

**IN THE INCOME TAX APPELLATE TRIBUNAL “PATNA” BENCH,  
VIRTUAL HEARING AT KOLKATA**

**Before  
Dr. Manish Borad, Accountant Member &  
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. Nos.322 to 329/Pat/2024  
Assessment Years: 2014-15 to 2021-22**

***Nalanda Engicon Pvt. Ltd.*** ..... ***Appellant***  
***(PAN: AACCN6360K)***

***Vs.***

***DCIT, Central Circle-2, Patna*** ..... ***Respondent***

**Appearances by:**

*Shri Siddarth Jhajharia, CA, Shri Sunil Kr. Dubey, Advocate & Shri Aman Kr. Dubey, Advocate appeared for Appellant.  
Shri Rinku Singh, CIT, DR appeared for Respondent.*

Date of concluding the hearing : 24.07.2024

Date of pronouncing the order : 12.09.2024

**ORDER**

**Per Bench :**

The captioned appeals filed at the instance of the assessee pertaining to the Assessment Years (in short “AY”) 2014-15 to 2021-22 are directed against the separate revisionary orders passed u/s 263 of the Income Tax Act, 1961 (in short the “Act”) by Ld. Pr. Commissioner of Income-tax (Appeal), (Central), Patna [in short ld. “Pr.CIT”] dated 31.01.2024.

2. Since facts are almost identical and grounds are common, we dispose of all the above appeals by this consolidated order for the sake of brevity and convenience. With the consent of both the sides, we take ITA No. 322/Pat/2024 for AY 2014-15 as the lead case and our

decision shall apply *mutatis mutandis* in respect of all the other appeals.

3. The original Grounds of appeal raised by the assessee for AY 2014-15 are reproduced as under:

*“1. For that the grounds of appeal hereto are all without prejudice to each other.*

*2. For that on the fact and in circumstances of the case the order passed by the ld. Principal Commissioner of Income-tax (Central), Patna (here-in- after known as "the Pr. CIT") is bad on facts and in law inter-alia being based entirely on mere suspicion, surmises and conjectures.*

*3. For that on the fact and in circumstances of the case, the revision of order under section 263 of the Income-Tax Act, 1961 (hereinafter referred as "the Act") by Pr. CIT of the order of assessment passed by the. Ld. Deputy Commissioner of Income Tax, Central Circle - 2, Patna (hereinafter referred as "Ld. AO") under section 153A read with section 143(3) of the Act is in complete violation and disregard of the law and on facts also.*

*4. For that on the fact and in circumstances of the case the Pr. CIT was not justified in initiating proceedings u/s 263 of the Tax Act without appreciating the fact that the order passed by the ld. AO was neither erroneous nor prejudicial to interests of the revenue and therefore, the proceeding are bad in law.*

*5. For that on the fact and in circumstances of the case the order passed u/s 263 of the Act, by the Pr. CIT is grossly arbitrary and bad in law in as much as the Order under the section 153A read with section 143(3) of the Act in itself is void ab initio for the want of proper order under the provisions of section 127 of the Act.*

*6. For that on the facts and in circumstances of the case, the impugned order under the section 263 of the Act is bad in law as the order of the Ld. Assessing Officer u/s 153A/143(3) in itself is beyond the period of limitation prescribed under the section 127 of the Act from National e-Assessment Centre to the Ld. Assessing officer.*

*7. For that on the fact and in circumstances of the case, the order of the Pr. CIT is illegal and bad in law inasmuch as the order of the Ld. Assessing Officer under the section 153A/143(3) of the Act in itself is beyond the period of limitation prescribed under the section 153A of the Act.*

8. For that on the fact and in circumstances of the case, the initiation of the proceedings by the Ld. Assessing Officer for the relevant assessment year is beyond the period of six years as prescribed under the section 153A in the absence of escapement of income of over and above 50 lakhs as the ground of Rs. 8,26,,46,443/- being an unexplained expenditure for the relevant year shall not find merit in the legal context wherein the expenses stands immaterial if the net profit ratio has been maintained to be minimum 6% of the total turnover; and thus making the order under the section 263 illegal and invalid.

9. For that on the fact and in circumstances of the case, since the appellant being a civil contractor has shown a profit of 6.59% of the total turnover, the unexplained expenditure of Rs. 8,26,46,443/- shall not be a ground of initiating the proceeding under the section 153A beyond the period of six years, thereby making the order under section 153A/143(3) as well as order under the section 263 invalid, illegal and arbitrary.

10. For that on the fact and in circumstances of the case the Pr. CIT was not justified rather grossly erred in not adjudicating the issues involved in the proceeding u/s. 263 of the Act on merit when all the material facts and evidences relevant to the assessment were on record at the time of hearing.

11. For that in the fact and in circumstances of the case the Pr. CIT has erred in adjudicating the issues without considering the facts that the details pertaining to the cash payment of Rs.40,000/- gathered vide register KK-03 from shop No. 14 and 15 was already sought by the Ld. Assessing Officer vide point no. 12 of the notice under the section 142(1) of the Act.

12. For that in the fact and in circumstances of the case the Pr. CIT has erred in adjudicating the issues without considering the facts that the details pertaining to the cash receipt and cash payment gathered vide NPT - 22 an NPT - 23 has already been enquired and verified by the Ld. Assessing Officer vide point 14 the notice under the section 142(1) of the Act.

13. For that on the facts and in circumstances of the case, the Ld. Pr. CIT erred reopening the proceeding under the section 263 of the Act on the grounds of lack of enquiry into the expenditure and payments of the assessee when the Assessee has already reported a profit of 6.59% of the total turnover more than the limit of 6% adjudicated by the Hon'ble High Court of Judicature at Patna in the case of Prasad Constructions and Company td. Vs. Commissioner of Income Tax.

14. For that on the facts and in circumstances of the case, the order of the Pr. CIT under the section 263 is invalid and arbitrary as the enquiry

*pertaining to the trade payables of Rs. 48,82,334/- was already done by the Ld. Assessing Officer vide the point No. 13 of the notice issued under the section 142(1) of the Act.*

*15. For that on the fact and in circumstances of the case, the Pr. CIT has erred in applying the sub-section (a) and (b) of the explanation - 2 of the section 263 of the Act as the order of assessment under the section 153A1143(3) of the Act was passed by the Ld. Assessing Officer after making due inquiries and verification as also evident from the notice under the section 142(1) of the Act.*

*16. For that on the fact and in circumstances of the case the Pr. CIT has erred in stating the order of the ld. AO as "erroneous in so far as it was prejudicial to the interest of the Revenue" is arbitrary and bad in law.*

*17. For that on the fact and in circumstances of the case the setting aside of order passed by the Ld. AO with a direction to pass a fresh order is wholly arbitrary, unwarranted, wrong and illegal at any rate are excessive.*

*18. For that the observations made by the Pr. CIT in the order of revision under the section 263 is wholly biased, unwarranted and uncalled for and are even without any material available on record and particularly because the same has been made without considering the materials available on record.*

*19. For that on the facts and in Circumstances of the case the officer has erred in considering irrelevant materials, which has vitiated the order of Assessment.*

*20. For that the impugned order is misconceived and arbitrary in nature.*

*21. For that the appellant prays to add, amend, modify, and any ground, if necessarily.*

*22. For that other grounds, if any, will be urged at the time of hearing."*

4. Ld. Counsel for the assessee prayed before the bench that along with the original grounds of appeal the additional grounds of appeal may be admitted, as the same goes to the root of the matter. Though Ld. DR opposed, we considering the judicial precedence that legal issues can be raised at any stage of the proceeding, admit the additional ground for adjudication.

5. The additional Grounds of appeal raised by the assessee in AY 2014-15 are reproduced as under:

*“1. That on the Facts and on the circumstances of the case, the dated 31st March, 2024, passed by the PCIT (Central) Patna, by wrongly and illegally invoking the provisions of section 263 of the Act, is bad in law, illegal, ab initio void and the order is liable to be cancelled/set aside/quashed.*

*2. That on the Facts and on the circumstances of the case, the PCIT (Central) Patna, had failed to understand that since the assessment order had been framed under section 153A, after obtaining necessary approval from the Additional Commissioner of Income Tax (ACIT) under section 153D, such assessment order cannot be revised without revising the directions given by the ACIT under section 153D of the Act.*

*Accordingly, following the principles as laid down by the Jurisdiction Tribunal at Patna, the order passed by the PCIT (Central) Patna, by wrongly and illegally invoking the provisions of section 263 of the Act, is bad in law, illegal, ab initio void and the order is liable to be cancelled I set aside/quashed.*

*3. Without prejudice to the aforesaid grounds, and that on the Facts and on the circumstances of the case, the PCIT (Central) Patna had erred in invoking the revisional power under section 263 without appreciating and considering that the AO while framing the assessment under section 153A had conducted detailed enquiry by issuing questionnaires to the Appellant to which the compliance had been made by the Appellant by way of filing written submissions and all other relevant evidences addressing all the issues raised in the questionnaires issued under section 142(1).*

*Accordingly it is humbly submitted that once the Assessing Officer has carried out sufficient enquiry and taken one possible view in light of settled judicial pronouncements, the PCIT (Central) Patna cannot assume jurisdiction under section 263.*

*4. Without prejudice to the aforesaid Grounds, and that on the Facts and on the circumstances of the case the PCIT (Central) Patna had relied upon certain case laws which according to the Appellant had no relevance and had been referred to in the order passed under section 263 of the Act, on a misconception of law and without proper application of mind to the facts and to the circumstances of the case and the Appellant craves leave to distinguish the said case laws before or during the hearing of the Appeal.*

5. *That the order passed by DCITI ACIT, Central Circle - 2, Patna u/s 153A itself was bad in law due to absence of Document Identification Number (DIN) and hence subsequent order u/s 263 is also bad in law and it may be held accordingly.*

6. *That on the Facts and on the circumstances of the case, the appellant craves leave to alter/amend/rescind/prefer additional grounds, at the time of hearing of the Appeal or before.”*

6. Brief facts of the case are that the assessee is a private limited company engaged in the business of construction and mainly takes government contracts and does construction works of making roads, water tanks, over bridges etc. Assessee has filed regular return of income u/s. 139 of the Act on 26.12.2015 declaring income of Rs.1,24,21,610/-. Search and seizure operation u/s. 132 of the Act were carried out at the business premises of the assessee company along with residential premises of director of the company. Subsequent to search, notice u/s. 153A of the Act issued on 25.11.2021. In compliance, the assessee furnished the return of income on 12.02.2022 u/s. 153A of the Act on ITBA portal declaring income of Rs.1,24,21,610/- which was the same income as was declared in the original return filed u/s. 139 of the Act on 26.12.2015. Thereafter, detailed questionnaire attached to the notice u/s. 142(1) of the Act was also issued and duly served. Various details called for by the Ld. AO from time to time to which necessary compliance was made by the assessee to the satisfaction of the AO, who finally accepted the returned income as assessed income.

7. Thereafter, Ld. Pr. CIT vested with revisionary powers u/s. 263 of the Act called for the assessment records and after going through the details available in the assessment records *prima facie* came to a conclusion that the assessment order is erroneous in so far as prejudicial to the interest of revenue and issued a show cause notice

u/s. 263 of the Act dated 15.06.2023 show causing the assessee to reply as to why the assessment order should not be treated as erroneous in so far as prejudicial to the interest of revenue as the AO has not examined the seized material before concluding the assessment. The show cause notice issued by the Ld. Pr. CIT runs in or around 40 pages which has been reproduced in para 3 of the impugned order. In the said show cause notice Ld. Pr. CIT gave reference to certain contract receipts, TDS deducted thereon, register marked as NPT-02, details about cash receipt from different persons referred in seized material NPT-02. Reference also made to seized document BKC-03, MCT-10, MCT-13, NPT-01. Ld. Pr. CIT also asked the assessee to explain about the page wise description of receipt and payment written in the seized material marked NPT-02 along with corroborative evidence. Assessee duly replied to the said show cause on 18.12.2023 stating that the queries raised in the show cause notice u/s. 263 of the Act have already been raised and complied in the assessment proceeding. It was also submitted by the assessee that the assessment was passed after thorough enquiry and investigation conducted by the Ld. AO and after considering all the relevant documents, statement and explanation provided during the assessment proceedings. It was also stated that the assessee has disclosed 6.07% net profit before tax on the gross turnover during the year under consideration and that the assessee has fully cooperated and produced all the relevant documents, statement and explanation required for the proper and fair assessment during the assessment proceedings. However, Ld. Pr. CIT was of the view that the assessee has chosen to reply to the show cause notice in a perfunctory manner and, therefore, it can be inferred that assessee company does not have any necessary evidence /explanation for the issues raised in the notice

u/s. 263 of the Act. Thereafter, Ld. Pr. CIT refers certain judicial precedents and finally has set aside the assessment order dated 30.03.2022 observing as under:

*“9. In view of the discussions above, it is clear that there is non-application of mind on the part of the Assessing officer inasmuch as the necessary verification of facts/enquiries which should have been made, have not been made, making the order erroneous and prejudicial to interest of revenue within the meaning of section 263 read with Clause (a) of Explanation-21 thereunder. I, therefore, under the powers conferred u/s. 263 of the Income Tax Act, 1961, hereby set aside the order passed by Assessing Officer u/s. 153A/143(3) for AY 2015-16 with direction to pass fresh order after conducting proper enquiries, including third party enquiries and investigations into the claim of the assessee company and close examination of seized material available with him, after providing opportunity to the assessee also.”*

8. Ld. Counsel for the assessee vehemently argued referring to the following written submissions:

“1. The AO’s order has been passed after having been called for various details and AO having examined the details / documents / evidences and had applied his mind and has passed the order in such respect. Accordingly, the AO’s order cannot be treated as “erroneous” and “prejudicial to the interest of revenue”. Particularly, in the light of the fact that the AO had examined and there cannot be possible view on the material available with him. Indeed explanation 2 to sec 263 can also not be invoked since the AO had verified the relevant details / documents / evidences and hence there is no lack of enquiry in such respect.

2. The AO in the impugned order u/s 153A/ 143(3) for A.Ys 2014-15 to 2021-22 and u/s 143(3) for A.Y 2022-23 has been passed without mentioning of Document Identification No. (DIN) and hence the underlined order itself is bad in law and hence the subsequent order u/s 263 also cannot be held as valid in law.

3. The order u/s 153A having been passed after approval of Addl. CIT u/s 153D and Ld.PCIT cannot revise the impugned order without revising the approval u/s 153D and hence the Ld. PCIT’s order is bad in law.

4. Ld PCIT did to conduct any verification on his own and has merely remanded the matter to the AO and hence the Ld. CIT(A)’s order in such respect is bad in law.

**A. AO's order neither "erroneous" nor "prejudicial".**

a) Ld. PCIT set aside order passed u/s 153A/ 143(3) for aforementioned years treating the same as "erroneous" and "prejudicial" and thereby PCIT set aside the said order so passed by the AO. This is to submit that as will appear from the assessment order, the assessment had been completed only, after the AO had obtained all the necessary details & particulars and only after due consideration of the entire matter and only after fully satisfying himself and hence provisions of sec. 263 did not validly lie in the facts and circumstances of this case and in this connection your kind attention is drawn to the principles enunciated in the following cases and in this connection your kind attention is also drawn to the decision in the case of Manmal Jain v. ITO (10) 39 SOT 5 (URO) and also to the decision of Delhi High Court in the case of CIT v. Eicher Ltd. (07) 294 ITR 310 and also to the decisions reported in 108/ 116 TTJ 225 (Ahd.-B)/(08) 22 SOT 68 (Bom) and (1984) 31 ITD 52 (SB-Delhi) holding that in an assessment made u/s 143(3) it should be presumed that the assessment u/s 143(3) had been made after proper application of mind and also holding that the assessee has no control over the way, the assessment is drafted by the AO and generally issues which are accepted by the AO do not find place in the assessment order. Attention is also drawn to principles settled in following judicial pronouncements as well:

- b) CIT vs. Ratlam Coal Ash Co., (1988) 171 ITR 141 (MP) – revisional order was held not proper where the Tribunal took the view that in the facts of the case it could not be held that the Income-tax Officer had made the assessment without making proper inquiries.
- c) CIT vs. Shri Govindram Seksariya Charity Trust, (1987) 166 ITR 580 (MP)
- d) Venkatakrisna Rice Co. vs. CIT, (1987) 163 ITR 129 (Mad)
- e) CIT vs. Steller Investment Ltd. (1991) 59 Taxman 568, 569-70 (Del)
- f) CIT vs. J. P. GOEL (2001) 161 TAXMANN.COM 400 (CAL)

Commissioner noticing order passed by the assessing officer prejudicial to the interests of Revenue since the assessing officer had not fully verified the facts – Commissioner noticing that there being a search at the premises of the assessee certain amount of cash, gold and jewellery seized not enquired by the assessing officer by investigating the fact- Assessee pleading that assessing officer had made proper enquiries and passed the order thereafter only – Held, this being a question of fact and the material being before the assessing officer, the assessing officer made proper enquiries- Order not prejudicial to the interests of the Revenue- CIT not justified in canceling the order.

- g) In G.M. Mittal Stainless Steel (P) Ltd. (2003) 179 CTR (SC) 553 : (2003) 263 ITR 255 (SC)
- h) Usha Martin Industries Ltd. vs. DC (03) 86 ITD 261 -It was held by the Kolkata , I T A T,
- i) BLUE DART EXPRESS LTD. VS JC (00) 75 ITD 414
- j) The Gujarat High Court rejected the Departmental reference in CIT vs. Mehsana District Co-op. Milk Producers Union Ltd. (2003) 184 CTR (Guj.) 608 : (2003) 263 ITR 645 (Guj.).

In this connection reference may also kindly be made to the decision of Bombay High Court in the case of CIT v. Gabriel India Ltd. (1993) 203 ITR 108.

- k) The Supreme Court in Malabar Industrial Co. Ltd. vs. CIT (2000) 15 CTR (SC) 1: (2000) 243 ITR 83 (SC) has clearly laid down that section 263 makes it clear" that the prerequisite to the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income-tax Officer is erroneous insofar as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent-if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue-recourse cannot be had to section 263(1) of the Act.

There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. 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 principles of natural justice or without application of mind.

The phrase 'prejudicial to the interests of the Revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue, unless the view taken by the Income-tax Officer is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue."

l) Guwahati High Court in the case of Smt. Lila Chowdhury Vs. CIT [2008] 167 Taxman 1 ( paras 13 & 14 ).

m) In this connection your kind attention is drawn to the principles enunciated in the following cases and in view of the principles enunciated and in view of the fact that the assessment had been made after obtaining all the details and particulars, provisions of sec.263 were not at all applicable in this case.

a) *Rajiv Agnihotri v. CIT (09) 23 DTR 476 (Delhi – ITAT)*

b) *Kulbir Singh v. AC (09) 24 DTR 421 (Agra TM)*

c) *CIT v. Ashis Rajpal (09) 180 Taxmann 623 (Delhi)/(09) 23 DTR 266 (Del)*

d) *S.L.P dismissed – CIT v. Bhagwan Gupta (09) 313 ITR 27 (St)*

e) *CIT v. R. K. Construction Co. (09) 313 ITR 65 (Gujrat)*

f) *Amrik Singh v. AC (10) 36 DTR 111 (Chd. – A Bench)*

g) *Puranlal Agencies v. AC (10) 131 TTJ 78 (Nagpur Bench)*

h) *Essar Inv. Ltd. v. DC (07) 16 SOT 119 (Mum.)*

n) Your kind attention, in this regard is also drawn to the principles enunciated in the following cases in accordance with which also and in view of the facts and circumstances as stated above in this case no valid proceedings u/s 263 legally lied in this case.

a) *CIT v. Anil Kumar Sharma (2011) 335 ITR 83 (Delhi)*

b) *CIT v. Sunbeam Auto Ltd. (2011) 332 ITR 167 (Delhi)*

Moreover, as stated above and in view of the facts and circumstances and in view of the decisions of different Courts of India including Apex Court and other Benches of I.T.A.T. it can be very well said that since the AO has taken one of the possible view and in view of the facts and in the circumstances as discussed above, it cannot be said that the AO had taken any impossible view and rather the AO had rightly and correctly taken a possible view and hence also provisions of section 263 were not at all applicable and in this connection and in addition to the case laws discussed above your kind attention is also further drawn to the principles decided in the following cases:

(a) *CIT Vs. Sak Soft Limited [2008] 205 Taxation 148 (Mad.)*

(b) *M/s. P.N. Writer & Co. Vs. Addl. CIT (Mum.) [2006] 7 SOT 346*

(c) *Bagaria Vegetable Products Ltd. Vs. Jt. CIT (Pune)(TM) [2007] 106 ITD 105*

- (d) *Indian Shaving Products Ltd. Vs. Addl. CIT [2007] 161 Taxman 166*
- (e) *Pargat Singh Vs. ITO ITA No. 1111 to 1114.Chandi/2004 Assessment Years 1996-97 to 1999 – 2000 – [2006] 191 Taxation 192 (Chd. ITAT)*
- (f) *Mrs. Khatiza S. Oomerbhoy Vs. ITO (Mum.) [2006] 100 ITD 173.*
- (g) *M/s. Balaram Manmani Vs. Asstt. CIT (Lucknow) [2006] 7 SOT 368.*
- (h) *Zyma Laboratories Ltd. Vs. Addl. CIT (Mum.) [2006] 7 SOT 164.*
- (i) *Deoniti Prasad Singh v. CIT (1947) 15 ITR 165 (Pat) : TC 15R. 1583 and C.T. Narayanan Chettiar v. CIT (1966) 60 ITR 690 (Mad) : TC 15R. 1397.*
- (j) *CIT v. Nirma Chemical Works (P) Ltd. (09) 183 Taxmann 183 (Gujrat)*
- (k) *Grashim Industries Ltd. v. CIT(10) 321 ITR 92 (Bom)*
- (l) *CIT v. R. K. Construction (09) 313 ITR 65 (Guj)*
- (m) *Sidh International v CIT (09) 122 TTJ 557 (Ahd)*
- (n) *Ramesh P. Modi v. CIT (09) 122 TTJ 566 (Ahd)*
- (o) *CIT v. Max India Ltd. (04) 268 ITR 128 (P&H)*

**B. Even invocation of Explanation 2 to sec. 263 is incorrect since AO had made detailed enquiry.**

Ld. PCIT did not conduct any verification of his own and also invoked the provisions of sec. 263 read with Explanation to Sec. 263 without appreciating the fact AO has made detailed and necessary enquiries in respect of all the documents/ evidences so found during the impugned search proceedings u/s 132 (1) and after considering all such details / explanation/ evidences so furnished by appellant AO has taken a possible view in the matter.

**For illustration**

a) In A.Ys 2014-15, 2015-16, 2016-17, 2017-18 & 2018-19, Ld. AO has raised specific query regarding sundry creditors and indeed AO raised query vide notice u/s 142(1) dt. 25.1.2022 (at Q. No. 16) and also made enquiry in respect of purchases (at Q. No.4) of such notice. Appellant vide letter dt. 10.2.2022 responded not only on purchases but also on sundry creditors (with name and address of such vendors). Such purchases itself have not been challenged by Ld. CIT question of invoking provisions

of sec. 263 in respect of sundry creditors does not arise. Hence Ld. CIT's action in such respect is bad in law.

b) In respect of unsecured loans in A.Ys 2016-17, 2017-18 & 2018-19, Ld AO had raised query vide notice u/s 142(1) dt. 25.1.2022 (at Q. No.14) and appellant vide its response dt. 10.2.2022 duly furnished all such details / evidences along with bank statement etc. Indeed majority part of such loan was repaid also and such fact was duly observed and recorded by AO in the order sheet.

Hence Ld. CIT's action in such respect is bad in law.

c) As regards the various seized documents [i.e. NPT-1 to NPT-27 and also MCT-02, MCT-04, MCT-05, MCT-11, MCT-15, MCT-1'6 DKC-01 to 05 etc.] attention is drawn to following chart wherefrom it can be seen that Ld. AO has raised specific query in respect of such documents for such year and since PCIT's contention in such respect is without even conducting basic enquiries. Such documents and details are as follows :

F.Y.	Notice u/s 142(1) dt. 28.1.2022 & 142(1) dt. 4.2.2022	Response dt. 25.2.2022 & 4.3.2022
2014-15	NPT-22 & 23	Yes
2015-16	NPT-02	Yes
2016-17	NPT-04 & 08	Yes
2017-18	NPT 03 & 05	Yes
2018-19	NPT-06	Yes
2019-20	MCT-02,04, 11, 12, 14, 15, 16, NPT-10, 20, 24, 25, 26, 27, DKC 05	Yes
2020-21	MCT-04, 05, 11, 14, 15, 16, NPT-10, 20, 24, 25, 26, 27, DKC -02 to 05	Yes
2021-22	MCT-02, NPT-01, 02, 03, 11-18, 20, 25, 27	Yes

[Copies of all notices issued by AO and responses filed by appellant are placed in paper book Vol. 1 to 8] year wise.

Ld. AO after having made such enquiries and having obtained all the details has taken "possible" view in the matter and hence the Ld. AO's order cannot be held as "erroneous" or "prejudicial to revenue" in any manner. Even invocation of Explan. 2 to sec. 263 by AO is bad in law since there is no "lack of enquiry" by Ld. AO and for which reliance is placed on following judgments -

a) *Sri Narayan Tatu Rane v ITO – ITA 2690/ Mum/2016 dt. 6.5.2016 [70 taxmann.com 227 (Mum.)]*

**b) Arun Kumar Garg HUF v. PCIT – ITA 3391/ Del/ 18 dt. 8.1.2019**

**c) Rajgul Credit Invest (P) Ltd. V. PCIT – ITA 2519/Del/ 2019 dt. 19.9.2019**

**d) Kems Services Pvt. Ltd. v. PCIT – ITA 120,121 & 122/Pat/2017 dt. 22.3.2024**

**e) Amira Pure Foods (P) Ltd. v. PCIT – ITA 3205/Del/2017 dt. 29.11.2017**

**C. 263 Notice have been issued without revising the order the approval under sec. 153D.**

**Reliance is placed on the following judicial pronouncements:**

**i. Smt. Abha Bansal v. Principal Commissioner of Income-tax [2021] 132 taxmann.com 231 (Delhi - Trib.)–**

"9.4 It is evident from the plain reading of the \*— aforesaid Explanation that an Order passed on or before or after 1 st Day of June, 1988 by the A.O. shall include (/) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A; (if) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or ' Commissioner authorised by the Board in this behalf under section 120. It may be noted that Order of assessment passed with the approval of JOT under section 153D of the I.T. Act, 1961 could not be revised under section 263 of the I.T. Act, 1961. The Ld. D.R. has, however, relied upon the Order of ITAT, Panaji Bench, but, has not explained whether the Judgment of Hon'ble Allahabad High Court in the case of Dr. Ashok Kumar (supra) or different Benches of the Tribunal have been considered in this case by the Panaji Bench. It is not decided in this case that assessment order cannot be revised without revising the approval under section 153D of the I.T. Act and Explanation 1 to section 263 of the I.T. Act has also not been considered. Therefore, this decision relied upon by the Ld. D.R. would not apply to this case. Further the Judgment in the case of Param Transport (P.) Ltd. (supra), of Hon'ble Chhattisgarh High Court (supra) is not with regard to approval obtained under section 153D of the I.T. Act because in this case it was held that revisional power under section 263 of the I.T. Act is applicable to assessments under search and seizure. However, it is not explained by the Ld. D.R. whether in this case the approval under section 153D have been revised by the Learned PCIT. It may also be noted that it is well settled Law that if two views are possible, then the view which is in favour of the assessee should be made applicable. We rely upon Judgment of Hon'ble Supreme Court in the case of CITv. Vegetable Products Ltd. R9731 88 ITR 192. It may also be noted here that the

Hon'ble Allahabad High Court is one of the jurisdictional High Court of Delhi Bench, therefore, preference shall have to be given to the Judgment of the Hon'ble Allahabad High Court as reproduced above. In the totality of the facts and circumstances of the case and following the decisions referred to above, we are of the view that the Learned PCIT was not having jurisdiction to proceed under section 263 of the I.T. Act, 1961 in the matter in issue and as such the Order passed by the Learned PCIT is nullity and void ab initio. We therefore, decide this issue in favour of the assessee.

ii) **Surendra L. HeeraNandani v. Pr.CIT [IT Appeal No.3226/Mum./2017 etc., date. 14-2-2018]** 2

8. Since in the instant case also the Assessing Officer has passed the order after obtaining necessary approval from Addl. CIT u/s.153D of the I.T. Act, therefore respectfully following the above-mentioned decisions of the Coordinate Benches of the Tribunal we are of the considered opinion that the CIT has no power to revise the order u/s.263 of the I.T. Act in the instant case since the same has been passed with the approval of the Addl. CIT U/S.153D of the I.T. Act. We respectfully following the decision of ACIT Vs. Dr. Ashok Kumar, ITA 192 of 2000. We find that in the instant case the original approval 25 ITA No3226- 3232.M.17 A.Y.2008 09 to 2014-15 was granted by Addl. CIT and this assessment order is cannot be revise without approval of Add. CIT.

iii) **Dhariwal Industries Ltd. v. CIT [IT Appeal Nos. 1108 to 1113 (Pune) of 2014 dated 23-12-2016]**

9. Referring to the decision of the Hyderabad Bench of the Tribunal in the case of M/s. Trinity Infra Ventures Ltd. Vs. DCIT vide ITA Nos. 584 to 589/H/2015 order dated 04-12- 2015 for A.Yrs. 2005- 06 to 2010-11 he submitted that the Tribunal in the said decision, following various decisions including the decision of Hon'ble Allahabad High Court in the case of CIT Vs. Dr. Ashok Kumar vide Income Tax Appeal No. 192/2000 order dated 06-08-2012, has held that assessment order approved by the Addl.CIT U/S.153D cannot be subjected to revise u/s.263 of the I.T. Act. We have considered the rival arguments made by both the sides, perused the orders of the AO and the Ld.CIT and the paper book filed on behalf of the assessee.

14. We find merit in the above submission of the Ld. Counsel for the assessee. We find the Lucknow Bench of the Tribunal in the case of MehtabAlam Vs. ACIT vide ITA Nos.288 to 294/Lkw/2014 order dated 18-11-2014 while deciding an identical issue has observed as under.

14.1 We find the Hyderabad Bench of the Tribunal in the case of CH. Krishna Murthy Vs. ACIT vide ITA No.766/Hyd/2012 order dated 13-02- 2015 following the decision of the Lucknow Bench of the Tribunal in the case of MehtabAlam (Supra) held that

CIT is not justified in assuming jurisdiction u/s.263 when the order has been passed in terms of section 153D of the Act.

14.2 We find the Hyderabad Bench of the Tribunal in the case of M/s. Trinity Infra Ventures Ltd. (Supra) had an occasion to decide an identical issue and it held that the assessment order approved by the Addl. CIT U/S.153D cannot be subject to revision u/s.263 of the I.T. Act. iv. Trinity Infraventures Ltd. v. Dy. CIT [IT Appeal Nos. 584-589 (Hyd.) of 2015, dated 4-12-2015]

**(iv) The Patna Bench of the ITAT in Gyan Infrabuild (P) Ltd. v. PCIT held that**

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“.....5.4. The Ld. Counsel for the assessee has further submitted that the assessment under section 143(3) read with section 153C was passed after getting approval of Addl. CIT under section 153D of the I.T. Act and therefore such an assessment cannot be revised without revising the directions of the Addl. CIT under section 153D of the I.T. Act. The Ld. Counsel for the assessee, has relied upon the decisions of this Tribunal in the case of Ch. Krishna Murthy vs. ACIT, C.C. 3, Hyderabad in ITA No. 766/Hyd/2012 dated 13.02.2015 and also the decision of Lucknow Bench of ITAT in the case of Mehtab Alam 288/Luck/2014 dated 18.11.2014 in support of this contention. He has also placed reliance upon the decision of Hon'ble Allahabad High Court in the case of CIT vs. Dr. Ashok Kumar in I.T. Appeal No. 192 of 2000 wherein it has been held that the assessment order approved by the Addl. CIT under section 153D, cannot be subjected to revision under section 263 of the I.T. Act. In view of the above decision also, we hold that the revision order under section 263 of the I.T. Act is not sustainable.

21. From going through the above decisions, wherein it has been consistently held that without revising the approval u/s 153D of the Act, the ld. Pr. CIT cannot revise the assessment order u/s 153A of the Act. Even in case of Surendra L. HeeraNandani (supra) it was held that ld. Pr. CIT has no power to revise the order u/s 263 of the Act since the same has been passed with the approval of the Addl. CIT u/s 153D of the Act.

22. Therefore, in the light of the above decisions, so far as the first limb of legal argument of the ld. Sr. Counsel for the assessee is concerned, we find merit that ld. Pr. CIT erred in assuming jurisdiction u/s 263 of the Act by revising order u/s 153A r.w.s. 143(3) of the Act without considering that prior approval already accorded to ld. Assessing Officer u/s 153D of the Act and secondly when orders u/s 153A of the Act has been passed after receiving approval u/s 153D of the Act, Ld. PCIT erred in revising order u/s 153A of the Act without first revising the order u/s 153D of the Act as which means that no defect has been observed by ld. Pr. CIT in approval u/s 153D of the Thus the action of the ld. Pr. CIT assuming jurisdiction u/s 263 of the Act

cannot be held to be tenable, the impugned proceedings deserves to be quashed on this grounds itself.....”

**[2024] 162 taxmann.com 664 (Patna - Trib.) IN THE ITAT, PATNA Gyan Infrabuild (P.) Ltd. v. Principal Commissioner of Income-tax SONJOY SARMA, JUDICIAL MEMBER AND DR. MANISH BORAD, ACCOUNTANT MEMBER IT APPEAL NOS. 175 TO 178 (PAT.) OF 2023 [ASSESSMENT YEARS : 2015-16 TO 2018-19] MAY 13, 2024**

**Section 153D, read with section 263, of the Income-tax Act, 1961 - Search and seizure - Prior approval necessary for assessment (Revision) - Assessment years 2015-16 to 2018-19 - Whether when there is an approval under section 153D, revisionary power under section 263 cannot be exercised - Held, yes - Whether even otherwise, without revising order under section 153D, and finding them to be erroneous and prejudicial to interest of revenue, revisionary powers cannot be invoked for assessment order framed under section 153A/143(3) after getting approval under section 153D - Held, yes [Para 32] [In favour of assessee]**

Section 263, read with sections 153A and 143, of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interest of revenue (Scope of provision) - Assessment years 2015-16 to 2018-19 - Whether when Assessing Officer had conducted detailed enquiry, examined seized records, made necessary observations in assessment order, referred to various statements filed by assessee and having taken one of legally permissible view, revisionary powers could not be exercised just on ground that adequate enquiry had not been done - Held, yes - Whether revisionary proceedings could not be held to be justified unless Principal Commissioner had carried out independent enquiry specifically dealing with details in his possession, for issues raised in showcause notice under section 263 - Held, yes - Whether where Assessing Officer, based on his observations and examination of records had made addition in hands of another assessee, Principal Commissioner without revising assessment order of other assessee, which had been framed by same Assessing Officer could not revise assessment order in case of assessee and direct to make additions as same would tantamount to double addition - Held, yes - Whether therefore, as order of Assessing Officer was neither erroneous nor prejudicial to interest of revenue, there was no scope for Principal Commissioner to revisit order of Assessing Officer - Held, yes - Whether therefore, impugned order under section 263 was to be quashed and assessment order framed under sections 153A/143(3) was to be restored - Held, yes [Paras 32 and 33] [In favour of assessee]

An order of assessment passed under section 153A read with section 143(3) after getting an approval of Jt. Commissioner under section 153D could not be revised under section 263 [2024] 162 taxmann.com 48 (Madhya Pradesh) HIGH COURT OF MADHYA PRADESH Principal Commissioner of Income-tax v. Prakhar Developers (P.) Ltd.

“.....7.. Ms. Veena Mandlik, learned counsel for the appellant submits that the assessee made a cash payment for purchase of the land in violation of Rule 6DD(g) r/w 40A(3) of the Act as the land was held by him as stock in trade for the company, therefore, there was a prejudice to the interest of the Revenue. Hence, this appeal is liable to be admitted on the aforesaid proposed substantial questions of law. 07. Learned counsel for the appellant failed to answer the query made by this Court whether order passed by the Pune Bench in the case of *RamamoorthyVasudevan (supra)* was challenged before the High Court or Supreme Court on the issue of jurisdiction under section263 of the Act. Learned counsel submits that she could not lay her hands any order / judgment passed by the High Court as well as by the Supreme Court on this issue. In the case of *RamamoorthyVasudevan (supra)*, in a similar facts and circumstances, reliance has been placed on judgments delivered by the Pune Bench of Tribunal in the case of *Dhariwal Industries Ltd. v. CIT* [IT Appeal Nos.1108 to 1113/PUN/2014], Lucknow Bench in the case of *MehtabAlam v. ACIT* [IT Appeal Nos.288 to 294/Lkw/2014], Hyderabad Bench of the Tribunal in the case of *CH. Krishna Murthy v. ACIT* [IT Appeal No.766/Hyd/2012] and one of the judgment passed by the High Court of Judicature at Allahabad in the case of *CIT v. Dr. Ashok Kumar* [IT Appeal No.192 of 2000] and Hyderabad Bench of Tribunal in the case of *Trinity Infra Ventures Ltd. v. DCIT* [IT Appeal No.584/H/2015] and consistently held that once the order under Section 143(3) r/w section153A of the Act has been passed after taking prior approval of the ACIT under section 153D of the Act, then the jurisdiction under section263 of the Act cannot be invoked. Therefore, the view taken by the Co-ordinate Bench of the Appellate Tribunal had attained finality. Hence, the ITAT, Indore has not committed any error of law by following the same view.

8. Even otherwise, as per section263 of the Act, the Principal 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 make enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify. For passing any order under sections 143(3) & 153A of the Act, prior approval of Joint Commissioner is required under section153A of the Act, or Principal Commissioner or Commissioner as the case may be. Therefore, once prior approval had already been taken by the Assessing Officer and accepted the return submitted by the assessee, then the same authority cannot exercise the power under Section263 of the Act to reverse the order of Assessing Officer.....”

An order of assessment passed under section153A read with section 143(3) after getting an approval of Jt. Commissioner under section 153D could not be revised under section263[2021] 132 taxmann.com 231 (Delhi - Trib.)IN THE ITAT DELHI BENCH 'A'Smt. Abha Bansal v. Principal Commissioner of Income-tax, (Central), Gurgaon \*BHAVNESH SAINI, JUDICIAL MEMBERAND O.P. KANT, ACCOUNTANT MEMBER.IT APPEAL NOS. 383 TO 386 (DELHI) OF 2021 [ASSESSMENT YEAR 2017-18]MAY 31, 2021

**D. Document Identification Number (DIN) was missing /not quoted in order u/s 153C/ 143 and 143(3).**

It is in respect of the impugned order u/s 153A having been issued / passed without Document Identification No. (DIN) and as such following the judgment of Jurisdictional High Court impugned order is bad in law and it may be held accordingly.

In this connection, it is humbly submitted that the AO is obliged to mention the DIN on the body of the impugned order in terms of CBDT Circular No. 19/2019 dt. 14.8.2019 that the AO is obliged to mention the DIN on the body of the impugned order so passed u/s 153A and hence impugned order is to be treated as bad in law. In this connection reliance is also placed on following judgments including that of Jurisdictional Tribunal and High Court and the same are as follows : -

- i) Tata Medical Centre Trust v. CIT(E) [ITA 238/Kol/2121 dt. 18.7.2022] [Calcutta High Court]
- ii) CIT v. Brandix Mauritius Holding Ltd. (2023) 293 Taxman 385 (Delhi High Court) 456 ITR 34 (Del)
- iii) Texmo Precision Castings UK Ltd. v. CIT (Int. Tax) 138 taxmann.com 566 (Madras High Court)
- iv) Ashok Commercial Enterprises v. ACIT [W.P. No. 2595 of 2021, Bombay High Court]
- v) Linde India Ltd. v. DCIT-ITA 319/Kol/2023 [Kol ITAT]

Hence it may be held accordingly.

In such respect attention is drawn to the following judgments in which it was held that if the underlying order is bad in law then the subsequent revision order cannot be held as valid and in such respect reliance is placed on the following judgments :

- a) PCIT V. Badal Praksh Jindal (ITA 879/10 of 2003 dt. 2.3.2003) (Orissa High Court)
- b) Classical Flour and Food Processing Pvt Ltd v. CIT (ITA 764 -766/K/ 14 dt. 5.4.2017) (ITAT Kolkata)
- c) Twins Steel Pvt. Ltd. v. CIT (ITA 1356/k/13 dt. 9.8.2019)( ITAT Kol)
- d) Keshab Narayan Banerjee v. CIT( 1999) 238 ITR 694 (Kol)
- e) Supersonic Technologies Pvt. Ltd. v. PCIT (ITA 2269/Del/ 2017 dt. 10.12.2018)

f) Charvujja Marmo India Pvt. Ltd. v. PCIT (ITA 4748/Del/ 19 dt. 31.12.19)

Hence it may be considered accordingly and order of Ld. PCIT u/s 263 may kindly be quashed / cancelled.

9. Ld. Counsel for the assessee concluded his argument submitting that the issue raised about the assumption of jurisdiction u/s. 263 of the Act being bad in law and that the show cause notice deserves to be quashed as it has been issued without revising the order of approval u/s. 153D of the Act has been dealt exhaustively in the decision of this Hon'ble Tribunal in *Gyan Infrabuild Pvt. ltd. (supra)* and that the decision is squarely applicable on the facts of the instant case. He thus, submitted that Ld. Pr. CIT grossly erred in assuming jurisdiction u/s. 263 of the Act and also grossly erred in holding the assessment order u/s. 153A r.w.s. 143(3) of the Act for the impugned assessment years as erroneous and prejudicial to the interest of revenue. He further submitted that Ld. Pr. CIT failed to take note of the details filed by the assessee before the AO which formed part of the assessment records and further Ld. Pr. CIT has not carried out any independent enquiry to verify as to whether or not the AO has carried out proper enquiry about the seized material and other details found during the course of search. He thus, prayed that the impugned order passed u/s. 263 of the Act may be quashed.

10. On the other hand, ld. DR vehemently argued supporting the order of Ld. Pr. CIT and also stated that when the details were called for by Ld. Pr. CIT through show cause notice assessee had given a very brief reply not dealing with each of the issues referred in the show cause notice. Ld. DR also submitted that Ld. AO has passed a brief order and nothing has been discussed in the assessment order even though the same being the assessment carried out based on search

action on the assessee and that various incriminating material as found and seized by the department.

11. We have heard rival contentions and perused the material and records placed before us. In the instant appeals for AYs 2014-15 to 2021-22 the common grievance of the assessee is firstly that Ld. Pr. CIT erred in holding the assessment order is erroneous and prejudicial to the interest of revenue, secondly, that Ld. Pr. CIT erred in invoking Explanation to sec. 263 of the Act even when the AO had made a detailed and adequate enquiry, thirdly, that the show cause notice u/s. 263 of the Act deserves to be quashed as it has been issued without revising the order of approval u/s. 153D of the Act granted to AO by Ld. Joint Commissioner of Income Tax and fourthly, the legal ground that the assessment order u/s. 153A read with 143(3) of the Act do not bear DIN and, therefore, the assessment orders are itself bad in law and, therefore, they cannot be the subject matter of the revisionary proceeding. Now, as far as fourth issue raised by the assessee regarding invalidity of the assessment orders for non-quoting of DIN, we find that the assessee has mainly placed reliance on the judgment of Hon'ble jurisdictional High Court in the case of *Tata Medical Centre Trust v. CIT(E)* [ITA 238/Kol/2121 dt. 18.7.2022] [Calcutta High Court] wherein Hon'ble jurisdictional High Court has affirmed the view of this Tribunal quashing the revisionary proceeding for want of DIN on impugned order. But the operation of the said judgment has recently been stayed by the Hon'ble Apex Court vide order dated 23.07.2024 passed in the SLP No. 27852/2024 and, therefore, at this stage judgment of Hon'ble Calcutta High Court in the case of *Tata Medical Centre Trust* (supra) cannot be followed as right precedence. Therefore, since the issue is seized with the Hon'ble Apex

Court and that the judgment of Hon'ble jurisdictional High Court on the issue of non-quoting of DIN has already been stayed by the Hon'ble Apex Court, we are not inclined to adjudicate this ground at this stage. However, in case, the Hon'ble Apex court finally decides the issue of DIN against the revenue then the assessee would be at liberty to file a Misc. application in this regard. Thus, this legal issue challenging the validity of assessment order in the ground of DIN not mentioned is held to be infructuous.

11.2. Now as far as the remaining issues raised in the instant appeal are concerned, they are all challenging the assumption of jurisdiction u/s. 263 of the Act and that the Ld. Pr. CIT erred in holding that the assessment orders framed u/s. 153A r.w.s. 143(3) of the Act is erroneous and prejudicial to the interest of revenue and that the impugned order deserves to be quashed as the approval granted u/s. 153D of the Act has not been revised.

12. The assumption of jurisdiction u/s 263 of the Act holding the assessment order as erroneous and prejudicial to the interest of the revenue is in challenge before us. As Section 263 of the Act has a direct bearing on the controversy, therefore, it is pertinent to take note of this section. It reads as under:-

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

*Explanation- For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,-*

*(a) an order passed on or before or after the 1<sup>st</sup> day of June, 1988 by the Assessing Officer shall include-*

*(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;*

*(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorized by the Board in this behalf under section 120;*

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

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

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

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

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

13. A bare perusal of sub section-1 would reveal that powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was

not required to show any reason. It is a part of his administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned Commissioner was not required the assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show cause notice pointing out the reasons for the formation of his belief that action u/s 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the 4<sup>th</sup> compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order. He may set aside the order and direct the Assessing Officer to pass a fresh order. At this stage, before considering the multi-fold contentions of the ld. Representatives, we deem it pertinent to take note of the fundamental tests propounded in various judgments relevant for judging the action of the ld. Pr. CIT taken u/s 263.

14. Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC) has laid down following ratio with regard to provisions of section 263 of the Act:

*"There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing*

*Officer; it is only when an order is erroneous that the section will be attracted. 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 principles of natural justice or without application of mind. The phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the revenue - Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 (SC) and in Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC)".[Emphasis Supplied]*

15. In the light of the provisions of section 263 of the Act and a settled position of law, powers u/s 263 of the Act can be exercised by the Pr. Commissioner/Commissioner on satisfaction of twin conditions, i.e., the assessment order should be erroneous and also prejudicial to the interest of the Revenue. By 'erroneous' is meant contrary to law. Thus, this power cannot be exercised unless the Commissioner is able to establish that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Thus, where there are two possible views and the Assessing Officer has taken one of the possible views, no action to exercise powers of revision can arise, nor can revisional power be exercised for directing a fuller enquiry to find out if the view taken is erroneous. This power of revision can be exercised only where no enquiry, as required under the law, is done. It is not open to enquire in case of inadequate inquiry.

16. The ITAT in the case of Mrs. Khatiza S. Oomerbhoy vs. ITO, Mumbai, 101 TTJ 1095, analyzed in detail various authoritative pronouncements including the decision of Hon'ble Supreme Court in the case of Malabar Industries 243 ITR 83 and has propounded the following broader principle to judge the action of CIT taken under section 263:

*“(i) The CIT must record satisfaction that the order of the AO is erroneous and prejudicial to the interest of the Revenue. Both the conditions must be fulfilled.*

*(ii) Sec. 263 cannot be invoked to correct each and every type of mistake or error committed by the AO and it was only when an order is erroneous that the section will be attracted.*

*(iii) An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.*

*(iv) If the order is passed without application of mind, such order will fall under the category of erroneous order.*

*(v) Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the AO has adopted one of the courses permissible under law or where two views are possible and the AO has taken one view with which the CIT does not agree. It cannot be treated as an erroneous order, unless the view taken by the AO is unsustainable under law*

*(vi) If while making the assessment, the AO examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determine the income, the CIT, while exercising his power under s 263 is not permitted to substitute his estimate of income in place of the income estimated by the AO.*

*(vii) The AO exercises quasi-judicial power vested in his and if he exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous simply because the CIT does not see stratified with the conclusion.*

*(viii) The CIT, before exercising his jurisdiction under s. 263 must have material on record to arrive at a satisfaction.*

*(ix) If the AO has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the AO allows the claim on being*

*satisfied with the explanation of the assessee, the decision of the AO cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard."*

17. Apart from above stated broader principles, one more principle needs to be added in view of the judgment of Hon'ble Delhi High Court in the case of ITO vs. D.G. Housing Projects Ltd. [2012] 343 ITR 329 (Delhi) that the Id. CIT has to examine and verify the issue himself and give a finding on merits and form an opinion on merits that the order passed by the AO is erroneous and prejudicial to the interest of the Revenue. Relevant extract is reproduced below:

*"In the present case, the findings recorded by the Tribunal are correct as the CIT has not gone into and has not given any reason for observing that the order passed by the Assessing Officer was erroneous. The finding recorded by the CIT is that "order passed by the Assessing Officer may be erroneous". The CIT had doubts about the valuation and sale consideration received but the CIT should have examined the said aspect himself and given a finding that the order passed by the Assessing Officer was erroneous. He came to the conclusion and finding that the Assessing Officer had examined the said aspect and accepted the respondent's computation figures but he had reservations. The CIT in the order has recorded that the consideration receivable was examined by the Assessing Officer but was not properly examined and therefore the assessment order is "erroneous". The said finding will be correct, if the CIT had examined and verified the said transaction himself and given a finding on merits. As held above, a distinction must be drawn in the cases where the Assessing Officer does not conduct an enquiry; as lack of enquiry by itself renders the order being erroneous and prejudicial to the interest of the Revenue and cases where the Assessing Officer conducts enquiry but finding recorded is erroneous and which is also prejudicial to the interest of the Revenue. In latter cases, the CIT has to examine the order of the Assessing Officer on merits or the decision taken by the Assessing Officer on merits and then hold and form an opinion on merits that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. In the second set of cases, CIT cannot direct the Assessing Officer to conduct further enquiry to verify and find out whether the order passed is erroneous or not."*

18. In the light of the above judicial precedence and ratios laid down by Hon'ble Supreme Court, we would first like to go through the facts

as to what culminated during the course of assessment proceedings carried out after issuance of notice u/s. 153A of the Act. Now admittedly, all the seized materials were in the possession of Ld. AO and a copy of the same/details were also made available to the Joint Commissioner of Income Tax who has to finally grant the approval u/s. 153D of the Act. Now, we find that after the assessee having filed the return of income u/s. 153A of the Act on 12.02.2022 for AY 2014-15, Ld. AO issued notice u/s. 142(1) of the Act and a questionnaire was attached to it in the form of an annexure placed at page 2 to 5 of the paper book and the same is reproduced below for necessary reference:

**THIS PLACE IS LEFT BLANK INTENTIONALLY**



**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT**

To,  
NALANDA ENGICON PRIVATE LIMITED  
N P Tower, Main Road Kankarbagh  
Patna, Bihar  
India

PAN: AACCN6360K	AY: 2014-15	Dated: 21/02/2022	DIN & Notice No : ITBA/AST/F/142(1)/2021-22/1039968052(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 2014-15 you are required to:

- Furnish or cause to be furnished on or before **01/03/2022 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 **01/03/2022 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,

AVLOKITA ASHOK  
DCIT/ACIT CEN CIR2,PAT

**ANNEXURE**

In connection with the asst. proceedings in your case, PAN: AACCN6360K for the A.Y. 2013-14 and 2014-15, you are hereby requested to furnish the following details:

1. Please furnish your nature of business, computation of income with complete set of Tax Audit Report, P & L account & balance sheet for the year in question.
2. Bank account details for each bank separately in following proforma:-

Name of the Bank & Account No. :-			
Opening Balance	Total deposit during the year	Total withdrawal during the year	Closing balance

Please also furnish copy of bank statement and bank reconciliation statement, if required.

3. You are requested to furnish the details of immovable assets in your name purchased or sold since F.Y. 2012-13 and 2014-15 in the following format:-

Nature of assets (land/residential building / commercial building) and address of the assets	Date of Purchase/sale	Deed No.	Amount of purchase / sale	Amount of Govt. Value of the property (Stamp duty value)	Amount of stamp duty paid	Source of the fund in case of purchase/capital gain in case of sale

Please furnish details of all movable & immovable properties in your name and how the same were reflected in your regular books of accounts. Give details of purchase / sale of movable & immovable property during the financial year relevant to this assessment year. Also show the details of source of fund and the reflection of the assets in relevant accounts, if any.

4. Please furnish Party wise details of purchase and sale in following format :-

Sl. No.	Name, address &	Amount of Transaction	Payment made during	Outstanding Balance

	PAN of the Party	(Rs.)	the year (Rs.)	(Rs.)

5. Please furnish evidence in support of deduction claimed under chapter VIA.
6. Please furnish details of unsecured loan taken during the year (including squared off loan) with name, address, amount, amount of interest, rate of interest and TDS deducted, if any.
7. Please furnish details of fresh capital introduction during the year with source of the fund.
8. Please furnish party wise details and supporting evidences in respect of expenses debited in P & L A/c.
9. Disclosure, if any made for the relevant assessment year. In this connection you are requested to:-
- Submit with documentary evidence the basis of calculation of this undisclosed income and the entries of the said income in the seized documents/books of a/cs, if any.
  - Submit with documentary evidence the application of this undisclosed income and the recording of the same in the seized documents/books of a/cs, if any.
  - Give the matching accounting entry passed in your regular books of accounts to show increase in asset or decrease in liability due to the disclosure of income vis-a-vis in the Balance sheet and corresponding entries in P&L account and trading account for the year.
  - Computation of income to show how this disclosed income has been reflected in return of income furnished for each year separately.
  - Submit documentary evidence of payment of tax on the disclosed income.
10. Give details of assessment history in your case for the above mentioned year as per the following proforma enclosing the copy of last order received which may be, 143(1), 143(3), 154, 147, appellate orders etc.

A.Y.	Latest order passed by AO	Appellate orders passed

11. Search and Seizure operations under Section 132 were conducted on M/s Nalanda Engicon Pvt. Ltd. Group on 29/10/2020. In relation of the above, kindly establish your relationship with Shri Bibekanand Kumar.

12. Books of a/cs. seized/impounded:

Books of accounts and other documents were seized / impounded from the residence and office premises during the course of search and seizure operations u/s. 132 / survey u/s.133A of "M/s Nalanda Engicon Gr.". Kindly explain details of documents which was seized / impounded in course of search proceedings conducted in your premises, in the following format:

Sl.No.	I.D. Mark	Page No(s)	Explanation	Year to which	Whether appearing in regular

				relates	books of accounts. If not, whether taken in disclosure.

You are requested to explain each and every entry of the said seized documents marked as NPT-01 to NPT- 29, DKC-01 to DKC-07, KK-01 to KK-04, MCT-01 to MCT-16 and 1 impounded copy (HP Pen drive 32GB). You are also requested to explain how and where these entries are recorded in your regular books of a/c and what is the financial implication of these entries.

**13. Trade payable :-**

From the perusal of the balance sheets of the company, it is also observed that M/s Nalanda Engicon Private Ltd. books a huge liability under the head trade payables. The financial year-wise details of the same are as under:-

Sl.No.	F.Y.	Amount of liability shown under the head trade payables
01.	2012-13	74,36,824/-
02.	2013-14	48,82,334/-

You are requested to explain as to why amount of liability shown under the head trade payables amounting to 74,36,824/- and Rs. 48,82,334/- appearing under the head sundry creditors in the balance sheet of M/s Nalanda Engicon Pvt. Ltd. filed for the F.Y. 2012-13 relevant to A.Y. 2013-14 and F.Y. 2013-14 relevant to A.Y. 2014-15 respectively, should not be treated as unexplained credits u/s 68 of the Income Tax Act, 1961 and added back to your total income.

**14. Unexplained expenses :-**

During the search and seizure operation at the business premise of M/s. Nalanda Engicon Private Limited i.e. N.P. Tower, Main Road, Kankarbagh, Patna, some daily ledgers were found which were subsequently seized and marked as NPT-02, NPT-03, NPT-04, NPT-05, NPT-06, NPT-07, NPT-08, NPT-11, NPT-12, NPT-13, NPT-14, NPT-15, NPT-16, NPT-17, NPT-18, NPT-21, NPT-22, NPT-23 & NPT-26. The analysis of the cash vouchers is as below:-

Sl. No.	F.Y.	Amount
01.	2013-14	8,26,46,443/-

From the analysis of the cash vouchers, it is clear that the company has made expenses of Rs. 8,26,46,443/- during the , F.Y. 2013-14 was neither found during the search and seizure nor submitted by the assessee company during the post search enquiries despite being given ample opportunities. In absence of books of accounts it was hard to ascertain whether the expenses made by the company are taken into account or not.

You are further requested to explain with corroborative documents and evidence regarding the expense of Rs.

8,26,46,443/-, failing which it will be treated as unexplained expenditure u/s. 69C of the Income Tax Act, 1961 for the A.Y. 2014-15 and added back to your total income

AVLOKITA ASHOK  
DCIT/ACIT GEN CIR2,PAT

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

19. We further notice that in compliance to the notice u/s. 142(1) of the Act assessee had replied on 25.03.2022 and the said reply is for each of the question/query raised in the questionnaire attached to notice u/s. 142(1) of the Act and the reply submitted by the assessee placed at paper book pages 6 to 9 which is reproduced below:

6. With Respect to Point No. 6

The details of Unsecured loan accepted during year under Consideration are attached herewith in the specified format as required.

**Annexure IV**

7. With Respect to Point No. 7

There is no Capital Introduction during the relevant year.

8. With Respect to Point No. 8

The Extract of the Profit & Loss Statement and related schedules are tabled below for your ready reference.

<b>INCOME</b>		
Revenue from operations	17	16,98,11,382.60
Other income	18	16,71,661.51
<b>Total Revenue</b>		<b>17,14,83,044.11</b>
<b>EXPENSES</b>		
Direct Project Expenditure	24	15,23,12,848.30
Changes in inventories of finished goods work-in-progress and Stock-in-Trade		(14,95,900.00)
Employee benefits expense	19	23,54,470.00
Finance costs	20	35,04,737.00
Depreciation and amortization expense	21	8,21,968.00
Other expenses	22	27,93,811.74
<b>Total Expenses</b>		<b>16,02,91,935.04</b>
<b>Profit before exceptional and extraordinary items and tax</b>		<b>1,11,91,109.07</b>

All the expenses debited to the P&L Account are exclusively for the purpose of business. As per the availability, the required details/ evidence of major expenditures are attached. It is not out of place to mention here that the most of the payments except the necessary/urgent/unavoidable payments, are made through banking channel which can easily be verified from the Bank Statement. For your ready reference all the bank statement are attached.

**Attached- Annexure- V**

9. With Respect to Point No. 9

No disclosure made during the year under consideration.

10. With Respect to Point No. 10

No Assessment under The Income Tax has been made for the relevant assessment year.

11. With Respect to Point No. 11

Your office has sought to establish the relation of Company with Shri Bibeka Nand Kumar. It is respectfully submitted that Shri Bibeka Nand Kumar is one of the Director of the Company since Incorporation.

To establish this relationship Master Data from the MCA website as on date attached for your ready reference.

**Attached- Annexure- VI**

**12. With Respect to Point No. 12**

In respect to explanation sought for seized / impounded documents, your office has served a detailed questionnaire dated 04-02-2020 bearing the and having the response date 21-02-2022.

Accordingly, it is respectfully submitted that, the required explanation in the specified format is already submitted with the reply filed against the abovementioned questionnaire.

**13. With Respect to Point No. 13**

In connection with the trade payable for the relevant year, I have already provided, in response to Point No. 4 a list of Supplier along with the supply made which is self-explainable.

It is pertinent to mention here that the trade payable is only Rs. 48,82,334/- and verifiable also.

This fact is also required to be noted here that in the business of Govt. Contractor where payments (receipt for the company) are dependent upon the availability of Fund with the corresponding authority of State Government. Normally, in the state like Bihar Authority always face fund crunch. Due to delayed realization of funds the company has no option left with it but to hold the payment of the creditors and manage day to day the operating expenses.

Further, the Govt. Authority expect from the contractor to invest minimum 25% of the value of work during the implementation of the contract. It would be only possible for the company by arranging borrowings or purchase the material from the supplier on Credit Basis. It is reiterated here that due the time lag in release of payment the trade payables were outstanding. This was/is the main reason of outstanding balance of Trade Payable.

Although, considering the above facts it would not be prudent and justified to treat the trade payables as unexplained credit u/s 68 of the Income Tax Act 1961.

**14. With respect to Point No. 14**

All these entries appearing in the seized documents are related to business transactions of the assessee company. We have referred all these seized materials and found that these are business transactions and are properly accounted for in the financial statements. I would like to mention here that the finding of your office that all these expenses are in cash is totally baseless. These expenses include expenses which are mainly through banking channel.

Further it is important to mention here that the books of the Company audited under Companies Act as well as under Income Tax act and no adverse remarks raised by both the auditor in the relevant Financial Year. Therefore It would not be prudent and justified to treat these expenses as unexplained expenditure u/s 69 C of the Income Tax Act 1961.

Please find above documents/clarification in order. We will be grateful to submit further clarification/ documents as required by you.

Thanking You.

**For, Nalanda Engicon Private Limited**

SD/-

**Bibeka Nand Kumar**

**Director**

**Enclosures:**

1. As per Above

**Note:** - Due to the Limitation of size of documents provided on the e-portal, all the documents are being submitted in Hard Copy i.e. in Physical Form to your Office.

20. Now, the AO was having complete details for the queries raised in the notice u/s. 142(1) of the Act and specifically in point no. 14, Ld. AO has asked the assessee to explain the contents of the seized material available in NPT-02, NPT-23 and NPT-26 and in reply, assessee has stated that all the alleged seized material relevant to AY 2014-15 are part of the business transaction and properly accounted for in the books of account. It was also submitted that the observation of the search team/revenue authorities that the expenses referred in the seized material have been incurred in cash, are totally baseless and that the majority of the expenses have been incurred through banking channel.

21. We also observe that the Ld. AO after thoroughly examining the reply and the details annexed thereto has taken note of all these details and submissions in the body of assessment order. Ld. AO has

observed in the assessment order that the assessee has replied on four occasions through on line made on 25.02.2022, 05.03.2022 and 22.03.2022 and finally on 25.03.2022.

22. Now, on going through the above facts which remain undisputed at the end of the revenue authorities, we find that detailed enquiry having been conducted by the AO to which reply has been furnished along with the evidence and explanation, and Ld. AO after due application of mind and acting within the four corners of law has adopted one of the courses permissible in law and was satisfied with the submissions of the assessee and has completed the assessment proceeding and, therefore, it no where emerges that no enquiry or inadequate enquiry has been conducted by the AO. Now, once the AO has conducted detailed/adequate/requisite enquiry and has also taken note of all the seized material in the questionnaire attached to notice u/s. 142(1) of the Act and have also received the reply the next course of action of the AO is to approach i.e. Joint Commissioner of Income Tax for approval u/s. 153D of the Act. Now, ld. Jt. Commissioner who is briefed about the assessment proceeding stage by stage has also examined the draft assessment order vis-à-vis seized material and have granted the approval u/s. 153D of the Act and subsequent thereto the assessment order has been passed on 30.03.2022. As far as remaining assessment years are concerned the course of action at the end of the AO and the replies submitted by the assessee on multiple occasions to the satisfaction of the AO are clearly evident from the paper book filed for each of the years separately.

23. We find that for AY 2015-16 after filing of the return u/s. 153A of the Act Ld. AO issued notice u/s. 142(1) of the Act on 25.01.2022

running into eight pages containing 16 questions and various details have been called for which, *inter alia*, includes the details referred in the show cause notice issued by Ld. Pr. CIT in the impugned order. A second notice was issued on 04.02.2022 by Ld. AO which is running into 50 pages and in the said notice, Ld. AO has extracted/attached copies of all the seized material including loose papers and other financial transactions appearing in the seized records. The assessee duly replied to this notice firstly on 10.02.2022 and another reply on 25.02.2022 which is running into 88 pages placed in the paper book and perusal of the same indicates that each and every query raised by the Ld. AO has been addressed with and with this explanation assessee has been able to establish that the transactions referred in the seized material are duly entered in the regular books of account and there is no escapement of income.

24. Coming to AY 2016-17, the audited financial statements were furnished during the course of proceeding u/s. 153A r.w.s. 143(3) of the Act carried out after the filing of return by the assessee. Ld. AO issued the first notice u/s. 142(1) on 25.01.2022 to which reply was given by the assessee on 10.02.2022 which is running into 111 pages and again second notice on 04.02.2022 was issued which is running into 50 pages to which again a detailed reply was furnished by the assessee running into 88 pages. We have perused all the details and notices that the queries which have been raised by Ld. Pr. CIT in the show cause notice already stands called for by the Ld. AO to which detailed reply has been furnished by assessee.

25. Coming to AY 2017-18, after selecting the return for scrutiny carried out u/s. 153A r.w.s. 143(3) of the Act, first notice was issued

on 25.01.2022 u/s. 142(1) to which reply was furnished on 11.03.2022. Again second notice was issued on 04.02.2022 running into 50 pages to which reply was submitted by the assessee on 25.02.2022 running into 88 pages.

26. For AY 2018-19 in the scrutiny proceeding notice dated 25.01.2022 u/s. 142(1) of the Act issued to which reply has been furnished on 11.03.2022 followed by other two notices u/s. 142(1) dated 04.02.2022 and 18.02.2022 running into 52 pages and the same were duly replied addressing each of the questions and enclosing all relevant details with the reply dated 25.02.2022.

27. For AY 2019-20, ld. AO carried out the scrutiny proceeding post search issuing notice u/s. 142(1) calling for various details to which reply was furnished on 25.03.2022 and notices were also issued u/s. 142(1) on 04.02.2022 and 18.02.2022 to which reply was filed on 25.02.2022 and 05.03.2022 running into almost 100 pages.

28. For AY 2020-21, in the proceeding u/s. 153A r.w.s. 143(3) of the Act, notice u/s. 142(1) of the Act issued on 25.01.2022 was followed by another notice on 04.02.2022 running into 50 pages to which two separate replies were filed on 25.03.2022 which are running into 118 pages.

29. Lastly, for AY 2021-22, also notices u/s. 142(1) of the Act were issued on 25.01.2022, 06.02.2022 and 18.02.2022 to which replies were furnished on 05.03.2022 and 25.03.2022 and in these replies explanation about each of the seized material has been given by the

assessee indicating that the transactions mentioned therein are duly entered in the regular books of account.

30. Now, on perusal of all the above details for each of the assessment years it remains an undisputed fact that each of the seized material has been examined by the Ld. AO and the assessee has been asked to reply about each of the transaction appearing in the seized material and the replies given by the assessee are not mere formality but they are exhaustive replies giving explanation about each transaction. The audited financial statement for each of the impugned years along with the books of account were produced before the ld. AO and he after verifying these details has examined the replies filed by the assessee and has completed the assessment proceedings. It has consistently been held that each and every details called for and examined by the Ld. AO cannot form part of the assessment order and only those issues on which ld. AO intends to make the addition appears in the assessment order. The order sheet available in the records gives an insight of the assessment proceeding carried out by the Ld. AO. In the instant case, notice issued u/s. 142(1) of the Act are running into 100s of pages for almost each year and the replies are also running 100s of pages.

31. Hon'ble Apex Court in the case of *Malabar Industrial Company Ltd. (supra)* has held that every loss of revenue as a consequent of an order of the AO cannot be treated as prejudicial to the interest of revenue unless the AO do not adopt one of the courses permissible in law. In the given set of appeals, we find that the seized materials have been examined by the AO in reference to the detailed replies filed by the assessee and after he being convinced that the transactions

indicated in the seized material are duly accounted for in the regular books of account, there was no occasion to make the addition because the transactions were duly explained by the assessee. It is quite obvious that if the transactions appearing in the seized material are accounted for in the regular books and the profits for the year have been duly offered to tax, it is not open for the AO to make the additions in the hands of the assessee. We find that Ld. AO after carrying out adequate enquiry has completed the assessments which are neither prejudicial to the interest of the revenue nor are they erroneous in nature. The correctness of the assessment order is further supported by the approval granted by ld. JCIT u/s. 153D of the Act which still remains intact as Ld. PCIT has not revised the said order.

32. Now, once adequate enquiry has been conducted and a permissible view has been taken by the AO no room is left for the Ld. Pr. CIT to give direction to re-conduct the enquiry in the manner he deems fit. The revisionary powers cannot be extended to direct the AO to again enquire/examine the issue which have already been examined in detailed and a plausible view has been taken. It is for the Ld. Pr. CIT to carry out independent enquiry to bring certain material on record to prove that Ld. AO has not examined those issues and that the order is erroneous and prejudicial to the interest of revenue. Perusal of the impugned order clearly indicates that no such independent enquiry has been conducted and just for the sake of brief reply filed by the assessee to show cause notice, Ld. Pr. CIT had come to the conclusion of setting aside the assessment order.

33. Though the assessee has referred and relied upon plethora of decisions, we would like to take note of two decisions which are squarely applicable on the facts of the instant case. The first one is the judgment of Hon'ble jurisdictional High Court in the case of CIT Vs. J. P. Goel (2001) 161 Taxmann.com 400 and the brief synopsis of the said judgment and the ratio laid down therein is as under:

*“Commissioner noticing order passed by the assessing officer prejudicial to the interests of Revenue since the assessing officer had not fully verified the facts – Commissioner noticing that there being a search at the premises of the assessee certain amount of cash, gold and jewellery seized not enquired by the assessing officer by investigating the fact- Assessee pleading that assessing officer had made proper enquiries and passed the order thereafter only – Held, this being a question of fact and the material being before the assessing officer, the assessing officer made proper enquiries- Order not prejudicial to the interests of the Revenue- CIT not justified in cancelling the order.*

34. We also notice that in the recent decision of this tribunal in the case of *Gyan Infrabuild (P) Ltd.*(supra) the facts are almost identical because in the case of *Gyan Infrabuild (P) Ltd.*(supra) also search was carried out and Ld. AO completed the assessment proceeding after making detailed enquiry and also got the approval u/s. 153D of the Act and the assessment order u/s. 153A r.w.s. 143(3) of the Act was the subject matter of the revisionary proceeding and this Tribunal quashed the revisionary orders firstly on the ground that Ld. Pr. CIT before revising the assessment order should have also revised the approval u/s. 153D of the Act and secondly that when detailed and adequate enquiry has been conducted by the AO in the assessment proceedings for the issues referred in the show cause notice u/s. 263 of the Act and the Ld. AO has adopted one of the courses permissible under the law, Ld. Pr. CIT cannot assume jurisdiction u/s. 263 of the Act. Relevant part of the decision of this Tribunal in the case of *Gyan Infrabuild (P) Ltd.*(supra) reads as under:

"11. We have heard rival contentions and perused the material placed before us. Search and seizure action u/s 132 and Survey u/s 153A of the Act on 23/02/2018 was carried out at the business premises of Subhash Prasad Yadav Group which included the assessee. Various documents were seized and statements of various persons who were attached with the assessee company were also recorded and this mainly included the statement of Shri Satyendra Kumar Sharma, who is working as Director of the assessee company, and other employees, mainly, Mrs. Muskan Pandey, Shri Hulas Pandey, Shri Atul Kumar Agarwal etc.. Subsequent to search, notice u/s 153A of the Act were issued to the assessee company to which necessary compliances were made and return was filed. However, the returned income as disclosed in the original return filed on 30/09/2015 was again shown as income in the return filed in compliance to notice u/s 153A of the Act furnished on 02/12/2019. Thereafter the assessee was served with the statutory notices u/s 143(2) & 142(1) of the Act and various questions were raised in the notice u/s 142(1) of the Act as well as during the course of assessment proceedings. In the assessment order framed u/s 153A of the Act, the ld. Assessing Officer has mentioned that the details were filed along with the submissions as well as copies of returns, computation of 10 I.T.A. No. 175 to 178/Pat/2023 Assessment Year: 2015-16 to 2018-19 Gyan Infrabuild Private Limited income and point-wise reply. Further the assessment was completed after taking necessary approval u/s 153D of the Act from JCIT, Central, Range-1, Patna. Finally, the assessment for all the impugned assessment years for Assessment Year 2015-16 to 2018-19 were completed accepting the returned income filed by the assessee. Now, all the four assessment years evenly dt. 27/12/2019 are the subject matter of the revisionary proceedings invoked by the ld. Pr. CIT u/s 263 of the Act, wherein after referring to the seized material and other discussions, all these four assessments have been held to be erroneous and prejudicial to the interest of the revenue.

12. The assumption of jurisdiction u/s 263 of the Act holding the assessment order as erroneous and prejudicial to the interest of the revenue is in challenge before us. As Section 263 of the Act has a direct bearing on the controversy, therefore, it is pertinent to take note of this section. It reads as under:-

"263(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 Assessing Officer is erroneous in so far as it is prejudicial to the interest of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Explanation- For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,-

*(a) an order passed on or before or after the 1<sup>st</sup> day of June, 1988 by the Assessing Officer shall include-*

*(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;*

*(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorized by the Board in this behalf under section 120;*

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

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

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

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

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

13. A bare perusal of sub section-1 would reveal that powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any

proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned Commissioner was not required the assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show cause notice pointing out the reasons for the formation of his belief that action u/s 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the 4<sup>th</sup> compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order. He may set aside the order and direct the Assessing Officer to pass a fresh order. At this stage, before considering the multi-fold contentions of the ld. Representatives, we deem it pertinent to take note of the fundamental tests propounded in various judgments relevant for judging the action of the ld. Pr. CIT taken u/s 263.

14. Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. vs. CIT* (2000) 243 ITR 83 (SC) has laid down following ratio with regard to provisions of section 263 of the Act:

*"There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer; it is only when an order is erroneous that the section will be attracted. 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 principles of natural justice or without application of mind. The phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the revenue - *Rampyari Devi Saraogi v. CIT* [1968] 67 ITR 84 (SC) and in *Smt. Tara Devi Aggarwal v. CIT* [1973] 88 ITR 323 (SC)". [Emphasis Supplied]*

15. In the light of the provisions of section 263 of the Act and a settled position of law, powers u/s 263 of the Act can be exercised by the Pr. Commissioner/Commissioner on satisfaction of twin conditions, i.e., the assessment

*order should be erroneous and also prejudicial to the interest of the Revenue. By 'erroneous' is meant contrary to law. Thus, this power cannot be exercised unless the Commissioner is able to establish that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Thus, where there are two possible views and the Assessing Officer has taken one of the possible views, no action to exercise powers of revision can arise, nor can revisional power be exercised for directing a fuller enquiry to find out if the view taken is erroneous. This power of revision can be exercised only where no enquiry, as required under the law, is done. It is not open to enquire in case of inadequate inquiry.*

16. *The ITAT in the case of Mrs. Khatiza S. Oomerbhoy vs. ITO, Mumbai, 101 TTJ 1095, analyzed in detail various authoritative pronouncements including the decision of Hon'ble Supreme Court in the case of Malabar Industries 243 ITR 83 and has propounded the following broader principle to judge the action of CIT taken under section 263:*

*“(i) The CIT must record satisfaction that the order of the AO is erroneous and prejudicial to the interest of the Revenue. Both the conditions must be fulfilled.*

*(ii) Sec. 263 cannot be invoked to correct each and every type of mistake or error committed by the AO and it was only when an order is erroneous that the section will be attracted.*

*(iii) An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.*

*(iv) If the order is passed without application of mind, such order will fall under the category of erroneous order.*

*(v) Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the AO has adopted one of the courses permissible under law or where two views are possible and the AO has taken one view with which the CIT does not agree. It cannot be treated as an erroneous order, unless the view taken by the AO is unsustainable under law*

*(vi) If while making the assessment, the AO examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determine the income, the CIT, while exercising his power under s 263 is not permitted to substitute his estimate of income in place of the income estimated by the AO.*

*(vii) The AO exercises quasi-judicial power vested in his and if he exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous simply because the CIT does not see stratified with the conclusion.*

(viii) The CIT, before exercising his jurisdiction under s. 263 must have material on record to arrive at a satisfaction.

(ix) If the AO has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the AO allows the claim on being satisfied with the explanation of the assessee, the decision of the AO cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard."

17. Apart from above stated broader principles, one more principle needs to be added in view of the judgment of Hon'ble Delhi High Court in the case of ITO vs. D.G. Housing Projects Ltd. [2012] 343 ITR 329 (Delhi) that the ld. CIT has to examine and verify the issue himself and give a finding on merits and form an opinion on merits that the order passed by the AO is erroneous and prejudicial to the interest of the Revenue. Relevant extract is reproduced below:

"In the present case, the findings recorded by the Tribunal are correct as the CIT has not gone into and has not given any reason for observing that the order passed by the Assessing Officer was erroneous. The finding recorded by the CIT is that "order passed by the Assessing Officer may be erroneous". The CIT had doubts about the valuation and sale consideration received but the CIT should have examined the said aspect himself and given a finding that the order passed by the Assessing Officer was erroneous. He came to the conclusion and finding that the Assessing Officer had examined the said aspect and accepted the respondent's computation figures but he had reservations. The CIT in the order has recorded that the consideration receivable was examined by the Assessing Officer but was not properly examined and therefore the assessment order is "erroneous". The said finding will be correct, if the CIT had examined and verified the said transaction himself and given a finding on merits. As held above, a distinction must be drawn in the cases where the Assessing Officer does not conduct an enquiry; as lack of enquiry by itself renders the order being erroneous and prejudicial to the interest of the Revenue and cases where the Assessing Officer conducts enquiry but finding recorded is erroneous and which is also prejudicial to the interest of the Revenue. In latter cases, the CIT has to examine the order of the Assessing Officer on merits or the decision taken by the Assessing Officer on merits and then hold and form an opinion on merits that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. In the second set of cases, CIT cannot direct the Assessing Officer to conduct further enquiry to verify and find out whether the order passed is erroneous or not."

18. In the light of the above, we would like to examine the fact of the instant case. Before us, the first contention made by the ld. Counsel for the assessee is that

*the impugned revisionary proceedings are not valid in the eyes of law because only the order framed u/s 153A of the Act has been held to be erroneous and prejudicial to the interest of the revenue but the same cannot be held to be justified until and unless the approval given u/s 153D of the Act has also been held to be erroneous and prejudicial to the interest of the revenue. Now, under Chapter 14 of the procedure for assessment, so far as the assessments relating to search cases are concerned, separate procedures have been laid down. Starting from Section 153A for assessments in the case of search or acquisition, Section 153B for time limit for completion of assessment u/s 153A, Section 153C for assessment of income of any other person and Section 153D i.e., prior approval necessary for assessment in case of search or acquisition. So far as Section 153D of the Act is concerned, the same reads as follows:-*

*“153D. No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of [sub-section (1) of] section 153A or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner:”*

18.1. *Now, on perusal of the above Section which states that a prior approval is necessary for assessment in case of assessment search or acquisition, it is specifically mentioned that no order of assessment or re-assessment shall be passed by an Assessing Officer below the rank of JCIT except with the prior approval of the Joint Commissioner. Before us, the ld. Counsel for the assessee stated that for the search assessment cases whatever seized material are found belonging/pertaining to the assessee, a copy of complete set is also kept with the authority who has to provide the approval of the assessment or re-assessment. He also stated that during the course of assessment proceedings, the ld. Assessing Officer has to update about the proceedings to his senior who has to finally grant the approval u/s 153D of the Act. Even after preparation of the draft assessment order, the same is sent to the ld. Joint Commissioner and he/she after thorough examination of the seized material vis-à-vis the draft assessment order prepared by the ld. Assessing Officer and after being satisfied with the correctness of such draft assessment order or in case required can suggest certain changes in the said assessment order finally grants approval. Only after receiving such approval u/s 153D of the Act, the ld. Assessing Officer passes the final assessment order u/s 153A r.w.s. 143(3) of the Act. In short, the assessment order u/s 153A of the Act is incomplete without the approval u/s 153D of the Act. Now, whether action of the ld. Pr. CIT of assuming jurisdiction u/s 263 of the Act holding only the order u/s 153A of the Act is erroneous so far as prejudicial to the interest of the revenue and not the order u/s 153D of the Act, as erroneous insofar as prejudicial to the interest of the revenue, can be held to be justified.*

19. *Before us, the ld. Counsel for the assessee, has referred to plethora of decisions whether the revisionary order u/s. 263 of the Act has been quashed, where*

only the order u/s 153A of the Act is revised without revising order u/s 153D of the Act.

20. Reliance is placed on the following judicial pronouncements:

*i. Smt. Abha Bansal v. Principal Commissioner of Income-tax [2021] 132 taxmann.com 231 (Delhi - Trib.) -*

"9.4 It is evident from the plain reading of the \* – aforesaid Explanation that an Order passed on or before or after 1 st Day of June, 1988 by the A.O. shall include (i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A; (if) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or ' Commissioner authorised by the Board in this behalf under section 120. It may be noted that Order of assessment passed with the approval of JOT under section 153D of the I.T. Act, 1961 could not be revised under section 263 of the I.T. Act, 1961. The Ld. D.R. has, however, relied upon the Order of ITAT, Panaji Bench, but, has not explained whether the Judgment of Hon'ble Allahabad High Court in the case of Dr. Ashok Kumar (supra) or different Benches of the Tribunal have been considered in this case by the Panaji Bench. It is not decided in this case that assessment order cannot be revised without revising the approval under section 153D of the I.T. Act and Explanation 1 to section 263 of the I.T. Act has also not been considered. Therefore, this decision relied upon by the Ld. D.R. would not apply to this case. Further the Judgment in the case of Param Transport (P.) Ltd. (supra), of Hon'ble Chhattisgarh High Court (supra) is not with regard to approval obtained under section 153D of the I.T. Act because in this case it was held that revisional power under section 263 of the I.T. Act is applicable to assessments under search and seizure. However, it is not explained by the Ld. D.R. whether in this case the approval under section 153D have been revised by the Learned PCIT. It may also be noted that it is well settled Law that if two views are possible, then the view which is in favour of the assessee should be made applicable. We rely upon Judgment of Hon'ble Supreme Court in the case of CITv. Vegetable Products Ltd. R9731 88 ITR 192. It may also be noted here that the Hon'ble Allahabad High Court is one of the jurisdictional High Court of Delhi Bench, therefore, preference shall have to be given to the Judgment of the Hon'ble Allahabad High Court as reproduced above. In the totality of the facts and circumstances of the case and following the decisions referred to above, we are of the view that the Learned PCIT was not having jurisdiction to proceed under section 263 of the I.T. Act, 1961 in the matter in issue and as such the Order passed by the

*Learned PCIT is nullity and void ab initio. We therefore, decide this issue in favour of the assessee."*

**ii) Surendra L. Heera Nandani v. Pr.CIT [IT Appeal No.3226/Mum./2017 etc., date. 14-2-2018]**

*"28. Since in the instant case also the Assessing Officer has passed the order after obtaining necessary approval from Addl. CIT u/s.153D of the I.T. Act, therefore respectfully following the above-mentioned decisions of the Coordinate Benches of the Tribunal we are of the considered opinion that the CIT has no power to revise the order u/s.263 of the I.T. Act in the instant case since the same has been passed with the approval of the Addl. CIT U/S.153D of the I.T. Act. We respectfully following the decision of ACIT Vs. Dr. Ashok Kumar, ITA 192 of 2000. We find that in the instant case the original approval 25 ITA No3226-3232.M.17 A.Y.2008 09 to 2014-15 was granted by Addl. CIT and this assessment order is cannot be revise without approval of Add. CIT."*

**iii) Dhariwal Industries Ltd. v. CIT [IT Appeal Nos. 1108 to 1113 (Pune) of 2014 dated 23-12-2016]**

*"9. Referring to the decision of the Hyderabad Bench of the Tribunal in the case of M/s. Trinity Infra Ventures Ltd. Vs. DCIT vide ITA Nos. 584 to 589/H/2015 order dated 04-12- 2015 for A.Yrs. 2005- 06 to 2010-11 he submitted that the Tribunal in the said decision, following various decisions including the decision of Hon'ble Allahabad High Court in the case of CIT Vs. Dr. Ashok Kumar vide Income Tax Appeal No. 192/2000 order dated 06-08-2012, has held that assessment order approved by the Addl.CIT U/S.153D cannot be subjected to revise u/s.263 of the I.T. Act."*

*12. We have considered the rival arguments made by both the sides, perused the orders of the AO and the Ld.CIT and the paper book filed on behalf of the assessee.*

*14. We find merit in the above submission of the Ld. Counsel for the assessee. We find the Lucknow Bench of the Tribunal in the case of MehtabAlam Vs. ACIT vide ITA Nos.288 to 294/Lkw/2014 order dated 18-11-2014 while deciding an identical issue has observed as under.*

*14.1 We find the Hyderabad Bench of the Tribunal in the case of CH. Krishna Murthy Vs. ACIT vide ITA No.766/Hyd/2012 order dated 13-02-2015 following the decision of the Lucknow Bench of the Tribunal in the case of MehtabAlam (Supra) held that CIT is not justified in assuming jurisdiction u/s.263 when the order has been passed in terms of section 153D of the Act.*

14.2 We find the Hyderabad Bench of the Tribunal in the case of M/s. Trinity Infra Ventures Ltd. (Supra) had an occasion to decide an identical issue and it held that the assessment order approved by the Addl. CIT U/S.153D cannot be subject to revision u/s.263 of the I.T. Act.”

**iv. Trinity Infraventures Ltd. v. Dy. CIT [IT Appeal Nos. 584-589 (Hyd.) of 2015, dated 4-12-2015]**

“5.4. The Ld. Counsel for the assessee has further submitted that the assessment under section 143(3) read with section 153C was passed after getting approval of Addl. CIT under section 153D of the I.T. Act and therefore such an assessment cannot be revised without revising the directions of the Addl. CIT under section 153D of the I.T. Act. The Ld. Counsel for the assessee, has relied upon the decisions of this Tribunal in the case of Ch. Krishna Murthy vs. ACIT, C.C. 3, Hyderabad in ITA No. 766/Hyd/2012 dated 13.02.2015 and also the decision of Lucknow Bench of ITAT in the case of Mehtab Alam 288/Luck/2014 dated 18.11.2014 in support of this contention. He has also placed reliance upon the decision of Hon'ble Allahabad High Court in the case of CIT vs. Dr. Ashok Kumar in I.T. Appeal No. 192 of 2000 wherein it has been held that the assessment order approved by the Addl. CIT under section 153D, cannot be subjected to revision under section 263 of the I.T. Act. In view of the above decision also, we hold that the revision order under section 263 of the I.T. Act is not sustainable.

21. From going through the above decisions, wherein it has been consistently held that without revising the approval u/s 153D of the Act, the ld. Pr. CIT cannot revise the assessment order u/s 153A of the Act. Even in case of Surendra L. Heera Nandani (supra) it was held that ld. Pr. CIT has no power to revise the order u/s 263 of the Act since the same has been passed with the approval of the Addl. CIT u/s 153D of the Act.

22. Therefore, in the light of the above decisions, so far as the first limb of legal argument of the ld. Sr. Counsel for the assessee is concerned, we find merit that ld. Pr. CIT erred in assuming jurisdiction u/s 263 of the Act by revising order u/s 153A r.w.s. 143(3) of the Act without considering that prior approval already accorded to ld. Assessing Officer u/s 153D of the Act and secondly when orders u/s 153A of the Act has been passed after receiving approval u/s 153D of the Act, Ld. PCIT erred in revising order u/s 153A of the Act without first revising the order u/s 153D of the Act as which means that no defect has been observed by ld. Pr. CIT in approval u/s 153D of the Act. Thus the action of the ld. Pr. CIT assuming jurisdiction u/s 263 of the Act cannot be held to be tenable, the impugned proceedings deserves to be quashed on this grounds itself.

22.1. As regards the second limb of argument is concerned that detailed enquiry has been conducted and one of the view legally permissible has been taken, we, in view of the judgment in the case of Malabar Industrial Co. Ltd. vs. CIT (supra) and

of Income-tax Officer v. D.G. Housing Projects Ltd. (supra) note that the assessments in question before us are search assessments. There is a separate procedure for carrying out the assessment for search cases. Though we have referred to the procedure in the preceding paragraphs, we will like to observe that prior to issuing of notice u/s 153A of the Act, complete seized material are available with the ld. Assessing Officer and a copy is also made available to the Senior Officer who has to grant the approval u/s 153D of the Act. Under the search assessment, the assessee has to be confronted with all the seized material belonging to the assessee. In the instant case there were certain documents which were owned by Shri Satyendra Kumar Sharma, in the statement recorded on oath where, he has categorically stated that these documents belong to him and were maintained by him and on the basis of such documents, additions have been made in the hands of Shri Satyendra Kumar Sharma also. Now, reference has been made to the very same set of documents which have been owned by Shri Satyendra Kumar Sharma and the ld. Pr. CIT has observed that the ld. Assessing Officer ought to have conducted enquiry about these documents. We fail to find any merit in such action of the ld. Pr. CIT because the seized materials available with the ld. Assessing Officer which belonged to the assessee company have been examined, queries have been raised by issuing questionnaire. Detailed reply has been received along with necessary documents and after recording all these facts in the assessment order, ld. Assessing Officer has completed the assessment. So, it is not a case of no enquiry. However, it may be a case that intense enquiry as referred by the ld. Pr. CIT in the impugned order might not have been conducted but that cannot give power to the ld. Pr. CIT to revise the assessment order because the ld. Assessing Officer has conducted reasonable enquiry and taken one of the legally permissible view under the Act.

23. Further, the ld. D/R failed to rebut this fact that the ld. Assessing Officer is not the only person who is involved in completing the assessment and along with him, the ld. JCIT is also part of the assessment proceedings because once the draft assessment order is prepared by the ld. Assessing Officer, he/she has to approach the Joint Commissioner for prior approval, who again examines the seized material with the draft assessment order framed by the ld. Assessing Officer and after being satisfied, either suggests necessary changes or he accords the approval after which, the ld. Assessing Officer passes the final assessment order.

24. We also observe that learned PCIT u/s 263 of the Act before initiating the revisionary proceedings was required to carry out necessary enquiry in support of his assumption that the documents belongs to the assessee or that the ld. Assessing Officer has not enquired. The Hon'ble High Court of Delhi in the case of Income-tax Officer v. D.G. Housing Projects Ltd. reported in [2012] 343 ITR 329 has held that "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."Further the Hon'ble Apex Court in its judgment in the case of CIT vs. Electro House reported in 82 ITR 824, had held that "the CIT before reaching his decision and not before commencing his enquiry is to give the assessee an opportunity of being heard and make or cause to make such enquiry as he deems necessary". We note that in the instant case the learned PCIT before reaching his decision that the documents found, belongs to the assessee had made no enquiry whatsoever. Thus learned PCIT failed to appreciate that before he could have considered the assessment order to be erroneous and prejudicial to the interest of the revenue, he ought to have brought material on record to show that the documents belongs to the assessee and not by merely referring to those very documents which already stood examined by the ld. Assessing Officer and considering the statement of Shri Satyendra Kumar Sharma, for coming to the conclusion that the documents cannot be said to be belonging to the assessee.

25. We observe that in the case of Ramji Dayawala & Sons Pvt. Ltd. vs. Invest Import, AIR 1981 SC 2085, the Hon'ble Apex Court has held that if the truth of the facts stated in a document is in issue, mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence i.e. by the evidence of those persons who can vouchsafe for the truth of the facts in issue. Further reliance is placed on the following judicial pronouncements:

- i. Mohammed Yusuf vs. D. & Ors., AIR 1968 (Bom.) 112.
- ii. CIT vs. S M Aggarwal, 293 ITR 43 (Del.)

26. Further it is brought to our notice that huge addition has been made in the hands of other assessee, namely, Shri Satyendra Kumar Sharma, who has owned various documents seized during the course of search and has stated to that even some documents are in his own hand writing. The ld. Assessing Officer of the assessee is also the ld. Assessing Officer of Shri Satyendra Kumar Sharma and has framed the assessments in both the cases and after being satisfied with the documents and replies filed before him, he made the addition in the hands of Shri Satyendra Kumar Sharma. This asserts the fact that the ld. Assessing Officer has taken one of the legally permissible view and made addition in the hands of the person, he was of the believe, to be subjected to addition. Therefore, the ld. Counsel for the assessee succeeds on the second plea that ld. Pr. CIT erred in assuming jurisdiction in the given case where enquiry has been conducted and the order of the ld. Assessing Officer is not prejudicial to the interest of the revenue as huge additions have been made in the hands of Shri Satyendra Kumar Sharma, and thus one of the limbs of Section 263 of the Act is not fulfilled and revision of the assessment order cannot be held to be valid and tenable in the eyes of law and thus the impugned proceedings u/s 263 of the Act, deserves to be quashed.

27. So far as the merits of the case is concerned, we, taking strength of the judgment of the Hon'ble Delhi High Court in the case of Income-tax Officer v. D.G.

*Housing Projects Ltd. (supra), find that the ld. Pr. CIT has merely referred to the seized material but has not made any further enquiry about the correctness of such documents, as to whether they belong to the assessee, or pertain to the year under consideration.*

28. *We find that the learned PCIT in his show cause notice has referred to documents which even does not pertains to AY 2014-15 or 2015-16 but had been prepared thereafter and as such, it is evident that the order passed by ld PCIT apparently are without application of mind. The ld. Counsel for the assessee has referred to GIB-11 Page 8 which is in handwriting of Shri. Satyendra Kumar Sharma, is not a document for the AY 2015-16 or even AY 2016-17. Infact, there was no supporting evidence available for such figures and thus had no relevance at all in the eye of law for the assessment year either for AY 2015-16 or for AY 2016-17.*

29. *We note that the Learned CIT has committed a factual error observing at page 19 of his order, that the LD ACIT has committed an error by not examining the discrepancies pointed out by the DDIT(Inv) in his notice date 18.05.2018 in respect of the transactions with M/s Broadson Commodities Pvt Ltd.*

30. *However, it is an admitted fact that the Learned ACIT had duly examined each of the allegations stated in the notice under section 263 as is evident from the notice of the Learned ACIT issued under section 142(1) of the Act dated 11-11-2019, a copy thereof is placed at pages24-27 of the PB-I for the assessment year 2015-16. In fact in respect of all the allegation regarding the alleged discrepancy in respect of the transaction with M/s Broadson Commodities Pvt Ltd at item number 19, the AO had called for the assessee' explanation which was in respect of the advances made to M/s Broadson Commodities Pvt. Ltd. The assessee in response to said notice had duly explained the same, vide its response dated 24-12-2019 a copy of which has been placed at page 28 to 364 of the PB-I, wherein at para 18 the alleged discrepancy had duly been explained (at page 76-79). Further, on perusal of the said response which is running into 337 pages, we note each of the issues had been duly explained. Thus, we note that the Learned CIT while revising the order under section 263 has completely overlooked the assessee's response as also the order sheet entries made by ld. Assessing Officer in the assessment file of the assessee. We note that the Learned CIT has also overlooked that the Learned ACIT had examined Shri Baban Singh, Director, of M/s Broadson Commodities Pvt Ltd under section 133(6)/131 of the Act which is evident from the Order Sheet entry dated 25/12/2019 of the assessment file.*

31. *We find that the learned PCIT has failed to appreciate that the learned AO in given circumstances had framed the assessment with proper application of mind by making necessary enquiry and examining the seized material which in ld. Assessing Officer's view were belonging to the assessee and thus learned PCIT had acted without jurisdiction in setting aside the order of the ld AO and holding the*

*same as erroneous being prejudicial to the interest of the revenue. We draw support from the following judicial pronouncements:*

- i. 100 ITD 173 (Mum) Mrs. Khatiza S. Oomerbhoy vs. ITO*
- ii. 100 ITD 441 (Kol) Al-Haz Amir Hasan Properties Pvt. Ltd. vs. Asst. CIT*
- iii. 203 ITR 108 (Bom) CIT vs. Gabriel India Ltd*
- iv. 171 ITR 141 (MP) CIT vs. Ratlam Coal Ash Co*

*31.1. We also find that learned CIT has erred in holding the assessment order as erroneous, a condition precedent and that the fact for holding the order was erroneous he has not made any enquiry whatsoever but proceeded on the basis of his own opinion. Where more than one view is possible, the order cannot be said to be erroneous as has been held by the Apex Court in the case of Malabar Industrial Co. Ltd. vs. CIT (supra). That same income cannot be taxed twice over, as held in the case of Smt. Tara Devi Aggarwal vs. CIT reported in 88 ITR 323, where an income has not been earned and is not assessable merely because the assessee wants it to be assessed in his or her hands in order to assist someone else who would have been assessed to a larger amount, an assessment so made will be erroneous and prejudicial to the revenue. In the instant case we find that the learned PCIT has not considered the order of assessment made in the case of Shri Satyendra Kumar Sharma, on the ground that the said documents did not belong to him but it belongs to the assessee. But ld. Pr. CIT has taken no action to cancel/revise the said assessments made in the case of Shri Satyendra Kumar Sharma.*

*32. Thus, in the light of the settled judicial precedents referred supra and on our examination of the facts of the case including the enquiries conducted by the ld. Assessing Officer regarding the transactions carried out during the impugned year as well as examining the seized material, and then getting necessary approval u/s 153D of the Act and also observing that the ld. Pr. CIT did not make any specific enquiry prior to assuming jurisdiction, find the impugned revisionary proceedings as bad in law and deserves to be quashed on account of the following:-*

*“a) that when there is an approval u/s 153D of the Act, it has been held consistently by the Hon’ble Courts (referred supra) that revisionary power u/s 263 of the Act cannot be exercised.*

*b) even otherwise, without revising the order u/s 153D of the Act, and finding them to be erroneous and prejudicial to the interest of the revenue, revisionary powers cannot be invoked for the assessment order framed u/s 153A/143(3) of the Act after getting approval u/s 153D of the Act.*

*c) that when the ld. Assessing Officer has conducted detailed enquiry, examined the seized records, made necessary observations in the assessment order, referred to various statements filed by the assessee and having taken one of the legally permissible view, then in such circumstances, the*

*revisionary powers cannot be exercised just on the ground that adequate enquiry has not been done.*

*d) that revisionary proceedings cannot be held to be justified unless ld. Pr. CIT had carried out independent enquiry specifically dealing with the details in his possession, for the issues raised in the show cause notice u/s 263 of the Act.*

*e) that when the Assessing Officer, based on his observations and examination of records had made addition in the hands of another assessee, the ld. Pr. CIT without revising the assessment order of other assessee, which has been framed by the same Assessing Officer cannot revise the assessment order in the case of the assessee and directing to make the additions as the same would tantamount to double addition.*

*f) that the finding on merit of the ld. Pr. CIT contains various mistakes as the documents referred are not for the assessment year in dispute and some of the documents are not belonging to the assessee."*

33. *Thus, in view of our discussion(supra)and our examination of the facts, as the order of the Assessing Officer is neither erroneous nor prejudicial to the interest of revenue, there was no scope for the ld. Pr. CIT to revisit the order of the ld. Assessing Officer. Therefore, the impugned order u/s 263 of the Act is quashed and assessment order framed u/s 153A/143(3) of the Act dt. 26/03/2022, is restored. The effective grounds raised by the assessee are hereby allowed for Assessment Year 2015-16. As discussed earlier, our decision for Assessment Year 2015-16 quashing the order u/s 263 of the Act is applicable mutatis mutandis to the appeals of the assessee for Assessment Year 2016-17 to 2018-19."*

35. Respectfully following the decisions cited *supra* particularly placing reliance on the recent decision of this Tribunal in the case of *Gyan Infrabuild (P) Ltd.*(*supra*), we find that Ld. Pr. CIT erred in assuming jurisdiction u/s. 263 of the Act firstly because approval granted u/s. 153D of the Act to the draft assessment order u/s. 153A r.w.s. 143(3) of the Act has not been revised and, therefore, the extensive and adequate conducted by the AO is proved. Secondly, we find that Ld. Pr. CIT erred in holding the assessment order as erroneous and prejudicial to the interest of revenue because adequate and extensive enquiry has been conducted by the AO for each of the assessment years and detailed replies have been filed by the assessee explaining the transactions appearing in the seized material as well as other transactions

appearing in the books of account and since Ld. AO has adopted one of the courses permissible in law under the given facts, the assessment orders cannot be held as erroneous and prejudicial to the interest of Revenue. Even explanation (2) to section 263 of the Act cannot come to rescue the revenue because Ld. Pr. CIT has not carried out any independent enquiry before forming an opinion that the orders of the AO have been passed without making enquiries or verification. Accordingly, the impugned revisionary proceedings u/s. 263 of the Act are hereby quashed and the assessment orders framed u/s. 153A read with section 143(3) of the Act for the impugned assessment years i.e. s 2014-15 to 2021-22 are hereby restored. Common grounds of appeal challenging the impugned proceedings are hereby allowed.

36. In the result, all the appeals of the assessee are allowed as per terms indicated hereinabove.

Order is pronounced in the open court on 12th September, 2024.

Sd/-

[Sonjoy Sarma]

Judicial Member

Dated: 12<sup>th</sup> September, 2024

Sd/-

[Dr. Manish Borad]

Accountant Member

*J.D. Sr. PS.*

*Copy of the order forwarded to:*

- 1. Appellant – Nalanda Engicon Pvt. Ltd., N P Tower, Main Road, Kankarbagh, Patna, Bihar**
- 2. Respondent – DCIT, Central Circle-2, Patna**
3. PCIT (Central), Patna
4. Departmental Representative
5. Guard File.

*True copy*

By order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata