आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A. No.809/Kol/2023
Assessment Year: 2012-13

Deepak Switch Gears Pvt. Ltd…….....…..……....Appellant
48/6, Suman Villa, 2nd Floor,
155, Jessore Road,
Kolkata-700055.
[PAN: AABCD1131H]

vs.

PCIT, Asansol…....….....…….…..... Respondent

Appearances by:
Shri A. K. Tibrewal, AR, appeared on behalf of the appellant.
Shri Abhijit Kundu, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : April 08, 2024
Date of pronouncing the order : May 07, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the revision order dated 30.12.2022 of the Principal Commissioner of Income Tax, Kolkata [hereinafter referred to as 'Pr. CIT'] passed u/s 263 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee in this appeal has agitated against the action of the Pr. CIT in exercising his revision jurisdiction u/s 263 of the Act and thereby directing the Assessing Officer to frame the assessment afresh.

2. The registry has pointed out that the appeal is time-barred by 158 days. A separate application of condonation of delay has been filed, wherein, it has been pleaded that after receipt of the impugned order of the Pr. CIT, the assessee, through its director, Shri Deep Kishan Saraf, immediately approached one Shri Pawan Kumar Agarwal, Chartered

Accountant, for filing of appeal against the impugned order of the ld. Pr. CIT. However, the said appeal could not be filed by said Shri Pawan Kumar Agarwal in time due to sudden sickness and injury and the assessee was even not informed that the appeal could not be filed. When the assessee came to know that the said appeal was not filed in time by Shir Pawan Kumar Agarwal, he immediately approached the present counsel, Shri A. K. Tibrewal, FCA, who immediately filed the appeal before this Tribunal. It has, therefore, been pleaded that the delay in filing of the appeal is not intentional rather due to sudden sickness and injury of Shri Pawan Kumar Agarwal, CA. The said application is corroborated with the affidavit of Shri Pawan Kumar Agarwal, CA, wherein, he has affirmed that Shri Deep Kishan Saraf, Director of the assessee company had approached him in second week of January 2023 and that the appeal form 36 and grounds of appeal were also prepared and duly got signed from the said Shri Deep Kishan Saraf and that he had further directed his office staff, Shri Mrinal Kar Chowdhury to deposit the appeal fees and file the appeal before this Tribunal. It has been further deposed that on 25th February 2023, he suffered severe back pain and swelling in legs due to falling in bathroom and was advised bed rest for a month and could not attend the official work and further that he was under bona fide belief that the appeal of the assessee had been filed by his office staff in time. Later on, on asking of the assessee, the status of appeal was checked then he came to know that the appeal was not filed. The assessee was informed about this and the assessee further immediately contacted the present CA, Shri A. K. Tibrewal and filed the appeal. Similar averments have been made in the affidavit of Shri Deep Kishan Saraf, Director of the assessee company. The ld. Counsel for the assessee, therefore, has

submitted that the delay in filing the appeal was not intentional but doe to aforesaid circumstances and therefore, the same may be condoned.

3. The ld. DR, on the other hand, has objected to the condonation of delay.

4. After hearing the rival submissions, we are of the view that the assessee has duly explained the delay in filing the appeal and the assessee has not only filed the affidavit of its director, Shri Deep Kishan Saraf but also his earlier engaged counsel, Shri Pawan Kumar Agarwal, wherein, it has been explained that the assessee had duly taken steps for filing of the appeal in time but due to sudden sickness and injury of Shri Pawan Kumar Agarwal, CA and further due to his oversight, the appeal could not be filed in time for which the assessee should not be penalised. The Coordinate Bench of the Tribunal in the case of M/s Goldline Dealers Pvt. Ltd. vs. ITO in ITA No.608/Kol/2019 order dated 03.07.2023, under somewhat similar circumstances has observed as under:

> *"4. We have duly considered the rival contentions and gone through the record carefully. Sub-section 5 of Section 253 contemplates that the Tribunal may admit an appeal or permit filing of memorandum of cross-objections after expiry of relevant period, if it is satisfied that there was a sufficient cause for not presenting it within that period. This expression sufficient cause employed in the section has also been used identically in subsection 3 of section 249 of Income Tax Act, which provides powers to the ld. Commissioner to condone the delay in filing the appeal before the Commissioner. Similarly, it has been used in section 5 of Indian Limitation Act, 1963. Whenever interpretation and construction of this expression has fallen for consideration before Hon'ble High Court as well as before the Hon'ble Supreme Court, then, Hon'ble Court were unanimous in their conclusion that this expression is to be used liberally. We may make reference to the following observations of the Hon'ble Supreme court from the decision in the case of Collector Land Acquisition vs. Mst. Katiji & Others, 1987 AIR 1353:*
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> > *"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

4.1. Similarly, we would like to make reference to authoritative pronouncement of Hon'ble Supreme Court in the case of N. Balakrisknan vs. M. Krishnamurtky (supra). It reads as under:

"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the

court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi lain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Could should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss".

4.2. We do not deem it necessary to re-cite or recapitulate the proposition laid down in other decisions. It is suffice to say that the Hon'ble Courts are unanimous in their approach to propound that whenever the reasons assigned by an applicant for explaining the condonation of delay, then such reasons are to be construed with a justice oriented approach.

5. In the light of above, let's examine the facts of the present case. The stand of the assessee is that their tax consultant, Sh. Mukesh Gupta did not communicate the notices received by him from the office of ld. CIT(A). Therefore, they could not prosecute their remedy before the first appellate authority and similarly, he has not communicated the order of ld. CIT(A) as well as prepared the appeal further. It is pertinent to observe that no litigant would gain anything by making an appeal time barred. Therefore, such a step can never be taken at the end of the assessee to delay the disposal of the appeals. The demand has already been raised against the assessee and it is an adverse order against it unless it is deleted, no benefit would be there to the assessee. Therefore, to our mind, it was not adopted as a strategy to litigate with the Department. We condone the delay and proceed to decide the appeal on merit."

5. In view of the above discussion, the delay in filing the present appeal is hereby condoned and we proceed to decide the appeal on merits.

6. The brief facts of the case are that as noted from the order of the ld. Pr. CIT are that the assessee filed return of income for the year under consideration declaring total income of Rs.46,26,890/- on 22.09.2012. The case was selected for scrutiny and assessment order u/s 143(3) was passed on 19.01.2015 at a total income of Rs.46,26,890/-. Thereafter, the case was reopened after recording of satisfaction and assessment proceedings u/s 147/143(3) were completed on 18.03.2019 determining total income of Rs.46,26,890/-. Thereafter, the ld. Pr. CIT found some discrepancies in the assessment record and he exercised his revision jurisdiction u/s 263 of the Act as he found that the assessment order passed u/s 147/143(3) dated 18.03.2019 was erroneous and prejudicial to the interest of the revenue. Thereafter, the ld. Pr. CIT passed revision order u/s 263 on 23.03.2021 setting aside the order passed u/s 147/143(3) dated 18.03.2019 and directed the Assessing Officer to frame the assessment afresh considering the observations made in the order u/s 263. Thereafter, the assessee preferred appeal against the said order dated 23.03.2021 passed by the ld. Pr. CIT u/s 263 of the Act before this Tribunal. This Tribunal vide order dated 18.02.2022 passed in ITA No.171/Kol/2021 set aside the order of the Pr. CIT dated 23.03.2021, and restored the matter to the file of the ld. Pr. CIT for de novo consideration directing that the ld. Pr. CIT will consider the objections raised by the assessee on law as well as on facts and thereafter, to decide whether to proceed with the action u/s 263 of the Act in accordance with law. The ld. Pr. CIT thereafter again issued show-cause notice to the assessee on 29.11.2022, the relevant part of which is reproduced as under:

> *"On perusal of assessment record, it is revealed that the assessee has entered into transaction with 01 concern namely M/s. Swiss Progressive Products Pvt. Ltd. and received an amount of Rs.80 lakhs from the*

aforesaid concern during the FY 2011-12. As per Investigation Report carried out by the Investigation Director, 02 concerns namely M/s Swiss Progressive Product Pvt. Ltd. and M/s Shree Jawala Consultants Pvt. Ltd were not doing any real business and was only acting as intermediaries from providing accommodation entries to beneficiaries through layering of funds. Therefore, the sum of Rs. 80 lakhs received by the assessee company from M/s Swiss Progressive Product Pvt. Ltd. is nothing but own unaccounted income of the assessee routed through the aforesaid jamakharchi/shell company. The A.O, during the assessment proceedings, should have added the amount of Rs.80 lakhs received by the assessee from the aforesaid jamakharchi/shell company. Considering the above, the assessment order is erroneous so far as it is prejudicial to the interest of revenue. Accordingly, the assessment order is required to be revised."

6.1 In reply to the notice issued by the ld. Pr. CIT, the assessee made the submissions before the Pr. CIT which have been reproduced from para 4 onwards in the order of the Pr. CIT, which are extracted as under:

"4. The assessee had submitted, vide its letter dated 28.12.2022 along with the letter dated 17/02/2021, that:

"The assessee company is a NBFC Company. During the previous year relevant to the Assessment Year 2012-13, the Assessee Company had issued 1,65,000 equity shares of Rs. 10 each at premium of Rs.70. These shares were subscribed by the following three entities:

Sl. No.	*Name of the Subscribers*	*PAN*	*No. of shares applied*
1	*Tulsi Rolling & Flour Mills (P) Ltd.*	*AABCT2339P*	*58,750*
2	*Swiss Progressive Products (P) Ltd.*	*AAECS8997D*	*1,00,000*
3	*Shree Jawala Consultants (P) Ltd.*	*AAECS4025Q*	*6,250*
	Total		*1,65,000*

1.1 The assessee company had filed its original return of income u/s. 139(1) of the Act on 22.09.2012 declaring total income of Rs.46,26,890/-. The said return was selected for scrutiny. The Assessing Officer issued notice u/s. 142(1) of the Act to conduct inquiry before assessment. The Assessee Company furnished full details and documents which inter alia included details and documents in relation to the fresh share capital

raised by the Assessee Company. In course of the assessment proceedings the Assessing Officer issued notices u/s.133(6) of the Act to all the three share subscribers and gathered all details and documents relating to shares subscribed by each of them in the share capital issued at premium. The assessment was thereafter completed u/s. 143(3) of the Act on 19th January, 2015 assessing the total income of the assessee company at Rs.46,26,890/-.

2. The aforesaid assessment passed under section 143(3) of the Act was reopened by issue of Notice u/s. 148 of the Act on 7th September 2018. The reasons for re-opening of the assessment were that the Assessing Officer received some information from Investigation Wing, Kolkata that the assessee company was beneficiary of accommodation entry received from Swiss Progressive Production (P) Ltd. (hereinafter referred to as "Swiss"). In response to the Notice u/s. 148 the assessee company filed fresh of income declaring the same income of Rs.48,26,890 as was assessed earlier on 19th January 2015.

2.1 In course of re-assessment proceedings, the Assessing Officer issued Notice u/s. 142(1) of the Act directing the Assessee Company to submit various details which inter alia included the details of share application money received from "Swiss" and other two share subscribers as well. The Assessee Company was asked to satisfy the source of the share application money received from all the three share subscribers including "Swiss" within the meaning of section 68 of the Income Tax Act, 1961. The Assessee Company vide its letter dated 12th November, 2018 furnished all details and documents and evidences to explain the source of the share application money received by it from "Swiss". A copy of the Notice issued u/s. 142(1) of the Act and the copy of reply by Assessee with all Annexures is enclosed for ready reference.

2.2 The Assessing Officer conducted enquiry and issued Notices u/s 133(6) of the Act to "Swiss" as well as other two share subscribers for verification of the assessee company's transaction with them. All the three subscribers including the said "Swiss" complied to the said Notices issued by the Assessing Officer u/s 133(6) of the Act and confirmed that they had subscribed to the share capital of the assessee company issued at premium. They explained the source of the said subscription of shares. In support of the genuineness of the transactions, they submitted various documents and evidences. M/s Swiss also furnished the copy of the assessment order dated 11.03.2014 passed in their case u/s 143(3) of the Act to show that the source of their investment in the share capital of the assessee company was accepted in their case. On perusal of the said assessment order it would be seen that the source of their investment in the shares of the assessee company was accepted in as much as no addition u/s 68 or section 69 or any other section was made by the Assessing Officer assessing them. This shows that the return filed by the said share subscriber namely "Swiss" was accepted by the Assessing

Officer assessing "Swiss". The copy of the letter dated 26th February, 2019 of "Swiss" with all annexures thereto is enclosed for ready reference. The assessee company submits that in the case of other two share subscribers also, their returns were accepted u/s 143(1) of the Act. The copies of the replies of the share subscribers submitted to the Assessing Officer in response to enquiry by issue of Notices u/s 133(6) are enclosed.

2.3 The Assessing Officer having been satisfied, with the explanation of the Assessee Company and the enquiry conducted by him in respect of the share application money received by the assessee company, passed the assessment order u/s 147/143(3) of the Act on 18th March, 2019 accepting the source of assessee's transaction in respect of receipt of share application money received from the three shareholders including the receipt of Rs.80,00,000 from "Swiss". The copy of the said order passed u/s 147/143(3) of the Act on 18th March, 2019 is enclosed for ready reference.

2.4 The Assessee Company submits that the issue of shares of Rs.10 each at premium of Rs.70 by the assessee company during the Financial Year 2011-12 relevant to the assessment year 2012-13 was wholly explained by the assessee company in course of the assessment proceedings in its assessment u/s 143(3) of the Act as well as in course of re-assessment proceedings u/s 147/148 of the Act. It is pertinent to submit that the reassessment proceedings were initiated pursuant to report of the Investigation Wing alleging issue of shares by the assessee company through accommodation entries.

3. The Assessing Company submits that, in such circumstances, the assessment order passed by the Assessing Officer on 18th March, 2019 cannot be held to be erroneous and prejudicial to interest of revenue within the meaning of section 263 of the Act. The said assessment order passed by the Assessing Officer cannot be held to be unsustainable in law. There are number of judgments where the Courts have held that, the share capital subscribed by the assessee company cannot be added in the hands of the assessee company, in similar facts and circumstances of this case. The assessee company relies on the following judgments which inter alia include the judgments of Hon'ble Supreme Court and Jurisdictional Calcutta High Court.

a) CIT vs. Lovely Products Pvt. Ltd. [2008] 216 ITR 195 (SC)

b) CIT vs. Dataware Pvt. Ltd. ITAT No.263 of 2011 GA No.2856 of 2011

c) CIT vs. Roseberry Mercantile (P) Ltd. ITAT No.241 of 2010 G.A No.3296 of 2010"

6.2 However, the ld. Pr. CIT did not get satisfied with the above reply of the assessee and held that the order of the Assessing Officer passed

u/s 147 r.w.s. 143(3) of the Act was erroneous and prejudicial to the interest of revenue because there was a report of the investigation wing that the assessee had received accommodation entry from M/s Swiss Progressive Products Pvt. Ltd and that It was, therefore, unaccounted income of the assessee. He, therefore, set aside the assessment order passed u/s 147 r.w.s 143(3) of the Act and restored the matter to the file of the Assessing Officer to frame the assessment afresh. The entire discussion of the ld. Pr. CIT running from para 5 till end is reproduced as under:

> *"From the submission of the assessee company it is observed that the assessee company is an NBFC company and during the relevant previous year, the assessee had received Rs. 80 Lakhs from M/s. Swiss Progressive Products Pvt Ltd owing to subscription of 1,00,000 shares of the assessee company at a face value of Rs. 10/- and premium of Rs.70/- per share. The contention of the assessee is that the source of share capital has already been verified by the Assessing Officer during the course of assessment proceedings. The assessee further relied on the judgement of the Hon'ble Delhi Court in the case of CIT vs Hotz Industries Ltd [2014] 49 taxmann.com 267 (Delhi) and submitted that the Commissioner Of Income Tax, in proceedings u/s. 263 of the Act must reach a finding that the finding of A.O was erroneous, not because inquiries were not conducted, but because final findings was wrong and untenable. However, as per records available with this office, it is observed that the O/o the Assistant Director Of Income Tax (Inv.) (OSD), Unit-4, Kolkata carried out an investigation of transactions involving 02 firms namely Swiss Progressive Products Pvt Ltd and Shree Jawala Consultants Pvt Ltd. It was found that these companies were not doing any real business. Instead they were acting as intermediate for providing layering of funds and finally transferring the funds to the ultimate beneficiaries including the assessee company which has routed its unaccounted income through intermediary companies by taking accommodation entries and had concealed/ suppressed their income/ receipts. The assessee company has received an amount of Rs. 80,00,000/- from M/s. Swiss Progressive products Pvt Ltd and the same was received owing to subscription of shares at high premium. However, as per report received from the Investigation Directorate, the aforesaid concern M/s. Swiss Progressive products Pvt Ltd does not have the*

financial creditworthiness to forward such huge sum to the assessee company and the assessee only routed its unaccounted income through the aforesaid concern in the form of share capital. Since it is the unaccounted income of the assessee itself which has been routed through M/s. Swiss Progressive Products Pvt Ltd, the amount should have been added u/s. 68 of the Income Tax Act. In view of the above the assessment order passed u/s. 147/ 143(3) is erroneous insofar as it is prejudicial to the interest of revenue.

5. Now, explanation (2) to section 263(1) reads as under:

"Explanation 2- for the purpose of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if, in the opinion of the Chief Commissioner or Principal Commissioner or Commissioner, -

a) The order is passed without making enquiries or verification which should have been made"

5.1 Hon'ble Delhi High Court in the case of GEE VEE Enterprise vs. Addl. CIT reported in 99 ITR 375, 386 (Del) has held that the CIT may consider the order of the Assessing Officer to be erroneous not only if it contain some apparent error of reasoning or of law or of fact on the face of it but also because the Assessing Officer has failed to make enquiries which are called for in the circumstances of the case and it is an order which simply accepted what the assessee has stated in his return of income on the said issue. It is not necessary for the CIT to make further enquiries before cancelling the assessment order. The Commissioner can regard the order erroneous on the ground that the Assessing Officer should have made further enquiries.

5.2 Hon'ble Supreme Court in the case of Malabar Industrial Co. Pvt. Ltd vs. CIT reported in (2000) 243 ITR 83, 87-88(SC) affirming the Hon'ble Kerela High Court decision (198 ITR 611) has held that the phrase "Prejudicial to the Interests of the Revenue" is of wide import and is not confined to only loss of taxes. If the A.O. has accepted the claim of the assessee without any enquires then such assessment order passed by the A/O. was held to be erroneous.

5.3 In this regard it is mentioned that mere non enquiry would also render a particular order passed by lower authority as erroneous and prejudicial to the interests of Revenue. This position has been clearly confirmed by Hon'ble Supreme Court in the case of Rampyari Devi

Saraogi v. CIT [1968] 67 ITR 84 & Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC). The reasoning for this proposition has been explained by Hon'ble Delhi High Court in the case of Gee Vee Enterprise v. Addl. CIT [1975] 99 ITR 375 in the following para:-

> *"It is necessary for the Commissioner to make further inquiries before cancelling the assessment order of the Income-tax Officer. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the case the Income-tax Officer should have made further inquiries before accepting the statements made by the assessee in his return. The reason is obvious. The position and function of the Income-tax Officer is very different from that of civil court. The statements made in the pleading proved by the minimum amount of evidence may be adopted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which come before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an enquiry. The order becomes erroneous because such an inquiry has not be made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct."*

6. The Hon'ble ITAT, Kolkata was pleased to restore the case back to the file of the Pr. CIT for de-novo consideration and also to consider the objection raised by the assessee [on law as well as factual] and thereafter, to decide whether to proceed with the action u/s. 263 of the Act in accordance with the law. The Hon'ble ITAT also directed the assessee to file written submission/ objection and supporting documents, if advised to do so in the de-novo proceedings before the undersigned and the case was restored back to the file of the Pr. CIT to decide afresh after hearing the assessee in accordance to law. Having regard to the facts and circumstances of the case and in the light of the aforesaid decisions of Hon'ble Supreme Court and Hon'ble High Court and as per direction of the Hon'ble ITAT, and in accordance with the amendment made in Section-263 of the Act, I hold that the impugned assessment

order dated 18/03/2019 passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue. I further hold, after giving the assessee an opportunity of being heard and after considering the submission/ objection of the assessee [on law as well as factual], that the impugned assessment order dated 18/03/2019 is liable to be set-aside. Therefore, I set aside the said assessment order directing the A.O. to frame the assessment afresh after considering the aforesaid observations and submission and after considering the order of the Hon'ble ITAT, Hon'ble Supreme Court and Hon'ble High Court decisions and as per law.

7. The above order is passed as per the direction of the Hon'ble ITAT, Kolkata issued vide its order dated 18/02/2022 in I.T.A. No. 171/Kol/2021."

7. We have heard the rival contentions and gone through the record. At the outset, the ld. Counsel for the assessee has submitted that in this case, the assessee has been thoroughly scrutinized two times i.e. firstly assessment order dated 11.03.2014 was passed u/s 143(3) of the Act after examination of the entire facts and evidences and the returned income of the assessee was accepted. That, thereafter the assessment was reopened u/s 147 r.w.s. 148 of the Act. The ld. Counsel has invited our attention to the reasons recorded u/s 148 of the Act for reopening of the assessment, wherein, the reasons for the reopening of the assessment have been mentioned that "as per information it was found that the assessee was beneficiary of amount of Rs.45 lakh from M/s Swiss Progressive Products Pvt. Ltd". The ld. Counsel in this respect has submitted that the reopening of the assessment was made only on the reason that the Assessing Officer had received information from the investigation wing that the assessee was beneficiary of a transaction amounting Rs.40 lakh from M/s Swiss Progressive Products Pvt. Ltd. That the Assessing Officer in the reopened assessment proceedings thoroughly examined this issue. The assessee during the assessment proceedings submitted all the necessary documents to prove the

genuineness of the transaction which are also reflected in the submissions made by the assessee before the ld. Pr. CIT as reproduced above. The ld. Counsel has also relied upon the paper-book to submit that the assessee company filed reply dated 12.11.2018 with annexures before the Assessing Officer in response to the notice issued by him u/s 142(1) of the Act in the course of reassessment proceedings. That the said M/s Swiss Progressive Products Pvt. Ltd. also responded to the notice issue u/s 133(6) of the Act and duly filed confirmation and evidences before the Assessing Officer copies of which have been placed at pages 60 to 91 of the paper-book. Apart from that, the assessee also furnished details and evidences relating to the share application money received from other two entities namely M/s Shree Jawala Consultants Pvt. Ltd. and M/s Tulsi Rolling & Flour Mills Pvt. Ltd. The Assessing Officer after examining all the details and evidences furnished by the assessee accepted the transaction as genuine.

7.1 A perusal of the impugned order of the ld. Pr. CIT u/s 263 of the Act would reveal that the ld. Pr. CIT in the impugned order has not discussed about a single document or explanation furnished by the assessee during the reassessment proceedings u/s 147 of the Act. The ld. Pr. CIT has set aside the reassessment order passed u/s 147 of the Act solely on the ground that the information was received from Investigation Wing that the assessee has received an accommodation entry from M/s Swiss Progressive Products Pvt. Ltd. It is pertinent to mention here that the reopening of the assessment was also done on the basis of same information. However, after examining and scrutinizing the details and evidences furnished by the assessee to prove the genuineness of the transaction, the Assessing Officer accepted the said transaction and did not make any addition in this respect. Under the above facts and circumstances, the legal question

raised by the ld. counsel is as to whether ld. Pr. CIT was justified in setting aside the assessment order citing the same reason for which the assessment was reopened, enen without examination and pointing out any defect, error or infirmity in the evidences furnished by the assessee before the Assessing Officer and without making any further enquiries in this respect. At this stage, it will be relevant to reproduce the relevant provisions of section 263 of the Act as under:

> *"Section 263(1) of the Income- Tax Act reads as under:*
>
> *(1) The 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. ……"*
>
> *9.2. The sum and substance of the above reproduced section 263(1) can be summarized in the following points:*
>
> *1) The Commissioner may call for and examine the record of any proceeding under the Act;*
>
> *2) If he considers that the order passed by the AO is*
>
> *(i) erroneous; and*
>
> *(ii) is prejudicial to the interest of Revenue;*
>
> *3) He has to give an opportunity of hearing in this respect to the assessee; and*
>
> *4) He has to make or cause to make such enquiry as he deems necessary;*
>
> *5) He may pass such order thereon as the circumstances of the case justify including,*
>
> *(i) an order enhancing or,*
>
> *(ii) modifying the assessment or*
>
> *(iii) cancelling the assessment and directing a fresh assessment."*

8. As per the provisions of section 263, as enumerated above, after getting the explanation from the assessee, the Ld. Pr. CIT was supposed to examine the contention of the assessee. Before passing an order of modifying, enhancing or cancelling the assessment, he was supposed either to himself make or cause to make such an enquiry as he deems necessary. The words "as he deems necessary", in our view, do not mean that the Ld. Pr. CIT is left with a choice either to make or not to make an enquiry. As per the relevant provisions of section 263, it was incumbent upon the Ld. Pr. CIT to make or cause to make such an enquiry. So far as the words "as he deems necessary" are concerned, the said words suggest that the enquiries which are necessary to form a view as to whether the order of the Assessing Officer is erroneous and prejudicial to the interest of Revenue? Once a point wise reply was given by the assessee, then a duty was cast upon the Ld. Pr. CIT to examine the reply of the assessee and form a prima-facie opinion as to whether the order of the Assessing Officer was erroneous so far as it was prejudicial to the interest of Revenue. We further note that the Ld. Pr. CIT did not raise any query as to what enquiries were made by the Assessing Officer before proceeding to pass the assessment order in question. The opinion of the Commissioner that the Assessing Officer had not made proper enquiries or verifications should be based on his objective satisfaction and not a subjective satisfaction from the assessment order. The reopening in this case was held on the basis of some information received from Investigation Wing, whereby, the Assessing Officer asked the assessee to furnish the necessary details from time to time which were duly furnished by the assessee and after considering the same the Assessing Officer passed the assessment order. However, a perusal of the revision order passed by the ld. Pr. CIT shows that the ld. Pr. CIT has not pointed out any error or discrepancy

in the explanations and details furnished by the assessee and without examining such evidence and without counter questioning the assessee on the relevant points and even without considering the submission of the assessee furnished in reply to the show-cause notice, the ld. Pr. CIT, in our view, was not justified in setting aside the order, simply stating that in his view more enquiries were needed to be carried out by the Assessing Officer.

The ld. Pr. CIT, taking shelter in Explanation 2 to Section 263(1) of the Act, held that the order of the Assessing Officer was erroneous and prejudicial to the interest of the revenue on the ground of lack of enquiry, which, in our view, is a general observation and no specific observation has been made in respect of any of the details or evidence furnished by the assessee and as to why the ld. Pr. CIT was not satisfied about such details/replies furnished by the assessee. Simply because the ld. Pr. CIT felt that the Assessing Officer should have made further enquiries on the same issue or that the case was to be examined from some another angle, the same, in our view, cannot be a valid ground to set aside the assessment order. If such an action is allowed by the ld. Pr. CIT in his revision jurisdiction then, there would be no end to litigation and there would not be any finality to the assessment. The Explanation 2 to Section 263(1) of the Act does not give unbridled powers to the ld. Pr. CIT to simply set aside the assessment order by saying that the Assessing Officer was required to make further enquiries without pointing out as to what was lacking in the enquiries made by the Assessing Officer and why the ld. Pr. CIT was not satisfied with the reply and evidence furnished by the assessee.

9. Further, the Coordinate Kolkata Bench of the Tribunal in the case of 'M/s Rani Sati Agro Tech Pvt. Ltd. vs. ITO' in ITA No.85/Kol/2022 order dated 19.06.2023 while analysing the provisions of section 263 of

the Act has considered various case laws, the relevant part of the order of the Coordinate Bench of the Tribunal is reproduced as under:

> *"10.1. On a bare perusal of the sub section-1 would reveal that powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned Commissioner was not required the assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show cause notice pointing out the reasons for the formation of his belief that action u/s 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the 4th compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order. He may set aside the order and direct the Assessing Officer to pass a fresh order. At this stage, before considering the multi-fold contentions of the ld. Representatives, we deem it pertinent to take note of the fundamental tests propounded in various judgments relevant for judging the action of the ld. Pr. CIT taken u/s 263.*
>
> *11. Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC) has laid down following ratio with regard to provisions of section 263 of the Act:*
>
> > *"There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer; it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an ITO adopted one of the courses*

> *permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the revenue - Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 (SC) and in Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC)". [Emphasis Supplied]*

11.1. Hon'ble Apex Court in the case of CIT vs. Max India Limited as reported in 295 ITR 0282 has held that:

> *"2. At this stage we may clarify that under para 10 of the judgment in the case of Malabar Industrial Co. Ltd. (supra) this Court has taken the view that the phrase "prejudicial to the interest of the Revenue" under s. 263 has to be read in conjunction with the expression "erroneous" order passed by the AO. Every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interest of the Revenue. For example, when the ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the Revenue, unless the view taken by the ITO is unsustainable in law."*

11.2. Hon'ble Madhya Pradesh High court in the case of CIT vs. Associated Food Products (P) Ltd as reported in 280 ITR 0377 has held that:

> *"10. In view of the aforesaid pronouncement of law and taking into consideration the language employed under s. 263 of the Act, it is clear as crystal that before exercise of powers two requisites are imperative to be present. In the absence of such foundation exercise of a suomoto power is impermissible. It should not be presumed that initiation of power under suomoto revision is merely an administrative act. It is an act of a quasi-judicial authority and based on formation of an opinion with regard to existence of adequate material to satisfy that the decision taken by the AO is erroneous as well as prejudicial to the interests of the Revenue. The concept of "prejudicial to the interests of the Revenue" has to be correctly and soundly understood. It precisely means an order which has not been passed in consonance with the principles of law which has in*

> *ultimate eventuate affected realization of lawful revenue either by the State has not been realized or it has gone beyond realization. These two basic ingredients have to be satisfied as sine qua non for exercise of such power. On a perusal of the material brought on record and the order passed by the CIT it is perceptible that the said authority has not kept in view the requirement of s. 263 of the Act inasmuch as the order does not reflect any kind of satisfaction. As is manifest the said authority has been governed by a singular factor that the order of the AO is wrong. That may be so but that is not enough. What was the sequitur or consequence of such order qua prejudicial to the interest of the Revenue should have been focused upon. That having not been done, in our considered opinion, exercise of jurisdiction under s. 263 of the Act is totally erroneous and cannot withstand scrutiny. Hence, the Tribunal has correctly unsettled and dislodged the order of the CIT. [Emphasis supplied]"*

12. In the light of the provisions of section 263 of the Act and a settled position of law, powers u/s 263 of the Act can be exercised by the Pr. Commissioner/Commissioner on satisfaction of twin conditions, i.e., the assessment order should be erroneous and also prejudicial to the interest of the Revenue. By 'erroneous' is meant contrary to law. Thus, this power cannot be exercised unless the Commissioner is able to establish that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Thus, where there are two possible views and the Assessing Officer has taken one of the possible views, no action to exercise powers of revision can arise, nor can revisional power be exercised for directing a fuller enquiry to find out if the view taken is erroneous. This power of revision can be exercised only where no enquiry, as required under the law, is done. It is not open to enquire in case of inadequate inquiry. Our view is fortified by the judgment of Hon'ble High Court of Bombay in the case of CIT vs. Nirav Modi, [2016] 71 taxmann.com 272 (Bombay).

12.1. This view is further supported by the decision of the Hon'ble Gujarat High Court in the case of Shri Prakash Bhagchand Khatri in Tax Appeal No. 177 with Tax Appeal No.178 of 2016, wherein the Hon'ble Gujarat High Court was seized with the following substantial question of law:

> *"Whether the Tribunal is right in law and on facts in upholding the order passed by the CIT under section 263 of the Act on merits and still storing the issue of allowability of deduction under section 54 of the Act to the file of Assessing Officer even though the working of allowability of deduction under section*

54F is available in the order under section 263 which is not disputed by the assessee before ITAT."

13. We find that the Hon'ble Delhi High Court in the case of CIT vs. Anil Kumar reported in 335 ITR 83 has held that where it was discernible from record that the A.O has applied his mind to the issue in question, the ld. CIT cannot invoke section 263 of the Act merely because he has different opinion. Relevant observation of the High Court reads as under:

"63. We find the Hon'ble Delhi High Court in the case of Vikas Polymer reported in 341 ITR 537 has held as under:

"We are thus of the opinion that the provisions of s. 263 of the Act, when read as a composite whole make it incumbent upon the CIT before exercising revisional powers to: (i) call for and examine the record, and (ii) give the assessee an opportunity of being heard and thereafter to make or cause to be made such enquiry as he deems necessary. It is only on fulfilment of these twin conditions that the CIT may pass an order exercising his power of revision. Minutely examined, the provisions of the section envisage that the CIT may call for the records and if he prima facie considers that any order passed therein by the AO is erroneous insofar as it is prejudicial to the interest of the Revenue, he may after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify. The twin requirements of the section are manifestly for a purpose. Merely because the CIT considers on examination of the record that the order has been erroneously passed so as to prejudice the interest of the Revenue will not suffice. The assessee must be called, his explanation sought for and examined by the CIT and thereafter if the CIT still feels that the order is erroneous and prejudicial to the interest of the Revenue, the CIT may pass revisional orders. If, on the other hand, the CIT is satisfied, after hearing the assessee, that the orders are not erroneous and prejudicial to the interest of the Revenue, he may choose not to exercise his power of revision. This is for the reason that if a query is raised during the course of scrutiny by the AO, which was answered to the satisfaction of the AO, but neither the query nor the answer were reflected in the assessment order, this would not by itself lead to the conclusion that the order of the AO called for interference and revision. In the instant case, for example, the CIT has observed in the order passed by him that the assessee has not filed certain documents on the record at the time of assessment. Assuming it to be so, in our opinion, this does not justify the conclusion arrived at by the CIT that the AO

had shirked his responsibility of examining and investigating the case. More so, in view of the fact that the assessee explained that the capital investment made by the partners, which had been called into question by the CIT was duly reflected in the respective assessments of the partners who were I.T. assessees and the unsecured loan taken from M/s Stutee Chit & Finance (P) Ltd. was duly reflected in the assessment order of the said chit fund which was also an assessee."

64. Since in the instant case the A.O. after considering the various submissions made by the assessee from time to time and has taken a possible view, therefore, merely because the DIT does not agree with the opinion of the A.O., he cannot invoke the provisions of section 263 to substitute his own opinion. It has further been held in several decisions that when the A.O. has made enquiry to his satisfaction and it is not a case of no enquiry and the DIT/CIT wants that the case could have been investigated/ probed in a particular manner, he cannot assume jurisdiction u/s 263 of the Act. In view of the above discussion, we hold that the assumption of jurisdiction by the DIT u/s 263 of the Act is not in accordance with law. We, therefore, quash the same and grounds raised by the assessee are allowed."

13.1. The ITAT in the case of Mrs. Khatiza S. Oomerbhoy vs. ITO, Mumbai, 101 TTJ 1095, analyzed in detail various authoritative pronouncements including the decision of Hon'ble Supreme Court in the case of Malabar Industries 243 ITR 83 and has propounded the following broader principle to judge the action of CIT taken under section 263:

"(i) The CIT must record satisfaction that the order of the AO is erroneous and prejudicial to the interest of the Revenue. Both the conditions must be fulfilled.

(ii) Sec. 263 cannot be invoked to correct each and every type of mistake or error committed by the AO and it was only when an order is erroneous that the section will be attracted.

(iii) An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.

(iv) If the order is passed without application of mind, such order will fall under the category of erroneous order.

(v) Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the AO has adopted one of the courses permissible under law or where two views are possible and the AO has taken one view with which the CIT does not

agree. If cannot be treated as an erroneous order, unless the view taken by the AO is unsustainable under law

(vi) If while making the assessment, the AO examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determine the income, the CIT, while exercising his power under s 263 is not permitted to substitute his estimate of income in place of the income estimated by the AO.

(vii) The AO exercises quasi-judicial power vested in his and if he exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous simply because the CIT does not fee stratified with the conclusion.

(viii) The CIT, before exercising his jurisdiction under s. 263 must have material on record to arrive at a satisfaction.

(ix) If the AO 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 AO allows the claim on being satisfied with the explanation of the assessee, the decision of the AO cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard."

13.2. Apart from above stated broader principles, one more principle needs to be added in view of the judgment of Hon'ble Delhi High Court in the case of ITO vs. D.G. Housing Projects Ltd. [2012] 343 ITR 329 (Delhi) that the ld. CIT has to examine and verify the issue himself and give a finding on merits and form an opinion on merits that the order passed by the AO is erroneous and prejudicial to the interest of the Revenue. Relevant extract is reproduced below:

"In the present case, the findings recorded by the Tribunal are correct as the CIT has not gone into and has not given any reason for observing that the order passed by the Assessing Officer was erroneous. The finding recorded by the CIT is that "order passed by the Assessing Officer may be erroneous". The CIT had doubts about the valuation and sale consideration received but the CIT should have examined the said aspect himself and given a finding that the order passed by the Assessing Officer was erroneous. He came to the conclusion and finding that the Assessing Officer had examined the said aspect and accepted the respondent's computation figures but he had reservations. The CIT in the order has recorded that the consideration receivable was examined by the Assessing Officer but was not properly examined and therefore the

> *assessment order is "erroneous". The said finding will be correct, if the CIT had examined and verified the said transaction himself and given a finding on merits. As held above, a distinction must be drawn in the cases where the Assessing Officer does not conduct an enquiry; as lack of enquiry by itself renders the order being erroneous and prejudicial to the interest of the Revenue and cases where the Assessing Officer conducts enquiry but finding recorded is erroneous and which is also prejudicial to the interest of the Revenue. In latter cases, the CIT has to examine the order of the Assessing Officer on merits or the decision taken by the Assessing Officer on merits and then hold and form an opinion on merits that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. In the second set of cases, CIT cannot direct the Assessing Officer to conduct further enquiry to verify and find out whether the order passed is erroneous or not."*

10. Further, the Coordinate Mumbai Bench of the Tribunal in the case of 'Narayan Tatu Rane v. ITO' reported in [2016] 70 taxmann.com 227 (Mum. – Trib.) has held that Explanation 2(a) to section 263 of the Act does not authorise or give unfettered power and to revise each and every order on the ground that the Assessing Officer should have made more enquiries and verifications. The relevant part of the order of the Tribunal is reproduced as under:

> *"20. Further clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the A.O vis-à-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have*

been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquires or verification that would have been carried out by a prudent officer. Hence, in our view, the question as to whether the amendment brought in by way of Explanation 2(a) shall have retrospective or prospective application shall not be relevant."

11. At this stage, the ld. counsel has placed reliance on the decision of the jurisdictional Calcutta High Court in the case of 'PCIT vs. Usha Polychem India (P) Ltd' reported in [2023] 149 taxmann.com 240 (Cal), wherein, the Hon'ble Calcutta High Court has held that where Principal Commissioner involved revision jurisdiction under section 263 in case of assessee on basis of an information received from Dy. Director (Investigation) regarding huge amount of unaccounted funds received in bank account of assessee, since a reassessment proceeding was already invoked and completed on basis of same information, impugned revision was unjustified. The relevant part of the order of the Hon'ble Calcutta High Court is reproduced as under:

"4. *The short issue which falls for consideration in the instant case is whether the assumption of jurisdiction by the Principal Commissioner of Income Tax, Kolkata - 2 (PCIT) under section 263 of the Act was justified. The Tribunal had allowed the assessee's appeal and held that the PCIT has not recorded any finding that he has reason to believe that income assessable to tax has escaped assessment and the revenue being aggrieved by the said finding on an appeal before us. What is important to note in the instant case is that the assessment for the year under consideration, AY 2012-13 was completed on 30-3-2015. Subsequently, the assessment was reopened based on the information received from the DDIT (Investigation) Unit 2(2), Kolkata dated 6-3-2019. Thereafter, notice under section 148 of the Act was issued on 29-3-2019 and in response to such notice the assessee filed its return of income declaring a total income of Rs. 23,440/-. Subsequently, notices were issued under sections 143(2), 142(1) of the Act and the assessee filed his response along with documents. The Assessing Officer on considering the documents and the return furnished by the assessee accepted the stand taken by the assessee and completed the assessment. It is seen that PCIT has exercised jurisdiction under section 263 of the Act on the very same information furnished by the DDIT (Investigation) Unit 2 (2) dated 6-3-2019. On perusal of the order passed by the PCIT dated 15-3-2021 in*

which the show cause notice issued under section 263 of the Act has been extracted, the PCIT has not recorded any finding that he has reason to believe that income that is assessable to tax has escaped assessment.

5. *In the absence of such finding, we are of the view that the Tribunal was right in coming to the conclusion that the PCIT erred in exercising its jurisdiction. Our view is supported by the decision in the case of Pr. CIT v. Anindita Steels Ltd. [2022] 137 taxmann.com 203 (Cal.).*

6. *The learned standing counsel for the appellant relied upon the decision of the Hon'ble Supreme Court in Malabar Industrial Co. Ltd. v. CIT [2000] 109 Taxman 66/243 ITR 83/[2000] 2 Supreme Court Cases 718 and, in particular two paragraphs 10 and 11 of the said decision.*

7. *In fact, the said decision would support the case of the respondent assessee and would lead us to affirm such an order.*

8. *Thus, in the light of the factual aspect brought out by the Tribunal while granting relief to the assessee, we find no substantial questions of law, much less substantial questions of law arising for consideration in this appeal."*

12. In view of the discussion made above, the impugned order of the ld. Pr. CIT is not sustainable as per law and the same is set aside.

13. In the result, the appeal of the assessee stands allowed.

Kolkata, the 7th May, 2024.

Sd/-	Sd/-
[डॉक्टर मनीष बोरड /Dr. Manish Borad]	**[संजय गर्ग /Sanjay Garg]**
लेखा सदस्य /Accountant Member	**न्यायिक सदस्य /Judicial Member**

Dated: 07.05.2024.
RS

Copy of the order forwarded to:
1. Deepak Switch Gears Pvt. Ltd
2. PCIT, Asansol
3.CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches