

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

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

आयकर अपील सं./ITA No. 412/JPR/2024
निर्धारण वर्ष / Assessment Years : 2013-14

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| Shivam Readymix Private Limited 25, Jawahar Nagar, Kamal Chowk, Meemuch-458441, Madhya Pradesh. | बनाम Vs. | The PCIT (Central), Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAMCS9840B | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri Tarun Mittal (C.A.)
राजस्व की ओर से / Revenue by : Ms. Alka Gautam (CIT)

सुनवाई की तारीख / Date of Hearing : 05/11/2024
उदघोषणा की तारीख / Date of Pronouncement: 12/11/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

By way of this appeal, the assessee challenges the finding recorded in the order of the, Learned Principal Commissioner Income Tax, Jaipur [for short Id. PCIT] dated 26.03.2024. The dispute relates to the assessment year 2013-14. That order was passed by the Id. PCIT as per power vested upon her as per provision of section 263 of the Income Tax Act 1961 [for short Act].

2. The assessee challenges that order of the Id. PCIT on the following grounds:-

"1. On the facts and in the circumstances of the case and in law, Id. PCIT has erred in passing order u/s 263 dated 26.3.2024, by holding that assessment order passed u/s 143(3) of the Income Tax Act, 1961 dated 29.6.2021 is erroneous in so far as it is prejudicial to the interest of the revenue, arbitrarily.

1.1 That, Id. PCIT has further erred in holding that Id.AO has passed the order in routine and casual manner and without making adequate enquiries with regards to the unaccounted purchases and thereby issuing directions to re consider the applicability of provisions of section 69C in respect of unaccounted cash purchases made by assessee from M/s Triveni Grit Manufacturing Company. Appellant prays that all the necessary records were duly examined and enquiries were made by Id.AO and assessment was made after due application of mind, thus the action of Id. PCIT in holding the order as erroneous and prejudicial to the interest of the revenue deserves to be set aside.

1.2 That, Id. PCIT has erred in issuing directions for consideration of applicability of provisions of section 69C (i.e. unexplained expenditure) in respect of unaccounted purchases of Rs. 1,28,11,487/-, though in show cause notice, it was alleged that addition was shortly made by Rs.2,92,76,185/- on account of undisclosed income. Appellant prays that directions issued vide Revision order are not in accordance with Show cause notice issued and deserves to be set aside.

2. On the facts and in the circumstances of the case and in law, Id. PCIT has erred in issuing directions for consideration of applicability of provisions of section 69C in respect of unaccounted purchases and to thereby disallow 100% of unaccounted purchases of Rs. 1,28,11,487/-, which is against the settled legal position, according to which only profit earned on sale of such unaccounted goods could be disallowed and not the entire purchases.

2.1 That, Id. PCIT has further erred in disregarding the profit worked by assessee and accepted by Id.AO on such unaccounted purchases merely stating that estimated cost and estimated sales are not considered as allowable. Appellant prays that "Extrapolation technique" is an accepted technique of backward/forward projection of income to compute "real income" in search cases and such income is acceptable so far as it is made in scientific manner and is not mere guesswork, and therefore action of Id. PCIT in not accepting Estimated Sales and profit as worked out on the basis of actual unaccounted purchases is not in accordance with law and deserves to be set aside.

3. That the appellant craves the right to add, delete, amend or abandon any of

the grounds of appeal either before or at the time of hearing of appeal.”

3. Brief facts related to this case are that the assessee filed return of income declaring total income of Rs. 95,35,360/- on 01.10.2013. Because of the search conducted on 23.01.2019 in the case of Gupta Group, Jaipur to which the assessee belong the assessee the case was centralized before the ACIT, Central Circle-3, Jaipur and thereby the assessment was completed u/s 153A of the Act on 29.06.2021, after taking an appropriate approval u/s 153D of the Act from the concerned Joint Commissioner of Income, Central Range, Jaipur.

4. On culmination of the assessment proceedings, Id. PCIT, Central, Jaipur called for the assessment records for examination as per power vested u/s 263 of the Act upon her. While doing so she noted that as per para 5 of assessment order, during the survey proceedings, certain incriminating documents were seized and statements of related persons were recorded. The analysis of seized material inventoried as exhibit 81 of Annexure AS, showed that the assessee had made out of books purchase from M/s Triveni Grit Manufacturing company, Shivalic Grit Udyog, Nikhil Associates and others. From the record she noted that the assessee during

the period under consideration made unaccounted purchases to the tune of Rs 1,28,11,487/- and corresponding unaccounted sales were computed for Rs 4,51,31,144/-. Resultantly, the assessee had earned undisclosed income of Rs 3,23,19,657/-. However, in the assessment order u/s 143(3) an amount of Rs 30,43,472/- had been added on account of unaccounted transactions. Therefore, the remaining undisclosed income of Rs 2,92,76,185/- [Rs. 3,23,19,657 less (-) Rs. 30,43,472] is required to be added to the total income of the assessee under the head Business & Profession. The issue of making an addition of Rs. 3,23,19,657/- on account of undisclosed income under the head Business & Profession has not been examined or considered while making the assessment framed by the AO. Therefore, it appears that the action of the AO is erroneous which has caused prejudice to the interests of Revenue. In this connection Id. PCIT issued a Show Cause Notice on 09.03.2024 and hearing was provided to the assessee on 20.03.2024. In response to the above notice, the assessee/AR has filed his submission on 19.03.2024.

4.1 Based on the written submission and the material available on record, it is noted that the unaccounted cash purchases made by the assessee has remained unexplained expenditure. While finalizing the

assessment, Ld. AO had inadvertently not considered the unexplained cash purchases of Rs. 1,28,11,487/-. This error due to lack of enquiry and consequent non-deriving of reasoned inference by the Assessing Officer, has prima facie cause prejudice to the interest of the revenue. So relying on the decision of Hon'ble Supreme Court in the case of Malabar Industrial Limited vs. CIT [234 ITR 83] held that she do not intend to disturber the assessment that has already been made but only passing an order where applicability of the provisions of Section 69C is considered and unexplained cash purchases is made appropriately. The order of the Id. AO, was therefore, made liable to revision under the explanation (2) clause (a) of section 263 of the Act. The assessment order was set aside and restored to the file of Assessing Officer to verifying applicability of provisions of section 69C of the Act and appropriately considered the unexplained cash purchases. The relevant directions as issued vide order passed u/s 263 reads as follows:

"I wish to make it clear that I am not disturbing the assessment that has already been made. I am only passing an order whereas applicability of the provisions of section 69C is considered and unexplained cash purchases is made appropriately. The order of the AO is, therefore, liable to revision under the explanation (2) clause (a) of section 263 of the Act. The assessment order is set aside and restored to the file of Assessing officer to verifying applicability of provisions of section 69C of the Income tax Act and appropriately considered the unexplained cash purchases."

5. Feeling dissatisfied from the above order of the Id. PCIT, the assessee has preferred the present appeal on the ground as stated hereinabove. Apropos to the grounds so raised the Id. AR of the assessee relied on the written submission which is reproduced here in below :-

“Assessee is a Private Limited Company and engaged in the business of manufacturing and trading of readymix concrete mixture. Return of Income for the year under consideration was filed by assessee on 1.10.2013 declaring total income at Rs. 95,35,360/-. A Search and seizure operation u/s 132 of the IT Act, 1961 was conducted at the Gunesh Group of which assessee company is one of the members. During the course of search, various incriminating documents related to various group concerns were found and seized by the department. Accordingly, notices u/s 153A were issued to assessee also for the period covered under the search. In response to the same, return of Income was filed on 12.12.2019 declaring total income at Rs. 95,35,360/-. Various details / information were sought by Id.AO during assessment proceedings and after verification of the documents and submission filed by the assessee, the assessment was completed by Id.AO vide order dated 29.6.2021 passed u/s 153A r.w.s 143(3) of the IT Act, 1961, whereby addition of Rs. 30,43,472/- was made by applying GP rate of 6.74% on unrecorded sales of Rs. 4,51,31,143/- and thus at total income was assessed at Rs. 1,25,78,830/-.

Thereafter, Id. PCIT- Jaipur, issued show cause notice on 09.03.2024 proposed to revise the assessment completed u/s 153A r.w.s. 143(3) of the Act on the observation that undisclosed income worth Rs.2,92,76,185/- was required to be added to the total income of the assessee in respect of purchase of Rs. 1,28,11,487/- from M/s Triveni Grit Manufacturing Company. Detailed submission along with supporting evidences were filed before Ld. PCIT, who without considering the submission made by the assessee company, proceeded to complete revision proceedings vide order u/s 263 of the Act dated 26.03.2024, whereby order passed by Ld.AO u/s 153A r.w.s. 143(3) was held to be erroneous and prejudicial to the interest of the revenue on abovementioned issued and thus order of Ld. AO has been set aside with directions to (i) re-examine unsecured loan taken by the assessee (though there was no discussion on this issue in show cause notice as well as in Order u/s 263) & (ii) to verify the applicability of provisions of section 69C of the Act in respect of purchases of Rs.1,28,11,487/- made from Triveni Grit Manufacturing Company. Present appeal has been filed by the assessee against the order so passed by Ld. PCIT (Jaipur).

With this background, ground-wise submission is made as under:

Grounds of Appeal No. 1 to 1.2 & 2 to 2.1:

In grounds of appeal no. 1 & 1.1, assessee challenged the action of Ld. PCIT in holding the order passed by Id.AO as erroneous in so far as being prejudicial to the interest of revenue.

In grounds of appeal no. 1.2 to 2.1, assessee has challenged the action Id. PCIT in issuing directions for fresh assessment proceedings on matter relating to applicability of provisions of section 69C of the Act without considering the submission furnished by assessee.

As all these grounds of appeal are interconnected, same are canvassed together for sake of convenience.

In this regard, at the outset, directions of Id. PCIT as issued vide order passed u/s 263 are reproduced for ready reference:

"I wish to make it clear that I am not disturbing the assessment that has already been made. I am only passing an order whereas applicability of the provisions of section 69C is considered and unexplained cash purchases is made appropriately. The order of the AO is, therefore, liable to revision under the explanation (2) clause (a) of section 263 of the Act. The assessment order is set aside and restored to the file of Assessing officer to verifying applicability of provisions of section 69C of the Income tax Act and appropriately considered the unexplained cash purchases."

Brief facts pertaining to the grounds of appeal are that consequent upon search action u/s 132 of the Income Tax Act, 1961 on 23.01.2019 at the various premises of the appellant and its Directors, various documents comprising of loose sheets, registers, pen drives, hard disks, etc. etc. were found and seized by the respective Authorized Officers, which were marked on the basis of nature of documents/place from where the same were found etc. One such exhibit found from the possession of Sh. Sunil Kumar Sharma, Accountant of the company, was marked as Annexure AS Exhibit 81, which contain the details of purchases of Grit (Rodi) from M/s Triveni Grit Manufacturing Co., which is one of the raw materials required for the manufacturing of readymix concrete, in cash and through bank. It is a matter of fact that a search action u/s 132 was also conducted in the case of M/s Triveni Grit Manufacturing Company, (the business concern of Sh. Sita Ram Agarwal, a close business associate of Sh. Mahesh Gupta, Director of the applicant Company). During that search, the Learned Authorized Officers found and seized documents containing details of unaccounted sales of Grit by M/s Triveni Grit Manufacturing Company to the applicant company. As per the information provided by M/s Triveni Grit Manufacturing Company, it filed a separate application in its case before the Hon'ble Income Tax Settlement Commission and has duly disclosed such undisclosed sales. As the assessee company was not in the possession of complete documents / information for various assessment years for the purpose of calculating the exact amount of unaccounted purchases from M/s Triveni Grit

Manufacturing Company, it obtained the said information from M/s Triveni Grit Manufacturing Company and the details of amount of Grit purchased. Accordingly, unaccounted purchases of grit for the year under consideration was computed at Rs.1,28,11,487/-.

Further during the course of assessment proceedings, assessee furnished a detailed Common reply for A.Y. 2013-14 to 2019-20, explaining manner of determination of Additional income (**APB 18-23**), whereby it was explained before Id. AO that as an industrial benchmark, the approximate grit consumption ratio is approximately 30% in the sales of readymix concrete and other components are cement, sand, fly ash etc. Also, a detailed working was furnished before Id. AO, which is also reproduced in assessment order also, according to which cost of good sold was computed at Rs.4,20,87,670.83 and after applying gross profit of 6.74% (as per the regular books of accounts), sales was estimated at Rs.4,51,31,143.44. Accordingly, additional income earned on account of such unaccounted purchases was derived at Rs.30,43,472.61, which was offered by assessee for taxation. After thorough verification of the details furnished by assessee, Id.AO concluded assessment order with following remarks:

“5.6 The submission of assessee has been verified. The assessee filed separate working of gross profit of business of readymix and also submitted ledger accounts of the expenses incurred for readimix business. Gross profit @6.74% is hereby taken to calculate the undisclosed income earned from undisclosed sales. The assessee admitted unrecorded sales of Rs.4,51,31,143/-, therefore unrecorded gross profit calculates to Rs.30,43,472/- (6.74% of Rs.4,51,31,143) and the same is added to the total income of the assessee. Penalty proceedings u/s 271(1)© of the Act is hereby initiated for concealed the particulars of income.”

It is submitted that the Id.AO passed assessment order u/s 153A after obtaining prior approval u/s 153D of the Income Tax Act, 1961 of the Joint Commissioner of Income Tax, Central Range, Jaipur vide her office letter No. Jt. CIT/Central Range/JPR/2020-21/679 dated 28.6.2021.

It is thus evident that the assessment order in the case of assessee was passed after thorough examination of all the factual aspects and thus observations of Id. PCIT that *“....order has been passed by the AO in a routine and casual manner without applying proper mind on the issue involved. The AO has not verified the details which were required to be verified under the scope of scrutiny”* is not at all correct.

In view of above background, order passed u/s 263 is challenged by assessee on following issues:

1. Order u/s 153A r.w.s. 143(3) of the Act which is passed after an approval of Id. JCIT u/s 153D could not be revised u/s 263 without giving a finding that prior approval u/s 153D was vitiated:

In this regard Reliance is placed on following judicial pronouncements—

Principal Commissioner of Income-tax v. Prakhar Developers (P.) Ltd. Reported in 162 taxmann.com 48 (Madhya Pradesh High Court) has held as under—

Section 153A, read with sections 143 and 153D, of the Income-tax Act, 1961 Search and seizure - Assessment in case of (Revision) - Assessment years 2011-12 to 2016-17 – Whether 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 - Held, yes [Para 7] [In favour of assessee]

Hon'ble ITAT DELHI BENCH in the case of Devender Kumar Gupta v. Principal Commissioner of Income-tax in ITA Nos. 1890 to 1893 of 2024 reported in 166 taxmann.com 95 has held as under—

Section 263, read with section 153D, of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interest of revenue (Scope of) - Assessment years 2015-16 to 2018-19 -Whether while examining issue as to if assessment order is erroneous so far as prejudicial to interest of revenue, Principal Commissioner in his revisional jurisdiction under section 263 is not only supposed to see assessment record of Assessing Officer, but also record of approval under section 153D which as far as revisional authority is concerned becomes 'record' of quasi judicial authority whose order is being examined by invoking revisional jurisdiction - Held, yes - Whether, therefore, 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 without giving a finding that prior approval under section 153D was vitiated and was also erroneous so far as prejudicial to interest of revenue - Held, yes [Paras 9 and 11] [In favour of assessee]

Hon'ble ITAT PATNA BENCH in the case of Gyan Infrabuild (P.) Ltd. v. Principal Commissioner of Income-tax (Central) in ITA Nos. 175 to 178 of 2023 reported in 162 taxmann.com 664 has held as under—

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 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]

2. Directions have been issued by Id.PCIT vide Order u/s 263 to revise the assessment completed u/s 143(3) r.w.s.153A though order passed by Id.AO did not fulfill the twin conditions as prescribed u/s 263:

As stated above, that the due care has been taken by the Ld. AO with reference to the entries found noted on seized material and the assessment order has been passed after due application of mind on assessee's submissions and giving proper reasoning in assessment order with respect to the working of additional income offered by the assessee during the course of assessment proceeding. Thus, the order of Id.AO cannot be held as erroneous by any stretch of imagination as the most pertinent enquiries were made by Id.AO and thereafter, after duly considering the material available on record Id.AO formed his view, which is one of the possible views and therefore the order of Ld. AO cannot at all be held as erroneous.

It is also submitted that it is settled law that where two views are possible and Id. AO has taken one view with which the Id. PCIT does not agree with it. Than this will also not render order passed by Id. AO as an erroneous, unless the view taken by Id. AO is not sustainable in law, which is not the scenario in the present case. As stated above, during the course of assessment proceedings vide notice u/s 142(1) of the Act dated 05.02.2021 for A.Y. 2013-14 to 2019-20 (**s 24-29**), wherein, at serial no. 3 of which Id.AO has proposed to make addition of Rs.3,95,46,694/- on the basis of page 22 of Exhibit 81 and has further questioned about the purchases from M/s Nikhil Associates and Shivalik Grit udhyog. In response to such notice, assessee furnished detailed reply on 09.06.2021 (**APB 30-37**) duly explaining that purchases from M/s Nikhil Associates and Shivalaik Grit udhyog are duly recorded in the regular books of accounts, which were accepted by the Ld. AO after verification of parties ledger accounts. It was also submitted by the assessee that with regard to purchases from M/s Triveni Grit manufacturing Co., only part of the purchases and not the entire purchases recorded on such page was out of books. Further Id. AO has taken a view to add

Gross Profit on the estimated unaccounted sales which was made out of unaccounted purchases as per the explanation provided above. Thus, the view taken by Id. AO is one of the legal possible views and Id. PCIT has issued directions on the basis of another alternate view, which is not correct. In fact, it is pertinent to note here that Id.PCIT initially, vide show cause notice proposed addition of Rs.2,92,76,185/- on account of undisclosed income earned on sale of purchases made from Triveni Grit manufacturing company. However, while passing order u/s 263, directions have been issued to verify the applicability of provisions of section 69C. Even, Id. PCIT has changed her view in Revision Order as to the one that was taken in show cause notice issued.

In this regard, reliance is placed on:

295 ITR 282 (SC) CIT v. Max India Ltd.

The phrase “prejudicial to the interests of the Revenue” in section 263 of the Income-tax Act, 1961, has to be read in conjunction with the expression “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 the Assessing Officer adopts one of two courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the Revenue, unless the view taken by the Assessing Officer is unsustainable in law.

Further reliance is placed on the decision of Hon'ble **High Court Of Chhattisgarh at Bilaspur** in the case of **Pr. Commissioner of Income Tax-1, Raipur versus M/s Mahavir Ashok Enterprises Pvt. Ltd.** in **TAXC No. 40 of 2022** wherein it is held as under—

“17. In this case also, the Assessing Officer has issued specific show cause notice to the assessee as to why the excess stock of ₹ 2,25,75,951/- be treated as unexplained investment under Section 69 of the IT Act which the assessee replied stating that the said excess business stock was found during survey proceedings under the IT Act during the year under consideration in the business premises of the assessee Company and duly recorded in the books of accounts of the concerned year and thus, Section 69 of the IT Act would not be attracted to the assessee Company, as excess stock would not be treated as undisclosed income within the meaning of Section 69, which the AO has accepted and taken it as one of the possible views and which the ITAT has accepted holding to be the correct view.

18. In that view of the matter, we are of the considered opinion that both the twin conditions, namely, the order of the Assessing Officer sought to be revised is erroneous and it is prejudicial to the interests of the Revenue, are not satisfied at all to invoke the jurisdiction under Section 263 of the IT Act, as the Assessing

Officer has passed the order of assessment after conducting inquiry. As such, the learned PCIT is absolutely unjustified in invoking the jurisdiction under Section 263 of the IT Act which has rightly been set-aside by the ITAT.

19. *In that view of the matter, we answer the substantial question of law in favour of the assessee and against the Revenue.”*

Commissioner of Income Tax vs Ganpat Ram Bishnoi [2006] 152 Taxman 242 (Raj.) Para 11 of the decision is reproduced as under:

“Undoubtedly, the jurisdiction under section 263 is wide and is meant to ensure that due revenue ought to reach the public treasury and if it does not reach on account of some mistake of law or fact committed by the Assessing officer, the CIT can cancel that order and require the concerned Assessing Officer to pass a fresh order in accordance with law after holding a detailed enquiry. But when enquiry in fact has been conducted and the Assessing Officer has reached a particular conclusion, though reference to such enquiries has not been made in the order of the assessment, but the same is apparent from the record of the proceedings, in the present case, without anything to say how and why the enquiry conducted by the Assessing officer was not in accordance with law, the invocation of jurisdiction by the CIT was unsustainable. As the exercise of jurisdiction by the CIT is founded on no material, it was liable to be set aside. Jurisdiction under section 263 cannot be invoked for making short enquiries or to go into the process of assessment again and again merely on the basis that more enquiry ought to have been conducted to find something.”

Jhunjhunu Kraya Vikraya Sahkari Samiti Ltd. vs PCIT ITA No. 150/JP/2022 (Jaipur ITAT) (Relevant extracts reproduced):

11. *Clearly, therefore, as long as the action of the Assessing Officer cannot be said to be lacking bonafides, his action in accepting an explanation of the assessee cannot be faulted merely because it could have been lawful to make mere detailed inquiries or because he did not write specific reasons of accepting the explanation. As for learned PCIT's observations regarding accepting the explanation "in a routine and perfunctory manner", there is nothing to question the bonfides of the Assessing Officer or to elaborate as to what should have been 'appropriate' evidence. The fact remains that the specific issue mentioned and has been examined and the contention of the assessee accepted by the Assessing officer. Merely because the Assessing Officer did not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under section 263, and non-mentioning of these reasons do not render the assessment order "erroneous and prejudicial to the interest of the revenue".*

12. *In view of the above discussions, as also bearing in mind entirety of the case we vacate the impugned revision order. The assessee gets the relief accordingly.”*

It is further submitted that, the **Hon'ble Bombay High Court** in the case of **CIT Vs. Gabriel India Ltd.**, reported in **203 ITR 108**, has held that, "CIT cannot revise order merely because he disagrees with the conclusion arrived at by the ITO".

In Gabriel India Ltd. (supra), it was expressly observed: -

"The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasijudicial controversies as it must in other spheres of human activity [Parashuram Pottery Works Co. Ltd. vs. ITO, (1977) 106 ITR 1 (SC)]."

It was further observed as under: -

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

x x x x

There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed."

Hon'ble Bombay High Court in Moil Ltd. Vs. CIT [81 Taxmann.com 420] observed that if a query is raised during the assessment proceedings which was responded to by the assessee, the mere fact that the query was not dealt with in the assessment order then it would not lead to a conclusion that no mind has been

applied to it and the Assessing Officer is not expected to raise more queries, if he was satisfied about the admissibility of claim on the basis of the material and the details supplied.

M/s Hariom Stones Vs. PCIT in ITA No. 534/Jp/2016, wherein the Hon'ble bench of Jaipur ITAT has held as under:

"7. ...Thus, these facts suggest that the Assessing Officer has taken into consideration the material before him and after due application of law and of facts and then reached at the conclusion to conclude the assessment U/s 143(3) of the Act. It was not a case where Assessing Officer completed the assessment without conducting necessary and proper enquiries. The issue raised by the Id. Pr.CIT has been considered by the Assessing Officer at the time of assessment and the assessee has submitted evidences and details in support of its claim made in P&L account. Therefore, in our considered view, the order passed by the Assessing Officer U/s 143(3) of the Act on 24/3/2014 was not an erroneous order, which could be said to be prejudicial to the interest of the revenue. Considering the ratio laid down in various case laws relied upon, we set aside the order passed by the Id. Pr.CIT.

Reliance Industries Ltd. vs PCIT ITA No.578/Mum/2021 decision dated 01.09.2021 (Mumbai ITAT)(Relevant extracts)

5. In the present case, we find that the issue was duly considered by Ld. AO after considering assessee's detailed submissions. The view could not be said to be unsustainable view and it was one of the possible view. Therefore, on the given facts and circumstances, we find that the subject matter of proposed revision was already deliberated upon by Ld. AO and a possible was taken in the matter. That view could not be said to be contrary to law, perverse or unsustainable in law, in any manner and the same would be a possible view keeping in mind the assessee's submissions during reassessment proceedings. This being the case, the assessment order could not be subjected to revision u/s 263 and the action of Ld. Pr.CIT in invoking jurisdiction u/s 263 could not be sustained in the eyes of law. Similar is the view of the Tribunal in assessee's group concern i.e. M/s Reliance Corporate IT Park Ltd. V/s Pr. CIT (ITA No.2748/Mum/2015 dated 08/03/2017) wherein it has been observed by the coordinate bench that when Ld. AO had applied his mind on the given facts and material on record and took a possible view then such an assessment order could not be cancelled u/s 263 unless it was shown that the view was not tenable either in law or on facts.

6. The Ld. CIT-DR has relied upon the decision of Hon'ble Allahabad High Court in the case of CIT V/s Bhagwan Dass (272 ITR 367) which is a case wherein it was held that the order was passed without application of mind by Ld. AO. The same is not the case here. The case law of Chennai Tribunal in Bharat Overseas Bank V/s CIT (152 TTJ 546) was a similar case wherein no inquiry was made by Ld.AO during the course of assessment proceedings. Therefore, these case laws are distinguishable on facts and not applicable to the facts of the present case.

7. *Finally, on the facts and circumstances of the case, we quash the order passed by Ld. Pr. CIT in terms of settled legal position as enumerated by us in opening paragraphs. Ground nos. 1 to 3 stands allowed which render adjudication of ground no.4 merely academic in nature.*

8. *The appeal stands allowed in terms of our above order.”*

Shri Narayan Tatu Rane vs ITO ITA No.2690 & 2691/Mum/16 dated 06.05.2016 wherein hon'ble Mumbai bench of ITAT has held as under :

“20. Further clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-à-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying out enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquiries or verification that would have been carried out by a prudent officer. Hence, in our view, the question as to whether the amendment brought in by way of Explanation 2(a) shall have retrospective or prospective application shall not be relevant.”

Torrent Pharmaceuticals Ltd. vs DCIT: Ahmedabad ITAT I.T.A. No. 164/Ahd/2018

“9.5 We thus find merit in the plea of the assessee that the Revisional Commissioner is expected show that the view taken by the AO is wholly unsustainable in law before embarking upon exercise of revisionary powers. The revisional powers cannot be exercised for directing a fuller inquiry to merely find out if earlier view taken is erroneous particularly when a view was already taken after inquiry. If such course of action as interpreted by the Revisional Commissioner in the light of the Explanation 2 is permitted, Revisional Commissioner can possibly find fault with each and every assessment order without himself making any inquiry or verification and without establishing that assessment order is not sustainable in law. This would inevitably mean that every order of the lower authority would thus become susceptible to Section 263 of the Act and, in turn, will cause serious unintended hardship to the tax payer concerned for no fault on his part. Apparently, this is not intended by the Explanation. Howsoever wide the scope of Explanation 2(a) may be, its limits are implicit in it. It

is only in a very gross case of inadequacy inquiry or where inquiry is per se mandated on the basis of record available before the AO and such inquiry was not conducted, the revisional power so conferred can be exercised to invalidate the action of AO. The AO in the present case has not accepted the submissions of the assessee on various issues summarily but has shown appetite for inquiry and verifications. The AO has passed the order in great detail after making several allowances and disallowances on the issues involved impliedly after due application of mind. Therefore, the Explanation 2 to Section 263 of the Act do not, in our view, thwart the assessment process in the facts and the context of the case. Consequently, we find that the foundation for exercise of revisional jurisdiction is surely missing in the present case. Resultantly, the order of the Pr.CIT passed under s.263 of the Act is set aside and cancelled and the order of the AO under s.143(3) is restored.”

Indus Best Hospitality & Realtors Pvt. Ltd vs. PCIT (ITAT Mumbai) ITA No. 3125/JP/2017

S. 263 Revision: Explanation 2 to s. 263 inserted by the FA 2015 (which confers power upon the CIT to revise assessments where inadequate inquiries have been conducted by the AO) is prospective in nature and does not apply even to a case where the CIT passed the order after Explanation 2 came on the statute. The CIT should show that the view taken by the AO is unsustainable in law. The action of the CIT in directing the AO to conduct enquiry in a particular manner is contrary to the law interpreted by the Delhi High Court in CIT v. Goetze (India) Ltd 361 ITR 505. If such course of action is permitted, the CIT can find fault with each and every assessment order without making any enquiry or verification in order to establish that the assessment order is not sustainable in law.

Small Wonder Industries vs. CIT (ITAT Mumbai) ITA No. 2464/Mum/2013

S. 263: There is a distinction between “lack of enquiry” and “inadequate enquiry”. If the AO has called for the necessary details and the assessee has furnished the same, the fact that the AO is silent in the assessment order does not mean that he has not applied his mind so as to justify exercise of revisional powers by the CIT u/s 263.

With regards to applicability of 69C on unaccounted purchases on merits:

As stated above, it is reiterated that the assessee is engaged in the manufacturing of Readymix concrete (i.e RMC), (and not merely sale of aggregate/grit) and out of books purchases of Rs.1,28,11,487/- as made by assessee is merely that of aggregate/grits (which is one of the component of raw material), which constitutes approximately 30% of total cost of RMC. Since, assessee is engaged in the line of business for past many years and is fully aware about the ratio of raw material, process etc, accordingly, assessee has estimated other ingredients, such as Cement (44.23%), sand (19.85%), Fly Ash (3.21%), water admixture etc. and after applying profit margin of 6.74% on the same, has computed sale value of Rs. 4,51,31,143.44, giving Gross profit of Rs.30,43,472.61. Calculation so provided by

assessee was thoroughly examined by Id.AO before accepting the same. Your honours would appreciate that it is settled law that in case of unaccounted purchases/sales the entire such purchases/sales cannot be taxed and at the most, only the profit element embedded in such transactions can be disallowed. Thus, there is no question of applicability of provisions of 69C of the Act arises.

In this regard, reliance is placed on:

CIT Vs. President Industries, reported in (2002) 258 ITR 654, In this case, AO had made addition of the entire sum of the undisclosed sales found during the course of survey, which action of AO was quashed by ITAT by holding that entire sales could not have been added as the income of the assessee, but only to the estimated profits embedded in the sales for which the net profit rate was adopted on the suppressed amount of sales could have been added. In appeal before the Hon'ble Gujarat High Court upheld the observation of the ITAT and held as under:

“Having perused the assessment order made by the AO, the order made by the CIT(A) and the Tribunal, we are satisfied that the Tribunal was justified in rejecting the application under s. 256(1). It cannot be a matter of an argument that the amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that investment by way of incurring cost in acquiring goods which have been sold have been made by the assessee and that has also not been disclosed. In the absence of such finding of fact the question whether entire sum of undisclosed sale proceeds can be treated income of the relevant assessment year answers by itself in negative. The record goes to show that there is no finding nor any material has been referred about the suppression of investment in acquiring the goods which have been found subject of undisclosed sales.”

PCIT vs. Rishabhdev Technocable Ltd (Bombay High Court) INCOME TAX APPEAL (IT) NO.1330 OF 2017

S. 68 Bogus Purchases: Though the assessee has not proved the genuineness of the purchases and sales, yet if the AO has accepted the sales, the entire purchases cannot be disallowed. Only the profit element embedded in purchases would be subjected to tax and not the entire amount (Bholanath Polyfab 355 ITR 290 (Guj) followed, Kaveri Rice Mills 157 Taxman 376 (All) & La Medica 250 ITR 575 (Del) referred)

PCIT vs. Pinaki D. Panani (Bombay High Court) ITA No. 1543 of 2017

S. 68/ 69C Bogus purchases: Even if the purchases made by the assessee are to be treated as bogus, it does not mean that entire amount can be disallowed. As the AO did not dispute the consumption of the raw materials and completion of

work, only a percentage of net profit on total turnover can be estimated (Mohammad Haji Adam & Paramshakti Distributors followed)

PCIT vs. Paramshakti Distributors Pvt. Ltd (Bombay High Court) INCOME TAX APPEAL NO.413 OF 2017

S. 68 Bogus Purchases: Despite admission by the assessee that the purchases were mere accommodation entries, the entire expenditure cannot be disallowed. Only the profit embedded in the purchases covered by the bogus bills can be taxed. The GP rate disclosed by the assessee cannot be disturbed in the absence of incriminating material to discard the book results

Hemant M Mehta HUF vs. ACIT (ITAT Mumbai) ITA No.6483/Mum/2018

S. 68/ 69C: In case of bogus purchases where sales are accepted, the addition can be made only to the extent of difference between the GP declared by the assessee on normal purchases vis a vis bogus purchases. The AO is directed to restrict the addition to the extent of lower GP declared by the assessee in respect of bogus purchases as compared to G.P. on normal purchases

In the present case also, since the Id. AO has examined the profit worked out on unaccounted purchases and has accepted such working prepared by assessee by observing that :

"It is also submitted that assessee company has now offered the additional undisclosed income based on GP rate of its business activity and it is settled position of law that in case of unaccounted for purchase/expenses or unaccounted sales the only way to calculate income is by applying profit rate of the business and therefore the same deserves to be accepted."

Thus, it is again reiterated that the provisions of section 69C of the Act is not applicable in the case of assessee. Since, it is well settled law that only profit element after reducing all the necessary expenses incurred for selling such unaccounted goods can be taxed, thus order passed by Id.AO can neither be treated as erroneous and nor prejudicial to the interest of revenue.

It is further submitted that Id. PCIT at para 8, in order passed u/s 263, directed that assessment order is restored to the file of AO for examination of unsecured loans, whereas no query whatsoever has been raised by Ld. PCIT at any stage of Revision proceedings in this regard.

It is submitted that the observations of Id.CIT regarding unsecured loans appear to be typographical error only, as at no stage of Revision proceedings, neither in show cause notice dated 9.3.2024, nor during the course of physical hearing, any query was made in this regard. In fact, in the final order passed, directions have been issued stating that *"The assessment order is set aside and restored to the file of Assessing officer to verifying applicability of provisions of section 69C of the Income tax Act and appropriately considered the unexplained cash purchases."*

In view of above, it is submitted that direction issued in respect of examination of unsecured loan seems to be merely typographical error and deserves to be set aside.”

6. To support the contentions raised in the written submission the Id. AR of the assessee has relied upon the following evidences:-

| S. No. | Particulars | Page Nos. |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 1. | Copy of acknowledgement of return of income filed u/s 139(1) of the Act. | 1. |
| 2. | Copy of acknowledgement and computation of return of Income filed u/s 153A of the Act. | 2-5 |
| 3. | Copy of show cause notice dated 09.03.2024 issued during proceedings initiated u/s 263 of the Act. | 6-8 |
| 4. | Copy of reply dated 19.03.2024 filed before Ld. PCIT in response to show cause notice dated 09.03.2024 along with following enclosures. | 9-17 |
| | a) Copy of rely filed before DCIT on 23.04.2021 for A.Y. 2013-14 to 2019-20 along with working of additional income offered. | 18-23 |
| | b) Copy of notice dated 05.02.2021 issued u/s 142(1) of the Act. | 24-29 |
| | c) Copy of reply dated 09.06.2021 in response to notice dated 05.02.2021 issued u/s 142(1) of the Act. | 30-37 |

7. During the course of hearing, Id. AR of the assessee in addition to the written submission so filed vehemently argued that the issue that Id. PCIT has raised has already been verified during the course of assessment proceedings. The Id. AO has issued a specific show cause notice dated 05.02.2021 [page 24-29]. As is evident from the page 27 and 28 of the paper book, the issue as referred by the Id PCIT has already been taken up

by the Id. AO. That show cause notice issued by the Assessing Officer has already considered the seized material of Annexure-AS exhibit 81 at page 12, 22, 24, 25 & 26 and other required material and the Id. AO also proposed by giving specific notice to the assessee proposing the addition of unexplained purchase. The relevant extract is reproduced for the sake of brevity:-

“1. During the survey action, inventory of stock was prepared and value of stock was determined at Rs.11,26,675/-, which were found at your business premises situated at Khasara no. 214-252, Gadhi Road, Near LG Warehouse, Gurugram, Harayana but stock position as per books of account, was NIL. During the course of survey action, Shri Suresh Chand Sain, employee of your company was asked to furnish the reason of excess stock found amounting to Rs.11,26,675/-. In reply to question no. 12 of statement recorded u/s 131 of the I. T. Act dated 23.01.2019, Shri Suresh Chand Sain failed to furnish the satisfactory reasons for excess stock found amounting to Rs. 11,26,675/-. From the statement of the Sh. Suresh Kumar Sain, it can be seen that he had failed to give any satisfactory explanation in regard to excess stock. The excess stock, naturally seems to be unaccounted purchases of your company. Please explain why the amount of Rs.11,26,675/- may not be added to your total income for A.Y. 2019-20.

2. On perusal of page no. 12 of Exhibit 81 of Annx AS seized from the residence of Shri Sunil Kumar Sharma, employee of the group, it has been found that your company has made cash payment of Rs.33,66,500/- during F.Y. 2012-13. Similarly, on examination of page no. 16 and 17 of Exhibit-81 of Annx AS found from the residence of Shri Sunil Kumar Sharma it has been found that your company has paid cash of Rs.36,41,000/- during F.Y. 2012-13 to various persons from whom purchases have been made. You have not furnished clarification whether such payments have been recorded in your books or not. In case of not recorded in books, please explain why the amount of Rs.70,07,500/- (3366500+3641000) may not be added to your total income for A.Y. 2013-14.

3. As per page 22 of Exhibit 81 of Annx AS seized from the residence of Shri Sunil Kumar Sharma, **your company has made purchases of Rs.3.95,46,694/-**

from May, 2012 to March, 2013 and Rs.2,97,26,088/- from April, 2013 to September, 2013 from Triveni Grit Manufacturing Company. You have not furnished clarification whether such payments have been recorded in your books or not. In case of not recorded in books, please explain why the amount of Rs.3,95,46,694/- for A.Y. 2013-14 and Rs.2,97,26,088/- for A.Y. 2014-15 may not be added to your total income.

4. On examination of page no. 24 of Exhibit 3 of Annx- AS seized from the residence of Shri Manoj Kumar Gupta, accountant of the group, it has been found that your company has made cash sales to Gupta Bros Interiors & Infratech Pvt. Ltd. of Rs.74,57,387/- during F.Y. 2013-14 and Rs. 14,64,450/- during F.Y. 2014- 15. You have not furnished clarification whether such sales have been recorded in your books or not. In case of not recorded in books, please explain why the amount of Rs.74,57,387/- for A.Y. 2014-15 and Rs.14,64,450/-for A.Y. 2015-16 may not be added to your total income.

5. On perusal of page no. 25 and 26 of Exhibit-3 of Aninx AS seized from the residence of Shri Manoj Kumar Gupta, accountant of the group, it is noticed that total cash sales of your company from 04.12.2014 to 02.02.2015 was Rs. 74,64,050/-, You have not furnished clarification whether such sales have been recorded in your books or not. In case of not recorded in books, please explain why the amount of Rs.74,64,050/- may not be added to your total income for A.Y. 2015-16.

6. During the search proceedings, pen drive and hard disk were found from B-25, Shiv Shakti Nagar, Jagatpura, Jaipur, residence of Shri Manoj Gupta, Accountant of the Group. On perusal of tally data extracted from the hard disk, it is noticed that **you have purchased sand from Nikhil Associates of Rs.48,50,000/- and purchased aggregate from Shivalik Grit Udyog of Rs. 41,56,230/- during FY. 2012-13. You have not furnished clarification whether such purchases have been recorded in your books or not. In case of not recorded in books, please explain why the amount of Rs.90,06,230/- (4850000+4156230) may not be added to your total income for A.Y. 2013-14**

7. On perusal of extracted tally data of hard disk found from the residence of Shri Sunil Kumar Sharma. employee of the group, it is noticed that opening balance of Triveni Grit Manufacturing Co. as on 30.04.2012 was 2,40,34,528 Purchases of Rs 4,39,12,052/- has been made by your company from M/s Triveni Grit Manufacturing Co. from May, 2012 to March, 2013 and purchases of Rs 4,39,12,052/- from April 2013 to Sept, 2013 Against these purchases and

balance outstanding payment of Rs 3,18,00,000/- has been made by cheque from May, 2012 to March, 2013. Payment of Rs. 1.39,00,000/- was made by cheque from April, 2013 to Sept. 2013 Cash payment of Rs 14,31,000/- has been made from May, 2012 to March, 2013 and cash payment of Rs.93,47,900/- has been made from April, 2013 to Sept, 2013. These payments were made in cash seems to be undisclosed transactions. Please explain why the amount of Rs.14,31,000/- for A.Y. 2013-14 and Rs.93,47,900/- for A.Y. 2014-15 may not be added to your total income.

8. During the search proceedings, pen drive and hard disk were found from B-25, Shiv Shakti Nagar, Jagatpura, Jaipur residence of Shri Manoj Gupta, Accountant of the Group. On perusal of tally data extracted from the hard disk, it is noticed that you have made cash payments amounting to Rs. 1,61,50,000/- to Mis Dhandeep Concretes on account of purchase of aggregates during F.Y. 2013-14 You have not furnished clarification whether such payment has been recorded in your books or not, In case of not recorded in books, please explain why the amount of Rs.1,16,50,000/- may not be added to your total income for A.Y. 2014-15

9. During the search proceedings, pen drive and hard disk were found from B-25, Shiv Shakti Nagar, Jagatpura, Jaipur. residence of Shri Manoj Gupta, Accountant of the Group. On perusal of tally data extracted from the hard disk, it is noticed that you have paid Rs. 10,00,000/-, Rs.3,97,40,240/- and Rs.33,53,830/- during F.Y. 2014-15 and Rs.47,47,000/- during F.Y. 2015-16 in cash through hawala to Mis Dhandeep Concretes. You have not furnished clarification whether such sales have been recorded in your books or not. In case of not recorded in books, please explain why the amount of Rs.4,40,94,070/- (1000000+39740240-3353830) for A.Y. 2015-16 and Rs.47,47,000/- for A.Y. 2016-17 may not be added to your total income.”

Against the above detailed show cause notice, assessee filed detailed reply on 09.06.2021 wherein the assessee dealt with the issue and the Id. AO has applied his mind and taken a plausible view on the issue. Same issue is lifted by Id. PCIT holding that Id. AO should considered the unexplained cash purchase of Rs. 1,21,11,487/- as per provision of section

69C of the Act. Ld. PCIT also noted that she is passing the order but she is only intending to verify the applicability of provisions of Section 69C of the Act. That verification of applicability of particular provision when same is done at the end of the Id. AO in the assessment proceedings. That action of the Id. PCIT to review the order of the Id. AO is not permissible because it is merely a change of opinion about the applicability of a particular provision or not, where the Assessing Officer has already raised the issue sought explanation of the assessee which is patently not wrong. Therefore, the order is neither prejudicial to the interest of the Revenue nor erroneous. The Ld. AR of the assessee in respect of the technical ground so raised before us also submitted that when the approval u/s 153D of the Act is granted that order cannot be subjected to provision of Section 263 of the Act. To drive home to this contention Id. AR of the assessee relied on the decision Hon'ble Padhya Pradesh High Court in case of PCIT vs. Prakhar Developers (P.) Ltd. 162 taxmann.com and decision of Delhi bench in case of Devender Kumar Gupta vs. PCIT 166 taxmann.com 95. The Id. AR of the assessee also relied upon the decision of Hon'ble Supreme Court in case of CIT vs. Max India Ltd. 295 ITR 282.

8. Per contra, Ld. DR heavily relied upon the findings recorded by the Ld. PCIT in the order passed u/s 263 of the Act. The Ld. DR vehemently submitted that the assessee has not filed any details about unaccounted purchases so made. Ld. DR also submitted that M/s Triveni Grit Manufacturing Company has already offered the complete sale consideration in the settlement petition filed as sales whereas here the assessee disclosed only profit from that purchase. Therefore, the entire purchases made by the assessee being unaccounted required to be added so instead of the theory of offering the gross profit on the estimated sales and the estimated cost of sales as argued / advanced by the assessee. Considering that aspect of the matter the direction given by the Ld. PCIT u/s 263 of the Act is proper and in accordance with law and thereby Ld. DR supported the finding recorded in the order of the Ld. PCIT.

9. We have heard the rival contentions and perused the material available on record. Ground no. 1, 1.1, 1.2, 2 and 2.1 raised by the assessee effectively challenges the finding of the Ld. PCIT in her order passed u/s. 263 of the Act. Therefore, we deal with the same altogether. The brief facts related to the disputes are that the assessee is private limited company and engaged in the business of manufacturing of ready

mix concrete mixture. The assessee company filed Return of income for the year under consideration on 01.10.2013 declaring total income at Rs. 95,35,360/-. A Search and seizure operation u/s 132 of the Act was conducted at the Gunesh Group of which assessee company is one of the members.

10. During the course of search, various incriminating documents related to various group concerns were found and seized by the department. Accordingly, notices u/s 153A was issued to assessee also for the period covered under the search. In response to the same, return of Income was filed on 12.12.2019 declaring total income at Rs. 95,35,360/-. Various details / information were sought by Id. AO from the assessee during assessment proceedings and after verification of the documents and submission filed by the assessee, the assessment was completed by Id.AO vide order dated 29.6.2021 passed u/s 153A r.w.s 143(3) of the Act vide which addition of Rs. 30,43,472/- was made by applying GP rate of 6.74% on unrecorded sales of Rs. 4,51,31,143/- and thus total income was assessed at Rs. 1,25,78,830/-.

11. On culmination of the assessment proceeding Id. PCIT- Jaipur, issued a show cause notice on 09.03.2024 proposing to revise the assessment completed u/s 153A r.w.s. 143(3) of the Act. The reasons behind that action was that she was of the view that the undisclosed income worth Rs.2,92,76,185/- was required to be added to the total income of the assessee in respect of purchase of Rs. 1,28,11,487/- from M/s Triveni Grit Manufacturing Company. Detailed submission along with supporting evidences were filed before Ld. PCIT, who without considering the submission made by the assessee company, passed an order u/s 263 of the Act on 26.03.2024 holding the order of the assessee as erroneous and prejudicial to the interest of the revenue. While set aside the order of Id. AO he has given the directions to (i) re-examine unsecured loan taken by the assessee (though there was no discussion on this issue in show cause notice as well as in Order u/s 263) & (ii) to verify the applicability of provisions of section 69C of the Act in respect of purchases of Rs.1,28,11,487/- made from Triveni Grit Manufacturing Company.

12. The issue was raised because consequent upon search action u/s 132 of the Income Tax Act, 1961 on 23.01.2019 at the various premises of the assessee-appellant and its Directors, various documents comprising of

loose sheets, registers, pen drives, hard disks, etc. etc. were found and seized by the respective Authorized Officers, which were marked on the basis of nature of documents / place from where the same were found etc. One such exhibit found from the possession of Shri Sunil Kumar Sharma, Accountant of the company, was marked as Annexure AS Exhibit 81, which contain the details of purchases of Grit (Rodi) from M/s Triveni Grit Manufacturing Co., which is one of the raw materials required for the manufacturing of readymix concrete, in cash and through bank. It is a matter of fact that a search action u/s 132 was also conducted in the case of M/s Triveni Grit Manufacturing Company, (the business concern of Shri Sita Ram Agarwal, a close business associate of Shri Mahesh Gupta, Director of the applicant Company). During that search, the Learned Authorized Officers found and seized documents containing details of unaccounted sales of Grit by M/s Triveni Grit Manufacturing Company to the assessee company. As per the information provided by M/s Triveni Grit Manufacturing Company, it filed a separate application in its case before the Hon'ble Income Tax Settlement Commission and has duly disclosed such undisclosed sales. As the assessee company was not in the possession of complete documents / information for various assessment years for the purpose of calculating the exact amount of unaccounted

purchases from M/s Triveni Grit Manufacturing Company, it obtained the said information from M/s Triveni Grit Manufacturing Company and the details of amount of Grit purchased. Accordingly, unaccounted purchases of grit for the year under consideration was computed at Rs.1,28,11,487/-. Further during the course of assessment proceedings, assessee furnished a detailed Common reply for A.Y. 2013-14 to 2019-20, explaining manner of determination of Additional income (**APB 18-23**), whereby it was explained before Id. AO that as an industrial benchmark, the approximate grit consumption ratio is approximately 30% in the sales of ready mix concrete and other components are cement, sand, fly ash etc. Also, a detailed working was furnished before Id. AO, which was also reproduced in assessment order. According to which total amount of cost of goods sold was worked out at Rs.4,20,87,670.83. On that cost of goods sold gross profit of 6.74% (as per the regular books of accounts), was estimated and the figure of sales was computed at Rs.4,51,31,143.44. Accordingly, additional income earned on account of such unaccounted purchases was derived at Rs.30,43,472.61/- which was offered by the assessee for taxation. The Id. AO for this issue, issued a detailed show cause notice and after thorough verification of the details furnished by assessee, Id.AO concluded assessment order with following remarks:

“5.6 The submission of assessee has been verified. The assessee filed separate working of gross profit of business of readymix and also submitted ledger accounts of the expenses incurred for readimix business. Gross profit @6.74% is hereby taken to calculate the undisclosed income earned from undisclosed sales. The assessee admitted unrecorded sales of Rs.4,51,31,143/-, therefore unrecorded gross profit calculates to Rs.30,43,472/- (6.74% of Rs.4,51,31,143) and the same is added to the total income of the assessee.”

As we note from the records that Id. AO has specifically vide show cause noticed dated 05.02.2021 referred the entries seized material and the assessment order has been framed after due application of mind on assessee's submissions and giving proper reasoning in assessment order with respect to the working of additional income offered by the assessee. Thus, when the issue has been raised by the Id. AO has applied his mind that order of the Id.AO cannot be held as erroneous by any stretch of imagination as the most pertinent enquiries were made by Id.AO. After considering the material available on record Id.AO formed his view, which is one of the possible views and therefore the order of Ld. AO cannot be held as erroneous. Particularly when the view taken by the Id. AO is possible and Id. AO has taken one view with which the Id. PCIT does not agree with it, than this will also not render order passed by Id. AO as an erroneous, unless the view taken by Id. AO is not sustainable in law, which is not the scenario in the present case. As stated above, during the course of assessment proceedings vide notice u/s 142(1) of the Act dated

05.02.2021 for A.Y. 2013-14 to 2019-20 (**s 24-29**), wherein, at serial no. 3 of which Id.AO has proposed to make addition of Rs.3,95,46,694/- on the basis of page 22 of Exhibit 81 and has further questioned about the purchases from M/s Nikhil Associates and Shivalik Grit udhyog. In response to such notice, assessee furnished detailed reply on 09.06.2021 (**APB 30-37**) duly explaining that purchases from M/s Nikhil Associates and Shivalaik Grit udhyog duly recorded in the regular books of accounts, which were accepted by the Ld. AO after verification of parties ledger accounts. It was also submitted by the assessee that with regard to purchases from M/s Triveni Grit manufacturing Co., only part of the purchases and not the entire purchases recorded on such page was out of books. Further Id. AO has taken a view to add Gross Profit on the estimated unaccounted sales which was made out of unaccounted purchases as per the explanation provided above. Thus, the view taken by Id. AO is one of the legal possible views and Id. PCIT has issued directions on the basis of another alternate view, which is not correct. In fact, it is pertinent to note here that Id.PCIT initially, vide show cause notice proposed addition of Rs.2,92,76,185/- on account of undisclosed income earned on sale of purchases made from Triveni Grit manufacturing company. However, while passing order u/s 263, directions have been issued to verify the applicability of provisions of

section 69C on the purchase. Thus, it seems that even, Id. PCIT has changed her view in Revision Order as to what is to be added. Thus, as held by the apex court in the case of **CIT v. Max India Ltd. 295 ITR 282 (SC)**, the phrase “prejudicial to the interests of the Revenue” in section 263 of the Income-tax Act, 1961, has to be read in conjunction with the expression “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. Even our Hon'ble jurisdictional High court in the case of **Commissioner of Income Tax vs Ganpat Ram Bishnoi [2006] 152 Taxman 242 (Raj.)** vide Para 11 of the decision held that ;

“Undoubtedly, the jurisdiction under section 263 is wide and is meant to ensure that due revenue ought to reach the public treasury and if it does not reach on account of some mistake of law or fact committed by the Assessing officer, the CIT can cancel that order and require the concerned Assessing Officer to pass a fresh order in accordance with law after holding a detailed enquiry. But when enquiry in fact has been conducted and the Assessing Officer has reached a particular conclusion, though reference to such enquiries has not been made in the order of the assessment, but the same is apparent from the record of the proceedings, in the present case, without anything to say how and why the enquiry conducted by the Assessing officer was not in accordance with law, the invocation of jurisdiction by the CIT was unsustainable. As the exercise of jurisdiction by the CIT is founded on no material, it was liable to be set aside. Jurisdiction under section 263 cannot be invoked for making short enquiries or to go into the process of assessment again and again merely on the basis that more enquiry ought to have been conducted to find something.”

Respectfully following the view that has already advanced by the binding precedent cited that the issue which the Id. PCIT has raised has already been raised by the Id. AO and has after giving a specific show cause notice taken a plausible view which cannot be subjected to action u/s. 263 of the Act.

13. Even otherwise on the merits of the issue as raised by the Id. PCIT we note that the assessee is engaged in the manufacturing of Readymix concrete (i.e RMC), (and not merely sale of aggregate/grit) and out of books purchases of Rs.1,28,11,487/- as made by assessee is merely that of aggregate/grits (which is one of the component of raw material), which constitutes approximately 30% of total cost of RMC. Since, assessee is engaged in the line of business for past many years and is fully aware about the ratio of raw material, process etc, accordingly, assessee has estimated other ingredients, such as Cement (44.23%), sand (19.85%), Fly Ash (3.21%), water admixture etc. and after applying profit margin of 6.74% on the same, has computed sale value of Rs. 4,51,31,143.44, giving Gross profit of Rs.30,43,472.61. Calculation so provided by assessee was after thoroughly examining the contention Id. AO accepted the same. It is also noted disputed on the date of search that stock was lying with the assessee

it was considered to be used for circular sales therefore, in such circumstances only the profit element embedded in such transactions can be added which is so done by the Id. AO.

14. Considering that factual aspect now we refer to the provision of section 263 of the Act, 1961, which acts as safeguard, acknowledging dynamic nature of tax assessments, providing a mechanism to ensure fairness, accuracy, and protection of the revenue's legitimate claims. Essentially, it embodies the legislative commitment to a tax administration system that is both effective and just. In essence, Section 263 is a response to the complexities of the tax landscape, acknowledging the delicate balance needed between empowering tax authorities and preventing potential errors. Through its existence, the section reflects commitment to maintaining integrity of the tax assessment process, acknowledging the ever-evolving nature of tax laws and the need for a mechanism that can adapt to changes in interpretations and protect the revenue's interests. Section 263 is not merely a provision for revision but very crucial component of Act ensuring that tax administration system remains robust, fair, and equipped to address the challenges arising in the course of tax assessments. Main objective of Section 263 is to rectify orders that are not

only erroneous but also have the potential to adversely affect the revenue's interests. It provides a mechanism for the Commissioner to ensure correctness of orders passed by subordinate officers. The Commissioner's role extends beyond mere oversight; they serve as custodians of revenue. When an order is deemed "erroneous" and "prejudicial to the interests of the revenue," the Commissioner's revisionary power comes into play. "Erroneous" signifies a departure from the legal framework, while "prejudicial" pertains to circumstances that could diminish revenue rightfully owed to the government. Thus, the law provides that the Twin conditions needs to be satisfied before exercising revision jurisdiction under section 263 by the Commissioner. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the revenue. In the following circumstances, the order of the Assessing Officer can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii) Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the Assessing Officer has not investigated the issue before him; then the order passed by the Assessing Officer can be termed as erroneous order. Coming next to the second limb,

which is required to be examined as to whether the actions of the Assessing Officer can be termed as prejudicial to the interest of the revenue. This phrase, i.e., prejudicial to the interest of the revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer. It has to be remembered that every loss of the revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law.

15. Based on the discussion so recorded on the issue of fact the bench noted that every inadequacy of the enquiry conducted by an AO as against the no enquiry cannot form a basis for setting aside an assessment order which has been passed by the AO. In the instance case as discussed herein above the issue of unaccounted purchase based on the seized material has been specifically raised by the Id. AO by issue of specific show cause notice, the assessee has furnished the submission which the Id. AO

has considered and made the addition of profit involved in the returned income and thereby taken a plausible view. Even the Id. AR of the assessee placed on record relevant material to establish that the issue the order is not erroneous. Thus, when based on the submission and discussion so recorded as is evident that on all of the aspect of the matter the assessment order is not erroneous and prejudicial to the interest of the revenue. In our considered view, the PCIT had to reach a conclusion that in the fact situation obtaining in the instant case, that the assessment order was erroneous by conducting an enquiry before passing an order under Section 263 of the Act. Therefore, the order passed by the Id. PCIT dated 26.03.2024 cannot be sustained in law merely because the original assessment order does not exactly advert to the issue which the Id. PCIT is seeing. Hence, the PCIT could not have exercised the powers conferred upon her u/s. 263 of the Act only on the reasons that she had a different view or perspective in the matter and the matter requires a fresh verification as to the applicability of a particular section. The principle of law enunciated by the **Supreme Court in Malabar Industrial Co. Ltd.** has set up a standard concerning the width and amplitude of power vested for exercising revisionary jurisdiction under Section 263 of the Act. While exercising power under the said provision, the concerned officer must be satisfied that the

twin conditions provided therein stand fulfilled, i.e., the order passed by the AO, which is sought to be revised, is erroneous and is also prejudicial to the interest of the revenue. In other words, if one of the two conditions is not satisfied, the revisionary power under the said provision cannot be invoked. One cannot quibble with the principle of law.

16. Based on the discussion so recorded we are of the considered view that the proceeding-initiated u/s. 263 fails on the twin condition and there is no independent view of the Id. PCIT even on merits of the issue and therefore, the ground no. 1, 1.1, 1.2, 2 & 2.1 raised by the assessee are allowed.

17. Ergo, we quash the order passed by the PCIT, Central, Jaipur.

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

Order pronounced in the open court on 12/11/2024.

Sd/-

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

जयपुर / Jaipur
दिनांक / Dated:- 12/11/2024
*Santosh

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

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

1. The Appellant- Shivam Readymix Pvt. Ltd., Meemuch, (M.P.)
2. प्रत्यर्थी / The Respondent- Pr.CIT (Central), Jaipur.
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 412/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar