

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 203/JP/2023  
निर्धारण वर्ष/Assessment Years : 2018-19

APM Industries Ltd. SP-147, Industrial Area Bhiwadi, Alwar	बनाम Vs.	Deputy Commissioner of Income Tax Central Circle-01, Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCA 5114 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. S. L. Poddar  
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 19/07/2023  
उदघोषणा की तारीख / Date of Pronouncement : 12/09/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the Principal Commissioner of Income Tax, Jaipur-1 [ Here in after referred as Ld. PCIT ] for the assessment year 2018-19 dated 21.03.2023 which in turn arise from the order dated 24.03.2021 passed under section 143(3) read with sections 143(3A) & 143(3B) of the Income Tax Act, by the Assessing Officer, National e-Assessment Centre, Delhi.

2. The assessee has marched this appeal on the following grounds:-

*“1. In the facts and circumstances of the case and in law, Id. PCIT has erred in exercising the revisionary powers by passing order u/s 263 of I.T. Act, 1961 dated 21.03.2023 setting aside the order passed u/s 143(3) dated 24.03.2021. The action of Id. PCIT is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the order passed u/s 263.*

*2. In the facts and circumstances of the case and in law, Id. PCIT has erred in exercising the revisionary powers by passing order u/s 263 of I.T. Act, 1961 dated 21.03.2023 setting aside the order passed u/s 143(3) dated 24.03.2021 without considering the ignoring the facts mentioned in our submission letter dated 17.02.2023.*

*3. In the facts and circumstances of the case and in law, Id. PCIT has erred in holding that the assessment order passed u/s 143(3) dated 24.03.2021 is erroneous and prejudicial to interest of revenue. However, the details were duly verified by the Id. AO during the assessment proceedings and the assessment order u/s 143(3) was passed with due application of mind.*

*4. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.”*

3. The fact as culled out from the records is that the return of income for the A.Y 2018-19 was filed by assessee company on 31.10.2018, declaring total income at Rs. 10,31,88,100/-. Subsequently, the case was selected for scrutiny through CASS cycle under complete category and notice u/s 143(2) was issued electronically on 23.09.2019 & duly served upon the assessee. Thereafter, notice u/s 142(1) along with questionnaire was issued

through ITBA/E-filing portal against which the assessee filed details and particulars as requisitioned electronically. The assessee is a domestic company by name and style 'APM Industries Ltd.' and is engaged in the manufacture of Man-made Fibres Spum Yarn. On verification of audit report, it is noticed that the auditor in the Tax Audit Report has reported an amount of Rs. 12,87,768/- is disallowable under section 40A(7) on account of provision for payment of gratuity. However, it is noticed that the said amount of provision has not been disallowed by the assessee company in the return of income as reported in Part A-OI of ITR. Therefore, the assessee vide annexure to notice u/s 142(1) of the Act was requested to explain as to why there is lower amount disallowed u/s 40A(7) in ITR (Part A-OI) in comparison to audit report and why the differential amount should not be added to the total taxable income. The assessee company vide its reply dated 18.01.2021 has accepted the discrepancy and stated that they have not disallowed the provision for Rs. 12,87,768/- u/s 40A(7) due to clerical mistake. Accordingly, an amount of Rs. 12,87,768/- added to the total income. Based on these observations the assessment was completed and finally the assessed income of the assessee was determined at Rs. 10,44,75,868/-

4. On culmination of the assessment proceeding the Id. PCIT called for the assessment records for examination. On examination the Id. PCIT noted the assessee had claimed interest expenses of Rs. 4,08,08,396/-. Out of this amount, interest paid to schedule banks is of Rs. 18,60,978/-. Thus, the balance amount of interest paid of Rs. 3,89,47,418/- was liable to TDS u/s. 194A of the Act. Therefore, as per provision of section 40(a)(ia) of the Act, 30 % of this amount which comes to Rs. 1,05,52,530/- was liable to be disallowed. The Id. PCIT further observed that the assessee received duty drawback of Rs. 2,37,355/-. However, there is no evidence on record that this amount has been offered to tax as business income u/s. 28 of the Act. The Id. PCIT also noted that the assessee had sold scrap of Rs. 2,35,97,690/- on which TDS has been made u/s. 206C of the Act. However, assessee shown sale of scrap of Rs. 2,02,58,204/- only in its profit and loss account of ITR. As such there is an under disclosure of sales of scrap by Rs. 33,39,666/- which should have been added to the total income. She further noted from the ITR and details submitted by the assessee, that the assessee had declared exempted income of Rs. 16,80,179/- in the form of dividend on investments in equity / mutual funds and against which assessee claimed an expenditure

of Rs. 2,64,488/- for earning this exempt income and have disallowed the same u/s. 14A of the Act in the computation of income. However, no details have been furnished as to how this amount was computed. In absence of computation of this expenditure the correct amount of disallowance u/s. 14A of the Act was required to be calculated in the manner as provided u/r 8D of the Income Tax Rules. She further noted that the figures disclosed in ITR and that reported by the statutory auditor in form 3CD are not tallying. Specifically, the figures reported in clause 34(a) of form 3CD are not tallying with the respective expenses shown in the ITR. All these issues have not been verified by the Id. AO during the assessment proceedings. Therefore, a show cause notice proposing the revision u/s. 263 of the Act was issued on 16.02.2023. In response the assessee filed written submission online on 18.02.2023. The Id. PCIT noted that the reply of the assessee perused carefully but the same was not found tenable and thus on the all the issue as pointed out in the show cause notice considering the facts on records, she holds a view that the issues has not been verified by the Id. AO in the assessment proceedings based on the observation on facts recorded in para 8 of the his order and the finally vide para 9 & 10 she hold that the

assessment order is liable for revision u/s. 263 of the Act. The relevant part of the observations the Id. PCIT is reproduced here in below :

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

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

10. Considering all the facts and circumstances of the case and for the reasons discussed above. the assessment order dated 24.03.2021 for A.Y. 2018-19 passed by the AO is held erroneous in so far as it is prejudicial to the interest of the revenue for the purpose of section 263 of the Act. The said order has been passed by the Assessing Officer in a routine and casual manner without applying the applicable sections of the Act. The Assessing Officer has not verified the details which were required to be verified under the scope of scrutiny. The order of the Assessing Officer is, therefore, liable to revision under the explanation (2) clause (b) and clause (a) of section 263 of the Income Tax Act, 1961. The assessment order is set aside to be made afresh in the light of the observation made in this order. The AO is required to make necessary verification in respect of the observations made in this order after allowing reasonable opportunity to the assessee."

5. Feeling dissatisfied from the order of the PCIT, the assessee preferred the present appeal on the grounds as reproduced here in above challenging the order of the PCIT passed u/s. 263 of the Act. Apropos to the ground so raised by the assessee the Id. AR

appearing on behalf of the assessee has placed reliance on their written submission which is extracted in below;

“BRIEF FACTS OF THE CASE AND SUBMISSION:->

The assessee is a domestic company engaged in manufacture of man-made fibres spun yarn. For the year under consideration, the assessee filed return of income declaring total income of Rs.10,31,88,100/- on 31/10/2018. The case was selected for complete scrutiny and notice u/s 143(2) was issued on 23/09/2019. As per the assessment order, the main issues for examination were – (i) Duty Drawback (ii) ICDS compliance and adjustment and (iii) disallowance u/s 40A(7) (gratuity provision). During the course of assessment proceedings, notice u/s 142(1) along with query letter was issued, requiring the assessee to furnish certain details/information. In compliance to the notice issued u/s 142(1), the assessee furnished the information/details requisitioned by the Learned Assessing Officer. After considering the details and information filed, the Learned Assessing Officer assessed the total income at Rs. 10,44,75,870/-, vide order u/s 143(3) read with Sec. 143(3A) and 143(3B) of the IT Act, 1961 dated 24/03/2021., by making addition of Rs.12,87,768/-, being provision for payment of gratuity disallowable u/s 40A(7). Copy of the assessment order is available on Paper Book Page No.1-3.

Subsequently, proceedings u/s 263 of the IT Act, 1961 were initiated by the Pr. Commissioner of Income-tax-1, Jaipur by issuance of show-cause notice on the ground that the assessment order dated 24/3/2022 passed by the Learned Assessing Officer is erroneous and prejudicial to the interest of revenue inasmuch the Learned Assessing Officer failed to examine the issues related to (i) disallowance of interest u/s 40a(ia), (ii) duty draw back, (iii) sale of scrap, (iv) disallowance u/s 14 A and (v) reconciliation of figures of expenses shown in the audit report in form No. 3 CD and that shown in the IT return etc. In reply to the show-cause notice, the assessee furnished a detailed reply dated 17/2/2023, stating therein that the assessee has duly deducted TDS on interest expenses and no disallowance was called for. The maximum part of payment of interest was on term loan to banks and cash-credit facilities, on which provisions of TDS were not applicable. It was further submitted that the duty draw back claim has been duly considered as income in ITR and no addition was required. It was also submitted that income from sale of scrap has been duly considered and no addition was required. It was submitted that the assessee has duly complied with the provisions of Sec., 14 A r.w.r 8D and voluntarily made disallowance of Rs.

2,64,488/- u/s 14 A and no disallowance u/s 14 A was required. In respect of the issue of mismatch of figures reported in audit report in form No. 3 CD vis-à-vis ITR, details and chart were furnished and it was stated that there was no mismatch in the figures reported in audit report and the figures shown in ITR. It was, therefore, submitted that the assessment order has been passed with due application of mind and the same is not erroneous and prejudicial to the interest of revenue and no action u/s 263 is warranted. A copy of the reply dated 17/2/2023 along with annexures is available on Paper Book Page No.4-15. However, the Learned Pr. CIT did not accept the submissions made by the assessee and passed order u/s 263 on 24/03/2021, holding that the assessment order passed by the Learned Assessing Officer is erroneous and prejudicial to the interest of revenue. The Pr. CIT has set-aside the assessment order passed by the Learned Assessing Officer to be framed afresh after making necessary verification with regard to the observations made in the order u/s 263.

The Learned PCIT has erred in exercising the revisionary powers u/s 263 as the assessment order has been passed by the Learned Assessing Officer with due application of mind and after duly considering the details and reply submitted by the assessee. Therefore, the action of the Learned CIT in exercising the revisionary powers u/s 263 and holding the assessment order passed by the Learned Assessing Officer as erroneous and prejudicial to the interest of revenue is unlawful, illegal, unjust and arbitrary. The same is assailed as under, discussing the individual grounds :-

Ground No.1

In the facts and circumstances of the case and in law, the Learned PCIT has erred in exercising the revisionary powers by passing order u/s 263 of the IT Act, 1961 dated 21/03/2023 setting aside the order passed u/s 143(3) dated 24/3/2021. The action of the Learned PCIT is illegal, unjustified, arbitrary and against the facts of the case. Relief may kindly be granted by quashing the order passed u/s 263.

Ground No.2

In the facts and circumstances of the case and in law, the Learned PCIT has erred in exercising the revisionary powers by passing order u/s 263 of the IT Act, 1961 dated 21/03/2023 setting aside the order passed u/s 143(3) dated 24/3/2021 without considering and ignoring the facts mentioned in our submission letter dated 17/02/2023.

Ground No.3

In the facts and circumstances of the case and in law, the Learned PCIT has erred in holding that the assessment order passed u/s 143(3) dated 24/03/2021 is erroneous and prejudicial to the interest of revenue. However, the details were duly verified by the Learned

Assessing Officer during the assessment proceedings and the assessment order u/s 143(3) was passed with due application of mind.

Grounds No.1, 2, & 3 are taken together and discussed hereunder :-

In this case, the Learned PCIT has passed order under section 263 on 21/03/2023 setting aside the order of the learned Assessing Officer passed on 24/3/2021. While passing the order u/s 263, the Learned PCIT has specified the following items on which the order of the Learned Assessing Officer has been found erroneous and prejudicial to the interest of revenue.

- (i) Disallowance u/s 40(a)(ia) on account of non-deduction of tax u/s 194A on payment of interest ;
- (ii) Duty draw-back of Rs.2,37,335/- has remained untaxed ;
- (iii) Sale of scrap of Rs.2,35,97,690/- have been understated by Rs.33,39,666/-.
- (iv) Disallowance u/s 14A on investments yielding exempt income has not been considered.A sum of Rs. 1,50,03,512/- required to be disallowed u/s 14A as per the working of Learned PCIT.
- (v) Mismatch of figures reported in form No. 3 CD and those in the books of accounts

It is submitted that the objections raised and issues specified by the Learned PCIT have arisen on account of non-consideration of the reply of the assessee submitted under letter dated 17/02/2023. The Learned PCIT has not appreciated the facts submitted by the assessee in this letter. The approach of the Learned PCIT is quite confusing and discouraging.

The issues raised by the Learned PCIT are discussed as under :-

- (i) Disallowance u/s 40(a)(ia) on account of non-deduction of tax u/s 194A on payment of interest ;

It is submitted that in response to the show-cause notice issued by the Pr CIT on 16/2/2023, requiring assessee to explain why disallowance u/s 40a(ia) @ 30% should not be made on account of non-deduction of tax u/s 194A on payment of interest of Rs.38947418/-. In response to the show-cause notice, the assessee has submitted a detailed reply and the relevant part thereof is quoted below :-

Particulars	Amount (Rs)	Remakrs
Interest paid on term loans to banks	1,85,18,197	TDS not applicable
Interest paid to Banks on cash credit limits (HDFC&SBI)	1,58,76,990	TDS not applicable
Interest paid to government departments	30,022	TDS not applicable
Interest on unsecured loans	37,72,317	TDS deducted
Interest paid to others (below TDS limit)	5,887	TDS not applicable
Total	3,82,03,413	

Add : IND AS adjustments	10,69,246	
Add : Bank charges paid as processing fee to banks	15,35,737	
Total interest paid as per Balance sheet and shown in ITR schedule P&I IND as AT s.No.43(iii)	4,08,08,396	

In the order passed u/s 263, the Learned PCIT has observed that the reply submitted by the assessee was not having supporting documents. The assessee is now furnishing supporting documents regarding payment of interest of Rs.1,85,18,197/- on term loans, Rs.1,58,76,990/- interest on cash credit limits, Rs.30,022/- payment of interest to government departments, Rs.37,72,317/- interest on unsecured loans and bank charges Rs.15,35,737/- and adjustments on account of gratuity Rs.10,69,246/-. The relevant supporting papers include details of the above payments, copy of ledger account, copies of relevant challans in respect of payment of interest to Govt. departments etc are available on Paper Book Page No.16-46. In view of these supporting papers, the objection raised by the PCIT is fully met. The assessment did not require to be set-aside on this ground.

(ii) Duty draw-back of Rs.2,37,335/- alleged to have remained untaxed

The Learned PCIT has observed in the order u/s 263 that the amount of duty draw back of Rs.2,37,335/- received by the assessee was not disclosed in the books of accounts. It is submitted that this observation has been made by the Learned PCIT as she failed to consider the reply of the assessee submitted on 17/2/2023. In this reply, it was specifically mentioned that the assessee had disclosed duty drawback claim of Rs. 2,31,711/- during the year under consideration and remaining amount of Rs.5644/- pertain to A.Y.2017-18. It was further explained that this amount of Duty drawback of Rs.2,31,711/- was part of the total amount shown in the ITR at Rs.2,02,58,024/-, the details of which are as under :-

Particulars	Amount (Rs.)
Duty Drawback claim	2,31,711
Job work	3,28,820
Waste and Scrap sale	1,96,97,493
Total amount shown as waste and scrap sale in ITR	2,02,58,024

The reply of the assessee remained unconsidered by the Learned PCIT, which resulted in above uncalled for observation. It is submitted that the amount of duty draw back fully stands accounted for in the

books of accounts. This issue cannot be a ground for setting aside the assessment order u/s 263. So far as this issue is concerned, the assessment order is not erroneous, nor prejudicial to the interest of revenue.

(iii) Sale of scrap of Rs.2,35,97,690

This issue has been totally misunderstood by the Learned PCIT. It was submitted by the assessee under letter dated 17/2/2023 that there was sale of scrap of Rs.1,96,97,493/- on which GST of Rs.29,61,967/- was charged. Further, there was also scrap sale of boiler of Rs.938230/- which was part of plant and machinery, hence, the same was considered in fixed assets. These items total to Rs.2,35,97,690/- (Rs.19697493+ 2961967+938230). In view of this, the assessee has correctly accounted for the sale of scrap. It is further submitted that the sale of scrap has been disclosed in ITR at Rs.2,02,58,024/- as under :-

Particulars	Amount (Rs.)
Duty Drawback claim	2,31,711
Job work	3,28,820
Waste and Scrap sale	1,96,97,493
Total amount shown as waste and scrap sale in ITR	2,02,58,024

It is submitted that the figures of Rs.2,35,97,690/- include figures of GST of Rs. 29,61,967/- and also sale of boiler for Rs.9,38,230/-. Further, the figures of Rs. 2,02,58,024/- include sale of scrap of Rs. 1,96,97,493/- and job work of Rs.3,28,820/- and duty drawback claim of Rs. 2,31,711/-. These figures very clearly establish that the sale of scrap is only of Rs.1,96,97,493/- and the same has been duly accounted for. On the sale of scrap, GST is of Rs. 29,61,967/-. The Learned PCIT has wrongly assumed the figures of sale of scraps at Rs.2,35,97,690/- whereas this include sale of scrap for boiler Rs.938230 and GST of Rs.29,61,967/-. The Learned PCIT is wrong in stating that assessee has shown sale of scrap at Rs.2,02,58,204/- in place of Rs.2,35,97,690/-, resulting in alleged under-statement of sale of Rs.33,39,666/-. The explanation of the assessee makes it crystal clear that assessee has fully accounted for the sale of scrap and has charged GST on it. There is absolutely no under-statement of sale of scrap and the assessment did not require to be set aside on this issue.

(iv) Disallowance u/s 14A

It is submitted that in the order passed u/s 263 on 21/3/2023, the Learned PCIT has wrongly worked out disallowance u/s 14A at Rs.1,50,03,512/-. This has occurred on account of confusion and misunderstanding of the facts. The issue is fully explained as under :-

The assessee has shown exempt income of Rs.16,80,179/- and has disallowed expenses of Rs.2,64,488/- u/s 14A. The disallowance

of Rs.2,64,488/- voluntarily made by the assessee includes expenditure directly relating to exempt income of Rs.19001/-, being payment to CDSL and Rs.2,45,487/- being 1% of the monthly averages of investments in accordance with provisions of Rule 8D(ii), which states that an amount equal to 1% of the annual average of the monthly averages of the opening and closing balances of the value of investments income from which does not and shall not form part of total income. A complete working of the same was provided under letter dated 17/2/2023, copy of which is available on Paper Book cited supra.

It is submitted that investment in shares and tax free bonds as on 31/03/2018 is of Rs.2,67,62,750/- (Rs. 74,24,750 equity shares and Rs.1,93,38,000 in tax free bonds). This is the investment from which exempt income is arising. The average of monthly opening and closing balances of investments in these shares and bonds comes to Rs.2,45,48,729/-, one per cent of which comes to Rs. 2,45,487/- and the same has been disallowed. A chart containing the monthly opening and closing balances of investment in shares is enclosed along with the letter dated 17/2/2023 available on Paper Book cited supra (Page 4-15). Thus, the only expenditure disallowance u/s 14A has been correctly worked out and added back in the computation of income. No further disallowance is called for.

It is submitted that in her working, the Learned PCIT has committed an error in considering the investment in mutual funds of Rs.59,57,58,286/- as part of the investments yielding exempt income whereas assessee has explicitly mentioned in the letter dated 17/2/2023 that this investment in mutual funds etc. of Rs.59,57,58,286/- was part of investment whose income shall form part of total income. Hence, the same was wrongly considered for disallowance u/s 14A/Rule 8D. It is because of this mistake that the Learned PCIT has observed in the order u/s 263 that an amount of Rs.64,68,000/- is required to be disallowed, which is wrong.

The second mistake committed by the Learned PCIT is in respect of disallowance of expenditure directly relating exempt income. The Learned PCIT has worked out such expenditure at Rs.88,00,000/-, which she has done taking the total investments as per balance sheet of Rs. 297,67,00,000/- and the same has been distributed and allocated proportionately on investment in bonds and shares of Rs. 64,68,00,000/-. The Pr. CIT has again erred in taking the investment in exempt income at Rs. 6468 lacs which is wrong as it includes investment in mutual funds, income from which is includible in taxable income. It is further submitted that the investments which yield

exempt income are only investments in bond of Rs.1,93,38,000, which is a one-time investment and investment in shares of Rs. 74,24,750/-, which is in three scrips only, viz., SBI, HDFC and IOC. Therefore, these investments do not require any other direct expenditure to be disallowed. The assessee is furnishing complete details of investment in equity shares of Rs. 74,24,750/-. In view of these facts, the Learned PCIT erred in observing that direct expenditure to the extent of Rs.88 lacs required to be disallowed under Rule 8D. It is submitted that the assessee has correctly disallowed the expenditure of Rs.2,64,488/- which includes direct expenditure of Rs. 19,001/- being payment to CDSL.

It is further submitted that this is a case where the investment in shares and bonds of Rs.2,67,62,750/- is fully covered with the capital of the company. The company has got share capital of Rs. 4.32 lacs and accumulated profits of Rs. 113.97 lacs as on 31/3/2018. These are far more to cover the investments in shares and bonds of Rs.2,67,62,750/- generating exempt income. Thus, the assessee did not require any finance or loan for making investments in the shares and bonds of Rs.2,67,62,750/-. This makes it clear that no disallowance of interest is required in so far as investment of Rs.2,67,62,750/- is concerned as the same is fully covered with the share capital and accumulated profits of the company.

It is also submitted that the position of investment in equity shares as on April, 2017 is of Rs.60,35,675/- and as on 31/3/2018, the same is of Rs.74,24,750/-, showing increase of investment in shares of Rs.13,89,075/- (7424750 – 6035675). It is submitted that this fresh investments in shares of Rs. 13,89,075/- is fully covered by the profits made by the assessee during the year, which is of Rs.18.02 lacs. The assessee did not require any loan for making fresh investments in equity shares.

Keeping in view the aforesaid facts, it is the submission of the assessee that the Learned PCIT is not justified in observing that direct expenditure of Rs. 88 lacs and Rs. 64,68,000/- being 1% of investments yielding exempt income was required to be disallowed. The working of the Learned PCIT is faulty. The assessee has correctly disallowed expenditure of Rs.2,64,488/- as per provisions of Sec. 14A read with Rule 8D. There was no case with the Learned PCIT for setting aside the assessment on this issue also. The assessment order passed by the Learned Assessing Officer is neither erroneous nor prejudicial to the interest of revenue on this issue also. The assessee is submitting details of investments as on 31/3/2018, investment in equity of Rs.74,24,750/- copy of Balance sheet and P&L

account disclosing accumulated profits, share capital and profits earned during the year as per Paper Book Page No.47-71.

(v) Mismatch of figures reported in form No. 3 CD and those in the books of accounts

A complete reconciliation is available in the chart enclosed with the reply dated 17/2/2023 (copy of which is available on Paper Book Page No.4-15) which has not been appreciated by the Learned PCIT. The Learned PCIT has simply directed the Learned Assessing Officer to verify and reconcile the figures. No adverse remarks have been given. The assessee has completely reconciled the figures, as such, the order passed u/s 263 on this issue is also not in accordance with law. It is submitted that the Learned PCIT has passed order u/s 263, which is unlawful and unjustified. The assessment order passed by the Learned Assessing Officer on 24/3/2021 is neither erroneous nor prejudicial to the interest of revenue. The order of the Learned PCIT passed u/s 263 deserves to be quashed.

Ground No.4

The assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.

Your Honor is requested to decide the appeal in favour of the assessee by considering the grounds and submission made above and oblige.”

5.1 The Id. AR of the assessee in addition to the written submission so filed submitted before us vehemently that on all the issues the reply has been submitted to the PCIT. The PCIT has not pointed any defects in the detailed replied filed by the assessee and has not substantiated that the order is how termed as erroneous or prejudicial to the interest of the revenue. The Id. AR of the assessee drawing our attention to the reply filed in the proceeding pursuant to section 263 of the Act submitted that the PCIT has not asked for any further details or clarification based on

the information so placed on record. The Id. AR of the assessee submitted on the issue she has not placed on record as to why the submission and details placed on record fulfil the twin condition so as to prove the order to be erroneous and prejudicial to the interest of the revenue. Thus, since all the issues are such that the Id. PCIT is directing the Id. AO to review his order and make a particular enquiry in the opinion of the Id. PCIT. The action is thus, not of an order being prejudicial to the interest of the revenue or held to be erroneous but directing the Id. AO to hold an enquiry as per the will and wishes of the PCIT.

6. The Id DR is heard who has relied on the findings of the lower authorities and submitted that the case of the assessee was selected for complete scrutiny flagging the three issues to be examined. In addition, the Id. PCIT flagged mismatch in the records and the order of the Id. AO is silent on IND AS adjustment as pointed out by the PCIT in para 8.1 of her order. As regards the mismatch on figure of sale of scrap and TCS u/s. 206C the assessee has not furnished the details. Even on the issue of disallowance of interest u/s. 14A Id. DR relied upon the detailed finding of the PCIT and submitted that the order of the PCIT is

detailed and speaking order needs to be sustained based on the merits of the facts discussed in the order.

7. We have heard the rival contentions and perused the material placed on record. We note from the orders of the lower authority that the case of the assessee was selected for complete scrutiny under E-assessment scheme, 2019 on issue of verification of (1) Duty Draw Back (2) ICDS compliance adjustment (3) Disallowance u/s. 40A(7) (Gratuity provision) and the assessment was completed by National e-Assessment Centre, Delhi, (NeAC) u/s. 143(3) read with sections 143(3A) & 143(3B) of the Income Tax Act, at assessed income at Rs. 10,44,75,870/- as against the returned income of Rs. 10,31,88,100/-. On examination of the assessment record Id. PCIT observed that while passing the assessment order the following items on which the order of the Learned Assessing Officer has been found erroneous and prejudicial to the interest of revenue:

1. Disallowance u/s 40(a)(ia) on account of non-deduction of tax u/s 194A on payment of interest ;
2. Duty draw-back of Rs.2,37,335/- has remained untaxed ;
3. Sale of scrap of Rs.2,35,97,690/- have been understated by Rs.33,39,666/-.

4. Disallowance u/s 14A on investments yielding exempt income has not been considered, a sum of Rs. 1,50,03,512/- required to be disallowed u/s 14A as per the working of Learned PCIT.
5. Mismatch of figures reported in form No. 3CD and those in the books of accounts.

Based on these observations the Id. PCIT issued a notice dated 16.02.2023 providing an opportunity to the assessee and in response the assessee filed a detailed reply dated 18.02.2023 the same is reproduced in the order of the Id. PCIT. The Id. PCIT noted that the reply of the assessee has been considered and perused carefully but the same was not found tenable. In her opinion as per finding in para 8.1 to 8.5 on all the five-issue flagged she hold a view that the assessing officer failed to apply his mind and failed invoke the applicable provisions of law. This non action on the part of the Id. AO resulted into passing of an erroneous order by the Id. AO and due to non-application of mind to relevant material and an incorrect assumption of facts which is prejudicial to the interest of the revenue and hence considered liable for revision u/s. 263 of the Act. Considering this aspect of the matter the order of the Id. AO liable for revision under the explanation (2) clause (b) and cluse (a) of section 263 of the Act the order of the Id. AO was set a side.

7.1 In response to the notice issued, on the flagged five issues the assessee submitted a written submission dated 17.02.2023. The issue and the reply are dealt with here in subsequent para to check whether based on the facts placed on record the order of the Id. AO is erroneous and prejudicial to the interest of the revenue or not.

7.2 As regards the contention of the PCIT that the assessee has claimed interest expenses of Rs. 4,08,08,396/- and out of that amount Rs. 3,89,47,418/- was considered was liable to TDS u/s. 194A of the Act and the assessee has made TDS on 37,73,317/- only thus as per provision of section 40(a)(ia) of the Act, 30 % of this amount liable to disallowed. Against this contention the assessee replied that the contentions raised is factually incorrect and the assessee has furnished the following breakup to the applicability of TDS on interest. The breakup of expense claimed under the head interest is as under :

Particulars	Amount (Rs)	Remarks
Interest paid on term loans to banks	1,85,18,197	TDS not applicable
Interest paid to Banks on cash credit limits (HDFC&SBI)	1,58,76,990	TDS not applicable
Interest paid to government departments	30,022	TDS not applicable
Interest on unsecured loans	37,72,317	TDS deducted
Interest paid to others (below TDS limit)	5,887	TDS not applicable
Total	3,82,03,413	
Add : IND AS adjustments	10,69,246	

Add : Bank charges paid as processing fee to banks	15,35,737	
Total interest paid as per Balance sheet and shown in ITR schedule P&I IND as AT s.No.43(iii)	4,08,08,396	

Against this issue the Id. PCIT noted in her order that the assessee has not furnished / provided single documents in support of its claim. She further noted that in absence of supporting documents claim of the assessee not accepted. We note on the record that the assessee is a limited company subjected to the various audit under the companies Act and Income tax Act. This non compliance of the provision of law certainly flagged in the audit reports. The observation of the Id. PCIT did not pin point this aspect which is already on record. The assessee has taken the loan is already appearing in the balance sheet of the assessee. Thus the information which are already on record is not appreciated and the Id. PCIT rejected the claim of the assessee merely writing that the claim is not supported with the documents. We note from the above chart submitted by the assessee that the PCIT should have appreciated the fact corroborating the evidence already on record that the interest has been paid on loans taken from bank in the form of term loan and cash credit obtained by the assessee. The Id.

PCIT should have called for the specific details from the assessee if the claim of the assessee based on the details is in the opinion of the Id. PCIT is not proved. The assessee is limited company and loan taken in the form of term loan and cash credit is already reflected in the balance sheet and profit and loss account placed on record. Based on these details the Id. PCIT did not dispute the amount of loan taken from the banks (APB-57) i.e. IDBI Bank, Punjab National Bank and HDFC Bank. Since the interest paid on this entity being bank the assessee has no obligation to make the withholding of the tax on the interest paid. The Id. AO at para 4 noted as under

4. On verification of audit report, it is noticed that the auditor in the Tax audit report has reported that an amount of Rs. 12,87,768/- is disallowable.....

The above observation speaks that the Id. AO has gone through the details placed on record including the audit report under the companies and tax audit report under the Income Tax Act. Thus, considering the information already on record the bench has taken into consideration all the facts and circumstances for the case and noted that in this case so as to the question of interest of disallowance of interest on account of non-deduction of TDS, the order of the Id. AO is neither erroneous nor prejudicial to the

interest of the revenue. Based on the information already on record the Id. AO has taken a view that since the loans are taken from the bank the applicability of the TDS need not be considered or discussed. Even there is no adverse remark so far as to the issue is concerned which clearly evidence the position of view taken by the Id. AO. Thus, the Bench has taken into consideration all the evidences placed on record, facts of the cases and arguments advanced and considering the facts of the case and circumstances for the case we note that on this issue the observation of the Id. PCIT is general and does not hold the order of the Id. AO to be erroneous insofar as prejudicial to the interest of the Revenue. Based on the information available on record it is evident that a due enquiry was made by the AO during the assessment proceedings or a possible view was taken after considering the reply filed by the assessee, or details were furnished during assessment proceedings by way of audited financial statements and Form 3CB-CD which clearly evidences the position taken by the assessee and was accepted by the AO as no disallowance/ addition was made by him. Thus, the assessment order passed by the AO is after consideration of the information filed during assessment proceedings which is as mentioned by the AO himself in the

assessment order and therefore the order cannot be said to be erroneous and prejudicial to the interest of the revenue even by virtue of explanation 2(a) and 2(b) of section 263 of the Act and in such a situation, we find that the order of the Id PCIT is bad in law and the Bench does not concur with the findings of the Id. PCIT on the issue considering the facts and discussion so recorded here in above.

7.3 So far as the issue raised with respect of the duty draw back duty draw back the Id. AO has issued a notice and the assessee submitted a reply dated 07.10.2019 wherein the assessee has attached the required documents and submitted that the duty draw back claim is on account of export made by the assessee and the relevant papers were filed. The assessee also vide letter dated 16.02.2021 submitted following details

“4. With respect to the Exports reported we are giving below the following details:-

- i. Sales ledger of Export sale showing invoice no. date & value, name of Party, description of items exported as Annexure-II.
- ii. Commercial Invoice No. OS/EXP/003/2017-18 dt 29.5.17 for US Dollar 32401.20 (Annexure-III).
- iii. Name of Party & country-Rabindra Hosiery and Garments cum Emroidery Industries, Nepal.

- iv. Description of items exported – Man made fibres Spum Yarn-24 PSF 100% DYED BLACK AND 24 PSF 100% DYED YARD (MILLANGE).
- v. FOB value Rs. 2063956.44 (Rs. Twenty Lacs Sixty Three thousand Nine Hundred Fifty six & paise forty four only.)
- vi. Duty Draw Back claimed and sanctioned- Duty draw back claimed and sanctioned for Rs. 237355/- as per Shipping bill of Export enclosed (Annexure-IV).
- vii. Details of Bank account in which Duty Draw received-Name of Bank-Punjab National Bank, Nehru Place New Delhi. Our CC account no. 1529008700000893 and statement of Bank dt. 15.3.18, where Duty Draw Back credited to our account enclosed as Annexure-V.
- viii. Director General of Foreign Trade E-Bank Realization Certificate showing payment realized in our Bank account.”

Based on these papers the Id. AO satisfied so far as to the issue is concerned. Even before the Id. PCIT categorically submitted that the assessee had disclosed duty drawback claim of Rs. 2,31,711/- during the year and remaining amount of Rs. 5,644/- pertain to A. Y. 2017-18. The assessee also submitted where the amount offered is reflected in the ITR. On this issue the Id. PCIT observed that the amount is shown as reflected including the duty draw back is under the head “other operating revenue”. However, on verification of record Id. PCIT found that the assessee had made sales of scrap of 2,35,97,690/- on which TDS has been made u/s. 206C of the Act. Therefore, the contention of the assessee duty drawn back shown in ITR not considered. This claim of the assessee is supported by the documents placed on record,

reflected the amount in the audited accounts and the ITR filed by the assessee and therefore, we note that assessment order passed by the AO is after consideration of the information filed during assessment proceedings after raising the query on the issue which is as per the proof of reply filed by the assessee to AO on 07.10.2019. Based on the issue flagged and considering the explanation furnished the bench note that so far as to the issue on hand is in question the order cannot be said to be erroneous and prejudicial to the interest of the revenue even by virtue of explanation 2(a) and 2(b) of section 263 of the Act and in such a situation, we find that the order of the Id PCIT is silent and does not clearly deal with the facts of the case and did not establish that the order of the Id.AO is erroneous and prejudicial to the interest of the revenue and therefore, Bench does not concur with the findings of the Id. PCIT on the issue considering the facts and discussion so recorded here in above that the merely the amount is shown under the operating revenue and other scrap sales receipt is not internally tallied with that of the figure of the amount shown in 3CD.

7.4 As regards the difference appearing in the amount of sales of scrap recorded by the assessee. The brief fact is that the Id. PCIT

noted that the auditor has reported Rs. 2,35,97,690/- ( which includes taxes such as GST, excise etc.) under clause 34(a) of Form 3CD at Sr. no. 7 under column titled as “Total amount on which tax was required to be deducted or collected. Out of (4)” and the said taxes are duly forming part of balance sheet. Whereas sales of scarp considered in the ITR amounts to Rs. 1,96,97,492/-. Thus Id. PCIT hold that there is under reporting of sales of scrap in the ITR filed by the assessee. The Id. AR of the assessee submitted that the issue was not flagged before the Id. AO and therefore, Id. PCIT is extending the scope of enquiry of the Id. AO. Without prejudice the Id. AR of the assessee argued that the assessee has filed the evidence and reconciled the alleged difference. By submitting as under :

This issue has been totally misunderstood by the Learned PCIT. It was submitted by the assessee under letter dated 17/2/2023 that there was sale of scrap of Rs.1,96,97,493/- on which GST of Rs.29,61,967/- was charged. Further, there was also scrap sale of boiler of Rs.938230/- which was part of plant and machinery, hence, the same was considered in fixed assets. These items total to Rs.2,35,97,690/-. (Rs19697493+2961967+938230). In view of this, the assessee has correctly accounted for the sale of scrap. It is further submitted that the sale of scrap has been disclosed in ITR at Rs.2,02,58,024/-

The bench noted from the order of the Id. PCIT that while Id. PCIT has merely noted that the alleged difference but did not consider the reply of the assessee and did not deal with the same while

passing the order under attack and merely choose to show case the alleged difference without considering the submission before him. Thus, we note from the explanation that there is no under reporting of the income by the assessee and in fact the same has been duly reconciled by the assessee and the said reconciliation submitted is not disputed by the Id. PCIT and therefore, the bench note that so far as to the issue on hand the order cannot be said to be erroneous and prejudicial to the interest of the revenue even by virtue of explanation 2(a) and 2(b) of section 263 of the Act. There is not satisfaction to make it clear that the order of the Id. AO is erroneous or prejudicial to the interest of the revenue. Thus, in such a situation, we find that the order of the Id PCIT does not speak that how the order of the Id. AO is erroneous and prejudicial to the interest of the revenue, hence Bench does not concur with the findings of the Id. PCIT on the issue considering the facts and discussion so recorded here in above.

7.5 The next issue that is subjected by the Id. PCIT in the proceeding u/s. 263 of the Act is that in the year under consideration the assessee has earned exempt income of Rs. 16,80,179/- which comprise of dividend income of Rs. 2,35,816/-

and interest on tax free bonds of Rs. 14,44,363/-. Further the assessee made disallowance u/s. 14A r.w.r. 8D of the Act amounting to Rs. 2,64,488/-. Based on this information available on record the Id. PCIT noted that the no details have been furnished as to how this amount of disallowance so made was computed and in the absence of the computation the Id. PCIT noted the above disallowance disallowance computed under Rule 8D(2)(ii), the direct expenses in the form of interest/finance cost are also required to be computed under Rule 8D(2)(i). Total finance cost claimed by the assessee in accounts is of Rs. 408 lakh. Total of assets in the balance sheet are of Rs. 29767 lakh, thus if the amount of finance cost is distributed/allocated towards investment in equity/MFs/bonds at Rs. 6468 lakh, the proportionate finance cost attributable to average investment in MFs would be Rs. 88 lakh ( $408 \times 6468 / 29767$ ). As such total disallowance required to be made u/s 14A of the Act should have been Rs. 88,00,000/- + Rs. 64,68,000/- = Rs. 1,52,68,000/- instead of assessee disallowed at Rs. 2,64,488/- only. Thus, the balance amount of Rs. 1,50,03,512/- is required to be disallowed u/s 14A of the Act.

On this issue the Id. AR of the assessee submitted that the issue was not flagged before the Id. AO and therefore, Id. PCIT is extending the scope of enquiry of the Id. AO. Without prejudice the Id. AR of the assessee argued that the assessee has shown exempt income and considered the disallowance in accordance with the provision of law. He further submitted that the addition u/s 14A cannot be made When mixed funds (interest bearing and interest free) are available, and payment is made out of that mixed fund, the investment must be considered to have been made out of the interest free funds. It is well accepted principal established by various court judgments referred hereinafter that when mixed funds (interest bearing and interest free) are available, the right of appropriation is vested with the assessee. It is right of the assessee to appropriate interest free funds to exempt income earning investments. Assessee's own funds i.e. equity (Rs. 432 lacs and reserves (Retained earning 11397 lacs) amount to Rs. 11,829/-Lacs which is much more than the value of current and non-current investments as per the audited financial statements. So, no borrowing cost has been incurred towards purchase of this Investment generating the exempt income. There is no finding to the contention raised by the assessee in the order of the PCIT.

The Id. AR of the assessee also based on the written submission argued that investment in shares and tax free bonds as on 31.03.2018 is Rs. 2,67,62,750/- (Rs. 74,24,750/- equity shares and Rs. 1,93,38,000/- in tax free bonds) from the exempt income arise and the 1 % of the said amount was disallowed. The Id. AR vehemently based on the written submission submitted that the PCIT has committed an error in considering the investment in mutual funds of Rs. 59,57,58,286/- as part of investment yielding exempt income but in fact the income of the mutual fund forms part of total income and hence the same should be excluded and thus based on that an amount of Rs. 63,68,000/- computed is against the facts. The second issue / mistake that PCIT has worked out disallowance of Rs. 88,00,000/- taking total investment as per balance sheet of Rs. 2,97,67,000/- and the same has been distributed and allocated proportionality on investment in bond and shares of Rs. 64,68,00,000/-. Here also the PCIT has included the investment in mutual funds income from which is includible in taxable income. Thus, the Id. AR of the assessee submitted that investment in bond of Rs. 1,93,00,000/- which is one time investment and investment in shares of Rs. 74,24,750/- invested in the shares of SBI, HDFC and IOC does not require any other direct

expenditure to be disallowed. The position of investment in equity shares as on 31.03.2017, the same is of Rs. 60,35,675/- and as on 31.03.2018, the same is of Rs. 74,24,750/-. The increase of Rs. 13,89,075/- is covered by the investment of profit of the assessee for the current year and there is no loan taken to make this investment. Thus, the observation of the PCIT that direct expenditure of Rs. 88,00,000/- and Rs. 64,68,000/- is found fault as discussed and disallowance of Rs. 2,64,488/- and Rs. 19,001 being the CDSL payment is correct and on this aspect the order of the Id. AO is neither erroneous nor prejudicial to the interest of the revenue. The bench note from the explanation that there is no error of the Id. AO accepting the disallowance made the assessee and in fact the same has been duly justified by the assessee and there is contradiction of the facts argued by the assessee before PCIT but she has not considered the submission on its merits and hold the order erroneous which we note that same is not erroneous and prejudicial to the interest of the revenue even by virtue of explanation 2(a) and 2(b) of section 263 of the Act. Thus, in such a situation, we find that the order of the Id PCIT does not speak that how the order of the Id. AO is erroneous and prejudicial to the interest of the revenue after considering the explanation of the

assessee. Therefore, bench does not concur with the findings of the Id. PCIT on the issue considering the facts and discussion so recorded here in above and after considering the decision in the case of **South India Bank Ltd v/s Commissioner of Income Tax [2021] 438 ITR 1 (SC)** and Hon'ble Supreme Court in the case of **Commissioner of Income Tax (Large Tax Payer Unit) Vs. Reliance Industries Ltd, (2019) 410 ITR 466 SC** where a Division Bench expressly held that where there is finding of fact that interest free funds available to assessee were sufficient to meet its investment it will be presumed that investments were made from such interest free funds.

7.6 The Id. PCIT based on the figure disclosed in the ITR and with that of the figure mentioned in the statutory auditor form no. 3CD noted in certain head the figure shown in the ITR and amount reported in clause 34(a) reported mismatch and observed that the Id. AO has not deemed it fit to reconcile the differences. On this issue the Id. AR of the assessee objected that the Id. PCIT is trying to extent the scope of scrutiny assessment by raising the issue which were not before the Id. AO. The difference of interest and sale of scrap is already discussed herein above on a separate

point and in respect of the rent expenses the assessee submitted before the PCIT that rent expenses include godown rent and office rent and the both expenses in 3CD jointly reported and in ITR the same is shown independently. As regards the technical or professional fees the same is also shown in ITR at two place one as audit fees and another at professional fees others. Same is the case of commission expenses it is shown partly under the commission others and commission in Miscellaneous expenses. This aspect of the facts presented in the submission of the assessee is not found mentioned or discussed so as to establish that the order passed by the Id. AO is erroneous and prejudicial to the interest of the revenue. Thus, bench note from the explanation that there is no error of the Id. AO though the issue was not subject matter on hand before the Id. AO and based on the explanation made available before the Id. PCIT we note that the Id. PCIT has not taken into consideration to the submission of the assessee and has not established on its merits to hold the order erroneous which we note that same is not erroneous and prejudicial to the interest of the revenue even by virtue of explanation 2(a) and 2(b) of section 263 of the Act. Thus, in such a situation, bench does not

concur with the findings of the Id. PCIT on the issue considering the facts and discussion so recorded here in above.

8. Based on the discussion we see that the order of the Id. AO on the issue for selection obtained the information made certain disallowance as required and after taking into consideration the submission and evidence placed on record by the assessee taken a plausible view on the issues on hand. Thus, the provision of section 263 of the Act nowhere allow to challenge the judicial wisdom of the Id. AO or to replace the wisdom of the PCIT in the guise of revision unless the view taken by the Id. AO is not at all sustainable in the law and to invoke the provision of section 263 the twin condition needs to be satisfied by the Id. PCIT which we note that is absent on the issues raised. The extent of the enquiry can be stretched to any level by forcing the AO to go through the assessment process again and again and that case there cannot be finality of the issue. The bench further note that the prerequisite exercise of jurisdiction by the learned PCIT under section 263 of the Act is that the order of the AO is established to be erroneous in so far as it is prejudicial to the interest of the Revenue. The Id. PCIT has to be satisfied of twin conditions, namely (i) the order of

the AO sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If any one of them is absent i.e., if the assessment order is not erroneous but it is prejudicial to the Revenue, provision of section 263 cannot be invoked. This provision cannot be invoked to correct each and every type of mistake or error committed by the AO; it is only when an order is erroneous as also prejudicial to Revenue's interest, then the provision will be attracted. An incorrect assumption of the fact or an incorrect application of law will satisfy the requirement of the order being erroneous. The phrase 'prejudicial to the interest of the Revenue has to be read in conjunction with an erroneous order passed by the AO. Every loss of revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. It is pertinent to mention that if the AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with which the PCIT does not agree, it cannot be treated as an erroneous order and it is prejudicial to the interest of the Revenue, unless the view taken by the AO is totally unsustainable in law. In this process even the AO has no power to review his own order. In this regard, we draw strength from the

decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT (2000) 159 CTR (SC) 1: (2000) 243 ITR 83 (SC). We also draw strength from the decision of the Hon'ble Supreme Court in the case of CIT vs. Max India Ltd. (2007) 213 CTR (SC) 266: (2007) 295 ITR 282 (SC) wherein it was held that:

"The phrase 'prejudicial to the interests of the Revenue' in s. 263 of the IT Act, 1961, has to be read in conjunction with the expression 'erroneous' order passed by the AO. Every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interests of the Revenue. For example, when the AO adopts one of two courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the AO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the Revenue, unless the view taken by the AO is unsustainable in law."

Thus, based on this decision it is also noteworthy to mention that one of the pre-requisite before invoking S. 263 and the allegation of the Ld. PCIT is that there has been incorrect assumption of fact and law by the Assessing Officer. However, despite our deep and careful consideration of the material on record including the finding recorded in the subjected Assessment order and in the findings recorded in the order under challenge, considering on all the issues flagged by the Id. PCIT we do not find any incorrectness and incompleteness in the appreciation of facts made by the AO. In the light of these observations, we do not agree in the finding recorded by the PCIT and even on facts we have discussed on each flagged

issue that there is no error or prejudice caused to the revenue and does not attract the clause (a) or (b) to explanation 2 of section 263 of the Act and thus, it is nothing but a change of opinion and Id. PCIT intend that the enquiry should have been done in the light of the his view which is not permitted in the eyes of the law. In the light of the aforesaid discussion, we hold that the order of the PCIT is not in accordance with the provisions of section 263 of the Act and thus the same is quashed.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 12/09/2023

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 12/09/2023

\*Ganesh Kumar, PS

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

1. अपीलार्थी / The Appellant- APM Industries Ltd., Alwar
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-01, Alwar
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 203/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar