

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No.1379/Bang/2024
Assessment Year: 2017-18

Mahesh Reddy No.21, Embassy Pristine 6 <sup>th</sup> Main Road Iblur Village Bellandur Bangalore 560 102  <b>PAN NO :AFTPR0449A</b>	<b>Vs.</b>	PCIT Circle-2(2)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

ITA No.936/Bang/2024
Assessment Year: 2018-19

Mahesh Reddy No.21, Embassy Pristine 6 <sup>th</sup> Main Road Iblur Village Bellandur Bangalore 560 102  <b>PAN NO :AFTPR0449A</b>	<b>Vs.</b>	DCIT Circle-2(2)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Sri K.R. Pradeep, A.R. & Ms. Girija G.P., A.R.
<b>Respondent by</b>	:	Sri Kiran D., D.R.

<b>Date of Hearing</b>	:	01.08.2024
<b>Date of Pronouncement</b>	:	05.08.2024

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

These two appeals by same assessee for the assessment years 2017-18 & 2018-19 are directed against different orders passed by PCIT u/s 263 of the Income Tax Act, 1961 (in short “The Act”) dated

27.3.2022 and 21.3.2024 respectively. Since the issue involved in both the appeals is common, these are clubbed together, heard together and disposed of by this common order for the sake of convenience. We reproduce the common grounds of appeal in ITA No.1379/Bang/2024 which are as follows:

*1. General grounds:*

*1.1 The learned Principal Commissioner of Income Tax: Bengaluru-2, Bengaluru CPr. CIT) erred in invoking revision proceedings under section 263 of the Income tax Act, 1961 ('Act') by setting aside the assessment order passed by the National e-Assessment Centre, Delhi ('AO') under section 143(3) of the Act as being erroneous and prejudicial to the interest of the revenue. The order passed under section 263 of the Act is bad in law and liable to be quashed.*

*1.2 The order of the Pr. CIT in so far it is against the assessee is against the law, facts, circumstances, natural justice, equity and all other known principles of law.*

*1.3 The learned Pr. CIT erred in in issuing notice u/s 263 when there was no error prejudicial to the interest of revenue attracting proceedings u/s 263.*

*2. Grounds relating to the order passed under section 263 of the Act:*

*2.2 The learned Pr. CIT erred in refusing to allow sufficient opportunity.*

*2.2 The order of the learned Pr. CIT is against the principles of natural justice as sufficient time was not given to the assessee to furnish the necessary details.*

*2.3 The learned Pr. CIT erred in rushing the proceedings on the plea of limitation in the absence of any such impediment.*

*2.4 The learned Pr. CIT erred in holding that the assessment order passed under section 143(3) of the Act was erroneous in so far as it is prejudicial to the interests of revenue as per clause (a) of explanation 2 of section 263.*

*2.5 The learned Pr. CIT erred in concluding that the assessment order passed under section 143(3) was made without making proper inquiries or verification regarding the allowability of deduction claimed under section 54 of the Act.*

2.6 *The learned Pr. CIT erred in neither going through the details submitted by the assessee nor calling for specific details if so required. Consequently, erred in his finding in para 6 of the order.*

2.7 *The learned Pr. CIT failed to appreciate that :*

- a) *The issues proposed to be revised in the order passed under section 263 were verified by the learned AO during the assessment proceedings under section 143(3) of the Act.*
- b) *There was no inadequacy of enquiry by the learned AO during the assessment proceedings under section 143(3) of the Act;*
- c) *Revision under section 263 cannot be initiated where two views are possible and the AO has accepted one of the possible views while passing the assessment order.*

2.8 *Without prejudice, the Pr. CIT cannot resort to section 263 to supplant his own views regarding the enquiry conducted during the assessment proceedings.*

2.9 *The Learned Pr. CIT erred in not examining or calling for the records of the earlier assessment years during the revisionary proceedings under section 263 of the Act.*

2.10 *On the facts and in the circumstances of the case and in law, the Learned Pr. CIT erred in revising the assessment order under section 263 of the Act without appreciating that order of the Assessing Officer is not prejudicial to the interest of the revenue and hence needs to be quashed.*

### **3. Grounds relating to deduction under section 54 of the Act**

3.1 *The learned Pr.CIT erred in stating that the deduction amounting to Rs.4,80,33,694/- was incorrectly claimed under section 54 of the Act.*

3.2 *The learned Pr. CIT erred in not appreciating that deduction under section 54 encompasses allowance/deduction for all expenses incurred towards cost of the new asset i.e., purchased/constructed residential house.*

3.3 *The learned Pr. CIT failed to appreciate that:*

- a) *The factum of purchase or construction of villa cannot be examined in the second year of claim;*
- b) *All bills, vouchers in support of the claim under section 54 were submitted during the assessment proceedings conducted under section 143(3) of the Act;*
- c) *All the expenses incurred towards making the residential house habitable are eligible for deduction under section 54 of the Act.*

*3.4 Without prejudice to the above, the learned Pr. CIT erred in following the binding decision of the Jurisdictional High Court in Rahana Siraj vs CIT ( [2015] 232 Taxman 327) relating to deduction under section 54 of the Act.*

*3.5 Even otherwise, the capital gains amount, if any, not utilized towards the new asset can be brought to tax in the previous year in which the period of three years from the date of transfer of original asset expires.*

*3.6 On the facts and circumstances of the case at hand, the disallowance of deduction under section 54 of the Act amounting to Rs. 4,80,33,694/- is bad in law and deserves to be deleted in its entirety.*

*The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds, at any time before or at the time of hearing.*

*The Appellant prays accordingly.”*

**2.** We consider the facts narrated in ITA No.1379/Bang/2024 for the assessment year 2017-18. The assessee has declared income from Profession, Capital Gains and from Other Sources and filed his Return of Income at Rs.2,52,16,420/-. Assessment was completed u/s. 143(3) on 28.12.2019 accepting the income shown in the return.

**2.1** The case was selected for complete scrutiny under CASS to verify various issues including the large deduction/exemption claimed u/s 54 etc. The assessee claimed to have sold 6 flats for a total consideration of Rs. 9,85,81,022/- on various dates during FY 2016-17 and computed the Long Term Capital Gains at Rs.4,82,00,000/-The assessee claimed exemption u/s 54F amounting to Rs.4,80,33,694/- in the return of income filed, in respect of purchase of a new asset having cost of Rs.6,39,50,000/-, and the asset was stated to have been acquired/constructed on 31.3.2017. Further, vide letter dated 27.9.2019 the assessee has again submitted details of the 6 flats sold resulting in capital gains of Rs.7,12,17,657/- on which deduction of Rs.4,82,00,000/- had

been claimed u/s 54F of the IT Act. The assessee has not made any submissions regarding the alternative claim made in place of the claim already made in the return, nor has he submitted the details of deduction claimed u/s 54F therefore, the claim of deduction u/s 54F is not justified. Subsequently, vide letter dated 14.11.2019, the assessee has furnished the details of investment in the house amounting to Rs.6,66,50,852/-, out of which deductions has been claimed amounting to Rs.4,64,71,744/-, without specifying the details of expenses against which deduction u/s 54F has been claimed.

**2.2** The AO has allowed the entire deduction u/s. 54F claimed by assessee at Rs. 4,80,33,694/- without conducting necessary enquiries and examining relevant issues / evidence in respect of the said claim like:

- a) Complete details about new asset like its address, purchase deed, construction permissions, approved plans, construction completion certificate, nature of asset, etc. have not been obtained and verified.
- b) No evidence like Bills, vouchers, etc. in support of the claim is filed.
- c) The details filed by the assessee show that the assessee has claimed the expenditure towards HMG Stones, Kitchen fittings, Doors & Portals, Windows, Star decor POP, MS railing & Painting work, air -conditioning etc which does not qualify for deduction u/s. 54.
- d) most of the expenses claimed by the assessee prima facie are in the nature of renovation & refurnishing of existing house. Section 54 requires construction or acquisition of a 'residential house' but not merely refurnishing an existing house to make it better.

e) No clarity under which section (i.e., 54 or 54F), the deduction was claimed and allowed considering the nature and source of re-investment of LTCG.

**2.3** From the above, it is evident that the deduction u/s. 54/54F has been allowed without proper examination of relevant details and materials. Accordingly, the assessment was completed in this case without conducting necessary enquiries and examining relevant issues / evidence.

**2.4** The assessee has mentioned that there had been reinvestment in Villa for which deduction has been claimed u/s 54. However, the assessee has not furnished any details regarding the Villa as to whether any purchase or construction of a residential house was undertaken by him, nor has he furnished the address of the premises or the details regarding the cost of land, or cost towards basic building materials. The assessee has not produced any evidence of expenses apart from producing the list of expenses incurred. Moreover, no completion certificate issued by the municipal authorities has been submitted confirming that a new house has come into existence. In the light of the above infirmities, it is evident that the issue of admissibility of deduction u/s 54F claimed by the assessee has not been properly examined by the AO during the course of assessment proceedings. The Assessing Officer has allowed the deduction claimed without conducting necessary inquiries and verification.

**2.5** In view of these facts, the assessment order was considered to be erroneous and prejudicial to the interests of revenue in terms of Sec. 263. It was therefore, proposed to pass an order u/s. 263 in this case. A show cause notice was issued on 15.03.2022 giving the assessee an opportunity of filing his submissions. The notice was sent by e-mail on 15.03.2022. A copy of the notice was also sent to the assessee. In response, the assessee attended before Id.

PCIT and filed submissions stating that the claim for deduction was justified.

**3.** The ld. PCIT observed that the assessee has failed to substantiate his claim for deduction. The claim of deduction u/s 54F has incorrectly been allowed by the Assessing Officer. The view taken by the Assessing Officer is clearly untenable in law. When the case was selected for scrutiny for examining the deductions claimed, and other reasons, it was necessary for the Assessing Officer to examine the deductions claimed and carry out necessary inquiries in accordance with law and CBDT guidelines. The Assessing Officer has not conducted necessary inquiries and has not made the additions required as per law. Considering these facts, the assessment order is erroneous and prejudicial to the interests of Revenue in terms of section 263.

**3.1** In view of the above discussion, the ld. PCIT observed that the assessment order u/s 143(3) is erroneous and prejudicial to the interests of Revenue in terms of section 263. The assessment order was accordingly set aside for this purpose and the AO was directed under section 263, to make a fresh assessment in accordance with law, after considering the above with direction to the ld. AO that he shall examine whether the assessee's claim for deduction discussed above is allowable and shall conduct necessary inquiries in accordance with law and CBDT guidelines. He shall give the assessee an opportunity to furnish necessary evidence to establish his claim and explain why the proposed additions be not made to income. The AO shall consider the facts, and the results of any enquiries made, as well as the explanation furnished by the assessee, and make a fresh assessment in accordance with law. Against this assessee is in appeal before us.

**4.** The Id. A.Rs for the assessee submitted that the Id. PCIT issued a notice in respect of revision proceedings u/s 263 of the Act dt.15.03.2022 to comply by 22.03.2022. The said notice was received by the assessee only on 19.03.2022 being a Saturday and 20.03.2022 being a Sunday; thus effectively leaving a day for compliance. The assessee to the best extent possible has replied to the notice on 21.03.2022. Thus he submitted that the proceedings are in violation to the established principles of natural justice and requires to be quashed.

**4.1** He submitted that the contention of the Id. PCIT in para 2 of the notice dt.15.03.2022 that the claim of deduction u/s 54 of the Act has not been properly dealt with and no enquiry with regard to the maintainability has been conducted by the AO. The said contention is incorrect since the issue has been enquired by the AO in the regular assessment proceedings vide notice dt. 06.09.2019. He reproduced the relevant question hereunder:

*“ 6. Please give details of the asset sold during the year. Also furnish the sale deed, purchase deed, and details of expenditure incurred wholly and exclusively with the transfer of the asset with evidence. It is seen that you have claimed deduction of Rs. 4.80 crs in the new asset. Please furnish details of the same alongwith the deed entered into for purchase of the new asset.”*

**4.2** To which the assessee has filed its response vide reply dt.27.09.2019. Upon which further notice was issued u/s 142(1) dt.20.12.2019 by the AO seeking details of flats sold, cost, brokerage, expenses incurred etc. The assessee furnished the details called for in the notice vide reply dt.21.12.2019 (PB-1 page 13). The PCIT in its order u/s 263 dt.27.03.2022 also has recorded the facts of the enquiry conducted by the AO. He reproduced the relevant portion hereunder:

*“ 2. The case was selected for complete scrutiny under CASS to verify various issues including the large deduction/exemption claimed u/s 54 etc. The assessee*

*claimed to have sold 6 flats for a total consideration of Rs. 9,85,81,022/- on various dates during FY 2016-17 and computed the Long Term Capital Gains at Rs.4,82,00,000/-The assessee claimed exemption u/s 54F amounting to Rs.4,80,33,694/- in the return of income filed, in respect of purchase of a new asset having cost of Rs.6,39,50,000/-, and the asset was stated to have been acquired/constructed on 31.3.2017. Further, vide letter dated 27.9.2019 the assessee has again submitted details of the 6 flats sold resulting in capital gains of Rs.7,12,17,657/- on which deduction of Rs.4,82,00,000/- had been claimed u/s 54F of the IT Act....”*

**4.3** Thus he submitted that it is grossly incorrect to initiate 263 proceedings on the ground of no enquiry or inadequate inquiry. Consequently, the order of the AO dt.28.12.2019 is neither erroneous nor prejudicial to the interest of the revenue. The assessee relies on the decision of Hon’ble Karnataka High Court in the case of CIT vs Cisco Systems (India) Pvt Ltd (2021) 437 ITR 349.

**4.4** He relied on the judgement of the Hon’ble Delhi High Court in CIT vs Klaxon Trading Pvt Ltd (2023) 118 CCH 187 relying on the judgement of Mumbai High Court in 203 ITR 108, wherein it has been held as under:

*“15.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.”*

**4.5** Further he submitted that even Explanation 2 (a) of Section 263 –

*(a) the order is passed without making inquiries or verification which should have been made*

is clear that section 263 can be invoked only when no inquiry is made. In this case since the AO has already caused the enquiry the assessment order cannot be regarded as erroneous and prejudicial to interest of revenue.

**4.6** He submitted that the details submitted by the assessee in compliance of notice u/s 263 has not even gone into by the PCIT

and upon consideration of the details filed the PCIT has not caused any enquiry nor has she given a finding that based on the material submitted by the assessee that there was any error. She simply abdicated her responsibility by setting aside the assessment order and directing fresh assessment. He submitted that this procedure is contrary to the decision of the Hon'ble Supreme Court in CIT, Bangalore v. Shree Manjunathesware Packing Products (1998) 1 SCC 598, wherein held as under:

*“28. The judgment of CIT, Bangalore v. Shree Manjunathesware Packing Products (1998) 1 SCC 598, dealt with the issue as to what would be the scope of the expression “record” found in Section 263 of the Act, i.e., whether it would include the material placed before the AO or the material that was filed before the authority exercising the revisionary power as well. The Commissioner in this case had exercised the revisionary power after taking into account the valuation report which, though ordered to be submitted by the AO, could not be placed before him due to paucity of time. The AO was constrained to pass the assessment order as the prescribed limitation period was ending. Since the valuation report was made available to the Commissioner, he took the same into account while exercising the revisionary power. In this context, the Court was called upon to rule whether the expression “record” would include the material not made available to the AO. The Supreme Court ruled that the valuation report placed before the Commissioner could be considered by him while exercising powers under Section 263 of the Act and thus rejected the narrow interpretation placed on the expression “record” on behalf of the assessee. Again, in our opinion, this case has no application to the issue arising for consideration in the instant matter.”*

**4.7** The Id. A.R. relied on the order of Tribunal in the case of Sourabh Sharma Vs. PCIT 110 ITR (Trib.) 677 (JP), wherein held as under:

*“Held, allowing the appeal, that it was clear that the assessee was confronted with all the facets of the claim and had furnished the requisite information based on which the Assessing Officer had completed the assessment. The assessee had clarified the confusion of the figures noted considering which the b Principal Commissioner did not establish the order to be prejudicial. The term "records" not only means records available with the Income-tax Officer at the time of passing the assessment order but also includes records available with the Commissioner at the time of passing his order. The Assessing Officer had called for the details on as many as nine aspects and had examined the issues before allowing the assessee's claim. Once the Assessing Officer, based on the details placed on record, takes up a plausible view of the matter, it could not be subjected to revision*

*under section 263 even in light of the revised Explanation 2 thereto. The jurisdiction under section 263 could not be invoked for making short enquiries or go into the process of assessment again and again d merely on the basis that more inquiry ought to have been conducted to find something. As the Assessing Officer had passed the assessment order after relevant inquiries, the order passed by the Principal Commissioner was not in accordance with law and, therefore, was to be quashed.”*

**5.** The ld. D.R. submitted that there was no enquiry by ld. AO while passing the order u/s 143(3) of the Act. Hence, ld. PCIT after verifying the records given a direction for re-examining claim of assessee u/s 54F of the Act and same to be confirmed.

**6.** We have heard the rival submissions and perused the materials available on record. We will go through the provisions of section 263 of the Act.

**“SECTION 263:**

*The provision, as on date, reads as under:*

**“263. (1)** *The Principal Commissioner 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 is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.”*

**Explanation 2.**-*For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the 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.”*

**6.1** The above Explanation 2 was Inserted vide The Finance Act, 2015, w.e.f. 1st day of June, 2015. The memorandum explaining the amendment reads as under:

**6.2** The pre-amended provisions contained in sub-section (1) of section 263 of the Income-tax Act provides that if the Principal Commissioner or Commissioner considers that any order passed by the assessing officer is erroneous in so far as it is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making an enquiry pass an order modifying the assessment made by the assessing officer or cancelling the assessment and directing fresh assessment.

The interpretation of expression “*erroneous in so far as it is prejudicial to the interests of the revenue*” has been a contentious one.

*In order to provide clarity on the issue it is proposed to provide that an order passed by the Assessing Officer 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 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, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.*

*This amendment will take effect from 1st day of June, 2015.”*

**6.3** The Clause (a) of the Explanation, as all other clauses are self explanatory. Clause (a) talks about the inquiry or investigation having not been made by the A.O., which ‘should have been made’. The clause can be split into two parts for understanding purposes.

First is the absence of inquiry/investigation and the second phraseology provides an adjective to the first one, being 'which should have been made'. In fact the pre amended section itself did not provide for this terminology, however as per the judge made law, as of now it was settled that this first limb of the Explanation was already built in the pre amended section also. Therefore it can be said that the second part of the Explanation is the only new addition.

**There is difference between no enquiry and inadequate enquiry:**

**6.4** In order to invoke provisions of section 263 of the Act, the two conditions of the order being erroneous as well as prejudicial to the interest of the Revenue are to be satisfied simultaneously. There is no change as such in assumption of jurisdiction under section 263 of the Act. However in the absence of Explanation 2, it was being consistently held by various courts that an order can be said to be erroneous if the Assessing Officer has not made inquiry on a relevant issue. An inquiry made by the Assessing Officer, considered inadequate by the Commissioner of Income Tax, cannot make the order of the Assessing Officer erroneous. The order can be erroneous if the Assessing Officer fails to apply the law rightly on the facts of the case. As far as adequacy of inquiry is considered, there is no law which provides the extent of inquiries to be made by the Assessing Officer. It is Assessing Officer's prerogative to make inquiry to the extent he feels proper. The Commissioner of Income Tax by invoking revisionary powers under section 263 of the Act cannot impose his own understanding of the extent of inquiry. There were a number of judgments by various High Courts in this regard.

**6.5** Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd. v. CIT (2000) 243 ITR 83 (SC), wherein it was held as under:

*"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 interest of the Revenue unless the view taken by the Income Tax Officer is unsustainable in law."*

**6.6** The said view has also been held in a judgment of the Hon'ble Punjab & Haryana High Court in the case of CIT v. Indo German Fabs IT Appeal No. 248 of 2012, dated 2412-2014, in the following words:

*"Section 263 of the Act confers power to examine an assessment order so as to ascertain whether it is erroneous and prejudicial to the interest of the revenue but does not confer jurisdiction upon the CIT to substitute his opinion for the opinion of the Assessing Officer. The words prejudicial and erroneous have to be read in conjunction and therefore, it is not each and every error in an assessment that invites exercise of powers under Section 263 of the Act, but only orders that are erroneous and prejudicial to the interest of the revenue."*

**6.7** Further, Delhi High Court in the case of CIT Vs. Sunbeam Auto 332 ITR 167 (Del.), wherein, while considering the distinction between lack of inquiry and inadequate inquiry, the Hon'ble court held that where the AO has made inquiry prior to the completion of assessment, the same cannot be set aside u/s 263 on the ground of inadequate inquiry:

*"12. 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-tax Act. 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 different opinion in the matter. It is only in cases of "lack of inquiry", that such a course of action would be open. -----*

*From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.*

*15. Thus, even the Commissioner conceded the position that the Assessing Officer made the inquiries, elicited replies and thereafter passed the assessment order. The grievance of the Commissioner was that the Assessing Officer should have made further inquiries rather than accepting the explanation. Therefore, it cannot be said that it is a case of 'lack of inquiry'."*

**6.8** In our opinion, 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 a claim. 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.

**6.9** 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 (page 113) “From a reading of sub-section (1) of section 263, it is clear that the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the Income-tax Officer is ‘erroneous in so far as it is prejudicial to the interests of the Revenue’. It is not an arbitrary or unchartered power, it can be exercised only on fulfilment of the requirements laid down in sub-section (1). The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that 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. (Parashuram Pottery Works Co. Ltd. v. ITO [1977] 106 ITR 1 (SC) at page 10)

**6.10** There are other plethora of case laws from various High Courts and various benches of the Tribunal for the same effect.

**6.11** Further, there was another angle to these cases when the Commissioner of Income Tax held the order of the Assessing Officer to be erroneous and at the conclusion of his order directs the Assessing Officer to make assessment de-novo. This approach of the Commissioner of Income Tax was held to be not correct in law. The revisionary powers under section 263 of the Act are given to the Commissioner of Income Tax when he finds the order of the Assessing Officer to be erroneous as well as prejudicial to the interest of the Revenue. In case the Commissioner of Income Tax finds the error in the order of the Assessing Officer, still prefers to direct him to make assessment denovo, these two things contradict each other. If the Commissioner of Income Tax directs the Assessing Officer to make assessment after further enquiry, this act of the Commissioner of Income Tax would show that he is not sure whether the original order was erroneous or not, as on conclusion of further enquiry, the Assessing Officer may not make the proposed addition or disallowance. There will emerge a very weird situation in such a case. Therefore, if the Commissioner of Income Tax holds that there is any error in the order of the Assessing Officer, he should give a categorical finding in this regard and for this purpose, he himself has to make enquiries and investigations, whatever he deems fit in the circumstances.

**6.12** It also be noted that the Hon'ble Delhi High Court in the case of PCIT Vs. Delhi Airport Metro Express Private Limited vide ITA No.705/2017 order dated 05.09.2017 has held that for the purpose

of exercising jurisdiction u./s. 263 of the Act, the conclusion that the order of the AO is erroneous and prejudicial to the interest of the revenue has to be preceded by some minimal inquiry. If the PCIT is of the view that the AO did not undertake any inquiry, it becomes incumbent on the PCIT to conduct such inquiry. If he does not conduct such basic exercise then the CIT is not justified in setting aside the order u/s. 263 of the IT Act.

**6.13** Further, Hon'ble Delhi High Court in the case of ITO Vs. D.G. Housing Projects Ltd. (2012) 343 ITR 329 (Del), whereby the Hon'ble High Court held as under :

*“16. Thus, in cases of wrong opinion or finding on merits, the CIT 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 passed is not sustainable in law and the said finding must be recorded. CIT 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 CIT 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 CIT and he is able to establish and show the error or mistake made by the Assessing Officer, making the order unsustainable in Law. In some cases possibly though rarely, the CIT 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/issue to the Assessing Officer would imply and mean the CIT has not examined and decided whether or not the order is erroneous but has directed the Assessing Officer to decide the aspect/question.”*

**6.14** Hon'ble Delhi High Court in the case of Director of Income Tax Vs. Jyoti Foundation (357 ITR 388) (Delhi) has also held that where revisionary authority opined that further enquiry was

required, such enquiry should have been conducted by revisionary authority himself to record finding that assessment order passed by the AO was erroneous and pre judicial to the interest of the revenue. This principle is also based on Hon'ble Delhi High court in the case of Sunbeam Auto Limited (supra) whereby it was held that if the AO, while making an assessment, has made inadequate enquiry that would not by itself give occasion to the CIT to pass order u/s.263 merely because he has different opinion of the matter.

**6.15** Only in the case of “lack of enquiry” that such a course of action would be open. It has further been held in the said decision that where the view taken by AO was one of the possible views, therefore, the assessment order passed by the AO cannot be held to be prejudicial to the interest of the revenue.

**6.16** Now if both the above propositions are put together, the conclusion would be that the PCIT, in his revisionary jurisdiction, cannot said the order with some enquiry done by the A.O. to be erroneous, he can hold the non inquiry cases to be erroneous. However he himself has to bring on record the error and prejudice through independent verification and enquiry.

**6.17** Before post amendment, the phrase ‘should have been done’ as provided in the newly inserted Explanation means the verification/ enquiry which ought to have been done. Now, it is to be remembered that the Income Tax Act nowhere provides the exact modalities to be followed to verify a specific claim made by the assessee. It is the prerogative of the Assessing Officer to decide the extent of verification. Now the Act gives a specific power to the Commissioner to revise the orders made without the inquiry to the extent he thinks fit. One should not be oblivious of the fact that the fiscal statute are to be read literally and no equity or logic has to be found in these. Therefore, if the parliament in its wisdom has given

power to the decide the extent of enquiry, let it be. One must appreciate the fact that, the view, what ought to have been done in a specific situation, will always differ from person to person. What the A.O. found sufficient; the Commissioner may not find. What one Commissioner finds adequate may not be adequate for any other officer sitting in his place. In this manner a discretion has been provided to the Commissioner in this context.

**6.18** In our opinion, it is a trite law that exercise of discretion requires the exercise of good judgement. Decision makers must use discretionary powers in good faith and for a proper, intended and authorised purpose. Decision makers must not act outside of their powers. No decision maker has an unfettered discretionary decision making power. It is not sufficient to exercise discretion and do some act simply because it seems the right thing to do. When exercising discretion, decision makers need to act reasonably and impartially. They must not handle matters in which they have an actual or reasonably perceived conflict of interest. It is important to apply the values that the legislation promotes, professional values and the values of the agency, not personal values.

**6.19** The risk of arbitrariness in such discretion has been weighed by the Supreme Court of United States in Harold Withrow v. Duane Larkin (43 L. Ed. 2d 712).

*"The contention that the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication has a much more difficult burden of persuasion to carry. It must overcome a presumption of honesty and integrity in those serving as adjudicators; and it must convince that, under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individual poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented."*

**6.20** In exercising discretionary powers, decision makers should have regard to any specific requirements as well as satisfy general

administration, it was held in the case of Golam Momen vs. DCIT (2002) 256 ITR 754 (Cal), while discussing the discretionary powers, Calcutta High Court observed as under:

*“Discretion means according to the rules of reason and justice, not according to private opinion, but according to law and not humour. It is not to be arbitrary, vague and fanciful, but legal and regular to be exercised, not capriciously but on judicial grounds and for substantial reasons. If an authority cast with a public duty of exercising discretion takes into account matters which the court considers to be improper for guidance of the discretion, then in the eye of law, it is an improper exercise of the discretion.*

*We may find support for the above proposition in Maxwell on Interpretation of Statutes, tenth edition, page 123, and Saurashtra Cement and Chemical Industries Ltd. v. CIT [1978] 115 ITR 27 (Guj). Every discretionary power vested, even in the executive, is to be exercised in a just, reasonable and fair manner. This is the essence, the rule of law, as was held in Aeltemesh Rein v. Union of India [1988] AIR 1988 SC 1768, 1771. Such discretion is to be exercised judiciously and not arbitrarily depending upon the facts and circumstances of each case (Jagdish Singh v. Lieutenant Governor, Delhi [1997] AIR 1997 SC 2239, 2243). The discretion is to be exercised with circumspection, consistent with justice, equity and good conscience, keeping always in view the given facts and circumstances of the case Hindalco Industries Ltd. v. Union of India (1994) 2 SCC 594, 599.*

*When a statute confers a power, it pre-supposes that it was conferred to achieve some object. Such power, therefore, is to be exercised for achieving the object. Such authority while exercising such power is to be guided by a consideration as to whether such exercise would advance the object sought to be achieved by the enactment. As soon as such power is vested in an authority, it is implicit therein that such power is to be exercised reasonably and in a reasonable manner for the purpose for which it was conferred Wood Polymer Ltd., In re and Bengal Hotels Private Limited, In re [1977] 109 ITR 177, 184-185 (Guj). The Legislature never intended to grant an absolute uncontrolled and arbitrary discretion, but to impose upon the authority the duty of considering the facts and circumstances of a particular case and then to come to an honest judgment as to whether the case calls for exercise of the power (Vetcha Sreeramamurthy's case [1956] 30 ITR 252 (AP)). It implies necessarily that all these circumstances are to be taken into account and an appropriate order is to be passed having regard to the facts of the case. Exercise of such power cannot be summarily rejected on the basis that the power is with the officer, but he is not bound to exercise it (M.L.M.*

*Mahalingam Chettiar v. Third ITO [1967] 66 ITR 287 (Mad) and K.M. Rahmath Bibi's case [1969] 72 ITR 73 (Mad).*”

**6.21** In the case of Hindalco Industries Ltd. vs. Union of India (1994) 2 SCC 594, the Apex Court observed:

*“The discretion must be exercised reasonably. A person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter he has to consider. If he does not obey those rules, he may truly be said to be acting unreasonably.*

*8. There lies a distinction between the administrative authorities exercising discretionary jurisdiction and the court or the quasi-judicial tribunal deciding the list. In the latter case discretion has been given to the court or the Tribunal to mould the ancillary relief. The discretion is to be exercised with circumspection consistent with justice, equity and good-conscience, keeping always the given fact and circumstances of the case.”*

**6.22** From the above analysis, it becomes too evident that even if the terms of Explanation 2 to section 263 smells of some degree of discretion given to the Commissioner for exercise of his revisionary powers, the same are not to be used arbitrarily and irrational manner.

**6.23** Further, the judgements referred to as above, where it has been held that the Commissioner has to himself make enquiry in order to bring the error as well as the prejudice to revenue on record, also strengthens the view that the Commissioner will be required to do the same exercise even the Explanation 2 be there in the statute.

**6.24** In the present case, in assessment year 2017-18, the assessing officer issued notice u/s 142(1) of the Act on 6.10.2019 which reads as follows:



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX  
CIRCLE 2(3)(1), BANGALORE

To, MAHESH REDDY 2990/C 12TH A MAIN ROAD, HAL II STAGE BENGALURU 560008, Karnataka India	
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PAN: AFTPR0449A	AY: 2017-18	Dated: 06/09/2019	Notice No : ITBA/AST/F/142(1)/2019-20/1017802947(1)
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Notice under Sub Section (1) of Section 142 of the Income Tax Act, 1961

Sir/ Madam/ M/s,

In connection with the assessment for the assessment year 2017-18 you are required to:

- Furnish or cause to be furnished on or before 16/09/2019 at 12:30 PM the accounts and documents specified overleaf.
- Furnish and verified in the prescribed manner under Rule 14 of I.T. Rules 1962 the information called for as per annexure and on the points or matters specified therein on or before 16/09/2019 at 12:30 PM.
- The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in 'e-filing' website of Income Tax Department.
- Para(s) (a) to (c) are applicable if you have an account in e-filing website of Income Tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).
- In cases where order has to be passed under section 153A/153C of the Income Tax Act, 1961 read with section 143(3), assessment proceedings would be conducted manually.

Yours faithfully,

VIJI SESHADRI  
CIRCLE 2(3)(1), BANGALORE

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AFTPR0449A- MAHESH REDDY  
A.Y. 2017-18  
ITBA/AST/F/142(1)/2019-20/1017802947(1)

ANNEXURE

1. Please give a detailed note on the professional activities carried out during the year.
2. Please furnish computation of income.
3. Please give the details of unsecured loans in the following format

Loan taken during the year	Name and PANo. of the person from whom the loan was taken	Mode of taking the loan	Whether any interest is paid on the loan
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
4. Details of investments made during the year in the following format

Nature of investment	Amount of investment	Date of purchase (supported by deeds, invoices etc.)	Source from which the investment was made along with evidence thereof.
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5. Please give details of current liabilities in the following format

Name of the creditor	Amount outstanding	Confirmation from the creditor
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6. Please give details of the asset sold during the year. Also furnish the sale deed, purchase deed, and details of expenditure incurred wholly and exclusively with the transfer of the asset with evidence. It is seen that you have claimed deduction of Rs. 4.80 crs in the new asset. Please furnish details of the same alongwith the deed entered into for purchase of the new asset.
7. Please give details of owner ship of 2990/C, 12<sup>th</sup> A Main Road, HAL II Stage, Bengaluru along with evidence.
8. Tax credit claimed in ITR is less than tax credit available in 26AS. Please explain the

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AFTPR0449A- MAHESH REDDY  
A.Y. 2017-18  
ITBA/AST/F/142(1)/2019-20/1017802947(1)

reasons for the same.

9. Receipts u/s. 194C and 194J are more than the receipts shown in the ITR. Please explain the reasons for the same.

VIJI SESHADRI  
CIRCLE 2(3)(1), BANGALORE

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**6.25** The assessee given the reply vide letter dated 27.9.2019 to the notice issued u/s 142(1) of the Act as follows:

September 27, 2019

From,  
**Mahesh Reddy,**  
2990/C,  
12<sup>th</sup> "A" Main Road,  
Hal II Stage,  
Bengaluru - 560008

To,  
**The Assistant Commissioner Of Income Tax**  
**Circle 2(3)(1), Bangalore**  
BMTC Building,  
80 Feet Road,  
6th Block, Koramangala,  
Near KHB Games Village,  
Bengaluru - 560095

Dear Sir,

**Sub: Notice under Sub Section (1) of Section 142 of the Income Tax Act, 1961 for A.Y. 2017-18**  
bearing no. ITBA/AST/F/142(1)/2019-20/1017802947(1) dated 06.09.2019

**Re: Mahesh Reddy**  
**PAN: AFTPR0449A**

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With reference to the above and in continuation of our submissions dated 11.09.2019, we have hereby submit the following details:

**Point no. 1 of the notice u/s 142(1) :: Note On Professional Activities ::**  
I am an orthopaedic surgeon. During the financial year 2016-17 relevant for A.Y. 2017-18, I was associated with Apollo Specialty Hospitals Private Limited, Bangalore and Chaparral Health Services Limited, Bangalore. Income from rendering of professional services to the said two organisations are duly reflected in Form 26AS and audited Profit and Loss Account for the year ended 31.03.2017. The said income is offered to tax under the head 'Profits and gains of business or profession' in the return of income filed for the A.Y. 2017-18.

**Point no. 2 of the notice u/s 142(1):**  
As required by your good self, please find enclosed herewith computation of income of A.Y. 2017-18.

**Point no. 3 of the notice u/s 142(1):**  
As required by your good self, please find enclosed herewith details of unsecured loans.

**Point no. 4 of the notice u/s 142(1):**  
The details of investments reflected in the balance sheet as at 31.3.2017 are under compilation. I am in the process of collecting and collating the information. I request your good self to kindly give us ten days' time to prepare and submit the said details.


**Point no. 5 of the notice u/s 142(1):**  
As required by your good self, please find enclosed herewith details of current liabilities reflected in the balance sheet as at 31.3.2017.

**Point no. 6 of the notice u/s 142(1):**

- i. **Immovable properties transferred:**  
As required by your good self, please find enclosed herewith details of assets sold during FY. 2016-17 relevant for A.Y. 2017-18, copy of sale deeds and assessment order u/s 143(3) of A.Y. 2012-13 in support of cost of acquisition.
- ii. **Deduction u/s 54F:**  
The details of expenditure incurred in respect of the deduction u/s 54F are under compilation. I am in the process of collecting and collating the information. I request your good self to kindly give us ten days' time to prepare and submit the said details.

**Point no. 7 of the notice u/s 142(1):**  
The premises situated at 2990/C, 12th A Main Road, HAL II Stage, Bengaluru belongs to my father Mr. V. Venkata Reddy.

**Point no. 8 & 9 of the notice u/s 142(1):**  
In the return of income filed for A.Y. 2017-18, I have not claimed credit of following TDSs, which are reflected in Form 26AS of A.Y. 2017-18 since the relevant receipts are either not taxable or offered to tax in subsequent assessment year(s):

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(10)

- i. TDSs of Rs. 17,50,000 from capital receipts of Rs. 1,75,00,000 from Apollo Specialty Hospitals Private Limited, Bangalore.
- ii. TDS on sale of immovable properties as detailed in the table below:

TDS (Rs.)	Name of the deductor	PAN of the deductor	Reason for not claiming TDS in the ITR of A.Y. 2017-18
1,29,617	CHAITANYA PRAKASH	AHOPP7122P	Sale deed not registered till 31.3.2017
13,645	SUDESH JAGDISHKUMAR MADAN	AHFPM7946M	Sale deed not registered till 31.3.2017
1,89,586	NIKHIL RASIWASIA	AFVPA8070L	Sale deed not registered till 31.3.2017
63,195	NIKHIL RASIWASIA	AFVPA8070L	Sale deed not registered till 31.3.2017
8,395	PRASHANTH RAJAMOHAN RAO	AGNPR3237M	Sale deed not registered till 31.3.2017
2,81,287	NITIN ASHOK KINI	AIHPK5863G	Sale deed not registered till 31.3.2017
11,213	SUDESH JAGDISHKUMAR MADAN	AHFPM7946M	Sale deed not registered till 31.3.2017
6,96,939	<b>Total</b>		

Kindly take the above on records and oblige.

Thanking you,

Yours faithfully,  
For, Dr. Mahesh Reddy

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(Authorised signatory)

**6.26** Later, one more notice issued on section 142(1) on  
20.12.2019 (11 & 12 pages)



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX  
CIRCLE 2(2)(1),BANGALORE

To, MAHESH REDDY NO.21, EMBASSY PRISTINE,6TH MAIN ROAD, IBLUR VILLAGE, BELLANDUR, BENGALURU 560102,Karnataka India	
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PAN: AFTPR0449A	AY: 2017-18	Dated: 20/12/2019	Notice No : ITBA/AST/F/142(1)/2019-20/1022734857(1)
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Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961

Sir/ Madam/ M/s,

In connection with the assessment for the assessment year **2017-18** you are required to:

- Furnish or cause to be furnished on or before **23/12/2019** at **11:00 AM** the accounts and documents specified overleaf.
- Furnish and verified in the prescribed manner under Rule 14 of I.T. Rules 1962 the information called for as per annexure and on the points or matters specified therein on or before **23/12/2019** at **11:00 AM**.
- The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in 'e-filing' website of Income Tax Department.
- Para(s) (a) to (c) are applicable if you have an account in e-filing website of Income Tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).
- In cases where order has to be passed under section 153A/153C of the Income Tax Act, 1961 read with section 143(3), assessment proceedings would be conducted manually.

Yours faithfully,

VIJI SESHADRI  
CIRCLE 2(2)(1),BANGALORE

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Note: If digitally signed, the date of digital signature may be taken as date of document.  
.BMTc BUILDING, 80 FEET ROAD, 6TH BLOCK, NEAR KHB GAMES VILLAGE, KORAMANGALA, BENGALURU, Karnataka, 560095  
Email: BANGALORE.DCIT.C2.2.1@INCOMETAX.GOV.IN.

\* The Notice/Letter/Order No. mentioned above is the Document identification No. (DIN) of this Notice/Letter/Order.

12

AFTPR0449A- MAHESH REDDY  
A.Y. 2017-18  
ITBA/AST/F/142(1)/2019-20/1022734857(1)

ANNEXURE

With regard to the ongoing scrutiny proceedings, you are required to furnish the following

1. Sale deeds of the flats sold.
2. Evidence in support of brokerage and market expenses claim and justification regarding its allowability.
3. Explain how the cost of SBA has been arrived at.
4. Explain how the cost of land has been arrived at.

The information should be furnished on the due date mentioned in the notice. Please note no further adjournments will be given. Failure to furnish the details will result in ex parte assessment

VIJI SESHADRI  
CIRCLE 2(2)(1), BANGALORE

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

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*Vi*

**6.27** Reply was given to the above notice issued u/s 142(1) of the Act on 21.12.2019 (page 13)

13  
December 21, 20

From,  
Mahesh Reddy,  
No.21, Embassy Pristine,  
6<sup>th</sup> Main Road, Iblur Village,  
Bellandur Bangalore - 560102

To,  
The Assistant Commissioner Of Income Tax  
Circle 2(2)(1), Bangalore  
BMTC Building,  
80 Feet Road,  
6th Block, Koramangala,  
Near KHB Games Village,  
Bengaluru - 560095

Dear Sir,

Sub: Notice under Sub Section (1) of Section 142 of the Income Tax Act, 1961 for A.Y. 2017-18 bearing no. ITBA/AST/F/142(1)/2019-20/1022734857(1) dated 20.12.2019

Re: Mahesh Reddy  
PAN: AFTPR0449A

With reference to the above, I have state and submit as under:

Please find enclosed herewith the following basic details:

1. Sale deeds of the flats sold: Attached (6 Sale Deed)
2. Evidence in support of brokerage and market expenses claim and justification regarding its allowability: Attached
  - a. Details of working brokerage paid
  - b. Details of brokerage paid proof
  - c. Details of Brokerage payment details
  - d. Marketing expenses note
  - e. Marketing expenses bills
3. Explain how the cost of SBA has been arrived at: Attached
4. Explain how the cost of Land has been arrived at: Attached

Kindly take the above on records and oblige.

Thanking you.

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*MHR*

Yours faithfully,  
For, Dr. Mahesh Reddy

*Manjul*  
(Authorised signatory)

**6.28** After this Id. AO framed assessment u/s 143(3) of the Act on 28.12.2019 and he has taken a conscious decision that the assessee entitled for deduction u/s 54F of the Act on going to the details of assets sold during the financial year 2016-017 relevant to assessment year 2017-18 and its cost of acquisition of said property. Further, the assessee has furnished details of investment in new residential property vide notice u/s 142(1) of the Act dated 24.12.2020 and 17.3.2021. The assessee has furnished the bills/vouchers vide response dated 20.2.2021 and 19.3.2021. The Id. AO/NFAC after examining all the relevant details concluded on the allowability of deduction u/s 54F of the Act. It is also be seen that as noted by Id. PCIT in second page of his order, vide letter dated 14.11.2019, the assessee has furnished the details of investments in huge amount of Rs.6,66,50,852/-, out of which deduction has been claimed amounting to Rs.4,64,71,744/- without specifying the details of expenses against which deduction u/s 54F of the Act has been claimed. Once the Id. PCIT himself has noted that assessee has furnished the details of expenditure amounting to Rs.6,66,50,852/- to claim deduction of Rs.4,64,71,744/-, it cannot be said that there is no enquiry or inadequate enquiry on the issue of exemption u/s 54F of the Act.

**6.29** Thus, the judgement relied by the Id. A.R. in the case of Cisco Systems (India) Pvt. Ltd. of Hon'ble Karnataka High Court cited (supra) and in the case of Klaxon Trading Pvt. Ltd. of Hon'ble Delhi High Court cited (supra) are support the case of assessee.

**6.30** Further, in the case of Sh. Narayan Tatu Rane Vs. ITO, I.T.A. No. 2690/2691/Mum/2016, dt. 06.05.2016

*“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-à-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the 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.”*

**6.31** Further, in the case of M/s. Arun Kumar Garg HUF vs. PCIT, ITA No. 3391/Del/2018, dt. 08.01.2019

*“5.6 Although, there has been an amendment in the provisions of section 263 of the Act by which Explanation 2 has been inserted w.e.f. 1.6.2015 but the same does not give unfettered powers to the Commissioner to assume jurisdiction under section 263 to revise every order of the Assessing Officer to re-examine the issues already examined during the course of assessment proceedings. The Mumbai ITAT Bench has dealt with Explanation 2 as inserted by Finance Act, 2015 in the case of Narayan Tatu Rane vs. ITO reported in (2016) 70 taxman.com 227 to hold that the said Explanation cannot be said to have overridden the liability as interpreted by Hon'ble Delhi High Court, according to which the Commissioner has to conduct the inquiry and verification to establish and show that the assessment order was unsustainable in law. The ITAT Mumbai Bench has further held that the intention of the legislature could not have been to enable the CIT to find fault with each and every assessment order without conducting any inquiry or verification in order to establish that the assessment order is not sustainable in law, since such an interpretation will lead to unending litigation and there would not be any point of finality in the legal proceedings. The ITAT Mumbai Bench of the Tribunal went on to hold that the opinion of the Commissioner referred to in section 263 of the Act has to be understood as legal and judicious opinion and not arbitrary opinion.”*

**6.32** In the case of Rajgul Credit Invest P. Ltd. Vs. PCIT, I.T.A. No. 2519/DEL/2019, dt. 19.09.2019

*“We further note that Explanation to section 263 of the Act does not change the scope of section 263 of the Act, the Mumbai Tribunal in the case of Narayan Tatu*

*Rane vs. ITO reported in 70 taxmann.com 227 has also held that in a case where learned Pr. CIT has not brought any material on record by making enquiries or verifications to substantiate his inference, the learned PCIT is not justified in holding that the impugned assessment order was erroneous. The relevant portion of the decision is as under:-*

*"21. In the instant case, as noticed earlier, the AO has accepted the explanations of the assessee, since there is no fool proof evidence to link the assessee with the document and MIs RNS Infrastructure Ltd, from whose hands it was seized, also did not implicate the assessee.*

*Thus, the assessee has been expected to prove a negative fact, which is humanely not possible. No other corroborative material was available with the department to show that the explanations given by the assessee were wrong or incorrect. Under these set of facts, the AO appears to have been satisfied with the explanations given by the assessee and did not make any addition. We have noticed that the Hon'ble Supreme Court has held in the case of Central Bureau of Investigation (supra) that the entries in the books of account by themselves are not sufficient to charge any person with liability. Hence, in our view, it cannot be held that the assessing officer did not carry out enquiry or verification which should have been done, since the facts and circumstances of the case and the incriminating document was not considered to be strong by the AO to implicate the assessee. Thus, we are of the view that the assessing officer has taken a plausible view in the facts and circumstances of the case. Even though the Ld Pr. CIT has drawn certain adverse inferences from the document, yet it can be seen that they are debatable in nature. Further, as noticed earlier, the Ld Pr. CIT has not brought any material on record by making enquiries or verifications to substantiate his inferences.*

*He has also not shown that the view taken by him is not sustainable in law. Thus, we are of the view that the Ld Pro CIT has passed the impugned revision orders only to carry out fishing and roving enquiries with the objective of substituting his views with that of the AO. Hence we are of the view that the Ld Pr. CIT was not justified was not correct in law in holding that the impugned assessment orders were erroneous."*

**6.33** In the case of Sourabh Sharma Vs. PCIT 110 ITR (Trib.) 677 (JP), wherein held as under:

*"Held, allowing the appeal, that it was clear that the assessee was confronted with all the facets of the claim and had furnished the requisite information based on which the Assessing Officer had completed the assessment. The assessee had clarified the confusion of the figures noted considering which the b Principal Commissioner did not establish the order to be prejudicial. The term "records" not only means records available with the Income-tax Officer at the time of passing the assessment order but also includes records available with the Commissioner at the time of passing his order. The Assessing Officer had called for the details on as many as nine aspects and had examined the issues before allowing the assessee's claim. Once the*

*Assessing Officer, based on the details placed on record, takes up a plausible view of the matter, it could not be subjected to revision under section 263 even in light of the revised Explanation 2 thereto. The jurisdiction under section 263 could not be invoked for making short enquiries or go into the process of assessment again and again merely on the basis that more inquiry ought to have been conducted to find something. As the Assessing Officer had passed the assessment order after relevant inquiries, the order passed by the Principal Commissioner was not in accordance with law and, therefore, was to be quashed.”*

**6.34** In view of above, we note that notice u/s. 263 of the Act issued by the Pr. CIT is vague and only for making deeper enquiry and re-considering the evidences already on record duly considered during assessment proceedings based on purported proposal that fresh facts have been emerged subsequent to the order of assessment which is factually incorrect and untenable and the conditions or the factors enabling the Ld. Pr. CIT to invoke his jurisdiction u/s 263 have not been satisfied.

**6.35** Though Explanation provides for an extra discretionary power to the Commissioner in his revisionary powers under section 263 of the Act. This discretion cannot be assumed arbitrarily by the Ld. PCIT. At least something he should bring on record to show the error and the prejudice to revenue caused by that error while assuming jurisdiction under section 263 of the Act. This can be done to the least by him by making independent inquiry/ investigation to conclusively bring on record such error and also the prejudice. In view of this we hold that exercising of jurisdiction u/s 263 of the Act is not justified. Accordingly, we quash the order passed by PCIT u/s 263 of the Act for the assessment year 2017-18.

**7.** In the result, ITA No.1379/Bang/2024 is allowed.

**ITA No.936/Bang/2024 (AY 2018-19):**

**8.** Facts of the case in this appeal are similar to that one in ITA No.1379/Bang/2024 for the AY 2017-18 and ld. PCIT also based his findings in his order passed u/s 263 of the Act for this assessment year as he reached for assessment year 2017-18 while passing the order u/s 263 of the Act. Being so, applying the ratio laid down in ITA No.1379/Bang/2024 for the assessment year 2017-18, the ITA No.936/Bang/2024 is also quashed and the appeal of the assessee is allowed.

**9.** In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 5<sup>th</sup> Aug, 2024

**Sd/-**  
**(Soundararajan K.)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 5<sup>th</sup> Aug, 2024.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**