INDORE 452001, Madhya Pradesh India
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PAN: AAFCM6285P	AY: 2017-18	Dated: 22/12/2019	Notice No : ITBA/AST/F/142(1)/2019-20/1022876741(1)
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Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961

Sir/ Madam/ M/s.

In connection with the assessment for the assessment year **2017-18** you are required to:

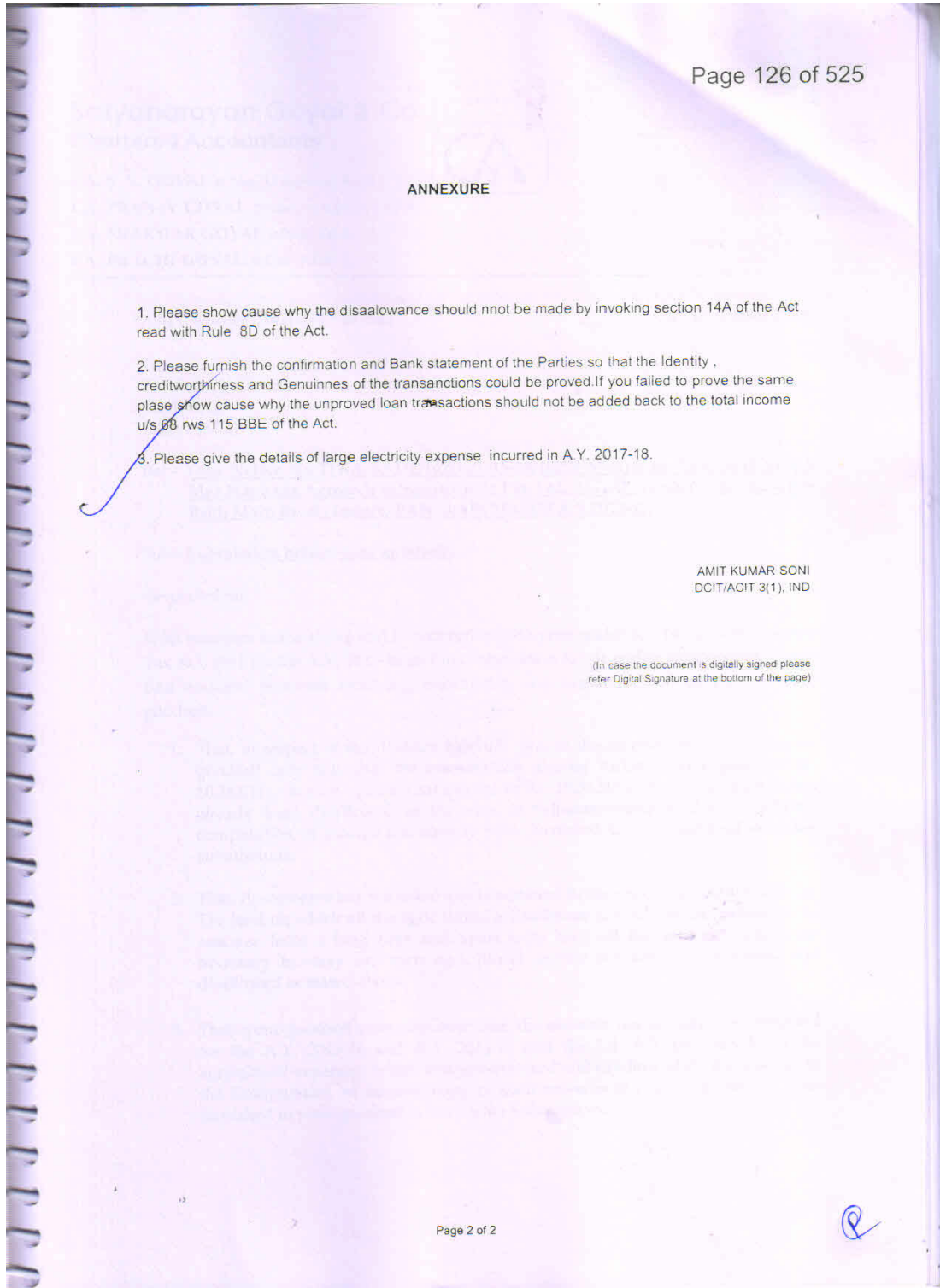
- Furnish or cause to be furnished on or before **23/12/2019** at **03:00 PM** the accounts and documents specified overleaf.
- Furnish and verified in the prescribed manner under Rule 14 of I.T. Rules 1962 the information called for as per annexure and on the points or matters specified therein on or before **23/12/2019** at **03:00 PM**.
- The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in 'e-filing' website of Income Tax Department.
- Para(s) (a) to (c) are applicable if you have an account in e-filing website of Income Tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).
- In cases where order has to be passed under section 153A/153C of the Income Tax Act, 1961 read with section 143(3), assessment proceedings would be conducted manually.

Yours faithfully,

AMIT KUMAR SONI  
DCIT/ACIT 3(1), IND

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452001  
Email: INDORE.DCIT3.1@INCOMETAX.GOV.IN, Office Phone:07312494018

\* The Notice/Letter/Order No. mentioned above is the Document Identification No. (DIN) of this Notice/Letter/Order.



11. As it is apparent from the annexures to show cause notice issued by the AO u/s 142(1) that the AO issued a detailed questionnaire to the assessee for providing the necessary details, record and evidence. The AO

even given a specific format in respect of each details to be provided by assessee which covered all these issues as raised by the Pr. CIT in the show cause notice issued u/s 263 of the Act. The assessee duly complied with the show cause notice issued by the AO by filing to detail reply along with relevant details and documents which runs into 100 of the pages, therefore, for the sake of brevity we are not reproduced the reply and documents filed by the assessee before the AO. However, on-going through the reply filed by the assessee it is manifest that the assessee has given all these details and explanation as sought by the AO in the show cause notice issued u/s 142(1) of the Act. The AO even issued a second show cause notice dated 22.12.2019 asking the details regarding unsecured loans along with explanation in respect of disallowance u/s 14A r.w. Rule 8D. Finally the AO has made disallowance only u/s 14A and no disallowance or addition was made in respect of the other issues as raised in the show cause notice issued u/s 142(1) of the Act. Thus, it is clear that the AO has conducted an inquiry on these issues and was satisfied with the reply and explanation filed by the assessee along with supporting evidence. Hence it is not a case of complete lack of inquiry on the part of the AO while passing the assessment order and therefore, the assessment order cannot be held to be erroneous so far as the prejudicial to the interest of the revenue on the ground of lack of inquiry. Though the commissioner has jurisdiction to invoke the provision of section 263 even when the AO has conducted inquiry and taken a view but the said jurisdiction and power of commissioner is restricted only in the case, where the view taken by the AO is absolutely wrong and against provision of law. No such allegation has been made by the Pr. CIT in the impugned order that the view taken by the AO in allowing the claims and accepting the explanation of the assessee is absolutely not permissible under the law. Even otherwise we find that the assessee has duly explained discrepancies in the total receipts declared by the assessee in comparison to the receipts appearing in form 26AS and explained the reasons with supporting evidence that the said difference is due to the time difference in recognizing the revenue by the assessee and booking of expenditure by

the contractee. It is matter of record that the assessee filed the reconciliation before the AO as well as before the Pr. CIT. Therefore, it was incumbent upon the Pr. CIT to verify the details produced by the assessee as well as reconciliation of difference in the receipts and to give a finding about the correctness of the claim of the assessee. The assessee has given the relevant details and explained difference of Rs.1.97 cr being the income already declared by the assessee in the preceding year with the supporting bills and TDS which was deducted by the payee in the preceding year as well as for the year under consideration. Therefore, if the TDS details for two years are taken into consideration it goes to prove that only because of the difference of time in deducting the TDS by contractee the discrepancies appears in respect of the receipts as shown in the form 26AS and turnover declared by the assessee. All these details were produced by the AO and this is a recurring issue as already examined before the AO in the preceding assessment years. The AO did not feel any need to give an elaborate finding on this issue. The assessee has produced copies of the assessment order passed u/s 143(3) for A.Ys.2014-15 & 2015-16 wherein an identical issue was considered by the AO and after examining of the record and explanation of the assessee the AO accepted the claim of the assessee. Once it is a recurring issue and already examined in the preceding years and AO has duly conducted an inquiry by issuing show cause notice u/s 142(1) which was duly replied by the assessee with relevant record then the AO was not expected to give an elaborate finding on this issue. Similarly on the other issues when the AO has issued show cause notice and the assessee produced relevant details and supporting evidence in respect of the expenses incurred which were subjected to TDS wherever applicable and the extra expenditure was incurred for the year was specifically explained by the assessee giving the specific reasons of consumption of electricity in development of site in the remote rural area as well as the expenditure incurred on acquiring equipment of machinery require for carrying out construction work. All these details were available with the AO as filed by the assessee, therefore, this case is certainly does not fall in the category of lack of inquiry on the

part of the Assessing Officer. Coordinate Bench of this Tribunal in case of *Rakesh Khandelwal vs. Pr. CIT (Supra)* while considering an identical issue has held as under:

*“8. Therefore, it is not the case where there was no enquiry at all by the A.O. The assessee had furnished certain evidences, which the assessing officer has gone through. There is no dispute that the Ld. Principal CIT can exercise the revisionary jurisdiction u/s 263 of the Act. If he considers that any order passed by the A.O. is erroneous in so far as it is prejudicial to the interest of the revenue. Explanation (2) to [section 263](#) of the Act further clarifies that an order passed by the A.O. shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if in the opinion of the Principal Commissioner or Commissioner (a) the order is passed without making enquiries or verification which should have been made (b) the order is passed allowing any relief without enquiring into the claim (c) the order has not been made in accordance with the order, direction or instruction issued by the Board u/s 119 or (d) order has not been passed in accordance with any decision, which is prejudicial to the assessee rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person. In the present case, Principal CIT has revised the order on the ground that the A.O. has failed to make enquiries or verification, which should have been made. Ld. Principal CIT has not specified that what enquiries the A.O. has not made. There is no material suggesting that the Principal CIT has expressed his view about insufficiency of enquiry on the material placed on record. The issue regarding whether the assessment order is erroneous or prejudicial on the ground of insufficiency of enquiry has been dealt by the Hon'ble Delhi High Court in the judgement of *ITO Vs. DG Housing Projects Ltd. (2012) 20 Taxmann.com 587*, which has been followed by this Tribunal in various cases. Hon'ble High Court while adverting to the issue held that in cases of wrong opinion for finding on merit, the CIT has to come to the conclusion and himself decide that order is erroneous, by conducting necessary enquiry, if required and necessary before the order u/s 263 of the Act is passed. In such cases, the order of the A.O. will be erroneous because the order passed is not sustainable in law and the said finding must be recorded CIT cannot remand the matter to the assessing officer to decide whether the findings recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, again the CIT must give and record a finding that the order/enquiry made is erroneous. This can happen if an enquiry and verification is conducted by the CIT and he is able to establish and show the error or mistake made by the A.O. making the order unsustainable in law. In some cases, possibly though rarely, the CIT can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation*

*but the A.O. had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable.*

*The matter cannot be remitted for a fresh decision to the A.O. who conduct further enquiries without a finding that the order is erroneous finding that order is erroneous the condition or requirement which must be satisfied for exercise of jurisdiction u/s 263 of the Act. In such matters, to remand the matter/issue to the A.O. would imply and mean the CIT has not examined and decided whether or not the order is erroneous but has directed the A.O. to decide the aspect/question. The Hon'ble Court further held that this distinction must be kept in mind by the CIT while exercising jurisdiction u/s 263 of the Act and in the absence of the finding that the order is erroneous and prejudicial to the interest of revenue, exercise of jurisdiction under the said section is not sustainable. In most cases of alleged "inadequate investigation", it will be difficult to hold that the order of the A.O., who had conducted enquiries and had acted as an investigator, is erroneous, without CIT conducting verification/enquiry.*

*The order of the A.O. may be or may not be wrong. CIT cannot direct reconsideration on this ground but only when the order is erroneous. An order of remit cannot be passed by the CIT to ask the A.O. to decide whether the order was erroneous. This is not permissible. An order is erroneous, unless the CIT held and records reason why it is erroneous.*

*An order will become erroneous because on remit, the A.O. may decide that order is erroneous. Therefore, CIT must after recording reasons, hold that order is erroneous the jurisdictional pre-condition stipulated is that CIT must come to the conclusion that the order is erroneous and is unsustainable in law. It was further observed that the material, which the CIT can rely includes not only the records as it stands at the time when the order in question was passed by the A.O. but also record as it stands at the time of the examination by the CIT. Nothing appears/prohibits CIT from collecting and relying new/additional material which evidence to show and state that the order of the A.O. is erroneous. We find that Ld.*

*CIT in the present case has not carried out any enquiry of his own has merely set aside the assessment to the file of the A.O. to re-examine issue of source of cash deposited by the assessee. Therefore, it is contrary to the guidelines as mandated in the Hon'ble Delhi High Court in the case of ITO Vs. DG Housing Projects Ltd. (supra) coupled with the fact that the assessee during the assessment proceedings had submitted evidences in support of sale of jewelleryes and receipt of gift. Moreover, the issue of examination of source of gift was not subject matter of the scrutiny.*

*Therefore, the decision of the Ld. CIT invoking provisions of [section 263](#) of the Act is not justified and cannot be sustained under the facts and circumstances of the present case. We therefore, set aside the impugned order and allow the grounds raised by the assessee.”*

12. Once AO has conducted an inquiry which may be inadequate inquiry but in that case it cannot be said that the order passed by the AO is erroneous due to complete lack of inquiry. Once the AO has conducted an inquiry and taken a view which is not found to be impermissible view then the Pr. CIT is not permitted to invoke the provision of section 263 of the Act merely because he does not agree with the view of the AO. Similar view has been taken by the Jaipur Bench of the Tribunal in case of Smt. Lata Phulwani vs. Pr. CIT (supra) as under:

*“5. We have considered the rival submissions as well as the relevant material on record. We have carefully perused the assessment order passed by the AO under [section 143\(3\)](#), show cause notice issued by the ld. PCIT under [section 263](#) of the Act as well as the impugned order passed under [section 263](#). It is manifest from the record that the case of the assessee was taken up for limited scrutiny as per the notice issued under [section 143\(2\)](#) dated 19.09.2016, the relevant part of the said notice listing the issues identified for examination are as under :-*

*" This is for your kind information that the return of income for Assessment Year 2015-16 filed vide ack. No. 134831180300316 on 30/03/2016 has been selected for Scrutiny. Following issues have been identified for examination :-*

- i. Purchase of Property*
- ii. Deduction claimed under the head Capital Gains*

*2. In view of the above, we would like to give you an opportunity to produce, or cause to be produced, any evidence which you feel is necessary in support of the said return of income on 26/09/2016 at 11:00 AM in the Office of the undersigned."*

*Thus it is clear that the case was selected for limited scrutiny on the issue of purchase of property and deduction claimed under the head Capital Gains. Both these issues are inter-connected as the deduction under [section 54F](#) was claimed by the assessee in respect of purchase of property and construction of residential house on the said land. The AO, thereafter issued notice under [section 142\(1\)](#) dated*

14.07.2017 along with a questionnaire. These facts are also evident from the assessment order in para 1 and 2 as under :-

" Thereafter, the case was transferred to the office of the undersigned from the ITO Ward 4(1) Jaipur on 26.05.2017 and due to change of incumbent of charges, notice u/s 142(1) along with questionnaire issued on 14.07.2017 fixing the case of hearing on 20.07.2017 which was duly served upon the assessee on 15.07.2017. In response thereto, the CA/AR of the assessee Sh. Ajay Jain attended the proceedings from time to time and furnished required details/documents and also produced books of accounts, which were examined on test check basis. The case was discussed with him.

2. The assessee earned income from capital gain and interest. During the course of assessment proceedings written submissions were filed placed on file and other details were produced which were examined on test check basis. After discussion with the A/R of the assessee, the returned income is accepted."

Thus in response to the notice issued under [section 142\(1\)](#), the assessee attended the proceedings through her 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 the assessee earned the income from capital gain and interest. The details and records produced before him were examined and thereafter the returned income is accepted. Thus it is not a case of lack of enquiry on the part of the AO. Though the AO has not discussed the issue in elaborate manner, but once he was satisfied with the supporting evidences produced by the assessee he has accepted the claim. The ld. PCIT has invoked the provisions of [section 263](#) by issuing the show cause notice dated 4th February, 2019 at pages 16 & 17 of the paper book as under :-

Xxxxxxxxxxxxxx

Thus it is clear from the show cause notice issued under [section 263](#) that the ld. PCIT has invoked the provisions of [section 263](#) only on the issue of allowability of deduction under [section 54F](#) in respect of the investment made by the assessee towards cost of agricultural land and construction of house. The sole ground for initiating the proceedings under [section 263](#) by the ld. PCIT is that in his view the claim of deduction in respect of agricultural land is not admissible. As apparent from the show cause notice that the scope of proceedings under [section 263](#) was limited ITA No. 246/JP/2020 Smt. Lata Phulwani, Jaipur. only on the issue of allowability of deduction under [section 54F](#) in respect of the agricultural land acquired by the assessee and used for construction of house. There was no allegation by the ld. PCIT about the lack of enquiry on the part of the AO while

passing the assessment order. Even otherwise, it is clear from the assessment order that the case was selected for limited scrutiny only on the issue of investment made in the agricultural land and deduction under [section 54F](#) of the IT Act. Therefore, the question of lack of enquiry does not arise when the AO has taken up the scrutiny and issued the notice under [section 142\(1\)](#) along with a questionnaire calling for all the details relevant to the acquisition of the land as well as of construction of house. It is also not in dispute that the assessee produced the relevant details and evidences and specifically the purchase documents for acquiring the agricultural land as well as the valuation report towards the cost of construction. The ld. PCIT has also not doubted the facts as brought on record by the assessee and considered by the AO while passing the assessment order. The provisions of [section 263](#) were invoked by the ld. PCIT due to the reason that he has a different view regarding the allowability of deduction under [section 54F](#) in respect of the investment made for purchase of agricultural land and construction of house. There is no quarrel on the point that lack of enquiry renders the order of the AO as erroneous so far as prejudicial to the interests of the revenue. However, when there is no allegation and even otherwise it is manifest from the record that this is not a case of lack of enquiry on the part of the AO but the AO after satisfying himself about the claim of deduction under [section 54F](#) consequent upon the examination and verification of the concerned details, evidences and books of account produced by the assessee, allowed the claim of the assessee. Further, though the ld. PCIT has not alleged that there is inadequate enquiry on the part of the AO, however, even in case there is inadequate enquiry on the part of the AO, the ld. PCIT can give a concluding finding while passing the revision order after considering the complete record as well as conducting a necessary enquiry. In this case the assessee has contended before the ld. PCIT that the claim of deduction under [section 54F](#) is eligible even if the residential house is constructed on the agricultural land. The crux of the argument of the assessee has been reproduced by the ld. PCIT in para 5 of the impugned order. Thus the assessee has cited various decisions in support of her claim. The ld. PCIT has turned down the contentions of the assessee and has gone further to verify the facts by conducting an enquiry. This exercise of the ld. PCIT in conducting the enquiry to find the facts is beyond the scope of the proceedings initiated under [section 263](#) by issuing the show cause notice dated 4th February, 2019. In the said show cause notice, the ld. PCIT has raised only one issue i.e. purely a view regarding the allowability of the deduction under [section 54F](#) in respect of the investment made for construction of house on agricultural land. Whereas in the proceedings under [section 263](#) the ld. PCIT has travelled beyond the scope of proceedings as initiated vide show cause notice dated 4th February, 2019. Therefore, the proceedings which are beyond the scope of the revisional proceedings, are not permissible as not an issue involved in the show cause notice.

6. Further, once it is not a case of lack of enquiry or inadequate enquiry as per the show cause notice issued under [section 263](#) of the Act, then conducting a further enquiry on the factual aspects of the investment made in purchase of agricultural land and construction of the house is beyond the jurisdiction of the ld. PCIT as assumed by issuing show cause notice under [section 263](#). The finding of the ld. PCIT in the revision order ought to have been confined on the issue of allowability of deduction under [section 54F](#). Since the ld. PCIT was not agreeing with the view of the AO regarding the claim of deduction under [section 54F](#), at the outset, he was required to give a concluding finding on the issue. On the contrary, the ld. PCIT has remitted the issue to the AO in para 7 as under :-

" 7. In view of the above I hold that the order passed by the AO in this case for the A.Y. 2015-16 on 18.12.2017 is erroneous in so far as it is prejudicial to the interests of revenue. The order dated 18.12.2017 passed u/s 143(3) of the Act deserves to be set-aside. AO will pass the order after taking into account all necessary facts and details connected with the claim of deduction u/s 54F of the Act and the claim of indexed cost of construction/improvements on the land sold by the assessee amounting to Rs. 18,18,483/- (pertaining to F.Y. 2007-08) and of Rs. 13,46,834/- (pertaining to F.Y. 2010-11)."

Thus while passing the revision order, the ld. PCIT himself was not sure about the correctness of the claim and has remanded the matter to the record of the AO for passing a fresh order. Hence he has not given a concluding finding whether the order of the AO allowing the claim of deduction under [section 54F](#) after conducting an enquiry is absolutely against the provisions of law. Once it is not a case of lack of enquiry on the part of the AO, the said order cannot be held to be erroneous unless the ld. PCIT holds and records the reason why it is erroneous. The pre-condition for invoking the jurisdiction under [section 263](#) is that the ld. PCIT must come to the conclusion that the order of the AO is erroneous and is unsustainable in law. When the order passed by the AO is not erroneous for want of an enquiry, then it is incumbent upon the ld. PCIT to give a concluding finding and reasons that the order is not sustainable in law. An identical issue was considered by the Hon'ble Jurisdictional High Court in case of [CIT vs. Ganpat Ram Vishnoi](#), 296 ITR 292 (Raj.) in para 7 to 12 as under :-

" 7. In this connection, it would be relevant to refer to the material which was relied by the Tribunal to set aside the order of the CIT. The Tribunal noticed that as per the record of the proceedings; on 16-10-1995, the Assessing Officer required the assessee to produce documents or material in relation to 10 different items, which included the details of capital contributed by partners, details of purchases made in excess of Rs. 20,000 with evidence, confirmation

of unsecured loans, amongst other matters, which the Assessing Officer desired to enquire into.

The assessee has produced desired information by 15-11-1995. There-after, the case was adjourned to 22-11-1996 and 1-12-1995. On 5-12-1995, the Assessing Officer studied the sundry creditors, unsecured loans and desired to furnish affidavits of unsecured loans and details of interest paid and the case was adjourned to 19-1-1996. On 19-1-1996, the Assessing Officer again required the assessee to furnish the details of partners capital accounts and also to produce voucher for expenses and the matter was adjourned for 23-1-1996. On 23-1-1996, the case was discussed and finalised. After that, assessment was completed by passing assessment order. These matters clearly indicate that the Assessing Officer particularly made reference to the matters, which the CIT has opined were not inquired.

Thus, according to the Tribunal, the foundation to exercise power under [section 263](#) of the Income-tax Act, was not existing.

8. We are of the opinion in the aforesaid circumstances on the finding reached by the Assessing Officer, no question of law really arises for consideration in this appeal.

9. It is true that in a given case not holding of any enquiry, which is relevant for assessment may indicate non-application of mind by Assessing Officer or furnish the ground for taking action under [section 263](#) by the CIT. In this connection, reference may be made in the case of *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 831 (SC), wherein the CIT opined that he has passed the order of "nil" assessment without application of mind. The High Court accepted this part of the assertion made by the CIT in his order that the ITO has failed to apply his mind to the case in all perspectives and the order passed by him was erroneous. The High Court has also found that the assessment order was passed without application of mind. The High Court rightly held that the exercise of jurisdiction by the CIT under [section 263\(1\)](#) was justified.

10. From the record of the proceedings, in the present case, no presumption can be drawn that the Assessing Officer had not applied its mind to the various aspects of the matter. In such circumstances, without even *prima facie* laying foundation for holding that assessment order is erroneous and prejudicial to interest in any matter merely on spacious ground that the Assessing Officer was required to make an enquiry, cannot be held to satisfy the test of existing necessary condition for invoking jurisdiction under [section 263](#) of the Income- tax Act.

11. Undoubtedly, the jurisdiction under [section 263](#) is wide and is meant to ensure that due revenue ought to reach the public treasury and if it does not reach on account of some mistake of law or fact committed by the Assessing Officer, the CIT can cancel that order and require the concerned Assessing Officer to pass a fresh order in

accordance with law after holding a detailed enquiry. But when enquiry in fact has been conducted and the Assessing Officer has reached a particular conclusion, though reference to such enquiries has not been made in the order of the assessment, but the same is apparent from the record of the proceedings, in the present case, without anything to say how and why the enquiry conducted by the Assessing Officer was not in accordance with law, the invocation of jurisdiction by the CIT was unsustainable. As the exercise of jurisdiction by the CIT is founded on no material, it was liable to be set aside. Jurisdiction under [section 263](#) cannot be invoked for making short enquiries or to go into the process of assessment again and again merely on the basis that more enquiry ought to have been conducted to find something.

12. The finding of the Tribunal that the ITO had passed assessment order after relevant enquiries and considering the aspects of the matter required by the CIT to be considered by him is a finding of fact and on the basis of which, the jurisdiction assumed by the CIT being non-existent must be held to be not sustainable.

Consequently, the appeal fails and is hereby dismissed."

Thus the Hon'ble High Court has held that the ld. CIT can cancel the order of the AO and require the concerned AO to pass a fresh order in accordance with the law after holding a detailed enquiry. But when the enquiry in fact has been conducted and the AO has reached a particular conclusion, though reference to such enquiries has not been made in the order of assessment, but the same is apparent from the record of the proceedings, the invocation of jurisdiction by the ld. CIT was unsustainable. A similar view has been taken by the Hon'ble Delhi High Court in case of [ITO vs. D.G. Housing Projects Ltd.](#) 343 ITR 329 in para 18 as under :-

"18. It is in this context that the Supreme Court in [Malabar Industrial Co. Ltd. v. Commissioner of Income Tax](#), [2000] 243 ITR 83 / 109 Taxman 66 (SC), had observed that the phrase 'prejudicial to the interest of Revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of Revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of Revenue. Thus, when the Assessing Officer had adopted one of the courses permissible and available to him, and this has resulted in loss to Revenue; or two views were possible and the Assessing Officer has taken one view with which the CIT may not agree; the said orders cannot be treated as an erroneous order prejudicial to the interest of Revenue unless the view taken by the Assessing Officer is unsustainable in law. In such matters, the CIT must give a finding that the view taken by the Assessing Officer is unsustainable in law and, therefore, the order is erroneous. He must also show that prejudice is caused to the interest of the Revenue."

The Hon'ble High Court has laid out a fine distinction between the orders where no enquiry has been made by the AO from the order based on inadequate enquiry. Therefore, where the AO has made an enquiry and taken a possible/permissible view, then the said order cannot be treated as erroneous and prejudicial to the interests of the revenue unless the view taken by the AO is unsustainable in law. The Hon'ble Supreme Court in case of [Malabar Industrial Co. Ltd. vs. CIT](#), 243 ITR 83 (SC) has held that an order of ITO cannot be treated as prejudicial to the interests of the revenue if the ITO adopted one of the course permissible in law and it has resulted in loss of revenue or two views are possible and the ITO has taken one view with which the Id. CIT 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. As it is clear from the impugned order that the assessee has relied upon various decisions and further the assessee has also relied upon the recent decision of the Coordinate Bench of this Tribunal in case of [Shri Rajendra Kumar Sharma vs. JCIT](#) in ITA No. 358/JP/2015 wherein the Tribunal has held in paras 4 & 5 as under :-

"4. We have heard and considered the rival contentions and perused the material placed on record. From the record, we found that the assessee claimed deduction of Rs. 83,54,434/- u/s 54F from the LTCG declared by it. The assessee made investment of Rs. 1,15,00,000/- in purchase of land and constructed residential house thereon. The area of land was 4090 Sq.mt. and construction thereon is of 1504 Sq. ft. The A.O. on these facts issued a show cause notice to assessee as given in assessment order to which assessee replied which is given in page -- 6 of assessment order. The A.O. on following grounds denied the claim of assessee:

- (a) The land is agricultural and not residential.
- (b) The construction of residential house without approval of plan by Govt. Authority.
- (c) The assessee has also not submitted any electricity and water connection evidence.
- (d) The land was registered in the name of assessee on 28-3-13 i.e. beyond the period specified in [Section 54F \(4\)](#) and so assessee not complied conditions laid down therein. The agreement to purchase land executed on 2-6-2011 claimed by assessee has no evidentiary value as payment of consideration shown in cash.
- (e) The bills for construction are lacking details and contain no detail of work done and each payment made therefor was in cash for less than Rs. 20,000/-.
- (f) The Inspector physically verified the property and found there is only boundary wall with gate and on whole land there was little construction, with walls and Tin shed roofing and construction is about 700-800 Sq.ft as against 1504 Sq.ft. construction claimed by

assessee. The Ld. A.O. in assessment order gave scanned photographs stated to have been taken by Inspector on site visit.

The A.O. thus concluded that investment was purely in land and not a residential house as required u/s 54F of I. T. Act, 1961 and so assessee is not entitled to claimed deduction u/s 54F. As per our considered view, benefit of [Section 54F](#) cannot be denied on the ground that land on which construction done was agriculture in nature. Reliance is placed on the judgements in case of Vishnu Trading Co. 259 ITR 724 (Raj.), Narendra Mohan Uniyal 34 SOT 152 (Del.), Shyam Sunder Mukhija Vs. ITO 38 ITD 125 (JPR) and ACIT Vs. Om Prakash Goyal (2012) 53 SOT 158 (JPR). In the case of Narendra Mohan Uniyal (Supra) it is held that "It is crystal clear from the plain reading of [ss. 54](#) and [54F](#) that exemption is allowable in respect of amount invested in the construction of a residential house. There is no any rider under [s. 54F](#) that no deduction would be allowed in respect of investment of capital gains made on acquisition of land appurtenant to the building or on the investment on land on which building is being constructed. When the land is purchased and building is constructed thereon, it is not necessary that such construction should be on the entire plot of land, meaning thereby a part of the land which is appurtenant to the building and on which no construction is made, there is no denial of exemption on such investment. In this connection reference may be made to Cir. No. 667 dated 18-10-1993 (204 ITR (ST) 103) issued by CBDT which has clarified that for the purpose of computing exemption u/s 54 or 54F, the cost of the plot together with cost of the building will be considered as cost of new asset, provided the acquisition of the plot and also the construction thereon are completed within the period specified in these sections. There is no need of approval of plan from competent authorities if construction is within limits on agricultural land and it is not a condition laid down in [Section 54F](#) for construction of residential house. The construction on land is meant for residential house. The assessee could complete the construction of the residential house within three years and if any facility lacking in the constructed residential house the same could be completed within in that period. There is water supply from well and temporary electric connection in the residential house constructed by assessee. The construction of residential house is 1553.50 Sq.ft. and not having proper bills for construction cannot be taken adversely against him for purposes of [Section 54F](#). These facts are evident from the valuation report of Regd. Valuer a copy of which is submitted. The Inspector of department furnished vague details without any physical inspection of building and took only photographs. The assessee has only to invest net sale consideration in purchase or construct a residential house and therefore registration or legal ownership is not necessary which is evident from Circular No. 471 dated 15-10-1986 issued by CBDT and from judgements of Balraj Vs. CIT 254 ITR 22 and CIT Vs. Laxmi Chand 211 ITR 804 and various other judgements on the

*issue. Thus, agreement to purchase copy of which submitted proves domain and control of assessee on the land in the hands of assessee and satisfies the connotation of purchase of land for construction of residential house. WE found from the record that the assessee had invested Rs. 1,15,00,000/- in construction of residential house and, therefore entitled to claimed deduction u/s 54F. The Ld. A.O. is wrong and has erred in law in disallowing the claimed deduction of Rs. 83,54,434/- u/s 54F the Act, which deserves to be allowed.*

*5. We found that in the previous year relevant to the above said assessment year the assessee invested a sum of Rs.1,15,00,000/- in purchase of land for construction of a residential house. The deduction u/s 54F amounting to Rs.83,54,434/- has been claimed on account of said investment in the land; copy of the agreement to purchase and registered purchase deed were verified before the A.O.. The assessee got constructed a residential house in the F.Y. 201213 i.e. within the statutory time limit allowed by the Act i.e. before the due date of February, 2014. Copy of bills for construction of house alongwith Map of the house was filed before the A.O.. The total area of land is about 4090 sq.mtr. and the constructed area is about 1504 sq.ft. No approval is required for construction of the above said residential house. Copy of registered sale deed is also filed before the A.O. We found that it was a residential unit, therefore, the assessee is entitled for claim of deduction U/s 54F of the Act amounting to Rs. 83,54,434/-."*

*Thus it is clear that the Tribunal has referred and relied upon various decisions on the point of allowability of deduction under [section 54/54F](#) of the Act in respect of the investment made in construction of house on agricultural land. Therefore, the view taken by the AO is a possible view though may not be the only view. Further once the issue of allowability of deduction under [section 54F](#) is a debatable issue and the AO has taken a possible view, then the ld. PCIT is not permitted to invoke the provisions of [section 263](#) merely because he does not agree with the view of the AO. Hence in the facts and circumstances of the case as well as the foregoing discussion about the settled principles of law laid down in various decisions, we hold that the impugned order passed by the ld. PCIT is not sustainable and the same is liable to be set aside."*

13. Therefore, once the AO was satisfied with the supporting evidence produced by the assessee in response to the show cause notice u/s 142(1) then it is not necessary for the AO to give an elaborate finding on the issue. Accordingly, in the facts and circumstances of the case when the AO has conducted an inquiry then the Pr. CIT while passing the revision order cannot remand the matter back to the AO for passing afresh order

simply because of the reason that the Pr. CIT himself was not sure about the correctness of the claim of the assessee. Therefore, once the order passed by the AO is not erroneous for want of inquiry then it is incumbent upon Pr. CIT to give conclusive finding that the order passed by the AO is not sustainable in law. Accordingly in the facts and circumstances of the case and following the various judgments of the Hon'ble High court as relied upon Coordinate Benches of the Tribunal sited (supra) the impugned order of the Pr. CIT passed u/s 263 of the Act is not sustainable and the same is liable to be set aside. We order accordingly.

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

Order pronounced in the open court on 11.07.2023.

**Sd/-**  
**(B.M. BIYANI)**  
Accountant Member

**Sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, 11.07.2023**

**Patel/Sr. PS**

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*