pIN THE INCOME TAX APPELLATE TRIBUNAL, “F” BENCH MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER & SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA. No. 554/MUM/2024
(A.Y. 2018-19)

Worley Services India Pvt Ltd(Formerly Worley India Pvtd Ltd)NewEnergyHouse, RamakrishnaMandir,Road, kondivita, Andheri (East), Mumbai-400059.	Vs.	Pr.CIT-2, Room No.344, 3rd Floor, Aayakar Bhavan, M.K.Road, Mumbai-400020.
PAN/GIR No. AAACH0456J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri.Nikhil Tiwari,Shri.Milan Kapadia & Shri.ArpitThakkar.AR
Revenue by	Shri.Nimesh Yadav.CIT.DR

सुनवाई की तारीख/Date of Hearing	22.05.2024
घोषणा की तारीख/Date of Pronouncement	03.06.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the Pr. Commissioner of Income Tax (Pr.CIT)-2, Mumbai passed u/sec 263 of the Act. The assessee has raised the fallowing grounds of appeal :

On the facts and in the circumstances of the case and in law, the Principal Commissioner of Income-tax- 2 ('Ld. PCIT')

Grounds on validity of proceedings under section 263

1. erred in holding that the assessment order dated 8 April 2021 passed under section 143(3) read with section 143(3A) & (3B) of the Income Tax Act, 1961 ('the Act') is erroneous and prejudicial to the interests of the revenue.

Grounds on Merits:

Allowability of deduction under section 80G of the Act in respect of contributions towards Corporate Social Responsibility ('CSR') of Rs. 48,59,170:

2. erred in directing the Assessing Officer to conduct requisite enquiries in relation to allowability of deduction under section 80G in respect of donations made to eligible institutions and forming part of CSR contributions, and to frame a fresh assessment order accodingly.

3. erred in not appreciating the fact that the provisions relating to disallowance of CSR expenditure have been introduced only in connection with allowability of deduction under section 37(1), and do not apply to allowability of deduction under section 80G of the Act

4. erred in not appreciating the fact that the provisions of section 80G [in clauses (iiihk) and (iiihl)] specifically provide for disallowance of deduction only in respect of certain specific CSR contributions, viz. Swachh Bharat Kosh and Clean Ganga Fund, and thereby deduction is allowable under section 80G of the Act in respect of other eligible CSR contributions..

2. The Brief facts of the case are that, the assessee company is engaged in the business of rendering a full spectrum of engineering consultancy services including feasibility studies, process engineering, details engineering, project management and project series, design and construction services.The assessee has filed the return of income for the A.Y 2018-19 on 30.11.2018 disclosing a total income of Rs.129,92,74,400/-Subsequently the case was selected for scrutiny under the CASS to examine

issues (i)Claim of any other amount allowable as deduction in Schedule BP (ii)Double taxation relief u/sec 90/91(iii)Expenses incurred for earning exempt income and (iv) Capital gains/income on sale of property. Subsequently, the Assessing Officer (A.O) has issued notice u/sec 143(2) and u/sec 142(1) of the Act. In compliance to the notice, the assessee has submitted the details and information on 19.01.2021 and 08.02.2021. The AO has perused the Audited financial statements and find that the assessee has entered into an Advance Pricing Agreement (APA) on 18.07.2019 with CBDT covering the assessment year from A.Y 2012-13 to A.Y. 2019-20 and the copy of APA agreement was furnished. The AO has dealt on the facts with respect to information and details submitted. Further the assessee has filed the modified return of income for the A.Y 2018-19 on 30.10.2019 disclosing a total income of Rs. 146,58,08,180/- covering the adjustment of international transactions with its AEs as per APA signed with CBDT against the taxable income declared at Rs. 129,92,74,400/-. Whereas the AO has dealt on the claims made by the assessee u/sec 90/91 of the Act and made disallowance of Rs. 5,44,956/-. Similarly the AO found that the assessee has earned dividend income of Rs.2,42,98,5016/- on the investments in dividend based mutual funds. The AO has dealt and invoked the provisions of Sec.14A r.w.r 8D of the I T Rules and worked out the disallowance u/sec 14A of the Act of Rs.53,92,918/-.Finally the AO has assessed the total

income of Rs.147,17,46,060/- and passed the order u/sec 143(3) r.w.s143(3A) & 143(3B) of the Act dated 08.04.2021.

3. Subsequently, the Pr.CIT on perusal of the records and information found that, the order passed by the AO under section 143(3) r.w.s 143(3A) & 143(3B) of the Act is erroneous and prejudicial to the interest of the revenue and has issued revision notice U/sec 263 of the Act as under:

> *"Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the THE INCOME TAX ACT, 1961-Assessment Year 2018-19*
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> *In this regard, a hearing in the matter is fixed on 11/12/2023 at 11:00 AM. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: incometaxindiaefiling.gov.in*
>
> *1. In your case, the relevant case records were called for the AY 2018-19 and examined. It is seen from the examination of the said records that the Return of Income was filed for the year on on 30.11.2018 declaring total income of Rs.129,92,74,400/-. The assessment was completed u/s 143(3) r.w.s. 143(3A) & 143(3B) of the Act on 08.04.2021 assessing the total income at Rs. 147,17,46,060/-.*
>
> *2. On perusal of the case records, it is noticed that an amount of Rs.48,59,170/- was claimed as donation u/s 80G on the amount spent on CSR activities. The same is prima facie not an allowable deduction. This aspect was not examined by the AO during the assessment proceedings making the order erroneous and prejudicial to the interest of the Revenue.*

3. In view of the aforesaid reasons, it is proposed to revise the assessment order dt. 08.04.2021 invoking provisions of section 263 of the Income-tax Act, 1961, as undersigned is satisfied that the said assessment order dt. 08.04.2021 is erroneous in so far as it being prejudicial to the interest of revenue, specifically also in view of the provisions of explanation 2 to section 263(1) of the Act, since it has been made without proper inquiries & verification which should have been made.

4. You are hereby given an opportunity to represent your case as to why the proposed action u/s 263 be not pursued and necessary order be passed on the issues discussed above as well as other issues that may come to the notice of the undersigned during this proceeding. You or any duly authorized person may comply to this notice latest by 11.12.2023 at 11:00 AM.

5. You are requested to make submission online through ITBA system on or before the due date. Failure to comply will lead to the conclusion that you have nothing to offer and you are agreeable to the proposed action as deemed fit on the materials available on record or gathered during these proceedings"

4. In compliance to the notice, the assessee has filed the detailed submissions vide letter dated 22.12.2023 referred at Page 2 Para 4 of the revision order as under:

"4. In response the assessee submitted written submissions in respect of its claim vide its letter dated 22.12.2023. The relevant extract of the submissions is as under:-

2.30 Your honours attention is invited to Memorandum of Finance Bill, 2015 wherein it was provided that expenditure on account of CSR expenditure will not be allowed as deduction u/s.80G of the Act for donation to Swatch Bharat Kosh and Clean Ganga fund only. Relevant extract of the Act of Memorandum to Finance Bill, 2015 is reproduced below:-

"It is proposed to provide that donations made by any donor to the Swachh Bharat Kosh and donations made by domestic

donors to Clean Ganga Fund will be eligible for a deduction of 100% from the total income. However, any sum spent in pursuance of Corporate Social Responsibility under sub-section (5) of Section 135 of the Companies Act, 2013 will not be eligible for deduction from the total income of the donor."

2.31 Hence, it would not be out of case to mention that if the intent of legislature was that any expenditure towards CSR is not eligible for deduction u/s.80G of the Act, then restriction would not have been made specifically for donation to SwachhKosh and Clean Ganga Fund only. Consequently, where the donation (other than contribution made to Swachh Bharat Kosh and Clean Ganga Fund) is made to the trust/institution covered u/s.80G(5) of the Act, deduction for such donation is allowable to the assesse even if such donation also qualifies as CSR payments u/s. 135(5) of the Companies Act, 2013.

2.50 It is submitted that expenditure incurred towards CSR is not allowable as deduction u/s.37 of the Act while computing the income chargeable under the head income from business and profession. However, where such CSR expenses is covered by any other specific section of the Act (i.e. other than section 37 of the Act), the same is allowable as deductible item to the assessee against the income of the assesse in accordance with provisions of such specific section. Consequently, where the donation made by the assessee is squarely covered by section 80G of the Act: and there is no embargo on claiming of such donation by the assesse unlike contribution made to Swachh Bharat Kosh and Clean Ganga Fund, the assesse is eligible to claim the deduction of such donation under section 80G of the Act while computing its total income even if such donation also qualifies as CSR payment u/s.135(5) of the Companies Act, 2013.

2.51 Admittedly, the assesse did not claim any deduction for the said donation u/s.37 of the Act while computing its income chargeable under the head income from business or profession. The said donation of INR 97,18,340/- Was paid by the assessee to institutions/trust registered u/s.80G of the Act, which is also evident from donation receipts enclosed as Annexure-5. Hence in view of the aforesaid submissions and precedents, it is submitted that the assesse is eligible for

deduction of Rs.48,59,170/- (i.e. 50% of Rs.97, 18,340/-) u/s.80G of the Act

5. Whereas the Pr.CIT was not satisfied with the explanations and submissions and is of the opinion that the order passed by the AO is erroneous and prejudicial to the interest of the revenue, and accordingly issued directions to the AO observing at Page 14 to 17 of the order as under:

"On perusal of the case records, it is observed that none of these donation receipts are on record. These donation receipts were not asked for by the AO from the assessee. These receipts have been produced during the course of 263 proceedings. The AO during the course of assessment proceedings has not enquired into the nature of the donations made and no enquiry has been made regarding the nature of the donee. It is therefore, seen that no such enquiry has been conducted by the AO during the course of assessment proceedings. This is therefore, a case of no enquiry by the AO and hence the assessment order is erroneous and prejudicial to the interest of revenue as per Explanation 2(a) to section 263 of the IT Act.

(v) It would be pertinent to point out that provisions of eligibility of CSR expenses as business expenses u/s.37(1) of the IT Act was amended by the Finance Act, 2014, wherein it was clarified that CSR expenses will be deemed not to have been incurred for the purposes of business. In the said Memorandum to the Finance Act, it has been clearly stated that these expenses, if allowed as tax deduction would result in an anomalous situation of Government subsidising the said expenditure incurred by the tax payers. The relevant extract of the Memorandum is as follows:-

"13.2 CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business. As the application of income is not allowed as deduction for the purposes of computing taxable income of a company, amount spent on CSR cannot be allowed as

deduction for computing the taxable income of the company. Moreover, the objective of CSR is to share burden of the Government in providing social services by companies having net worth/turnover/profit above a threshold. If such expenses are allowed as tax deduction, this would result in subsidising of around one-third of such expenses by the Government by way of tax expenditure".

This is, both, a case of no enquiry on the issue and also non application of mind on the issue with respect to the clarifications given in the Memorandum to the Finance Act explaining the very basis of bringing the amendment.

6. In view of the facts discussed above, on the above above i issue it is seen that the requisite enquiry was not made by the AO and the assessment was completed without proper application of mind. The Explanation 2(a) to Section 263 inserted by Finance Act, 2015 w.e.f. June1, 2015, which reads as under:-

'Explanation 2 - For the purpose of this section, it is hereby declared that an order passed by the AO 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 Principal Commissioner or Commissioner,- (a) the order is passed without making inquiries or verification which should have been made.'

It is therefore, observed that the AO has made no enquiry on the issue involved.

7. The Mumbai Bench of the ITAT thorough an elaborate order in the case of Madhurima International (P.) Ltd. v. Pr.CIT [49 CCH 217 Mumbai] has held that where an assessment order is passed by the Assessing Order without making inquiries or verification which should have been made, then it is hit by the Explanation 2 to section 263 of the Act which deems the order to be erroneous, in so far as prejudicial to the interest of Revenue and, therefore, "the Principal Commissioner of Income-tax has rightly invoked the provisions of section 263 of the Act."

8. The Hon'ble Delhi High Court in the case of Gee Vee Enterprises v. Addl.CIT [TS-5-HC-1947(DEL)-O] has held that

an Income Tax Officer is not only an adjudicator but also an investigator. It was stated that he (ITO) cannot, therefore, remain passive in the face of a return which is apparently in order but calls for further enquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as provoke an enquiry."

The ITAT further stated that the word 'erroneous' u/s.263 included a failure on the part of the AO to make proper enquiry as warranted and that the order becomes erroneousmerely for the fact that proper and effective enquiry has not been made.

9. The Hon'ble Calcutta High Court in the case of Maithan International [381 ITR 375] has held as follows:-

"16. The power under section 263 of the Act can be exercised where the order of the Assessing Officer is erroneous and prejudicial to the interest of the revenue. When an order is erroneous, then the order is also deficient and in order to remedy the situation, power under section 263 of the Act has been given. Therefore, the view that the power could not have been exercised to allow the Assessing Officer to make up the deficiency is altogether an incorrect impression of the law. Further, incorrect impression of law of the Ld. Tribunal is to be found from the following sentence."

"If there is an enquiry, even inadequate, that would not by itself give occasion to the Ld. CIT to pass order u/s.263 of the Act."

From the above, it can be inferred that inadequate enquiry by the Assessing Officer would make the order erroneous and prejudicial to the interest of Revenue. Incorrect assumption of facts and improper application of mind would also make the order erroneous and prejudicial to the interest of revenue.

10. Thus, it is observed that in the above highlighted issue has not been examined by the assessing officer at all and the assessment order has been passed without making requisite inquiries or verification which should have been made under the facts and circumstances of the case, thus rendering the assessment order erroneous and prejudicial to the interest of revenue. In view of the facts discussed above, and the legal

position discussed above, the Assessing Officer's failure in, not conducting the requisite enquiries which were required to be made in this case the assessment order dated08.04.2021, becomes erroneous in so far as it is prejudicial to the interests of the revenue.

11. Considering the facts of the case and, moreover, that both the conditions specified u/s 263 of the Act are satisfied in this case I am of the opinion that this is a fit case to invoke provisions of Explanation 2 to the section 263. Accordingly, the assessment order dated 08.04.2021 passed by the Assessing Officer u/s 143(3) r.w.s. 143(3A) & 143(3B) of the Act is set aside for the limited purpose, on the issue discussed above, to the file of the Assessing Officer with the directions to conduct requisite enquiries along the lines discussed above and frame the order of assessment accordingly. In the process, adequate opportunity of being heard should be afforded to the assessee to file submissions, details and to furnish their explanation. Order under section 263 of Income Tax Act, 1961 is passed accordingly"

6. Finally the Pr.CIT has passed order u/sec 263 of the Act dated 29.12.2023. Aggrieved by the order of the Pr.CIT, the assessee has filed an appeal before the Hon'ble Tribunal.

7. At the time of hearing, the Ld. AR submitted that the Pr. CIT has erred in considering the order passed by the AO is erroneous and prejudicial to the interest of the revenue, irrespective of the fact that the assessee has complied with the information and the notices through ITBA and the A.O. having verified and examined the facts has accepted the information. The Ld. AR submitted that the asssessee has contributed to seven institutions/trusts in the F.Y.2017-18 under the CSR Expenditure aggregating to Rs.97,18,340/- and these institutions were granted exemption U/sec80G of the Act. The Assessee has not

claimed the deduction of CSR expenditure in the computation of income for the A.Y.2018-19 but the amount debited to the Audited Profit & Loss account was disallowed under the Head "Income From Business" and the assessee has alternatively claimed deduction @50% of contributions u/sec80G of the Act under Chapter VIA Act of Rs.48,59,170/-. Whereas the AO having considered these facts reflected in the Return of Income has applied his mind and was satisfied with the genuineness of claim and accepted in compliance with the scrutiny guidelines. Further the assessee has submitted the evidences/donation receipts in support of claim of deduction U/sec80G of the Act in the detailed submissions filed vide letter dated22.12.2023 in the revision proceedings U/sec263 of the Act. The Pr.CIT has overlooked these factual aspects and evidences and dealt on the provisions of section 37(1) of the Act and without considering the merits of claim has issued directions to the Assessing officer to conduct enquiries. Further Ld. AR has substantiated the submissions with the factual paper book and judicial decisions and prayed for allowing the assessee appeal.

8. Per Contra, the Ld. DR submitted that the AO has not dealt on the facts that the assessee has made donations and no enquiry was conducted and the Ld.DR relied on the order of the Pr.CIT.

9. We heard the rival submissions and perused the material on record. The Ld.AR envisaged that the order passed by the Pr.CIT is bad in law as the order revised under revision proceedings passed by the Pr. CIT is not erroneous and not prejudicial to the interest of the revenue. The contentions of the Ld. AR that, the AO has considered the submissions, facts in respect of claims and method of accounting. In compliance to the notice u/sec 142(1) of the Act and subsequent hearings, the asssessee has filed the explanations and details on various dates i.e.7-10-2019, 31-12-2020,19-07-2021 and 8-02-2021 placed at page 218 to 264 of the paper book. The CSR expenditure debited to the Profit &Loss account will not be allowed as deduction u/sec.80G of the Act for donations to Swatch Bharat Kosh and Clean Ganga fund only. Further such expenditure incurred towards CSR is not allowable as deduction u/sec.37 of the Act while computing the income chargeable under the head income from business and profession. However, where such CSR expenses is covered by any other specific section of the Act (i.e. other than section 37 of the Act), the same is allowable as deductible expenses to the assessee against the income of the assesse in accordance with provisions of the Act. Consequently, the assesse is eligible to claim the deduction of such donations under section 80G of the Act while computing its total income even if such donations also qualifies as CSR payments u/s.135(5) of the Companies Act, 2013. The assessee has made donations of Rs

97,18,340/- to the institutions/trust registered u/s.80G of the Act and demonstrated the receipts placed at Page 211 to 217 "Annexure-5". The Assessee has not claimed the deduction of CSR expenditure in the computation of income for the A.Y.2018-19 placed at Page1 of the paper book but the amount debited to the Audited Profit & Loss account was disallowed under the Head "Income From Business and Profession" and the assessee has alternatively claimed deduction @50% of contributions u/sec80G of the Act under Chapter VIA Act of Rs.48,59,170/-. The Ld.AR demonstrated the claim of deduction under section 80G of the Act in Return of Income-ITR-6 at Page117 of the paper book. The Ld. AR emphasized that the AO has considered these facts in the assessment proceedings and accepted the return of income and it cannot be disturbed. Further the Ld. AR submitted that the Pr. CIT has erred in set aside the order of the AO which does not satisfy the twin conditions of erroneous and prejudicial to the interest of the revenue. The Ld. AR also submitted that explanation (2) to Sec. 263 of the Act are to be considered only when the AO has not applied his mind and no facts are verified and no enquiry was conducted. The Ld. AR contended that the assessee has complied with the statutory notices and filed reply online through ITBA. The Ld.AR relied on the judicial decisions on the validity of revision proceedings U/sec263 of the Act and the donations though forming part of CSR Expenditure

are eligible for claim of deduction u/sec80G of the Act as under:

1. *Malbar Industrial Co. Ltd Vs. CIT, (SC), 109 taxman 66*
2. *CIT Vs. Jain Construction Co., 34 taxmann.com 84 (Raj HC)*
3. *Bajaj Electricals Ltd Vs. Pr. CIT, ITA No. 1302/Mum/2021*
4. *FDC Ltd Vs. PCIT, 157 taxmann.com 387 (Mum Trib)*
5. *JMS Mining (P.) Ltd Vs. Pr. CIT, 130 taxmann.com 118 (Kol Trib)*
6. *Naik Seafoods Pvt Ltd Vs. PCIT, ITA No. 490/Mum/2021*
7. *Synergia Lifesciences Pvt Ltd Vs. DCIT, ITA No. 938/Mum/2023*
8. *ACIT Vs. M/s Rustomjee Realty Pvt Ltd., ITA No. 1585/Mum/2023*
9. *Societe Generale Securities Ind Pvt Ltd Vs. Pr. CIT, ITA No. 1921/Mum/2023.*
10. *National Seeds Corp Ltd., Vs ACIT, ITA No. 6794/Del/2014*
11. *Goldman Sachs Services Pvt Ltd Vs. JCIT, TS-331-ITAT-2020(Bang)*
12. *Allegis Services (Ind) Pvt Ltd Vs. ACIT, ITA No. 1693/Bang/2019*
13. *First American (Ind) Pvt Ltd Vs. ACIT, ITA No. 1762/Bang/2019*
14. *P. C. Chandra Holding Pvt Ltd Vs. Pr. CIT, ITA No. 256/Kol/2022.*

10. The AO dealt on the facts in the proceedings but there are no observations in the assessment order. Further the Pr.CIT has erred in overlooking the facts that the assessee has filed the written submissions along with the evidences of claim of deduction u/sec80G of the Act in the revision proceedings and hence the action of the Pr. CIT

is not acceptable. Whereas the AO has applied the mind and accepted the assessee's submissions in the complete scrutiny under the E-assessment. We rely on the decision of the Honble High Court of Bombay in the case of M/S Grasim Industries Ltd Vs CIT (321 ITR 92) considered the law laid down by the Honble Supreme Court on the scope of the revisionary proceedings initiated under sec263 of the Act and the observations are read as under:

> *"Section 263 of the Income-tax Act, 1961 empowers the Commissioner to call for and examine the record of any proceedings under the 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, to pass an order upon hearing the assessee and after an enquiry as is necessary, enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. The key words that are used by section 263 are that the order must be considered by the Commissioner to be "erroneous in so far as it is prejudicial to the interests of the Revenue". This provision has been interpreted by the Supreme Court in several judgments to which it is now necessary to turn. In Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83, the Supreme Court held that the provision "cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer" and "it is only when an order is erroneous that the section will be attracted". The Supreme Court held that an incorrect assumption of fact or an incorrect application of law, will satisfy the requirement of the order being erroneous. An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in that category. The expression "prejudicial to the interests of the Revenue", the Supreme Court held, it is of wide import and is not confined to a loss of tax. What is prejudicial to the interest of the Revenue is explained in the judgment of the Supreme Court (headnote)*
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> *"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 Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer 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 Income-tax Officer is unsustainable in law."

The principle which has been laid down in Malabar Industrial Co. Ltd. [2000] 243 ITR 83 (SC) has been followed and explained in a subsequent judgment of the Supreme Court in CIT v. Max India Ltd. [2007] 295 ITR 282."

11. Further In the case of Nagesh Knitwears P Ltd (2012)(345 ITR 135), the Hon'ble Delhi High Court has elucidated and explained the scope of the provisions of sec. 263 of the Act and the same has been extracted by the Delhi High court in the case of CIT Vs. Goetze (India) Ltd (361 ITR 505) as under:-

"Thus, in cases of wrong opinion or finding on merits, the Commissioner of Income tax has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under section 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order is not sustainable in law and the said finding must be recorded. The Commissioner of Income tax cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, again the Commissioner of Income tax must give and record a finding that the order/inquiry made is erroneous. This can happen if an enquiry and verification is conducted by the Commissioner of Income tax and he is able to establish and show the error or mistake made by the Assessing officer, making the order unstainable in law. In

some cases possibly though rarely, the Commissioner of Income tax can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the Assessing officer had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the Assessing Officer to conduct further enquiries without a finding that the order is erroneous. Finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction under section 263 of the Act. In such matters, to remand the matter to the Assessing Officer would imply and mean the Commissioner of Income tax has not examined and decided whether or not the order is erroneous but has directed the Assessing Officer to decide the aspect/question....” Similar view has been expressed by Hon’ble Madras High Court in the case of CIT Vs. Amalgamations Ltd (238 ITR 963).

12. We considering the ratio of decisions of the Honble High courts, find that the Pr.CIT before holding the order of the A.O. is erroneous should conduct necessary inquiries. The Ld.AR submitted that the Pr.CIT has not considered the facts that the A.O has called for the information in the scrutiny assessement and hence there cannot be any non application of mind by the A.O. Further if any query is raised in the assessment proceedings and it was responded by the assessee, mere fact that it is not dealt with by the A.O. in the order cannot implied that there is no application of mind. We find that the A.O has considered one of the possible views based on the information and it is not necessary that the A.O should put all the discussions/observations in the assessment order, as per explanation (2) to sec 263 of the Act the authority

has to invoke provisions only when there is no verification and enquiry conducted by the A.O. Whereas the A.O has applied his mind and verified the facts and has not doubted the genuineness of expenditure. The Ld. AR referred to the submissions, financial statements, judicial decisions and explanations filed before the A.O. We find the Hon'ble High Court of Bombay in CIT Vs. Gabriel India Ltd.(203 ITR 108) has observed as under:

> *Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interests of revenue - Assessment year 1973-74 - Assessee claimed a sum of Rs. 99,326 described 'as plant relay out expenses' as revenue expenditure and ITO, after making enquiries in regard to nature of said expenditure and considering explanation furnished by assessee in that regard, allowed assessee's claim - Subsequently, Commissioner, exercising powers under section 263, cancelled order of ITO observing that order of ITO did not contain discussion in regard to allow ability of claim for deduction which indicated non-application of mind and that claim of assessee required examination as to whether expenditure in question was a revenue or capital expenditure and directed ITO to make a fresh assessment on lines indicated by him - Whether under section 263 substitution of judgment of Commissioner for that of ITO is permissible - Held, no - Whether ITO's conclusion can be termed as erroneous simply because Commissioner does not agree with his conclusion - Held, no - Whether ITO's order could be held to be 'erroneous' simply because in his order he did not make an elaborate discussion - Held, no - Whether provisions of section 263 were applicable to instant case and Commissioner was justified in setting aside assessment order - Held,*

13. We Considering the overall facts, circumstances, ratio of the judicial decisions and the details submitted in the course of hearing are of the view that the if any query is raised in the assessment proceedings and it was responded

by the assessee, mere fact that it is not dealt within by the A.O. in the order cannot implied that there is no application of mind and the A.O. has applied one of the possible view. We find the assessee is eligible to claim deduction u/sec80G of the Act under Chapter VIA and also there is no dispute on the genuineness of the contributions and the activities of the Donees i.e the institutions/trust registered u/s.80G of the Act. Hence, the action of the Pr.CIT cannot be acceptable as the order passed by the A.O. does not satisfy the twin conditions of erroneous and prejudicial to the interest of the revenue. Accordingly, we set aside the order of the Pr.CIT and allow the grounds of appeal in favour of the assessee.

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

Order pronounced in the open court on 03.06.2024.

Sd/-	Sd/-
(GIRISH AGRAWAL)	**(PAVAN KUMAR GADALE)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 03/06/2024

KRK.PS

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-

4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,

Mumbai