

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 416/Chd/2022
निर्धारण वर्ष / Assessment Year : 2017-18

Shri Baljit Singh 3309, Gurdev Nagar, Ludhiana Punjab-141001	बनाम	The PCIT Ludhiana-1
स्थायी लेखा सं. / PAN NO: ABTPS8292A		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारित की ओर से/ Assessee by : Shri Rajiv Kaushal &
Shri S.S. Wahi, C.A's
राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT DR
सुनवाई की तारीख/ Date of Hearing : 01/05/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 22/05/2024

आदेश/Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the Assessee who is a person resident in India.
The Assessment Year is 2017-18.

2. The assessee is aggrieved by DIN & Order No. ITBA/REV/F/REV5/2021-22/1042032366(1) dt. 30/03/2022 passed by Ld. PCIT, Ludhiana -1, Punjab (hereinafter called the "PCIT") under section 263 of the Income Tax Act, 1961 hereinafter referred to as the "impugned order" dt. 30/03/2022.

Factual Matrix

3. Assessment under section 143(3) of the Act for the assessment year 2017-18 was completed in the present case by the Assistant Commissioner of Income Tax, Circle (6)(1), Ludhiana hereinafter called for sake of convenience and ease as "AO". The Ld. AO vide order no. ITBA/AST/S/143(3)/2019-20/1022492206(1) dt. 17/12/2019 (A.Y. 2017-18) has held as under:

" Accordingly the case of the assessee is assessed at the returned income"

4. In brief the Ld. AO accepted the returned income of the assessee.

5. The **Chapter XX** of the Income Tax Act, 1961 as amended from time to time deals with “ **Appeals & Revision**”. Section 263 of the said **Chapter at E-** speaks of revision by the Pr. Commissioner or Commissioner. The heading deals with broad caption “ **Revision of order and prejudicial to Revenue**”. By virtue of Section 263 (1) The PCIT or Chief Commissioner or Pr. Commissioner or Commissioner may call for and examine the record of any proceedings under this Act and if he considers that any order passed therein by the AO (or Transfer Pricing Officer, as the case may be) is **erroneous** in so far 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 inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including-

(i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or

(ii) an order modifying the order under section 92CA; or

(iii) an order cancelling the order under section 92CA and directing a fresh order under the said action.

6. The Ld. PCIT in exercise of power conferred upon him by virtue of the above section in para 6 of the impugned order has held as under:

Hence, keeping in view the above discussed facts, figures of the case and lapses on the part of the A.O., I hold the assessment order dated 17.12.2019 for the A.Y. 2017-18 in the case of the assessee is erroneous as well as prejudicial to the interest of the revenue and therefore set aside the order to the file of the A.O. for passing a fresh order in accordance with law in respect of the issue discussed above and also raised in show cause notice u/s 263(1) of the Act, after giving sufficient opportunity of hearing to the assessee.

7. The Ld. PCIT **before holding** as above by following the due process had called for and examined the record of AO proceedings. His observations are as under:

"4. Examination of assessment record revealed that you were engaged in the business of Real estate Business and sold following properties during the year under consideration:

Sr. No.	Name of Purchaser/ Area	Full value of consideration	TDS deducted	Remarks
1.	ACP Enterprises	1,34,00,000/-	1,34,000/-	Figures in 26AS
2	Acharya Shree Atma Ram Jian Samarak Samiti	90,00,000/-	90,000/-	Figures in 26AS
3	ACP Enterprises	3,11,00,000/-	3,11,000/-	Figures in 26AS
4	Land at Jawadi (Model Town Ext.)	48,00,000/-	0	TDS not deducted being transaction less than 50 lakh. Figure taken from Trading account

5. Although you had sold, four properties worth RS. 5,83,00,000/- but shown only one property for Rs. 48,00,000/- in the trading account on which you had declared loss of Rs. 9,41,936/-. The copies of the sale deed of acquisition of properties are also not available on record so actual acquisition cost is not available but your capital account revealed that you had credited LTCG of Rs. 1,92,48,027/- in your capital account directly. This LTCG was neither declared in the profit & loss account nor offered for tax.

As Section 68 of the Income Tax Act, provides that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year.

Since LTCG was neither declared in the Profit & Loss account nor offered for tax, the assessment is erroneous as also prejudicial to the interest of revenue because the amount of Rs. 1,92,48,027/- has not been brought to tax.

[Be it noted at the threshold and at outset herein that-

[We are restricting his observations and findings of PCIT only with regard to the applicability of section 68 with regard to unsecured loans and payment of interest thereon as a consequence thereof expenditure of Rs. 1,32,97,887/- has remained unexplained. The other issue dealt by him in para 4 & 5(supra) of the impugned order stands dealt with in fresh assessment order dt. 27/03/2023-i.e; the consequential order passed in pursuance to order under section 263 as the same was not canvassed and pressed in the course of the hearing of this appeal. (Be it noted that the assessee vide application dt. 01/05/2024 the date on which the personal hearing took place has submitted that this issue was not pressed). Be it further noted that while adjudging the present appeal we are in no way affected or prejudice by the consequential order passed in pursuance to the order of the PCIT under section 263 and hence we are examining legality, validity, and propriety of order under section 263 partly and not as a whole.]

The Assessment record reveals that as per Balance Sheet (as on 31.03.2017) there were unsecured loans of Rs. 26,11,77,083.55/- and as per 3 CD audit report (column 34a), you had deducted TDS of Rs. 2435095/- on payment of interest of Rs. 2,43,50,911/- under section 194A. Further scrutiny of the case records revealed that as per profit & loss account, total expenditure was Rs. 1,40,14,722/- (expenditure on interest was only 11053024) against expenditure of Rs. 2,43,50,911/- **on interest alone**. This expenditure of Rs. 1,32,97,887/- (24350911-11053024) remained unexplained.

7.1 The Ld. PCIT has observed in response to the show cause, the reply of the assessee with regard to the aforesaid wherein it was contended as under:

"2. The interest paid on unsecured loan Rs. 2,43,50,911/-, was partly capitalized in cost of land holdings Rs. 2,06,85,380/- and partly debited in Profit and Loss account Rs. 36,65,526/-. This is as per past practice being following in accounting interest on unsecured loans. The Hire charges and interest debited in profit and loss account Rs. 7387498, is interest paid on secured loans from Banks. The interest Rs. 1,10,53,024/- is sum total of Rs. 36,65,526/- and Rs. 73,87,498/-. Rs. 2,43,50,911/- total interest on unsecured loan is partly capitalized in cost of land holdings Rs. 2,06,85,380/-, reflected in trading account of each land holding. Balance Rs. 36,65,526/- is debited in profit and loss account. So the figure of Rs. 1,32,97,887/- (24350911-11053024/-) is wrongly calculated. Nothing as such is unexplained. This fact was well explained and verified during assessment by Ld. A.O.

*The papers supporting the facts of Rs. 1,92,48,027/- LTCG [**not covered by us in this order**] and unexplained expenditure of Rs. 1,32,97,887/- [**covered by us in this order**] submitted during assessment proceedings are hereby again attached."*

7.2 The Ld. PCIT has even recorded the comments of AO as under:

*4.1 Further, the AO was directed to submit his comments on the reply of the assessee on the issue of interest paid on unsecured loans who submitted his report through Range Head vide his letter No.672 dated 15.03.2022 stating that the interest paid on unsecured loans amounting to Rs.2,43,50,911/- has partly been capitalized in the cost of Land Holdings at Rs.2,06,85,380/- and partly debited in profit and loss account at Rs.36,65,526/- which is reflected in trading account and P & L account of the assessee. **However, the details are still subject to verification.***

(emphasis supplied by us)

7.3. The Ld. PCIT has recorded in para 5.1 the nature and scope of powers under section 263 and has held as under:

5.1 Detailed and deep enquiries were required to be made on the issue discussed above before accepting claim of the assessee. In this regard, it is worthwhile to refer to provisions of Explanation 2 to Section 263(1) of the Income Tax Act, 1961 according to which an order passed by the A.O. shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue for various reasons including the fact that if in the opinion of Principal Commissioner or Commissioner the order is passed without making any enquiry or verification which should have been done and also includes the order which is passed allowing any relief without enquired into the claim.

7.4 The Ld. PCIT has recorded in para 5.4 as under:

5.4 Further it has also been held in the case of *Gee Vee Enterprises v. Addl. CIT &Ors.* (1975) 99 ITR 375 (Del.) that an order can be regarded as erroneous when either it does not decide a point and record a finding on an issue which ought to have been done or decides it wrongly. The word 'erroneous' in the section includes cases, where there has been a failure to make necessary inquiries. The Patna HC in *CIT v. Pushpa Devi* (1987) 164 ITR 639 (Pat), held that if the procedure adopted by the A.O. brings in lesser revenue than some other procedure, the order would be prejudicial to the revenue. It has been held in the case of *LajjaWati Singhal, Smt. V. CIT* (1997) 226 ITR 527 (All) that on failure of Assessing Officer to make enquiry as expected, Commissioner was justified in invoking provisions of section 263 because order passed as such by Assessing Officer was erroneous as well as prejudicial to the interest of the revenue. Similar view has been taken by the Hon'ble Madras High Court in the case of *K.A. RamswamyChettiar&Anr Vs. CIT* 220 ITR 657 (Mad.).

Moreover, the facts of the case are squarely covered by Explanation 2 of Sec.263, which is inserted w.e.f. 01.06.2015. It is as under :-

1. The order is passed without making inquiries or verification which should have been made.
2. The order is passed allowing any relief without inquiring into the claim.
3. The order has not been made in accordance with any order, direction or instruction issued by the board u/s 119 or.
4. The order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional high court or Supreme Court in the case of the assessee or any other person.

7.5 Finally the Ld. PCIT has held as follows:

6. Hence, keeping in view the above discussed facts, figures of the case and lapses on the part of the A.O., I hold the assessment order dated 17.12.2019 for the A.Y. 2017-18 in the case of the assessee is erroneous as well as prejudicial to the interest of the revenue and therefore set aside the order to the file of the A.O. for passing a fresh order in accordance with law in respect of the issue discussed above and also raised in show cause notice u/s 263(1) of the Act, after giving sufficient opportunity of hearing to the assessee.

8. In Form No. 36 the assessee has raised the following grounds of appeal:

1. *The Id. Principal Commissioner of income tax has erred in passing revision order u/s 263 for passing fresh order without taking note of submissions and the judicial pronouncements & explanations/evidence put forth during assessment proceedings. The copy of the submissions are attached herewith and also available on income tax portal.*

2. *The Id. Principal Commissioner of income tax is not justified in passing revision order u/s 263 for passing fresh order without taking note of submissions made vide reply dated 17.02.2022 by disregarding the principles of natural justice and giving an opportunity to resolve the same where all papers submitted with regard to the questionnaire issued during assessment were downloadable, clear, complete and explainable.*

3. *The Id. Principal Commissioner of income tax is not justified in passing revision order u/s 263 for passing fresh order without taking note of audited Profit and loss account and trading account where interest expenditure is fully explained and there is nothing unexplained.*

4. *The assessee craves leave to add, amend, alter any other ground on or before the hearing and disposal of appeal.*

9. The paper book is filed before this Hon'ble Tribunal in total 5 volumes:

Volume I: Contains pages from S.No. 1 to 112 with description index.

Volume II: Continued – contains pages from 113 to 131 with description index.

Volume III: Contains pages from 1 to 35 containing land purchase details and land sold / sale details.

Volume IV: Continuation pages from 1 to 9. Containing land purchased details, land sold details / gifted etc.

Volume V: Compilation of judgment

10. **The Id. DR vide submission letter dt. 07/03/2024 has placed on record consequential order under section 143(3) r.w.s 263/ r.w.s 144B dt. 27/03/2023 in response to earlier direction of Tribunal dt. 06/03/2024. The assessed total income is shown as Rs. 2,63,13,486/-. Thus total income as per order u/s 143(3) dt. 07/12/2019 is Rs. 19,62,660/- where there is addition of Rs. 2,06,85,300/- being the amount on unsecured loan claimed to have been capitalized, as unexplained expenditure under section 69C and further addition of Rs. 36,65,528/- is added being the interest on unsecured loan debited to profit & loss account disallowed under section 37(1) of the Act.**

10.1 Be that as it may, be it noted that above consequential order was passed while the present appeal was pending. The part of the order under section 263 wherein the aforesaid ground is considered / taken cognizance still survives for us. The tribunal by virtue of section 253(1)(c)(ii) in appeal has

jurisdiction to determine its legality, validity and propriety in a manner challenged before us, even after consequential order is passed; even if it is against the assessee partially in our considered view and that there is no embargo legally or otherwise.

10.2 The Ld. AR of the assessee has challenged the aforesaid on the following contentions:

- 1) Original return of income was filed on 31/10/2017 w.r.t AY 2017-18 showing total income of Rs. 21,25,320/-.
- 2) Revised return of income was filed on 06/11/2017, showing total income of Rs. 19,62,660/-; thus curing the mistake committed in filing original return.
- 3) The case was selected for complete scrutiny through CASS.
- 4) Detailed questionnaire were issued by the Ld. AO.

10.3 The assessee duly replied all the queries so raised by the Ld. AO. The Ld. AO satisfied himself w.r.t all the key points, which triggered the assessment proceedings. In depth analysis of all the documentary evidences as well as other submissions was done by the Ld. AO further such questionnaire as well as replies thereto are very much available on the portal for cross verification thereof. After following due process, the assessment was completed u/s 143(3) of the Income Tax Act, 1961 vide order dt. 17/12/2019, accepting the returned income.

10.4 Thereafter, Id. Principal Commissioner of Income Tax Ldh 1 (for brevity, "PCIT") illegally assumed jurisdiction u/s 263 of the Act, without appreciating the facts on record, in- spirit and substance of the law, and initiated the proceedings under section 263 of the Act. The Ld. PCIT initiated the proceedings u/s 263 of the Act for following alleged infirmities (emanating out of Show cause notice) (for brevity "SCN")

10.5 With regard to core issue as aforesaid it was contended "as per 3CD (audit report point no. 34(a)) the assessee had deducted TDS of Rs.24,35,095/- on Interest payment of Rs.2,43,50,911/- u/s 194A of the Act. Whereas in profit and Loss account interest of Rs.1,10,53,024/- against expenditure of

Rs.2,43,50,911/- .Thus difference of Rs.1,32,97,887/- (Rs.2,43,50,911/- minus Rs.1,10,53,024/-). (Para 2.6 Of Order Of PCIT, on page No 3 of 6)"

10.6 The assessee duly submitted the replies alongwith documentary evidence and to show, all the abovementioned doubts of the Ld. PCIT are against the facts on record. The assessee emphatically submitted that replies to all these queries were duly submitted before the Ld. AO during assessment proceedings. The assessee also further submitted before the Ld. PCIT that his doubts are challengeable for following reasons on core issue:

i) *Interest of Rs.2,43,50,911/- was paid to unsecured loanees and interest of Rs.73,87,498 was paid to banks. Thus total interest paid was Rs.3,17,38,409/-. Out of this interest Rs.1,10,53,024/- (Rs.36,65,526/- + Rs. 73,87,498/-) was debited in Profit and loss account and balance Rs.2,06,85,380/- was apportioned as cost on pro-rata basis amongst different lands, held as stock in trade.*

In SCN the Ld. PCIT mentioned that expenditure of Rs.1,32,97,887/- is unexplained. This is for the reason that in total interest the Ld PCIT did not consider interest paid to bank amounting to Rs.73,87,498/-. Thus total difference comes to Rs.1,32,97,887 + Rs.73,87,498/- i.e. Rs.2,06,85,385/-. This amount of Rs. 2,06,85,380/- was apportioned to lands as stock in trade.

In spite of all these submissions and explanations the Ld. PCIT opted to pass order u/s 263 of the Act, to the effect that assessment order dt. 17.12.2019 is erroneous as well as prejudicial to the interest of revenue and therefore set aside the order to file of the A.O. for passing the fresh order in accordance with law.

ii) Reliance on section 263 which is as below is placed.

263. (1) The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer or the Transfer Pricing Officer, as the case may be, 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 –

(i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or

(ii) an order modifying the order under section 92CA; or

(iii) an order cancelling the order under section 92CA and directing a fresh order under the said action.

iii) While making averments in support of this ground of Appeal, It is humbly submitted that In last para of page 5 of order passed u/s 263 of the Act, the Learned PCIT has referred and relied on provisions of explanation 2 of section 263 which are as under:

1. The order is passed without making inquiries or verification which should have been made.

2. The order is passed allowing any relief without inquiring into the claim.

3. The order has not been made in accordance with any order, direction or instruction issued by the board u/s 119 or.

4. The order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional high court or Supreme Court in the case of the assessee or any other person.

Point no. 3 and 4 as above mentioned, are not applicable on the facts of instant case in hand, since neither there is any order, direction or instruction issued by the board u/s 119 of the act, nor any direct decision of any jurisdictional High court or Supreme Court on specific facts of the case.

As so far point no. 1 and 2 above mentioned are concerned, it is humbly submitted that the learned A.O. had made sufficient inquiries or verification before making order and no relief is allowed without sufficient enquiry.

iv) Regarding enquiries made by A.O., it is humbly submitted that queries raised by A.O., vide notice u/s 142(1) of the Act dated 20.11.2019 , are placed on page no. 129-130 (point no.1-3, on page no.130) of paper book, w.r.t. computation of capital gains and submissions of balance sheets. Further query in relation to interest was raised in point no.20 of questionnaire dated 07.09.2019 placed on page no. 120 of paper book. Reply to notice dated 20.11.2019 was duly submitted and is placed on page no.7 - 8 (comprising of pages running from page no.9 -83 of paper book), duly evidenced by acknowledgement placed on page no. 131 of paper book.

Further reply to notice dated 07.09.2019 was duly submitted and is placed on page no.96 (point no.20) of paper book, duly evidenced by acknowledgement placed on page no. 127-128 of paper book. Copy of such reply w.r.t. point no.20 is annexed herewith for ready reference.

v) Further, page wise split of information submitted w.r.t notice in relation to Interest expense is as under:

a. Notice dated 07.09.2019, para 20 at page no. 120 of paper book, required details of expenses.

b. Reply dated 17.10.2019, para 20 at page no. 96 of paper book.

c. Point no. 20, reply of interest bifurcation debited to direct expense on acquiring lands, working of the same submitted at the time of assessment is now attached,

d. Acknowledgement of response submitted online at time of assessment on 18.10.2019 attached at page no 127 -128 of paper book. Reflects the all attached submitted during assessment. Hence interest expense was fully explained,

e. Page 88 of paper book gives complete picture of unsecured loans and interest paid bifurcation to land and to profit and loss account.

It is very astonishing to note that in spite of submissions of documents as required by law, the Ld. PCIT opined that the A.O. has not made enquiries and assessee has not submitted the replies properly. Whereas, above mentioned submissions clearly show that assessee has duly replied to the queries raised by A.O. regarding book Capital gain of Rs. 1,92,48,027/- and Interest of Rs.2,06,85,380/- has been partly debited in cost of land holding and partly in profit and loss a/c Rs.36,65,526/-. Under the given facts of the case, activation of revisionary powers u/s 263 of the act are void ab-initio.

vi) That the Ld. Principal Commissioner of Income Tax, passed order u/s 263 of the Act, to the effect to be erroneous and prejudicial to the interest of revenue, is against the facts of the case and illegal, on the following:

While not appreciating that out of total Interest of Rs.2,43,50,906/-, interest of Rs.2,06,85,380/- has been partly apportioned in cost of land holding in Trading account and partly apportioned in profit and loss a/c amounting to Rs.36,65,526/-.

Further the above query was raised by the Ld. PCIT under section 263 of the Act replies were duly submitted. Details are specified in written submission of Authorised Representative of the assessee.

(vii) Explanation with respect to interest

That Interest of Rs.2,43,50,911/- was paid to unsecured loanees and interest of Rs.73,87,498 was paid to banks. Thus total interest paid was Rs.3,17,38,409/-. Out of this interest Rs.1,10,53,024/- (Rs.36,65,526/- + Rs.73,87,498/-) was debited in Profit and loss account and balance Rs.2,06,85,380/- was apportioned as cost on pro-rata basis amongst different lands, held as stock in trade.

In his SCN the Ld PCIT mentioned that expenditure of Rs. 1,32,97,887/- is unexplained. This is for the reason that in total interest the Ld PCIT did not consider interest paid to bank amounting to Rs.73,87,498/-. Thus total difference comes to Rs. 1,32,97,887 + Rs.73,87,498/- i.e. Rs.2,06,85,385/-. This amount of Rs. 2,06,85,380/- was apportioned to lands as stock in trade.

It is also worth mentioning here that in show cause notice Ld PCIT has mentioned that the Total expenditure is Rs 1,40,14,722/-. This is not the correct fact. He wrongly mentioned the total of profit and loss account as expense. However, this does not have any bearing on the fate of the case.

Consolidated Trading account enclosed herewith is a good evidence to substantiate that total amount of interest of Rs 2,06,85,350/- is debited to Trading account. Above submissions makes it amply clear that interest amount of Rs 2,43,50,911/- is duly accounted for in books of account as per consistently adopted accounting policy by the assessee. Nothing is unexplained.

viii) In respect of case law relied upon by Ld. PCIT it was contended that reference of citations suggested by Ld. PCIT, Points towards following infractions in conduct of assessment proceedings, to invoke provisions of section 263 of the Act:

1. Where assessing officer has not applied his mind;
2. Where assessing officer has not made necessary inquiry, or where further inquiry is necessitated by the circumstances in the given facts of the case;
3. Where there is loss of revenue or in other words, where more revenue can be garnered.

In this regard, it is humbly submitted that all above mentioned three infirmities/infractions/inconsistencies are not there in conduct of assessment proceedings of present case in hand. While making submissions w.r.t. both grounds of appeal, it has been categorically explained that the assessing officer had made diligent enquiries to probe the facts in detail as any person of ordinary prudence would have done. He duly applied his mind on the submissions made by the assessee, and rightly concluded that assessee had paid all due taxes as per provisions of law. He did not find an evasion of tax from detailed/threadbare analysis of the transactions. Therefore, Factual submissions are amply clear to suggest that there was no occasion to invoke provisions of section 263 of the Act.

ix) Judgement of following Courts / Tribunal were relied upon:

(i) Torrent Pharmaceuticals Ltd Vs DCIT (ITAT Ahmedabad) (ITA 164/Ahd/2018)

"9.5 We thus find merit in the plea of the assessee that the Revisional Commissioner is expected show that the view taken by the AO is wholly unsustainable in law before embarking upon exercise of revisionary powers **The revisional powers cannot be exercised for directing a fuller inquiry to merely find out if the earlier view taken is erroneous particularly when a view was already taken after inquiry. If such course of action as interpreted by the Revisional Commissioner in the light of the Explanation 2 is permitted, Revisional Commissioner can possibly find fault with each and every assessment order without himself making any inquiry or verification and without establishing that assessment order is not sustainable in law. This would inevitably mean that every order of the lower authority would thus become susceptible to Section 263 of the Act and, in turn, will cause serious unintended hardship to the tax payer concerned for no fault on his part.** Apparently, this is not intended by the Explanation. Howsoever wide the scope of Explanation 2(a) may be, its limits are implicit in it. It is only in a very gross case of inadequacy in inquiry or where inquiry is per se mandated on the basis of record available before the AO and such inquiry was not conducted, the revisional power so conferred can be exercised to invalidate the action of AO. The AO in the present case has not accepted the submissions of the assessee on various issues summarily but has shown appetite for inquiry and verifications. The AO has passed the order in great detail after making several allowances and disallowances on the issues involved impliedly after due application of mind. Therefore, the Explanation 2 to Section 263 of the Act do not, in our view, thwart the assessment process in the facts

and the context of the case. Consequently, we find that the foundation for exercise of revisional jurisdiction is sorely missing in the present case.

10. Resultantly, the order of the Pr. CIT passed under s.263 of the Act is set aside and cancelled and the order of the AO under s. 143(3) is restored.

11. In the result, the appeal of the assessee is allowed".

(Emphasis supplied in bold and Italics)

(ii) CIT v/s Max India Ltd. (2007) 295 ITR 282 (SC)

It is held that: "The phrase "prejudicial to the interests of the Revenue" in S. 263 of the Income Tax Act, 1961, has to be read in conjunction with the expression "erroneous" order passed by the Assessing Officer. **Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue.** For example, when the Assessing Officer adopts one of two courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the Revenue, unless the view taken by the Assessing Officer is unsustainable in law." Ratio of these cases fully apply on the facts of the present case in principle.

(Emphasis supplied in bold and Italics)

(iii) Narayan Tatu Rane Vs Income Tax Officer (2016) 70 Taxmann.com 227 (Mumbai ITAT)

"19. The law interpreted by the High Courts makes it clear that the Ld Pr. CIT, before holding an order to be erroneous, should have conducted necessary enquiries or verification in order to show that the finding given by the assessing officer is erroneous, the Ld Pr. CIT should have shown that the view taken by the AO is unsustainable in law. In the instant case, the Ld Pr. CIT has failed to do so and has simply expressed the view that the assessing officer should have conducted enquiry in a particular manner as desired by him. Such a course of action of the Ld Pr. CIT is not in accordance with the mandate of the provisions of sec. 263 of the Act. The Ld Pr. CIT has taken support of the newly inserted Explanation 2(a) to sec. 263 of the Act. Even though there is a doubt as to whether the said explanation, which was inserted by Finance Act 2015 w.e.f. 1.4.2015, would be applicable to the year under consideration, **yet we are of the view that the said Explanation cannot be said to have over ridden the law interpreted by Hon'ble Delhi High Court, referred above. If that be the case, then the Ld Pr. CIT can find fault with each and every assessment order, without conducting any enquiry or verification in order to establish that the assessment order is not sustainable in law and order for revision. He can also force the AO to conduct the enquiries in the manner preferred by Ld Pr. CIT, thus prejudicing the independent application of mind of the AO. Definitely, that could not be the intention of the legislature in inserting Explanation 2 to sec. 263 of the Act, since it would lead to unending litigations and there would not be any point of finality in the legal proceedings. The Hon'ble Supreme Court has held in the case of Parashuram Pottery Works Co. Ltd Vs. ITO (1977)(106 ITR 1) that there must**

be a point of finality in all legal proceedings and the stale issues should not be re activated beyond a particular stage and the lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity.

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 AO vis-a-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 enquiries 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."

(Emphasis supplied in bold and Italics)

10.7. In conclusion, that in view of the Authoritative Pronouncements of ITAT and different High Courts online as aforesaid putting up more and more citations of case law would be a futile exercise resulting into repetition only. Hence one can safely conclude from citations as above that where the assessing officer has made assessment after making due enquiries / due verifications and after due application of mind, which a man of ordinary prudence would do; under such circumstances, PCIT cannot invoke provisions of Section 263 of the Act. Since such unfurred powers vested with PCIT would vitiate the whole assessment process and there would be no sanctity of any assessment.

10.8 Finally concluding in the present case it is amply clear that the AO had made due enquiries on the issues raised by the PCIT. AO has also applied his mind on the submissions made as per provisions of law. PCIT doubted the veracity / truthness of submissions without assigning any reason for the same.

With regard para 4.1 of Ld. PCIT order mentioned that details of interest are

still verifiable, when all the detail were duly submitted at the assessment level itself as well as at revisionary stage under section 263. In brief nothing was left to further explain or nothing remain unexplained. Therefore both factually and legally present case is not a fit case for invocation of Section 263. PCIT had passed the order under section 263 with preconceived notions in his mind and without application of his mind and has acted in a capricious and whimsical manner. Hence prayer for quashing the revision proceedings as illegal and so also order of PCIT under section 263.

11. Per contra the Ld. DR has placed reliance on the order of the Ld. PCIT under section 263 of the Act and has contended that there is no infirmities both on facts and legal. The revisionary proceedings were as per law. Finally even the revisionary order under section 263 stands implemented and consequentially the assessment order u/s 143(3) r.w.s 263/ 144B of the Income Tax Act, 1961 dt. 27/03/2023 is passed wherein above issue raised by the assessee is rightly not considered by AO in consequential order as Rs. 2,06,85,300/- is added as interest on unsecured loan claimed to have been capitalized held as unexplained expenditure under section 69C of the Act and further interest on unsecured loan debited to profit & loss account is disallowed under section 37(1) of the Income Tax Act amounting to Rs. 36,65,526/-.

12. In view of the forgoing premises **we now examine legality, validity, proprietary of the impugned order dt. 30/03/2022.** While examining we make it very clear that only the contention canvassed during the hearing of appeal by the Ld. AR and DR alone has been taken into consideration as according to AR the first issue of sale of four properties worth Rs. 5,83,00,000/-, out of which only one was shown for Rs. 48,00,000/- in trading account wherein loss of Rs. 9,41,936/- is shown. The copies of sale deed of acquisition of properties are also not available on record, actual acquisition cost is not available, but capital account reveals that there is credited LTCG of Rs. 1,92,48,027/-

directly. The LTCG is neither declared in P&L Account nor offered for tax does **not survive due to consequential order dt. 27/03/2023 (not pressed (supra))**.

13. Therefore we have to examine only surviving issue under section 263 which was pressed by Ld. AR and opposed by DR which is whether on the facts and circumstances of the case the PCIT was correct in law to exercise power under section 263 on issue that the assessment record reveals that as per Balance Sheet (as on 31.03.2017) there were unsecured loans of Rs. 26,11,77,083.55/-and as per 3 CD audit report (column 34a), you had deducted TDS of Rs. 2435095/- on payment of interest of Rs. 2,43,50,911/- under section 194A. Further scrutiny of the case records revealed that as per profit & loss account, total expenditure was Rs. 1,40,14,722/- (expenditure on interest was only 11053024) against expenditure of Rs. 2,43,50,911/- on interest alone. This expenditure of Rs. 1,32,97,887/- (24350911-11053024) remained unexplained.

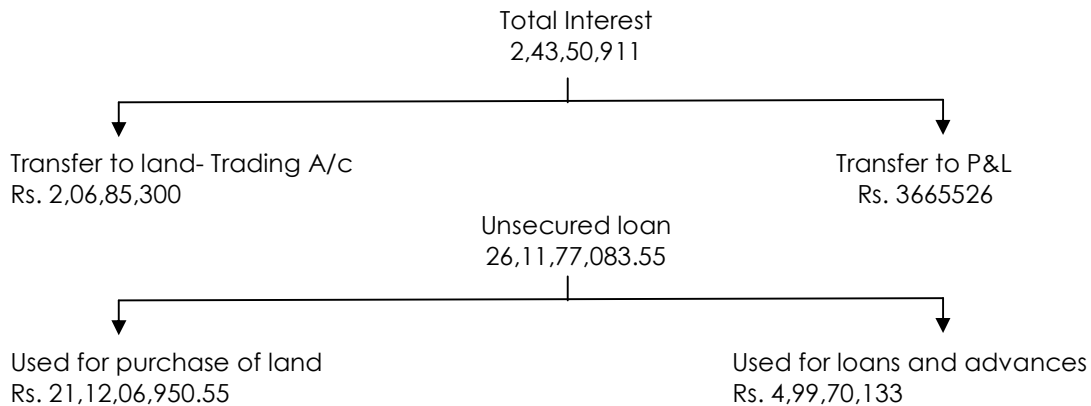
Findings and Conclusion

14. We at the outset and threshold observe that due process as contemplated by section 263 that is calling for and examine the record of any proceedings and that of giving opportunity to the assessee has been done. We notice that notice of hearing cum opportunity was duly given vide letter dt. 09/02/2022 by Ld. PCIT. The assessee duly replied the said notice vide reply dt. 17/02/2022 wherein with regard to issue it was interalia contended as under:-

The Interest paid on unsecured loan Rs. 24350911, was partly capitalized in cost of Land holdings Rs. 20685380 and partly debited in Profit and loss account Rs. 3665526. This is as per past practice being following in accounting interest on unsecured loans. The Hire charges and interest debited in profit and loss account Rs. 7387498, is interest paid on secured loans from Banks. The interest Rs. 11053024 is sum total of Rs. 3665526 and Rs.7387498. Rs. 24350911 total interest on unsecured loan is partly capitalized in cost of land holdings Rs. 20685380, reflected in trading account of each land holding. Balance Rs. 3665526 is debited in profit and loss account. So the figure of Rs. 13297887 (24350911- 11053024) is wrongly calculated. Nothing as such is unexplained. This fact was well explained and verified during assessment by Ld. A.O.

14.1 The papers amongst other issue and unexplained expenditure of Rs. 1,32,97,887/- submitted during original assessment proceedings (first round) were too attached and given. It was requested that proceedings under section 263 may be dropped.

14.2 We have perused on page 88 how objections under section 263 is explained by way of a chart which as follows:



14.3. We have also perused all the papers and proceedings of original assessment proceedings (first round) which were resubmitted by the assessee during the course of proceedings u/s 263 (page 7 – 83 of Paper Book Volume-I)

14.4 At page 84 we observe that there is an acknowledgment refer id no. ITBA/REV/F/REV1/2021-22/1039577094(1) wherein following response is submitted.

"2. The Interest paid on unsecured loan Rs. 24350911, was partly capitalized in cost of Land holdings Rs. 20685380 and partly debited in Profit and loss account Rs. 3665526. This is as per past practice being following in accounting interest on unsecured loans. The Hire charges and interest debited in profit and loss account Rs. 7387498, is interest paid on secured loans from Banks. The interest Rs. 11053024 is sum total of Rs. 3665526 and Rs.7387498. Rs. 24350911 total interest on unsecured loan is partly capitalized in cost of land holdings Rs. 20685380, reflected in trading account of each land holding. Balance Rs. 3665526 is debited in profit and loss account. So the figure of Rs. 13297887 (24350911- 11053024)is wrongly calculated. Nothing as such is unexplained. This fact was well explained and verified during assessment by Ld. A.O."

14.5. We have perused in addition to above chart replies submitted during the original assessment proceedings u/s 143(3) page 89- 106 (PB-Vol-I) and acknowledgment of replies during assessment under section 143(3) (PB Vol-I page 107-112)

14.6 We have perused PB Volume II i.e; order under section 143(3) dt. 17/12/2019 at page 113-114. Notice issue by AO dt. 07/09/2019 and reply at page 115-124, PB II notice issued by AO dt. 30/09/2019 and reply dt. 18/10/2019 at pages 125-128, notice issued by AO dt. 20/11/2019 and reply dt. 03/12/2019 at pages 129-131 and finally reply to notices and acknowledgement at pages 89-106, 7-83, 107-112 (PB Vol 2).

14.7 We have also seen letter dt. 11/01/2024 wherein revised grounds of appeal were filed which now reads as under:

1. *That the Ld. Principal Commissioner of Income Tax has wrongly assumed jurisdiction of revision u/s 263 of Income Tax Act, 1961. He has erred in law, on the given facts of the case, while activating Provisions of section 263 of the Act.*

2. *That the Ld. Principal Commissioner of Income Tax, passed order u/s 263 of the Act. to the effect to be erroneous and prejudicial to the interest of revenue, is against the facts of the case and illegal, on the following two counts:*

i) *While concluding against the facts that profit on sale of properties amounting to Rs1,92,48,027/- has escaped taxation. **(Not pressed in the hearing before us.)***

ii) *While not appreciating that out of total Interest of Rs.2.43.50.906/-, interest of Rs.2,06,85,380/- has been partly apportioned in cost of land holding in Trading account and partly apportioned in profit and loss a/c amounting to Rs.36,65,526/-. **[Pressed in the hearing before us]***

14.8. In addition we have perused other papers filed with letter dt. 11/01/2024.

15. The core contention of assessee is PCIT ought not to have exercised power u/s 263 as the original assessment order dt. 17/12/2019 was passed properly after taking into consideration all papers and documents which were requisitioned from time to time and duly furnished. In addition to all financial statements which are required too, were filed before him. No

material information was suppressed / concealed with a view to evade taxes. Further all the necessary documents which were on record during original assessment proceedings were resubmitted in proceedings u/s 263 and nothing was hidden. All notices were replied u/s 263 and additional explanation too were furnished. In these circumstances when return was accepted and assessed as per ROI there is no material available on record to exercise revisionary jurisdiction u/s 263. Reliance is placed on consolidated trading account for the year ending 31/03/2017 wherein total amount of interest of Rs. 2,06,85,350/- is debited to trading account. Interest amount of Rs. 2,43,50,911/- is duly accounted in books of account. Therefore once everything is declared and nothing has remained unexplained before AO, PCIT ought not to have exercised power under section 263.

16. Per contra the Ld. DR has supported the order of Ld. PCIT and has contended that impugned order u/s 263 is proper and entire records before AO and before him were duly considered by him while exercising power under section 263 of the Act. There is proper application of mind. The impugned order is rational and just within the meaning of section 263 of the Act. The reasoning given by PCIT is fair and proper. There is a determination that AO's order is erroneous and prejudicial to the interest of the Revenue.

17. We observe from the impugned order that PCIT in para 4.1 has observed as under:

4.1 Further, the AO was directed to submit his comments on the reply of the assessee on the issue of interest paid on unsecured loans who submitted his report through Range Head vide his letter No.672 dated 15.03.2022 stating that the interest paid on unsecured loans amounting to Rs.2,43,50,911/- has partly been capitalized in the cost of Land Holdings at Rs.2,06,85,380/-and partly debited in profit and loss account at Rs.36,65,526/- which is reflected in trading account and P & L account of the assessee. However, the details are still subject to verification.

17.1 We also observe that after recording the aforesaid with regard to the issue as discussed above; the PCIT has rightly observed that the order of the AO is erroneous as the AO did not enquire/ verify about the complete details

and documentary evidences and also it is prejudicial to the interest of the Revenue.

18. The Ld. PCIT has further rightly observed that a detailed and deep inquiries were required to be made on the issue discussed above before accepting claim of the assessee. Reliance is rightly placed on explanation 2 to Section 263 (1) of the Income Tax Act, 1961 according to which 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 for various reasons and including the fact that if in the opinion of PCIT or CIT, the order is passed without making any enquiry or verification which should have been done and also includes the order which is passed allowing any relief without enquired into the claim.

19. We hold that above is squarely applicable to the fact of the present case as AO in the original order as well as in his comments sought by PCIT has in so far as the issue of interest paid on unsecured loan amounting to Rs. 2,43,50,911/- has partly been capitalized in the cost of land holding at Rs. 2,06,85,380/- and partly debited in P&L Account at Rs. 36,65,526/- **were not at all threshed out completely in a manner known to law and that such details are still subject to verification of books of account admittedly. When such is a position then PCIT has rightly exercised his power under section 263. Even assuming that such comments had not come forward from the AO; then also it was incumbent upon the AO, while carrying out the original assessment to have dealt with such a broad issue elaborately particularly so when case was selected for complete scrutiny through CASS. Hence Ld. PCIT is right in holding that detailed and deep enquiries were required to be made.**

19.1 We have perused the judgment of ITAT in the case of Desai Brothers Ltd. Vs. Dy. CIT(1998) 66 ITD 203 (Pune Trib) where failure to make the necessary enquiries which AO is legally required to be make and decide the issue without making such inquiries, then the order of AO would be erroneous, further Hon'ble Delhi High Court in case reported in Gee Vee Enterprises Vs.

Addl. CIT & Ors. Reported in (1975) 99 ITR 375 (Del) wherein the word erroneous in section included cases where there has been a failure to make necessary inquiries.

19.2 We have perused the judgment of Hon'ble Madras High Court in case of K.A. Ramaswamy Chettiar and Another reported in (1996) 220 ITR 657 (Mad) and that of Delhi High Court in case of Gee Vee Enterprises Vs. Addl. CIT & Ors. (supra) relied upon by the PCIT in his impugned order **wherein it has been held that when the Income Tax Officer is expected to make an inquiry of a particular item of income and if he does not make an enquiry as expected that would be a ground for the Commissioner of Income Tax to interfere under section 263 of the Income Tax Act, 1961, with the order passed by the Income Tax Officer. Since such an order passed by the Income Tax Officer is erroneous and prejudicial to the interest of Revenue.** In this case reliance was placed by the Hon'ble High Court of Madras in case of Gee Vee Enterprises Vs. Addl. CIT (supra). The judgments relied upon by the Assessee in the compilation were perused by us and with respect we follow the judgments as aforesaid where it is expressly and clearly held that AO is expected to make an inquiry and if he has not as is the case here **admittedly** then such an order of AO is erroneous and prejudicial to the interest of Revenue. We make it clear and hold that mere act of submissions of papers, documents, accounts, books of accounts etc. ipso facto during the course of the assessment proceedings (and so also in proceedings under section 263) does not mean that the Assessing Officer should not hold inquiry or verify such papers, documents, books, books of account etc. **particularly so when assessment was under complete scrutiny through CASS** and omission thereof would certainly amount to erroneous, exercise of power, prejudicial to the interest of the Revenue. In the revisionary jurisdiction under section 263 what is tested by the superior officers of Revenue is whether the exercise of power by AO in carrying out the assessment is righteous or erroneous and further whether it is prejudicial to the interest of Revenue or not. In a given case apart from comments of AO that details are still subject to verification we

hold that even much prior thereto while the original assessment proceedings (first round) was ongoing it was just incumbent upon the AO to have inquired into and ought to have done the necessary and requisite verification of such papers and documents **in a manner known to law in addition to explanation given**. Upon failure to do so PCIT is right in exercising his powers under section 263 as such order of AO in law becomes erroneous coupled with the fact that it is prejudicial to the interest of the Revenue. We also hold that there is no material infirmities while exercising powers in terms of procedures under section 263 by the PCIT. We also hold that no decision on merits of the case has been given nor any opinion or manner in which assessment is to be done in next round of assessment is expressed while exercising the power under section 263 of the Act by Ld. PCIT. The PCIT has held AO's order as erroneous and prejudicial by applying his mind to the factual aspect of the case before him and was not guided by any extraneous consideration whatsoever save and accept the records of the case. Simultaneously he while passing the order under section 263 has not taken into consideration any material not forming the part of the records of the case. Further none is as such brought to our notice. Further it is not expressly contended before us that in depth analysis of books of accounts respective appropriation etc. was done. The matter was inquired into deeply and extensive verification and / or cross verification were done by the Ld. AO at the material time and place. What is contended before us is that all queries, replies, submission etc. were duly complied with which we feel ipso facto cannot be a substitute for inquiry and verification by AO and therefore Ld. PCIT is right in holding that extensive and deep inquiry is required to be conducted and further such omission makes AO's order erroneous and prejudicial to the interest of Revenue. We hold that there is a mark distinction between submission of papers etc. and inquiry / verification of same is altogether a different exercise which was not done so in the original assessment proceedings. Needless to state that the documents without conducting inquiry and verification cannot be taken on face value or perse. The explanations if offered is too required to be checked and cross

checked before the assessment order is passed. The claims needs to be inquired into deeply and verified in a manner known to law which did not happen consequently AO's order is rightly held to be erroneous and prejudicial.

19.3 We observe that the original order of AO passed after **complete scrutiny (CASS)** on return of income of the assessee which was subject matter of the revision under section 263 by PCIT was a non speaking order and not a reasoned order. We are of the considered view that even if the return of income is accepted as filed under complete scrutiny (CASS) the assessment order should be a speaking order and a reasoned order on grounds specified for complete scrutiny under CASS or otherwise. Our concern is towards transparency too. In speaking orders income computation and disclosure standard according to law gets disclosed too. Needless to state books of account and other papers / practices recognized by law would prevail over. The plausible view of the AO was not known to anyone, no doubt PCIT has ascertained the facts of the case from the records which were obtained both from AO as well as the assessee but atleast order of assessment on scrutiny as aforesaid should be a speaking and reasoned order so that reasons which are centre heart of the assessment order are known to all stakeholders in the system. In a situation like the present case the reasons are cuddled out from the facts of the case and its records. The word "record" includes and shall always deemed to have included all records relating to any proceedings under the Act which is available at the time of examination by PCIT. When the AO in his reply to PCIT has himself stated that he has to verify means that AO had failed to verify the maintainability of assessee's claim on query raised by PCIT and clearly implies that in the absence of any inquiry on the material placed before him had summarily accepted the claim of the assessee perse and subjectively that too in a complete scrutiny through CASS. Therefore it is crystal clear that the assessment order was passed without making any inquiry which should have been made but not made.

Hence as per explanation 2(a) to Section 263 of the Act the PCIT has rightly reviewed the order under section 263 as erroneous and prejudicial.

19.4 We thus, in terms of our observation as aforesaid finds no reason to dislodge the well reasoned order of PCIT who specifically referring to explanation 2 to Section 263 of the Act has held that the order passed by AO under section 143(3) dt. 17/12/2019 to be erroneous in so far as it was prejudicial to the interest of Revenue. The PCIT held a conviction that as AO had failed to apply his mind to the aforesaid issues which was or could be reason for compulsory scrutiny therefore the same had rendered the assessment order passed by Ld. AO as erroneous in so far as it was prejudicial to the interest of the Revenue. The assessee's explanation coupled with documents including books of accounts requires inquiry and verification. Mere filing of papers giving explanation in assessment proceedings and in reply to proceedings under section 263 perse is not sufficient so as to not to exercise powers under section 263. It is not a case of lack of inquiry or inadequate inquiry but is a case of no inquiry / verification.

19.5 We uphold the same. Accordingly, finding no merits in the appeal filed by the assessee, we dismiss the same.

20. In the result, appeal of the Assessee is dismissed.

Order pronounced in the open Court on 22/05/2024

Sd/-

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar