

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.348/SRT/2023

Assessment Year: (2018-19)

(Physical Hearing)

Harmony Yarns Private Limited, Plot-65, 1 st floor Subhash Nagar Society, Ghod Dod Road, Nr. Ram Chowk, Surat – 395001.	Vs.	The PCIT-1, Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACH5895F		
(Appellant)		(Respondent)

Appellant by	Shri Rasesh Shah, CA
Respondent by	Shri Airiju Jaikaran, CIT(DR)
Date of Hearing	12/10/2023
Date of Pronouncement	23/11/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

By way of this appeal, the assessee appellant has called into question correctness of impugned order passed by the Learned Principal Commissioner of Income Tax under section 263 of the Income Tax Act, 1961, in the matter of assessment under section 143(3) of the Act for the assessment year 2019-19, on the following grounds:

“1. On the facts and in circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in passing the order u/s 263, although the assessment order passed u/s 143(3) r.w.s.143(3A) & 143(3B) of the I. T. Act, 1961 was neither erroneous nor prejudicial to the interest of the revenue.

2. On the facts and in circumstances of the case as well as law on the subject, the learned Pr. CIT has erred in setting aside the order passed u/s 143(3) with a direction to the assessing officer to pass fresh assessment order after taking into consideration, the issues as may be considered

together with the issues discussed in order. Accordingly, PCIT has erred in setting aside the assessment order making it wide open instead of restricting the issues raised in the show cause notice.

3. It is therefore prayed that above order passed by Pr. CIT u/s 263 may please be quashed or modified as your honors deem it proper.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

2. The relevant material facts, as culled out from the material on record, are as follows. The assessee before us is a Private Limited Company and had filed its return of income for assessment year (A.Y.) 2018-19, on 27.08.2018, declaring returned income Rs.1,24,90,210/-. The assessee's case was selected for complete scrutiny to verify the issue of Transactions with Company whose Registration has been cancelled by MCA. The assessment order has been passed u/s 143(3) r.w.s. 143(3A) & 143(3b) of the Act, on 27.01.2021, accepting the returned income of the assessee.

3. Later on, the Learned Principal Commissioner of Income Tax (in brief 'ld. PCIT'), exercised his jurisdiction under section 263 of the Income Tax Act, 1961, The ld. PCIT, on perusal of the records, noticed that the assessee company had received unsecured loan of Rs.20,00,000/- from Alliance Commodities Ltd (PAN: AAGCA7943M) during the year consideration. On further perusal of the ministry of Corporate Affairs website, it was noticed by ld. PCIT that the status of the company, Alliance Commodities Pvt. Ltd, is shown as "Strike Off". The confirmation filed with respect to unsecured loan, the assessee had shown unsecured loan receipt at Rs.20,00,000/- and had filed confirmation, ledger and Return of Income, alongwith the copy of bank account of the lender, which has been considered by the assessing officer. However, the assessing

officer has omitted to enquire into genuineness of the transaction by not enquiring as to how the lender, which has no revenue from its operation or yield no investment, as appearing in its books, has lent the money. Further the satisfaction arrived at regarding the loan by struck off company was not supported by the enquiry carried out in this regard. Therefore, the assessing officer was required to make inquiry and verification for genuineness of the transaction made of Rs.20,00,000/- with Alliance Commodities Ltd, (PAN AAGCA7943M) whose status is “Strike Off” on the ministry of Corporate Affairs website and if the assessee had failed to substantiate the genuineness of the transaction, the transaction done of Rs.20,00,000/- was required to be treated as unexplained cash credit u/s 68 of the Act and to be added to the total income of the assessee, for the year under consideration, which the assessing officer has failed to do.

4. It was also noticed by Id. PCIT from the Form 3CB-Col. 20(b) that the PF contribution received from employees of Rs.14,796/-, for which due date for payment has been mentioned, as 15.06.2017, has been actually paid on 23.06.2017 i.e. after the due date. As per provisions of section 36(1)(va), the contribution paid after the due date is not eligible for deduction. Hence, the assessee company is not eligible for claiming deduction on the PF contribution of the employees paid after the due date and the amount of Rs.14,796/- was required to be disallowed. But as per the computation of income available in ITBA portal for AY 2018-19, it was noticed by Id. PCIT that the assessee has not disallowed the same. The assessing officer was required to make inquiry and disallow the same, which he has failed to do.

5. From the above facts, the ld. PCIT noticed that the Assessing Officer has finalized the Assessment Order without making inquiry and verification on the issue, which should have been made during the course of assessment proceedings. This shows lack of inquiry and verification and non-application of mind by the assessing officer and thereby rendering the assessment order u/s 143(3) r.w.s. 143(3A) & 143(3B) of the Act passed by the Assessing Officer on 27.01.2021, as erroneous in so far as it is prejudicial to the interest of Revenue within the meaning of Section 263 of the Income Tax Act and is required to be revised u/s 263 of the Act, 1961. Accordingly, ld. PCIT issued show cause notice bearing DIN No. ITBA/COM/F/17/2022-23/1050992059(1) dated 20.03.2023 and was duly served upon the assessee, through e-proceedings and the assessee -company was provided an opportunity of being heard and to offer explanation, if any, as well as to adduce evidence, if any, against the proposal of revision u/s 263 of the Act. A complete detail of the facts on account of which the remedial action u/s 263 of the Act proposed, was discussed in the aforesaid show-cause notice by ld. PCIT.

6. In compliance with the show cause notice, the assessee has furnished its reply on 27.03.2023, relevant portion of which is reproduced as under:

"1. With respect to the above subject and reference, we would like to submit that for the year under consideration the assessee company had filed its return of income on 16.10.2018 vide acknowledgement number 337189101161018. Subsequently the case was selected for scrutiny assessment under CASS and passed order u/s 143(3) r.w.s 143(3A) & 143(3B) of the IT Act on 27.01.2021 by accepting the return of income as filed.

2. The screenshot of the extract of scrutiny notice issued is reproduced as below:

13	Returned income	Rs.1,24,90,210
14	Date of Order	27/10/2021

15	DIN	ITBA/AST/S/143(3)/2020-21/1030101465(1)
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ASSESSMENT ORDER

1. The case was selected for complete scrutiny assessment under the E-assessment Scheme, 2019 on the following issues:

S.No. issues

1. Transactions with Company whose Registration has been Cancelled by MCA.

From the above extract it can be clearly concluded that the assessment included the scrutiny of transactions with company whose registration has been cancelled by MCA

2. Now, in the course of proceedings u/s 263, your honour has initiated the proceedings basis the following as mentioned in the present notice; "3. On perusal of the records, it is noticed that the assessee company had received unsecured loan of Rs. 20,00,000/- from Alliance Commodities Ltd. (PAN AAGCA7943M) during the year under consideration. On further perusal of the Ministry of Corporate Affairs website, it is noticed that the status of the company, Alliance Commodities Pvt Ltd is shown as "Strike Off". The confirmation filed with respect to Unsecured Loan, the assessee had shown Unsecured Loan receipt at Rs.20,00,000/- and had filed confirmation, ledger and Return of Income alongwith the copy of bank account of the lender, which has been considered by the assessing officer. However, the assessing officer has omitted to enquire into genuineness of the transaction by not enquiring as to how the lender, which has no revenue from its operation or yield no investment, as appearing in its books, has lent the money.

"3.2 It is also noticed from the Form 3CB - Col. 20 (b) that the PF contribution received from employees of Rs.14,796/- for which due date for payment has been mentioned as 15.06.2017 has been actually paid on 23.06.2017 i.e. after the due date. As per provisions of Sec 36(1)(va) the contribution paid after the due date is not eligible for deduction.

3. In regards to the above it is submitted that the first matter related to Unsecured Loan was already examined by the Ld Assessing Officer during the course of assessment proceedings. From the screenshot of scrutiny assessment order u/s 143(3) depicted in Point No 2 above, it is clearly visible that the issue of transactions with company whose registration has been cancelled by MCA was under due scrutiny while completing the assessment u/s 143(3). To substantiate the complete facts the exact notice wherein the details have been asked which is also the matter for the proceedings under consideration u/s 263 and the corresponding replies wherein all the details relating to the said issued have been submitted is listed as follows.

a. Notice u/s 142(1) of the IT Act dated 10.01.2020 was issued wherein Question no.3, 4, 5 and 8 specifically covered all the matters related to

transactions with company whose registration has been cancelled by MCA. The questions of the notice are as follows for your kind perusal.

Question No. 3- Please furnish Party wise details of unsecured loans obtained during the year, including squared off loans along with confirmations in the following format:

Sr. No.	Name of lender, PAN, address and email id	Opening Balance as on 01.04.2017	Amount of Loan repaid during the year	Amount of Loan repaid during the year	Closing Balance of Loan as on 31.03.2018	Interest & Rate of interest paid during the year	TDS Deducted on interest paid	Purpose/utilization of the loan amount	Provide documentary evidence to substantiate the identity and ITR of last 3 years of the lenders to substantiate their creditworthiness as well as the proof of genuineness of transaction of unsecured loan
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Question No.4 -If the loan providing entity is companies then kindly confirm its status on MCA.

Question No. 5- Kindly submit documentary evidence to corroborate the identity and creditworthiness of the company and genuineness of the transaction with such company which has ceased to exist.

Question No. 8- Please provide the details of expenses along with justification thereof for Salary, Wages & Bonus Expenses and Manufacturing Expense.

b. In response to the above notice, grievance was raised on 27.01.2020 stating inability to file submission due to technical glitch alongwith the submission with it. Further, another notice was issued u/s 142(1) of the IT Act on 04.02.2020, the response to which was filed by the assessee company on 13.02.2020 (partial response) and 18.02.2020 (full response) wherein answers to Question no. 3 (in part), 4 and 5 have been provided in response dated 13.02.2020 and to Question No. 8 and 3 (remaining part) in response dated 18.02.2020. In the said reply the assessee had submitted the copy of acknowledgement of return of income, PAN Cord, Bank statement and ledger account of such company whose registration has been cancelled viz Alliance Commodities Pvt Ltd for AY 2018-19.

c. Further vide another notice u/s 142(1) of the IT Act dated 03.01.2021 wherein the id Assessing Officer seeked further details about the transactions with company whose registration has been cancelled by MCA. The details seeked are listed below for your kind perusal.

Question No.1 - Kindly furnish the nature of services rendered by the said party during the F.Y.2017-18.

Question No. 2- Kindly furnish the date of strike off and reason on which Registration of the company has been cancelled by MCA with the documentary evidence.

Question No. 3- Kindly furnish the confirmation of unsecured loans along with copy of ITR, ledger copy and details of interest received Please furnish the copy of bank statement with respect to confirmation of unsecured loans by highlighting the loan amount and details of interest paid during the year under consideration.

Question No, 4- Kindly furnish reason why the company has given substantial loan when its Registration of the company has been cancelled by MCA. The assessee submitted its detailed reply along with all necessary documentary evidence vide response dated 16.01.2021 to the supra notice.

5. All the above notices and replies alongwith acknowledgement of reply and relevant attachments are attached herewith for your kind perusal, In the course of proceedings under Section 263 it is submitted that the basis for which the current proceedings have been initiated as mentioned in Point 3 above is transactions with company whose registration has been cancelled by MCA which has been duly taken into consideration in the course of original assessment proceedings u/s 143(3). In regards to the queries raised by your honour in the current notice under section 263 of the Act, the assessee has already submitted complete details alongwith all the relevant documents before the Assessing Officer and only after due examination by the Id Assessing Officer, the assessment order under section 143(3) r.w.s 143(3A) and (3B) of the Act was finalised on 27.01.2021.

6. The assessing officer has in fact done a detailed enquiry and due verification of the issues in question as specified above. The various notices issued in the course of assessment proceeding specially on the same issue as mentioned in the notice u/s 263 and the compliances of the assessee thereto indicate a sufficient level of enquiry and examination of the issued involved.

7. The bare provisions of Section 263 is as follows which states that- "263, (1) The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing afresh assessment.

8. Thus, from the plain reading of the provision, the twin conditions of the Section 263 i.e. the order being erroneous and prejudicial to the interest of the revenue both the conditions does not hold correct in the present case. Neither is this a case of an abject lack of enquiries to invoke revisionary power under section 263 of the Act as all the detailed information were duly submitted in the course of assessment proceeding and only after consideration of the same by the Assessing Officer, the order was passed nor the order is prejudicial to the interest of the revenue. The fact that the Assessing Officer in the various notices and the assessment order has specifically adverted to this issue also concludes that no lack of enquiry on the issued in notice u/s 263 exists and neither any interest prejudicial to the revenue exists. Therefore, order passed by the assessing officer cannot be termed as erroneous.

9. Reliance is placed on the decision of Hon'ble Apex Court in *Malabar Industries Ltd, vs. CIT [2000] 243 ITR 83 (SC)*, wherein their Lordship have held that twin conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT, The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue, In the following circumstances, the order of the assessing officer can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii) Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the assessing officer has not investigated the issue before him; then the order passed by the Assessing Officer can be termed as erroneous order. In the present case none of the above conditions are fulfilled, the Assessing Officer has passed the order after considering all required data with him and after considering the same, thus the order cannot be termed as erroneous.

10. Coming next to the second limb, which is required to be examined as to whether the actions of the assessing officer can be termed as prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of *Malabar Industries (supra)* held that this phrase Le, "prejudicial to the interest of the revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law.

11. Further the Explanation 2 to Section 263 is also reproduced below, "Explanation 2. —For the purposes 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 interests of the revenue, if, in the opinion of the Principal [Chief commissioner or Chief Commissioner or 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 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.

12. In regards to the above it is submitted that Clause (a) wherein the order is passed without making inquiries or verification is not applicable in the present case since all the issues even mentioned in the notice under 263 have been duly dealt with in the assessment proceedings. All the proofs have been duly submitted as above and in the attachments. Similarly Clause (b) above, no relief has been provided without any inquiry, all the inquiries in regards to the expenditures have even been duly done in the course of assessment proceedings by the Assessing Officer. Clause (c) and Clause (d) are not applicable. Hence even the explanation 2 to 263 does not hold applicable in the present case under consideration.

13. Reliance is further placed on the judgement of Jurisdictional Hon'ble ITAT Surat Bench in the case of Rampratap S. Ghasoliya vs PCIT [ITA No.1266/Ahd/2017] dated 23.08.2021 wherein it was held that "Taking note of the aforesaid dictum of law laid down by the Hon'ble Apex Court, let us examine the assessee's facts. We note that in assessee's case, ld PCIT has raised three issues in his order under section 263 of the Act. About these three issues, we have already discussed the facts in para nos. 9 to 13 of this order and noted that assessing officer has raised questions by issuing notice under section 142(1) of the Act and assessee has replied, these questions along with evidences. The assessing officer has examined the evidences and applied his mind and then after he framed the order under section 143(3) of the Act, therefore, we are of the view that order passed by the assessing officer is neither erroneous nor prejudicial to the interest of revenue. Since, we find that the Assessing Officer has made enquiries and the action of Assessing Officer in accepting the claim of assessee, after detailed enquiry, is a plausible view, so, we do not find that the twin conditions required for exercising the jurisdiction u/s 263 of the Act is found missing /absent and, therefore, the Ld. PCIT ought not to have exercised his revisional jurisdiction under section 263 of the Act and, therefore, we cancel the impugned revisional order dated 27.03.2017 of the ld. PCIT. Therefore, we are inclined to allow the appeal of the assessee."

14. Reliance is also placed on the judgement of Jurisdictional Hon'ble ITAT, Surat bench in the case of Nilkanth Stone Industries vs. PCIT [128 taxmann.com 416] dated 27.05.2021 wherein it was held that "Section 69A, read with section 263, of the Income-tax Act, 1961 - Unexplained moneys (Revision) - Assessment year 2014-15 - Assessee-firm, engaged in

business of stone crushing and selling of crushed stones, filed its return of income - Case was selected for scrutiny and an assessment order was passed under section 143(3) making certain addition - Subsequently, Pr. Commissioner invoked revision under section 263 on ground that Assessing Officer had not examined issue related to advance of certain amount given by assessee to one AIP and also had not examined issue related to payments of commission to two persons - Thus, impugned assessment order was erroneous and prejudicial to interest of assessee - It was noted that assessee had furnished all relevant details regarding loan and advances given to AIP and explained that said advance was returned back in next year and also furnished copy of ledger account - Further, assessee had also submitted all evidence and explained services in relation to sales provided by such two persons to whom it paid commission along with copy of sales register profit and loss account and confirmation of parties before Assessing Officer - It was again furnished in revision proceedings and that nothing was found wrong against those documents by Pr. Commissioner - During scrutiny assessment assessee filed reply to all queries raised by Assessing Officer and produced all relevant evidences and after considering those materials and explanation, Assessing Officer came to a conclusion regarding advances and commission payments in question though it was not mentioned explicitly in assessment order -Whether, on facts, impugned invocation of revision under section 263 was unjustified - Held, yes [Paras 10,11,16 and 17] [in favour of assessee]”

15. Reliance is also placed on the recent judgement of Hon'ble ITAT Surat Bench in case of NYA International vs Principal Commissioner of Income-tax in ITA No. 57/SRT/2022 wherein it was held that – “26, We are aware of the fact that the Assessing Officer's role while framing an assessment is not only an adjudicator. The assessing officer has a dual role to dispense with i.e. he is an investigator as well as an adjudicator; therefore, if he fails in any one of the role as afore-stated, his order will be termed as erroneous. We take note that it is not the case of ld. Principal CIT that assessing officer failed to made any additions/disallowances, the assessing officer conducted sufficient enquiry to examine the debit and credit in the bank statement and he also examined the eligibility to claim deduction under section 10AA of the Act and that is why he disallowed deduction under section 10AA of the Act It is pertinent to mention here that there was as such no allegation of 'no enquiry' or lack of enquiry' or verification, because the Ld. Pr. C.I.T, himself found that the details/evidences in the assessment record, i.e. well within the A.O,'s possession and what he alleged was about the plausible view taken by the A.O. as against his perception and understanding on the same set of facts and documents. Therefore, the notices issued for examination of the issues during the assessment proceedings and submission and verification of the same has not been shown to be fallacious. In this connection it is pertinent to mention here that the way in which assessment should be finalized falls in the exclusive domain of the Assessing Officer. Section 142(1) speaks of inquiry before assessment and gives immense power to the assessing officer for conducting enquiry. Therefore, the assessing officer u/s 142(1)(ii) & (iii) can ask the assessee almost any information which he thinks necessary for

passing assessment and even if Ld. Commissioner has such results of enquiries, the resultant order cannot be subjected to revision proceedings,"

16. Further reliance is placed on the decision of the Punjab and Haryana High Court in the case of Hart Iron Trading Co. vs. Commissioner of Income-tax [263 ITR 437] wherein it was held that even though the assessment order was silent with respect to the issues raised in the 263 order, that by itself did not vest the Commissioner with valid jurisdiction, considering that such issues were considered by the assessing officer and formed part of the assessment record, On page 444 of the judgment, the High Court observed as under: "Thus, it is not only the assessment order but the entire record which has to be examined before arriving at a conclusion as to whether the Assessing Officer had examined any issue or not The assessee has no control over the way an assessment order is drafted. The assessee on its part had produced enough material on record to show that the matter had been discussed in detail by the Assessing Officer. The least that the Tribunal could have done was to refer to the assessment record to verify the contentions of the assessee. Instead of doing that, the Tribunal has merely been swayed by the fact that the Assessing Officer has not mentioned anything in the assessment order. During the course of assessment proceedings, the Assessing Officer examines numerous issues. Generally, the issues which are accepted do not find mention in the assessment order and only such points are taken note of on which the assessee's explanations are rejected and additions/disallowances are made." (emphasis supplied)

17. Reliance is also placed on the following judicial pronouncements O's welt wherein if the issues have been already examined in the course of assessment proceedings nothing can form basis of revisionary proceedings u/s 263 of the IT Act, 2016. a. Reliance Payment Solutions Ltd. vs PCIT [336 taxmann.com 277] dated 21.03.2022 b. M/s Time City Real Estates vs Pr CIT [ITA No. 67/Lkw/2021] dated 30.08.2022 c. M/s Gujarat State Lion Conservation Society vs CIT (Exemption) [141 taxmann.com 269] dated 03,08,2022 d. M/s. KBB Nuts Private Ltd. vs Pr.CIT(A), ITA no. 217/ASR/2019] dated 24.09.2021.

18. Further in regards to the issue of Provident Fund expense it is submitted that the payment has been made within 8 days of the due date for the month of May 2017 i.e. on 23.06.2017 wherein the due date was 15.08.2017 via online portal. It is pertinent to note that the assessee company has been regular with its payments of provident fund throughout the year except for the month of May 2017 since in the year under consideration i.e. 2017-18 the online payment of PF was introduced and the assessee had a shift from off line to online mode of payment of challan for compliances with regards to PF. During such introductory phase, in the month of May the online mode caused technical glitches (website crash/not working) due to which it was impractical to make timely payment Thus, the assessee company was prevented by sufficient cause from making the payment on time and as soon as the same was resolved the payment of challan was made vide online mode only and therefore your honour may

consider condonation of delay for the same. Further even if we take the amendment on Section 36(1)(va) in regards to due date of payment, the same has been introduced recently and prospectively from 01-04-2021 i.e. AY 2021-22 as stated in the Memorandum explaining the provisions in the Finance Bill, 2021 and thus the provision does not apply in the year under consideration. Keeping the said points in view there is no discrepancy in the said expense as well. The extract of the Memorandum is reproduced below for your kind perusal- "Accordingly, in order to provide certainty, it is proposed to - (i) amend clause (va) of sub-section (1) of section 36 of the Act by inserting another explanation to the said clause to clarify that the provision of section 43B does not apply and deemed to never have been applied for the purposes of determining the —due dated under this clause; and (ii) amend section 43B of the Act by inserting Explanation 5 to the said section to clarify that the provisions of the said section do not apply and deemed to never have been applied to a sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section 2 applies. These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years. [Clauses 8 and 9]" Therefore, the issue raised by your honour regarding Alliance Commodities Pvt Ltd has already been examined by the learned assessing officer during the assessment proceedings and hence, the order passed by the assessing officer cannot be termed as erroneous. Thus, it is prayed that the proceedings should not be initiated u/s 263 of the Act. Hence, we request your honour to kindly consider the above submission and do not initiate the proceedings u/s 263. In case your honour is not satisfied with the contention we request your goodself to kindly provide at least one opportunity of video conferencing to the assessee."

7. However, ld. PCIT rejected the contention of the assessee and noted that contention of the assessee is not acceptable as the company, Alliance Commodities Ltd. (PAN AAGCA7943M) from which the assessee has accepted loan during the year under consideration, is a strike off company (whose registration has been cancelled by MCA). The company which is not in existence for the year under consideration is not capable of advancing any unsecured loan to the assessee. Hence, the credit worthiness of the lender was required to be inquired and verified by the assessing officer, which he has not done. Genuineness of the transaction made with such a company whose registration has been cancelled by MCA was required to be inquired and verified by the assessing officer, which he has not done. The

assessing officer was required to make third party enquiry from the MCA regarding reasons for strike-off and the lender company through its Directors, regarding the genuineness of transaction and the creditworthiness of the lending company, which he has failed to do. Further on the issue of late payment of PF of Rs.14,796/- being the contribution from the employee the assessee has submitted that in the year under consideration i.e. 2017-18, the online payment of PF was introduced and the assessee had a shift from offline to online, therefore delay has occurred, was not acceptable.

8. In view of the facts and circumstances of the case, the ld PCIT held that assessment order passed on 27.01.2021 u/s 143(3) r.w.s. 143(3A) & 143(3B) of the Act, in the case of the assessee for the A.Y. 2018-19 is held to be erroneous, in so far as it is prejudicial to the interest of Revenue. Therefore, the assessee's case was set aside with a direction to the Assessing Officer to pass fresh assessment order after taking into consideration the issues as may have been already considered together with the issue discussed herein above also.

9. Aggrieved by the order of ld. PCIT, the assessee is in appeal before us.

10. Shri Rasesh Shah, Learned Counsel for the assessee, argued that loan received by assessee-company and repayment of loan was before the dissolution of company and this fact has been verified by the Assessing Officer by issuing notice under section 142(1) of the Act dated 29.09.2019. In response to the said notice, the assessee submitted its reply, with documentary evidences that loan received by assessee-company and repayment thereof was before the dissolution of said

company. The loan was received out of the accumulated fund of that company. Therefore, Id Counsel submitted that matter related to unsecured Loan, was already examined by the Assessing Officer during the course of assessment proceedings. From the screenshot of scrutiny assessment order u/s 143(3) depicted in Point No 2 above, it is clearly visible that the issue of transactions with company whose registration has been cancelled by MCA was under due scrutiny while completing the assessment u/s 143(3) of the Act. The Id Counsel pointed out that notice u/s 142(1) of the Income Tax Act, dated 10.01.2020, was issued wherein Question no.3, 4, 5 and 8 specifically covered all the matters related to transactions with company whose registration has been cancelled by MCA and assessee has replied these questions to the assessing officer, therefore assessing officer made enough enquiry about the issue on unsecured loan, hence order passed by the assessing officer is neither erroneous nor prejudicial to the interest of revenue.

11. In regards to the issue of Provident Fund expense, it was submitted by Id Counsel that the payment has been made within 8 days of the due date for the month of May 2017 i.e. on 23.06.2017 wherein the due date was 15.08.2017 via online portal. It is pertinent to note that the assessee- company has been regular with its payments of provident fund throughout the year except for the month of May 2017, since in the year under consideration i.e. 2017-18, the online payment of PF was introduced and the assessee had a shift from off line to online mode of payment of challan for compliances with regards to PF. During such introductory phase, in the month of May the online mode caused technical glitches (website crash/not working) due to which it was impractical to make timely payment Thus, the assessee company

was prevented by sufficient cause from making the payment on time and as soon as the same was resolved the payment of challan was made vide online mode only and therefore no addition should be made in the hands of the assessee.

12. On the other hand, Learned Departmental Representative (Id. DR) for the Revenue relied on the findings of the Id. PCIT. About the issue of Provident Fund expenses, it was submitted by Id DR that issue is covered against the assessee by the judgment of the Hon`ble Supreme Court in the case of CHECKMATE SERVICES P. LTD, vide CIVIL APPEAL NO. 2833 OF 2016 (SC).

13. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. PCIT and other material brought on record. We note that assessee has submitted before the Bench the following documents and evidences, viz: (1) Tax audit report (vide Pb.47 to 64), (2) Acknowledgement of return of income alongwith computation of total income (vide Pb.64 to 69), (3) Notice u/s 143(2) issued by assessing officer (vide Pb.70 to 71), (4) Notice u/s 142(1) issued by assessing officer (vide Pb.72 to 74), (5) Acknowledgment of grievance filed at E-Nivaran portal for non-permission to upload documents on ITD portal (vide Pb.75), (6) Letter filed on E-Nivaran portal (vide Pb.76 to 79), (7) Notice u/s 142(1) issued by assessing officer (vide Pb.80 to 81), (8) Reply Letter filed before assessing officer (vide Pb.82 to 83), (9) Reply Letter filed before assessing officer (vide Pb.84 to 86), (10) Notice u/s 142(1)

issued by assessing officer (vide Pb.87 to 89), (11) Response submitted by assessee on ITD Portal (vide Pb.90 to 91), (12).

14. In respect of Alliance Commodities Pvt. Ltd., the Ld. Counsel for the assessee submitted the following documents and evidences; viz: (1) Certificate of Incorporation (vide Pb. 94), (2) Audit report with audited financial statements (vide Pb.95 to 104), (3) Acknowledgment of return of income alongwith computation of total income (vide Pb.105 to 106), (4) Ledger account (vide Pb.107), (5) Contra account (vide Pb.108), (6) Extract of bank statement of Dena Bank (A/c. No.002411023964) (vide Pb.109), (7) Extract of Bank Book of Dena Bank A/c. (vide Pb.110), (8) PAN card of the assessee-company (vide Pb.111).

15. We have examined the above documents and evidences. We note that during the assessment proceeding, the assessing officer has raised the following questions, in respect of issue raised by Id PCIT:

Question No. 3- Please furnish Party wise details of unsecured loans obtained during the year, including squared off loans along with confirmations in the following format:

Question No.4 -If the loan providing entity is companies then kindly confirm its status on MCA.

Question No. 5- Kindly submit documentary evidence to corroborate the identity and creditworthiness of the company and genuineness of the transaction with such company which has ceased to exist.

Question No. 8- Please provide the details of expenses along with justification thereof for Salary, Wages & Bonus Expenses and Manufacturing Expense.

16. In response to the above questions assessee submitted its reply before the assessing officer. Further, another notice was issued u/s 142(1) of the IT Act on 04.02.2020, and the response to which was filed by the assessee company on 13.02.2020. In the said reply the assessee had submitted the copy of acknowledgement of return of income, PAN Card, Bank statement and ledger account of such company whose registration has been cancelled viz Alliance Commodities Pvt Ltd for AY 2018-19.

17. Further vide another notice u/s 142(1) of the IT Act dated 03.01.2021 wherein the Assessing Officer asked further details about the transactions with company whose registration has been cancelled by MCA. The details asked are listed below:

Question No.1 - Kindly furnish the nature of services rendered by the said party during the F.Y.2017-18.

Question No. 2- Kindly furnish the date of strike off and reason on which Registration of the company has been cancelled by MCA with the documentary evidence.

Question No. 3- Kindly furnish the confirmation of unsecured loans along with copy of ITR, ledger copy and details of interest received. Please furnish the copy of bank statement with respect to confirmation of unsecured loans by highlighting the loan amount and details of interest paid during the year under consideration.

Question No, 4- Kindly furnish reason why the company has given substantial loan when its Registration of the company has been cancelled by MCA.

18. In respect of above questions, the assessee submitted its detailed reply along with all necessary documentary evidences, vide response dated 16.01.2021. In the course of proceedings under section 263 of the Act it was submitted by the assessee that the basis for which the current proceedings have been initiated in respect of transactions with company whose registration has been cancelled by MCA, which has been duly taken into consideration in the course of original assessment proceedings u/s 143(3) of the Act. Therefore, the assessing officer has in fact done a detailed enquiry and due verification of the issues in question. The various notices issued in the course of assessment proceeding specially on the same issue as mentioned in the notice u/s 263 and the compliances of the assessee thereto indicate a sufficient level of enquiry and examination of the issues involved, therefore, order passed by the assessing officer is neither erroneous nor prejudicial to the interest of revenue.

19. The assessing officer examined the books of accounts, documents and evidences submitted by the assessee and applied his mind. That is, the AO examined the copy of acknowledgement of return of income, PAN Card, Bank statement and ledger account of such company whose registration has been cancelled viz Alliance Commodities Pvt Ltd for AY 2018-19. The assessing officer conducted sufficient inquiry. To gather more information and then prove the claim of the assessee wrong is not the object of section 263 of the Act. The object of section 263 is to examine whether order passed by the AO is erroneous as well as prejudicial to the interest of revenue. Therefore, based on this factual position, the order passed by the AO under section 143(3) should not be erroneous. We note that Coordinate

Bench of I.T.A.T., Kolkata in the case of Plastic Concern vs. ACIT [61 TTJ 87 (Cal) has held that mere possibility of gathering more material to prove the claim of the assessee wrong would not make the concluded assessment erroneous so long as the Id. A.O. had acted judiciously and conducted enquiries in the course of assessment proceedings.

20. We note that Ld. A.O. having examined the documents and evidences and having satisfied himself about the correctness of the same and explanation of the assessee in regard to the unsecured loan, completed the assessment and, therefore, there cannot be a reason to say that the A.O. has failed to conduct necessary enquiry before accepting the claim of the assessee. We note that Ld. Pr. C.I.T. on analysis of assessment records derived satisfaction for issuing the impugned show-cause notice u/s. 263 of the Act. The expression '*record*' as used in section 263 of the Act is comprehensive enough to include the whole record of evidence on which the original assessment order is based. At the same time, if any information asked for by the assessing authority from the assessee or from others to whom he referred the matter during the course of assessment proceeding was not received but received subsequent to the completion of the assessment, in that situation the assessment order passed without receiving such report may appear to be erroneous within the meaning of sec.263 of the Act. In the case of the assessee, there is no denying the fact, as detailed above and acknowledged in the assessment order u/s. 143(3) dated 29.12.2016, that in response to notices u/s. 143(2)/142(1) and further requisitions made during the course of assessment proceeding, the assessee appeared from time to time and produced/ submitted necessary details/documents as per requisitions in relation to the issues

raised by the Ld. Pr. C.I.T., which were examined by Assessing Officer. Therefore, it is the appraisal of the same records which are already with the Ld. A.O. and the Ld. Pr. C.I.T. took a different view than adopted by the A.O. on the same set of facts, which is not permissible u/s. 263 of the Act. In the above circumstances, the view taken by the A.O. was one of the possible views and the assessment order passed by him could not be held to be erroneous and prejudicial to the interests of revenue. There is difference between 'Lack of enquiry' and 'inadequate enquiry'. It is for the AO to decide the extent of enquiry to be made as it is his satisfaction as what is required under law. Reliance is placed on the decision of CIT v. Sunbeam Auto Ltd. [(2010) 332 ITR 167], wherein Hon'ble Delhi High Court has held that if there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass order u/s 263 of the Act, merely because the Commissioner has a different opinion in the matter and that only in cases where there is no enquiry, the power u/s 263 of the Act can be exercised. The ld. PCIT cannot pass the order u/s 263 of the Act on the ground that further/thorough enquiry should have been made by AO.

21. Further, it was settled by Hon'ble Supreme Court in the case of ***Malabar Industrial Co. Ltd. vs. CIT [(2000) 243 ITR 83 (SC)]*** wherein it was held that if the A.O. adopts one of the possible courses available in the scheme of the I.T. Act which results in any loss of revenue or when two views are possible and the A.O. adopts one of them with which the C.I.T. does not agree, then it would not be an order prejudicial to the interest of revenue for invoking the jurisdiction u/s. 263 of the Act. For better appreciation, the relevant portion of the

judgment in the case of **Malabar Industrial Co. Ltd. vs. CIT** (supra) is quoted below:

“The phrase “prejudicial to the interests of the 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 interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or 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 interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law”.

22. We note that the Ld. Pr. C.I.T. by invoking his jurisdiction u/s. 263 of the Act is giving another opportunity to the Ld. A.O., which is not permissible. Hon’ble Bombay High Court in the case of **Ranka Jewellers vs. Addl. CIT (328 ITR 148)** relying on the decisions of Hon’ble Supreme Court in the cases of **Malabar Industrial Co. Ltd. vs. CIT** and **CIT vs. Max India Ltd. [(2007) 295 ITR 282 (SC)]**, has held that once the issue was considered by the A.O., the remedy of the revenue could not lie in invoking of the jurisdiction u/s. 263 of the Act. Therefore, the order of the Ld. C.I.T. was definitely outside the purview of section 263 of the Act. As noted above, the exercise aimed at ascertaining the correct income of the assessee has been fulfilled by the Ld. A.O. by exercising his quasi-judicial functions *vis-a-vis* passing the assessment order u/s.143(3) of the Act. Therefore, certainly it is not a case wherein adequate enquiries at the assessment stage were not carried out or assessment was made in haste. However, what is an opinion formed as a result of these enquiries and verification of the materials is something which is in exclusive domain of the Assessing Officer, and even if Ld. Pr. Commissioner does not agree with the results of such enquiries, the resultant order cannot be subjected to revision proceedings. For that we rely on the decision of the

Coordinate Bench of I.T.A.T., Kolkata in the case of **Smt. Juthika Kar vs. ITO [I.T.A. No.1128/Kol/2009, dated 16.5.2012]**, wherein it has been held as under (relevant portion):-

“8.....However, what is opinion formed as a result of these enquiries is something which is in exclusive domain of the Assessing Officer, and even if Commissioner has such results of enquiries, the resultant order cannot be subjected to revision proceedings. The conclusions arrived at as a result of enquiries cannot be tinkered with in the revision proceedings. The conclusions being drawn up as a result of enquiry is a highly subjective exercise and as to what is appropriate conclusion is something on which perceptions vary from person to persons. These variations in the perceptions of the Assessing Officer vis-a-vis that of the Commissioner, cannot render an order erroneous and prejudicial to the interest of the revenue.”

23. The aforesaid position gets further strength from the decision of Hon’ble jurisdictional High Court in the case of **CIT vs. J.L. Morrison (India) Ltd. (2014) 366 ITR 593 (Cal)**, the relevant finding of which is applicable to the facts of the present assessee is quoted below :

“85. Whether the assessment order dated March 28, 2008, was passed without application of mind is basically a question of fact. The learned Tribunal has held that the assessment order was not passed without application of mind. The records of the assessment including the order-sheets go to show that heard from time to time. In deciding the question the court has to bear in mind the presumption in law laid down in Section 114 clause (e) of the Evidence Act: “that judicial and official acts have been regularly performed.”

86. Therefore, the court has to start with the presumption that the assessment order dated March 28, 2008, was regularly passed. There is evidence to show that the Assessing Officer had required the assessee to answer 17 questions and to file documents in regard thereto. If the Assessing Officer cannot be shown to have violated any form prescribed for writing an assessment order, it would not be correct to hold that he acted illegally or without applying his mind. ” [Emphasis given]”

24. It is a settled position in law that provisions of sec. 263 of the Act do not permit substituting one opinion by another opinion. Therefore, the order of the Ld. Pr. C.I.T. cannot be sustained on the principle of ‘erroneous’ nature of the order of the A.O., as it is not erroneous. Further, in the instant case, to reiterate, there was no

allegation by the Revenue Authorities that the evidences produced were fictitious or invented, thus accepted the authenticity of the same. Therefore, so far issue of unsecured loans of Rs.20,00,000/- from Alliance Commodities Ltd, is concerned, the order passed by the assessing officer is neither erroneous nor prejudicial to the interest of Revenue, hence we quash the order of Id PCIT.

25. So far the issue of Provident Fund contribution, is concerned, we find merit in the submission of Id DR that the issue is covered against the assessee by the judgment of the Hon`ble Supreme Court in the case of **CHECKMATE SERVICES P. LTD, vide CIVIL APPEAL No. 2833 OF 2016 (SC)**, therefore, we dismiss such ground raised by the assessee.

26. In the result, the appeal filed by the assessee is partly allowed in above terms.

Order is pronounced on 23/11/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 23/11/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat