

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 725/JPR/2024  
निर्धारण वर्ष/Assessment Year : 2019-20

Mahendra Kumar Sharma, 21/264 Kaveri Path, Mansarover, Jaipur	बनाम Vs.	PCIT (Central) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGMPS 6792 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. R. P. Sharma, CA  
राजस्व की ओर से / Revenue by : Sh. Arvind Kumar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 21/08/2024  
उदघोषणा की तारीख / Date of Pronouncement: 29/08/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

Because the assessee aggrieved from the order of Pr. Commissioner of Income Tax (Central), Jaipur [ for short PCIT ] for the assessment year 2019-20 dated 27.03.2024. The Id. PCIT passed that order under challenge as per provisions of section 263 of the Income Tax Act, 1961 (for short "Act") while examining the assessment record of the above-named assessee. That order of

assessment was passed by the ACIT, Central Circle-03, Jaipur dated 21.09.2021 as per provisions of section 143(3) of the Income Tax Act.

2. The assessee has taken following grounds in this appeal;

*“1. In the facts and circumstances of the case and law, Ld PCIT has erred in holding the order passed u/s 143(3) dated as erroneous and prejudicial to the interest of revenue. The order passed u/s 263 is bad in law and therefore the action of Ld. PCIT is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the order passed u/s 263 and holding the order passed u/s 143(3) dated as not erroneous and prejudicial to the interest of revenue.*

*2. The assessee craves his right to add, amend, or alter any of the ground on or before the hearing.”*

3. The brief fact as culled out from the records is that a survey action u/s 133A of the Income Tax Act, 1961 was carried out on 06.02.2019 at the business premises of M/s Laxminath Infrastructure Pvt. Ltd. Churu. During the survey proceedings, various documents were found and the same was impounded as per annexure prepared during survey. The assessee e-filed his return of income on 30.08.2019, declaring total income at Rs. 45,06,840/-. During the year under consideration, the assessee has shown income from salary, house property and other source

being interest from saving bank account, FDR and income declared during the survey. The case of the assessee company was selected for scrutiny by issuing notice u/s 143(2) of the Income tax Act, 1961 on 29.09.2020 and the same was duly acknowledged by the assessee. Accordingly, notice u/s 142(1) of the Income tax Act, 1961 along with detailed questionnaire requiring certain details / information was issued and the same was duly served upon the assessee. In response to the above notice, the assessee has filed his written submission along with requisite details. After examination of the details available on record and verification of facts with reference to details filed by assessee's AR, returned income was accepted.

4. On culmination of the assessment proceedings, Id. PCIT called for the assessment record for examination. Upon examination of the records Id. PCIT noted that in the survey proceedings carried out on 06.02.2019, the assessee had admitted undisclosed income amounting to Rs. 40,00,000/- for the AY 2019-20 which has also been disclosed in return of income as undisclosed income, source of which has not been explained.

Hence the said amount was liable to be taxed u/s 69A of the Income Tax Act, 1961 r.w.s. 115BBE. However, in the assessment order u/s 143(3) passed 21.09.2021 the same was not treated accordingly and tax was calculated at normal rate only. Hence, the same has not been examined or considered while making the assessment by the AO. Therefore, it appears that the action of the AO is erroneous which caused prejudice to the interests of Revenue. In this connection a Show Cause Notice dated 07.03.2024 was issued and hearing has been provided to the assessee on 18.03.2024. In response to the assessee submitted reply on 18.03.2024. The submission of the assessee has been perused carefully by Id. PCIT and she noticed that the assessee has in the submission tried to establish that the Assessment order passed by the Assessing Officer is not erroneous, but the action now initiated is just a change of opinion hence cannot be subject to the revision u/s 263 of the Income Tax Act, 1961. She further observed that Id. AO has not applied the proper provisions of the Act, as the unexplained money was treated to be from regular income of the assessee whereas the same arose owing to the suppression of Income, the source of which had not been

explained by the assessee. Thus, Id. PCIT holds that the Assessing Officer failed to apply his mind on the material available on record and failed to invoke the applicable provisions of law for the unexplained money offered for tax during the survey. This in turn has resulted in passing of an erroneous order by the AO in the case due to non-application of mind to relevant material, an incorrect assumption of facts and an incorrect application of mind to the law which is prejudicial to the interest of the revenue. Hence liable for revision under section 263 of the Act. She also relies on Apex Court decision in the case of Malabar Industrial Limited vs. CIT 243 ITR which reads as follows:-

*“...An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principle of natural justice or without application of mind.”*

Thus, she hold that she has examined the facts available on record and have observed the position of law, the error caused by the Assessing Officer resulting in prejudice to Revenue as has been detailed in the Show Cause Notice issued to the assessee. On examination of order of the Assessing Officer makes it clear to her that Id. AO did not take a conscious decision regarding special tax u/s 115BBE on undisclosed money u/s 69A of Rs. 40,00,000/-. As

this issue is not seen to be examined at all by the AO, while passing assessment order which clearly this error caused prejudice to Revenue. Being a search/seizure case, it was essential that clarification/explanation of the addition made on account of undisclosed money of Rs. 40,00,000/- u/s 69A of the Act, recorded on the impounded documents be ascertained and examined by the Assessing Officer. The tax implication of the same has also not been examined or considered while making the assessment by the AO.

Considering all the facts and circumstances of the case and for the reasons discussed above, the assessment order dated 21.09.2021 for A.Y. 2019-20 passed by the AO was held to be erroneous in so far as it is prejudicial to the interest of the revenue for the purpose of section 263 of the Act.

5. The said order has been passed by the AO in a routine and casual manner without applying the applicable sections of the Act. The AO has not verified the details which were required to be verified under the scope of scrutiny. The order of the AO is, therefore, liable to be revised under the explanation (2) clause (b)

and clause (a) of section 263 of the Act. The assessment order is set aside to be made afresh in the light of the observation made in this order. The AO is required to make necessary verification in respect of the observations made in this order after allowing reasonable opportunity to the assessee. She further made it clear that;

“I am not disturbing the assessment that has already been made. I am only passing an order for initiation/addition on undisclosed money u/s 69A of Rs. 40,00,000/- to be charged special tax u/s 115BBE as detailed above based upon independent satisfaction of the assessing officer, who will duly consider the replies of the taxpayer.”

6. Feeling aggrieved from the above order of the PCIT passed u/s. 263 of the Act, the present appeal is filed by the assessee challenging the finding recorded thereon. Apropos to the ground so raised the Id. AR appearing on behalf of the assessee has placed their written submission which is reproduced herein below;

“That there was the survey of premises of m/s laxminath infrastructure and subsequently survey was done in the house of assessee who is the director in the company m/s Laxminath Infrastructure pvt. Ltd., officers at that time persuaded appellant to surrender a sum of rs.40,00,000 in view of buying the piece and assured him that it will be treated income of the current year. So Assessee appellant surrendered 40 lacs as income of the current year and subsequently deposited advance tax.

Learned ITO completed the scrutiny case and accepted Return Income after detailed inquiry and imposed normal tax slab on the income as per return.

After audit objection revision proceedings u/s 263 of the IT Act, learned CIT Principal set aside the assessment order without disturbing the

assessment and directed AO to change the special tax u/s 115 BBE of Income tax act.

With the above brief facts, the grounds of appeal are discussed hereunder:

GROUND OF APPEAL:

Ground No. (1) In the facts and circumstances of the case and law, Ld. PCIT has erred in holding the order passed u/s 143(3) dated 21.09.2021 as erroneous and prejudicial to the interest of revenue. The order passed u/s 263 is bad in law and therefore the action of Ld. PCIT is illegal, unjustified, arbitrary, and against the facts of the case. Relief may please be granted by quashing the order passed u/s 263 and holding the order passed u/s 143(3) dated 21.09.2021 as not erroneous and prejudicial to the interest of revenue.

Response to the notice of Id. CIT (Central) was submitted on 18.03.2024 in which categorically explained that in which circumstances assessee appellant surrendered the income and sec 69A of the income tax act is not at all applicable.(PB-1)

1. our preliminary objection is regarding initiation of proceedings u/s 263 of the IT act –

That the revisionary proceedings against the assessee appellant for the assessment year 2019-20 was initiated by Id. PCIT on the basis of audit objection. The assessee appellant applied for the inspection of the record vide letter dt. 22.05.2024 (PB-2) and vide letter dt.27.05.2024 (PB-3) an application to provide certified copy was made and same was thereafter provided to the assessee appellant. So, it is very much clear that revision proceedings were initiated on the basis of audit objection. Certified copy of Letter of DCIT (PB-4).

As per section 263 of the income tax act “. (1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Income-tax 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,”

So, the purpose of this law is that the commissioner should call the record and should examine the record of the proceeding of the AO but here it has not been done and no independent decision was taken by Id. PCIT.

It has been decided by coordinate bench in the case of Pink city Jwell house pvt. v/s PCIT (ITAT Jaipur) in Appeal no. ITA no. 63/JP/2021 that on an examination of procedural aspects of the case, including the basis of the proceedings initiated under section 263. It can be noted that the action was primarily based on the revenue audit objections which raised question about the independence and validity of the PCIT's decision.

That in the matter of JAIN CARRYING CORPORATION VS PRINCIPAL COMMISSIONER OF INCOME TAX ITAT, JODHPUR BENCH (ITA No.134/Jd/2018; Asst. yr. 2013-14) dt. 18<sup>th</sup> March 2024 it is again decided by the coordinate bench that the reason for taking the proceedings u/s263 is not an independent view of Principal CIT but it is borrowed from the C&AG, Thus the action u/s 263 is based on the audit objection – Therefore, the revision order of the PCIT is quashed.

That in the case of Ganga Acrowools Limited vs Pricipal commissioner of Income – Tax in ITA no. 196/CHD/2021 on 31.03.2022 held by THE INCOME-TAX APPELLATE TRIBUNAL CHANDIGARH "A" BENCH that The commissioner cannot exercise its power under section 263 only on the basis of audit objections and replies filed by the assessee for the audit objection are also a part of the assessment records.

That in the case of Alfa Laval AB (India) Ltd. V. CIT (IT/TP), [ITA No. 1284/Pun/2017, dt.2-11-2021] held that The process of of revision initiates only when the commissioner calls for and examine the record of any proceedings under this Act and consider that any order passed by the AO is erroneous and prejudicial to the interest of revenue. The AO recommending a revision to the commissioner has no statutory sanction. Since in the instant case revisionary order suffered from jurisdictional defect, the revision order was quashed.

That it is proved itself from the order of the Ld. PCIT(Central) that order of Ld. A.O. is not the erroneous and not prejudicial to the interests of the revenue only issue raised without disturbing the assessment order is regarding imposition of special tax rate which is not valid.

That imposition of sec 115BBE is not applicable in our case because as per ;

section 115BBE “Where the total income of an assessee, -

- (a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or
- (b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a)  
,the income-tax payable shall be the aggregate of –
- (i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and
- (ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).]”

Whereas in our case neither the income includes the income referred to in section 68, 69, 69A, 69B, 69C and 69D reflected in the return furnished u/s 139 of the income tax act NOR AO determined includes any income referred in the above mentioned sections so our humble submission is that AO imposed normal tax slab because there is no ingredients of section 115BBE of the Income Tax Act. In our computation of total income Rs 40 lacs income showed as income declared in survey.(PB-5)

During the course of Assessment proceedings, the Ld. AO was satisfied that looking into the facts and circumstances of the case and provision of the sec. 69A of the act are not applicable on the assessee therefore she did not apply the same. The satisfaction of the learned AO cannot be substituted with the view point of any other authority. The surrender was made on account of money given to different parties, out of accumulated savings of the assessee over the years but since the assessee was not able to substantiate his claim and also on the advice of survey team to buy the peace and avoid litigation, the same was admitted income of the year under consideration. Thus the money so given does not pertaining to the income of assessee but for the reasons mentioned above the same was admitted as the income of the year under consideration.

If Id. PCIT is treating this as a special tax rate case which can be said as difference of opinion and difference of opinion cannot be the basis of revisionary power.

That in our case there was no suggestion by the survey team income surrendered by the assessee is unexplained investment or unexplained expenditure as well as learned AO accepted the return income.

It is held in the case of Arun Enterprises v. Pr. CIT (2024) 193 TR (A) 573 (Del.Trib) : 2023 Tax Pub (DT) 1835 (Del-Trib) held that Amount was surrendered by assessee in order to buy peace of mind in case any discrepancy was found in the books of account but the fact of the matter is that neither AO nor Pr. CIT brought anything on record to show that there was unexplained investment or unexplained expenditure was found during the course of survey proceedings. With these facts, it could be safely concluded that surrender could be said to have been offered to cover up the discrepancies in respect of likely disallowances of claims/bogus expenses/cash payments bogus purchases relating to business income. Further, there was nothing stated in the pre amended or post amended provisions of section 115BBE that where assessee surrenders undisclosed income during search action for the relevant year, the tax rate has to be charged as per provision of section 115BBE. Therefore, applicability of the amended provisions of section prompted Pr. CIT to assume jurisdiction under section 263 was Pr. CIT highly debatable issue, and therefore, Pr. CIT wrongly assumed jurisdiction. Therefore, order passed under section 263 was set aside.

It is requested to set aside the order of Ld. PCIT passed u/s 263 of the income tax act and hold the order passed u/s 143 (3) of income tax act as not erroneous and prejudicial interest of revenue.”

7. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions;

S. No.	Particulars	Page No.
1)	Written submission	1-5
2)	PB-1 Response to PCIT(Central)	6-11
3)	PB-2 Inspection of the record vide letter dt. 22.05.2024	12
4)	PB-3 Copy of Letter to take certified copy dt. 27.05.2024	13
5)	PB-4 Certified copy of letter of DCIT	14-16
6)	PB-5 Computation of Income	17-18

7)	PB-6 Pink City Jewell house Pvt. Vs. PCIT (ITAT Jaipur)	19-66
8)	PB-7 Jain Carrying Corporation vs. Principal Commissioner of Income Tax ITAT, Jodhpur Bench	67-79

8. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the assessment has been completed by the Assessing Officer. He also submitted that the proceedings u/s 263 of the Act has been initiated merely based on internal audit objections issued (APB-14, 15 & 15).

Based on audit objections the provisions of section 263 have been initiated. Since there is no independent application of mind by Id. PCIT the proceedings initiated is bad in law. To drive home to this contention he relied upon the decision of Jodhpur Bench in the case of Jain Carrying Corporation v. PCIT in ITA No. 134/Jodh/2018. As the fact of that case and that of the assessee having similar the proceedings initiated by the Id. PCIT is required to be quashed. The Id. AR of the assessee also submitted that when the assessee has disclosed the income as his income for the year under consideration as promised before the survey team and if the assessee co-operate, he will be free from any further litigation and it will provide a mental peace to the assessee. Accordingly, the

assessee declared the income during the survey proceedings to buy the mental peace to avoid litigation and the amount the income declared during the survey proceedings was also not found fault while filling the return of income by the assessee. Thus, the Assessing Officer after scrutinizing the return submission so called for assessed the income was considered as regular and current year income of the assessee. Thus, when the Assessing Officer has applied his mind and assessed the income by taking plausible view of the matter, Id. PCIT cannot change the view taken by the Id. AO and that too to resolve the internal audit objection.

9. Per contra, the Id. DR relied upon the order of Id. PCIT which is passed after considering the submission of the assessee. The order of the PCIT is based on the detailed finding recorded in the order of Id. PCIT. The Id. DR also argued that the assessee admitted the income which is additional income and separately offered in addition to the regular income offered by the assessee. Therefore Id. DR heavily relied upon the order of Id. PCIT.

10. We have heard the rival contentions and perused the material placed on record and gone through the judicial precedent cited by the parties to drive home this contention so raised. The bench noted that in this case survey action u/s 133A of the Act was carried out on 06.02.2019 at the business premises of M/s Laxminath Infrastructure Pvt. Ltd., Churu. In that proceedings, the assessee disclosed a sum of Rs. 40,00,000/- to buy the mental peace and has duly offered that income while filing the return of income. Subsequent to filing the return of income, the case of the assessee was selected for scrutiny wherein the Id. Assessing Officer after raising the queries assessed return of income.

In the meantime, as is evident from the record that the internal audit party raised and audit objections to the levy of the tax in the case of the assessee. Therefore, Id. Assessing Officer made a proposal before Id. PCIT to initiate the provisions of section 263 of the Act vide his letter dated 30.10.2023 to charge that additional income as per provisions of section 155BBE of the Act. This shows that proposal has been sent by the Id. Assessing Officer to review of order passed by him, though a proposal sent by the Assessing Officer. The Id. PCIT has invoked the provisions of section 263 of

the Act based on that proposal so submitted by the Id. AO. Thus, as is evident that review of an order passed is not permitted and are bad in law. We get support of this view from the decision so cited by the assessee in the case of Jain Carrying Corporation v. PCIT in ITA No. 134/Jodh/2018 wherein author of the bench are the same and in that case the bench has held as under:-

“7. We have heard the rival contentions, perused the material placed on record and gone through the judicial precedent cited by both the parties to drive home their respective contentions. The bench noted the Id. PCIT has raised four issues, on four issue the Id. AO has raised the issue, the assessee submitted the reply and the Id. AO has taken a plausible view on the matter. The Id. AO taken a view based on the submission made by the assessee which the Id. PCIT merely based on the audit objection and PCIT’s observation that the view taken by the Id. AO on which the Id. PCIT is not in agreement cannot hold the order liable to be sustained. On the first issue that has been flagged by the PCIT we note that the allegation made is to justify the audit objection raised even the Id PCIT stated that he has no hesitation in holding that the AO has not examined the issue in question properly but he failed point where the Id. AO has called for the details and based on the details called for he has taken a view based on the record produced before him which merely there is audit objection the order passed after examination of the issue cannot be taken again. To drive home to this contention we take support on a decision of apex court in the case of Parashuram Pottery Works Co. Ltd Vs ITO [ 1977] 106 ITR 1 “At the same time, we have to bear in mind that the policy of law is 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”. On the second issue we note that the Id. PCIT is trying to justify the claim of the assessee with the net profit rate and the expenses incurred by the assessee and merely based on the contention that the Id. PCIT is not in agreement with the view taken by the AO the assessment cannot be hold liable to be sustained u/s. 263 of the Act. As regards the opening and closing stock we note that the Id.AO has called for the details and has examined the issue. Merely in the audit report the auditor has stated that increase / decrease has not been certified by them the order which is passed after examination of the issue cannot be a base to

again given the second inning to the Id. AO and review of the order passed after the examination of the issue is not permitted under the law. As regards the fourth issue there is no observation recorded by the Id. PCIT has simply stated that the issue does not require separate discussion. Thus, we note that on all the four issue the Id. AO has called for the details, examined the issue and the plausible view on the matter is taken. Merely there is an audit objection, adverse remark of the auditor and the Id. PCIT is not in agreement with the view of the AO the order cannot be sustained as liable to quash as the twin condition provided u/s. 263 of the Act that the order should be erroneous and prejudicial to the interest of the revenue fails and therefore, we do not agree with the finding of the Id. PCIT wherein he could not point out any mistake / error in order which is prejudicial to the interest of the revenue. The AO while framing the assessment had taken a possible view, and revenue did not demonstrate the error remain on the part of the Id. AO. In fact, when the Id. AO has conducted the required enquiry and not violated any of the conditions mentioned for revision of order as required by Explanation 2 of Section 263 of the Act, the order passed by the Assessing Officer could not be deemed to be erroneous so as to be prejudicial to the interests of the revenue and to support the view we take support on the jurisdictional Hon'ble Rajasthan High Court decision in PCIT v. Manna Trust (2022) 1 TMI 693 [Compilation 42-44] wherein it has been held that "We are broadly in agreement with the view of the Tribunal. It is well settled through a series of judgments that power under Section 263 of the Act can be exercised only when twin conditions of the order of assessing officer being erroneous and prejudicial to the interest of revenue are satisfied. The Jurisdiction of the Commissioner under Section 263 of the Act is restricted and cannot be equated with the appellate jurisdiction. The Commissioner does not sit in appeal."

8. The bench also noted from the order of the PCIT that the reasons for taking the proceeding u/s. 263 is not an independent view of the Id. PCIT but it is borrowed from the audit memo issued by the C&AG. Thus, it is undisputed that the action u/s. 263 based on the audit objection and it has been held in various case law cited by the Id. AR of the assessee holding that proceedings u/s. 263 at the instance of Revenue Audit is impermissible. The Id. AR of the assessee has relied upon the decision in the case of M/s. Grasim Industries Ltd., in ITA no. 1964/Mum/2019 wherein the co-ordinate bench while dealing with the similar set of facts held that-

"9. We hold that a possible view has been taken by the Id AO in the matter and merely because the Id PCIT is of a different view on the same issue, he cannot resort to invoke revision proceedings u/s 263 of the Act. This is only a case wherein the Id PCIT is trying to substitute his view in lieu of a possible view already taken by the Id AO on the impugned issue on the allowability of LTCL. Reliance in this regard is

placed on the decisions of Hon'ble Jurisdictional High Court in the case of Gabriel India Ltd reported in 203 ITR 108 (Bom) and in the case of Nirav Modi reported in 390 ITR 292 (Bom). It is also pertinent to note that the Special Leave Petition (SLP) preferred by the Revenue before the Hon'ble Supreme Court against the judgement of Nirav Modi was dismissed in 77 taxmann.com 15 (SC).

10. We also find that the Explanation 2 to section 263 of the Act , which was heavily relied upon by the Id DR before us, would not apply to the facts of the instant case as full enquiry was already made by the Id AO in the original assessment proceedings itself. Infact the stand of the assessee was accepted by the Id AO in the assessment proceedings and also before the Revenue Audit Party which is evident from the reply to audit objection as reproduced supra. Reliance in this regard is placed on the following decisions, the operative portion are not reproduced for the sake of brevity:- a) Decision of Co-ordinate Bench of this Tribunal in the case of Narayan Tatu Rane vs ITO reported in 70 taxmann.com 227 (Mumbai) ( Paras 19 & 20) b) Decision of Co-ordinate Bench of Delhi Tribunal in the case of Hero Honda Motors Ltd vs DCIT in ITA No. 2148/Del/2009 dated 2.2.2017 (Paras 14 to 17) 11. In view of the aforesaid elaborate observations and respectfully following the various judicial precedents relied upon hereinabove, we hold that – a) Adequate enquiries were indeed carried out by the Id AO in the original assessment proceedings and hence the Id PCIT was not justified in invoking revisionary jurisdiction u/s 263 of the Act ; I.T.A

b) A possible view has been taken by the Id AO on the issue of LTCL on the facts of the case and also by placing reliance on the available case laws on the subject and hence the Id PCIT was not justified in invoking revisionary jurisdiction u/s 263 of the Act merely because he is of a completely different view and opinion on the issue of allowability of LTCL to be carried forward to subsequent years; c) The Id AO had defended his original assessment order before the Revenue Audit Party by accepting the contentions of the assessee and by stating that there was no misrepresentation of facts by the assessee. The evidences in this regard are already on record and already reproduced elsewhere in this order. Hence it could be safely concluded that the revision proceedings u/s 263 of the Act had been apparently triggered only based on borrowed satisfaction i.e Audit Objection and not based on independent application of mind by the Id PCIT. Infact the show cause notice issued by the Id PCIT u/s 263 of the Act also uses the same language used by the Revenue Audit Party in its Audit Objection. Hence revision proceedings could not be invoked by the Id PCIT based on borrowed satisfaction. 12. Since the revision order passed by the Id PCIT u/s 263 of the Act is hereby directed to be quashed, the other arguments advanced by the Id AR on the applicability of provisions of section 170(2) of the Act and on merits of the case need not be gone into and they are left open.”

Respectfully following that decision of the co-ordinate bench and since the Id. PCIT based on the borrowed information and has not

established as to how the view taken by the Id. AO is not correct when the issue raised has already been form part of the proceeding before the Id. AO. Based on the discussion so recorded we are of the considered view that the proceeding initiated u/s. 263 is merely based on the audit objection, PCIT is not agreement with the Id. AO and the observation on the stock, in the audit report already filed by the assessee. Thus, there is clear absence of his satisfaction and there is no independent view of the Id. PCIT even on merits thus, the assessee which has been completed there cannot be the second inning to the revenue without justifying the twin condition to the order passed by the Id. AO.

9. In the light of the discussion so recorded we considered the ground raised by the assessee and quash the order of the PCIT, Bikaner. In the result the appeal of the assessee is allowed.

On being consistent with the findings so recorded in the order referred to herein above, we quash the order passed by Id. PCIT u/s 263 of the Act.

In terms of these observations, the appeal of the assessee is allowed.

Order pronounced in the open court on 29/08/2024.

Sd/-  
( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-  
( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 29/08/2024

\*Ganesh Kumar, Sr. PS

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

1. अपीलार्थी / The Appellant- Mahendra Kumar Sharma, Jaipur
2. प्रत्यर्थी / The Respondent- PCIT (Central), Jaipur

3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलिय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 725/JP/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar