

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA. No. 537/JPR/2023
निर्धारणवर्ष / AssessmentYear : 2018-19

Rawat Bal Vidha Niketan Samiti 348-349, Vivek Vihar New Sanganer Road Jaipur – 302 019	बनाम Vs.	The Pr. CIT (Central) Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AABTR 1522 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Anoop Bhata CA &
Prerna Sharma, CA

राजस्व की ओर से / Revenue by : Shri Ajay Malik, CIT

सुनवाई की तारीख / Date of Hearing: 04/10/2023
उदघोषणा की तारीख / Date of Pronouncement : 02/01/2024

PER: SANDEEP GOSAIN, JM

This appeal of the assessee is directed against the order of the ld. PCIT (Central), Jaipur dated 01-08-2023 for the assessment year 2018-19 in the matter of Section 263 of the Act wherein the assessee has raised the following grounds of appeal.

“1. On facts and in the circumstance of the matter Ld. PCIT has grossly erred in passing the revision order u/s 263 of the Income Tax Act, 1961 ('the Act'), on the order passed by AO u/s 143(3) by alleging the same as being erroneous and prejudicial to the interest of revenue. Appellant prays that the order of the AO being detailed and well-considered, the revisionary action of Ld. PCIT

deserves to be held bad-in law and the order passed u/s 263 of the Act deserves to be quashed.

2. That the Ld. PCIT has grossly erred in holding the order of the AO as erroneous on the basis of assessment made in earlier AY (2017-18) without considering the fact that the additions in the earlier year were made on estimation. Appellant prays that estimation is always a basis of opinion and one of the possible views, revision action under section 263 is bad in law if addition needs to be made on the basis of an estimation or one of the possible views.

3. That Ld. PCIT has further erred in passing revisionary order u/s 263 of the Act. Appellant prays that the order of AO neither being erroneous nor prejudicial to the interest of Revenue, hence the order of Ld. PCIT being without jurisdiction deserves to be quashed.

4. That Ld. PCIT has grossly erred in holding the order of AO as erroneous and prejudicial on the grounds that in earlier years exemption u/s 11 and 12 was withdrawn, by disallowing salary to specified persons and the same was being fully allowed in the relevant year. Appellant prays that specific details relating to salary paid to both specified and non-specified persons were duly called for and examined and based on same a view was taken by the AO. Holding such view as erroneous and prejudicial without bringing any new material on record, being outside the purview of sec 263, the order passed deserves to be quashed.”

2.1 Brief facts of the case are that the assessee trust e-filed its return of income for the previous year 2017-18 relevant to assessment year 2018-19 on 31-10-2018 declaring an income of Rs. NIL. The case of the assessee was taken up for “Limited Scrutiny” u/s 143(3) of the Income Tax Act. 1961 on the basis of Computer Assisted Selection for Scrutiny (CASS) and statutory notice u/s 143(2) of the Act dated 22-09-2019 was issued through ITBA and duly served upon the assessee. The information/s 142(1) of the Act was called for vide questionnaire through ITBA. Incompliance of the said notices, the assessee submitted details / information through e-proceedings and the information so filed by the assessee was

examined by the AO. The AO while assessment proceedings noted that the assessee trust is engaged in education Sector wherein the following institutions are run by the Rawat Bal Vidhya Niketan Samiti.

S.N.	Name of the institution	Address
1.	Rawat Public School, PratapNagar	Sector-17, Pratap Nagar, Raipur
2.	Rawat Sr. Secondary School, Vivek Vihar	348-349, Vivek Vihar, New Sanganer Road,
3.	Rawat Public School, Mansarovar	366, Vivek Vihar, New Sanganer Road, Raipur
4.	Rawat Mahila P.G. College	Kami Vihar, Hirapura, Ajmer Road, Raipur
5.	Rawat B.Ed College	-do-
6.	Rawat Nursingh College	-do-

It is noted that the AO vide his assessment order dated 21-04-2021 accepted the assessee's returned income by observing as under:-

“4. After examination of the information and other details, the returned income of the assessee trust is accepted.”

The total income is assessed at income of Rs. Nil u/s 143(3) of the Income Tax Act, 1961, ITNS-150 showing calculation of tax and interest chargeable, if any, is attached herewith forming a part of this order.”

2.2 The Id. PCIT on examination of the details/ record available before him observed that the assessment order passed on 21-04-2021 by the AO appears to be erroneous as well as prejudicial to the interest of revenue and set aside the same with direction to make afresh assessment order on the point of salaries paid to

specified persons as being excessive based on the order of earlier year. The relevant observations as made by the Id. PCIT in his order are mentioned as under:

“5. I have studied the issue at hand alongwith the assessment records and the submissions of the assessee. The Counsel has been duly heard.

6. The taxpayer (through Counsel) has pleaded, among other things, that on grounds of consistency an adverse view cannot be taken in this year particularly when revenue has been holding that the taxpayer is eligible for grant of exemption as per provisions of sections 11 and 12 of the Income Tax Act 1961.

7. The taxpayer also pleaded that there was no need or no occasion or no necessity for triggering the said disallowance in this year. The petitioner also pointed out that the disallowance was specific to findings of that year. Since there were no findings in this year, therefore, the AO did not need to make any disallowance and therefore no prejudice whatsoever has been caused to revenue. The assessing officer, pleads the assessee, has proceeded to make this disallowance on the basis of view arrived at by him on the basis of facts of earlier year which too are contested in appeal and not final. The taxpayer, through counsel, pleaded that there was no positive evidence specific to this year which could have led to disallowance. Thus, pleaded the petitioner that the hypothesis of loss having been caused to revenue is merely an allegation which remains unsubstantiated. As such, the taxpayer (that is the assessee or the petitioner) has propositioned that the disallowance in the earlier year was a view taken by the assessing officer in that year. The view to be taken in this year needs to be a different view and therefore as per law laid down in the case of Malabar by Honorable Supreme Court 243 ITR 83, an adverse view cannot be taken in this year.

8. The petitioner (or assessee or taxpayer) has also pointed out that some of the additions have also been made in the hands of one of the trustees. Thereby, the taxpayer has propositioned that there are double additions and that revenue itself is not sure as to in what hand

such an addition is to be made. According to the taxpayer, these common items did not belong to income of the society, which is this assessee. The taxpayer has also propositioned that the society is actually involved in the activity of education being running of the school which is a fact that cannot be denied and is a ground reality

9. Further, the taxpayer has pleaded that merely a percentage disallowance on account of salary payments without any strong basis being there is not appropriate. The taxpayer also submits that this was the primary basis of disallowance of exemption and that in this year there is no such basis for "disallowance. Even the disallowance in the earlier year is not final and is disputed.

10 In this connection I am of the view that Revenue had, on the basis of inquiries made an evidence available in the earlier assessment year, disallowed the exemption given to the assessee society. Further, the triggering factor were, the salary payments that were disallowed relating to the specified persons. The additions made in the earlier year were the surplus of income over expenditure as well as addition on account of disallowance of salary paid to specified persons

11. The taxpayer has also pleaded vehemently that the show cause notice speaks of additions/ disallowance of exemption, to be made on a basis similar to assessment year 2017-18. In this connection, it is pointed out by the learned Counsel that the assessment order for AY 2017-18 was based on survey carried out under section 133A of the Income Tax Act 1961 relating to the post Demonetization period, that is in March 2017. The irregularities found (without prejudice) pertain to that period only and cannot be a basis for taking action in this year particularly when no evidence thereof was available with the assessing officer during the course of assessment proceedings for AY 2018-19. Furthermore, pleads the taxpayer, that proceedings under section 263 cannot be made to uncover evidence on a supposed / hypothetical basis, particularly when the information that was available was specific and additions to be made in this year will be merely based, if at all, on the basis of projection in future/ estimation. This kind of approach is not acceptable in the courts of law, pleads the assessee.

12. It is noted that the assessing officer has failed to take note of the fact that there were disallowances on account of salary payments in the earlier year, which might have needed to be disallowed in this year too and therefore consequential denial of exemption might have followed. Further on the basis similar to the earlier year, the exemption needed to be disallowed. It has therefore been noted in the show cause notice issued to the taxpayer that this is a case of a trust where substantial expenses (primarily salary payments) have not been made for charitable purposes and therefore the trust has violated provisions of section 13(1)(c) and 13(1)(d) of the IT Act 1961. As such, It has been detailed in the show cause notice that the income should have been prima facie computed on a basis similar to the preceding year.

The assessee pleads that the view arrived at in the earlier year was based on the facts obtaining in that year and this view has not been arrived at in this year. According to the taxpayer, in this year, the assessing officer has adopted one of the various plausible legal views which is not illegal as the fact of survey having been carried out in this year is absent. The survey had been carried out in an earlier "previous year (which was the demonetization year) and therefore that view cannot be applicable in this year to reopen the case under section 263. The taxpayer pleaded that there is no survey in this year and no adverse findings in this year, as such, the view in this year has to be different. The taxpayer thus pleads that their being no survey in this year, (and no demonetization in this year) there is no error in the action by the assessing officer.

13. This failure on part of the assessing officer to primarily ascertain the disallowance of salary to be made (which was the primary trigger for disallowance of exemption addition in the earlier year) and in examining/disallowing the eligibility of the taxpayer for purposes of exemption is an erroneous act which has caused prejudice to the interests of revenue. The assessing officer failed to take the possible view as had been taken in the earlier year, and caused prejudice to the interest of revenue from this erroneous action. logically

14. Furthermore, it is noted that the taxpayer had incorrectly claimed depreciation. The taxpayer has intimated that he has already moved a petition for rectification of the same, being an error apparent from record. The taxpayer has also explained / clarified as to why did this error occur. If such a petition has been suo motto moved by the taxpayer, then, I am of the view that, on adverse view with regard to depreciation may not be taken by the assessing officer

15. Summing up, the assessing officer is directed to examine the eligibility of salary payments on the basis as in the earlier year, Further, the assessing officer consequently may also examine whether the petitioner is eligible for exemption within the meaning of provisions of Income Tax Act 1961. To this extent, the assessment order made on 21.04.2021 is hereby set side to be made afresh within the parameters as above.’

2.3 During the course of hearing, the ld.AR of the assessee prayed that the ld. PCIT has wrongly invoked the provisions of Section 263 as well as wrongly set aside the order of the AO whereas the AO after examination of the information and other details submitted by the assessee, accepted the returned income of the assessee for which the ld. AR of the assessee filed the detailed written submission as under:-

‘The assessee is a charitable entity engaged in imparting education through various schools and colleges in Jaipur. The return of income for the relevant year was filed on 31.10.2018 declaring NIL income by claiming exemption u/s 11 of the Act. The case of the assessee was taken up for “Limited scrutiny” on the basis of CASS for examining the **‘expenditure for charitable and religious purposes’**. Various documents and explanations called for were duly examined and an order u/s 143(3) of the Act was passed on 21.04.2021 accepting the returned income.

Later Ld. PCIT(Central) called for records and a notice u/s 263 of the Act was issued on 01.08.2023. The points considered in the notice were as under:-

5. It has been noted that as per information available on record, assessment of immediately preceding assessment year i.e. A.Y. 2017-18 was completed under scrutiny u/s 143 (3) of the Act on 31.12.2019.

6. In that assessment, the ACIT (Exemption) held in unambiguous terms that based on various irregularities found during survey proceedings u/s 133A at the premises of the assessee, coupled with the facts gathered is carried out during the assessment proceedings, the assessee had violated provisions of section 13 (1)(c)(ii) and 13(1)(d) and was thus not entitled to any benefits as provided u/s 11 of the Act.

7. It is noted that the nature of activities and transactions in the current year are similar to those in the immediately preceding year. As such, there is no case for allowing benefit of section 11 of the Act to the assessee. Expenses in the current year have not been incurred for charitable purposes. However, the same have been allowed by the AO. There is nothing on record to indicate that the facts and circumstances in the current year are different from those in AY 2017-18, so as to enable the AO to deviate from the stand taken in AY 2017-18. The AO appears to have overlooked the findings in AY 2017-18 and has therefore, arrived at incorrect while accepting the claim of the assessee.

8. The facts in the current year also indicate a clear violation of provisions of section 13(1)(c)(ii) and 13(1)(d) of the Act read with section 13(2)(c) and section 13(3) of the Act. Following specific instances have been found, viz:- a. As per reply dated 15.2.2021, the trust has paid salary of Rs. 15,18,000/- to ShBachan SinghRawat, Rs, 12,40,800/- to SmtNirmalaRawat, Rs. 7,59,000/- to NarendraRawat, Rs. 7,59,000/- to HemendraRawat and Rs, 6,90,000/- to Arpan Mehra. All these 5 persons are specified persons within the meaning of u/s 13(3) of the Act. As against such high payment of salary to specified persons the salary payment to non-specified persons is much below. The highest salary paid to nonspecified person is of Rs 4,44,000/- only to one Shri A K Gupta. Though nothing is on record to show as to what qualifications and posts are held by the specified/non specified persons, but it can be inferred from the very basic details that the highest qualified person is Shri A K Gupta, who might be the principal/head of any of the Colleges run by the trust, to whom salary of Rs 4,44,000/- only has been paid. Apparently there is excessive and unreasonable payment of salary to the specified persons which clearly attracted provisions of section 13(1)(c)(ii) of the Act. They may at the most have been reasonably paid @ Rs. 4,44,000/-p.a totaling to Rs. 22,20,000/-. As against this they have been paid total salary of Rs.49,66,800/-. As such, there is excess payment of Rs. 27,46,800/-. All these 5 persons are specified persons within the meaning of u/s 13(3) of the

Act. As against such high payment of salary to specified persons, the salary payment to non-specified persons is at a far lower figure. b. As such the trust has made excessive and unreasonable payments to specified persons, with high salaries paid to them and far lower salaries paid to non-specified persons. This violates the provisions of Section 13(1)(c)(ii) of the Act, and the excessive payment of salaries to specified persons cannot be considered for charitable purposes. Further the trust has claimed a high amount of salary in the current year, which is excessive and disallowable. Additionally, heavy amounts of rent have been paid to specified persons, but there is no record of whether the properties were actually used by the trust or if the payments were reasonable. The trust also owns luxury vehicles that are being used for personal purposes of specified persons, which cannot be considered for charity. c. In the AY 2018-19, total salary claim is of Rs. 7,89,25,249 as against claim of Rs.6,24,99,589 in AY 2017-18. Around 42% of salary claim was found genuine and reasonable in AY 2017-18 and remaining 58% was disallowed. On the same analogy 58% of the salary of the current year i.e Rs 4,57,76,644 is not for the purpose of activities of the trust and excessive and thus disallowable. This amount also covers excess and unreasonable salary paid to specified persons as above. d. It is further noticed that as per copies of accounts of various expenses, a substantial part has been incurred in cash without any details of the payee and any supporting evidence. Such expenses cannot be considered for charity in absence of clear details of payee and purpose of expenditure.

9. Furthermore, depreciation of Rs. 8708189/- has been claimed for the year under consideration on assets which have already been claimed as application of income in earlier years and therefore this claim was not an allowable expenditure for charitable purpose within the meaning of section 11(6) of the Act. Since, the assessee is not entitled to benefit of section 11 of the Act for the reasons as detailed above, this claim may otherwise be disallowed on the principal of lack of commercial expediency.

10. The funds of the trust have not been deposited or invested in the specified forms/modes/assets as prescribed u/s 11(5) of the Act. As such, there is a violation of provisions of section 13(1)(d) of the Act. Furthermore, during the year under consideration, the assessee trust has shown advances of Rs. 1,49,00,000/- under the head loans and advances for land and construction without any description of persons to whom such amounts were given.

11. In view of above, it was a case of a trust where substantial expenses were not for charitable purpose and the trust has violated provisions of section 13(1)(c) and 13(1)(d)''

The assessee filed complete details and explanations vide its replies dated 17.05.2023 and 19.05.2023. It was stated by the assessee that to initiate proper proceedings u/s 263 of the Act the order of ld. AO has to be found both erroneous and prejudicial to the revenue. The assessee also stated its reply on each of the points above and relying on case laws submitted that the case was not a fit case for revision u/s 263 of the Act.

The contention of the assessee was not appreciated and Ld. PCIT finally found the assessment order on the point of salaries paid to specified persons as being excessive based on the order of earlier year and held the order of the AO to be erroneous as well as prejudicial to the interest of the Revenue and set aside the assessment order dated 21.04.2021 passed u/s 143(3) with the direction to make fresh assessment order on this point. The order of Ld PCIT passed u/s 263 of the Ld. PCIT is challenged before Your Honors

It is humbly submitted as under:-

At the outset the assessee invites Your kind attention to the FACTS of the case which are summarized as below:

The assessee is a charitable entity engaged in imparting education through various schools and colleges in Jaipur. As regards the establishment and purpose of assessee trust, it is submitted that, Rawat Bal Vidya Niketan Samiti (hereinafter referred to as the Samiti) was started with just 50 students and 5 Teachers.

The motive of this Samiti since its inception is to spread Education and encourage literacy among the maximum population. Later on this Samiti turned into an Educational Group with various Branches / Institutions. In these 40 years the Samiti is groomed with Several Branches like- Rawat Sr.Sec School,Vivek Vihar, Jaipur, Rawat Sr.Sec School Mansarover, Jaipur, Rawat Public School, Pratap Nagar, Jaipur, Rawat Public School, Bhankrota, Jaipur & Rawat Group of Colleges,Karni Vihar, Heerapura, Jaipur. Every Branch / Institution of the Samiti is focusing on Social Welfare through promotion of Education. The Samiti is determined to provide privilege to needy ones and poor section of the society without any discretion of creed and cash. In all Branches / Institutions of the Samiti a good number of Students are getting Free Education. About 25 students in Rawat Senior Sec.School, Vivek Vihar, Jaipur, 30 students in Rawat School, Mansarover, Jaipur, 20 students in Rawat School, Bhankrota, Jaipur and about 40 Students in Rawat Public School Partap Nagar, Jaipur are

presently getting free education. Apart from this about 35 students of Group Employees are presently studying at 50 percent fee only.

It is gladly submitted that the institutions under the samiti are associated with the Red Ribbon Club which is Spreading Aids awareness Programmes. Rawat Group is involved in many Charitable Works such as Blood Donation, Food Donation, Clothes Donation, Etc. The Samiti is working for welfare of Animals & Birds also as recently It has started Parinda Campaign for Birds under this campaign 21,000 Parindas are planned to be tied for Birds. In the education field, the Samiti is also providing Free Books to needy ones and skill education wherein education is provided to create self-employed youth. All institutions of the Samiti are applying innovative teaching techniques as well as methods to groom the future of the Nation. Atal labs and Innovative labs of School are Providing Practical Learning Environment. Best CBSE and RBSE Board Results make it a shining group in the Educational Field.

The above brief of the Samiti and its institution would help you to understand the intent and the actual carrying of charitable activities by the Samiti as also its commitment towards them.

Coming to the facts of the relevant year, we would like to bring your kind attention to the fact that the return of income for the relevant year was filed on 31.10.2018 declaring NIL income by claiming exemption u/s 11 of the Act. The case of the assessee was taken up for “Limited scrutiny” on the basis of CASS for examining the ‘**expenditure for charitable and religious purposes**’. Various documents and explanations called for were duly examined and an order u/s 143(3) of the Act was passed on 21.04.2021 accepting the returned income.

Ld PCIT has passed order u/s 263 of the Act, pointing out that the order of ld. AO was erroneous and prejudicial to the extent that the salary payments to specified persons should have been examined by ld. AO in light of the disallowance of salaries made in the earlier year and the consequent withdrawal of exemption u/s 11 & 12 of the Act in that year

Regarding observation of Ld. PCIT that “expenses on account of Salary paid to persons specified u/s 13(3) of the Act were not examined in light of sec 13(2)(c) and violation of sec 13(1)(c)(ii) of the Act was not brought out by ld. AO by overlooking the observation made in this regard in order passed u/s 143(3) for AY 2017-18”, it is submitted as under:-

During the relevant financial year the assessee had paid the following salaries to persons specified u/s 13(3) of the Act:

Name	Description	Nature of expense	Amount
Shri Bachhan Singh Rawat	Trustee	Salary	15,18,000/-
Smt. Nirmala Rawat	Wife of trustee	Salary	12,40,800/-
HemendrasinghRawat	Trustee	Salary	7,59,000/-
Narendra Singh Rawat	Trustee	Salary	7,59,000/-
Arpan Mehra	Wife of trustee	Salary	6,90,000/-
		Total	49,66,800/-

Ld PCIT has observed that order of ld.AO was erroneous, as the salaries paid were not examined in light of observation made in the order of AY 2017-18 that, the salaries paid to specified persons were very high in comparison to the salaries paid to other non-specified persons, and in absence of any detail on qualifications and posts held by such specified persons, the reasonableness of payment could not be ascertained. It has been further observed that salary had been held reasonable only to the extent of 42% of the total salary claimed in AY 2017-18, and ld.AO seemed to have overlooked this observation and held the entire salary as allowable.

In this regard it is humbly submitted that:

1. The ground on which the salary for AY 2017-18 was held excessive was a salary register that was found during survey conducted on the assessee samiti on 16.03.2017 and based on the salaries mentioned in that register, ld.AO had pro-rated the salary for the entire year and held the balance salary claimed as not genuine. Also submitted that the amount disallowed in AY 2017-18 was the entire salary and not the salaries paid to persons specified

u/s 13(1)(c) of the Act. Therefore, the observation that there was violation to sec 13(1) of the Act in the earlier year and the resultant withdrawal of exemption u/s 11 and 12 of the Act was absolutely unwarranted and unjustified and based on absolute incorrect footing. Further that the disallowance made in AY 2017-18 was based merely on one of the incomplete registers found during survey which probably belonged just to one of the institutions operating under the samiti, without considering the salaries that were paid by other institutions of the samiti, and thus holding only 42% of the entire salaries claimed as being genuine was totally an unjustified and incorrect observation made in the earlier year. Also that no such disallowance was made in any of the earlier assessment years which were also re-opened pursuant to the survey proceedings held in AY 2017-18 where such salaries were paid, claimed and allowed consistently.

Moreover complete details regarding the salaries paid to specified persons were specifically called for and examined by ld. AO during the assessment proceedings of the year under consideration. And after due verification of the same, ld. AO had formed an opinion and allowed the salaries as genuine. Merely because nothing specific was mentioned regarding the verification and allowability of salaries, it cannot be presumed that the same was not scrutinized during the assessment proceedings. **(Copies of specific replies filed by the assessee with regards to genuineness of salaries paid to specified persons are enclosed herewith.)**

2. Assessee further prays that:

- a. Each year is a different year and merely because something was disallowed in an earlier year, the same need not be disallowed in the current year, especially when the facts of both years are not identical.
- b. There was no survey conducted in the year under consideration nor there was a need to pro-rate the salary in an adhoc manner, based on any incomplete register(which was non-existing).
- c. The salary allowed by ld. AO was after due consideration of all details duly filed by assessee and an opinion was duly formed by ld. AO after verification of details so filed by assessee.
- d. **During the course of scrutiny assessment for the relevant AY ld. AO in vide notices issued u/s 142(1) on 14.02.2021 and 20.02.2021 duly asked the assessee to submit its reply in support of the payments made to persons specified u/s 13(3) of the Act and the assessee vide**

replies dated 15.02.2021 and 08.03.2021 respectively filed its detailed replies along with required documents and accordingly during the course of assessment necessary enquiry was made by Id. AO regarding the issue raised by Id. CIT in his revisions proceedings as well as order presently pending in appeal before Hon'ble ITAT. Therefore, the present case per se is not a fit case for revision proceedings u/s 263 as there is no lack of enquiry in the matter at all.

In context of the above and in accordance with the guiding judicial precedents as well as legal position the revisionary order thus cannot be passed merely to review the opinion formed by Id. AO for the reason that a higher authority does not concur with the view taken by Id. AO, without there being any substantive material in possession of such higher authority that has not been considered by Id. AO while forming such opinion.

Reliance is placed on the following decisions: -

CIT v/s Rajasthan Financial Corporation (1996) 134 CTR 145 (Raj) held that: "Once Assessing Officer has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the Assessing Officer allowed the claim being satisfied with the explanation of assessee, the decision of the Assessing Officer cannot be held to be erroneous simply because in his order not make an elaborate discussion in that regard

Commissioner Of Income Tax vs Ganpat Ram Bishnoi (2005) 198 CTR Raj 546, 2008 296 ITR 292 Raj (copy enclosed) held that, "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 AO, the CIT can cancel that order and require the concerned AO to pass a fresh order in accordance with law after holding a detailed enquiry. But when 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 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 AO 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”

Hon’ble ITAT Jaipur bench in the case of Annu Agrotech Vs. PCIT in ITA no. 9/JP/2021 dated 15.09.2021 (copy enclosed), wherein relying on the decision of the Hon’ble Apex Court in the case of M/s Malabar Industrial Co. Ltd it has been held that, “This provision cannot be invoked to correct each and every type of mistake or error committed by the AO; it is only when an order is erroneous as also prejudicial to Revenue's interest, that the provision will be attracted. An incorrect assumption of the fact or an incorrect application of law will satisfy the requirement of the order being erroneous. The phrase 'prejudicial to the interest of the Revenue' has to be read in conjunction with an erroneous order passed by the AO. Every loss of revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. For example, if the AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order and it is prejudicial to the interest of the Revenue, unless the view taken by the AO is totally unsustainable in law”

Similar view has again been taken by the Hon’ble ITAT Jaipur bench in the case of M/s Agrani Buildestate Vs. PCIT in ITA No. 205/JP/2023 dated 03.07.2023 (copy enclosed)

Hon’ble Karnataka High Court in the case of CIT Vs. Cyber Park Development & Construction Ltd. (276 Taxmann 460), wherein held that when the AO allowed the claim of assessee after due application of mind and on proper consideration of the material available on record, the order passed by AO can neither said to be erroneous nor prejudicial to the interests of revenue. Therefore, the order of Ld. CIT passed u/s 263 of the Act cannot be sustained.

CIT Vs. Sunbeam Auto Ltd., reported in 227 CTR 133, the Hon’ble Delhi High Court drew a distinction between “Lack of inquiry” and “inadequate enquiry” and held that, ‘in the case of inadequate enquiry, provisions under section 263 cannot be invoked.’ It may however, be noted that the instance case is neither the case of inadequate enquiry nor lack of enquiry during assessment proceedings as it can be

seen that due enquiries were conducted by the Ld. AO. Therefore, in view of such legal position, no action u/s 263 can be taken.

The above contention of assessee is further fortified by the judgment of Hon'ble Supreme Court in the case of **CIT v. Gabriel India Ltd.** reported in **203 ITR 109 (Bom)** wherein it has been held as under:

-Revision--Exercise of power of CIT to make revision suomotu--Conditions precedent--CIT cannot revise order merely because he disagrees with conclusion arrived at by ITO--Expenditure allowed by ITO as being revenue in nature--CIT reopening matter under section 263 and hearing assessee--CIT directing ITO to re-hear matter--Order not valid--Income-tax Act, 1961, s. 263-

It has also been held by the Court that section 263 does not arm the CIT to trespass into this peculiar jurisdiction of the Assessing Officer so as to direct him to exercise this discretion with a bent of mind conforming to the CIT's opinion or in other words, towards generation of some extra revenue. It is a well established law by now that section 263 does not contemplate mere substitution of the opinion of AO with that of CIT.

It has been held in the case of **CIT v. Max India Ltd.** reported in **295 ITR 282 (SC)** that 'every loss of revenue cannot be said to be prejudicial to the interests of revenue', however in this case interestingly, there has been no loss at all to the revenue, accordingly, it cannot be said that the action of Ld. AO was prejudicial to the interest of revenue. Thus, no action u/s 263 is called for. This submission of assessee is fortified from the observations of Hon'ble Supreme Court in the case of **CIT Vs. Max India** (supra) wherein it was held as under:

The phrase "prejudicial to the interests of the Revenue" in section 263 of the Income-tax Act, 1961, has to be read in conjunction with the expression "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 the Assessing Officer adopts one of two courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the Revenue, unless the view taken by the Assessing Officer is unsustainable in law.**

Antala Sanjay kumar Ravjibhai v. CIT [2012] 135 ITD 506 (Rajkot) (Trib.), Manish Kumar v. CIT [2012] 134 ITD 27 (Indore) (Trib.) held that section 263 does not visualize a case of substitution of judgment of Commissioner for that of the Assessing Officer, unless the decision is held to be erroneous.

Allied Engineers v. CIT [2009] 180 Taxman 70 (Mag.) (Delhi) (Trib.) held that order passed by the Assessing Officer in accordance with law, judicial pronouncements and after considering relevant replies duly supported by evidence cannot be branded as erroneous, merely because the Commissioner is of other view or in his opinion order passed is weak and not a detailed order.

Antala Sanjaykumar Ravjibhai v. CIT [2012] 135 ITD 506 (Rajkot) (Trib.), Roshan Lal Vegetable Products (P) Ltd. v. ITO [2012] 51 SOT 1 (URO) (Asr.)(Trib.), Fine Jewellery (India) Ltd. v. ACIT [2012] 19 ITR 746 (Mum.)(Trib.) held that in these cases, since the Assessing Officer made proper enquiry and examined accounts, it could not be said that there was non-application of mind by him. Hence, the action under Section 263 was held invalid.

Anil Shah v. ACIT [2007] 162 Taxman 39 (Mum.)(Trib.) held that if the Assessing Officer allows the claim, on being satisfied with the explanation of assessee, on an enquiry made during the course of Assessment Proceedings, the decision of the Assessing Officer cannot be held to be erroneous, on ground that there is no elaborate discussion in that regard in the order. It is the practice that whenever any claim of the assessee is accepted, the A.O may not discuss the same in his order”.

It is humbly submitted the salaries paid to the specified persons mentioned above is completely genuine and in accordance with the services offered by each of them for the smooth working of the noble cause for which the assessee society was formed (the curriculum vitae of each such specified person is attached for your perusal) which clearly reveal that the kind of services provided by these persons were definitely their genre and fully deserved the remuneration given to them . **The comparison of specified persons who not only manage the entire samiti, which includes all the schools and colleges run from various areas, the entire staff engaged in all such schools and colleges (which also includes the dean or the principal) but also includes working towards managing funds and grants received for the overall functioning of the samiti. This requires complete**

dedication, influential network and managerial skills for which the amount so paid as remuneration to such specified persons are very reasonable and most genuine and thus deserve to be accepted as such. Further, comparing salaries paid for the managerial tasks stated above with the salary paid to the Dean/Principal of the college/ school, who merely manages a single institution, is most unreasonable, unwarranted and totally incomparable and thus the observation made to allege the salaries paid to specified persons being unreasonable, deserves to be rolled back. Also submitted that the salaries paid to specified persons account merely for 4.21% of the total expenditure of the samiti during the relevant year and merely 6.29% of the total salaries claimed by the assessee during the relevant year. The salaries claimed in the last 3 years by the assessee are given below:

SALARY DATA OF KEY PERSONS IN RAWAT BAL VIDHA NIKETAN SAMITEE				
NAME	A.Y. 2015-16	A.Y. 2016-17	A.Y. 2017-18	A.Y. 2018-19
BACHAN SINGH RAWAT	9,00,000	11,40,000	13,20,000	15,18,000
NIRMALA RAWAT	7,80,000	10,20,000	11,37,400	12,40,800
HEMENDRA SINGH RAWAT	5,04,000	6,00,000	6,78,683	7,59,000
NARENDRA SINGH RAWAT	5,04,000	6,00,000	6,68,250	7,59,000
ARPAN MEHRA	4,32,000	5,40,000	6,07,500	6,90,000
Total	31,20,000	39,00,000	44,11,833	49,66,800

Perusal of above table reveals that the salary paid to specified persons have been consistent in the last 3 years and the increase in the relevant year as

compared to the earlier year ranges merely from 9 to 15% which is most reasonable and no negative inference deserves to be drawn as regards salary expense claimed by the assessee samiti. [Please also find attached CVs of above mentioned specified persons which duly reflect their strength and eligibility to contribute to the betterment of the society.]

In this regard kind attention is also invited to the provisions of Section 13(2) as applicable for the relevant AY that reads as under:-

“(2) Without prejudice to the generality of the provisions of clause (c) and clause (d) of sub-section (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),—

(a)

(c) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;
.....”

A bare reading of the provisions of section 13(2)(c) does not restrict the payment of salary to the specified persons at all rather it attracts the provisions of section 13(1)(c) only when the payment of salary etc. to a specified person is in excess of what may be reasonable paid for their services. **Since in the present case the payments made to the specified person were towards their complete dedication and involvement in the activities of charitable purpose which were not limited to a single institution rather for the group of institutions run by the assessee hence treating the payment of salary as unreasonable without having a reference to the real facts of the case or understanding them in light of the specific circumstances of the case of assessee in totality would be a pure injustice to the assessee.**

In view of the above humble submission, it is submitted that expenses have been rightly claimed by the assessee and assessed by the Id. AO and the order of Ld AO is neither erroneous nor in any manner prejudicial to the

interest of revenue on this issue and therefore the order of Ld. PCIT passed u/s 263 of the Act deserves to be rolled back and the assessee prays accordingly

In addition to the above humble submission we once again attract your kind attention on the following legal position as regards the initiation of proceedings u/s 263 of the Act:

It is settled law that basic ingredients are to be fulfilled before invoking section 263 which has been explained by the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. Vs. CIT reported in 243 ITR 83 (SC) in the following words:

“A bare reading of section 263 of the Income Tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income Tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent – if the order of the Income Tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue – recourse cannot be had to section 263(1) of the Act.”

It is therefore submitted that the Ld. AO has taken a legal and correct view of the entire material available before him and after making application of mind as a duly instructed person on law and facts and any conclusion having been reached to a reasonable satisfaction of accepting the returned income, thus the order of Ld. AO is neither erroneous nor prejudicial to the interest of the revenue on any count.

Indeed, in the instant case the Ld. AO has passed this order after considering entire material available on record, called for and submitted by assessee during the course of assessment proceedings. It is not the case that the Ld. AO had passed the order without conducting inquiries into the issue under consideration and specific details regarding salary to specified persons and allowability of the same was duly asked for and have been submitted by the

assessee, which after due verification have been allowed by Id.AO. The entire material as also the order passed for AY 2017-18 was duly available with Id. AO. Also the observation made by Ld. PCIT regarding the salary expenses is based merely on inference drawn for AY 2017-18, which was under totally different situation and also that except AY 2017-18 no other assessment year bears any disallowance in this regard, where assessments were re-opened pursuant to survey proceedings carried out in AY 2017-18. Therefore a disallowance made in just one year, that too on incorrect footing cannot be made basis for doubting the claim made in current year and duly allowed by Id. AO after due verification.

Kind attention is also invited to the provisions of Section 263 as applicable for the relevant AY (2018-19):

“Revision of orders prejudicial to revenue.

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 a fresh assessment.*

Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

- (a) *an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include—*
 - (i) *an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;*
 - (ii) *an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;*
- (b) *"record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner;*
- (c) *where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall*

extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

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 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.”***

A bare reading of clause (a) to the Explanation 2 of Section 263(1) enables a deeming fiction for the CIT to treat the order of AO erroneous in so far as prejudicial to the interest of revenue if in the opinion of CIT the order is passed without making inquired or verification which should have been made.

This again substantiates that the assessee challenging the validity of Sec 263 is completely valid as in the present case the assessment order was passed after making due enquiry as well as verification from the assessee hence the CIT has no power to invoke the power provided under section 263 of the Act at all.

In light of the facts / circumstances of the case, submissions made above, and the case laws relied upon (including the decisions of this Hon'ble bench quoted supra), it is very humbly prayed that the revisionary order passed u/s 263 of the Act, may kindly be quashed as the order passed by Ld. AO does not come in the purview of holding it to be either erroneous or prejudicial to the interest of the revenue entailing the consequence of order to be either modified / set aside in any manner.

Further, reliance is placed on the following case laws:

- 1. CIT Vs. M/s Chambal Fertilizers & Chemicals Ltd. (Raj HC) 51 TW (III) 157***
Therefore, it is clear the CIT does not have unfettered and un-checked discretion / power to reverse the order. He can do so within the bounds of the law and has to satisfy the need of fairness in action and fair play with due respect to the principle of Audi Alterem Partem as envisaged in the Constitution. The law is well settled that the CIT cannot invoke the powers to

correct each and every mistake or error committed by the AO. Every loss to the Revenue, cannot be treated as prejudicial to the interest of the Revenue and if the Assessing Officer has adopted one of the course permissible under the law or where two views are possible and the AO has taken one view which the CIT does not agree with, it cannot be treated as an order erroneous and prejudicial to the interest of the revenue. The AO exercises quasi judicial power vested in him and if he exercises such powers in accordance with law, arrives at a just conclusion such conclusion cannot be termed as erroneous only because the CIT does not feel satisfied with the conclusion.

2. CIT Vs. M/s Deepak Real Estate Developers P. Ltd. (Raj HC) 51 TW (IV) 186

It is no longer res-integra that the revisional jurisdiction available to a Commissioner u/s 263 of the Act, is essentially circumscribed by the determinant that the order of the Assessing Officer is erroneous so much so that it is prejudicial to the interest of the revenue. This statutory enjoinder carves out an extremely constricted ambit of such discretionary jurisdiction. The word 'considers' applied in the statutory provision involved, signifies a genuine satisfaction of that authority that the order of the Assessing Officer is erroneous and that the interest of revenue is prejudicing thereby. Any exercise of the revisional jurisdiction, bereft of such satisfaction and / or finding that the order of the Assessing Officer is erroneous and that it is prejudicial to the interest of the revenue and that too, based on tangible materials on record, is impermissible rendering the resultant order void.

3. CIT Vs. Green World Corporation 314 ITR 81 (SC)

The Income-tax Officer, while passing an order of assessment performs a judicial function. A revision application lies before the Commissioner. It is trite that the jurisdiction exercised by the revisional authority pertains to his appellate jurisdiction. The jurisdiction under section 263 can be exercised only when both the following conditions are satisfied (i) the order of the Assessing Officer should be erroneous, and (ii) it should be prejudicial to the interests of the Revenue. These conditions are conjunctive. An order of assessment passed by the Assessing Officer should not be interfered with only because another view is possible.

4. M/s Emgee Cables & Communication Ltd. Vs. CIT (2014) 51 TW (IV) 197

Section 263 – power of revision by commissioner – AO completed assessment at NIL – assessee involved in manufacture / trading of cable/copper/wire – declared income from interest & commission as business income – accepted by

*AO – CIT invoked sec 263 and set-aside the order of AO directing him to consider the said income as income from other sources and not from business – whether CIT justified in invoking sec 263? **Held**: No – CIT only wanted AO to make re-verification – cannot be said that that order of AO was without making proper enquiry – AO having taken one of the possible view – cannot be said that assessment order was erroneous and prejudicial to the interest of revenue.*

In context of the above humble submission duly backed by judicial pronouncements as well as in light of the provisions of section 263 quoted above, favouring the assessee, it is prayed that the grounds raised in the appeal may please be allowed. ‘

2.4 On the other hand, the ld DR supported the order of the ld. PCIT

2.5 We have heard the rival contentions and perused the material placed on record. Ld. AR has vehemently argued that the powers of PCIT to invoke the provisions of Sect 263 requires two conditions precedent one the order passed by the Assessing Officer is erroneous second such order is prejudicial to the interest of Revenue. Where even one of the conditions mentioned above is satisfied but the other one is not the power of revision invoked by ld PCIT may be challenged. He also argued that in the instant case the AO has passed the assessment order after considering entire material available on record, called for and submitted by assessee during the course of assessment proceedings. It is not the case that the AO had passed the order without conducting inquiries into the issue under consideration and specific details regarding salary to specified persons and allowability of the same was duly

asked for and have been submitted by the assessee, which after due verification have been allowed by AO. The entire material and also the order passed for AY 2017-18 was duly available with AO. Also the observation made by Ld. PCIT regarding the salary expenses is based merely on inference drawn for AY 2017-18, which was under totally different situation and also that except AY 2017-18 no other assessment year bears any disallowance in this regard, where assessments were re-opened pursuant to survey proceedings carried out in AY 2017-18. Therefore, a disallowance made in just one year, that too on incorrect footing cannot be made basis for doubting the claim made in current year and duly allowed by AO after due verification. This in our considered opinion renders the revision proceedings invoked by ld. PCIT beyond jurisdiction and against the legal principals laid down through various judicial pronouncements. We rely the ITAT Jaipur Bench decision dated 03-07-2023 in the case of Agrani Buildestate vs the PCIT-1, Jaipur (JP – Tribunal 2023 ITL 2216) wherein it is held that as under:-

“2.4.....therefore after considering the totality of the facts of the case and keeping in view the legal position as discussed hereinabove, it is clear that the assessment order passed by the AO was after full enquiry and therefore, the cases does not fall within the clause (a) and (b) of Explanation 2 to Section 263 of the Act. Hence, the ld PCIT has erred in assuming jurisdiction u/s 263 of the Act and the order passed by him stands quashed. Our view in this case is restricted only to the invocation of Section 263 of the

Act by the Id. PCIT and our findings are restricted only to this case considering the peculiar facts contained. Therefore, our this decision may not become precedent upon the merits of contemplated additions by the Id PCIT. Since we have not adjudicated or commented upon the merits of contemplated additions and have decided only invocation of provisions of Section 263 of the I.T. Act under peculiar circumstances in this case alone. Thus keeping in view the above deliberations, the appeal of the assessee is allowed.

3. In the result, the above appeal of the assessee is allowed.”

We also rely the ITAT Jaipur Bench decision dated 15-09-2021 in the case of Annu Agrotech (P) Ltd. vs PCIT 214 TTJ 1118 (Raj) **wherein relying on the decision of the Hon’ble Apex Court in the case of M/s Malabar Industrial Co. Ltd it has been held that,** *“This provision cannot be invoked to correct each and every type of mistake or error committed by the AO; it is only when an order is erroneous as also prejudicial to Revenue's interest, that the provision will be attracted. An incorrect assumption of the fact or an incorrect application of law will satisfy the requirement of the order being erroneous. The phrase 'prejudicial to the interest of the Revenue' has to be read in conjunction with an erroneous order passed by the AO. Every loss of revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. For example, if the AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order and it is prejudicial to the interest of the Revenue, unless the view taken by the AO*

is totally unsustainable in law". Considering the totality of the facts and circumstances of the case, legal position as well as judicial pronouncements, we found merit in the contention of ld. AR, therefore we quash the order passed by ld. PCIT under section 263 of the Act. Accordingly, upon quashing of the order passed by PCIT u/s 263 of the Act, the other grounds raised by the assessee become infructuous and need no adjudication.

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

Order pronounced in the Open Court on 02/01/2024

Sd/-

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

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 02 /01/2024

*Mishra

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

1. The Appellant- Rawat Bal Vidha Niketan Samiti, Jaipur
2. प्रत्यर्थी / The Respondent- Pr. CIT, Jaipur-1
3. आयकर आयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 537 /JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar