

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajesh Kumar, Accountant Member
&
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 462/KOL/2023
Assessment Year: 2018-2019**

**Britannia Industries Limited,.....Appellant
5/1A, Hungerford Street,
Shakespeare Sarani,
Kolkata-700017
[PAN:AABCB2066P]**

-Vs.-

**Principal Commissioner of Income Tax-1,..Respondent
Kolkata,
AayakarBhawan,
P-7, Chowringhee Square,
Kolkata-700069**

Appearances by:

Shri Akkal Dudhwewala & Vidhi Ladia, A.Rs., appeared on behalf of the assessee

Shri S. Datta, CIT, D.R., appeared on behalf of the Revenue

Date of concluding the hearing :February 26, 2024

Date of pronouncing the order :March 06, 2024

O R D E R

Per Shri Rajesh Kumar, Accountant Member:-

The assessee is in appeal before the Tribunal against the order of ld. Principal Commissioner of Income Tax, Kolkata-1 dated 29.03.2023 passed u/s 263 of the Act, which is arising out of the assessment order dated

22.03.2021 passed under section 143(3) of the Income Tax Act, 1961 for A.Y. 2018-19 framed by ld. ACIT, Income Tax Department, National e-Assessment Centre, Delhi.

2. The only issue raised by the assessee in various grounds of appeal is against the invalid exercise of revisionary jurisdiction by the ld. PCIT under section 263 of the Income Tax Act and therefore the order passed under section 263 of the Act is invalid and *ab initio void*.

3. The facts in brief are that the assessee filed its return of income under section 139(1) of the Act on 30.11.2018 declaring total income at Rs.1432,82,52,530/-. The case of the assessee was selected for scrutiny under CASS and the assessment was ultimately framed under section 143(3) of the Act vide order dated 22.03.2021 with an assessed income of Rs.1470,93,38,584/-. Thereafter the ld. PCIT issued notice under section 263 of the Act dated 30.11.2022 to the assessee to explain as to why the assessment framed under section 143(3) of the Act dated 22.03.2021 should not be revised/set aside on account of being erroneous in so far as prejudicial to the interest of revenue citing five issues, which are as under:-

- (i) Applicability of section 56(2)(x) on acquisition of leasehold land & building;

(ii) Disallowance of expenditure on scientific research u/s 35(1)(i) of the Act;

(iii) Disallowance of claim u/s 43B in relation to reversal or write back of provision for liabilities;

(iv) Disallowance of deduction claimed u/s 80JJAA;

(v) Disallowance of prior period expenses.

4. The assessee replied to the show-cause notice vide written submissions dated 13.01.2023, 13.02.2023 & 13.03.2023, the copies of which are filed at pages no. 30 to 76 of the paper book annexing several documents/evidences in support of its averments and contentions that the order passed by the ld. Assessing Officer is neither erroneous nor prejudicial to the interest of the revenue and, therefore, the impugned show-cause notice deserved to be dropped summarily. The ld. PCIT after taking into consideration the said replies and the contentions raised therein partly accepted the contentions of the assessee in so far as these relate to the issues as mentioned in Clause Nos. (II), (IV) & (V) above and Ld. PCIT, however, held the assessment order to be erroneous and prejudicial to the interests

of the revenue so far as it relates to the issues as set out in Clause Nos. (I) & (III) of the show-cause notice. The ld. PCIT simply set aside the assessment order under section 143(3) of the Act to the file of ld. Assessing Officer, for examining the issues raised in Clause Nos. (I) & (III) for *de novo* assessment after affording reasonable opportunity of hearing to the assessee.

5. The assessee has taken various alternative arguments qua the separate grounds in the grounds of appeal. However, we deem it fit that all these contentions and arguments are summarized and directed against the exercise of invalid jurisdiction under section 263 by the ld. PCIT thereby passing a revisionary order, which is invalid and *void ab initio and therefore are dealt with together*.

6. The first argument taken by the ld AR for the assessee is that the ld. PCIT has invoked jurisdiction under section 263 of the Act at the instance of ld. Assessing Officer as the ld. Assessing Officer had sent proposal to the ld. PCIT for initiating the revisionary proceeding on five issues as raised by way of audit objections by the revenue audit party. The ld. A.R. placed before us the copy of audit objections and submitted that the issues set out in the show-cause notice issued by the ld. PCIT was verbatim same to the audit objections and

the proposal sent by the ld. Assessing Officer. The ld. A.R. submitted that the verification of the case records revealed that the electronic assessment records of the assessment , which was conducted in a faceless manner by the NFAC, was also never called for by the ld. PCIT and he simply followed the ld. Assessing Officer proposal and issued show-cause notice under section 263 of the Act. The ld. A.R., therefore prayed that the conditions precedent laid down in Explanation 2 to Section 263 of the Act to validly initiate the revisionary proceedings was never met and, therefore, the jurisdiction invoked by the ld. PCIT is wrong and invalid. The ld. A.R. argued that the ld. PCIT never examined the case records himself and did not form his own independent opinion as to whether the assessment order was erroneous and prejudicial to the interests of the revenue. The ld. A.R. also submitted that the ld. PCIT forwarded the objections to the ld. Assessing Officer and called for his comments vide letter dated 03.02.2023. The ld. A.R. submitted that the ld. PCIT had only sent the issues raised at Clauses II, IV & V to the ld. Assessing Officer. The first reply furnished by the assessee dated 13.01.2023 contained the detailed objections on the said issues and the ld. Assessing Officer vide report dated 02.03.2023 informed the ld. PCIT that the explanation given by the assessee regarding these issues were found to be acceptable. The ld. A.R. therefore, submitted that the ld. PCIT again acted at the instance of ld. Assessing Officer and

dropped the issues raised in Clauses II, IV & V. The ld. A.R. submitted that since the submissions qua the rest two issues, i.e. clauses I & III were furnished at a later date, the ld. PCIT did not forward the same to the ld. Assessing Officer for his comments instead, vide the impugned order he simply set aside the assessment order for these two issues to the file of ld. Assessing Officer with a direction to examine the contentions of the assessee. The ld. A.R. contended that the entire sequence of events clearly showed that the revisionary proceedings under section 263 of the Act had been conducted at the beck and call of the Assessing Officer meaning thereby that neither the ld. PCIT himself independently examined the case records nor did he issue the show cause notice based upon his own objective application of mind. The ld. A.R., therefore, prayed that the exercise of jurisdiction invoked in such a manner is bad in law and may be quashed. In defence of his argument, ld. Counsel for the assessee relied on the following decisions:-

(i) PCIT -vs.- Sinhotia Metals & Minerals Pvt. Ltd. (IA No. GA/1/2019) (Cal)

(ii) Karabi Dealers Pvt. Ltd. -vs.- PCIT (IA No. GA/1/2023) (Cal);

(iii) Manish Chirania -vs.- PCIT (ITA No. 1161/KOL/2019)

7. While arguing his second plea , the ld. Counsel vehemently submitted that ld. PCIT's action of holding that the provisions of section 56(2)(x) of the Act applicable to the acquisition of leasehold interest in land and building as well as freehold land parcel at Ranjangaon, is against the provisions of the Act. The ld. Counsel for the assessee submitted that in the financial year 2016-17 relevant to assessment year 2017-18, the assessee had acquired leasehold interest in two immovable properties, being land and the building appurtenant thereto/constructed therein, on leasehold basis, at Ranjangaon pursuant to an Agreement to Sell dated 31.12.2016 from M/s. Bombay Dyeing and Manufacturing Company Limited (hereinafter referred to as 'BDMC') for an aggregate consideration of Rs.168,85,00,000/-. The said sale consideration in respect of the leasehold rights in land and building, was calculated based on separate valuation reports obtained from a Registered Valuer, who had valued the land based on the Direct Comparison Method and the building based on the Depreciated Replacement Cost Method, the copies thereof were placed at pages no. 132 to 178 of the paper book. The ld. A.R. stated that during F.Y. 2017-18, the assessee had executed the final deed of conveyance , which was registered with the stamp valuation authority, who valued the leasehold land and building at Rs.211,63,11,850/- (for leasehold land) and Rs.147,57,26,950/- (for leasehold in building)

aggregating to Rs.364,80,38,000/-. The ld. A.R. also submitted that apart from the above, the assessee had also acquired an undulated land parcel on freehold basis for an agreed consideration of Rs.13,56,79,600/- vide an Agreement to Sell dated 06.09.2017. The ld. A.R. stated that due to the peculiarities of the subject property, the assessee had obtained a valuation report from a registered valuer, M/s. Vestian Global Workplace Services Pvt. Limited, who objectively assessed the true and fair market value of the subject freehold land at Rs.12,75,00,000/-. The said property was executed by the Deed of Conveyance dated 29.09.2017 where the value assessed by the stamp valuation authorities was Rs.30,00,33,000/-. The ld. A.R. submitted that the said acquisition, however, was not subjected to actual levy of stamp duty due to exemption available to the assessee company under the Industrial Scheme of the State of Maharashtra and even the cost paid towards the said acquisitions was fully subsidized under the same Scheme meaning thereby that the stamp duty calculated was only for academic purposes. The ld. A.R. submitted that the ld. PCIT has simply directed the ld. Assessing Officer to examine as to whether the provisions of section 56(2)(x) of the Act were applicable in the case of assessee after giving fresh opportunity of hearing without taking into account the objections filed with relevant supporting documents by the assessee and simply set aside to the

file of Id. Assessing Officer, which is wholly unjustified and wrong for the following reasons:-

a) The Id. A.R. submitted that the provisions of section 56(2)(x) of the Act were not applicable to the acquisition of leasehold rights in the land and building and, therefore, the direction of Id. PCIT to examine the acquisition in light of section 56(2)(x) of the Act is ex-facie untenable and contrary to the provisions of law. The Id. A.R. contended that the provisions of section 56(2)(x) of the Act are applicable only where there is a transfer of land or building or both but it does not apply to the transfer of leasehold interest/rights, which is in consonance with the provisions of section 50C and section 56(2)(vii) of the Act. In defence of his argument, Id. A.R. relied on the following decisions:-

- (i) *Green Fields Hotels & Estates (389 ITR 68) (Bom HC);*
- (ii) *Dy. CIT v. Tejinder Singh (19 taxmann.com 4) (ITAT Kolkata)*
- (iii) *Atul G Puranik vs. ITO (11 ITR (Trib.) 120) (ITAT Mum)*
- (iv) *Sowmya Sathyan vs ITO (124 taxmann.com 74) (ITAT Bangalore)*
- (v) *M/s Kancast Pvt. Ltd. vs. ITO (55 taxmann.com 171) (ITAT Pune)*
- (vi) *Voltas Ltd. v. ITO (74 taxmann.com 99) (ITAT Mum)*
- (vii) *Shri Farid Gulmohammed vs. ITO (ITA No. 5136/Mum/2014) (ITAT Mum)*
- (viii) *ITO vs Yasin Moosa Godil (20 taxmann.com 424) (ITAT Ahmedabad)*
- (ix) *ACIT vs. Nadir Nazarali Dhanani (ITA No. 100/Mum/2013) (ITAT Mum);*
- (x) *Kumarpal Mohanlal Jain vs. ITO (ITA No. 7231/Mum/2010) (ITAT Mum);*
- (xi) *ITO vs. Hari Om Gupta (45 ITR 137);*
- (xii) *ITO -vs.- Pradeep Steel Re-rolling Mills (P.) Ltd (155 TTJ 294).*

b) The second proposition argued by the ld. Counsel for the assessee is that the provisions of section 56(2)(x) of the Act are not applicable to leasehold rights held in land and building at Ranjangaon, which were acquired in F.Y. 2016-17 relevant to A.Y. 2017-18, when the provisions was not existing in the Statute Book and, therefore, the ld. PCIT was not justified in directing the ld. Assessing Officer to examine the same in the light of provisions of section 56(2)(x) of the Act.

c) The ld. A.R. stated that the assessee had already pointed out through various replies letter dated 13.03.2023 and 23.03.2023 that the Agreement to Sell for acquisition of leasehold rights in land and building at Ranjangaon, was executed on 31.12.2016, i.e. F.Y. 2016-17, viz. Prior to the insertion of section 56(2)(x) of the Act by Finance Act, 2017 with prospective effect from 01.04.2017. The ld. A.R. contended that assignment of lease which took place on 31.12.2016 was merely registered vide deed of agreement dated 27.03.2018, which happened in the relevant year i.e. F.Y. 2017-18 (A.Y. 2018-19) and thus, if at all a cause of action existed on this issue, the same existed in the preceding F.Y. 2016-17, i.e. the year of acquisition and not the relevant A.Y. 2018-19. The ld. A.R. stated that the ld. PCIT has not objectively dealt

with this contention of the assessee and merely restored this issue to the file of ld. Assessing Officer for re-examination. He further stated that it is a well settled law that the material event is the date on which the leasehold interest in the impugned properties is acquired and not the date when the registration took place by referring to the decision of the Hon'ble Supreme Court in the case of Poddar Cement Pvt. Limited reported in 256 ITR 625, wherein it has been held that the date of registration is not decisive to ascertain the date of acquisition/ownership of the property. In defence of his argument, ld. A.R. stated that the ld. PCIT's direction was unjustified and unlawful so far as the provisions of section 56(2)(x) of the Act were not on the Statute Book. The ld. A.R. placed reliance on the following decisions:-

(i) *PCIT Vs Naina Saraf (142 taxmann.com 147)*

(ii) *CIT Vs Shimbhu Mehra (65 taxmann.com 142)*

(iii) *Hari Mohan Das Tandon (HUF) Vs PCIT [Allahabad Trib.]*

(iv) *Vasant L. Khandge Vs ITO [Pune Trib.]*

Ld. A.R., therefore, prayed that the jurisdiction of ld. PCIT is invalid and deserved to be quashed on this score alone.

d). The third proposition of the ld. Counsel with regard to the acquisition of freehold land on which

the ld. A.R. vehemently submitted that the freehold land was fully subsidized by the Government and even the registration of conveyance was not subjected to levy of stamp duty and, therefore, the notional value assessed by the State Government for stamp duty purposes was of no relevance in the given facts and circumstances and, therefore, the provisions of section 56(2)(x) of the Act cannot be invoked to such transaction. The ld. A.R. contended that the assessee acquired freehold land at Ranjangaon for setting up mega industrial unit and the said unit was eligible for several incentives under the Government of Maharashtra's Package Scheme of Incentives- 2013. The ld. A.R. stated that as per the scheme, the entire investment made in relation to the industrial unit including land, land development, building etc. were to be included in the total eligible investment for availment of the subsidy, which was ultimately sanctioned and approved by the Government as well. The ld. A.R. referred to the eligibility certificate issued to the assessee, copy of which is placed at pages no. 309 & 310 of the paper book. Ld. A.R. further submitted that the entire cost incurred by the assessee towards acquisition of leasehold, building and freehold land has been subsidized/incentivized by the Government. Therefore, there is no justification for invoking the provisions of section 56(2)(x) of the

Act as there is no rationale for the assessee to acquire the impugned properties at prices lower than their corresponding Stamp Duty Valuations for leasehold/freehold land & building. Even if it is presumed that the assessee had entered into the deed of agreement to sell for a higher amount and executed the same for higher amount, the same would have been made good and reimbursed by the Government under the Maharashtra Package Scheme of Incentives-2013 and the assessee would not have paid any extra penny over and above that amount. Thus there is no question of the order being erroneous and prejudicial to the interest of the revenue. Therefore, the plea of the ld. PCIT for restoring the issue to the file of ld. Assessing Officer is wholly unjustified and may be quashed. The ld. A.R. finally argued that section 56(2)(x) of the Act is an anti-tax avoidance provision and has no application in the instant case. The ld. A.R. relied on the decision of the Hon'ble Calcutta High Court in support of his argument in the case of PCIT -vs.- Durgapur Projects Limited (148 taxmann.com 50).

e) The fourth proposition taken by the ld. Counsel for the assessee is with regard to framing the assessment vide order dated 22.03.2021 under section 143(3) of the Act after detailed examination of the transactions involving acquisition of leasehold

interest in land and building at Ranjangaon and freehold land at values lower than the stamp duty value. The ld. A.R. argued that as per the valuation of the stamp duty valuation authority, ld. PCIT was not justified in holding that the assessment order was erroneous and prejudicial to the interest of revenue. The ld. A.R. submitted that during the course of assessment proceedings, the complete facts and details concerning the above acquisitions of leasehold land, building and the freehold land for considerations which were lower than the stamp duty value, had been furnished before the NFAC. The said facts were disclosed in the Notes to Tax Audit Report and the Notes filed alongwith the return of income, which were filed before the ld. Assessing Officer at the time of scrutiny assessment. The ld. A.R. submitted that after taking into account all these facts especially the acquisition of rights in the properties at a values which were lower than the stamp duty value, the ld. Assessing Officer did not dispute the same after exercising his discretion under section 56(2)(x) of the Act. The ld. A.R. also drew our attention to the fact that Notes to Clause 29B of the Tax Audit Report, copy of which is placed at pages no. 93 to 95 of the paper book, and also the notes filed with the return of income before the NFAC, copy of which is placed at pages no. 96 & 97 of the paper book. The ld. Counsel also stated that

the assessee has also filed valuation reports from the registered valuer concerning the valuation of leasehold land and building and freehold land and building and complete facts were brought before the ld. Assessing Officer. The ld. A.R. also stated that the facts were duly disclosed in the Notes filed with the return of income and the ld. Assessing Officer after considering all these facts had taken a plausible and correct view accepting the transactions entered into by the assessee. In support of his argument, ld. Counsel relied on the decision of the Hon'ble Calcutta High Court in the case of CIT -vs.- Morrison & Co. Limited reported in 366 ITR 593, wherein the Hon'ble Court has held that where the assessee's claim is allowed by the ld. Assessing Officer after conducting necessary enquiry and application of mind, then the order of assessment cannot be considered and held to be erroneous and prejudicial to the interest of revenue under section 263 of the Act on the ground of lack of enquiry or non-enquiry. The ld. A.R. also relied on the decision of the Hon'ble jurisdictional ITAT, Kolkata in the case of Peerless General Finance & Investment Company Limited -vs.- CIT (132 taxmann.com 80), in which the similar issue has been decided in favour of the assessee. The ld. A.R. also contended that the jurisdiction u/s 263 of the Act is not available to the ld. PCIT for simply

restoring the issue for examination and verification to the ld. Assessing Officer, where the ld. PCIT himself has not recorded any objective satisfaction and arrived at a conclusion as to how the order passed by the ld. Assessing Officer is erroneous and prejudicial to the interest of revenue. In the present case, ld. Counsel submitted that the ld. PCIT's action of merely referring the matter back to the file of ld. Assessing Officer for examination the issue and the applicability of section 56(2)(x) of the Act was wholly unjustified and the impugned order dated 29.03.2023 passed under section 263 of the Act is invalid and deserved to be quashed. The ld. A.R. in support of his argument relied on the decision of the Hon'ble Delhi High Court in the case of ITO -vs.- DG Housing Projects Limited reported in 343 ITR 349 and DIT -vs.- Jyoti Foundation reported in 357 ITR 488.

f) The fifth proposition of the ld. A.R. is with regard to the fact that the values adopted by the stamp duty authorities were highly excessive and did not reflect the true and correct market reality. The ld. A.R. submitted that the lease assignment transactions were executed based on the appropriate market values as assessed by a registered valuer, copies of which are placed at pages no. 132 to 178 and pages no. 247 to 272 of the paper book. The ld.

A.R. argued that the value adopted by the stamp duty authorities were absurdly high as they failed to take into consideration the commercial/ground realities and specific peculiarities involved in the respective cases. The concerned registered valuer had extensively studied the subject properties and undertaken thorough analysis to arrive at the fair market value of the properties. Finally making the without prejudice argument, ld. A.R. argued that in case the above propositions were not held to be in favour of the assessee, then, the matter may be restored to the file of NFAC to refer before the issue of valuation to the DVO for ascertaining the correct fair market value.

8. The second issue proposed by the ld. PCIT was with regard to the deduction claimed by the assessee on account of reversal of earlier years provisions under section 43B of the Act. The ld. A.R. submitted that the ld. PCIT had specifically observed that the deduction claimed on account of reversal of earlier provisions under section 43B of the Act was not allowable since there was no actual payment on the basis of explanation given by the assessee. The ld. A.R. stated that the assessee has claimed deduction of Rs.14,47,32,736/-, which represented reversal of provisions created in the earlier years and had been disallowed under section 43B of the Act, copy of which placed at pages no. 30 to 59 of the

paper book. The ld. A.R. stated that these were never claimed as a deduction as an expense in earlier years. The ld. A.R., therefore, submitted that the assessee has rightly claimed unpaid provisions of Rs.14,47,32,736/-, which were disallowed under section 43B in the respective years in which they were created/debited. The ld AR submitted that the same was rightly claimed as deduction under section 43B in the year in which such provisions were written back and reversed/credited to the profit & loss Account. The ld. A.R. in defence of his argument relied on the following decisions:-

(i) Pr. CIT vs Eveready Industries India Ltd (ITAT No.96/Kol/2017) [Calcutta HC] [Pages 158-162 of Judicial PB];

(ii) CIT vs Samudra Shoe Overseas Ltd (TCA No. 349 of 2016) [Madras HC] [Pages 163-170 of Judicial PB];

(iii) Dy.CIT vs K.S. Diesels Ltd (132 taxmann.com 74) [ITAT Mumbai] [Pages 171 -176 of Judicial PB].

9. Ld. A.R. also referred to the reconciliation of the details of reversals during the year vis-a-vis the provisions made in earlier years alongwith details of disallowances made under section 43B of the Act in those respective years, filed before the ld. PCIT. The ld. A.R. also referred to the relevant extracts of the tax audit reports and income tax returns of earlier assessment years, which are available at pages no. 326 to 374 of the paper book, which proved beyond doubt that the assessee has only reversed those provisions, which

created in the respective years, which had been disallowed by the assessee company under section 43B of the Act *suo motto* and was never claimed as deduction as an expense. The ld. A.R. submitted that the ld. PCIT has to objectively deal with the submissions and explanations of the assessee and examine the issue in the light of the facts placed on record before him. However, ld. PCIT restored the issue to the file of ld. Assessing Officer by treating the assessment order as erroneous as well as prejudicial to the interest of revenue, which is incorrect and hence the resort to the jurisdiction u/s 263 of the Act cannot be sustained and deserved to be quashed.

10. Finally ld. A.R. pleaded before the bench that in view of the foregoing contentions and submissions as well as judicial decisions of various High Courts and judicial forums, ld. PCIT's jurisdiction under section 263 has been invoked invalidly and, therefore, the order passed under section 263 is also invalid and may kindly be quashed.

11. The ld. D.R., on the other hand, vehemently argued before us at the time of hearing that the jurisdiction has been rightly invoked by the ld. PCIT. The ld. CIT DR filed written submissions before the bench which are extracted as follows:-

In this case, the Ld A/R relied on the decisions of Sinotia Meals & Minerals vs PCIT (ITA No. 889Kol/2017), Manish

Chirania vs PCIT (ITA NO. 1161/Kol/2019), Karabi Dealers Pvt Ltd vs PCIT (IA No. GA/1/2023)(Kolkata High Court), Sinotia Meals & Minerals vs PCIT (IA No. GA/1/2019) (Kolkata High Court) in support of his contention that the order u/s 263 passed by the Pr. CIT-l, Kolkata stood vitiated in law in as much as the said order have been passed at the behest of the AO and not by his own independent motion.

It may be appreciated that in the prevailing set up of the department, where one Pr.CIT has so many AOs working under him, it is not humanly possible for any Pr.CIT to go through all the records of all his AOs "on his own motion" to detect any order which is simultaneously erroneous and prejudicial to the interest of revenue. The Pr. CIT has to rely on inputs provided to him by his subordinate officers to act upon such a case. The input may originate by way of a revenue audit objection or on a reference made by his subordinate officer that an erroneous order has been passed inadvertently which cannot be remedied by the AO by taking recourse to either 154 or 147 of the Act. In the present day working, even an AO is working with inputs in the form of Assessee Information System(AIS) or inputs from other external agencies. That does not mean that he is passing an order without application of mind. Now tax computations are made on systems, but does that mean that the AO is acting on behest of the computer and is not applying his own mind? Similarly, when a glaring instance is brought to the notice of the Pr.CIT, he is acting on the primary input and after due application of mind, he is passing a revision order on the facts of the case. This is in no way acting on the behest of the AO. In fact, all officers of the department are duty bound, if at any point of time, there is detection of revenue loss or there is any information from any other agency that there has been a possible loss of revenue. Like an AO cannot act on his own and has to depend on the ITBA system, the Pr.CIT has to take inputs from subordinate officers on which he applies his mind independently for passing an order u/s 263. It would be a very narrow concept of acting on "own motion" if the Pr. CIT has to work in isolation, and detect needles out of countless stacks of hay to find out suitable cases where action u/s 263 is required. The role of application of mind by the Pr.CIT is reflected in the order he passes after receiving response from the assessee in regard to the show cause notice issued by him. There is no bar in the Act that he cannot get an enquiry conducted by the AO or obtain a factual report from the AO in a matter where he has to give his independent finding. That the Pr.CIT has to do everything single handed to make an order u/s 263 cannot be the spirit of the text of the Act. Such a narrow meaning of "own motion" would defeat the

very purpose of protecting revenue by invoking provision of section 263.

The next issue worth mention here is that the AO in this case passed an order u/s 143(3) dated 22/03/2021 without considering the aspect of section 56(2)(x). He found that the stamp duty of the acquired properties, both freehold and leasehold, exceeded the fair market values. He relied on the valuation reports of valuer furnished by the assessee and made no addition as required u/s 56(2)(x). In the case of CIT vs Chandra Narain Chaudhri, the Allahabad High Court observed as follows (order enclosed for ready reference):

"Whenever the assessee claims before the Assessing Officer that the value adopted or assessed or assessable by the Stamp Valuation Authority under sub section (1) of Section 50-C exceeds the fair market value of the property as on the date of transfer, the Assessing Officer may refer the valuation of the capital asset to a Departmental Valuation Officer (DVO) and for that purpose, the procedure prescribed under the Wealth Tax Act are to be applied. In case of any such claim, the AO may rely on the report of the registered valuer under Section 55-A of the Act and in such case it will not be necessary for him to refer the matter to the DVO. However, in any event, the AO has to record sufficient reasons. He has to record reasons for accepting the report of the approved valuer submitted by the assessee along with his claim/objection under Section 50-C(2) of the Act. If he does not accept the report, he has to record the reason for referring the matter to the DVO. The reasons in either case must have nexus with the objection/claim made by the assessee and the objection, which may be raised by the department against the valuation determined in the report of the approved valuer."

The order of the AO is silent on the issue of acceptance of valuation report furnished by the assessee and is an erroneous order in view of the above judgment of Allahabad High Court. Also, since the provisions of section 56(2)(x) were not invoked, it was rightly held by the Pr.CIT that there was prejudice caused to the revenue.

12. We have heard the rival contentions and perused the material available on record including the written submissions filed by the parties before us. The undisputed facts are that the revisionary jurisdiction was invoked by ld. PCIT under section 263 of the Act by issuing notice under section 263 to revise the assessment on five issues:-

(i) Applicability of section 56(2)(x) on acquisition of leasehold land & building;

(ii) Disallowance of expenditure on scientific research u/s 35(1)(i) of the Act;

(iii) Disallowance of claim u/s 43B in relation to reversal or write back of provision for liabilities;

(iv) Disallowance of deduction claimed u/s 80JJAA;

(v) Disallowance of prior period expenses.

13. We note that the revenue audit team has pointed out certain objections during the course of audit before the ld. Assessing Officer and then ld. Assessing Officer proposed these issues to the ld. PCIT to invoke jurisdiction under section 263 of the Act. We have also examined the audit objections raised by the audit party,

which are identical with the issues raised in the show cause notice issued under section 263 of the Act on 30.11.2022. We further note that the ld. PCIT accepted the contentions of the assessee on three issues as mentioned in Clause Nos. II, IV & V above whereas in respect of remaining two issues as mentioned in Clause Nos. I & III of the show cause notice, the assessment order was revised and set aside and ld. Assessing Officer was directed to look into these issues afresh and frame the assessment after affording reasonable opportunity of hearing to the assessee. Pertinent to state that the ld. PCIT has accepted the contentions of the assessee partly on the basis of written submissions as were filed on 13.01.2023 and 13.02.2023, the copies thereof are available from pages no. 32 to 76 of the paper book. Therefore, we find merit in the contentions of the ld. Counsel for the assessee that jurisdiction has been invoked by ld. PCIT at the instance of ld. Assessing Officer, which is incorrect and against the provisions of the Act and also the ratio laid down by the various Hon'ble High Courts including the jurisdictional High Court and, therefore, the revisionary order passed under section 263 of the Act is to go on this score alone. We note that the ld. PCIT has failed to apply his mind objectively and to record a finding of his own upon perusal of the assessment record, which is pre-condition to initiate proceeding under section 263 of the Act and came to the conclusion that due to certain

discrepancies/omissions on the part of the Id. Assessing Officer, the assessment so framed has been rendered erroneous in so far as prejudicial to the interest of revenue. However, the Id. PCIT has hopelessly failed to do that. The case of the assessee finds support from the decisions of the Hon'ble Calcutta High Court in the case of PCIT -vs.- Sinhotia Metals & Minerals Pvt. Ltd. (IA No. GA/1/2019) (Calcutta High Court, wherein the Hon'ble Calcutta High Court has held as under:-

"We have gone through the order passed by the Tribunal, wherein we find that the Tribunal has noted the decision of the coordinate Bench of the Tribunal in the case of M/s. Rapayan Udyog in ITA No. 1073/Kol/2012, dated 28th October, 2018. After noting the said decision the Tribunal points out that the appellant department has not controverted the contents of the letter of the Joint Commissioner of Income Tax dated 18th August, 2016 and has recorded that the said letter clearly brings out that the PCIT has called for proposal from the JCIT/Assessing Officer to exercise jurisdiction under Section 263 of the Act. Therefore, the Tribunal concluded that the PCIT has not exercised jurisdiction under Section 263 of the Act himself, but he exercised jurisdiction at the instance of the Assessing Officer/JCIT, which is against the provisions of law.

The argument made by the learned Standing Counsel is that it is the PCIT who has exercised jurisdiction under Section 263 of the Act. From the order passed by the Tribunal we find that the department could not controvert the contents of the letter dated 18th August, 2016. If, according to the department, the contents of the letter were otherwise, then it is for the department to approach the Tribunal for necessary rectification or clarification and the correctness of the order of the Tribunal cannot be decided by us in an appeal under Section 260A of the Act by bringing certain submissions which were never made before the Tribunal. Therefore, we are not inclined to interfere with the order passed by the Tribunal and accordingly, the appeal is dismissed. However, we leave it open to the appellant/department to approach the

Tribunal for clarification or rectification of the order, if they are so advised.

The substantial questions of law are answered against the revenue.

With the dismissal of the appeal, the stay application (IA No. GA/1/2019) also stands dismissed.

13.1. Similarly Hon'ble Calcutta High Court in the case of Karabi Dealers Pvt. Ltd. -vs.- PCIT (IA No. GA/1/2023) (Calcutta High Court) has held as under:-

“We have heard Mr. Subhas Agarwal, learned Counsel for the appellant/assessee duly assisted by Mr. Brijesh Kr. Singh, learned Advocate and Mr. Tilak Mitra, learned standing Counsel for the respondent/revenue.

The short issue which falls for consideration is whether the Principal Commissioner of Income Tax -2, Kolkata (PCIT) was justified in exercising his power under Section 263 of the Act. On perusal of the order passed under Section 263 of the Act, it is seen that the proceedings were initiated based on a proposal received by the assessing officer. The PCIT would observe that on perusal of the said proposal of the assessing officer, prima facie, it appears . that the assessing officer has failed to take a logical action on the information available with him. The statute is very clear that unless and until the twin conditions are satisfied that assessment order should be erroneous and it should be prejudicial to the interest of revenue, the power under Section 263 - cannot be invoked. Turning back to the facts of the case, we find that the assessing officer has specifically recorded in the assessment order dated 21.09.2017 under Section 143(3) of the Act that during the course of assessment proceedings, the assessee was asked to explain the books of accounts, bills and vouchers and the authorised representative of the assessee filed the relevant documents in detail with many explanations which were examined by the assessing officer and verified with the books of accounts and the heard copies of the ITR and audited accounts and thereafter, the assessment was completed. From the notice issued under Section 142(1) of the Act dated 16.08.2017, it is seen that as many as 21 particulars/documents were called upon to be produced by the assessee of which the document/observations in

item No. 20-21 are relevant for the purpose of this case, they being (i) large increase in investment in unlisted equities during the year and (ii) low income in comparison to very high investment.

It is seen that first issue on which the information was called for by the assessing officer has not been taken as a ground by the PCIT while assuming jurisdiction under Section 263 of the Act. Thus it has to be seen as to whether assessee had furnished the requisite information with regard to the second issue namely low income in comparison to very high investments. The assessee had placed before the assessing officer many submissions in which the detail explanation has been given with regard to the said issue apart from placing reliance on various decisions of the Hon'ble Supreme Court as well as the High Courts. Apart from that, a separate reply had also been given on 21.09.2017 dealing with all the twenty-one issues. Thus it cannot be said that assessing officer did not conduct any enquiry in the matter with regard to the issue on which the PCIT had exercised jurisdiction under 263 of the Act. It may be true that a proposal had been received by the PCIT from the assessing officer. However, solely based on the proposal, action could not have been initiated under Section 263 of the Act as the statute mandates that PCIT should enquire and be satisfied that the case warrants exercise of its jurisdiction under Section 263 of the Act. Such satisfaction should be manifest in the show-cause notice which is issued under Section 263 of the Act. However, we find in the instant case the word used by the PCIT is "prima facie". Thus based on prima facie view the PCIT accepted the proposal of the assessing officer and initiated action under Section 263 of the Act. The decisions of the Hon'ble Courts on the point clearly holds that the satisfaction of the PCIT is essential. Though the Tribunal has knowledge of those facts as also the order sheet maintained by the assessing officer which records that on 19.09.2017 the authorised representative of the assessee had appeared and produced the books of accounts, bills vouchers etc and they were test checked and the case was discussed with the authorised representative of the assessee. If that be so, it could not have been stated that there was any lack of enquiry on the part of the assessing officer. That apart, the Tribunal also admits that a paper book containing 124 pages of documents were also placed. Thus it is a case where the assessing officer had raised specific query and the case was discussed with the authorised representative of the assessee and thereafter decision has been taken. Similar

issue was considered by this Court in the case of PCIT 9, Kolkata Vs, Reeta Lakmani; ITAT No. 129 of 2022 etc. dated 22.11.2022 and in PCIT 9 Vs. Satish Kumar Lakmani ; ITAT No. 112 of 2022 dated November 22, 2022, Though one of the decisions of this Court has been noted by the Tribunal, the reason assigned by the Tribunal for distinguishing the decision cannot be countenanced. Thus in absence of any satisfaction recorded by the PCIT that the order of assessment was both erroneous and prejudicial to the interest of revenue, the Tribunal ought to have granted relief to the assessee and faltered the PCIT for having exercised its jurisdiction.

For the above reason, the appeal filed by the assessee is allowed and the order passed by the Tribunal as well as the PCIT is set aside and the assessment order stands restored and the substantial questions of law are answered in favour of the appellant/ assessee.

13.2. The same issue has been adjudicated by the Coordinate Bench of Kolkata in the case of Manish Chirania -vs.- PCIT (ITA No. 1161/KOL/2019), wherein the Coordinate Bench has held as under:-

“9. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and the fact of the case including the findings of the ld CIT(A) and other materials available on record. We note that ld Principal Commissioner of Income Tax (ld. PCIT) has exercised his revision jurisdiction under section 263 of the Act on the basis of the proposal for revision made by the assessing officer. At this juncture, it is relevant to quote para No.2 of the order of ld PCIT (to the extent applicable for our discussion) under section 263 of the Act, which reads as follows: “A proposal for revision of the Assessment Order u/s. 263 has been received from Assessing Officer i.e., ITO. Wd-45(3) Kolkata. On perusal of assessment order and the assessment records it is seen that in course of assessment proceedings, the following statutory additions and disallowances were not examined properly-.....” First of all, let us examine whether ld PCIT has independently applied his mind to exercise his jurisdiction under section 263 of the Act. It is abundantly clear from para No.2 of the ld PCIT’s order that ld PCIT exercised his jurisdiction under section 263 of the Act based on the proposal received from Assessing Officer for revision of the Assessment Order. It means, the ld PCIT is using the mind of the

assessing officer to revise the order of AO under section 263 of the Act, which according to us is not the scheme of section 263 of the Act. The ld PCIT ought to apply his own mind to examine whether order passed by the assessing officer is erroneous and prejudicial to the interest of revenue. That is, ld PCIT should examine the assessment records and assessment order made by AO to find out the error in the assessment order, as the power under section 263 is given to ld PCIT and not to ld AO. The ld PCIT need not to take guidance from AO to revise the assessment order. That is, the revisional jurisdiction vested with the ld PCIT as per the scheme of the Act. The Act gives various powers to various authorities to exercise powers and they have to exercise powers in their respective given sphere which is clearly ear-marked and spelled out by the statute. Thus, the revisional jurisdiction exercised by the ld PCIT is not in accordance to law therefore, order passed by the ld PCIT under section 263 of the Act is not sustainable in law.

10. Based on the facts and circumstances, as narrated above, we note that order passed by the ld PCIT is not sustainable in law, therefore, we quash the order under section 263 passed by the ld PCIT.

13.3. The Coordinate Bench has further held that revisional jurisdiction exercised by the ld. PCIT is not in accordance to law and, therefore, the order passed by the ld. PCIT under section 263 of the Act is not sustainable in law. So considering the facts of the case and the ratios laid down above, we are of the considered view that the order of the ld. PCIT passed under section 263 of the Act is bad in law and cannot be sustained.

14. We also note that the jurisdiction has been invoked by the ld. PCIT for two issues, namely that i) the provisions of section 56(2)(x) of the Act were applicable to the acquisition of leasehold/freehold land and building from 'BDMC' on leasehold/freehold basis at Ranjangaon pursuant to an Agreement to Sell dated

31.12.2016, whereas the registration with the local authorities was done in the instant financial year relevant to assessment year 2018-19. The second issue regarding allowing the deduction of provisions created u/s 43B of the Act upon bring written back in relation to reversal or write back of provision for liabilities.

15. We observe from the facts before us that so far as the first issue is concerned, the facts are that the assessee acquired leasehold/freehold land and building from the BDMC. The said freehold land and building situated at Ranjangaon, Maharashtra was acquired for an aggregate consideration of Rs.168,85,00,000/-, which was calculated on the basis of valuation report from the registered valuer, who had valued the land based on the Direct Comparison Method and the building based on the Depreciated Replacement Cost Method, a copy of which is available at pages no. 132 to 178 of the paper book. We also note that the said freehold land was registered with the local authority who valued the leasehold land and building at Rs.211,63,11,850/- (for leasehold interest in land) and Rs.147,57,26,950/- (for leasehold interest on building) respectively aggregating to Rs.364,80,38,000/-. We also note that the freehold land was acquired for a consideration of Rs.13,56,79,600/- vide an Agreement to Sell dated 06.09.2017, which was registered on 29.09.2017 vide a Deed of Conveyance, where the value assessed by the stamp valuation authorities was

Rs.30,00,33,000/-, whereas according to the valuer, the fair market value of the property was Rs.12,75,00,000/-. We observe that the assessee acquired leasehold/freehold land and building at Ranjangaon for setting up mega industrial unit and the said unit was eligible for several incentives under the Government of Maharashtra's Package Scheme of Incentives- 2013. The ld. A.R. stated that as per the scheme, the entire investment made in relation to the industrial unit including land, land development, building etc. were to be included in the total eligible investment for availment of 100% subsidy, which was ultimately sanctioned and approved by the Government as well meaning thereby that the cost of the assessee was nil and it was reimbursed 100% by the Government of Maharashtra's Package Scheme of Incentives- 2013. If we look these transactions from another angle by assuming that these transactions were made at the value as per stamp valuation authorities, then, the same would have been reimbursed by the Government of Maharashtra under the Industrial Scheme and even in that scenario, the cost of the assessee would have been nil. Thus it is abundantly clear that the assessee has not gained in any manner whatsoever from valuing these properties at lower value than the value as per the stamp duty authorities. Moreover, these properties were valued on scientific basis as calculated by the registered valuer M/s. Vestian Global Workplace Services Pvt. Limited. We also note

that the property acquired by the assessee was not fully developed and has uneven surfaces etc. We also note that the fact qua the acquisition of properties as well as valuation of properties as such was fully placed before the NFAC. We also observe from the facts, which were disclosed in the Notes to Tax Audit Report and the Notes to computation of income filed alongwith the return of income, filed before the ld. Assessing Officer at the time of scrutiny assessment, copy of which is available at pages no. 93 to 95 which is extracted below for the sake of ready reference:-

CLAUSE 299 PARTICULARS OF AMOUNT INCLUDED UNDER THE HEAD 'INCOME FROM OTHER SOURCES' AS REFERRED TO IN CLAUSE (X) OF SUB-SECTION (2) OF SECTION 56

1. During the year the assessee has acquired Leasehold land at Ranjangaon, Pune for consideration of ₹ 04,15,17,494. The Assessee claims that Leasehold land acquired does not fall within the ambit of this Section relying on the ratio laid down in following decision:-
 - *Abul G. Pirani v. ITO* (ITA No. 1051/N/2003)
 - *Fazil Gulmohamed v. ITO* (ITA No. 5136/N/2014)
 - *Neelima Prasad Pvt Ltd v. ITO* (ITA No. 633/N/2018)



2. During the year the Assessee has acquired the following immovable properties being land or buildings for the consideration specified there against:-

Particulars of the Property	Agreement/ Consideration Amount	Stamp Duty Value	As per Valuation Reports
Freehold Land	1,35,679,600	306,000,000	127,100,000
Building at Ranjangaon, Pune	747,000,000	1,47,738,950	747,000,000

In terms of the third proviso to Section 56(2)(x), the Assessee, based on the independent Valuation Report obtained, claims that the value assessed by the stamp valuation authorities exceeds the fair market value of the aforesaid property and therefore the fair market value i.e., the agreement value is the consideration amount and accordingly no income is to be included under Section 56(2)(x).

3. During the year the Assessee has subscribed to the equity share capital of Britannia Nepal Private Limited which is its wholly owned subsidiary at face value. In view of the ratio of the Tribunal in *Sudhir Menon HCP* (ITA No. 4381/W/2012), the Assessee contends that Section 56(2)(x) is not applicable.

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Apart from the above, the assessee had also set out complete facts in Notes filed along with the return of income before the NFAC [Refer Pages 97 of PB], the relevant extract of which, reads as follows:

“3. During the financial year 2017-18, certain properties were registered in Ranjangaon, Maharashtra. The stamp duty value of the properties were in excess of the actual transaction value of the properties. Both the purchaser (Assessee) and sellers being listed entities, due diligence was followed in arriving at the price, based on valuation report obtained from registered property valuers. Hence the assessee is of the opinion that no adjustment is required to be made under section 56(2)(x) of Income tax Act 1961.

Further the leasehold property comprising of land and building, which was registered during the year, had been purchased vide agreement dated 31st December 2016 for which part consideration was paid in January 2017. The assessee company is therefore of the view that the provisions of Section 56(2)(x), which was inserted only with effect from 01.04.2017, is not applicable to this transaction and further it is the date of agreement which is to be reckoned for valuation purposes under the Income-tax Act, 1961.

The assessee further contends that there is no undue benefit or consideration which has accrued to it. The values adopted by the stamp authorities for registration purpose were based on ready reckoner value, which does not take into account various factors like nature of the land such as Industrial or not industrial, topography of the area, rocky terrain of the land, cost incurred in converting the land into industrial purpose, cost of levelling, construction cost involved in rocky land etc. In the circumstances the assessee company disputes the ready reckoner value and contends that such value cannot be taken as a substitute or reference value for the properties purchased. Further due to the effect of demonetization, GST, implementation of RERA, the actual market / transactional value of the property is substantially lower than the ready reckoner rates. Besides other factors like labour issues, farmers

agitation also had impacted the value of the property in and around the location. In the circumstances, the purchase consideration paid by the assessee based on the valuation reports obtained from the registered valuers does not call for any interference.”

16. We also note that the assessee has also furnished the valuation reports before NFAC meaning thereby that

all the facts were before the JAO and the NFAC after taking into account all the facts of the case has taken a plausible view and did not refer the matter to the DVO for valuation by not invoking the provision of section 56(2)(x) of the Act. Therefore, in our opinion, the ld. PCIT is not justified in exercising the revisionary jurisdiction under section 263 of the Act setting aside the assessment to the ld. Assessing Officer for fresh examination into these issues. The case of the assessee finds support from the decision of the Hon'ble Calcutta High Court in the case of CIT -vs.- J.L. Morrison & Co. Limited (supra), wherein the Hon'ble Calcutta High Court has held that where the assessee's claim is allowed by the ld. Assessing Officer after conducting necessary enquiry and application of mind, then the order of assessment cannot be considered and held to be erroneous and prejudicial to the interest of revenue under section 263 of the Act on the ground of lack of enquiry or non-enquiry. Similarly the Coordinate Bench in the case of Peerless General Finance & Investment Company Limited -vs.- CIT (supra) has held as under:-

“15. We have considered the rival submissions and also perused the relevant material available on record, it is observed that the short-term capital gain arising from the sale of four flats being the depreciable assets forming part of the block of assets 'building' was computed and offered to tax by the assessee as per section 50 of the Act since the said block of assets was completely exhausted in the year under consideration as a result of sale consideration of the four flats was more than the opening value of the building of the block of assets and the additions made during the year under consideration to the said block. Out of these four flats sold by

the assessee, three flats were short-term capital assets being held by the assessee for less than 36 months and the capital gain arising from the sale thereof was computed by the assessee by taking into consideration the stamp duty value wherever it was more than the sale consideration actually received in accordance with section 50C of the Act. In respect of the remaining four flat which was long-term capital asset being held by the assessee for more than 36 months, the actual sale consideration received by the assessee amounting to Rs. 7,00,80,000/- was less than the stamp duty valuation and the same was adopted by the assessee for computation of capital gain. As submitted by the Id. Counsel for the assessee, a specific query was raised by the Assessing Officer in this regard during the course of assessment proceedings and the assessee was called upon by him to explain and justify the actual sale consideration received and adopted for computation of capital gain which was lower than the stamp duty valuation with reference to section 50C. The Id. Counsel for the assessee has also invited our attention to the letter dated 23-12-2016 (copy placed at page 18 of the paper book), wherein the following explanation was offered by the assessee in this regard:-

"4. In the computation of the short-term capital gain on the sale of the flat at 5, Lala Lajpat Rai Sarani. the sale proceed of the flat has been taken at Rs. 8,02,01,600/- as per sale deed (copy enclosed) as against the stamp duty valuation of Rs. 8,81,25,600/-. The stamp duty valuation has not been taken into account in computing the short-term capital gain as the assessee, before the sale of this property, got it valued by a registered valuer. A copy of valuation report as on 14.04.13 showing its market value at Rs. 5,84,00,000/- is enclosed. From the report of the valuer it may kindly be seen that the flat had no car parking space or a garage without which the high value buyers were not interested in acquiring the flat. There was also no scope of getting a high voltage electric connection. Because of such defects, the assessee could not realize full market value of the sale of this flat. The assessee therefore submits that its fair market value was much less compared to the stamp duty valuation. If your Honour does not however accept the assessee's contention, it is requested that before adopting the stamp duty valuation, you may kindly refer the valuation of this /property to the DVO as provided in u/s 50C(2) of the I.T. Act".

16. As is evident from the submission made by the assessee before the Assessing Officer during the course of assessment proceedings, the actual sale consideration adopted by the assessee for computation of capital gain arising from the sale of concerned flats which was lower than the stamp duty valuation was duly explained by the assessee and the same was also supported by a valuation report of the registered valuer, which had valued the market value of the flats at Rs. 5.84 crores just before its sale by the assessee. It is also relevant to note here that a specific request was also made by the assessee to the Assessing Officer to refer the matter relating to the valuation of the property to DVO in terms of section 50C(2) of the Act if the lower sale consideration actually received by the assessee than the stamp duty value as justified by it was not acceptable. No such reference, however, was made by the Assessing Officer and keeping in view the same as well as all the facts of record, we find merit in the contention of the Id. Counsel for the assessee that the explanation/justification offered by the assessee in the matter was found acceptable by the Assessing Officer and on appreciation thereof a well considered view was taken by the Assessing Officer. This issue thus was examined by the Assessing Officer during the course of assessment proceedings and after having satisfied himself with the explanation/justification offered by the assessee. which was duly supported by the valuation report of the Registered Valuer, a possible view was taken by the Assessing Officer accepting the stand of the assessee.

17. In the case of R.K. Construction Co. (supra) cited by the Id. Counsel for the assessee, it was held by the Hon'ble Gujarat High Court that when the necessary details and documents were furnished by the assessee to the Assessing Officer and a particular view was taken by the Assessing Officer on the basis of the same, it was not open for the Commissioner to take a different view in the revision proceedings under section 263 of the Act. If the facts of the present case as discussed above are considered in the light of the decision of the Hon'ble Gujarat High Court in the case of R.K. Construction Co. [supra], we find that there was no error in the order of the Assessing Officer on this issue as alleged by the Id. Pr. CIT and the impugned order passed by the Id. Pr. CIT revising the order of the Assessing Officer on this issue is not sustainable. We accordingly set aside the impugned order passed by the Id. Pr. CIT under section 263 on this issue and restore that of the Assessing Officer. Ground No. 4 of the assessee's appeal is accordingly allowed”.

17. We further note that in this case ld. PCIT has simply restored the matter to the file of ld. Assessing Officer for fresh examination without recording any objective finding as to how the non-application of section 56(2)(x) has rendered the assessment to be erroneous and prejudicial to the interest of revenue. In our opinion, the jurisdiction under section 263 of the Act is not available to the ld. PCIT merely for restoring the issue to the file of ld. Assessing Officer where he has not recorded any clear-cut finding as to how the assessment is erroneous. The case of the assessee finds support from the decision of Hon'ble Delhi High Court in the case of ITO -vs.- DG Housing Projects Limited(supra) wherein the Hon'ble Delhi High Court has held that the ld PCIT cannot restore the issues to the AO for fresh examination unless he himself on the basis of contentions/replies/documents/evidences filed by the assessee has recorded a finding as to how the assessment order is erroneous.

18. We have perused the provisions of section 56(2)(x) of the Act and note that the provisions of section are not applicable to acquisition of leasehold rights in land and building and therefore, the direction of the ld. PCIT requiring the ld. Assessing Officer to examine the transactions of acquisition in light of section 56(2)(x) of the Act is ex-facie untenable and contrary to the provisions of law. We observe that the provisions of

section 56(2)(x) of the Act are applicable in a case where transfer of land and building or both, but not to the leasehold rights. The case of the assessee finds support from the decision of the Hon'ble Bombay High Court in the case of Green Fields Hotels & Estates(supra), wherein a ratio has been laid down that in respect of leasehold rights, the provisions of section 56(2)(x) of the Act are not applicable. We note that the similar issue has been laid down by the Coordinate Bench of ITAT in the case of DCIT -vs.- Tejinder Singh (supra); Atul G. Puranik -vs.- ITO (supra), Soumya Sathyan -vs.- ITO (supra) and various decisions as relied and referred by the assessee during the course of hearing by the ld. A.R and noted above. Therefore, the exercise of jurisdiction by the ld. PCIT is unsustainable in the eyes of law.

19. So far as the second issue regarding allowing deduction in respect reversal or writing back of provision for liabilities u/s 43B of the Act created in the earlier assessment years to the tune of Rs.14,47,32,736/- is concerned, we observe from the facts before us that the assessee has filed complete and detailed reconciliation of reversals/writing back of provisions before the ld. PCIT explaining that the deduction which represented reversal of provisions, was not claimed as expenses in the earlier assessment years when these were created except to the extent of

payments made. We observe from the said chart that the assessee has not claimed the deduction as an expense in the year of creation of these provisions meaning thereby that these provisions stood disallowed while computing the income to the extent not paid in the respective assessment years. Therefore, the ld. PCIT has not given any objective finding on the basis of the reconciliation of the total provisions written back during the year amounting to Rs.14,47,32,736/- which is not correct and the jurisdiction is not available u/s 263 of the Act. The case of the assessee finds support from the decision of the Hon'ble High Courts as well as Coordinate Bench of this Tribunal in the case of (i) PCIT -vs.- Eveready Industries India Limited (supra); (ii) CIT -vs.- Samundra Shoes Overseas Limited (supra) and (iii) DCIT -vs.- K.S. Diesels Limited (supra), wherein it has been held that statutory liabilities, which were earlier disallowed under section 43B of the Act are to be excluded and allowed as deduction in the year of reversal/write back.

20. We have also examined the facts of the case qua claim of written back provisions along with supporting documents, which are available on pages no. 325 to 374 of the paper book and are of the view that the assessee has been rightly allowed the deduction in respect of reversed provisions created in the earlier assessment years while computing the income. Further, in our opinion, the ld. PCIT has simply restored the issue to the

file of ld. Assessing Officer without giving any finding on the issue as to how the deduction of the provisions written back would amount to adjustment rendering the assessment as erroneous. We note that the ld. PCIT without doing any exercise/examination of the documents filed by the assessee simply set aside the issue back to the file of NFAC directing to ascertain the liability in the light of Hon'ble Calcutta High Court's decision in the case of PCIT -vs.- Eveready Industries India Limited (supra). In our opinion, the revisionary jurisdiction exercised by the ld. PCIT is invalid and so is the order passed u/s 263 of the Act and can not be sustained. The case of the assessee finds support from the decision of the Hon'ble Delhi High Court in the case of DG Housing Projects Limited (supra) and Hon'ble Calcutta High Court in the case of Jyoti Foundation (supra), have held that before setting aside the issue to the file of Assessing Officer, the ld. PCIT did not mention as to how the issue proposed has rendered the assessment framed by the A.O. as erroneous then the jurisdiction u/s 263 of the Act cannot be invoked.

21. Considering the aforesaid facts and circumstances and various case laws as discussed hereinabove, we are inclined to quash the revisionary order passed by the ld. PCIT under section 263 of the Act.

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

Order pronounced in the open Court on 06/03/2024.

Sd/-

Sd/-

(Sonjoy Sarma)
Judicial Member

(Rajesh Kumar)
Accountant Member

Kolkata, the 6th day of March, 2024

Copies to : (1) Britannia Industries Limited,
5/1A, Hungerford Street,
Shakespeare Sarani, Kolkata-700017

(2) Principal Commissioner of Income Tax-1,
Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069

(3) *Commissioner of Income Tax-;*

(4) *The Departmental Representative*

(5) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.