आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

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

ITA No.44/Ind/2022
(Assessment Years:2016-17)

Sewa Sahkari Sammittee Maryadit Beed Beed Mundi Khandwa	Vs.	Pr. CIT-2 Indore
(Appellant / Assessee)		(Revenue)
PAN: AAUFS0703N		
Assessee by	Shri Gagan Tiwari, AR	
Revenue by	Ms. Simran Bhullar, CIT-DR	
Date of Hearing	05.10.2023	
Date of Pronouncement	30.10.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 17.03.2021 of Pr. Commissioner of Income Tax, Indore passed u/s 263 of the Act for A.Y.2016-17.

2. This appeal was filed on 04.03.2022 against the impugned order dated 17.03.2022 therefore, there is a delay of 292 days. Ld. AR has submitted that the delay in filing the appeal is covered by the judgment of Hon'ble Supreme Court in case of *Suo Motu Cognizance for extension of Limitation reported in 441 ITR 722 (SC).*Ld. DR has not disputed that the delay in filing the appeal is now covered by the judgment of Hon'ble

Supreme Court. Having considered the rival submission it is noted that the Hon'ble Supreme Court in the case of *Suo Motu Cognizance for extension of Limitation (supra)* has issued the directions for extension of limitation in para 5 as under:

> *"5.Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:*
>
> *I.The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
>
> *II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
>
> *III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022. notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*
>
> *IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s)*

of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

Accordingly the appeal filed by the assesse on 04.03.2022 is treated as within the limitation. The assesse has raised following grounds:

"1. That the order of the Ld. Pr. Commissioner of Income Tax, Indore u/s 263 of the Act is illegal, void and without jurisdiction.

2. That the Ld. Pr. Commissioner of Income Tax, Indore has wrongly invoked provision of Section 263 of the Act without looking into factum that The assessment order was framed u/s 143(3) after making due enquiry and was not erroneous or prejudicial to the interest of revenue.

3. That The Ld. PCIT has erred in law and on facts in holding that the sufficient inquiries were not made to ascertain the genuineness cash deposited (loan repayment by farmers under Kisan Credit Card loan) and cash in hand in the books of accounts of Assessee in the Assessment Year 2016-17.

4. The Ld. PCIT has erred in ignoring the records of the assessment proceedings while passing the impugned order. It is submitted that in case the authority had perused the records of the assessment proceeding, it would have considered the merit in Appellant's submission that detailed enquiry and investigation was made by the LD 40 qua cash deposited (loan repayment by farmers under Kisan Credit Card loan.

5. The Learned PCIT has erred in concluding that the assessment order passed by the AO is prejudicial to the interest of the revenue and is erroneous in the nature.

6. That the impugned order is contrary to the extant judicial position wherein it has been settled that the revisionary power by the LD PCIT/ CIT can be held to be correct only if the LD CIT examines and verifies the transactions under question by himself and arrives at a finding on merits that the concerned order erroneous and prejudicial to the interest of revenue. However, in the instant case, the LD PCIT has at the foremost, failed to even examine and verify whether the interest of revenue has been prejudiced. An examination of the order of PCIT reveals that it is without any merits and does not even venture out to ascertain the interest of revenue or any supposed prejudice/error.

7. That there is a distinction between "lack of enquiry" and "inadequate enquiry". In the present case the Assessing Officer collected necessary details, examined the same and then framed the

assessment us. 143(3) of the Act. Since the Assessing Officer had investigated/examined the issue and applied his mind towards the whole record made available by the assessee during assessment proceedings and uncontrovertedly, necessary details/reply to the questionnaire were filed/produced by the assessee and the same were examined by the Assessing Officer, therefore, the present case is not a case of lack of enquiry by the Assessing Officer and thus section 263 cannot be invoked by the Pr. CIT.

8. That Explanation 2 to s. 263 inserted w.e.f. 01.06.2015 does not override the law as interpreted by the various High Courts whereby it is held that the CIT cannot treat the AO's order as being erroneous and prejudicial to the interest of revenue without himself conducting an enquiry and recording a finding. If the Explanation is interpreted otherwise, the CIT will be empowered to find fault with each and every assessment order and also to force the AO to conduct enquiries in the manner preferred by the CIT, thus prejudicing the mind of the AO as has been done in the present case. Thus the entire order u/s 263 is vitiated and bad in law on account of the failure of the Pr. CIT to himself first make an inquiry and only then to arrive at any fault in the assessment order.

9. That for the purposes of exercising jurisdiction u/s 263, the conclusion of the CIT that the order of the AO is erroneous and prejudicial to the interests of the Revenue has to be preceded by some minimal inquiry. If the PCIT is of the view that the AO did not undertake any inquiry, it becomes incumbent on the PCIT to conduct such inquiry. The second option available w/s 263 (1) of sending the entire matter back to the AO for a fresh assessment can be exercised by the PCIT only after he undertakes an inquiry himself and not otherwise. Thus the present order u/s 263 is vitiated on this ground alone."

3. The assesse is a Co-operative society formed under the M.P. Co-operative Societies Act 1961. The assesse is engaged in the business of lending money and to supply seed, fertilizers to its members and running PDS shop for its members who are farmers. The assesse society filed return of income for the year under consideration on 20.11.2016 declaring total income at nil. The case was selected for limited scrutiny under CASS. The assessment u/s 143(3) was completed on 29.11.2018 whereby the AO accepted the returned income. Subsequently on going through the assessment record the Pr. CIT noted that certain points were not taken into consideration while framing assessment u/s 143(3). The Pr. CIT

observed that the AO passed the order without making any inquiry on those issues. Accordingly show cause u/s 263 dated 31st July 2019 was issued. The Pr. CIT in the show cause notice taken up the issue of no inquiry conducted by the AO in respect of the cash balance as on 31.03.2016 and cash received from 28.03.2016 to 31.03.2016. The assesse filed reply to the show cause notice and explained the source of the cash received as recovery of Kishan Credit Card loans from farmers, sale proceeds at support price, deposit in saving bank account made by the customers, deposit in F.D account, recovery in loan accounts against FDR, loans from JSKB Mandi PDS account, upbhokta sale and fertilizers total amounting to Rs.3,50,88,182/-. The Pr. CIT after considering replied of the assesse held that the AO has totally failed to conduct proper inquiry and thorough examination of the cash book with the corresponding entries of the bank account of the assesse and accordingly the order of the AO was held to be erroneous so far as prejudicial to the interest of revenue. The Pr. CIT set aside the assessment order and directed the AO to pass fresh assessment order on the line of the discussion in the revision order.

4. Before Tribunal the Ld. AR of the assesse has submitted that the case of the assessee was taken up for limited scrutiny vide notice u/s 143(2) for examination of two issues:

i) Whether unsecured loans are genuine and from undisclosed sources

ii) Whether cash in hand shown in return of income is correct

5. Ld. AO has issued notice u/s 142(1) dated 18.07.2018 placed at page no.37 and 38 of the paper book. The Ld. AR has referred to the questionnaire as per annexure to notice u/s 142(1) and submitted that the query no.4 has been specifically raised by the AO regarding cash in hand and asked the assesse to explain the source of above cash in hands of Rs.1,72,10,437/-. The AO also asked the assesse to produce all the books of account. Ld. AR then referred to the reply filed by the assesse to

the notice u/s 142(1) placed at page no.39 to 44 of the paper book and submitted that the assesse has given all the relevant details of the source of cash in hand and explained that the main income of the assesse society is the interest and commission received from the M.P. State on providing loans to the farmers and also purchase of wheat in Government scheme of minimum support price as well as sale of fertilizers to farmers. The assessee has furnished the details of bank account numbers with the name of bank branches and submitted that the said cash in the hands was collection received from farmers against their loans. The assesse also produced the cash book and bank account statement to show that the cash in hands was deposited in the bank account with Jila Sahkari Kendriya Bank in the subsequent week. The assesse also produced certificate obtained from the bank regarding unsecured loan of Rs.3,49,31,603/-. The books of accounts, ledger, cash book, bills, vouchers, stock register for the year under consideration was produced before the AO for verification and examination. Ld. AR has further submitted that 31st March was last date for repayment of the loan taken by the farmers failing which penal interest was to be charged and therefore, the collection from the farmers regarding repayment of loan is received towards the due date of payment of the loan without penal interest. Hence Ld. AR has submitted that the payment received from 28.03.2016 to 31.03.2016 was on account of the loan repayments made by the farmers. All these receipts are duly recorded in the cash book and were also deposited in the bank account. He has referred to the bank account statement and submitted the entire amount of cash in the hands as on 31.03.2016 was deposited in the bank account on 5th April 2016 and therefore, there is no question of doubting the genuineness of the transactions. The Ld. AR has submitted that the Pr. CIT has doubted the genuineness of the transactions due to demonetization declared in the month of November 2016 and the assesse might have manipulated the books of account by showing the cash in hands as on 31.03.2016 to show the source of the deposit made during the demonetization period. Ld. AR has further submitted the books of account of the assessee are subjected

to the audit as per M.P. Co-operative Society Act 1960 and therefore, there is no reason for doubting the correctness of the books of account of the assesse which were produced by the assesse during the assessment proceedings. He has referred to the assessment order and submitted that in para 3 to 6 the AO has noted this fact that the assesse is primary agricultural Co-operative society and providing agricultural loan to its members (farmers) and marketing of the agricultural produce grown by its members. The AO has also referred to the source of cash in hands in para 4 of the assessment order as collection received from the farmers against their loans. The assesse furnished details/documents in this regard which was kept on record. The AO also examined books of account, ledger cash book and only on his satisfaction the AO accepted the explanation regarding the cash in hands as well as unsecured loans. Thus, Ld. AR has submitted that it is not case of lack of inquiry on the part of the AO. But an exhaustive inquiry was conducted by the AO for examination of the source of the cash in hands. The AO verified and examined all the details, documents books of account ledger cash book as well as bank accounts to satisfy himself. Ld. AR has referred to the directions issued by the District Cooperative Central Bank whereby the due date for repayment of short term loan given to the farmers of Kharif crop was fixed at 28th March and for Ravi crop it was determined as 15th June. In case the loan is not repaid by these due dates an additional interest up 3% is charged. Therefore, the payment received by the assessee on 28.03.2016 was due to the reason that this was the last date for repayment of the loan as per the letter dated 26.02.2016 of District Cooperative Central Bank Khandwa placed at page no.308 of the paper book. Ld. AR then referred to para 4 of the impugned order and submitted that the assesse also produced the year wise comparative chart of deposit before Pr. CIT to show that the receipt for the year under consideration is in line of the receipts as in the preceding years. He has referred to the receipt and ledger accounts of the farmers and submitted that all the transactions in the receipts are mentioned with ledger account and also recorded in the cash book having corresponding reference of ledger account. The AO has duly verified the

cash book which contains all the entries with reference of ledger account as well as the receipts in respect of the recovery of loan from the farmers and therefore, the order of the AO cannot be said to be erroneous for want of inquiry. He has further submitted that the assesse society is eligible for deduction u/s 80P and therefore, the cash in hands cannot be considered as income of the assesse. The deeming provisions u/s 68 or 69 can not be invoked in case of assesse society. Once the AO has conducted a due inquiry the commissioner without conducting the inquiry or giving an conclusive finding cannot set aside the order of the AO for fresh assessment order. Once the assesse has produced all the material before the AO as well as before the Pr. CIT to show the cash deposit is from collection of loan from the farmers then without questioning correctness of the evidence produced by the assesse which was accepted by the AO, the Pr. CIT has no jurisdiction to hold the order of the AO as erroneous. In support of his contention he has relied upon the following decision:

i).Maa Narmada Agrotech & Infrastructure Ltd. vs. PCIT Indore ITANo.117/Ind/2022 order dated 11.07.2023

ii). ITO vs. DG Housing Project Ltd. 20 taxmann.com 587 (Delhi HC)

iii). CIT, Central-III vs. Nirav Modi Taxmann.com 272 (Bombay HC)

iv). Citizen Co-op. society vs. ACIT in ITA/1003/Hyd/2011 dated 02.07.2012

v). Shri Bhageeratha Pattina Sahakara vs. ITO ITA/646/Ban/2021

vi). Om Sai Co-op. Society vs. PCIT ITANo.454/Bang/2022 dated 27.07.2022

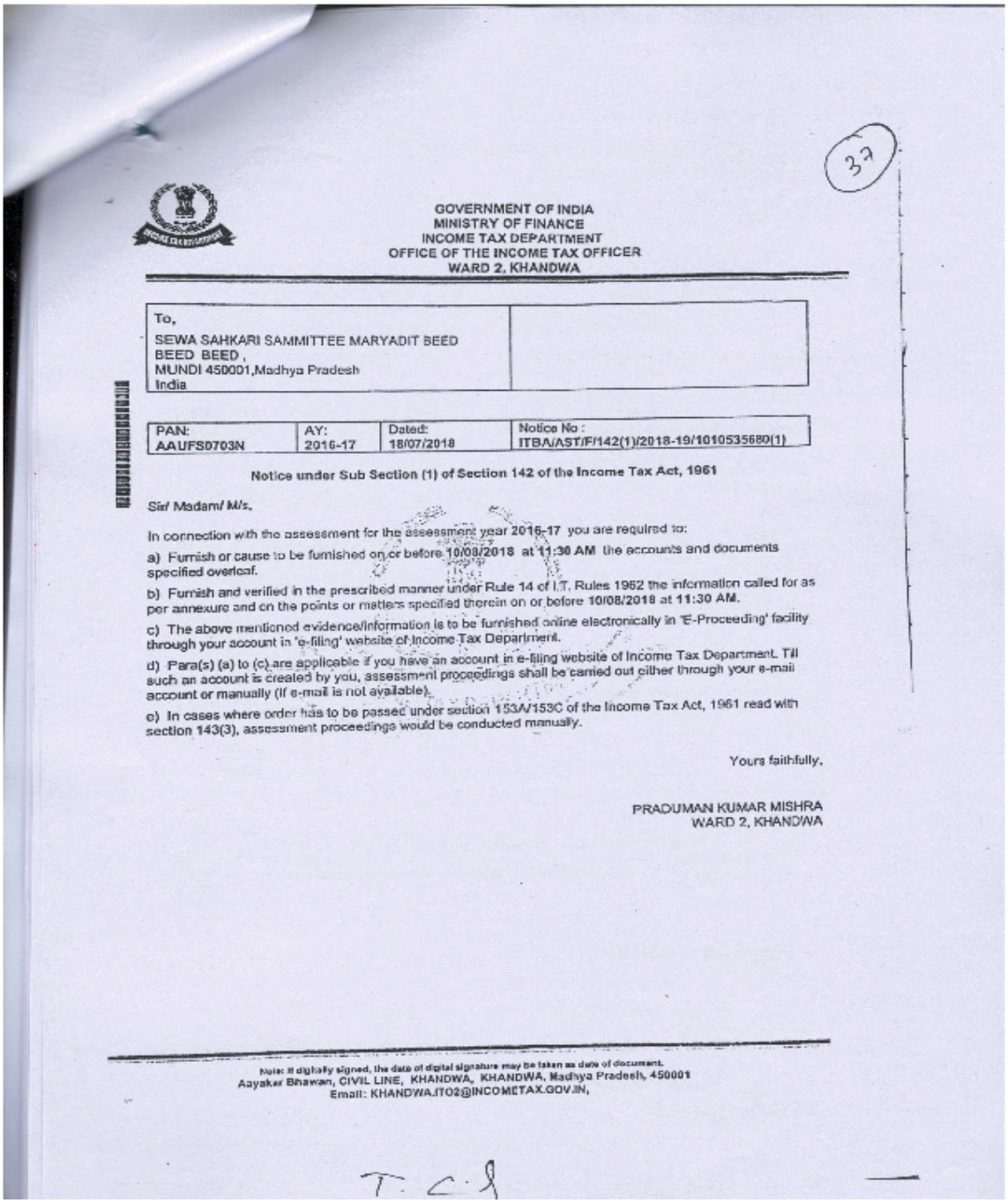
6. On the other hand, Ld. DR has submitted that the assesse filed return of income after demonetization was announced. The assesse has not produced any supporting evidence to discharge its owns to prove the genuineness of the transactions as accounts are prepared in the hand written and therefore, the possibility of manipulation cannot be ruled out.

It is a case of lack of inquiry on the part of the AO therefore, the Pr. CIT has rightly set aside the order of the AO and directed the AO for fresh assessment after proper inquiry and verification. She has relied upon the impugned order of the Pr. CIT.

7. We have considered the rival submissions as well as relevant material on record. The case of the assesse was selected for limited scrutiny through CASS as evident from the para no.1 of the assessment order as under:

> *"1.The return of income for the assessment year 2016-17 was filed on 20-11-2016 declaring gross total income of Rs.1,08,534/- and after claiming deduction chapter VIA [under Section 80P] of Income Tax Act, 1961, of Rs. 1,08,534/-, declaring total income of Rs. nil. This case was selected for "Limited-Scrutiny" though "CASS". Following issues have been identified for examination-*
>
> *"(i)-- Whether Unsecured Loans are genuine and from disclosed sources.".*
>
> *"(ii)-- Whether Cash in hand shown in return of income is correct".*

8. Thus, in the scrutiny assessment proceedings the AO was to examine two issues of unsecured loans being genuine and from disclosed sources and second cash in hand shown in the return income is correct. The AO issued show cause notice u/s 142(1) dated 18th July 2018 along with questionnaire in Annexure placed at page 37 & 38 as under:



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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD 2, KHANDWA

To,
SEWA SAHKARI SAMMITTEE MARYADIT BEED
BEED BEED ,
MUNDI 450001,Madhya Pradesh
India

PAN:	AY:	Dated:	Notice No :
AAUFS0703N	2016-17	18/07/2018	ITBA/AST/F/142(1)/2018-19/1010535680(1)

Notice under Sub Section (1) of Section 142 of the Income Tax Act, 1961

Sir/ Madam/ M/s,

In connection with the assessment for the assessment year 2016-17 you are required to:

a) Furnish or cause to be furnished on or before 10/08/2018 at 11:30 AM the accounts and documents specified overleaf.

b) Furnish and verified in the prescribed manner under Rule 14 of I.T. Rules 1962 the information called for as per annexure and on the points or matters specified therein on or before 10/08/2018 at 11:30 AM.

c) The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in 'e-filing' website of Income Tax Department.

d) Para(s) (a) to (c) are applicable if you have an account in e-filing website of Income Tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).

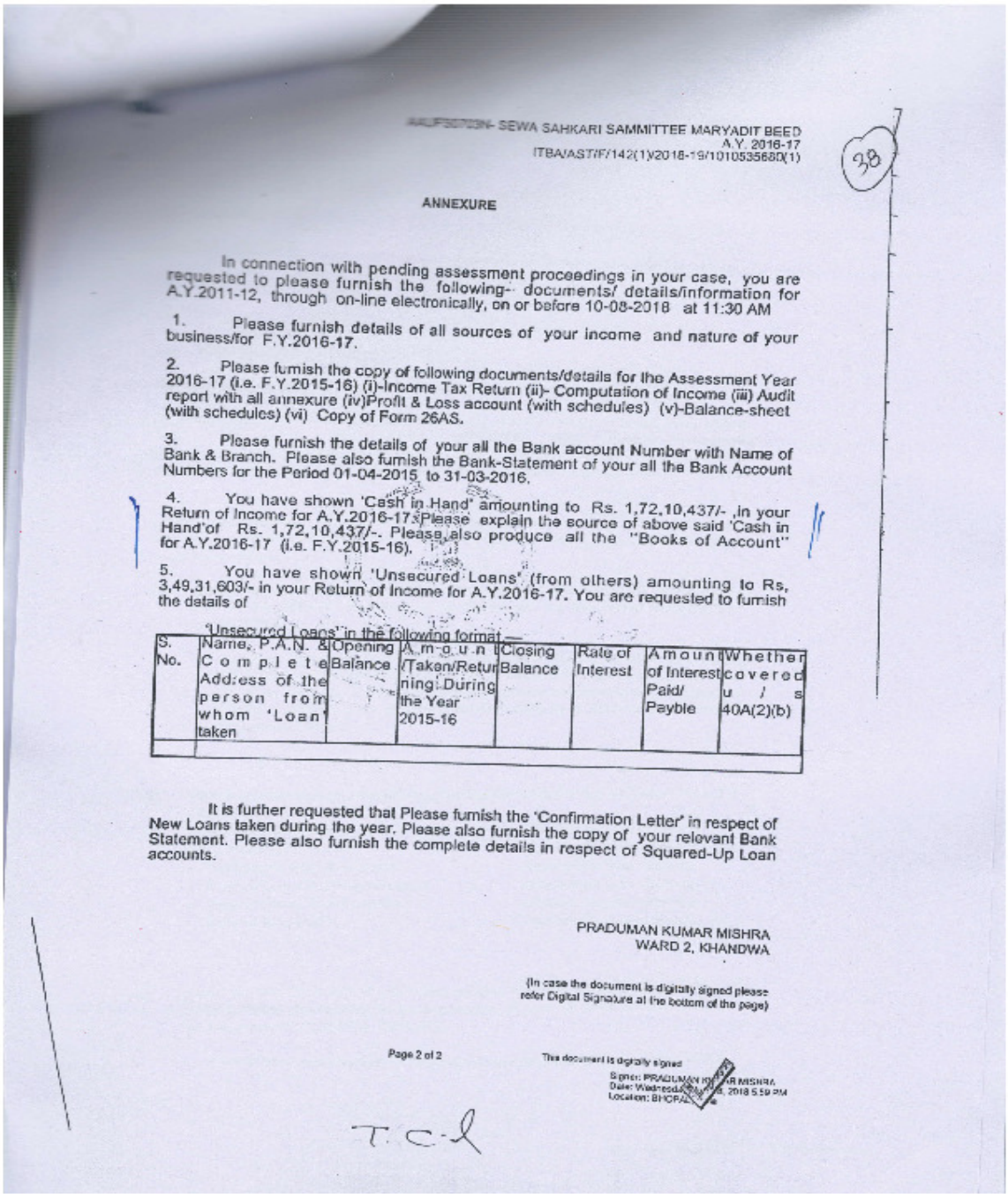
e) In cases where order has to be passed under section 153A/153C of the Income Tax Act, 1961 read with section 143(3), assessment proceedings would be conducted manually.

Yours faithfully,

PRADUMAN KUMAR MISHRA
WARD 2, KHANDWA

Note: If digitally signed, the date of digital signature may be taken as date of document.
Aayakar Bhawan, CIVIL LINE, KHANDWA, KHANDWA, Madhya Pradesh, 450001
Email: KHANDWA.IT02@INCOMETAX.GOV.IN,

T. C. J



AAUFS0703H- SEWA SAHKARI SAMMITTEE MARYADIT BEED
A.Y. 2016-17
ITBA/AST/F/142(1)/2018-19/1010535680(1)

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ANNEXURE

In connection with pending assessment proceedings in your case, you are requested to please furnish the following- documents/ details/information for A.Y.2011-12, through on-line electronically, on or before 10-08-2018 at 11:30 AM

1. Please furnish details of all sources of your income and nature of your business/for F.Y.2016-17.

2. Please furnish the copy of following documents/details for the Assessment Year 2016-17 (i.e. F.Y.2015-16) (i)-Income Tax Return (ii)- Computation of Income (iii) Audit report with all annexure (iv)Profit & Loss account (with schedules) (v)-Balance-sheet (with schedules) (vi) Copy of Form 26AS.

3. Please furnish the details of your all the Bank account Number with Name of Bank & Branch. Please also furnish the Bank-Statement of your all the Bank Account Numbers for the Period 01-04-2015 to 31-03-2016.

4. You have shown 'Cash in Hand' amounting to Rs. 1,72,10,437/- ,in your Return of Income for A.Y.2016-17. Please explain the source of above said 'Cash in Hand'of Rs. 1,72,10,437/-. Please also produce all the "Books of Account" for A.Y.2016-17 (i.e. F.Y.2015-16).

5. You have shown 'Unsecured Loans' (from others) amounting to Rs, 3,49,31,603/- in your Return of Income for A.Y.2016-17. You are requested to furnish the details of

'Unsecured Loans' in the following format —

S. No.	Name, P.A.N. & Complete Address of the person from whom 'Loan' taken	Opening Balance	Amount (Taken/Returning) During the Year 2015-16	Closing Balance	Rate of Interest	Amount of Interest Paid/ Payble	Whether covered u / s 40A(2)(b)

It is further requested that Please furnish the 'Confirmation Letter' in respect of New Loans taken during the year. Please also furnish the copy of your relevant Bank Statement. Please also furnish the complete details in respect of Squared-Up Loan accounts.

PRADUMAN KUMAR MISHRA
WARD 2, KHANDWA

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

Page 2 of 2

This document is digitally signed
Signer: PRADUMAN KUMAR MISHRA
Date: Wednesday, August 08, 2018 5:59 PM
Location: BHOPAL

T.C-1

9. The AO has asked the assesse to furnish the details, documents books of account, bank account statement and income tax return computation of income audit report etc. The AO has also given proforma for furnishing the details regarding the unsecured loans and asked the assesse to furnish the confirmation later in respect of loan taken during the year, copy of bank account statement and complete details in respect

of squared up loan account. The assesse furnished its reply the notice u/s 143(2) as well as u/s 142(1) at page no.36, 39 to 42 as under:

18/07/2017

To
The Income Tax Officer
Ward 2
Khandwa
Ref.:- Sewa Sahakari Samittee Maryadit Beed
PAN AAUFS0703N
Sub.: Compliance to notice No ITBA/AST/S/143(2)/2017-18/1004781781(1) 150 dated 4/7/2017, Asst Year 2016-17

Madam

In compliance to your above notice assessee society begs to submit that 1) That the unsecured loan as shown in the return of income are genuine and from disclosed sources. This is further to submit that assessee society is a Co-operative society engaged in the business of PDS. Samarthan Mulya and also in the business of accepting deposits froin it's members and also lending the said money to it's members who are farmers. Thus whatever amount that has been shown in the return of income as unsecured loan is infact amount which assessee society has accepted as deposits from it's members for saving Bank account or FDR maintained by those members with assessec society.

2) That the cash in hand shown is the actual cash in hand which assessee society had with it as on 31/03/2016 and it is in agreement with the books of accounts maintained by the assessee society."

Income Tax Officer,
Ward 2, Khandwa
Khandwa - (450001)
Dear Sir,
Sub: Return filed for Assessment year 2016-17
Ref - Notice under section 142(1) of the IT ACT 1961 vide letter dated 18/07/2018

Sir, with reference to the above mentioned subject, I am in receipt of notice under section 142(1) vide your letter dated 18/07/2018 serial number referenced ITBA/AST/F/142(1)/2018-19/1010535680(1), wherein you have expressed desire for further information with respect to the return filed against assessment year 2016-17 i.e FY 2015- 16

In the present communication, I have been requested for certain set of document's for supporting my return of income for FY 2015-16 My point wise reply to each of the points raised are as follows:

(1) Please furnish detail of all sources of your income and nature of your business for the FY 2015-16. statement of all Banks A/c for the Period 01/04/2015 to 31/03/2016

-As we are registered as co-operative society under the MP Co-Operative society act & our main income source is interest & commission received from MP state Govt. on providing Loans to farmers & also purchase wheat in Govt. Scheme of Minimum Support price (MSP Samarthan Mulya) & other source is sale of fertilizers to farmers.

(2) Please furnish the copy of following documents/detail for the AY 2016-17 (i.e. FY

2015-16).

• Income Tax Return Attached for your reference

• Computation of Income Attached for your reference

Audit report with all annexure Attached for your reference

● Profit & Loss A/c (With Schedule) Attached for your reference

● Balance Sheet (With Annexure) Attached for your reference

Copy of form 26AS Attached for your reference

Please furnish the detail of your bank account Number with the name of Bank Branch. Please also furnish the bank statement of your all bank account Number for the period 01.04.2015 to 31.03.2016.

All bank statement attached for the stated period. Detail of all banks are as under:

S.No.	Name of Bank	Branch	ANo.
1	JSKB Khandwa	Mandi	659008058087
2	JSKB Khandwa	Mandi	159000840169
3	JSKB Khandwa	Mandi	159000818098
4	JSKB Khandwa	Mandi	659008000068
5	JSKB Khandwa	Mandi	659008038184
6	JSKB Khandwa	Mandi	659008020744
7	JSKB Khandwa	Mandi	659008038300
8	JSKB Khandwa	Mandi	159000375144
9	JSKB Khandwa	Mandi	659008055291

10	JSKB Khandwa	Mandi	159000379543
11	JSKB Khandwa	Mandi	659008055053
12	JSKB Khandwa	Mandi	659008054887
13	JSKB Khandwa	Mandi	159000318380
14	JSKB Khandwa	Mandi	159000403184
15	JSKB Khandwa	Mandi	159000657130
16	JSKB Khandwa	Mandi	159000475886
17	JSKB Khandwa	Mandi	159000232560
18	JSKB Khandwa	Mandi	159000403264
19	JSKB Khandwa	Mandi	159000319010
20	JSKB Khandwa	Mandi	159000661974
21	JSKB Khandwa	Mandi	159000493486
22	JSKB Khandwa	Mandi	159000193391
23	JSKB Khandwa	Mandi	659008054876
24	JSKB Khandwa	Mandi	659008000057

(4)You have shown 'Cash in hand' amounting to Rs. 1,72,10,437/-, in your return of income for AY 2016-17. Please explain the sources of above said 'Cash in band' of Rs. 1,72,10,437/-. Please also produce all the 'Books of account' for the AY 2016-17 (L.e. 2015-16).

As per our 'Cash Book' closing balance as on date 31 March 2016 was amounting to Rs. 1,72,10,437/-. The said cash in hand was collection received from Farmers against their Loan. I will produce 'Books of Account' within 10 days.

(5) You have shown 'Unsecured Loans' (from other) amounting to Rs. 3,49,31,603/- in your return of Income for the AY 2016-17. You are requested to furnish the detail of. - There is no personal loan taken from individuals, all loans were taken from Jila Sahakari Kendriya Bank, Khandwa. The detail of Loans will be produce as per your requirement.

In the ending, I request you to kindly let me know, if I can provide you with any other details for your verification.

……

To
The Income Tax Officer
Ward 02 Ayakar Bhawan
Civil Lines Khandwa
Ref : Sewa Sahakari Samiti Mydt. Bir Distt. Khandwa PAN: AAUFS0703N

Sub: Replay on your query regarding Asst. Year 2016-17

Sir,

In reference to above kindly find enclosed here with

1). Copy of cash book from 28/03/2016 to 07/04/2016 for conformation of cash in hand of Rs. 1,72, 10, 437/- on 31/03/2016. This is to explain n that same has been deposited on next week in concerning bank branch of Jila Sahakari Kendriya Bank.

2). Copy of certificate obtained from the bank regarding unsecured loan of Rs. 3,49,27,996.81. Rest of amour of Ra. 3006/- is related to some Government loan before converting of bank branch in to CBS pattern.

Thanking you.

For Sewa Sahakari Samiti Maryadit, Beed

10. The assesse has explained the nature of its business activity as the assesse is a primary agricultural credit cooperative society and engaged in the providing agricultural loan to the members (farmers) and marketing of agricultural produce grown by its members. The AO has stated in the assessment order that in response to the notice issued u/s 143(2) & 142(1) the assesse filed written submission, books of account bills and vouchers, stock register which are examined on Test check basis. The AO has specifically given the remarks in para 4 of the assessment order as under:

> *"4. The Assessee shown Cash in hand' amounting to Rs. 1,72,10.437/-. The assessee in his written reply stated that 'Cash in hand' amounting to Rs.1,72,10.437/- was collection received from farmers against their loan. assessee furnished details/ documents in this regard connection, which kept on record. In this connection, Books of Accounts [Ledger, Cash book] were examined."*

11. Thus, the Ld. AO on examination of the books particularly cash book ledger account and found that this cash in hand of Rs.1,72,10,437/- was collection received from the farmers against their loan. The assesse furnished the details/documents in this regard which is kept on record. Further the AO has also examined the further record regarding unsecured loans. The assesse has produced the relevant record of unsecured loan of Rs.3,49,31,603/- taken from Jila Sahakari Kendriya Bank Khandwa

which was neither disputed by the AO nor by the Pr. CIT in the impugned order. In para 5 & 6 the AO has stated about unsecured loan and the claim of the assesse u/s 80P as under:

> *"5.The Assessee shown 'Unsecured Loans' amounting to Rs.3,49,31,603/- The assessee in his written reply stated that No personal Loan was taken from individuals. All 'Unsecured Loans' were taken from 'Jila Sahakari Kendriya Bank, Khandwa'. In this connection, Books of Accounts [Ledger, Cash-book, Bills, Vouchers] were examined. assessee furnished details/ documents in this regard connection, which kept on record.*
>
> *6. In view of the discussion made and considering the totality of facts and in the circumstances of the case and material available on record the claim of the assessee to deduction U/s. 80P is allowed and return income of the assessee society is accepted.*
>
> *Total income Assessed u/s 143(3) of Income Tax Act, 1961 = Rs. - Nil-*
> *.*

12. It is manifest from the record as well as voluminous documents filed by the assesse before the AO that it is not a case of complete lack of inquiry on the part of the AO while passing the assessment order. Though the AO has not given elaborate finding on the issue but the reasons for that is simple that on examination of the relevant record, books of account the AO was satisfied with the explanation of the assesse regarding the source of the cash in hand. The AO has specifically pointed out that the collection from the recovery of the loan from the farmers. The assesse also produce the letter of the Jila Sahkari Kendriya Bank or District Cooperative Central Bank Khandwa whereby the due date of repayment of the farmers loan taken from Kharif crop and Ravi crop were determined at 28th March & 15th June respectively. These were short term loans granted by the assesse to the farmers for meeting out the expenditure of crop season. Therefore, the assesse has brought on record supporting evidence to show as to why there was a collection of this account at the fag end of the financial year i.e. 28th March 2016.

13. We have also gone through the relevant documentary evidence filed by the assesse which was produced before the AO to show the source of

the cash in hand as on 31.03.2016. There is one more important aspect on this point that the assesse has also explained that the said amount of cash in hand as on 31.03.2016 was subsequently deposited in the Jila Sahakari Kendriya Bank on 4th April 2016. Once the said cash was deposited in the bank account in the subsequent week itself then the possibility of the manipulating accounts for showing source of deposit and availability of the cash with the assesse during the demonetization period is completely ruled out. The Pr. CIT has also not disputed the fact that the assesse produced all the relevant evidence before the AO as he has observed in para no.4 of the imgpuend order as under:

> *"4. I have carefully considered the facts of the case as well as the submission of the assessee. The assessee has simply stated that the cash was deposited out of the cash received through repayment of loans by the farmers. The assessee has further stated that if the farmer does not return the loan taken by 28th March of the respective year, he will not be eligible for fresh loan in the next year. The AO has accepted the contentions of the assessee without subjecting the details submitted by the assessee to further scrutiny. It is seen that some of the cash receipts are quite big. For instance, Rs. 12 lacs is shown to have been received from Mr. Narendra Kumar and so on. The AO has not even called a single person to record statement or to cross verify the entries in the books of the assessee. It is to be seen that the assessee has furnished its Return of Income on 20.11.2016, i.e. 12 days after the announcement of demonetization. The assessee has contended that similar deposits were made in the earlier years also before the undersigned. However, no such details of earlier years were furnished by the assessee nor were called by the AO. Most notably, it is seen that during the course of assessment proceeding, the AO had called for all the bank statements of the assessee. The bank statements found on record do not show such heavy deposits on the last working days of the financial year. Thus, the AO should have enquired the source of cash receipts shown in the cash book of the assessee. Failure of the AO to do so has led the assessment to be erroneous and prejudicial to the interests of the Revenue."*

14. The only ground raised by the Pr. CIT in respect of the cash in hand that the bank statement do not show such heavy deposit for the last financial year. Once it is matter of record that the deposits were made on 4th April 2016 then obviously it would not be found deposited on 31.03.2016. Once the entire record was produced before the AO who has

examined the same and accepted the claim of the assesse then the Pr. CIT while revising the order of the AO ought to have given conclusive finding as to why acceptance of the claim by the AO is not in accordance with the evidence or contrary to the law. There is no quarrel on the point that the lack of inquiry on the part of the AO would render the order of the AO as erroneous so as the prejudicial to the interest of the revenue and consequently the commissioner has jurisdiction to invoke the provisions of section 263. However, once the AO has conducted an inquiry and was satisfied about the claim of the assesse then the order of the AO cannot be held as erroneous for lack of inquiry. In case the commissioner does not agree with the order of the AO then he has to give finding to the effect that the order passed by the AO is either contrary to the evidence or to the law. This Tribunal in case of *Maa Narmada Agrotech & Infrastructure Ltd. vs. PCIT(supra)* has considered the identical issue and the relevant finding in para 11 to 13 is as under:

> *"11. As it is apparent from the annexures to show cause notice issued by the AO u/s 142(1) that the AO issued a detailed questionnaire to the assessee for providing the necessary details, record and evidence. The AO even given a specific format in respect of each details to be provided by assessee which covered all these issues as raised by the Pr. CIT in the show cause notice issued u/s 263 of the Act. The assessee duly complied with the show cause notice issued by the AO by filing to detail reply along with relevant details and documents which runs into 100 of the pages, therefore, for the sake of brevity we are not reproduced the reply and documents filed by the assessee before the AO. However, on-going through the reply filed by the assessee it is manifest that the assessee has given all these details and explanation as sought by the AO in the show cause notice issued u/s 142(1) of the Act. The AO even issued a second show cause notice dated 22.12.2019 asking the details regarding unsecured loans along with explanation in respect of disallowance u/s 14A r.w. Rule 8D. Finally the AO has made disallowance only u/s 14A and no disallowance or addition was made in respect of the other issues as raised in the show cause notice issued u/s 142(1) of the Act. Thus, it is clear that the AO has conducted an inquiry on these issues and was satisfied with the reply and explanation filed by the assessee along with supporting evidence. Hence it is not a case of complete lack of inquiry on the part of the AO while passing the assessment order and therefore, the assessment order cannot be held to be erroneous so far as the prejudicial to the interest of the revenue on the ground of lack of*

inquiry. Though the commissioner has jurisdiction to invoke the provision of section 263 even when the AO has conducted inquiry and taken a view but the said jurisdiction and power of commissioner is restricted only in the case, where the view taken by the AO is absolutely wrong and against provision of law. No such allegation has been made by the Pr. CIT in the impugned order that the view taken by the AO in allowing the claims and accepting the explanation of the assessee is absolutely not permissible under the law. Even otherwise we find that the assessee has duly explained discrepancies in the total receipts declared by the assessee in comparison to the receipts appearing in form 26AS and explained the reasons with supporting evidence that the said difference is due to the time difference in recognizing the revenue by the assessee and booking of expenditure by the contractee. It is matter of record that the assessee filed the reconciliation before the AO as well as before the Pr. CIT. Therefore, it was incumbent upon the Pr. CIT to verify the details produced by the assessee as well as reconciliation of difference in the receipts and to give a finding about the correctness of the claim of the assessee. The assessee has given the relevant details and explained difference of Rs.1.97 cr being the income already declared by the assessee in the preceding year with the supporting bills and TDS which was deducted by the payee in the preceding year as well as for the year under consideration. Therefore, if the TDS details for two years are taken into consideration it goes to prove that only because of the difference of time in deducting the TDS by contractee the discrepancies appears in respect of the receipts as shown in the form 26AS and turnover declared by the assessee. All these details were produced by the AO and this is a recurring issue as already examined before the AO in the preceding assessment years. The AO did not feel any need to give an elaborate finding on this issue. The assessee has produced copies of the assessment order passed u/s 143(3) for A.Ys.2014-15 & 2015-16 wherein an identical issue was considered by the AO and after examining of the record and explanation of the assessee the AO accepted the claim of the assessee. Once it is a recurring issue and already examined in the preceding years and AO has duly conducted an inquiry by issuing show cause notice u/s 142(1) which was duly replied by the assessee with relevant record then the AO was not expected to give an elaborate finding on this issue. Similarly on the other issues when the AO has issued show cause notice and the assessee produced relevant details and supporting evidence in respect of the expenses incurred which were subjected to TDS wherever applicable and the extra expenditure was incurred for the year was specifically explained by the assessee giving the specific reasons of consumption of electricity in development of site in the remote rural area as well as the expenditure incurred on acquiring equipment of machinery require for carrying out construction work. All these details were available with the AO as filed by the assessee, therefore, this case is certainly does not fall in the category of lack of inquiry on the part of the

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

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

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

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

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

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

Therefore, the decision of the Ld. CIT invoking provisions of section 263 of the Act is not justified and cannot be sustained under the facts

and circumstances of the present case. We therefore, set aside the impugned order and allow the grounds raised by the assessee."

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

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

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

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

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

Thus it is clear that the case was selected for limited scrutiny on the issue of purchase of property and deduction claimed under the head Capital Gains. Both these issues are inter-connected as the deduction under section 54F was claimed by the assessee in respect of purchase of property and construction of residential house on the said land. The AO, thereafter issued notice under section 142(1) dated 14.07.2017 along with a questionnaire. These facts are also evident from the assessment order in para 1 and 2 as under :-

" Thereafter, the case was transferred to the office of the undersigned from the ITO Ward 4(1) Jaipur on 26.05.2017 and due to change of incumbent of charges, notice u/s 142(1) along with questionnaire

issued on 14.07.2017 fixing the case of hearing on 20.07.2017 which was duly served upon the assessee on 15.07.2017. In response thereto, the CA/AR of the assessee Sh. Ajay Jain attended the proceedings from time to time and furnished required details/documents and also produced books of accounts, which were examined on test check basis. The case was discussed with him.

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

Thus in response to the notice issued under section 142(1), the assessee attended the proceedings through her A/R and also furnished the required details/documents as well as books of account which were examined by the AO. There is no dispute that the AO has conducted the enquiry on the issue for which the case was selected for scrutiny and after satisfying himself the AO finally concluded that the assessee earned the income from capital gain and interest. The details and records produced before him were examined and thereafter the returned income is accepted. Thus it is not a case of lack of enquiry on the part of the AO. Though the AO has not discussed the issue in elaborate manner, but once he was satisfied with the supporting evidences produced by the assessee he has accepted the claim. The ld. PCIT has invoked the provisions of section 263 by issuing the show cause notice dated 4th February, 2019 at pages 16 & 17 of the paper book as under :-

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Thus it is clear from the show cause notice issued under section 263 that the ld. PCIT has invoked the provisions of section 263 only on the issue of allowability of deduction under section 54F in respect of the investment made by the assessee towards cost of agricultural land and construction of house. The sole ground for initiating the proceedings under section 263 by the ld. PCIT is that in his view the claim of deduction in respect of agricultural land is not admissible. As apparent from the show cause notice that the scope of proceedings under section 263 was limited ITA No. 246/JP/2020 Smt. Lata Phulwani, Jaipur.only on the issue of allowability of deduction under section 54F in respect of the agricultural land acquired by the assessee and used for construction of house. There was no allegation by the ld. PCIT about the lack of enquiry on the part of the AO while passing the assessment order. Even otherwise, it is clear from the assessment order that the case was selected for limited scrutiny only on the issue of investment made in the agricultural land and deduction under section 54F of the IT Act. Therefore, the question of lack of enquiry does not arise when the AO has taken up the scrutiny and issued the notice under section 142(1) along with a questionnaire

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

6. Further, once it is not a case of lack of enquiry or inadequate enquiry as per the show cause notice issued under section 263 of the Act, then conducting a further enquiry on the factual aspects of the investment made in purchase of agricultural land and construction of the house is beyond the jurisdiction of the ld. PCIT as assumed by

issuing show cause notice under section 263. The finding of the ld. PCIT in the revision order ought to have been confined on the issue of allowability of deduction under section 54F. Since the ld. PCIT was not agreeing with the view of the AO regarding the claim of deduction under section 54F, at the outset, he was required to give a concluding finding on the issue. On the contrary, the ld. PCIT has remitted the issue to the AO in para 7 as under :-

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

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

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

The assessee has produced desired information by 15-11-1995. There-after, the case was adjourned to 22-11-1996 and 1-12-1995. On 5-12-1995, the Assessing Officer studied the sundry creditors, unsecured loans and desired to furnish affidavits of unsecured loans

and details of interest paid and the case was adjourned to 19-1-1996. On 19-1-1996, the Assessing Officer again required the assessee to furnish the details of partners capital accounts and also to produce voucher for expenses and the matter was adjourned for 23-1-1996. On 23-1-1996, the case was discussed and finalised. After that, assessment was completed by passing assessment order. These matters clearly indicate that the Assessing Officer particularly made reference to the matters, which the CIT has opined were not inquired.

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

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

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

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

11. Undoubtedly, the jurisdiction under section 263 is wide and is meant to ensure that due revenue ought to reach the public treasury and if it does not reach on account of some mistake of law or fact committed by the Assessing Officer, the CIT can cancel that order and require the concerned Assessing Officer to pass a fresh order in accordance with law after holding a detailed enquiry. But when enquiry in fact has been conducted and the Assessing Officer has reached a particular conclusion, though reference to such enquiries has not been made in the order of the assessment, but the same is apparent from the record of the proceedings, in the present case, without anything to say how and why the enquiry conducted by the

Assessing Officer was not in accordance with law, the invocation of jurisdiction by the CIT was unsustainable. As the exercise of jurisdiction by the CIT is founded on no material, it was liable to be set aside. Jurisdiction under section 263 cannot be invoked for making short enquiries or to go into the process of assessment again and again merely on the basis that more enquiry ought to have been conducted to find something.

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

Consequently, the appeal fails and is hereby dismissed."

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

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

The Hon'ble High Court has laid out a fine distinction between the orders where no enquiry has been made by the AO from the order based on inadequate enquiry. Therefore, where the AO has made an enquiry and taken a possible/permissible view, then the said order cannot be treated as erroneous and prejudicial to the interests of the

revenue unless the view taken by the AO is unsustainable in law. The Hon'ble Supreme Court in case of Malabar Industrial Co. Ltd. vs. CIT, 243 ITR 83 (SC) has held that an order of ITO cannot be treated as prejudicial to the interests of the revenue if the ITO adopted one of the course permissible in law and it has resulted in loss of revenue or two views are possible and the ITO has taken one view with which the ld. CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law. As it is clear from the impugned order that the assessee has relied upon various decisions and further the assessee has also relied upon the recent decision of the Coordinate Bench of this Tribunal in case of Shri Rajendra Kumar Sharma vs. JCIT in ITA No. 358/JP/2015 wherein the Tribunal has held in paras 4 & 5 as under :-

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

(a) The land is agricultural and not residential.

(b) The construction of residential house without approval of plan by Govt. Authority.

(c) The assessee has also not submitted any electricity and water connection evidence.

(d) The land was registered in the name of assessee on 28-3-13 i.e. beyond the period specified in Section 54F (4) and so assessee not complied conditions laid down therein. The agreement to purchase land executed on 2-6-2011 claimed by assessee has no evidentiary value as payment of consideration shown in cash.

(e) The bills for construction are lacking details and contain no detail of work done and each payment made therefor was in cash for less than Rs. 20,000/-.

(f) The Inspector physically verified the property and found there is only boundary wall with gate and on whole land there was little construction, with walls and Tin shed roofing and construction is about 700-800 Sq.ft as against 1504 Sq.ft. construction claimed by assessee. The Ld. A.O. in assessment order gave scanned photographs stated to have been taken by Inpsector on site visit.

The A.O. thus concluded that investment was purely in land and not a residential house as required u/s 54F of I. T. Act, 1961 and so assessee is not entitled to claimed deduction u/s 54F. As per our

considered view, benefit of Section 54F cannot be denied on the ground that land on which construction done was agriculture in nature. Reliance is placed on the judgements in case of Vishnu Trading Co. 259 ITR 724 (Raj.), Narendra Mohan Uniyal 34 SOT 152 (Del.), Shyam Sunder Mukhija Vs. ITO 38 ITD 125 (JPR) and ACIT Vs. Om Prakash Goyal (2012) 53 SOT 158 (JPR). In the case of Narendra Mohan Uniyal (Supra) it is held that "It is crystal clear from the plain reading of ss. 54 and 54F that exemption is allowable in respect of amount invested in the construction of a residential house. There is no any rider under s. 54F that no deduction would be allowed in respect of investment of capital gains made on acquisition of land appurtenant to the building or on the investment on land on which building is being constructed. When the land is purchased and building is constructed thereon, it is not necessary that such construction should be on the entire plot of land, meaning thereby a part of the land which is appurtenant to the building and on which no construction is made, there is no denial of exemption on such investment. In this connection reference may be made to Cir. No. 667 dated 18- 10-1993 (204 ITR (ST) 103) issued by CBDT which has clarified that for the purpose of computing exemption u/s 54 or 54F, the cost of the plot together with cost of the building will be considered as cost of new asset, provided the acquisition of the plot and also the construction thereon are completed within the period specified in these sections. There is no need of approval of plan from competent authorities if construction is within limits on agricultural land and it is not a condition laid down in Section 54F for construction of residential house. The construction on land is meant for residential house. The assessee could complete the construction of the residential house within three years and if any facility lacking in the constructed residential house the same could be completed within in that period. There is water supply from well and temporary electric connection in the residential house constructed by assessee. The construction of residential house is 1553.50 Sq.ft. and not having proper bills for construction cannot be taken adversely against him for purposes of Section 54F. These facts are evident from the valuation report of Regd. Valuer a copy of which is submitted. The Inspector of department furnished vague details without any physical inspection of building and took only photographs. The assessee has only to invest net sale consideration in purchase or construct a residential house and therefore registration or legal ownership is not necessary which is evident from Circular No. 471 dated 15-10-1986 issued by CBDT and from judgements of Balraj Vs. CIT 254 ITR 22 and CIT Vs. Laxmi Chand 211 ITR 804 and various other judgements on the issue. Thus, agreement to purchase copy of which submitted proves domain and control of assessee on the land in the hands of assessee and satisfies the connotation of purchase of land for construction of residential house. WE found from the record that the assessee had invested Rs. 1,15,00,000/-in construction of residential house and, therefore entitled to claimed deduction u/s 54F. The Ld. A.O. is wrong

and has erred in law in disallowing the claimed deduction of Rs. 83,54,434/- u/s 54F the Act, which deserves to be allowed.

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

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

13. Therefore, once the AO was satisfied with the supporting evidence produced by the assessee in response to the show cause notice u/s 142(1) then it is not necessary for the AO to give an elaborate finding on the issue. Accordingly, in the facts and circumstances of the case when the AO has conducted an inquiry then the Pr. CIT while passing the revision order cannot remand the matter back to the AO for passing afresh order simply because of the reason that the Pr. CIT himself was not sure about the correctness of the claim of the assessee. Therefore, once the order passed by the AO is not erroneous for want of inquiry then it is incumbent upon Pr. CIT to give conclusive finding that the order passed by the AO is not sustainable in law. Accordingly in the facts and circumstances of the case and following the various judgments of the Hon'ble High court as relied upon Coordinate Benches of the Tribunal sited (supra) the impugned order of the Pr. CIT passed u/s 263 of the Act is not

sustainable and the same is liable to be set aside. We order accordingly."

15. In the above case the Tribunal by following the various decisions of the Hon'ble High Court including the judgment in case of ITO vs. D.G. Housing Project Ltd. (supra) has held that the once the AO was satisfied with the evidence produced by the assesse in response to show cause notice u/s 142(1) it is not necessary to give the elaborate finding on the issue. Further the AO has conducted an inquiry then the Pr. CIT while passing the revision order cannot remand the matter back to the AO for passing fresh order simply because the Pr. CIT himself was not sure about the correctness of the claim of the assesse. The above decision of this Tribunal in case of *Maa Narmada Agrotech & Infrastructure Ltd. vs. PCIT(supra)* is squarely applicable in the facts of the present case. Accordingly to avoid multiplication of the case laws and legal precedence on the point we are not reproducing other judgments relied upon the assessee on this point. Hence in the facts and circumstances of the case and by following the decision relied upon by the assesse we hold that the impugned order of the Ld. Pr. CIT is not sustainable in law and the same is set aside.

16. In the result, appeal by the assesse is allowed.

Order pronounced in the open court on 30.10.2023

Sd/-	**Sd/-**
(B.M. BIYANI)	**(VIJAY PAL RAO)**
Accountant Member	Judicial Member

Indore, 30.10.2023

Patel/Sr. PS

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

By order

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