

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE,
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No.1545/Del/2024
(ASSESSMENT YEAR-2016-17)

ITA No.1544/Del/2024
(ASSESSMENT YEAR-2015-16)

ITA No.1543/Del/2024
(ASSESSMENT YEAR-2014-15)

ITA No.1542/Del/2024
(ASSESSMENT YEAR-2013-14)

Sandeep Kumar House No.317, Sector-8, Faridabad Haryana-121006 PAN:AHIPG5861A (Appellant)	Vs.	ITO Ward-2(3), C.R. Building Faridabad-121001 (Respondent)
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Assessee by	Shri KVSR Krishna, Adv.
Respondent by	Shri Sujit Kumar, CIT-DR

Date of Hearing	07/08/2024
Date of Pronouncement	18/10/2024

ORDER

PER VIMAL KUMAR, JM:

1. These bunch of four appeals of the Assessee are against order dated 08/02/2024 of the Learned Principal Commissioner of Income Tax, Faridabad [hereinafter referred to as 'Ld. PCIT'] u/s 263 of the Income Tax Act, 1961 [hereinafter referred as 'the Act']

arising out of Assessment Order dated 31/03/2022 of Income Tax Officer, NFAC, Delhi [hereinafter referred to as "Ld. AO"] for the Assessment Years 2013-14 to 2016-17 respectively.

2. Brief facts, issues and grounds raised thereon are identical, so these appeals are taken up together and disposed of by this common order for sake of convenience.

3. Brief facts are that assessee Shri Sandeep Kumar filed return of income of Rs.12,69,150/- on 26.03.2017 for Asst. Year 2016-17. The return was processed u/s 143(1) of the Act. On 24/05/2017 as per information received from the Assistant Director of Income Tax (Inv.)-II, Faridabad vide letter dated 21/05/2020, it was found that Faridabad Police Commissioner has stated that criminal cases alleging cheating of investors have been registered against Piyush Group of Companies and that during the investigation, it has been found that many investors have invested in Piyush Group for purchase of flats. The assessee is one of investors who made investment of Rs.3,52,11,600/- on which the assessee has received interest income to the tune of Rs.1,48,70,650/- during the year under consideration. The ledgers of various persons whose investment having transactions exceeding Rs.10 Crore have been identified from data. Thereafter the identified ledgers have been confronted with Sh. Rajiv Sharma (who is employee responsible for collection for cash from various investors as well as Director in group in the companies of Piyush Group) for want of their addresses. Out of the confronted ledgers of the person whose ledger

was maintained in the Anju and Company in the name of Sandeep Garg@2.15% was identified by the Rajiv Sharma as Sandeep Kumar S/o Sh. Mahender kumar R/o H No. 317, Sec-08, Faridabad.

4. Summons were issued to the assessee and his statement was recorded u/s 131(1A) of the Act on 09/10/2019. Notice u/s 148 dated 30/03/2021 was issued to the assessee. In response to notice u/s. 148, the assessee filed ITR on 16/08/2021 admitting same income as admitted in original return filed on 29/07/2013. Subsequently, notice u/s 143(2) was issued on 17/02/2022. In reply, the assessee stated that he had invested Rs.10,00,000/- only in Piyush Group as advanced against the property out of which the income earned/savings. He disclosed all the interest income (i.e. Rs.32,261/- only) as earned by him during the year under consideration in his ITR. He has furnished the Bank Account statements for the period from 01/04/2015 to 31/03/2016. On verification of details, it was seen that assessee invested Rs.10,00,000/-, and same was added through the assessment order dated 31/03/2022.

5. Learned PCIT, exercising power u/s 263 issued show cause notice dated 29/08/2023 as to why assessment order dated 31/03/2022 should not be set aside and a fresh assessment be directed. Assessee filed written submission dated 05/10/2023. Ld. PCIT vide order dated 31/03/2022 set aside assessment order dated 31/03/2022 and directed Ld. AO to pass a fresh assessment

order and re-compute the assessee's income after making further enquiries.

6. Being aggrieved, the appellant/assessee preferred above said appeals. In appeal for Assessment Year 2016-17 i.e. ITA No.1545/Del/2024, the assessee has raised following grounds:-

"1. The order is beyond jurisdiction conferred u/s 263 of the Act. Hence the order u/s 263 dated 8th February, 2024 is wrong and bad in law.

2. The appellant contends that the Id. PCIT, Faridabad in his order has not provided any material, evidence for holding the assessment order u/s 147 r.w.s. 144B to be erroneous or prejudicial to the interest of the revenue. Hence, the proceedings u/s 263 and the consequential order is wrong and bad in law.

3. The appellant contends that the Ld. PCIT has not undertaken any exercise of enquiry, verification but has only directed the AO to undertake enquiry. Therefore, without establishing any error in the order of the AO, which is a fundamental and preliminary condition for invoking the jurisdiction u/s 263, the directions so given are wrong and bad in law and hence the order u/s 263 setting aside the original order has to be cancelled and filed.

4. The appellant contends that there cannot be parallel proceedings u/s 263 on the same issue which is a subject matter of appeal before the CIT(A). Hence also the order u/s 263 deserved n the same issue which is a subject matter of appeal before the CIT(A).

5. The above grounds are independent and without prejudice to one and another.

6. The appellant may be allowed to add, alter, forgo any of the ground at the time of hearing."

7. Learned Authorized Representative for assessee submitted that Ld. PCIT erred in holding assessment order to be erroneous and prejudicial to the interest of Revenue. Learned PCIT has not taken any exercise of enquiry verification but has only directed AO to undertake enquiry. Ld. PCIT without establishing any error in the

order of Ld. AO which is a fundamental and preliminary condition for invoking the jurisdiction u/s 263 is bad in law. Ld. PCIT erred in not appreciating that there cannot be parallel proceeding u/s 263 of the Act. The following case laws are in favour of the assessee:-

- (i) Green World Corporation (2009) 181 Taxman (SC), CIT v. Vodafone, Essar South India Ltd. (2012) 28 Taxman.com 273 (Del), CIT v. Anil Kumar Sharma (2010) 194 Taxman 504(Delhi).

"No Inquiry" is different from "inadequate Inquiry" and where the Id. AO makes enquiries as it seems appropriate on the facts and in the circumstances of the case, assumption of jurisdiction u/s 263 of the Act is not warranted.

- (ii) CIT v. DG Housing 343 ITR 239 (Del).

In case where the allegation is of "proper inquiries" the burden is on the Id. PCIT to conduct further inquiries by himself and he cannot simply set aside the order of the Id. AO for further enquiries.

- (iii) Delhi High Court in DIT vs. Jyoti Foundation [2013] 357 ITR 388 (Delhi).

"Thus, in cases of wrong opinion or finding on the merits, the Commissioner of Income-tax has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order u/s 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. The Commissioner of Income-tax cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous..

- (iv) CIT vs. Sunbeam Auto Ltd. (2011) 332 ITR 167 (Delhi).
CIT cannot remand matter to the AO to decide whether findings recorded are erroneous. In case there are inadequate inquiry but not lack of inquiry, again the CIT must give and record the finding let the order/inquiry made is erroneous.

8. The Learned AR for Department of Revenue submitted that in para 18 Ld. PCIT ordered that “.....On the basis of the discussion in this order and discrepancies pointed out, it is observed that the assessment framed by the Assessing Officer u/s 147 r.w.s 144B of the Act dated 21/03/2022, is without proper perusal, examination & investigation of relevant information and records as required under Income Tax Act, 1961; which makes it erroneous and prejudicial to the interest of revenue in the opinion of the undersigned.”

9. From the examination of record in light of aforesaid rival contention, it is crystal clear that in response to show cause notice dated 29/08/2023 assessee filed written submissions on 05/10/2023. Learned PCIT in para 8 has observed that “...the assessing officer has not made proper enquiry in the said case and has also not followed the due procedure before completing the assessment proceedings. The assessing Officer has not provided the material available on record to the assessee and has also not confronted the same. The A.O. was having concrete information in his possession that the assessee has made investment of Rs.3,51,11,600/- with the Piyush Group and has earned interest thereupon but has not added the same to the income of the assessee for the period under consideration.”

10. Hon'ble Delhi High Court in the case of Principal Commissioner of Income Tax vs. M/s Clik's Finance Pvt. Ltd. [2012]

(3) TMI 227 dated 01/03/2024 has held as under:-

"19. A bare reading of sub-Section (1) of Section 263 of the Act makes it abundantly clear that the said provision lays down a two pronged test to exercise the revisional authority i.e., firstly, the assessment order must be erroneous and secondly, it must be prejudicial to the interests of the Revenue. Further, Explanation 2 to Section 263 of the Act delineates certain conditions and circumstances when the order passed by the AO can be said to be erroneous and prejudicial to the Revenue.

20. Clause (a) of Explanation 2 to Section 263 of the Act further stipulates that if an order is passed without making an enquiry or verification which should have been made, the same would bestow a revisional power upon the Commissioner. However, the said Clause or any other condition laid down in Explanation 2 does not warrant recording of the said enquiry or verification in its entirety in the assessment order.

21. Admittedly, in the instant case, the questionnaire dated 02.11.2004, which has been annexed and brought on record in the present appeal, would manifest that the AO had asked for the allowability of the claims with respect to the issues in question. Consequently, the respondent-assessee duly furnished explanations thereof vide replies dated 09.12.2004, 20.12.2004 and 06.01.2005. Thus, it is not a case where no enquiry whatsoever has been conducted by the AO with respect to the claims under consideration. However, this leads us to an ancillary question whether the mandate of law for invoking the powers under Section 263 of the Act includes the cases where either an adequate enquiry has not been made and the same has not been recorded in the order of assessment or the said authority is circumscribed to only consider the cases where no enquiry has been conducted at all.

22. Reliance can be placed on the decision of this Court in the case of CIT v. Sunbeam Auto Ltd. [2009] SCC OnLine Del 4237, wherein, it was held that if the AO has not provided detailed reasons with respect to each and every item of deduction etc. in the assessment order, that by itself would not reflect a non-application of mind by the AO. It was further held that merely inadequacy of enquiry would not confer the power of revision under Section 263 of the Act on the Commissioner. The relevant paragraph of the said decision reads as under:-

"17. We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the

Commissioner of Income-tax under section 263 of the Income-tax Act. As noted above, the submission of learned counsel for the Revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order, which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter. It is only in cases of "lack of inquiry" that such a course of action would be open, In Gabriel India Ltd. (1993) 203 ITR 108 (Bom), law on this aspect was discussed in the following manner (page 113)

.....

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

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

opinion in the matter." No substantial question of law arises for our consideration."

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

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

"8. The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss 2024 (3) TMI 157-HC-Pr. Commissioner Of Income Tax-2 Delhi Versus Mis Clex Finance India of tax. The High Court of Calcutta in Dawjee Dadabhoy & Co. v. S.P. Jain ((1957) 31 ITR 87 (Cal)), the High Court of Karnataka in CIT v. T. Narayana Pai [(1975) 98 ITR 422 (Kant)], the 3/21/24, 6:32 PM High Court of Bombay in CIT v. Gabriel India Ltd. [(1993) 203 ITR 108(Bom)] and the High Court of Gujarat in CIT v. Minalben S. Parikh [(1995) 215 ITR 81 (Guj)] treated loss of tax as prejudicial to the interests of the Revenue.

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

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

In our view this interpretation is too narrow to merit acceptance. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue.

10. *The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing*

Officer cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income Tax Officer is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue. (See Rampyari Devi Saraogi v. CIT [(1968) 67 ITR 84 (SC)] and in Tara Devi Aggarwal v. CIT [(1973) 3 SCC 482: 1973 SCC (Tax) 318: (1973) 88 ITR 323J.]"

[Emphasis supplied]

26. Recently, the Hon'ble Supreme Court in the case of *CIT v. Paville Projects (P) Ltd.* [2023 SCC OnLine SC 371], while relying upon *Malabar Industrial Co. Ltd.*, has discussed the sanctity of twofold conditions for the purpose of invoking jurisdiction under Section 263 of the Act. The relevant paragraph of the said decision reads as under:-

"27. Learned counsel appearing on behalf of the assessee has heavily relied upon the decision of this Court in the case of *Malabar Industrial Co. Ltd.* (supra). It is true that in the said decision and on interpretation of Section 263 of the Income Tax Act, it is observed and held that in order to exercise the jurisdiction under Section 263(1) of the Income-tax Act, the Commissioner has to be satisfied of twin conditions, namely,

(i) the order of the Assessing Officer sought to be revised is erroneous; and

(ii) it is prejudicial to the interests of the Revenue. It is further observed that if one of them is absent, recourse cannot be had to Section 263(1) of the Act.

27. Considering the aforesaid judicial pronouncements, it can be safely concluded that inadequacy 28 2024 (3) TMI 157-HC-Pr Commissioner Of Income Tax-2 Delhi Versus M/s Clix Finance India enquiry by the AO with respect to certain claims would not in itself be a reason to invoke the powers enshrined in Section 263 of the Act. The Revenue in the instant case has not been able to make out a sufficient case that the CIT has exercised the power in accordance with law. Rather, in our considered opinion, the facts of the case do

not indicate that the twin conditions contained in Section 263 of the Act are fulfilled in its letter and spirit.”

11. From perusal of above material facts in light of aforesaid well settled principle of law, it is evident that all the submissions submitted by assessee before Learned AO were dealt by him. Ld. PCIT had not taken any enquiry but pointed out errors in the assessment proceedings i.e., non making of proper enquiry, non providing of copy of material to assessee. Ld. PCIT erred in ignoring the fact that the issue raised by him in the notice were before Ld. AO and as such the jurisdiction could not be assumed by him.

12. The Ld. PCIT erred in ignoring the contention that the proceedings u/s 263 cannot be used for substituting opinion of the A.O. by that of the PCIT. The order of Ld. PCIT is unsustainable as power to revise can be invoked in case on lack of enquiry and not in case of inadequate inquiry. The Ld. PCIT erred in ignoring proviso of Explanation 2 to section 263(1) of the Act despite the fact that contention prescribed therein are not satisfied in the present case. The Ld. PCIT erred in setting aside the order of AO without giving finding as to the error and prejudice caused to the revenue by the assessment order. Therefore, impugned order of Ld. PCIT u/s 263 dated 08/02/2024 is set aside.

13. As stated earlier, the grounds raised by the Appellant/assessee for Assessment Year 2016-17 are exactly identical with those grounds raised in Assessment Years 2015-16, 2014-15 and 2013-14. Hence, the decision rendered herein above

for Assessment Years 2016-17 shall apply *mutatis mutandis* to the aforesaid appeals i.e., ITA No.1544/Del/2024, ITA No.1543/Del/2024 and ITA No.1542/Del/2024.

14. In the final result, all the appeals of the assessee are allowed.

Order pronounced on this day 18th October, 2024.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

Dated: 18/10/2024

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI