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

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री संजय अवस्थी, लेखा सदस्य
के समक्ष
Before
SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No.: 570/KOL/2020
Assessment Year: 2011-12

Mohammed Gyasuddin.....Appellant
[PAN: AFVPG 2465 H]

Vs.

ACIT, Circle-30, Kolkata.....Respondent

Appearances:

Assessee represented by: *Miraj D. Shah, A/R.*

Department represented by: *Abhijit Kundu, CIT DR.*

Date of concluding the hearing : May 9th, 2024
Date of pronouncing the order : May 16th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

The present appeal arises from the order passed u/s 263 of the Income Tax Act, 1961 (in short the 'Act') dated 11.03.2020 by ld. Pr. Commissioner of Income Tax-10, Kolkata [hereinafter referred to as ld. 'Pr. CIT'], pertaining to AY 2011-12.

2. In this case it is necessary to briefly record facts from the Assessing Officer's (in short ld. 'AO') order. Thus, the brief facts of the case are that in this case the Assessing Officer (in short ld. 'AO') passed an order dated 29.12.2018 u/s 147/143(3) of the Act. It has been recorded by the ld. AO that

in the instant case original return of income was filed on 17.09.2011, which was later revised on 10.02.2012 showing total income of Rs. 14,90,811/-. It is further, recorded that an information was received from the investigation wing of Income Tax Department that the assessee was having a current account bearing No. 031-542343-001 in the name of Shifa International with the HSBC Bank Ltd., Juhu Vile Parle Branch, Mumbai. It was further, observed by the ld. AO that during the period 01.04.2010 to 31.03.2011 the total credit transactions aggregated to Rs. 5,11,17,075/- (Out of this there were cash deposits of Rs. 4,78,80,000/-) and there were debit transactions amounting to Rs. 5,05,42,053/- (Out of which there were no visible cash withdrawals). The AO was led to believe that the total income declared at Rs. 14,90,811/- on a turnover of Rs. 3,77,62,233/- did not allegedly match with the transactions visible in the bank account in HSBC Bank *(supra)*. Thereafter the ld. AO proceeded to record reasons under clause (a) of explanation 2 to Section 147 of the Act, indicating that an amount of Rs. 5,21,17,075/- had escaped assessment.

2.1. It is seen from ld. AO's order that the assessee was asked to reconcile the cash deposits made in the bank accounts with the disclosed sales during the year under consideration. As a result of this exercise the ld. AO found that there was suppression of sales to the extent of Rs. 18,19,792/-, on which he proceeded to apply a gross profit rate of 12.10%, to arrive at an addition of Rs. 2,20,195/-.

2.2. The ld. AO has also recorded that the assessee has accepted and repaid loans and advances in cash above Rs. 20,000/- and accordingly arrived at the conclusion that such loans and advances were totalling Rs. 1,77,84,300/- as under:

Name of the party	Advance	Repayment
Mukherjee Telecom	14,96,000/-	14,96,000/-
Sumanta Kr	21,63,000/-	21,63,000/-
Raju Telecom	17,83,000/-	17,83,000/-
KA Enterprises	21,61,000/-	21,61,000/-
Nick Telecom	21,78,000/-	21,78,000/-
Gazia Enterprises	20,81,000/-	20,81,000/-

S K Enterprises	36,76,300/-	36,76,300/-
A.M Enterprises	22,46,000/-	22,46,000/-
Total	1,77,84,300/-	1,77,84,300/-

2.3. In light of this finding, the ld. AO proceeded to initiate penalty proceedings u/s 269SS & 269T read with Section 271D & 271E of the Act respectively.

3. Subsequently, the ld. Pr. CIT issued a notice u/s 263 of the Act dated 28.11.2019 whereby he indicated that Rs. 1,77,84,300/- was never verified from the angle of genuineness of transaction by ld. AO and hence, proceedings u/s 263 of the Act were merited.

3.1. After considering the response filed by the assessee ld. Pr. CIT proceeded to pass an order u/s 263 of the Act dated 11.03.2020 (impugned order). The crux of findings are extracted as under:

> *"3. Subsequently, the assessment order and other records were called for and examined. The assessment u/s 147 read with section 143(3) has been completed without ascertaining the facts recorded on reason for issue notice u/s 148 of the Act. It is further seen that the AO recorded income to the tune of Rs.5,06,26,264/- had escaped assessment out of cash deposits to the tune of Rs.5,21,17,075/-. Whereas, in the assessment order the AO added back Rs.2,20,195/- only. Thus, there has been underassessment to the tune of Rs.5,04,06,069/-. It was observed that the assessee had taken loan/ advances in cash above in excess of Rs.20,000/- and also repaid the loans/ advances in cash above Rs.20,000/-. The details are as under:*

Sl.No	*Name of the Party*	*Advance*	*Repayment*
1	*Mukherjee Telecom*	*Rs. 14,96,000/-*	*Rs. 14,96,000/-*
2	*Sumanta Kr*	*Rs.21,63,000/-*	*Rs.21,63,000/-*
3	*Raju Telecom*	*Rs. 17,83,000/-*	*Rs. 17,83,000/-*
4	*K.A.Enterprises*	*Rs.21,61,000/-*	*Rs.21,61,000/-*
5	*Nick Telecom*	*Rs.21,78,000/-*	*Rs.21,78,000/-*
6	*Gazia Enterprises*	*Rs.20,81,000/-*	*Rs.20,81,000/-*
7	*S K Enterprises*	*Rs.36,76,300/-*	*Rs.36,76,300/-*
8	*A M Enterprises*	*Rs.22,46,000/-*	*Rs.22,46,000/-*
	Total	*Rs. 1,77,84,300/-*	*Rs. 1,77,84,300/-*

> *The AO vide order u/s 147/143(3) dated 29.12.2018 failed to verify the identity/ creditworthiness/ genuineness of the above advances but initiated penalty proceedings u/s 271(1)(c), 271D and 271E read with Section 274 of the Act."*

3.2. With this finding he set aside to the AO for detailed verification of cash transaction to the tune of Rs. 5,21,17,075/-.

3.3. It needs to be mentioned that the present proceedings are second round proceedings as in the initial stage two appeals of this assessee bearing ITA Nos. 570 & 571/KOL/2020 were disposed off vide a common order by this very Bench of the ITAT, Kolkata through order dated 16.06.2023. Through this consolidated order, it was recorded that there was inadequate persuasion by the assessee and thus, the matters were disposed off after hearing the ld. D/R, by dismissing the said appeals and upholding the action of ld. Pr. CIT. Aggrieved with this action, the assessee approached the Hon'ble Calcutta High Court and there, vide order dated 05.02.2024, the matter was restored back to the ITAT with the following observation:

> *"Considering the fact that the appeal is an individual assessee, we exercise discretionary power and opine that the appeal should be heard by the learned Tribunal on merits and the decision should be rendered after an opportunity to the appellant-assessee."*

4. Aggrieved with this action of ld. Pr. CIT the assessee is in appeal before us raising the following grounds of appeal:

> *"1. For that the Ld. CIT erred in invoking the provisions of section 263 when the reopening itself was bad in law and therefore the reassessment sought to be revised itself is bad in law.*
>
> *2. For that the Ld. CIT erred in invoking the provisions of sec. 263 without appreciating the facts on record and the submission made by the assessee.*
>
> *3. For that on the facts and in the circumstances of the case the Ld. CIT erred in setting aside the assessment when enquiries were already made by the AO and in any case the CIT did not come to a finding that the order was erroneous and prejudicial to the interest of revenue nor did he himself made any enquiry."*

4.1. During the course of hearing before us, the ld. Counsel for the assessee filed a paper book, along with written submissions agitating the grounds of appeal. The first ground challenges the reopening of the case of the assessment itself under clause (a) of explanation 2 to Section 147 of the Act which has been extracted as under:

> *"(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;"*

4.2. It has been contended that it has nowhere been doubted that there was no return of income filed by the assessee. In fact, this fact is mentioned in both the ld. AO's order as well as in the impugned order. Thus, it has been averred that the reopening itself was illegal and hence, there could be no ground for any further action u/s 263 of the Act. Ld. A/R has proceeded to rely on several authorities to canvass the point that the reopening itself was devoid of merit since it is an established fact that a return of income was duly filed by the assessee. Since the grievance is pertaining to the order u/s 263 of the Act, we do not deem it fit to pass any judgment on merits on the validity of the reopening under clause (a) of explanation 2 to Section 147 of the Act by the ld. AO. Accordingly, we would like to confine ourselves to the fact finding done by the ld. AO and in what manner the conclusions arrived therein have been found to be actionable u/s 263 of the Act by the ld. Pr. CIT.

4.3. Ld. D/R vehemently argued supporting the order of ld. Pr. CIT.

5. Ground nos. 2 & 3 challenge the impugned order through broadly the following contentions:

i) That the assessee has duly filed return of income with audited accounts.
ii) The transactions in the HSBC Bank *(supra)* were duly available with the ld. AO and he even made direct enquiries with the said bank for obtaining necessary details regarding the said account.
iii) The ld. AO examined the nature of the cash transactions and purportedly agreed with the assessee's contention that these transactions were loans and advances for business purpose and were being duly returned. In fact, the ld. AO made an addition of Rs. 2,20,195/- on alleged undisclosed sales of Rs. 18,19,792/-, after such examination.

iv) The ld. AO detected violation of Sections 269SS and 269T of the Act, for which he initiated relevant penalty proceedings.

v) The ld. Pr. CIT tended to take an adverse view regarding the cash transactions on the ground that the same had not been examined from the point of view of genuineness and thus, proceeded to set aside the same to the ld. AO for fresh assessment regarding cash transactions to the tune of Rs. 5,21,17,075/-.

vi) The ld. A/R has also averred that while in the notice u/s 263 of the Act the ld. Pr. CIT wanted to verify transactions worth Rs. 1,77,84,000/- only whereas in the operational part of the impugned order he has directed the ld. AO to verify cash transactions of Rs. 5,21,17,075/-.

5.1. The sum and substance of ld. A/R's submissions on this issue revolves around the fact that on the same set of documents and material as were available before the ld. AO, ld. Pr. CIT has come to a different conclusion, thereby allegedly detecting conditions making this case liable for action u/s 263(1) of the Act. For the sake of reference Section 263 of the Act is reproduced 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 afresh assessment."

5.2. As per the provisions of Section 263 of the Act, following the explanation from the assessee, ld. Pr. CIT was supposed to examine his contention before passing an order modifying, enhancing or cancelling the assessment. This could be done after he himself would make or cause to make such enquiries as deemed fit. The words "As he deems necessary" cast a responsibility on ld. Pr. CIT to make or cause to make such enquiries which are necessary to form a view as to whether the order of the ld. AO is erroneous and prejudicial to the interests of the revenue. From the conspectus of the facts evident from the impugned order it is seen that at the stage of issuance of notice u/s 263 of the Act, ld. Pr. CIT was of the *prima facie* view that the amount that needed to be verified was Rs. 1,77,84,000/-. Before the ld. CIT, the assessee explained the nature of his business and the transactions arising therefrom, which were duly examined by the ld. AO and nothing adverse was found thereon. The ld. A/R has further, demonstrated that even before the ld. CIT the assessee duly furnished the required details and explanations. However, the ld. CIT without appreciating the said details simply held the order to be erroneous and prejudicial to the interests of the revenue on the sole ground that the ld. AO had not examined the nature of transactions.

5.3. Coming to Explanation 2 to Section 263(1) of the Act under which the ld. Pr. CIT has held that the order of ld. AO was erroneous and prejudicial to the interests of the revenue on the ground of lack of enquiry, simply because ld. Pr. CIT felt that ld. AO should have made further enquiries on the same issue, importantly based on same facts and information, as was duly

considered by the ld. AO, or that the case needed to be examined from some other angle, cannot be a valid ground to set aside the assessment order u/s 263 of the Act.

5.4. Strength is drawn from the order of a Coordinate Bench of ITAT Kolkata 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, in which while analysing the provisions of Section 263 of the Act various case laws have been considered. The relevant part of the order of the Coordinate Bench of the Tribunal is reproduced as under as they are squarely applicable on the facts of the present case as well:

> *"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 quasijudicial 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."

5.5. Our attention was drawn to 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 the Principal Commissioner invoked 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, there since a re-assessment proceeding was already invoked and completed on basis of same information, impugned revision was unjustified. In this case there are similar facts as the assessment order considered by the ld. Pr. CIT for action u/s 263 of the Act, has been passed u/s 147/143(3) of the Act. 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 63-2019. 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."

6. In view of the above discussion, the impugned order passed by ld. Pr. CIT is not found sustainable as per the law, the same is set aside and the ground nos. 2 & 3 raised by the assessee are allowed.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 16th May, 2024.

Sd/-	*Sd/-*
[**Sanjay Garg**]	[**Sanjay Awasthi**]
Judicial Member	Accountant Member

Dated: 16.05.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. ***Mohammed Gyasuddin, 3, Dent Mission Road, Kolkata, West Bengal, 700023.***
2. ***ACIT, Circle-30, Kolkata.***
3. ***PCIT-10, Kolkata.***
4. CIT(A)-
5. CIT-
6. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata