| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SMT. KAVITHA RAJAGOPAL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2731/Mum/2024
Assessment Year: 2018-19

Avana Global FZCO C/o Avana Logistek Limited D-301 to 305, Level 3 Tower II, Seawoods Grand Central Plot No. R1, Sector 40 Nerul Node, Seawoods Darave Navi Mumbai - 400706 **[PAN: AADCB4021A]**	Vs	**Commissioner of Income Tax, (International Tax) - 1, Mumbai**

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri Dhanesh Bafna, Shri Hardik Nirmal & Ms. Hinal Shah, A/Rs
Revenue by :	Smt. Shaileja Rai, CIT, D/R

सुनवाई की तारीख/**Date of Hearing** : **16/07/2024**
घोषणा की तारीख /**Date of Pronouncement**: **30/07/2024**

आदेश/O R D E R

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by assessee is preferred against the order of the ld. CIT(IT), Mumbai -1, dated 21/03/2024, u/s 263 of the Act pertaining to AY 2018-19.

2. The grievance of the assessee reads as under:-

"The following grounds of appeal are independent and without prejudice to one another:

i. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (International tax) - 1, Mumbai ['Ld. CIT (IT)']

erred in assuming jurisdiction and invoking the provisions of section 263 of the Income-tax Act, 1961 (the IT Act) and revising the assessment order dated 24 August 2021 passed by the Deputy Commissioner of Income-tax (International tax), Circle - 1(1)(2), Mumbai (Ld. DCIT) under section 143(3) read with section 144C(3) of the IT Act without appreciating that the said assessment order is neither erroneous nor prejudicial to the interests of revenue.

1.1. While doing so, Ld. CIT(IT) failed to appreciate that:

i. the Ld. AO had made sufficient enquiry and verification during assessment proceedings;
ii. the impugned issue on merits has been decided by the Hon'ble Tribunal in favour of the Appellant in its own case for earlier assessment years;
iii. the entire assessment order cannot be set-aside
iv. the impugned issue i.e., denial of the benefit of Article 8 of India and United Arab Emirates (UAE) Double Taxation Avoidance Agreement (DTAA) with respect to its subject income derived from operations of ship in international traffic (freight income and inland haulage charges) is already a subject matter of appeal before the Commissioner of Income-tax (Appeals)
1.2. The Appellant prays that the order dated 21 March 2024 passed by the Ld. CIT (IT) under section 263 of the IT Act (hereinafter referred to as "the impugned order") is devoid of merits, invalid and thus, liable to be quashed.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(IT) failed to appreciate that the Appellant was entitled to the benefit of the Article & of the India – UAE DTAA with respect to subject income (freight charges and inland haulage charges) derived by the Appellant from operation of ships in international traffic.

2.1. The Appellant prays that its claim of entitlement of benefit of Article 8 of India-UAE be allowed.

The Appellant craves leave to add, alter, amend, substitute or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and paper as may be considered necessary at either at or before the appeal hearing so as to enable the Hon'ble Tribunal members to decide these according to the law."

3. The sum and substance of the grievance of the assessee is that, the ld. CIT erred in assuming jurisdiction u/s 263 of the Act by holding that the assessment order dt. 24/08/2021 is not only erroneous but also prejudicial to the interest of the revenue.

4. Representatives of both the sides heard at length. Case records carefully perused and the relevant documentary evidence brought on record duly considered in the light of Rule 18(6) of the ITAT Rules.

5. Briefly stated the facts of the case are that the assessee is a company incorporated in UAE and is a tax resident of UAE. Assessee is engaged in the business of operation of ships in international traffic and its operations are covered by Article 8 of DTAA between India and UAE. During the year under consideration, the assessee received an amount of Rs.386,66,29,701/- in the form of freight income, terminal handling charges, inland haulage charges and detention charges in India but the same was not offered to tax on the ground that the same is exempt to tax on the ground that the same is exempt under Article 8 of the India – UAE DTAA.

6. During the course of scrutiny assessment proceedings, the assessee was asked to produce the breakup of the shipping income. The assessee was also asked to submit the charter agreements/ownership agreements of such ships from which its claimed that profits from operations of ships was earned during the year under consideration. The assessee submitted the required details which was also verified by the AO. On verification, the AO found that the assessee has earned

Rs.73.52 Crores from pooling agreements with Transworld Feeders FZCO. Freight from chartered vessels of Transworld Feeders FZCO, was at Rs.59.47 Crores. However, the AO found that the assessee was not able to produce any chartered agreements/ownership documents or pooling agreements for the remaining amount of Rs. 2,95,36,19,876/- and since the assessee was not able to submit supporting documents, the exemption under Article 8 of India-UAE DTAA was denied to the assessee. with respect to the amount of Rs. 2,95,36,19,876/-. Proceeding further, the activity of inland transportation was not considered as international transport and accordingly taxed inland haulage charges as taxable u/s 44B of the Act.

6.1. The AO also found that Transworld Integrated Logistek Pvt. Ltd. (formerly known as 'BSL Freight Solutions Pvt. Ltd.), was also an agent of the assessee during FY 2015-16 and was held to be dependent agent of the assessee. Drawing support from the decision of the Hon'ble Andhra Pradesh High Court in the case of *CIT v. Visakhapatnam Port Trust [1983] 144 ITR 146 (SC)*, the AO held that the assessee is having permanent establishments in India, both fixed and in the form of agent/front office. Having established the business connection, the AO treated the amount of Rs.2,95,36,19,876/- and Rs.13,81,77,981/- as income of the assessee u/s 44B of the Act denying the benefit under Article 8 of the DTAA, the AO was of the firm belief that the above said income has to be computed as per the provisions of Rule 10 of the Income Tax Rules, 1962 (hereinafter 'Rules') and on the basis of the net

profit ratio of the assessee company, for the relevant AY, 3.53%, of the above said receipt is considered as income of the assessee.

7. Assuming jurisdiction conferred upon him by the provisions of Section 263 of the Act, the ld. CIT, issued the following show-cause notice:-

"I have called for and examined the records of I. T. proceedings in your case for A.Y. 2018-19. It is seen that the order passed u/s 143(3) r.w.s 144C(3) of the Income Tax Act, 1961 by DCIT(IT)1 (1)(2) dated 24.08.2021 has been passed without making enquiries and verification which should have been made.

The assessment order has been passed after examining only one charter party agreement and only one pooling agreement. AO has noted in the assessment order that "....the assessee was not able to produce any charter agreement/ownership documents or pooling arrangement agreements for the remaining amount of Rs.2,95,36,19,876/-".

The AO has held that income of inland haulage charges and amount of Rs.2,95,36,19,876 is income of the assessee u/s. 44B. Section 44B of the income tax states that:-

> ***"44B.** (1) Notwithstanding anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a non-resident, engaged in the business of operation of ships, a sum equal to seven and a half per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".*
>
> *(2) The amounts referred to in sub-section (1) shall be the following, namely:-*

(i)	*the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India; and*
(ii)	*the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.]*

> *97[Explanation.—For the purposes of this sub-section, the amount referred to in clause (i) or clause (ii) shall include the amount paid or payable or received or deemed to be received, as the case may be, by way of demurrage charges or handling charges or any other amount of similar nature.]"*

It is seen that the AO instead of computing income @ 7.5% has taken the

income as per provisions of Rule 10 of the IT Rules on the basis of net profit ratio @ 3.53% of gross receipts. The income adopted by the AO is erroneous and prejudicial to the interest of revenue since section 44B is a special provision which clearly lays down the manner in which the income of the non-resident in shipping business is to be ascertained and income has been under assessed.

In view of the above fact, I am of the considered view that the assessment order u/s 143(3) r.w.s 144C(3) of the Act dated 24.08.2021 passed by the Assessing Officer is not only erroneous but prejudicial to the interest of revenue and need to be revised u/s 263 of the Act.

In the above matter, you are being given an opportunity to represent your case by fixing hearing on 07.09.2023 at 3.15 P.M. You are requested to submit your written submission in this regard or attend the office of the undersigned on the above mentioned address either in person or through your authorized representative."

8. A perusal of the above clearly shows that the ld. CIT has treated the impugned assessment order as erroneous and prejudicial to the interest of the revenue only because the AO, instead of computing income @7.5%, has taken income as per provisions of Rule 10 of the Rules on the basis of net profit ratio @3.53% of gross receipts. According to the ld. CIT, the income computed by the AO is erroneous and prejudicial to the interest of the revenue since Section 44B of the Act is a substantial provision which clearly lays down the manner in which the income of the non-resident in establishing business has to be ascertained and income in the present case has been under assessed.

9. We have given thoughtful consideration to the contentions of the rival representatives and have considered the decisions relied upon by them.

10. Section 263 of the Act, reads as under:-

> ***"263. Revision of orders prejudicial to revenue.***
>
> ***(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 section].***
>
> ***Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—***
> ***(a) an order passed on or before or after the 1st day of June, 1988] by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall include—(i)an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;(ii)an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer [or the Transfer Pricing Officer, as the case may be,] conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;[(iii) an order under section 92CA by the Transfer Pricing Officer;]***

(b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal [Chief

Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner;

(c) where any order referred to in this sub-section and passed by the Assessing Officer 92[or the Transfer Pricing Officer, as the case may be,] had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.*

Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner,— (a)the order is passed without making inquiries or verification which should have been made;(b)the order is passed allowing any relief without inquiring into the claim;(c)the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or(d)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.

[Explanation 3.—For the purposes of this section, "Transfer Pricing Officer" shall have the same meaning as assigned to it in the Explanation to section 92CA.]

(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded."

11. The entire case of the revenue revolves around wrong application of the tax rate which means that, there is no error insofar as the facts are concerned. Now, the only issue which needs our consideration is whether the impugned assessment order is erroneous in law i.e., the moot point for our consideration is whether the impugned assessment order is contrary to the provisions of law.

12. As Section 44B of the Act has a direct bearing on the case on hand, the same is extracted for ready reference:-

> ***44B.*** *(1) Notwithstanding anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a non-resident, engaged in the business of operation of ships, a sum equal to seven and a half per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".*
> *(2) The amounts referred to in sub-section (1) shall be the following, namely :—*
> *(i) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India; and*
> *(ii) the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.]*
>
> *[97][Explanation. — For the purposes of this sub-section, the amount referred to in clause (i) or clause (ii) shall include the amount paid or payable or received or deemed to be received, as the case may be, by way of demurrage charges or handling charges or any other amount of similar nature.]"*

13. Further, Rule 10 of the Rules, reads as under:-

> *"**Determination of income in the case of non-residents.***
> ***10.** In any case in which the [82][Assessing Officer] is of opinion that the actual amount of the income accruing or arising to any non-resident person whether directly or indirectly, through or from any business connection in India or through or from any property in India or through or from any asset or source of income in India or through or from any money lent at interest and brought into India in cash or in kind[83] cannot be definitely ascertained, the amount of such income for the purposes of assessment to income-tax[84][* * *] may be calculated : –*
> *(i) at such percentage of the turnover so accruing or arising as the [82][Assessing Officer] may consider to be reasonable, or*
> *(ii) on any amount which bears the same proportion to the total profits and gains of the business of such person (such profits and gains being computed in accordance with the provisions of the Act), as the receipts so accruing or arising bear to the total receipts of the business, or*
> *(iii) in such other manner as the [82][Assessing Officer] may deem suitable."*

14. Section 44B of the Act and Rule 10, referred hereinabove are to be read comprehensively with the provisions of Section 90(2) of the Act, which reads as under:-

> *"(2) Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee."*

15. From the above, it is crystal clear that whichever provision is beneficial to the assessee has to be applied.

16. After establishing business connection, which has not been disputed by the assessee, the AO applied the beneficial provisions basis Article 7 of the India-UAE DTAA. Since the AO has taken a very plausible view supported by the relevant provisions of the Act and Rules, we failed to persuade ourselves to accept that the impugned

assessment order is erroneous and prejudicial to the interest of the revenue.

17. It would not be out of place to refer to the judgment of the Hon'ble High Court of Delhi in the case of *CIT Vs Clix Finance India Pvt Ltd ITA 1428/2018 order dated 01.03.2024*. The relevant findings read as under:

> *"19. A bare reading of sub-Section (1) of Section 263 of the Act makes it abundantly clear that the said provision lays down a two- pronged test to exercise the revisional authority i.e., firstly, the assessment order must be erroneous and secondly, it must be prejudicial to the interests of the Revenue. Further, Explanation 2 to Section 263 of the Act delineates certain conditions and circumstances when the order passed by the AO can be said to be erroneous and prejudicial to the Revenue.*
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> *20. Clause (a) of Explanation 2 to Section 263 of the Act further stipulates that if an order is passed without making an enquiry or verification which should have been made, the same would bestow a revisional power upon the Commissioner. However, the said Clause or any other condition laid down in Explanation 2 does not warrant recording of the said enquiry or verification in its entirety in the assessment order.*
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> *21. Admittedly, in the instant case, the questionnaire dated 02.11.2004, which has been annexed and brought on record in the present appeal, would manifest that the AO had asked for the allowability of the claims with respect to the issues in question. Consequently, the respondent-assessee duly furnished explanations thereof vide replies dated 09.12.2004, 20.12.2004 and 06.01.2005. Thus, it is not a case where no enquiry whatsoever has been conducted by the AO with respect to the claims under consideration. However, this whether the mandate of law for leads us to an ancillary question invoking the powers under Section 263 of the Act includes the cases where either an adequate enquiry has not been made and the same has not been recorded in the order of assessment or the said authority is circumscribed to only consider the cases where no enquiry has been conducted at all.*
>
> *22. Reliance can be placed on the decision of this Court in the case of CIT v. Sunbeam Auto Ltd. [2009 SCC OnLine Del 4237], wherein, it was held that if the AO has not provided detailed reasons with respect to each and every item of deduction etc. in the assessment order, that by itself would not reflect a non-application of mind by the AO. It was further held that merely inadequacy of enquiry would not confer the power of revision under Section 263 of the Act on the Commissioner. The relevant paragraph of the said decision reads as under:-*

"17. We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income-tax under section 263 of the Income-t axAct. As noted above, the submission of learned counsel for the Revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order, which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter. It is only in cases of "lack of inquiry" that such a course of action would be open. In Gabriel India Ltd. (1993) 203 ITR 108 (Bom), law on this aspect was discussed in the following manner

23. A similar view was taken by this Court in the case of CIT v. Anil Kumar Sharma [2010 SCC OnLine Del 838], wherein, it was held that once it is inferred from the record of assessment that AO has applied its mind, the proceedings under Section 263 of the Act would fall in the category of Commissioner having a different opinion. Paragraph 8 of the said decision reads as under:-

"8. In view of the above discussion, it is apparent that the Tribunal arrived at a conclusive finding that, though the assessment order does not patently indicate that the issue in question had been considered by the Assessing Officer, the record showed that the Assessing Officer had applied his mind. Once such application of mind is discernible from the record, the proceedings under section 263 would fall into the area of the Commissioner having a different opinion. We are of the view that the findings of facts arrived at by the Tribunal do not warrant interference of this court. That being the position, the present case would not be one of "lack of inquiry" and, even if the inquiry was termed inadequate, following the decision in Sunbeam Auto Ltd. (2011) 332 ITR 167 (Delhi) (page 180) : "that would not by itself give

occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter."

No substantial question of law arises for our consideration."

24. In Ashish Rajpal as well, this Court was of the view that the fact that a query was raised during the course of scrutiny which was satisfactorily answered by the assessee but did not get reflected in the assessment order, would not by itself lead to a conclusion that there was no enquiry with respect to transactions carried out by the assessee.

25. Further, the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd., enunciates the meaning and intent of the phrase "prejudicial to the interests of the Revenue", in the following words:-

"8. The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The High Court of Calcutta in Dawjee Dadabhoy & Co. v. S.P. Jain [(1957) 31 ITR 872 (Cal)], the High Court of Karnataka in CIT v. T. Narayana Pai [(1975) 98 ITR 422 (Kant)], the High Court of Bombay in CIT v. Gabriel India Ltd. [(1993) 203 ITR 108(Bom)] and the High Court of Gujarat in CIT v. Minalben S. Parikh [(1995) 215 ITR 81 (Guj)] treated loss of tax as prejudicial to the interests of the Revenue.

9. Mr. Abraham relied on the judgment of the Division Bench of the High Court of Madras in Venkatakrishna Rice Co. v. CIT [(1987) 163 ITR 129 (Mad)] interpreting "prejudicial to the interests of the Revenue". The High Court held:

"In this context, (it must) be regarded as involving a conception of acts or orders which are subversive of the administration of revenue. There must be some grievous error in the order passed by the Income Tax Officer, which might set a bad trend or pattern for similar assessments, which on a broad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue Administration."

In our view this interpretation is too narrow to merit acceptance. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the

Revenue. If due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue.

10. 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. 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.(See Rampyari Devi Saraogi v. CIT [(1968) 67 ITR 84 (SC)] and in Tara Devi Aggarwal v. CIT [(1973) 3 SCC 482 : 1973 SCC (Tax) 318 : (1973) 88 ITR 323].)" [Emphasis supplied]

26. Recently, the Hon'ble Supreme Court in the case of CIT v. Paville Projects (P) Ltd. [2023 SCC On Line SC 371], while relying upon Malabar Industrial Co. Ltd., has discussed the sanctity of

two- fold conditions for the purpose of invoking jurisdiction under Section 263 of the Act. The relevant paragraph of the said decision reads as under:-

*"27. Learned counsel appearing on behalf of the assessee has heavily relied upon the decision of this Court in the case of Malabar Industrial Co. Ltd. (supra). It is true that in the said decision and on interpretation of Section 263 of the Income Tax Act, it is observed and held that in order to exercise the jurisdiction under Section 263(1) of the Income tax Act, the Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. It is further observed that if one of them is absent, recourse cannot be had to Section 263(1) of the Act. ***"*

18. In light of the above, we are of the considered view that insofar as the facts are concerned, both the AO as well as the ld. CIT are on the

same page and insofar as the application of law is concerned, the AO has taken a very plausible view. Therefore, we are of the considered view that the assessment order dt. 24/08/2021 is neither erroneous nor prejudicial to the interest of the revenue.

19. It is a settled position of law that powers u/s 263 of the Act can be exercised by the Commissioner on satisfaction of twin conditions, i.e., the assessment order should be erroneous and 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 12 decision of Hon'ble High Court of Bombay in the case of *CIT vs. Nirav Modi, [2016] 71 Taxmann.com 272 (Bombay)*".

20. Considering the facts of the case in totality in light of the judicial decisions discussed herein above, we do not find any error or infirmity in the assessment order which could make it erroneous to the interest of the revenue. Therefore, we set aside the order of the CIT(IT), Mumbai-

1 and restore that of the AO dt. 24/08/2021 framed u/s 143(3) r.w.s. 144C of the Act.

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

Order pronounced in the Court on 30th July, 2024 at Mumbai.

Sd/-	*Sd/-*
(KAVITHA RAJAGOPAL)	**(NARENDRA KUMAR BILLAIYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated 30/07/2024
SC SrPs

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि ,**आयकर अपीलीय अधिकरण, मुंबई** /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ **BY ORDER,**
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai