

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

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

आयकर अपील सं./ITA No. 149/JP/2024  
निर्धारण वर्ष / Assessment Years : 2018-19

Finova Capital Private Limited 702, 7 <sup>th</sup> Floor Unique Aspire, Cosmo Colony, Vaishali Nagar, Jaipur	बनाम Vs.	PCIT-1, Jaipur, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCF 6521 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Rohan Sogani, CA &  
Sh. Vikash Rajvanshi, CA  
राजस्व की ओर से / Revenue by : MS Alka Gautam, CIT

सुनवाई की तारीख / Date of Hearing : 13/11/2024  
उदघोषणा की तारीख / Date of Pronouncement: 13/12/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

Because the assessee aggrieved from the order of Pr. Commissioner of Income Tax, Jaipur-1 [ for short PCIT ] for the assessment year 2018-19 dated 28.03.2023 the present appeal is preferred. The Id. PCIT passed that order under challenge as per provisions of section 263 of the Income Tax Act, 1961 (for short "Act") while examining the assessment record of the above-named assessee.

2. In this appeal, the assessee has raised following grounds: -

“1. In the facts and circumstances of the case and in law, Id. Principal Commissioner of Income Tax has erred in assuming jurisdiction u/s 263 when the order of the Id. AO is neither erroneous nor prejudicial to the interest of the revenue. The action of the Id. Principal Commissioner of Income Tax is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the order passed u/s 263.

2. The assessee company craves its right to add, amend or alter any of the grounds on or before the date of hearing.”

3. At the outset of hearing, the Bench observed that there is delay of 262 days in filing the present appeal by the assessee for which the Id. AR of the assessee filed an affidavit stating the reasons for delay and prayed for condonation of delay, the content of the affidavit reads as under :-

I, Mohit Sahney, son of Late Mr. Kamal Krishna Sahney, resident of 55, Grenade Marg, Pratap Nagar, Khatipura Road, Vaishali Nagar, Jaipur-302021 (Rajasthan), hereby affirm and submit this affidavit to request condonation for the delay in filing appeal before the Income Tax Appellate Tribunal ('ITAT'), Jaipur of Finova Capital Private Limited (the 'Company').

1. That I am a Director of the Company.
2. That on January 17, 2024, I have received mail on my personal id for notices u/s 263 from the Income Tax Officer ('ITO'). Subsequently, it came to my attention that the Principal Commissioner of Income Tax ('PCIT'), Jaipur-1, had issued an order on March 28, 2023. Regrettably, this order was dispatched to my personal email address at [mohit.sahney@gmail.com](mailto:mohit.sahney@gmail.com), which was infrequently used by me. It is noteworthy that all pertinent correspondence is routinely directed to company email address.
3. That in April 2023, I faced health challenges that hindered my ability to access my personal email account. Consequently, I was unaware of the order issued by the ITO until the receipt of the notice on January 17, 2024. Following this, I promptly updated email information, replacing personal email ([mohit.sahney@gmail.com](mailto:mohit.sahney@gmail.com)) with the my Company's Chief Financial Officer email ([ravi@finova.in](mailto:ravi@finova.in)). Despite this update, I have observed that the department continues to send communications to former email address.

Due to the circumstances described above, a delay of 263 days occurred in filing the appeal and accordingly I respectfully request the honorable ITAT, Jaipur to kindly condone this delay. I acknowledge the significance of adhering to deadlines and sincerely apologize for any inconvenience caused. I want to assure you that corrective measures have been implemented to prevent similar delays in the future. Your understanding and consideration in this matter are highly appreciated.

Date: November 05, 2024

Place: Jaipur

Mohit Sahney

Deponent

#### VERIFICATION

I, Mohit Sahney s/o Kewal Krishna Sahney do hereby verify that the contents of the above para are true and correct to the best of my knowledge and belief.

Date: November 05, 2024

Place: Jaipur

Mohit Sahney

Deponent

4. On this issue during hearing, the Id. DR objected to assessee's application for condonation of delay stating that the serving of the notice at the email is sufficient but at same time prayed that Court may decide the issue as deem fit in the interest of justice.

5. We have heard the contention of the parties and perused the materials available on record. The prayer by the assessee for condonation of delay of 262 days has merit because the email id mentioned was of personal of director and not of the company and the company on being immediately corrected it. Both these Act i.e. on being aware immediately filling the appeal and correcting the email address of the company on the

portal shows the assessee is vigilant and therefore, considering that aspect of the matter as declared in the affidavit placed on record we concur with the submission of the assessee. Thus the delay of 262 days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause and therefore, we admit this appeal.

6. The brief facts related to the case are that the assessee company is a Non Banking Financial Company (NBFC) registered with Reserve Bank of India(R.B.I.). For the year under consideration the assessee-appellant had filed return of income on 02.10.2018 declaring total income of Rs. 3,86,42,770/- for the year under consideration. The case was selected for Complete Scrutiny assessment under the E-assessment Scheme, 2019 to verify the following issues:

- i. Claim of Any Other Amount Allowable as deduction in Schedule BP
- ii. Short term Capital Gains u/s. 111A
- iii. Refund Claim
- iv. Share Premium
- v. Disallowance u/s. 40A(7)(Gratuity provision)
- vi. Share Capital / Other Capital

During the assessment proceedings u/s 143(3) of IT act, 1961, assessee company has duly submitted reply along with all required documents and clarification as required by the Ld. AO. Upon verification of the records so produced Id. AO [ i.e. National eAssessment Centre, Delhi] completed the assessment on 15.03.2021 accepting the returned income of the assessee.

7. On culmination of the assessment proceeding Id. PCIT called for the assessment records as per power vested upon her in section 263 of the act. Upon verification of the records Id. PCIT observed that as per Schedule 23 (Provisions on Loan and Advances) to the Profit and Loss account, an amount of Rs. 30,63,618/- was debited by the assessee for Standard Assets Provisions which is not allowable as per provision of sections of section 36(1)(via) of the Act. Further it was also noticed by her that while computing taxable income as per Income Tax Act, on account of "Syndication fees for CCPS issue (Convertible Cumulative preference shares), an amount of Rs. 1,18,50,389/- was reduced by the assessee from the taxable income. However, the same is not allowable as per provision of section 37(1) of the Act, being an expenditure in the nature of capital in nature. She also noticed that assessee debited expenses under the head rates and rates of Rs. 37,23,416/- which is not allowable as per the provision of section 40(a) of the Act. In view of these fact she noted that the

assessment order passed u/s. 143(3) r.w.s. 143(3A) & 143(3B) of the Act is erroneous in so far as it is prejudicial to the interest of the revenue. Accordingly she proposing to modify the order on the those issues under the power vested upon her and accordingly on those issues assessee was given a show cause notice on 10.03.2023 asking them to submit their reply by 14.03.2023. In response the assessee filed reply on 14.03.2023 and 18.03.2023 opposing the revision proposed. After perusing the reply filed by the assessee, the Id. PCIT has held as under :

"7. I have perused the reply of the assessee, order of the Assessing Officer as well as the documents placed on record. On verification of the assessment records, it is noticed that as per schedule 23(Provisions on Loans and Advances) to the Profit and Loss account, an amount of Rs. 30,63,618/- was debited for 'Standard Assets Provisions. As per section 36(1)(via) of the Act:-

*"in respect of any provisions for bad and doubtful debts made by a scheduled bank [ not being a bank incorporated by or under the laws of a country outside India] or a non-scheduled bank or a cooperative bank other than a primary agricultural credit society or a primary co-operative agriculture and rural development bank, an amount not exceeding eight and one-half per cent of the total income, the deductions provided shall be allowed in respect of the matters dealt with therein, in computing the total income referred to in section 28."*

8. In view of above section, the provision is applicable only for bad and doubtful debts and not for "standard assets" and therefore the same was not allowable as a deduction. The assessee in its letter dated 14/03/2023 has stated that it is a Non Banking Financial Company (NBFC) registered with Reserve Bank of India. The assessee has relied upon the order of the Hon'ble ITAT in the case of DCIT v/s Nawanshahr Central Cooperative Bank on 3/01/2018 in ITA No.61/ASR/2017 for A.Y. 2013- 14 in support of its contention However, the Hon'ble ITAT in its order under reference has clearly stated that deduction u/s 36(1)(viiia) of the Act is not allowable to NBFCs. From the perusal of assessment records it is noted that the Assessing Officer (AO) has allowed the same in the assessment order under reference.

9. Perusal of the assessment order shows that an amount of Rs. 1,18,50,389/- has been deducted from the taxable income on account of "Syndication Fees for Convertible Cumulative Preference Shares(CCPS) issue". The same is not allowable as per provisions of section 37(1) of the Act which states as follows-

"any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure, laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income."

In the case of Punjab State Industrial Development Corporation Limited VIS CIT Supreme Court [1997] 225ITR 792 (SC), the Hon'ble Supreme court ruled out that the fee paid to the Registrar for expansion of capital base of the company was directly related to the capital expenditure incurred by the company and although incidentally that would certainly help in the business of the company and may also help in profit making marketing, it still retains the character of a capital expenditure since the expenditure was directly related to the expansion of the capital base of the company. Similarly, "Syndication Fees for CCPS issue" is a capital expenditure and the same should have been disallowed by the AO while passing the assessment order.

9. The assessee in its reply stated that stamp duty and ROC charges of Rs. 37,23,419/- for the having account name 'rate & taxes' which was allowable expenses. However, no supporting documents has been furnished. In absence of supporting documents claim of the assessee not acceptable.

10. Thus in view of the above, it appears that the AO failed to apply his mind on the material available on record and failed to invoke the applicable provisions of law. This in turn has resulted in passing of an erroneous order by the AO in the case due to non-application of mind to relevant material, an incorrect assumption of facts and an incorrect application of mind to the law which is prejudicial to the interest of the revenue and hence liable for revision under section 263 of the Act. The Hon'ble Supreme Court in the case of Malabar Industrial Limited V/s CIT 243 ITR it has held as under-

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

11. Considering all the facts and circumstances of the case and for the reasons discussed above, the assessment order dated 15.03.2021 for A.Y. 2018-19 passed by the AO is held erroneous in so far as it is prejudicial to the interests of

the revenue for the purpose of section 263 of the Income Tax Act, 1961. The said order has been passed by the AO in a routine and casual manner without verification of the issues discussed above. The AO was required to make the disallowances discussed in the paras above which he failed to do. The order of the AO is therefore liable to revision under the explanation (2) clause (b) and clause (a) of section 263 of the Income Tax Act, 1961. The assessment order is set aside to be made afresh in the light of the observations made in this order. The AO is required to make necessary verification and finalize the assessment in accordance with the prevailing law to determine the correct income of the assessee liable to tax for the A.Y.2018-19 after allowing reasonable opportunity to the assessee.”

8. Feeling dissatisfied, with the above order of the PCIT passed u/s. 263 of the Act, the assessee filed the present appeal on the sole ground as reproduced here in above. To support the various grounds so raised by the assessee the Id. AR of the assessee relied upon the following written submissions at the time of hearing of the appeal :

I. Assessee company is a Non-Banking Finance Company (“NBFC”), registered with Reserve Bank of India. For the year under consideration, assessee company filed its return of income at a total income of Rs.3,86,42,770. Thereafter, case of assessee company was selected for Scrutiny Assessment by the National Faceless Assessment Centre (“NFAC”), in a faceless manner. Subsequently notices under Section 142(1) was issued to assessee company. During the course of assessment proceedings, against such notices issued, assessee company filed, elaborate submissions.

II. Considering the submissions filed by the assessee company, order under Section 143(3) was passed by the NFAC, on 15.03.2021 [PB: 3-5], without making any additions to the income of assessee company, thereby accepting the returned income of the assessee. All such proceedings were carried out by the Income Tax Department in a faceless manner .

III. Thereafter, jurisdiction was assumed in the case of the assessee company, under Section 263 by the Id. Principal Commissioner of Income Tax, Jaipur-1 (“PCIT”). In this regard, Show Cause Notice, dated 10.03.2023, was issued to assessee company by the Id. PCIT. Pursuant to Show Cause Notice,

detailed submissions were filed by assessee company. Subsequently, order was passed by Id. PCIT on 28.03.2024, considering the order passed by the NFAC to be erroneous, in so far as it is prejudicial to the interest of the revenue. Submissions filed by assessee company before Id. PCIT, during the proceedings under Section 263, have also been reproduced by the Id. PCIT from Pages 2 to 7 of her order.

IV. Against such assumption of jurisdiction by Id. PCIT, the present appeal has been preferred by assessee company before the Hon'ble ITAT, Jaipur Bench, Jaipur.

V. In relation to the assumption of jurisdiction by Id. PCIT, under Section 263, Id. PCIT raked up three issues which are set out here under for the sake of ready reference. Each of the issues set out hereunder have been dealt in detail subsequently:-

Issue No. 1: As per Schedule 23 (Provisions on Loans and Advances) to the Profit and Loss account, an amount of Rs. 30,63,618 was debited on account of 'Standard Assets Provision' which was not allowable in view of Section 36(1)(via).

Issue No. 2: Assessee deducted amount of Rs. 1,18,50,389 from the total income on account of "Syndication fees for CCPS issue". However, as per provisions of Section 37(1), expenditure so claimed being a capital in nature, was to be disallowed and added back to the income of the assessee.

Issue No. 3: During the year, assessee debited expenses pertaining to Rates and Taxes, amounting to Rs. 37,23,416, in the Profit & Loss account which was not allowable as per Section 40(a).

VI. ISSUE NO. 1

1. Assessee company is an NBFC, duly registered with the Reserve Bank of India (RBI). As part of its regulatory oversight, the RBI has issued specific guidelines mandating NBFCs to create Provisions for Bad and Doubtful Debts. In compliance with these guidelines, which are issued under the authority granted to the RBI by Section 45-JA of the Reserve Bank of India Act, 1934, the assessee duly created such provisions.

2. In this regard, appropriate disclosure was made by the assessee company, in its Audited Financial Statements, for the year under consideration. Same are referred as under: -

Notes on Financial Statements – PB : 16

i) **Provisioning/ write off of assets**

(i)

Loans are provided for/ written off as per company's policy, as given in sub para (b) below, subject to the minimum provision required as per the Master Direction- Non Banking Financial Company – Non systematically Important Non-deposit taking Company (Reserve Bank) Directions, 2016, issued vide Master Direction DNBR.PD.007/03.10.119/2016-17 dated September 01, 2016 (the NBFC-ND-NSI Master Directions")

## Schedule 23

23 PROVISION ON LOANS & ADVANCES	Particulars	(Amounts in Rupees)	
		For the Year ended March 31, 2018	For the Year ended March 31, 2017
<b>Provision for Loans</b>			
	Standard Asset Provision	3,063,618	712,946
	Provision for Non-Performing Assets	463,301	98,714
	<b>Total Provision on Loans and Advances</b>	<b>3,526,919</b>	<b>811,660</b>

3. As per Sub-Clause (d) of clause (viiia) of Section 36(1), any provision made by a Non-Banking Financial Company (NBFC) in respect of bad and doubtful debts is allowable as a deduction.

4. Such legal position was submitted before the Id. AO during the course of the assessment proceedings. It was also discernible from the Audited Financial Statements of the assessee company filed during the assessment proceedings. The Id. AO, after considering the factual and legal position, allowed the claim of the assessee company.

5. Id. PCIT assumed jurisdiction under Section 263 by referring to Section 36(1)(viiia) at page 7 of her order. Id. PCIT referred to the Sub-Clause (a) of Clause (viiia), which pertained to Scheduled Banks, Non-Scheduled Banks, Cooperative Banks etc. However, Id. PCIT overlooked the legal position that, as per Sub-Clause (d) of Clause (viiia) of Section 36(1), provision for bad and doubtful debts was allowable even to NBFCs. This provision was inserted by the Finance Act, 2016, with effect from 1-4-2017, accordingly the such deduction was allowed to the assessee company.

6. Further, Id. PCIT misinterpreted the said Sub-Clause by stating that the words used therein are "bad and doubtful debts." Accordingly, as per the Id. PCIT, the deduction for provision was not available to the assessee in relation to Standard Assets but was only available for bad and doubtful debts.

7. In the case of NBFCs, the assets are either classified as Standard Assets or Non-Performing Assets. The provision made on such assets is always termed as Bad and Doubtful Debts. This position is also discernible from the Schedule 23,

which forms part of the Audited Financial Statements, screenshot of which is set out hereinbefore.

8. Ld. PCIT confused herself by considering that the provision made by the assessee company in relation to Standard Assets was not in relation to bad and doubtful debts. On the contrary, the practice adopted by NBFCs is that for different types of assets, provisioning is done, and all such provisioning is in relation to Bad and Doubtful Debts.

9. It is pertinent to note that subsequently, in the proceedings initiated pursuant to the order passed under Section 263, such legal position was accepted by the Assessing Officer, and accordingly, no additions were made to the income of the assessee company.

Accordingly, no error was committed by the Id. AO, in the original proceedings, while allowing the claim of the assessee company in relation to "Standard Assets Provision".

#### VII. ISSUE NO. 2

1. Assessee company, during the year under consideration, paid Consultancy Fees in the form of Syndication Fees for raising Convertible Cumulative Preference Shares from Venture Capital "SCI Investment". Such fees was paid as part of arranging for the Strategic Investor.

2. During the course of the proceedings before the Id. AO, all the details related to the capital raised by the assessee company, the expenses incurred in relation to consultancy, and the fees paid to the Registrar of Companies for increasing the capital base of the company were submitted along with the documentary evidence.

3. In this regard, attention is drawn to the Written Submissions filed by the assessee company, which are placed at PB Page 129 to 131.

4. All the details related to the capital infusion and investment received by the assessee company were submitted to the Id. AO. Id. AO had specifically requested all the details related to the increase in the capital of the assessee company.

5. Additionally, the details of the returns filed with the Registrar of Companies for the allotment of shares were also sought from the assessee company. In this regard, attention is drawn to the query letter issued during the course of the assessment proceedings, which is placed at PB Page 125 to 127.

6. Ld. AO, through these submissions, was well aware that the assessee company had raised funds from a strategic investor. Accordingly, fees was paid to the consultant for different services, which *inter-alia* include, identifying potential

investors, strategizing the investment, exploring the best possible opportunities for the assessee company, providing guidance to the assessee company, in relation to type of the strategic investor, providing guidance of the type of securities to be issued and its ramification for the future etc.

7. After considering the submissions filed during the course of the assessment proceedings along with the documentary evidence, the Ld. AO took a conscious decision to allow the expenditure as revenue in nature.

8. Ld. PCIT, for the purpose of assuming jurisdiction under Section 263, placed reliance on the decision of the Hon'ble Supreme Court in the case of Punjab State Industrial Development Corporation Limited [1997] 225 ITR 792 (SC). In the said case, payment was made filing fee to the Registrar of Companies (ROC) for the enhancement of the company's capital base. However, the said case is not applicable to the present case of the assessee company. The expenditure sought to be disallowed by the Ld. PCIT is not in relation to the fees paid to the Registrar of Companies.

9. Attention is drawn towards the below mentioned judicial pronouncements, wherein similar type of expenses were held to be allowed as revenue in nature: -

Case Law	Ratio Laid Down
JCT Electronics Ltd [2010] 188 Taxman 191 (Punjab & Haryana)	Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of -Assessment year 2004-05 - Whether where Tribunal had treated expenditure for restructuring and viability study and preparation of restructuring proposal as revenue expenditure by recording findings of fact that expenses were incurred for purpose of business and were in conformity with provisions of section 37, no question of law arose from Tribunal's order - Held, yes
Lok Advisory Services (P.) Ltd. Delhi/[2019] 264 Taxman 39 (Delhi)[	Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Consultancy fee) - Assessment year 2012-13 - Assessee-company was engaged in providing managerial, technical, consultancy and investment research services to two overseas funds - Assessee-company entered into an agreement with its foreign associate entity 'LF' to help assessee in identifying potential investors and influence them to participate in said two overseas funds - Assessee paid Rs. 2.88 crores to LF as one time consultancy fee stating that due to efforts of one DP, co-founder of LF, total fund size of investments by said two funds had increased to huge amount - Assessee claimed said payment as deduction under section 37(1) - Same was disallowed - It was noted that revenue had accepted that fee was paid to LF for a gamut of services rendered by it namely, to identify and introduce potential investors in different countries, review and assist in preparation of material, influence potential investors, assist in negotiations to arrive at a commitment, move towards a closing and get a successful closure - Efforts had benefitted assessee in form of increased investment by said two overseas funds resulting in

increase in advisory fee being paid to assessee by said funds - Whether, on facts, impugned consultancy fee paid by assessee was expenditure wholly and exclusively for purpose of business and, therefore, same was to be allowed under section 37(1) - Held, yes [Paras 10 and 11] [In favour of assessee]

10. Ratio laid down in the aforementioned is relevant for the case at hand, in deciding that view adopted by the Id. AO, during the course of assessment proceedings, was based on the plausible view available as per law and that nothing contrary to law was done by the Id. AO.

Accordingly, no error was committed by the Id. AO, in the original proceedings, while allowing the claim of the assessee company in relation the consultancy fees paid.

#### I. ISSUE NO. 3

1. During the year under consideration, assessee company paid Stamp Duty and ROC charges of Rs. 37,23,419, which formed part of "Rate & Taxes" in the Profit and Loss Account.

2. Only 1/5<sup>th</sup> of such expenses incurred was allowed, while filing the return of income and the remaining 4/5<sup>th</sup> expenses were disallowed on its own by the assessee company. The same was also discernible from the computation of income/Income Tax Return form which had been submitted by the assessee company during the course of original assessment proceedings.

3. During the course of the assessment proceedings, a detailed query letter [PB 126] was issued by the Ld. AO, seeking information in relation to the deductions claimed in the return of income by the assessee company. In response to such a query letter, detailed submissions were made by the assessee, providing information on all the different expenses incurred and the nature of such expenses [PB: 129-131]. Based on the details provided, the Ld. AO accepted the return of income of the assessee company and did not make any disallowance.

4. It is pertinent to note that subsequently, in the proceedings initiated pursuant to the order passed under Section 263, such factual position was accepted by the Assessing Officer, and accordingly, no additions were made to the income of the assessee company.

#### IX. ORIGINAL ASSESSMENT PROCEEDINGS – FACELESS MANNER

1. It is pertinent to note that the assessment in the case of assessee for the

year under consideration was carried out in the “faceless manner”, by the NFAC. Any faceless assessment is carried out with Assessment unit, Technical unit, Review unit, Verification unit. Also, officers of level of Additional Commissioners are involved. The different units are headed by Principal Commissioner of Income tax. Accordingly, in a faceless regime, there cannot be a case of error of any kind being caused to the department, for the reason that there is application of mind by multiple officers of Department and not by a single officer.

## X. LEGAL POSITION – RELEVANT FOR CASE AT HAND

1. Assessment order can be revised under section 263 only if the twin conditions of “error in the order” and “prejudice cause to the revenue” coexist. Hon’ble Supreme Court in the case of Malabar Industrial Co. Ltd [2000] 109 Taxman 66 (SC) held that “...A bare reading of this provision makes it clear that the pre-requisite to exercise of jurisdiction by the Commissioner *suomotu* under it, is that the order of the ITO is erroneous insofar as it is prejudicial to the interests of the revenue. The Commissioner has to be satisfied with twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue. If one of them is absent - if the order of the ITO is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue - recourse cannot be had to section 263(1)...”

2. From the exhaustive material, already on record, and the enquiries conducted by Id. AO, it is abundantly clear that no prejudice, in any manner, was caused to the interest of the revenue:-

Hon’ble Calcutta High Court in Dawjee Dadabhoy and Co. v. S.P. Jain [1957] 31 ITR 872 (Cal.) at page 881 has explained the meaning of the expression “prejudicial to the interest of the Revenue” the following terms: “..The words ‘prejudicial to the interests of the Revenue’ have not been defined, but it must mean that the orders of assessment challenged are such as not in accordance with law, in consequence whereof the lawful revenue due to the State has not been realized or cannot be realized. It can mean nothing else...”

G.R. Thangamaligai [2003] 259 ITR 129 (MAD.)

*“In the absence of any finding that there is loss of revenue, interference under section 263 of the Act was not justified.*

Eveready Industries India Ltd [2020] 181 ITD 528 (Kolkata -Trib.) “...The Hon’ble Supreme Court, held that for invoking powers conferred by S.263; the CIT should not only show that the AO’s order is erroneous as a result of any of the situations enumerated above but CIT must also further show that as a result of an erroneous order, some loss is caused to the interest of the revenue...”

3. Provision of Section 263 no-where allows to challenge the judicial wisdom

of NFAC or to replace it/his wisdom in the guise of revision unless the view taken by NFAC is not at all sustainable in law. Extent of enquiry can be stretched to any level by forcing the Id. AO/NFAC to go through the assessment process again and again this proposition is not authorized by the law. Reliance is placed on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Ganpat Ram Vishnoi, 296 ITR 292 (Raj.) wherein at Para 11 of the Hon'ble Court held as under:

*"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."*

4. Unless prejudice to the interest of the revenue is "established", any assumption of jurisdiction under Section 263, by the Id. PCIT, directing revision of order, is unjustified.

5. Above factual and legal position was submitted before Id. PCIT, during the course of proceedings before her. However, the same has been ignored by her in her order passed under Section 263.

- Ld. PCIT simply mentioned at Page 8, of her order that NFAC/Assessing Officer, passed the order in a routine and casual manner.
- It is here by submitted that Id. PCIT failed to bring out any evidence to prove that there was non-application of mind by the NFAC. Ld. PCIT has not been able to point out, based on the submissions made by the assessee before her, as to how the orders passed by the NFAC was erroneous.
- As submitted above, the order passed by NFAC cannot be said to be erroneous. On the contrary, the factual position has been wrongly considered by Id PCIT, resulting into drawing erroneous conclusions.

In view of the above factual and legal position, Id. PCIT has grossly erred in assuming jurisdiction under section 263. Thus, the entire such proceedings initiated by the Id. PCIT deserves to be quashed.

9. To support the contentions so raised and in addition to the written submission the Id. AR of the assessee also submitted a paper book containing following documents which reads as under:-

S No.	Particulars	Page No.
1.	Copy of Show Cause Notice issued by Id. PCIT in respect of Revisionary proceedings under Section 263 of the Income Tax Act, 1961 ("ITA")	1-2
2.	Copy of original assessment order passed by Id. AO, in the case of the assessee company, under Section 143(3) read with Sections 143(3A) & 143(3B) of the ITA	3-5

3.	Copy of Audited Financial Statements of the assessee company for the relevant previous year	6-28
4.	Copy of ITR filed by assessee company for the relevant previous year	29-105
5.	Copy of Form 3CD filed by the assessee company for the relevant previous year	106-124
6.	Copy of the notice, dated 23.11.2020 issued to assessee company under Section 142(1) of the ITA, by Id. AO, during the course of assessment proceedings along with replies submitted by assessee company.	125-128
7.	Copy of the reply filed by assessee company against the notice dated 23.11.2020, issued by the Id. AO, during the course of assessment proceedings.	129-131
8.	Copy of the notice, dated 16.02.2021 issued to assessee company under Section 142(1) of the ITA, by Id. AO, during the course of assessment proceedings along with replies submitted by assessee company.	132-133
9.	Copy of the reply filed by assessee company against the notice dated 16.02.2021, issued by the Id. AO, during the course of assessment proceedings.	134-136

10. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the assessee the Id. PCIT has ragged up three issues in her order and out of that two issue have even though raised by the PCIT has been accepted by the Id. AO even after the assessment order passed pursuant to the order of the assessment. The left-out issue upon which Id. AO vide questionnaire dated 23.11.2020 called for the details of deduction and exemptions claimed by the assessee which was submitted vide reply dated 08.12.2020 point no. v page 130 and 131. After considering that submission made by the assessee Id. AO has considered the claim of the expenses as revenue expenses. Whereas the Id. CIT(A) is propagating that the same are in the nature of capital expenditure. To drive home to this contention the Id. AR of the assessee

relied upon the decision of Hon'ble Delhi High Court in the case of PCIT, Delhi-5 Vs. Lok Advisory Services(P) Ltd. [ 104 taxmann.com 67(Delhi) wherein the similar expenses were considered as revenue expense. Thus, the view adopted by the Id. AO was one of the view and therefore, the Id. PCIT cannot under the grab of 263 impose her view.

11. The Id DR is heard who relied on the findings recorded in the order of the Id. PCIT and submitted that though the claim on two issue accepted by the Id. AO but after verification and on third issue the claim being of the long term issue of shares issued the same should have been capitalized and the same are required to be claimed over a period not in the year under consideration.

12. We have heard the rival contentions and perused the material placed on record. The only solitary ground raised by the assessee in this appeal is that the order of the Id. AO is neither erroneous nor prejudicial to the interest of the Revenue and thereby the action of the Id. PCIT invoking the provision of section 263 of the Act is illegal, unjustified, arbitrary and against the facts of the case. The brief facts related to the case are that the assessee company is a Non-Banking Financial Company (NBFC) registered with Reserve Bank of India (R.B.I.). For the year under consideration the assessee-appellant had filed return of income on

02.10.2018 declaring total income of Rs. 3,86,42,770/- for the year under consideration. The case was selected for Complete Scrutiny assessment under the E-assessment Scheme, 2019 to verify the following issues:

- i. Claim of Any Other Amount Allowable as deduction in Schedule BP
- ii. Short term Capital Gains u/s. 111A
- iii. Refund Claim
- iv. Share Premium
- v. Disallowance u/s. 40A(7)(Gratuity provision)
- vi. Share Capital / Other Capital

13. During the assessment proceedings u/s 143(3) of IT act, 1961, assessee company duly submitted replies on the issue raised by the PCIT. The submission made before the Id. AO was made on 08.12.2020 and 17.02.2021. Both the replies deals with the subject and issue raised for the scrutiny. Ld. AO after considering the replies filed by the assessee completed the assessment. After that Id. PCIT while exercising the power vested upon her called for the assessment record and observed that as per Schedule 23 (Provisions on Loan and Advances) to the Profit and Loss account, an amount of Rs. 30,63,618/- was debited by the assessee for Standard Assets Provisions which is not allowable as per provision of sections of section 36(1)(via) of the Act. Further it was also noticed by her that while computing taxable income as per Income Tax Act, on account of "Syndication fees for CCPS issue (Convertible Cumulative preference

shares), an amount of Rs. 1,18,50,389/- was reduced by the assessee from the taxable income. However, the same is not allowable as per provision of section 37(1) of the Act, being an expenditure in capital in nature. She also noticed that assessee debited expenses under the head rates and rates of Rs. 37,23,416/- which is not allowable as per the provision of section 40(a) of the Act. Thus, Id. PCIT has raised three issues out of that two issue has already been considered even in the subsequent assessment proceeding completed pursuant the revision proceeding. Thus, on that issue the order of the Id. AO is neither erroneous nor prejudicial to the interest of the revenue. So as regards the one issue of Syndication fees for CCPS issue (Convertible Cumulative preference shares), for an amount of Rs. 1,18,50,389/- which was claimed by the assessee as per provision of section 37(1) of the Act. On this issue the bench noted that the assessee has in detailed replied to the AO vide questionnaire dated 23.11.2020 wherein Id. AO called for the details of deduction and exemptions claimed by the assessee which was submitted vide reply dated 08.12.2020 point no. v page 130 and 131 in the paper book filed. After considering that submission made by the assessee Id. AO has considered the claim of the expenses as revenue expenses as allowable u/s. 37(1) of the Act. Whereas Id. CIT(A) is propagating that the same are capital expenditure. The issue

being debatable in nature cannot be taken as prejudicial or erroneous. Thus, to examine that the view taken by the Id. AO was erroneous or prejudicial to the interest of the revenue or not we would deal the complete facts of the issue. As we note from the record that during the year under consideration, the assessee paid Consultancy Fees in the form of Syndication Fees for raising Convertible Cumulative Preference Shares from Venture Capital "SCI Investment". Such fees were paid as part of arranging for the Strategic Investor. On this issue of claim of expenditure while the proceeding before the Id. AO all the details related to the capital raised by the assessee company, the expenses incurred in relation to consultancy, and the fees paid to the Registrar of Companies for increasing the capital base of the company were submitted along with the documentary evidence. That records were also forms part of the paper book filed by the assessee vide page no 129 to 131 and that submission made were not disputed by the Id DR while arguing the case. Thus, we note that all the details related to the capital infusion and investment received by the assessee company were submitted to the Id. AO. Id. AO had specifically requested all the details related to the increase in the capital of the assessee company. The assessee also placed on record the details of the returns filed with the Registrar of Companies for the allotment

of shares were also sought from the assessee company. In this regard, attention is drawn to the query letter issued during the assessment proceedings, which is placed at PB Page 125 to 127. When the Id. AO was made aware of the issue by placing cogent evidence and based on the submissions and records verified the claim and was considered the same. It is also clear from the record that fees paid to the consultant for different services, which inter-alia include, identifying potential investors, strategizing the investment, exploring the best possible opportunities for the assessee company, providing guidance to the assessee company, in relation to type of the strategic investor, providing guidance of the type of securities to be issued and its ramification for the future etc. all these aspects as contended were considered in the assessment proceedings along with the documentary evidence, the Ld. AO took a conscious decision to allow the expenditure as revenue in nature and we do not find that the said decision was erroneous and prejudicial to the interest of the revenue. Before us in support of the view taken by the Id. AO the assessee has relied upon the judgments in the that the claim of the expenditure is duly allowable and as such the view of the Id. AO is not prejudicial to the interest of the revenue also when the legal precedent on the same very issue shows that the view adopted by the Id. AO was one of plausible view. The bench noted that Id.

PCIT, for the purpose of assuming jurisdiction under Section 263, placed reliance on the decision of the Hon'ble Supreme Court in the case of Punjab State Industrial Development Corporation Limited [1997] 225 ITR 792 (SC). In the said case, payment was made filing fee to the Registrar of Companies (ROC) for the enhancement of the company's capital base whereas the same is not case of the assessee as the expenditure sought to be disallowed by the Ld. PCIT is not in relation to the fees paid to the Registrar of Companies and there that decision does not support the view of the Id. PCIT. Thus, we are of the considered view that there is part of the order of the Id. AO found be erroneous or prejudicial to the interest of the revenue. The bench also noted that Id. PCIT has invoked the clause (a) and clause (b) to explanation 2 to section 263. The clause (a) deals with those reasons where the Id. AO has not made any enquiry and verification of the claim. On this aspect of the matter we note from the submission so made the Id. AO raised the issue, assessee filed all the details on the issue and after application of mind Id. AO allowed the claim of the assessee. Thus, clause (a) cannot be invoked. Clause (b) says that the order is passed allowing any relief without inquiring into the claim this is also not the case of revenue where the claim has been allowed raising questions and taking all the relevant documents required on the issue. Thus, we note that

when the Id. AO on the two issue accepted the fact and order was not found erroneous or prejudicial even after direction and on third issue the Id. AO has already raised the issue and examined the claim of the assessee. We also take note of the fact 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 NeFAC after raising the detailed enquiry on the issue flagged for scrutiny. In the instance case as discussed herein above on all of the issue either the Id. AO has raised the issue and taken a plausible view or the Id. AR of the assessee placed on record relevant material so as to establish that on that issue the order is not erroneous and that of the matter has not been challenged by the Id. DR. Thus, when based on the submission and discussion so recorded herein above as is evident that on all of the aspect of the matter either the inquiry has been made or considering the submission of the assessee the same is not prejudicial to the interest of the revenue the order passed by the Id. AO cannot be held prejudicial to the interest of the revenue as the twin condition laid down under the Act fails as order of the Id. AO is neither erroneous on facts nor prejudicial to the interest of the revenue. Therefore, the order passed by the Id. PCIT dated 28.03.2023 cannot be sustained in law merely because the original

assessment order does not exactly advert to the issue which the Id. PCIT is seeing. Moreover, we note that the issue that has been discussed on which the Id. AO took a possible view in the matter and even though the Id. AR of the assessee demonstrated the same are not prejudicial to the interest of the revenue. 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. 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 in the said case.

In view of foregoing discussion, we are of the considered view that the Ld. PCIT was not justified in invoking the provision of section 263 to the present case of the assessee. Being so, we quash the order passed by Id. PCIT u/s 263.

Order pronounced in the open court on 13/12/2024.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 13/12/2024

\*Ganesh Kumar, Sr. PS

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

1. The Appellant- Finova Capital Private Ltd, Jaipur
2. प्रत्यर्थी / The Respondent- PCIT-1, Jaipur, 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. 149/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar