

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**BEFORE: DR. S. SEETHALAKSHMI, JM  
&  
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA No. 23/Jodh/2022**  
**(ASSESSMENT YEAR- 2015-16)**

Jai International G-1/202 G-1/202, Udyog Vihar, Sukher	Vs	PCIT, Udaipur
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. AAAFJ 7582 Q</b>		

<b>Assessee By</b>	Sh. Anil Sharma, C.A.
<b>Revenue By</b>	Sh. Lovish Kumar, CIT-DR
<b>Date of hearing</b>	04/07/2023
<b>Date of Pronouncement</b>	26/09/2023

**ORDER**

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the Principal Commissioner of Income Tax, Udaipur dated 04.02.2021 [here in after (ld. PCIT)] for assessment year 2015-16 which in turn arise from the order dated 20.12.2017 passed under section 143(3) of the Income Tax Act, by the DCIT, Circle-02, Udaipur.

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

- “1. That the order passed u/s 263 of the I.T. Act, 1961 is bad in law and on facts.*
- 2. That the Hon’ble PCIT, Udaipur has grossly erred by passing revision order u/s 263 saying that the assessment order passed u/s 143(3) of the Act is found erroneous and prejudicial to the interest of revenue.*
- 3. That the assessee reserves to add, alter, amend, delete or to withdraw any of the grounds of appeal on or before the date of hearing.*
- 4. That the Hon’ble PCIT has not given any specific instance about rejecting the details submitted by us in response to their query.*
- 5. That the Hon’ble PCIT has not given any specific reason/speaking order contradicting case laws submitted by us. The Hon’ble PCIT only says that the facts are different.”*

3. The fact as culled out from the records is that the assessee furnished its return of income (e-return) on 30.09.2015 declaring total loss at Rs. 87,80,085/-. The case was selected for scrutiny through CASS under **“limited scrutiny”** and notice u/s 143(2) dated 01.08.2016 was issued which was served upon the assessee fixing the case for hearing on 16.08.2016. Due to change of incumbent another notice u/s 143(2) and notice u/s 142(1) along with questionnaire was issued on dated 06.06.2017 which was served upon the assessee fixing the case for hearing on 12.06.2017. The assessee firm is engaged in the business of manufacturing and sale of marble/granite slabs, tiles. During assessment proceedings, the assessee was asked for the detail of payment made to related

persons u/s 40A(2)(b) of the I.T. Act and also provided the reason for difference in amount paid u/s 40A(2)(b) in Audit Report and ITR. During the assessment proceedings, assessee was asked to reason for increase in sundry creditors. In response AR of the assessee submitted the list of sundry creditors along with the copy of ledger accounts also stated that some of the creditors have been written off in subsequent financial years on account of cessation of liability. Assessee submitted confirmations from major creditors which are placed on record during the assessment proceeding. Considering the reply of the assessee the assessment was completed on 20.12.2017 accepting the return of income of the assessee.

4. On culmination of the assessment proceeding the Id. PCIT called for the assessment records for examination. On examination the Id. PCIT noted that the case was selected for limited scrutiny with one of the reasons i.e. "large increase in sundry creditors with respect to total turnover as compared to preceding year". The Id. PCIT further observed that during the year under consideration, the assessee has shown sundry creditors of Rs. 4,34,58,532/- but the assessee did not provide confirmations, PAN and address of the major sundry creditors

to the AO during the course of assessment proceedings for examining the creditworthiness and genuineness of such creditors. The sundry creditors shown by the assessee are in respect of purchase creditors as well as creditors for expenses. The Id. PCIT observed that the Id. AO failed to examine this issue properly and the assessment order has been passed without making inquiries or verification which should have been made. Based on these observation Id. PCIT issued a notice dated 19.11.2020 proposing the revision of the order u/s. 263 of the Act.

4.1 In response to the notice for revision of order the assessee filed reply on 22.12.2020 contending that the order of assessment is not erroneous and prejudicial to the interest of revenue. The assessee further submitted that no order shall be passed under section 263 of the income tax act, after the end of the two-year from the end of the financial year, in which the orders sought to be revised was passed, as the limitation period had expired on 31<sup>st</sup> March 2020. Further the learned AR of the assessee enclosed confirmation of certain parties and submitted that due to poor financial position of the assessee creditors cannot be paid off and relations are also disturbed with some

of the parties. Hence, these parties or not providing confirmations even after continuous reminder.

5. As regards the limitation the Id. PCIT rejected the plea of the assessee that the time was extended time limit by the ministry on account of covid 19. So far as merits of the case the Id. PCIT observed that the assessee has not only failed to furnish the confirmation of creditors shown during the year in the assessment proceeding but also failed to file the confirmation in the proceeding u/s. 263 of the Act. The Id. PCIT noted in the order that most of the creditors are having almost no transaction during the year. The Id. PCIT also noted that some of the confirmation filed are not original one. Based on these comments he contended that based on this information the genuineness and creditworthiness of the sundry creditors not verifiable and taken a view that the assessee failed to discharge its onus and Id. AO failed conduct proper verification and independent enquiries in the cases of all sundry creditors and also verify the books of account along with supporting evidences and based this observation he directed the Id. AO to pass fresh

assessment order. The relevant part of the observations the Id. PCIT is reproduce here in below :

"6. I have carefully examined the written submission of the A.R. of the assessee. The contentions of the A.R. of the assessee have been considered but the same are not acceptable. It is useful to refer to the Explanation-2 below section 263(1) inserted w.e.f. 01.06.2015 by Finance Act, 2015, which provides

"Explanation 2.- For the purpose of this section, it is hereby declared that an order passed by the Assessing officer 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 of Commissioner, -

- (a) the order is passed without making inquiries or verification which should have been made, -
- (b) the order is passed allowing any relief without inquiring into the claim
- (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119, or
- (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdiction High Court or Supreme Court in the case of the assessee or any other person."

7. The assessment order u/s 143(3) of the IT. Act for the AY. 2015-16 dated 20.12.2017 was passed by the Assessing Officer in this case, without making proper enquiries and there is lack of verification on the issue of sundry creditors, irrespective of the fact that this was one of the key reason for scrutiny selection. Further, the undersigned has issued the notice u/s 263 of the IT. Act after being satisfied that the case of the assessee is a fit case for issue of notice u/s 263 of the I.T. Act as it is erroneous and prejudicial to the interest of revenue. As regards the contention of the Id. A.R. of the assessee regarding limitation expiring on 31.03.2020, it is pertinent to mention here that the same has been extended upto 31.03.2021. The Ministry of Law and Justice (Legislative Department) as per the Gazette of India dated 31.03.2020 through Ordinance, 2020 No. 2 of 2020 initially extended the date of time limit from 31.03.2020 to 30.06.2020. Further as per Gazette of India, Ministry of Finance (Department of Revenue), CBDT as per Notification dated 24.06.2020 extended the date of time limit from 30.06.2020 to 31.03.2021. In view of this, the contention of the assessee that order has to be passed / completed upto 31.03.2020 is not acceptable. Now coming to the merits of the case, it is pertinent to mention here that the assessee has not only failed to furnish the confirmation of creditors shown during the year at the time of assessment proceedings but also during the course of proceedings u/s 263 of the IT. Act. Most of the creditors are having almost no transactions during the year. On examination of so called

confirmations filed before the undersigned it is seen that most of these are photocopy of ledger confirmation and not original confirmations. Further as regards the remaining creditors, no details such as complete address, PAN, etc. have been furnished. Hence, in view of the above, the genuineness and creditworthiness of the sundry creditors cannot be verified. The assessee has failed to discharge its onus as regards the amount credited in its books of accounts. Further the Id. A.R. has cited certain judicial pronouncement but the facts of the case are not identical with the citation made by the A.R. hence the same is not acceptable. Hence, assessment order u/s 143(3) of the I.T. Act for the A.Y. 2015-16 dated 20.12.2017 has thus been rendered erroneous and prejudicial to interest of revenue on the issue of non-verification of sundry creditors. The same is therefore set-aside/ cancelled and restored back to the file of AO on this issue with the direction to conduct proper verification and independent enquiries in the cases of all sundry creditors and also verify the books of account alongwith supporting evidences and based on such verification and enquiry make necessary addition to the total income of the assessee in accordance with the provisions of Income Tax Act in those cases where genuineness of creditors are not found to be genuine and accordingly pass fresh assessment order.”

6. 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 the Id. AR appearing on behalf of the assessee has placed on record their written submission which is extracted in below;

1. FACTS OF THE CASE : The relevant facts in this case are as under :

1. The assessee is a partnership firm carrying on business of manufacturing, trading and exports of marble, granite and other stones.
2. The assessee has filed its return of Income for AY 2015-16 on 30/09/2015 claiming loss of Rs 87,80,085/-.
3. The case was selected for LIMITED SCRUTINY under CASS, mainly for Sundry creditors, as one of the issues identified for examination. The

Assessing Officer issued a query letter (Refer Annexure – 1), The assessee replied to all his queries & submitted all account copies from his books & also many confirmations. In few cases where confirmations were not available, the assessee produced bills & vouchers etc. for the satisfaction of assessing officer. The order u/s 143(3) dated 20/12/2017 has been passed with NIL additions after making complete enquiry and verification of sundry creditors. (Refer Annexure – 2).

The Hon,ble PCIT exercising power under Section 263 of the Act issued a notice dated 19/11/2020 (Annexure – 3) on the basis of Audit objection and ask to submit a list of sundry creditors above Rs 1,00,000/- in aggregate Rs. 98,10,444/- and list of expenses of Rs 29,78,166/-. The notice was duly replied by the assessee along with objection that all the details and documentary evidence in regard to the creditors for purchases and expenses were already submitted before the Assessing Officer in reply to the queries raised by the Assessing Officer.

Assessee also replied by letter dated 08/12/2020 (copy attached as Annexure 4 ) stating that most of them have same closing balance as opening balance. Here we would like to state that assessee is in great financial stress, so much so, they have sold their home and factory, closed their mines and not in position to pay the creditors.

4. Assessee also raised an objection against issue of notice u/s 263 stating that no order can be passed u/s 263 after the end of two years from the end of the financial year in which the order sought to be revised was passed.
  5. The case was set aside and restored back to the AO vide order dated 04/02/2021, by the Honorable PCIT, Udaipur with the direction to conduct proper verification and independent enquiries in the cases of Sundry creditors. (Refer Annexure – 5)
  6. Aggrieved with the revision order u/s 263 of the IT Act, the assessee has preferred an appeal before your good self.
2. **GROUND OF APPEAL :**
1. The Hon'ble Principal CIT was not justified in invoking the provisions of Section 263 of the Income Tax Act, as the order passed by the Assessing Officer was neither erroneous nor prejudicial to the interest of the revenue.

The Hon'ble PCIT contended in his order that

- (a) The assessment order u/s 143(3) of the I.T. Act for the AY 2015-16 dated 20/12/2017 was passed by the Assessing Officer in this case, without making proper enquiries and there is lack of verification on the issue of sundry creditors.
- (b) It is pertinent to mention here that the assessee has not only failed to furnish the confirmation of creditors during the course of assessment proceedings but also during the course of proceedings u/s 263 of the I.T. Act. and hence order passed by Id AO u/s 143(3) is found erroneous and prejudicial to the interest of the revenue.

During assessment proceedings, the Assessing Officer raised several queries in regard to creditors for purchases and expenses. As on 31.03.2015 in aggregate there were outstanding creditors amounting to Rs.4,34,58,532/- (for purchases – Rs 2,98,43,389/- and for expenses – Rs 1,36,15,143/-).

*The AO has specifically asked for details of sundry creditors by notice u/s 142(1) dated 06/06/2017 in point no 7 & 8 of the questionnaire reproduced below:(Refer Annexure 1)*

1. *Hard Copy of Return of Income with all schedules and computation of Income.*
2. *Form 3CD along-with audited Balance Sheet & P/L Account.*
3. *Comparative chart of G/P & N/P for 3 Years showing all heads.*
4. *Bank Account details of assessee:-*

Name & address	Account No.	Type of A/c	Opening Balance	Closing Balance
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5. *Please provide detail of payment made to related persons U/s 40A(2)(b) of I.T. Act. Please furnish the reason for difference in amount paid U/s 40A(2)(b) in Audit Report and ITR, if any.*
6. *Please provide detail of custom duty paid during the year. Please furnish copy of Return of custom duty filed for the year.*
7. *Please provide details of the sundry creditors, including the accounts squared up during the year in the following format.*

Name &	Opening	Details of	Details of	Closing	Nature of	Whether
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address of the creditor	balance (Debit Credit)	transactions debit	transactions credit	balance (Debit Credit)	services rendered/ transaction	person covered u/s 40A(2)(b)
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8. *If there is any increase in sundry creditors please provide detailed reason of increase in sundry creditors with supporting evidence.*
9. *Please provide details of duty draw back received during the year.*
10. *Please provide complete detail of foreign remittance along-with copy of form 15 CA. Please provide source of all foreign remittance along-with supporting documents.*

All the queries were duly replied by the assessee by furnishing the entire details along with the documentary evidence. Please note that during assessment proceeding, confirmations/ ledger copy for most of the creditors were submitted and assessee also produced bills/invoices before the AO for verification. Assessee had submitted detailed explanation in writing and also explained the reasons for " Why some of the parties not giving confirmation". As assessee was not in a position to make payment to creditors due to bad financial position, some of the parties refused to give confirmations. After detailed discussion with the AO regarding sundry creditors and after considering and appreciating the facts presented in front of AO, he passed an order with NIL additions.

Please note out of total creditors of Rs 4,34,58,532/- (for purchases Rs 2,98,43,389/- and for expenses Rs 1,36,15,143/- ), creditors worth of Rs 2,84,62,639/- were opening balances bought forward from FY 2013-14 and remaining creditors of Rs.1,49,95,893/- are related to current year purchases and expenses. Most of the creditors are regular creditors with whom assessee is associated since long and having transactions year on year basis.

#### Summary

Total creditors       Rs. 4,34,58,532.00  
Old Creditors         Rs.2,84,62,638.35  
Current Creditors    Rs. 1,49,95,893.65

Current creditors for purchases are Rs.1,35,66,617.00 (Confirmations amounting to Rs 1,21,78,662/- are submitted) and for Expenses are Rs.14,29,276.65 (major outstanding amount pertains to Electricity Board (AVVNL) amounting to Rs 6,15,944/- and Confirmations amounting to Rs 1,88,909/- are submitted).

We are enclosing list of current creditors for whom we have submitted confirmations or produced purchase/expenses bill during assessment proceedings before the AO, Udaipur.  
(Refer Annexure- 6 )

As directed by Hon'ble Tribunal, we are submitting certificate regarding confirmations/ purchase bills submitted during assessment proceedings along with True Copy of the confirmations provided by the income tax department. (Refer Annexure – 7)

The AO himself has discussed and clearly spelled out at Pt no 5 of the Assessment order u/s 143(3) dated 20/12/2017 of the I.T. Act, 1961 which is reproduced hereunder:

*“During the assessment proceedings, assessee was asked to reason for increase in sundry creditors. In response the AR of the assessee submitted the list of sundry creditors along with the copy of ledger accounts also stated that some of the creditors have been written off in subsequent financial years on account of cessation of liability. Assessee submitted confirmations from major creditors which are placed on record.”*

After such a specific comment in the assessment order about the issue i.e.sundry creditors there remains no scope to say that AO has not applied his mind. The Ld.PCIT has specified in the revision order that the assessee failed to furnish confirmations of creditors during the assesement proceedings is not correct, it is mere a guess work and assumption.

The AO has applied his mind correctly, appreciated the facts as discussed before him and had come to a reasoned conclusion that no addition was required to be made on this matter.Since the AO has applied his mind to the facts of the case and has raised specific query for sundry creditors, the learned PCIT was not justified in invoking the provisions of section 263 of the Act. The finding of Learned PCIT that confirmations were not provided during assessment proceedings is factually incorrect. Reliance is placed on decisions in CIT Vs. Max India Ltd., 295 ITR 282 (S.C.);CIT Vs. Sunbeam Auto Ltd. 332 ITR 167 (Del).

Further The asseesee's case was also under complete scrutiny for AY 2012-13, 2013-14 and 2014-15 and no additions were made during those years which itself proves the genuineness of creditors. All the creditors are

regular creditors with whom assessee is carrying on transactions. Also note that during the year most of the creditors were outstanding since opening.

*We would like to refer explanation 2 to section 263 of the Act “that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—*

*(a) the order is passed without making inquiries or verification which should have been made;*

*(b) the order is passed allowing any relief without inquiring into the claim;*

*(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*

*(d) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.*

In case of assessee assessment order has been passed after making complete inquiry on the issue and after having examined the replies of the Assessee with due application of mind, it is not the case where no inquiry was made. Therefore, such a case cannot be treated as a case of “no inquiry” and thus invoking of proceedings u/s 263 of the Act is invalid.

We would like to refer following case laws that support our argument which are as under

Merely because from a perfectionist point of view, it is felt that some more enquiries and verifications could have been made by the AO, assessment order cannot be declared to be erroneous and prejudicial to the interests of revenue [Delhi Tribunal Special Bench in the case of Salora International Ltd. v. Addl. CIT [2005] 2 SOT 705 (Delhi) (Trib.)]

The decision of the Assessing Officer cannot be held to be erroneous simply because in his order not make an elaborate discussion in that regard. In ABCAUS Case Law Citation ABCAUS 3597 (2022) (05) ITAT, it was held that if neither the query nor the answers were reflected in the assessment order, this would not by itself lead to the conclusion that the order of the AO calls for interference and revision. Also in CIT v/s Rajasthan Financial Corporation (1996) 134 CTR 145 (Raj) the high court upheld that the tribunal decision was justified in holding that there was no

error prejudicial to revenue for the CIT to invoke his powers u/s 263 of the I.T. Act.

Where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law. The said principal has been reiterated by Hon'ble Court in its subsequent judgment titled as CIT V/s Max India Ltd. (295 ITR 282). Similar principal has been followed by jurisdictional High Court in Grasim Industries Ltd V/s CIT (321 ITR 92).

Further, an assessment order should not be subject to revision u/s 263 merely because another view is possible on the issue decided by the AO. Following judgements including that of the Supreme Court has decided this issue in favour of Assessee: Supreme Court in the case of Greenworld Corporation – [2009] 181 Taxman 111 (SC) Delhi High Court in the case of CIT v. Vodafone Essar South Ltd. – [2012] 28 taxmann.com 273 (Delhi) Delhi High Court in the case of CIT v. Anil Kumar Sharma – [2010] 194 Taxman 504 (Delhi)

Lack of enquiry/no enquiry is different from inadequate enquiry and it is only in case of no enquiry by the AO, Pr. CIT/CIT can exercise jurisdiction u/s 263 of the Act and not in case where the AO has made enquiries as seems appropriate in the facts and circumstances of the case. Reliance is placed on Delhi Tribunal in the case of Braham Dev Gupta v. PCIT – [2017] 88 taxmann.com 831 and Bombay High Court in the case of CIT v. Nirav Modi – [2016] 71 laxmann.com 272 (Bombay) [’s SLP dismissed by SC.]

2. That the first notice u/s 263 of the Act was issued on 19/11/2020 (due date 31/03/2020, extended due date due to lockdown – 30/06/2020, further extended to 31/03/2021

In this regard, the assessee’s submissions are as follows:-

Assessee has raised an objection against notice issued u/s 263 by stating that no order shall be passed u/s 263 after the end of two years from the end of the financial year in which the order sought to be revised was passed. Accordingly the limitation period to pass the order had to expire on 31/03/2020. Assessee would like to highlight that, no

single notice u/s 263 of the act was issued before start of the lockdown ie 25/03/2020 and thus it shows that it was impossible to provide sufficient opportunity of hearing and pass the order till 31/03/2020, had there been no lockdown. The first notice u/s 263 of the Act was issued on 19/11/2020. It exhibits that the revenue has taken undue advantage of the extended limitation period due to lockdown.

3. That the notice u/s 263 of the Act was issued and on the basis of audit objection without any material which would enable to form prima facie opinion that the order passed by the AO is erroneous , in so far as it is prejudicial to the interest of the revenue.

In this regard, the assessee's submissions are as follows:

Various High Court have held that before reaching the conclusion that the order of the Assessing Officer is erroneous prejudicial to the interest of Revenue the PCIT himself has to undertake some enquiry to establish that the assessment order is erroneous and prejudicial to the interest of Revenue. Reliance is placed on the decision of M/s. Amira Pure Foods Pvt. Ltd., v. PCIT in ITA No.3205/Del/2017 and Ahmedabad Tribunal in the case of Torrent Pharmaceuticals Ltd. v. DCIT [2018] 97 taxmann.com 671 (Ahd. – Trib.).

There must be material before the PCIT to hold that an order is erroneous and prejudicial to the interests of revenue and mere change of opinion cannot render the order erroneous.

That assessee has submitted all the required details, confirmations and produce bills of sundry creditors to the Learned AO. The hon,ble PCIT has construed the facts wrongly. Hence without making proper investigation of sundry creditors and without appreciating the facts specified in assessment order that AO has made detailed en considering the contentions of the assessee the PCIT passed an order for revision which is not justifiable.

Even at the cost of repetition we would like to submit once again that at the time of assessment proceedings that assessee is going through extreme financial crisis since many years due to non realization of export debtors, tough market condition. Turnover of the assessee has drastically reduced due to tight financial position that's why creditors were not paid off and they are not providing confirmations. It is very heartily to submit that assessee

has sold his house, factory and mining equipments. However all available confirmations were submitted along with their PAN and address. Also we have produce bills/invoices for verification. Few creditors were also squared off/payment made in next financial year for which ledger copies were attached.

You will appreciate the fact that, assessee case was under complete scrutiny for AY 2012-13, 2013-14 and 2014-15 and no additions were made during those years which itself proves the genuineness of the old outstanding creditors. Also financial statements of the assessee were regularly audited on year basis.

In view of the above submission and on facts and circumstances of the case it is urged that the order passed u/s 143(3) by the Assessing Officer was neither erroneous nor prejudicial to the interest of the Revenue. Hence we request you that the order passed u/s 263 by the hon,ble PCIT of the Act be quashed.

7. The Id. AR of the assessee in addition the written submission so filed also contended that the Id. PCIT has appreciated in the order in para 7 that “most of creditors are having almost no transactions during the year”. Considering that aspect of the matter even the provision of section 41 till the liability is not ceased in the account is not chargeable to tax and assessee has shown sundry creditors on account of the purchase made in the earlier cannot be added even on merits of the case and Therefore, the very jurisdiction assumed by Ld. PCIT is bad in law, as the twin conditions as mandated in the case of Malabar Industrial Co. (Supra) have not been satisfied and it is beyond doubt

that the order of the Ld. AO is not prejudicial to the interest of revenue.

So far as the current year purchase the same is supported by the confirmation, name, address and PAN number there is no whisper in the order of the PCIT that the purchase made by the assessee is not genuine and therefore, for that aspect of the case even the order is not fulfilling the twin conditions as mandated in the case of Malabar Industrial Co. (Supra) have not been satisfied and it is beyond doubt that the order of the Ld. AO is not prejudicial to the interest of revenue.

8. The Id DR is heard who relied on the findings of PCIT and submitted that case was selected on the specific issue which the Id. AO failed investigation and therefore, the order is rightly held erroneous and prejudicial to the interest of the revenue.

9. We have heard the rival contentions and perused the material placed on record. It is not disputed that the case of the assessee for selected for limited scrutiny with one of the reasons i.e. "**large**

**increase in sundry creditors with respect to total turnover as compared to preceding year”.** On this issue of selection criteria on 06.06.2017 the Id. AO issued a notice and vide point no. 7 the Id. AO asked the assessee to provide details of the sundry creditors, including the accounts squared up during the year in a particular format (notice APB-pg-8). The assessee submitted that details and after verifying the details so submitted by the assessee. The Id. AO has taken a plausible view by observing as under:

“5. During the assessment proceedings, assessee was asked to reason for increase in sundry creditors. In response the AR of assessee submitted the list of sundry creditors along with the copy of ledger accounts also stated that some of the creditors have been written off in subsequent financial years on account of cessation of liability. Assessee submitted confirmations from major creditors which are placed on record.

Against this view of the matter the relevant finding of the Id. PCIT in para 7 he has observed as under:

“7. The assessment .....xxxx...In view of this, the contention of the assessee that order has to be passed / completed upto 31.03.2020 is not acceptable. Now coming to the merits of the case, it is pertinent to mention here that the assessee has not only failed to furnish the confirmation of the sundry creditor during the year at the time of assessment proceedings but also during the course of proceedings under section 263 of the Income tax Act. Most of the creditors are having almost no transaction during the year. On examination of so called confirmations filed before the undersigned, it is seen that most of these are the photo copy of ledger confirmation and not original confirmation. Further, as regards the remaining creditors, no details such as complete, address, phone number etc. have been furnished. Hence, in view of the above the genuineness and credit worthiness of the sundry creditors, cannot be verified. The assessee has failed, to discharge its onus as regards the amount credited in its books of accounts. Further the Id. AR has cited certain judicial pronouncement but the fact of the case or not

identical with the citation made by the Id. AR, hence the same is not acceptable. Hence assessment order u/s 143(3) of the Income tax Act for the assessment year 2015–16 has thus been rendered erroneous and prejudicial to interest of the revenue on the issue of non-verification of sundry creditors. Therefore, the same is set aside and cancelled and restored back to the file of AO on this issue with the direction to conduct proper verification and independent enquiries in the case of all Sundry Creditors and also verify the books of account along with the supporting evidences and based on such verification and enquiry make the necessary addition to the total income of the assessee in accordance with the provisions of the Income tax Act in the those cases where genuineness of creditors are not found to be genuine and accordingly pass fresh assessment order.

The bench noted the case of the assessee was for limited purpose the assessee has submitted the details on the issue. Based on the information so received the Id. AO has analyzed the information of the assessee and considered the details placed on record after verifying the same. The assessee submitted all the details before the Id. PCIT for which the Id. PCIT observed that the in some cases PAN number and address is not given. But at the same time has accepted the contention of the assessee that majority of the creditors are carried from the earlier year and having no transaction in the year under consideration even though this facts known to him he has without point out to the error on the part of the Id. AO directed the Id. AO to conduct the fresh enquiry even the Id. AO has recorded his finding on the issue. On careful perusal of the order of the PCIT we not that the finding of the PCIT is absent so far to satisfy the order to be erroneous

and prejudicial to the interest of the revenue and thus the order is not fulfilling the twin conditions as mandated in the case of Malabar Industrial Co. (Supra) have not been satisfied and it is beyond doubt that the order of the Ld. AO is neither erroneous nor prejudicial to the interest of revenue.

10. Based on the discussion we see that the order of the AO on the issue of sundry creditors has recorded the submission and evidence placed on record by the assessee. The Id. AO has considered and discussed the same in para 5 of the assessment order and after considering the submission and explanations of the assessee on record, taken plausible view in the matter. 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 the twin condition needs to be satisfied. 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."

11. 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, we do not find any incorrectness and incompleteness in the appreciation of facts made by the AO even the Id. PCIT noted that majority of the sundry creditors are having opening balance and Id. AO has also satisfied that the assessee has offered some of the balance of sundry creditors in the subsequent year on account of cessation of liability. In the light of these observations, we do not agree on this aspect to this extent with Id. PCIT. Even on facts we have discussed that on the issues raised 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 in ITA no. 23/Jodh/2022 is allowed.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules,  
1963, by placing the details on the notice board.

Sd/-  
(Dr. S. Seethalakshmi)  
Judicial Member

Sd/-  
(Rathod Kamlesh Jayantbhai)  
Accountant Member

Dated : 26/09/2023

*\*Ganesh Kumar, PS*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar  
Jodhpur Bench