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

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकरअपील सं./ITA No. 598/JP/2024
निर्धारणवर्ष/Assessment Year :2018-19

Pinkcity Jewelhouse Pvt. Ltd., 76, Dhuleshwar Gardens, Jaipur	बनाम Vs.	Principal Commissioner of Income Tax (Central), Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAACF 8368 D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Siddharth Ranka, Adv.,
Sh. Saurav Harsh, Adv.&
Sh. Satvika Jha, Adv.
राजस्व की ओर से/Revenue by: Sh. Arvind Kumar, CIT-DR

सुनवाई की तारीख/Date of Hearing : 11/12/2024
उदघोषणा की तारीख/Date of Pronouncement: 26/12/2024

आदेश/ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee has arisen out of the order of the Principal Commissioner of Income Tax (Central), Jaipur dated 30/03/2024 [here in after ld. PCIT] for assessment year 2018-19 which in turn arose from the order dated 12.04.2021 passed under section 144of the Income Tax Act, [for short Act] by DCIT, Central Circle-1, Jaipur [for short AO].

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

1. That in law and on the facts and circumstances of the case, the ld. Principal Commissioner of Income Tax, (Central), Jaipur grossly erred in passing an order u/s. 263 of the Act and in holding that the assessment order dated 12.04.2021 passed by the ld. Assessing Officer is found to be erroneous in so far as it is prejudicial to the interest of the revenue.
2. That in law and on the facts and circumstances of the case, the ld. Principal Commissioner of Income Tax, (Central), Jaipur grossly erred in directing the Assessing Officer to disallow the so-called excess contribution to the ESI/PF more than as prescribed under rule 87 of the Income Tax Rules.
3. That in law and on the facts and circumstances of the case, the ld. Principal Commissioner of Income Tax, (Central), Jaipur grossly erred in directing the Assessing Officer to take excess stock valued at Rs. 1,50,00,000/- as investment and treat it as unexplained income u/s. 69 r.w.s. 115BBE of the Act.
4. That in law and on the facts and circumstances of the case, the ld. Principal Commissioner of Income Tax, (Central), Jaipur grossly erred in directing the Assessing Officer to disallow interest expenses of Rs. 38,35,156/- u/s. 14A r.w.r. 8D of the Act.
5. That in law and on the facts and circumstances of the case, the ld. Principal Commissioner of Income Tax, (Central), Jaipur grossly erred in directing the Assessing Officer to disallow the claim of deduction u/s. 10AA of the Act.
6. The appellant craves leave to add, alter and modify the or amend any ground on or before the date of hearing.

3. Succinctly, the fact as culled out from the records are thatthe assessee company e-filed its return of income declaring total income of Rs.7,42,23,910/- on 31.10.2018 after claiming deduction under section 10AA of the Act. The case was selected for scrutiny under CASS and, therefore, notice u/s 143(2) was issued on 22.09.2019, which was duly served upon the assessee. Subsequently, notice u/s 142(1) was issued on 08.02.2021, along with detailed query letter, which was duly served upon

the assessee company through e-filing portal. In compliance thereto, the assessee furnished replies from time to time and produced books of accounts, which was examined on test check basis by the ld. AO.

3.1 The assessee company derives income from manufacturing and export of mainly gold and silver jewellery studded with precious, semi-precious stones and diamond from its unit situated in SEZ Unit, Sitapura and domestic Unit at Mahapura.

3.2 While examining the books of account and details furnished by the assessee, it was noticed that there remained difference in the profit margin of SEZ unit and domestic unit in as much as net profit of Rs. 1,26,72,574/- has been shown on turnover of Rs.52,68,47,908/- for the domestic unit at Mahapura, giving a net profit rate of 2.41% whereas net profit of Rs. 11,50,08,372/- has been shown on turnover of Rs.64,83,44,075/-, giving a net profit rate of 17.74%. The assessee was, therefore, called upon to furnish the details of goods transferred from domestic to SEZ unit mentioning quantity and value and also to explain as to why suitable profit rate be not applied having regard to the marked difference in profit margin of SEZ Unit and domestic Unit at Mahapura. Vide written submission filed on 02/04/2021, the assessee filed detailed reply. Ld. AO considered the submissions made by the assessee, but the same were not found to be

acceptable in view of the fact that the assessee had not been able to explain and substantiate satisfactorily with support material to prove that the profit of Rs. 38,69,984/- on Inter Unit transfer of goods valuing Rs.2,92,49,216/- is included in the transfer value declared by the domestic unit. As the assessee failed to explain as to how and on what basis the profit of Rs. 38,69,984/- claimed to have been made on inter unit transfer of goods valuing Rs.2,92,49,216/- had been worked out, assessee's A/R admitted that no working in respect of each invoice readily available and it was a lengthy process. In the light of that situation, the assessee was required to explain as to why the invoice value may not be enhanced and thereby the deduction claimed u/s 10AA by the SEZ Unit may not be reduced by invoking the provisions of Sec. 80IA(8) r.w.s. 10AA of the Act. Thus, ld. AO noted that the issue for consideration before him was to what quantum by which deduction claimed u/s 10 AA by the SEZ Unit be reduced. Ld. AO considering the facts of the case in its entirety, he considered it fair and reasonable and to safeguard the interest of revenue to make a further addition @ 17.74% on the value of inter-unit transfer of Rs. 2,92,49,217/-, being the net profit rate disclosed by Sitapura Unit as profit, this was worked out at Rs. 51,88,811/- over and above the profit of Rs. 38,88,584/- as claimed by the assessee on inter-unit transfers from

Mahapura Domestic Unit. Accordingly amount of Rs. 51,88,811/- was reduced from the profit of SEZ Unit and accordingly deduction under section 10AA revised by the ld. AO. Based on that observation income was assessed at Rs. 7,68,18,310/- against the return of income of Rs. 7,42,23,910/- and thereby the assessment was completed, considering the provisions of section 144 of the Act on 12.04.2021.

4. On culmination of the assessment proceeding the ld. PCIT(Central), Jaipur called for the assessment record for examination, and while doing so she noted that the assessment order dated 12.04.2021 passed u/s 144 of the Act for A.Y 2018-19 was erroneous and prejudicial to the interest of revenue. Therefore, proceedings u/s 263 of the Act were initiated and an opportunity of being heard vide ITBA generated notices dated 08.03.2024 was provided to the assessee to file its response in this regard electronically through e-filing portal by 19.03.2024. The notice so issued was for the following points;

> (i) allowability of deduction u/s 10AA of the Act
> (ii) disallowance of 40a(ia) of the Act
> (iii) disallowance of ESI & PF for an amount of Rs. 4,93,814/- required to be disallowed asthe provisions of u/s 36(1)(va) r.w.s. 2(24)(x) of the Act.
> (iv)& (v) ld. PCIT noted that the assessee disclosed investment in stock and therefore, considering the provisions of section 69 of the Act. The said income is required to be taxed as per the provisions of section 115BBE of the Act.

4.1 In response to the show cause notice, the assessee filed a detailed reply contending that undisclosed investment disclosed cannot be considered as other income and it should be considered as business income and therefore, the provisions of section 69 or 115BBE of the Act cannot be applied. Assessee also submitted that the assessing officer has not made any query in regard to the source of the investment in excess stock and considered the same out of the business income of the assessee. As regards the disallowance u/s 40a(ia) ld.PCIT considered the reply of the assessee and held that no disallowance was required to be made.

4.2 So far as the disallowance to be made for ESI & PF being paid late, ld. AR of the assessee submitted before ld. PCIT that the issue has been raised by ld. AO in the assessment proceedings by way of specific query and has considered claimed by the assessee. Here also ld. PCIT considered the reply and found acceptable as the cheques for the payment were tendered on or before the due date, but the credit had been delayed due to late clearing by the bank.

Ld. PCIT noted while hearing fixed for the revisionary proceeding wherein AR was asked to explain how the payment of PF/ESI made not in excess of the limits prescribed as per rule 37 of the Income Tax Rules. In

the reply it was submitted that the ld. AO raised a specific query wherein the assessee explained that how payment of ESI/PF was not more than the stipulated percentages as prescribed u/r 87. Ld. PCIT after perusing the reply noted that ld. AO was required to verify what are the component of Rs. 12,24,75,451/- which the AR is showing as part and parcel of the salary & wages that AO failed to do so. Therefore, she considered that ld. AO has erred while passing the assessment order in this and thus has caused prejudice to the interest of revenue.

4.3 As is evident from the record that the assessee made disclosure of Rs. 1.50 crore as additional income during survey on account of excess stock. Ld. PCIT noted that income offered for tax in the ITR was on account of excess stock found during survey and hence such sum should have been brough to tax u/s. 69 r.w.s. 115BBE of the Act. Against that contention assessee replied that to buy the peace of mind the sum of Rs. 1.50 crore was offered for taxation. On the other hand ld. PCIT noted that the surrender was suo motto and therefore, the plea taken by the assessee to consider business income was rejected and the sum invested for acquiring such unaccounted stock considered to be charged to tax as per provision of section 69 of the Act r.w.s. 115BBE of the Act and that is why

she hold the order of the ld. AO erroneous and prejudicial to the interest of the revenue.

4.4 Ld. PCIT noted that the assessee has claimed finance / interest cost which attribute to the investment in the capital contribution to the partnership firm and Mutual fund. Thus, as per the discussion and decision referred in her order she hold that disallowance of expenditure had to be made in as per provision 14A of the Act r.w.r. 8D which has resulted the order of assessment erroneous & prejudicial to the interest of revenue.

4.5 The last issue that as raised for the deduction of 10AA claimed by the assessee. On this issue PCIT noted that assessee company has taken over all plant and machinery of its sister concern M/s. Pink City Colour Stones P Ltd., on rent and employees of the sister concern were also absorbed in its SEZ unit. Even buyers and suppliers were found be same. This was considered a clear violation of provision of section 10AA(4)(iii) read with explanations 1 and 2 of section 80IA(3) of the Act. Against that observation assessee submitted that the plant and machinery of the sister concern was taken up by the domestic unit and not the SEZ unit of the assessee company. In support of this contention, copy of rent agreement, copy of board resolution, bank statement of the domestic unit. The assessee also contended that deduction u/s. 10AA has not been withdrawn

in any of the assessment year but were the proportionate disallowance of claim of 10AA was considered.

Ld. PCIT considered the submission of the assessee and observed that the stamp paper purchased was miscellaneous purpose and not for rent deed, the date of purchase is before the board resolution, stamp paper was purchased by the SEZ unit in Sitapura and not Mahapura Unit. The bank payment made by the domestic unit do not prove the ultimate usage of the plant and machinery. Based on that observation she hold that ld. AO failed to made disallowance of deduction claimed u/s. 10AA of the Act.

4.6 So with those observations and relying on the order of the Malabar Industiral Limited Vs. CIT and CIT Vs. Paville Projects P. Ltd., she held that the assessment order passed u/s 153A dated 12/4/2021 passed by the AO is held to be erroneous in so far as it is prejudicial to the interest of the revenue for the purpose of section 263 of the Act. The said order has been passed by the AO in a routine and casual manner without applying proper mind on issue discussed in the order. The AO has not verified the details which were required to be verified under the scope of scrutiny. The order of the AO is, therefore, liable to 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 examine the issues in the light of the

observation made in this order after allowing reasonable opportunity to the assessee.

5. Feeling dissatisfied with the finding recorded by the ld. PCIT, Central, Jaipur in an order passed u/s. 263 of the Act, the assessee preferred the present appeal challenging the order of the PCIT. Apropos to the ground so taken by the assessee the ld. AR of the assessee submitted the following written submissions:

1. That assessee appellant company M/s. Pinkcity Jewelhouse Pvt. Ltd. was incorporated on 23rd May 2003. Registered office of the company is situated at 76, Dhuleshwar Garden, Jaipur.

1.1. That the assessee appellant M/s. Pinkcity Jewelhouse Pvt. Ltd. is engaged in the business of export of Gemstones & Jewellery and is regularly filing its Income-tax return after getting its books of accounts audited from time to time.

1.2. That the assessee is currently having three manufacturing units:
(i) situated at Mahapura Link Road, Jaipur (Mahapura Domestic Tariff Area Unit);
(ii) situated at G-179/180, SEZ, Phase-II, Sitapura Industrial Area, Jaipur (Sitapura SEZ Unit- I);
(iii) situated at E-14A, E-13, Sitapura Industrial Area, SEZ-II, Jaipur (Sitapura SEZ Unit II).

1.3. That Sitapura SEZ Unit I has commenced commercial operation in FY 2009-10, Mahapura DTA Unit commenced commercial operation in FY 2011-12&Sitapura SEZ Unit-II has commenced commercial operation in FY 2017-2018.

1.4. That the assessee appellant company was issued Letter of Permission for establishing a SEZ Unit on 02.01.2006 [PB 382-384] and was allotted Plot No G-1/179-180 at SEZ, Phase-II, Sitapura, Jaipur. Thereafter the assessee

company constructed its own building on the land allotted to the company. SEZ Unit purchased the necessary Plant & Machinery required for the purpose of manufacturing. That the assessee appellant has claimed deduction u/s 10AA of the Act with regards to income earned from Sitapura SEZ Unit I from assessment year 2010-2011 till assessment year 2019-2020.

1.5. That M/s. Pinkcity Colourstones Pvt. Ltd., Mahapura Link Road, Jaipur was mainly in the business of manufacturing of Colored Gem Stones till the FY 2005-06 relevant to AY 2006-07 and the accumulated losses till AY 2006-07 were of Rs. 35,31,931/-, during AY 2007-08 PinkcityColourstones Pvt. Ltd. incurred loss of Rs. 36,63,226/-, during AY 2008-09 PinkcityColourstones Pvt. Ltd. incurred loss of Rs. 10,12,186/- and only during AY 2009-10 generated net profit of Rs 4,22,686/- and that as on 31.03.2009 the company PinckcityColourstones Pvt. Ltd. was having accumulated Business loss of Rs 3,72,591/- and accumulated Unabsorbed Depreciation of Rs. 77,85,895/-. Totaling Rs 81,58,486/- [PB 200-201].

1.6. That the assessee Company's DTA Unit (Mahapura) rented the building and machinery situated at Mahapura, Jaipur [PB 387-393] which was earlier owned by PinckcityColourstones Pvt. Ltd. during the F.Y. 2011-12 relevant to AY 2012-13 and started its own domestic Operations being Non-deduction claiming Unit situated at Mahapura, Jaipur [PB 204]. That NO part of Building and Plant & Machinery owned by M/s. Pink City Colorstones Pvt. Ltd. was given on lease/sold to M/s. Pinkcity Jewelhouse Pvt. Ltd. (SEZ Unit).

1.7. That during the FY 2012-13 the plant and machinery was purchased by Mahapura, Jaipur (DTA Unit) from PinkcityColourstones Pvt Ltd at WDV for a consideration of Rs. 1.88 Crores [PB 205-206]. That the Mahapura, Jaipur (DTA Unit) apart from the Machinery Purchased from PinkcityColourstones also made substantial investment in Plant and Machinery at domestic Unit of Rs. 57,12,807/- during FY 2011-12 and Rs. 63,03,158/- during FY 2012-3 and thereon till 31.3.2016. The additions to Plant & Machinery in Mahapura, Jaipur (DTA Unit) were to the tune of Rs 6.47 Crore apart from the Machinery purchased from PinkcityColourstones Pvt. Ltd. for domestic Non deduction claiming unit. That no Plant & Machinery was purchased by Sitapura SEZ Unit-I from PinkcityColourstones Pvt. Ltd.

1.8. That till July 2011 the SEZ Unit of the assessee company was not having a casting Machine, therefore the assessee company purchased casted Semi Finished Goods from PinkcityColourstones Pvt. Ltd. Subsequently after

Casting unit was purchased by the SEZ Unit, no new order for semi-finished goods were given to Mahapura Unit or PinkcityColourstones Pvt Ltd and from FY 2012-13 no purchase of semi-finished goods were made from Mahapura Unit by Sitapura SEZ Unit.

1.9. That the assessee appellants first year of commercial production and claim of deduction u/s 10AA of the Act for the assessment year 2010-11 was selected for scrutiny assessment. During the assessment proceedings a show cause notice dated 12.03.2013 [PB 42-43] was issued to the assessee appellant company that owing to close connection with M/s PinkcityColorstones Pvt Ltd. why provisions of section 80IA(10) should not be invoked and benefit be denied, the assessee appellant submitted detailed reply dated 18.03.2013 [PB 44-47] and the learned Assessing Officer was satisfied with the submissions made and did not invoked the provisions of section 80IA(10) and passed the assessment order dated 28.03.2013 [PB 48-49] without making any additions and accepted the returned Income of the assessee and by allowing the claim of deduction u/s 10AA of the assessee company.

1.10. That thereafter scrutiny assessment orders u/s. 143(3) of the Act for assessment year 2011-2012 was passed on 07.03.2014 [PB 50-51], assessment orders u/s. 143(3) of the Act for assessment year 2012-2013 was passed on 27.03.2015 [PB 67-78], assessment orders u/s. 143(3) of the Act for assessment year 2013-2014 was passed on 21.03.2016 [PB 95-110], assessment orders u/s. 143(3) of the Act for assessment year 2014-2015 was passed on 25.11.2016 [PB 128-142]. Benefit of deduction u/s.10AA as claimed was granted to the assessee appellant.

1.11. That reassessment for assessment year 2011-2012 was initiated u/s. 147 on account of unverifiable purchases and assessment order u/s. 143(3) r.w.s. 147 of the Act was passed on 18.12.2017 [PB 52-66]. Benefit of deduction u/s.10AA was partially disallowed, subsequently relief was granted to the assessee appellant by the Hon'ble ITAT.

1.12. That survey proceeding u/s 133A of the Act was carried out against the assessee appellant's business premises on 17-18.08.2017 and in consequence, reassessment proceedings u/s. 148 of the Act was initiated for the Assessment Years 2012-2013 to 2015-2016 and scrutiny assessments u/s. 143(3) of the Act for Assessment Years 2016-2017 to 2018-2019 were also initiated.

1.13. That during the course of Survey specific query was made to the Director with regards to transfer of Plant & Machinery by PinkcityColourstones Pvt Ltd to which it was categorically replied that the same was transferred to assessee appellants DTA Unit at Mahapura [PB 816-822]. Subsequent to survey queries were made to the assessee appellant to which replies dated 02.09.2017 [PB 207-213] & 09.09.2017 [PB 214-216] were submitted by the assessee appellant.

1.14. That on the basis of survey, thereafter scrutiny assessment orders u/s. 143(3) r.w.s. 147 of the Act for assessment year 2012-2013 was passed on 17.12.2018 [PB 79-94], for assessment year 2013-2014 was passed on 17.12.2018 [PB 111-127], for assessment year 2014-2015 was passed on 17.12.2018 [PB 143-158], for assessment year 2015-2016 was passed on 17.12.2018 [PB 159-174]. The reasons recorded for initiating reassessment proceedings were provided to the assessee appellant [PB 656-666] & the assessee appellant filed objection letter dated 29.10.2018 [PB 667-670]. That in the reasons recorded for initiating reassessment proceedings initiated for the Assessment Years 2012-2013 to 2015-2016 it was alleged that assessee is transferring semi-finished goods from the Mahapura Unit (DTA unit) to SEZ unit and that SEZ unit did not make any addition on the goods and that ratio of expenses incurred at DTA unit is more than SEZ Unit, etc. That disallowance was made by the ld. Assessing Officer as per reasons recorded for initiating 148 proceedings. The ld. Assessing Officer has allowed deduction u/s. 10AA by dividing the common expenses incurred by Mahapura Domestic Tariff Area Unit &Sitapura SEZ Unit- I proportionately. To the extent benefit of deduction u/s. 10AA was disallowed, the assessee appellant is in appeal before the ld. CIT(A) and the appeals are pending.

1.15. That on the basis of survey, scrutiny assessment proceedings u/s. 143(3) of the Act for the 2016-2017 was initiated and thereafter the assessment order was passed on 19.12.2018 [PB 175-189], for assessment year 2017-2018, the assessment order was passed on 30.12.2019 [PB 190-199], for assessment year 2018-2019, the assessment order was passed on 12.04.2021. In A.Y. 2016-2017, the ld. Assessing Officer has allowed deduction u/s. 10AA by dividing the common expenses incurred by Mahapura Domestic Tariff Area Unit &Sitapura SEZ Unit- I proportionately. In A.Y. 2017-2018 & A.Y. 2018-2019, the ld. Assessing Officer has applied NP% on goods transferred from DTA to SEZ Unit. The relevant extracts of the assessment order dated 12.04.2021 is as hereunder:

5. I have considered the submissions made by the assessee, but the same are not found to be acceptable in view of the fact that the assessee has not been able to explain and substantiate satisfactorily with support material to prove that the profit of Rs. 38,69,984/- on Inter Unit transfer of goods valuing Rs.2,92,49,216/- is included in the transfer value declared by the domestic unit. The assessee has failed to explain as to how and on what basis the profit of Rs. 38,69,984/- claimed to have been made on inter unit transfer of goods valuing Rs.2,92,49,216/- has been worked out. The assessee's A/R admitted that no working in respect of each invoice is readily available and it is a lengthy process. The assessee sought further time to furnish the details and explain the issue, but this being a time-barring case, no further time is allowed. Sufficient opportunities have already been allowed to the assessee. In such a situation, the assessee was required to explain as to why the invoice value may not be enhanced and thereby the deduction claimed u/s 10AA by the SEZ Unit may not be reduced by invoking the provisions of Sec. 801A(8) r.w.s. 10AA of the Income Tax Act, 1961. The issue for consideration is as to what is the quantum by which deduction claimed u/s 10 AA by the SEZ Unit is to be reduced. The turnover, gross profit/gross profit rate, net profit and net profit rate disclosed by both SEZ Unit and Domestic Unit are as follows :-

Unit	*Turnover Rs*	*GP /GP Rate Rs.*	*NP /NP rate Rs.*
Domestic Unit	*52,68,47,908*	*67271908 /12.77%*	*12672574/2.41%*
SEZ Unit-1	*64,83,44,075*	*155602459/24.00*	*115008372/17.74*

6. The details filed by the assessee and books of accounts have been examined particularly to ascertain as to whether there has been any inter-unit adjustment of expenses to adjust profits with a view to maximize the deduction under section 10AA of the IT Act, 1961. With this point of view, the books of account and vouchers related to both the units were examined to ascertain whether there is any possibility of shifting expenses from SEZ unit to domestic unit to enhance the claim of deduction u/s 10AA. On examination, it is noticed that the NP rate in SEZ Unit is 17.74% whereas the NP rate of domestic unit is 2.41% only, which would indicate the area on which examination for potential adjustments has to be focused. Having regard to the facts of the case in its entirety, it would be fair and reasonable and to safeguard the interest of revenue to make a further addition @ 17.74% on the value of inter-unit transfer of Rs.2,92,49,217/-, being the net profit rate disclosed by Sitapura Unit. The profit would work out at Rs. 51,88,811/- over and above the profit of Rs.38,88,584/- claimed by the assessee on inter-unit transfers from Mahapura Domestic Unit and accordingly this amount of Rs.51,88,811/- will be reduced from the profit of SEZ Unit and accordingly deduction under section 10AA will be recomputed.

To the extent benefit of deduction u/s. 10AA was disallowed, the assessee appellant is in appeal before the ld. CIT(A) and the appeals are pending.

1.16. That on the basis of Audit Objection [PB 671-678] wherein the purchase of Plant & Machinery by Mahapura DTA Unit from PinkcityColourstones Pvt. Ltd. was wrongly alleged to have been purchased by Sitapura SEZ Unit,

proceedings u/s. 263 of the Act for assessment year 2015-2016 were initiated by the ld. PCIT to disallow the entire claim of deduction u/s. 10AA. Subsequently the proceedings u/s. 263 was quashed and set-aside by the Hon'ble ITAT vide its detailed order dated 07.03.2024 [PB 218-265].

1.17. That the return of income for AY 2018-2019 (survey year) was filed by the assessee appellant on 31.10.2018 [PB 620] after getting the books of accounts audited [PB 572-619]. The computation of income is at [PB 202-203]. Variance in stock found by the Survey Officials was offered for tax as business income. The return was selected for scrutiny assessment and during the course of assessment proceedings several queries were raised to which replies [PB 556-557], [PB 558-559], [PB 560-563], [PB 564-565] & [PB 566-571] were filed by the assessee appellant and supporting documents [PB 572-619, 620, 621, 622-627, 628, 629-630, 631-632, 633-655] were also submitted. That the assessment order dated 12.04.2021 was passed whereby the ld. Assessing Officer allowed deduction u/s. 10AA by dividing the common expenses incurred by Mahapura Domestic Tariff Area Unit &Sitapura SEZ Unit-I proportionately. To the extent benefit of deduction u/s. 10AA was disallowed, the assessee appellant is in appeal before the ld. CIT(A) and the appeal is pending. It may be highlighted that at one end the ld. Assessing Officer proposed the ld. PCIT to take action against the assessee u/s. 263 of the Act vide its letter dated 19.02.2021 for A.Y. 2015-2016 [PB 676-678], however, he himself has while passing the assessment order for A.Y. 2018-2019 subsequently on 12.04.2021 has not disallowed the entire claim of deduction u/s. 10AA of the Act and has disallowed the claim of deduction by dividing the common expenses incurred by Mahapura Domestic Tariff Area Unit &Sitapura SEZ Unit- I proportionately. It is apparent that the Assessing Officer was himself not satisfied with the Audit Memo prepared by the Internal Audit Wing of the department.

1.18. That on the basis of Audit Objection [PB 680-688: w.r.t. deduction u/s. 10AA], [PB 689-691 w.r.t. disallowance u/s. 14A], [PB 692-693 w.r.t. disallowance u/s. 36(1)(va)] & [PB 694-702 w.r.t. applicability of section u/s. 69 r.w.s. 115BBE], the ld. Assessing Officer sent a proposal to the ld. PCIT to initiate proceedings u/s. 263 for A.Y. 2018-2019 vide its letter dated 17.11.2023 [PB 703-708] & which was forwarded by the ld. JCIT to ld. PCIT vide its letter dated 22.11.2023 [PB 709-710].

1.19. That furthermore on the basis of letter dated 08.11.2023 sent by ld. CIT(DR-ITAT) to ld. PCIT [PB 711], proceedings u/s. 148A of the Act for assessment year 2016-2017 [PB 712-714] & 2017-2018 [PB 715-716] were initiated against the assessee appellant vide notice dated 08.01.2024 proposing to disallow the entire deduction u/s. 10AA. Detailed replies were filed by the

assessee appellant dated 06.02.2024 [PB 717-738], 07.02.2024 [PB 739-743] & 22.03.2024 [PB 744]. The ld. Assessing Officer vide its order dated 29.03.2024 dropped the proceedings for the assessment year 2016-2017 [PB 745] & 2017-2018 [PB 746]. That thereafter proceedings u/s. 148A of the Act for assessment year 2017-2018 [PB 747-749] were again initiated vide notice dated 29.03.2024 proposing to disallow the entire deduction u/s. 10AA. Detailed replies were filed by the assessee appellant, however, the ld. Assessing Officer vide its order dated 29.04.2024 [PB 750-762] has initiated the reassessment proceedings for the assessment year 2017-2018 placing reliance upon the impugned order passed by the ld. PCIT for assessment year 2018-2019. No proceedings u/s. 148A were again initiated for assessment year 2016-2017.

1.20. That on the basis of Audit Objection [PB 680-710] & letter by the ld. CIT(DR-ITAT) [PB 711] the ld. PCIT issued notice dated 08.03.2024 u/s. 263 [PB 01-05] for A.Y. 2018-2019. No proceedings u/s. 263 were initiated for assessment year 2016-2017 or for assessment year 2017-2018. In response to the show cause notice, the assessee appellant filed detailed replies dated 19.03.2024 (online) [PB 06-216], dated 22.03.2024 (online) [PB 217-265], dated 27.03.2024 (email) [PB 266-379], dated 29.03.2024 (online) [PB 380], dated 29.03.2024 (email) [PB 381-544], dated 29.03.2024 (email) [PB 545-547] & dated 30.03.2024 (email) [PB 548-555] alongwith relevant supporting documents.

1.21. That the ld. PCIT vide its order dated 30.03.2024 passed u/s. 263 has partly accepted the submission of the assessee appellant to the extent of non-applicability of provisions of section 40(a)(ia) and disallowance u/s. 36(1)(va) for delay in deposit of ESI/PF, however, has held that the assessment order dated 12.04.2021 passed by ld. Assessing Officer is erroneous & prejudicial to the interest of revenue qua (a) benefit of section 10AA is not available to the assessee appellant, (b) disallowance u/s. 14A ought to have been made, (c) surrendered stock should be subjected to tax u/s. 69 r.w.s. 115BBE of the Act & (d) ESI & PF is deposited in excess as provided under Rule 87 of the Income Tax Rules.

Ground No. 1: Order passed by the ld. PCIT u/s. 263 is bad in law

2. Proceedings initiated on the basis of Audit Objection: That on the basis of Audit Objection [PB 680-710] & letter by the ld. CIT(DR-ITAT) [PB 711], the ld. PCIT has issued notice dated 08.03.2024 u/s. 263 [PB 01-05] for A.Y. 2018-2019. The reasons for taking the proceeding u/s. 263 is not an independent view of the ld. PCIT but it is borrowed from the audit memo issued by the internal audit party & letter of the ld. CIT (DR-ITAT) wherein the audit party in the audit memo made a base that the ld. Assessing Officer has not looked at

the several aspects of the matter and taken a view that (a) benefit of section 10AA is not available to the assessee appellant, (b) disallowance u/s. 14A ought to have been made, (c) surrendered stock should be subjected to tax u/s. 69 r.w.s. 115BBE of the Act & (d) ESI & PF is deposited in excess as provided under Rule 87 of the Income Tax Rules.

2.1. That it is settled law that initiation of 263 proceedings at the instance of Revenue Audit is impermissible & that the initiation should be at the instance of PCIT itself and it cannot be initiated on borrowed satisfaction. Reliance is placed upon:

- Hon'ble Punjab & Haryana High Court in CIT v. Sohana Woolen Mills (2006) 9 TMI 157 has held: *A reference to the provisions of section 263 of the Act shows that jurisdiction thereunder can be exercised if the Commissioner of Income-tax finds that the order of the Assessing Officer was erroneous and prejudicial to the interests of the Revenue. Mere audit objection and because a different view could be taken, are not enough to say that the order of the Assessing Officer was erroneous or prejudicial to the interests of the Revenue. The jurisdiction could be exercised if the Commissioner of Income-tax was satisfied that the basis for exercise of jurisdiction existed. No rigid rule could be laid down about the situation when the jurisdiction can be exercised. Whether satisfaction of the Commissioner of Income-tax for exercising jurisdiction was called for or not, has to be decided having regard to a given fact situation*.
- Hon'ble ITAT Jodhpur Bench in Jain Carrying Corporation v. PCIT (2024) 3 TMI 945 has held: *Revision u/s 263 - PCIT order of revision based on the audit objection - borrowed information or independent application of mind by CIT - HELD THAT:- The bench noted the ld. PCIT has raised four issues, on four issue the ld. AO has raised the issue, the assessee submitted the reply and the ld. AO has taken a plausible view on the matter.*

AO taken a view based on the submission made by the assessee which the ld. PCIT merely based on the audit objection and PCIT's observation that the view taken by the ld. AO on which the ld. PCIT is not in agreement cannot hold the order liable to be sustained

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

We note that on all the four issue the AO has called for the details, examined the issue and the plausible view on the matter is taken. Merely there is an audit objection, adverse remark of the auditor and the ld. PCIT is not in agreement with the view of the

AO the order cannot be sustained as liable to quash as the twin condition provided u/s. 263 that the order should be erroneous and prejudicial to the interest of the revenue fails and therefore, we do not agree with the finding of the ld. PCIT wherein he could not point out any mistake / error in order which is prejudicial to the interest of the revenue.

The AO while framing the assessment had taken a possible view, and revenue did not demonstrate the error remain on the part of the ld. AO. In fact, when the ld. AO has conducted the required enquiry and not violated any of the conditions mentioned for revision of order as required by Explanation 2 of Section 263 of the Act, the order passed by the Assessing Officer could not be deemed to be erroneous so as to be prejudicial to the interests of the revenue - See Manna Trust, [2022 (1) TMI 693 - Rajasthan High Court] wherein as held Jurisdiction of the Commissioner under Section 263 of the Act is restricted and cannot be equated with the appellate jurisdiction. The Commissioner does not sit in appeal.

As proceeding initiated u/s. 263 is merely based on the audit objection, PCIT is not agreement with the ld. AO and the observation on the stock, in the audit report already filed by the assessee. Thus, there is clear absence of his satisfaction and there is no independent view of the ld. PCIT even on merits - Decided in favour of assessee.

- Hon'ble ITAT Delhi Bench in Majestic Properties Pvt. Ltd. v. PCIT (2023) 8 TMI 673 has held: *As regards the issue of non-disallowance of loss on sale of tower, it is duly emanating that this aspect was raised on the basis of audit objection. The case laws cited by the ld. Counsel of the assessee duly establish that revisionary power u/s 263 cannot be initiated on the basis of audit objection. Hence, we set aside the order passed by the ld. Pr.CIT on this issue*.
- Hon'ble ITAT Chandigarh Bench in Paramjit Singh v. PCIT (2016) 12 TMI 799 has held: *No factual error has been pointed out by the audit party in this case because case was selected for scrutiny for cash deposits in the bank accounts of the assessee. The audit party did not agree with the findings of the Assessing officer, therefore, it could not be said that the assessment order was erroneous in so far as the prejudicial to the interest of the Revenue. The Ld. Counsel for the assessee therefore, rightly contended that the contents of the show cause notice u/s.263 of the I.T. are similarly worded as have been noted in the audit objection. Therefore, subsequently on mere audit objection, the Ld. Principal CIT, was not justified in initiating the proceedings u/s.263of the I.T. Act. The Principal CIT was, therefore, not justified in holding that Assessing officer did not make necessary enquiry into the matter. The Ld. Principal CIT merely disagree with the findings of the Assessing officer, therefore, it could not be termed as assessment order to be erroneous and prejudicial to the interest of Revenue. Therefore, we do not subscribe to the view of the Principal CIT in exercising jurisdiction u/s.263 - Decided in favour of assessee.*
- Hon'ble ITAT Chennai Bench in Refex Industries Ltd. v. DCIT (2014) 11 TMI 653 has held: *Rather, CIT without independent application of mind has replicated audit objections in the show cause notice issued u/s.263 - In Shri Jaswinder Singh Versus Commissioner Of Income Tax-II [2012 (6) TMI 543 - ITAT Chandigarh] it has been held that exercise of revisional power on the basis of audit objection is not tenable in law –*

thus, the CIT without examining the records and proper application of mind has invoked the provisions of section 263 in disallowing the advertisement expenditure claimed by the assessee - There is nothing on record to suggest that the order of AO is not sustainable in law – the order of the CIT is set aside – Decided in favour of assessee.

- Hon'ble ITAT Pune Bench in Volkswagen India Pvt. Ltd. v. PCIT (2023) 11 TMI 794 has held: *Revision u/s 263 - taxability of Government grants - As per CIT grants received by the assessee in such year were wrongly taken as capital receipt - HELD THAT:- The entire show cause notice that the initiation of revision is premised only on the report submitted by the AO requesting for the revision of the assessment order. During an earlier hearing, the ld. DR was directed to produce the said report of the AO forming part of the show cause notice. DR produced the file in original containing the AO's letter dated 22-03-2018 requesting for the revision of the assessment order and such request having been routed through the range JCIT with his own letter dated 27-03-2018. Pursuant to such letter of the AO, the ld. PCIT issued the above show cause notice on 29-05-2018. It is apparent that the entire foundation of the revision is based on the AO requesting the ld. PCIT to revise the assessment order.*

Both the conditions, namely, the CIT calling for and examining the record and then considering the assessment order passed by the AO to be erroneous and prejudicial to the interest of the Revenue are to be cumulatively satisfied by the CIT alone.

The use of the word `and' between the two expressions amply demonstrates that the calling for and examining the record by the CIT should precede and his such examination should culminate in getting satisfied that the order passed by the AO is erroneous and prejudicial to the interest of the Revenue. If one of these conditions gets negated, that is, either he does not call for and examine the record or such examination does not lead him to satisfying the assessment order erroneous etc., the jurisdiction u/s. 263 is not activated.

Revision u/s. 263 is concerned, it is the sole prerogative of the Pr. CIT, who needs to take suo motu action on calling for and examining the record of any proceedings under this Act and on the basis of such examination considering the assessment order erroneous and prejudicial to the interest of the Revenue. It is evident from the show cause notice that the ld. PCIT initiated revisionary proceedings just on the basis of the AO's report without carrying out any independent examination of the record followed by independently satisfying himself that the assessment order required revision.

Thus we are satisfied that the ld. PCIT exercised his jurisdiction to initiate the revision proceedings in a wrongful manner, which, ergo, cannot be accorded our imprimatur.

Assessee created the bedrock for challenging the revision through the additional ground, on the basis of the show cause notice issued by the ld. PCIT, which is part of the assessee's paper book. Our decision of quashing the revision on this legal issue is based on such show cause notice - The additional ground raises a pure question of law, for which no fresh investigation of facts is required. That is raison d'etre for our admitting the additional ground and then espousing it for consideration.

It is, therefore, ultimately held that the ld. Pr. CIT was not justified in invoking the revision jurisdiction. Decided in favour of asses

- Hon'ble ITAT Indore Bench in DBL Betul Sarni Tollways Ltd. v. PCIT (2023) 10 TMI 1187 has held: *Validity of Revision u/s 263 - prescription and requirement of revision u/s 263 - objection raised by Ld. AR that the show-cause notice issued on the very same day on which proposal is mooted before PCIT - Revenue submitted that there are multiple communications and in-house working in department before show-cause notice is actually issued to assessee and that the draft-notice was prepared by AO at the behest of PCIT - HELD THAT:- PCIT received proposal for revision from AO and the AO has even placed draft-notices before PCIT for signature. AR is successfully able to demonstrate that the revision in these cases had been conducted on the bedrock of AO's proposal and draft-notice. That means, the conditions prescribed in section 263 are not fulfilled*
As relying on Alfa Laval Lund AB [2021 (11) TMI 327 - ITAT Pune] the present case is having a jurisdictional deficit resulting into vitiating the impugned order. Therefore, we quash the impugned order on legality aspect itself and restore the original assessment-order passed by AO - Decided in favour of assessee.
- Hon'ble ITAT Pune Bench in Alfa Laval Lund AB v. CIT (2021) 11 TMI 327 has held: *Revision u/s 263 by CIT - HELD THAT:- Section 263 of the Act confers power on the CIT to revise an assessment order, subject to certain conditions. Instantly, we are confronted with a situation in which the revision was initiated on the basis of the AO sending a proposal to the CIT and not on the CIT suo motu calling for and examining the record of the assessment proceedings and thereafter considering the assessment order erroneous and prejudicial to the interests of the revenue. AO recommending a revision to the CIT has no statutory sanction and is a course of action unknown to the law. If AO, after passing an assessment order, finds something amiss in it to the detriment of the Revenue, he has ample power to either reassess the earlier assessment in terms of section 147 or carry out rectification u/s 154 of the Act. He can't usurp the power of the CIT and recommend a revision.*
No overlapping of powers of the authorities under the Act can be permitted. As the revision proceedings in this case have triggered with the AO sending a proposal to the ld. CIT and then the latter passing the order u/s 263 of the Act on the basis of such a proposal, we hold that it became a case of jurisdiction deficit resulting into vitiating the impugned order.

- Hon'ble ITAT Chandigarh Bench in Ashwani Oberoi v. PCIT (2023) 2 TMI 1109 has held: *The entire exercise seems to have been done because of audit objection only. Since, the Assessing Officer had duly enquired about the matter and was satisfied with the explanation given by the assessee, the ld. PCIT, in our view, has wrongly exercised his revision jurisdiction on the issue which is nothing but change of opinion, that too, at the instance of audit party. In this case, even the AO did not admit to the audit objections rather requested to settle the audit objection. Therefore, the revision jurisdiction exercised by the ld. PCIT cannot be held to be justified. The revision order passed u/s 263 of the Act is, therefore, quashed. Appeal of assessee allowed.*
- Hon'ble ITAT Delhi Bench in Ashish Dham v. PCIT (2021) 10 TMI 1106 has held: *Revision u/s 263 by CIT - Case was selected for scrutiny - assessee had claimed rental*

income and claimed deduction u/s 24B as interest paid for home loan against the property bearing No.C-207, Sarvodaya Enclave, New Delhi-110017 - on the basis of audit objection, the Assessing Officer initiated rectification proceedings u/s 154 however, same was dropped instead the Assessing Officer ("AO") made proposal for revising the assessment u/s 263 of the Act made to the Ld. Pr.CIT - Whether objections of the assessee were not duly considered by the Ld. Pr. CIT before passing the impugned order? - HELD THAT:- From the order of the Ld. Pr. CIT, it is clear that he set-aside the assessment order and directed the Assessing Officer to investigate the issue and pass a speaking order.

In our considered view, this approach of the Ld. Pr. CIT is erroneous as the law is clear that the Ld. Pr. CIT either he can make enquiry himself or cause such enquiry to be made but such exercise is to be made before passing the order u/s 263 of the Act. It is not disputed by the Revenue that proceedings u/s 154 of the Act were dropped by the same Assessing Officer who had requested for exercising powers u/s 263 of the Act by the Ld. Pr. CIT. It is also not disputed that the revision by the Ld. Pr. CIT is based upon the audit objections.

Pr. CIT did not dispose of the objections of the assessee that assessment order passed by the Assessing Officer was without jurisdiction. Under these undisputed facts, we are of the view that the exercise of power u/s 263 of the Act by the Ld. Pr. CIT is not accordance with law. Therefore, the same deserves to be quashed. We, therefore, hereby quash the impugned order being unjust and contrary to the settled law. The grounds raised in this appeal by the assessee are allowed. Appeal of the assessee is allowed.

2.2. Thus, the invocation of powers u/s. 263 by the ld. PCIT is bad in law and deserves to be quashed and set-aside.

Ground No. 2: Disallowance towards PF/ESI read with Rule 87 of the Income Tax Rules:

3. That in the show cause notice dated 08.03.2024 issued by the ld. PCIT, it was proposed to disallow ESI/PF for the month of February 20218 & March 2018 on account of delay in depositing the same u/s. 36(1)(va).

3.1. That the assessee appellant objected to the said issue and submitted that challan was deposited within due date.

3.2. That the ld. PCIT was satisfied and has dropped the issue raised.

3.3. That, however, without any show cause or without any query raised to the assessee appellant during the course of proceedings initiated u/s. 263 of the Act the ld. PCIT has held that the Assessing Officer ought to have verified

whether PF & ESI were paid in compliance to Rule 87 of the Income Tax Rules and excess PF & ESI deserves to be disallowed.

3.4. That without any show cause or without any query raised to the assessee appellant during the course of proceedings initiated u/s. 263 of the Act the ld. PCIT in the impugned order has held that the Assessing Officer ought to have verified whether PF & ESI were paid in compliance to Rule 87 of the Income Tax Rules. The said finding of the ld. PCIT is against the powers conferred u/s. 263 of the Act. In case the ld. PCIT had anything in mind, then she was obliged to issue show cause notice or raise query in this regard. However, without seeking any justification from the assessee & without understanding the correct factual backdrop the impugned order has been passed.

3.5. That if the ld. PCIT is permitted to invoke powers conferred u/s. 263 without even confronting the issue to the assessee then such powers would become arbitrary and draconian in nature and the purpose of section 263 itself would be defeated. The said action would also be against the principles of natural justice, fair play, reasonableness, equity and equality. Section 263 itself mandates that, *after giving the assessee an opportunity of being heard*. This is not an empty formality. Hon'ble Bombay High Court in PCIT v. Universal Music India Pvt. Ltd. (2022) 4 TMI 1081 has held: *Validity of Revision u/s 263 by CIT - payments made to persons specified under Section 40A(2)(b) allowed in assessment order - ITAT gave a finding of fact that no such issue was ever raised by CIT in the notice served upon the assessee and the assessee was not even confronted by the CIT before passing the Order - HELD THAT:- It is true that the Apex Court in Amitabh Bacchan [2016 (5) TMI 493 - SUPREME COURT] has held, all that CIT is required to do before reaching his decision and not before commencing the enquiry, CIT must give the assesseean opportunity of being heard. It is true that the Judgment also says no notice is required to be issued. But in the case at hand, there is a finding of fact by the ITAT that no show cause notice was issued and no issue was ever raised by the CIT regarding payments made to persons specified under Section 40A(2)(b) of the Act before reaching his decision in the Order dated 20th March, 2013. If that was not correct certainly the order of the CIT would have mentioned that an opportunity was given and in any case, if there were any minutes or notings in the file, revenue would have produced those details before the ITAT.*
In Amitabh Bachchan (supra), the Apex Court came to a finding that ITAT had not even recorded any findings that in the course of the suo motu revisional proceedings opportunity of hearing was not offered to the assessee and that the

assessee was denied an opportunity to contest the facts on the basis of which the CIT had come to its conclusions as recorded in his order under Section 263. In the case at hand, there is a finding by the Tribunal, as noted earlier, that no issue was raised by the CIT in respect of particulars of payment made to persons specified under Section 40A(2)(b) of the Act and even the show cause notice is silent about that.
In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

3.6. That in this regard, we wish to clarify that during the course of assessment proceedings the Assessing Officer noted that there was some mismatch in the figures of salary as per Audit Report and as per Income Tax Return and had asked the assessee to clarify the same and asked the assessee as to why-not Rule 87 of the Income-tax Rules be invoked to disallow excess PF/ESI deposited. The assessee appellant vide its letter [PB 558-559] submitted to the Assessing Officer had clarified as under:

Regarding your query for which originally return was selected under scrutiny.

i. **Excess Contribution to Provident Fund, Superannuation Fund or Gratuity Fund**

That on perusal of Part A – P and L Profit and Loss Account for the financial year 2017-18 of Income Tax Return Form, at Point No 14 the following amounts has been shown which are as under:

14. Compensation to employees		
i	Salaries and Wages	15742627
ii	Bonus	3708410
vii	Contribution to recognised Provident Fund	6174439
ix	Contribution to any Other Fund	3326094
x	Any Other Benefit to employee in respect of which an expenditure has been incurred	122475451
xi	Total Compensation to employees	151427021

16. Workmen and Staff Welfare Expenses	8187038

The Total Expenditure on Employees has been **Rs. 15,96,14,059/-**

That while feeding details in return form the amount which has been shown as Rs 12,24,75,451/- is also towards salary and allowances for employees both direct and indirect expenses. The working of total contribution to funds vis a vis Salary and Wages is as under:

Contribution to PF (both employer and employee) by Company is Rs 61,74,439/-
Contribution to ESI (both employer and employee) by Company is Rs 33,26,094/-
Provision For Leave Encashment by Company is Rs. 12,65,286/-
Provision for Gratuity by Company is Rs. 4,48,910/-

That total expenditure on Contribution to Provident Fund, ESI, Gratuity and Leave encashment etc. is Rs. 1,12,14,729/- and Total Employees Salary, Allowances benefits etc. other than these Contributions comes to Rs. 15,96,14,059/- Less Rs 1,12,14,729/- equals Rs 14,83,99,330/-

That total contribution to funds as % of Contribution to Salary and Wages and allowances paid to Employee comes to **Rs. 1,12,14,729/-/ 14,83,99,330/- = 7.55%** which is well within the limits. We would also like to mention that though company has made provision for Leave Encashment and Gratuity but the same has not been deposited in any funds etc., hence they are added back to Income in Computation of Total Income.

We hope that the submission made above will clarify that the assessee company has not made any excess contribution to Provident Fund, Superannuation Fund or Gratuity Fund and If any further detail/ explanation/clarification is required on this issue or any other issue, the same will be submitted as and when called for.

3.7. That the ld. Assessing Officer after due verification of books of accounts & other relevant records was satisfied that there was some mismatch in the figures of salary as per Audit Report and as per Income Tax Return as the same was merely a grouping error, while filing the income tax return, however, overall salary remained same and he thus chose not to disallow.

3.8. That on merits also the impugned order dated 30.03.2023 qua disallowance towards PF/ESI read with Rule 87 of the Income Tax Rules is "void on its face" and is "invalid".

3.9. Thus, the invocation of powers u/s. 263 by the ld. PCIT is bad in law and deserves to be quashed and set-aside.

Ground No. 3: Invocation of section 69 r.w.s. 115BBE of the Act

4. That during the course of survey, variance in stock of Rs. 1,50,00,000/- was found which was offered for tax as business income by the assessee appellant.

4.1. That during the course of assessment proceedings, the ld. Assessing Officer raised queries towards the same and the same were replied by the assessee appellant vide its letter dated 08.03.2021 [PB 560-563]. The ld. Assessing Officer after verification of books of accounts & other relevant records was satisfied and chose not to disturb the same and has accepted the assessee appellants submission.

4.2. That the ld. PCIT in the impugned order has opined that the said difference in stock was in the nature of 'Other Income' and thus provisions of section 69 read with section of the Act 115BBE should have been invoked by the ld. Assessing Officer.

4.3. That there was proper application of mind on the part of the ld. Assessing Officer and the matter has been duly examined by the ld. Assessing Officer during the course of assessment proceedings. It is not a case where necessary inquiries have not been carried out by the ld. Assessing Officer.

4.4. That the assessee appellant has no other income other than business income. It is settled law that such income ought to have been taxed as business income and thus section 69 read with section of the Act 115BBE is not invocable. We wish to rely upon:

- Hon'ble Jurisdictional Rajasthan High Court in PCIT v. Bajargan Traders (2017) 11 TMI 388 has held: *Excess stock surrendered during the course of survey - whether the amount surrendered by way of investment in the unrecorded stock of rice has to be brought to tax under the head "business income" or "income from other sources"? - Held that:- ITAT is correct to conclude that in the annual accounts, the purchases of*

Rs. 70,04,814/- were finally reflected as part of total purchases amounting to Rs. 33,47,19,658/- in the profit and loss account and the same also found included as part of the closing stock amount to Rs. 1,94,42,569/- in the profit/loss account since the said stock of rice was not sold out. In addition to the purchase and the closing stock, the amount of Rs. 70,04,814/- also found credited in the profit and loss account as income from undisclosed sources. The net effect of this double entry accounting treatment is that firstly the unrecorded stock of rice has been brought on the books and now forms part of the recorded stock which can be subsequently sold out and the profit/loss therefrom would be subject to tax as any other normal business transaction. Secondly, the unrecorded investment which has gone in purchase of such unrecorded stock of rice has been recorded in the books of accounts and offered to tax by crediting the said amount in the profit and loss account. Had this investment been made out of known source, there was no necessity for assessee to credit the profit/loss account and offer the same to tax. Accordingly, we do not see any infirmity in assessee's bringing such transaction in its books of accounts and the accounting treatment thereof so as to regularise its books of accounts. In fact, the same provides a credible base for Revenue to bring to tax subsequent profit/loss on sale of such stock of rice in future.
In the present case, the assessee is dealing in sale of foodgrains, rice and oil seeds, and the excess stock which has been found during the course of survey is stock of rice. Therefore, the investment in procurement of such stock of rice is clearly identifiable and related to the regular business stock of the assessee. The decision of the Co-ordinate Bench in case of Shri Ramnarayan Birla (2016 (9) TMI 1354 - ITAT JAIPUR) supports the case of the assessee in this regard. Therefore, the investment in the excess stock has to be brought to tax under the head "business income" and not under the head income from other sources"

- Hon'ble Gujarat High Court in PCIT v. Dharti Estate (2024) 1 TMI 1197 has held: *Revision u/s 263 - Taxability of income disclosed in survey proceedings u/s 133A at Higher Rate of tax u/s 115BBE - While deleting the addition, ITAT found that there was nothing stated in either pre-amended or post-amended provision of Section 115BBE that when the assessee surrendered undisclosed income during the search action for the relevant years, higher tax rate is required to be charged. HELD THAT:- In the facts of the case, during the course of assessment proceedings, as the Assessing Officer had made due inquiries and was aware of the fact that the assessee had disclosed the income as business income in his return of income in respect of which it had claimed expenditure in relation to interest and remuneration paid to partners and after making inquiries, Assessing Officer allowed the claim of the assessee by treating undisclosed income found during the survey as assessee's business income and in view such finding of facts arrived at by the Tribunal, we are of the opinion that no substantial question of law arises from the impugned order of the Tribunal. Decided against revenue.*
- Hon'ble ITAT Jaipur Bench in Gayatri Devi v. PCIT (2023) 10 TMI 23 has held: *It is well settled that the prerequisites to exercise of jurisdiction by the ld PCIT under s. 263 of the Act is that to establish order of the AO is to be erroneous insofar as it is prejudicial to the interest of the Revenue, the PCIT has to satisfy of twin conditions*

simultaneously, namely (i) the order of the AO sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If any one of them is absent, s. 263 cannot be invoked. This provision cannot be invoked to correct each and every type of mistake or error committed by the AO; it is only when an order is erroneous as also prejudicial to Revenue's interest, that the provision will be attracted. An incorrect assumption of the fact or an incorrect application of law will satisfy the requirement of the order being erroneous. The phrase 'prejudicial to the interest of the Revenue' has to be read in conjunction with an erroneous order passed by the AO. However, every loss of revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. For example, if the AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with which the PCIT does not agree, it cannot be treated as an erroneous order and it is prejudicial to the interest of the Revenue, unless the view taken by the AO is totally unsustainable in law. We draw strength from case of Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC) and also from the case of CIT vs. Max India Ltd. (2007) 295 ITR 282 (SC).

- Hon'ble ITAT Chandigarh Bench in Tarlochan Singh v. DCIT (2024) 1 TMI 795 has held: *Nature of Income as surrendered during survey proceedings - surrendered amount as "business income" OR "deemed income" i.e income from undisclosed sources - CIT (Appeals) sustained the surrendered amount u/s 68 of credit entry and u/s 69 of excess stock - appellant contended that surrendered amount represents the "business income" as the appellant has no other source of income. Whether deeming provisions of Section 68 can be invoked in respect of amount introduced in the capital account of the assessee and found credited during the course of survey in the books of accounts of the assessee? - HELD THAT:- The Survey team had asked a specific question to the assessee during the course of survey to explain the source of capital introduced during the financial year 2018-19 relevant to assessment year 2019-20 and in response, the assessee had stated that he was unable to explain the source of capital introduced during the during the financial year 201819 relevant to assessment year 2019-20, however, in order to buy piece of mind, he voluntarily surrendered the sum - Therefore, during the course of survey, the assessee has failed to offer any explanation regarding the source of such capital introduced in his capital account. Even during the course of assessment and appellate proceeding, we find that no explanation is forthcoming from the assessee. We therefore find that basis material available on record, the credit entry in the capital account of the assessee clearly demonstrate that the receipt of money by the assessee and in absence of any explanation from the assessee explaining the source of such capital introduced, the provisions of section 68 are clearly attracted and we therefore affirm the findings of the ld CIT(A) as far as bringing to tax the amount under section 68 of the Act. Whether the AO has invoked the deeming provisions of section 69 and brought to tax excess stock found during the course of survey which is sustained by the ld CIT(A)? - In the instant case there is no physical distinction between the accounted stock and unaccounted stock. No such physical distinction was found by the Revenue either. We therefore find that the difference in stock so found out by the authorities has no independent identity and is in*

terms of value terms only and thus part and parcel of entire stock, therefore, it cannot be said that there is an undisclosed asset which existed independently and thus, what is not declared to the department is receipt from business and not any investment as it cannot be co-related with any specific asset and the difference should thus be treated as business income. Thus the income surrendered during the course of survey cannot be brought to tax under the deeming provisions of section 69 of the Act and the same has to be assessed to tax under the head "business income". In absence of deeming provisions, the question of application of section 115BBE doesn't arise and normal tax rate shall apply. The AO is thus directed to assess the income under the head "Income from Business/profession" and apply the normal rate of tax.

- Hon'ble ITAT Amritsar Bench in Deepak Setia v. DCIT (2023) 9 TMI 942 has held: *Addition of income u/s 69A or Business income - surrender of income during survey proceedings - Charge tax as per provisions of Section 115BBE - HELD THAT:- During survey proceeding the assessee surrendered total income of Rs. 29 lacs out of which amount was related to other discrepancies/miscellaneous business income which was treated as income u/s 69A and calculated tax under special rate during assessment. There entire addition is certainly without forming proper basis for conversion into business income to non-business income. The revenue was not able to submit any evidence during assessment and appeal proceeding that the said income is not connected with the business income of the assessee or accumulated from non-recognising source. Hence, when all the incomes earned by the assessee are only from the business income of the assessee, there do not arise any question as to application of provisions of section 69A and hence taxing such income at special rate as per section 115BBE is improper. It is a settled principle in law that when there is no other/separate source of income identified during the course of survey or during the course of assessment proceedings, any income arising to the assessee shall be treated to be out of the normal business of the assessee only. During survey proceeding the assessee filed surrendered letter and in statement assessee also recorded and income was surrendered. We respectfully relied on the order of Sh. Harish Sharma & M/s. Sham Jewellers [2021 (5) TMI 482 - ITAT CHANDIGARH] and case of Daulatram Rawatmull [1966 (4) TMI 73 - CALCUTTA HIGH COURT]. In considered view, the conversion of business income into other income and application of section 69A is bad and illegal. Accordingly, levy of tax u/s 115BBE on the income amount liable to be quashed. Assessee appeal allowed*.
- Hon'ble ITAT Chandigarh Bench in Parmod Singla v. ACIT (2023) 8 TMI 525 has held: *Characterization of income - income surrendered during the course of survey u/s 133A - deemed income u/s 69 and 69A or business income - HELD THAT:- Foundational requirement before invoking the deeming provisions is not that there were certain survey operations u/s 133A and some undisclosed income has been detected and surrendered by the assessee and thus, the deeming provisions are automatically attracted. Rather the foundational requirement is whether the assessee has made the investment/has been found to be owner of cash and the explanation offered by the assessee explaining the nature and source of such undisclosed income and the reasonability of the explanation so offered by the assessee keeping into account the*

facts and circumstances of the relevant case. The mere fact that survey/search proceedings have been initiated at the business premises of the assessee doesn't mandate the Assessing officer to automatically invoke the deeming provisions and before invoking the deeming provisions, he has to call for the explanation of the assessee and only where the explanation so offered is not found satisfactory, he can proceed and invoke the deeming provisions. In the instant case as well, we find that the difference in stock so found out by the authorities has no independent identity and is part and parcel of entire stock, therefore, it cannot be said that there is an undisclosed asset which existed independently and thus, what is not declared to the department is receipt from business and not any investment as it cannot be co-related with any specific asset and the difference should thus be treated as undeclared business income. Following the said decision of DCIT Vs . Shri Ram Narayan Birla [2016 (9) TMI 1354 - ITAT JAIPUR] has taken a similar view holding that the excess stock so found during the course of survey was part of the stock and the Revenue has not pointed out the excess stock has any nexus with any other receipts other than the business being carried on by the assessee. The surrender on account of advances were relating to the business being carried on by the assessee. The ld CIT(A) has also returned a finding that the advances were admitted as being related to business activity of the assessee. Where the same has been found unrecorded in the books of accounts, the same has to be brought to tax under the head "business income". Thus the income surrendered during the course of survey cannot be brought to tax under the deeming provisions of section 69 and 69A of the Act and the same has been rightly offered to tax under the head "business income". In absence of deeming provisions, the question of application of section 115BBE doesn't arise for consideration. Decided in favour of assessee.

- Hon'ble ITAT Chandigarh Bench in Ravinder Kumar Bansal v. PCIT (2023) 12 TMI 716 has held: *Revision u/s 263 - course of survey proceedings at the assessee's business premises, certain discrepancy were observed and confronted to the assessee and in response, the assessee offered a sum towards unexplained misc. advances - CIT stated that the assessee in his return of income has disclosed the surrendered income in the profit/loss account and paid taxes at the rates applicable to normal business income which need to be taxed u/s 115BBE making assessment erroneous so far as prejudicial to the interest of the Revenue - HELD THAT:- Assessee has been asked specific questions not just regarding the discrepancy found during the course of survey but the nature and source thereof during the course of survey and it is clearly emerging that nature of such advances is unaccounted business advances and the source of such income so surrendered is assessee's share of diagnostic lab fees received from Shri Sandeep Singh who was running the diagnostic lab from business premises of the assessee and sharing 70% of lab fees with the assessee which remain unaccounted and undisclosed at the time of survey. No doubt, these transactions were not recorded at the time of survey thus qualify as unrecorded transactions satisfying one of the essential conditions, at the same time, the assessee has provided the necessary explanation about the nature and source of such unrecorded transactions and the necessary nexus with assessee's business has been established, thus, it cannot be said that these are unexplained transactions thus, doesn't satisfy the second*

condition for invoking the deeming provisions of section 69-69B - AO has duly taken cognizance of the findings of the survey team, the documents found during the course of survey, the statement of the Shri Sandeep Singh, the surrender letter and the return of income and after examination thereof and due application of mind, the income has been rightly assessed under the head business income. We are of the considered view that the order so passed by the AO cannot be held as erroneous due to lack of inquiry or for that matter requisite inquiry on the part of the AO. As we have held above, there is no findings recorded by the Ld. Pr. CIT as to how the deeming provisions are applicable in the instant case and the order so passed by the AO is erroneous. We therefore find that merely stating that there was survey operation at the business premises of the assessee and provisions of Section 115BBE of the Act are attracted, the same can be a basis for exercise of jurisdiction u/s 263 of the Act. In view of the same, order so passed by the Ld. Pr. CIT under section 263 is set aside and that of the AO is restored. Appeal of assessee allowed.

- Hon'ble ITAT Jaipur Bench in Rekha Shekhawat v. PCIT (2022) 8 TMI 791 has held: *Revision u/s 263 - Addition u/s 68 - income from other source (income declared at the time of survey) - tax is payable u/s 115BBE or not - recovery of cash amount of advances made by the assessee to the other persons for purchase of land / plots and thus comes under the purview of section 68 or not - HELD THAT:- Additional income was in the nature of business income and don't fall under Sec. 68 and/or Sec. 69 of the Act and consequently therefore, Sec.115BBE could not have been invoked. In view of the above discussion, therefore, we are of the considered view that the CIT was not at all justified by invoking the provisions of Sec. 263 by wrongly/incorrectly holding that the subjected assessment order u/s 143(3) dated 25.02.2019, was passed without considering that the income declared under the head of other sources being recovery of cash amount of advances paid for purchase, comes under preview of S. 68 and 69 and thus, the tax u/s 115BBE was to be paid, as against the tax at normal rates. The assumption of jurisdiction u/s 263 was contrary to the law and facts on record. Hence, the proceedings initiated u/s 263 of the Act and the impugned order are hereby quashed. Thus, ground of appeal decided in favour of assess and against the revenue.*
- Hon'ble ITAT Rajkot Bench in Vaidya Realities v. PCIT (2024) 1 TMI 970 has held: *Revision u/s 263 - income surrendered during survey operation was not verified in pursuance to the provision of section 69 r.w.s. 115BBE - PCIT held that the assessment has been framed u/s 143(3) of the Act without verification with respect to undisclosed income offered by the assessee in pursuance to the provisions of section 69 r.w.s. 115BBE of the Act which is erroneous and causing prejudice to the interest of revenue - whether there was any inquiry conducted by the AO during the assessment proceeding qua the income offered by the assessee during the survey operation? - HELD THAT:- It is transpired that there was application of mind by the AO during the assessment proceedings. Accordingly, it cannot be said that the assessment has been framed by the AO without conducting inquiries. As such, we hold that the AO framed the assessment after necessary inquiries with respect to the income surrendered by the assessee during the survey operation conducted u/s 133A of the Act. The assessee in the statement recorded during the survey operation has also accepted that*

it has received onmoney for its real estate project - Due application of mind by the AO during the assessment proceedings and therefore assessment cannot be held as erroneous in so far prejudicial to the interest of revenue on account of non-verification. PCIT in his order has referred the explanation 2 to section 263 of the Act, in holding that the necessary inquiries were not carried out by the AO during the assessment proceedings. However, we find that the Ld. PCIT in the notice issued u/s 263 of the Act has nowhere made any reference to the explanation 2 to section 263 of the Act, and therefore we hold that the Ld. PCIT erred in holding assessment order as erroneous and prejudicial to the interest of Revenue after referring to the explanation 2 of section 263 of the Act. To tax any item of income/ expenditure, unaccounted investment at the specific rate r.w.s. 115BBE of the Act, it is necessary to classify the income under the head deeming provision under section 69, 68, 69B etc. In the present case, the income surrendered was to be classified u/s 69 - As per the direction of the Ld. PCIT, however, we find that the Ld. PCIT has nowhere pointed out any contravention that the income surrendered by the assessee falls within the provision of section 69 of the Act. As such, the assessee in the present case was able to justify the source of income surrendered during survey operation and therefore we are of the view that the same cannot be treated as deemed income u/s 69 of the Act. Once the income goes out of the preview of the deeming provision, the provision of section 115BBE of the Act, cannot be applied. We note that the AO has taken one of the impossible view by treating the income offered during survey operation as income under the head business and profession. The Ld. PCIT cannot substitute the view taken by the AO as per his understanding of facts of the case - Decided in favour of assessee

- Hon'ble ITAT, Jodhpur Bench in case of Lovish Singhal v. ITO in ITA No. 142-146/Jodh/2018 dated 23.05.2018 has held: *I have heard the rival contentions and record perused. I have also carefully gone through the orders of the authorities below. I have also deliberated on the judicial pronouncements referred by the lower authorities in their respective orders as well as cited by the ld AR during the course of hearing before the ITAT in the context of factual matrix of the case. From the record, I find that during the course of survey, income was surrendered by the assessee on account of stock, excess cash found out of sale of stock and also in respect of incriminating documents. As per judicial pronouncements cited by the ld. AR and also the decision of Hon'ble Rajasthan high court in the case of Bajrang Traders in Income Tax Appeal No. 258/2017 dated 12/09/2017 I observe that the Hon'ble High Court in respect of excess stock found during the course of survey and surrender made thereof was found to be taxable under the head 'business and profession'. Similarly in respect of excess cash found out of sale of goods in which the assessee was dealing was also found to be taxable as business income. Applying the proposition of law laid down in the judicial pronouncements as discussed above, I hold that the lower authorities were not justified in taxing the surrender made on account of excess stock and excess cash found U/s 69 of the Act. Thus, there is no justification for taxing such income U/s 115BBE of the Act.*
- Hon'ble ITAT, Jodhpur Bench in case of Pawan Kumar (HUF) v. ITO in ITA No. 371-375/Jodh/2018 dated 10.05.2019 has held: *I have considered the submissions of*

both the par ties and perused the material available on the record. In the present case, it is an admitted fact that the Assessing Officer invoked the provisions of section 154 of the Act and held that the surrendered amount of the assessee was subjected to tax @ 30% as per the provisions of section 115BBE of the Act. However, on the said issue the ITAT Jodhpur (SMC) Bench vide its aforesaid referred to order dated 25.5.2018 held that the provisions of sect ion 115BBE of the Act were not applicable if the surrender was made on account of excess stock found during the course of survey. So, the issue was a debatable, therefore, the Ld. CIT(A) was not justified in confirming the action of the Assessing Officer for making the rectification u/s 154 of the Act. Accordingly, the impugned order is set aside and it is held that the provisions of sect ion 154 of the Act were not applicable in the present case and the Assessing Officer was not justified in making the rectifications u/s 154 of the Act.

- Hon'ble ITAT, Lucknow Bench in the case of Kanpur Organics Pvt. Ltd. v. DCIT (2020) 3 TMI 279 has held:*Taxation of income - whether the surrendered amount can be taxable under section 115BBE read with section 69A of the Act or it was to be taxed as a regular business receipt - HELD THAT:- To decide this issue, it is important first to visit the statement of the director of the assessee which was recorded during the course of survey. We have particularly gone through the answer to question No. 35 wherein the director of the assessee has clearly stated that the figures noted in the diary represented sales unrecorded in the books of account and these figures related to the period April 2015 to August 2015. In the present case, the addition under section 69A could have been made only if no explanation, regarding source of such income, was offered or the explanation offered by the assessee was not satisfactory in the opinion of the Assessing Officer. In the present case, as we have already noted that the assessee had given complete explanation regarding the source of entries recorded in the diary, which were explained to be part of unrecorded sales and the Assessing Officer also did not object to the said explanation. Therefore, addition cannot be made under section 69A of the Act and if the addition cannot be made under section 69A, the provisions of section 115BBE will not be applicable.*
- Hon'ble ITAT, Chandigarh Bench in the case of Famina Knit Fabs v. ACIT (ITA: 1494/CHD/2017 dated 08.02.2019) has held:*Clearly, it is evident from the above that the surrender was on account of debtors/receivables relating to the business of the assessee only. The Revenue has accepted the surrender as such, as being on account of receivables. It follows that the debtors were generated from the sales made by the assessee during the course of carrying on the business of the assessee, which was not recorded in the books of the assessee. Though the said income was not recorded in the books of the assessee but the source of the same stood duly explained by the assessee as being from the business of the assessee. Even otherwise no other source of income of the assessee is there on record either disclosed by the assessee or unearthed by the Revenue. The preponderance of probability therefore is that the debtors were sourced from the business of the assessee. Therefore, there is no question of treating it as deemed income from undisclosed sources u/s 69, 69A, 69B and 69C of the Act and the same is held to be in the nature of Business Income of the assessee. Having held so, the same was assessable under the head 'business and*

profession' and as stated above, the benefit of set off of losses both current and brought forward was allowable to the assessee in accordance with law.
The contention of the Revenue therefore that the income be treated as deemed income u/s 69,69A/B/C of the Act is accordingly rejected and as a consequence thereto the plea that no set off of losses be allowed against the same u/s 115BBE of the Act also is rejected.

Ground No. 4: Disallowance u/s. 14A read with rule 8D

5. That during the year under consideration, i.e., A.Y. 2018-2019 no exempt income was earned by the assessee appellant from its investments with Mutual Fund & share in partnership firm. Refer: computation of income [PB 202-203], details of investment held [PB 628]. Thus section 14A of the Act was not invocable. The ld. Assessing Officer being satisfied, did not invoke, section 14A and did not disallow any expense at the time of passing of assessment order.

5.1. That in response to the show cause notice issued to the assessee by the ld. PCIT, it was submitted by the assessee appellant that: *the assessee company had invested Rs. 50 lacs in mutual funds in growth option and they are not capable of earning any dividend income nor any dividend income was earned during the year under consideration and the capital gains tax is payable on redemption of the same from AY 2019-20 and they were redeemed in subsequent years and income on the same was offered to tax. That balance Rs 21,44,76,231/- is invested in Partnership Firm M/s. Pinkcity Retail ventures LLP out of which Rs 70,000/- is towards capital contribution and rest is towards current capital account which has no link to exempt income. That during the year the assessee share in loss of the firm was Rs. 20,897/-. Thus no exempt income was earned during the year under consideration. That it is settled law that the disallowance u/s 14A cannot exceed the actual exempt income earned, which in the instant case of the assessee is Rs. Nil as no dividend Income has been received and no profit from firm has been received*.

5.2. That the ld. PCIT has held that actual earning of exempt income is not necessary and has relied upon Circular No. 5/2014 and has further relied upon amendment made by Finance Act, 2022 whereby Explanation has been inserted to justify the disallowance u/s. 14A of the Act. Accordingly it has held that interest expenses of Rs. 38,35,156/- should have been disallowed.

5.3. That for ready reference, section 14A of the Act is reproduced as hereunder:

Expenditure incurred in relation to income not includible in total income.

14A.(1) Notwithstanding anything to the contrary contained in this Act, for the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act :

Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001.

[1] Explanation.-For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income.

5.4. That various Hon'ble High Courts & Hon'ble Tribunals including Hon'ble Jurisdictional Tribunals have already held that the amendment made by Finance Act, 2022 whereby the explanation was inserted would be prospective in nature and would not apply retrospectively. We rely upon:

- Hon'ble Calcutta High Court in the case of PCIT v. Avantha Realty Ltd. (2024) 6 TMI 987: *Disallowance u/s 14A - HELD THAT:- Tribunal took note of the decision of the High Court of Delhi in PCIT Vs. Era Infrastructure Ltd. [2022 (7) TMI 1093 - Delhi High Court] which had taken note of the decision in the case of Cheminvest Ltd. [2015 (9) TMI 238 - Delhi High Court] wherein it was held that amendment by the Finance Act, 2022 of Section 14A of the Act by inserting a non-obstante clause and explanation we take effect from 01.04.22 and cannot be presumed to have retrospective effect and, therefore, on facts the amendment cannot be applied to the assessment year under consideration. We find no error in such conclusion arrived at by the learned Tribunal.*

- Hon'ble Madhya Pradesh High Court in the case of PCIT v. Keti Construction Ltd. (2024) 5 TMI 168: *Addition u/s 14A - disallowance in cases where no exempt income has been claimed by the assessee during the year under consideration - ITAT deleted addition - as submitted ITAT ignoring the CBDT Circular No. 05 of 2014 dated 11.02.2014 and amendment to Section 14 of the Act inserted by the Finance Act, 2022. HELD THAT:- From the perusal of the order of the assessing authority, it appears that the assessing authority did not consider the documents submitted by the assessee during the course of the assessment proceeding and this fact came to light from the observation made by the appellate authority that despite availability of documents, additions were made by the assessing authority. Amendment brought in Section 14 (A) of the Act inserted by the Finance Act, 2022, inserting explanation which is clarificatory in nature hence have retrospective effect - It is clear that the contention of appellant in respect of question no.3 (a) is not relevant in this case as the assessment is for the year 2013-14, therefore, the amendment proposed in Section 14 (A) of the Act as discussed hereinabove would not be applicable in the present case and the submission of the appellant in respect of Section 14 (A) of the Act is not relevant in light of the amendment, therefore, the contention of the appellant to this effect that order of CIT appeal as well as an order of ITAT may be quashed is hereby rejected. The judgment rendered in the case of Cheminvest [2015 (9) TMI 238 - DELHI HIGH COURT] is worthy of reference, where it has been categorically held that Section 14 (A) of the Act will not apply, if no exempt income is received or receivable during the relevant previous year by the assessee and this finding is just and proper and further contention of the appellant in respect of the pendency of the case in the Apex Court i.e. PCIT vs. Adani Wilmart Ltd. [2021 (8) TMI 1390 - SC Order] against the order of the [2021 (1) TMI 1260 - Gujarat High Court] and in the PCIT Vs. Karnataka State Financial Corporation [2021 (4) TMI 652 - Karnataka High Court]against the judgment of the Karnataka High Court are concerned, in the cases of the High Court, relief has been granted to the assessee by holding that no disallowance of the expenditure under Section 14 (A) of the Act can be made more than exact annual income earned by the assessee and it is the view of this Court that until and unless the issue travelled uptil Apex Court modifying or setting aside judgment of the High Court.*
- Hon'ble Delhi High Court in the case of PCIT v. Techno Trexim (India) Ltd. (2023) 11 TMI 346*: Disallowance u/s 14A r.w.r.8D - in the period in issue assessee had not earned any exempt income - HELD THAT:- Issue concerning whether Section 14A r.w.r. 8D could not be triggered where no exempt income has been earned as decided in Bhilwara Energy Ltd. case [2023 (7) TMI 1316 - Delhi High Court] as relying on Cheminvest Limited [2015 (9) TMI 238 - Delhi High Court], Chettinad Logistics (P.) Ltd.. [2017 (4) TMI 298 - Madras High Court] and IL And FS Energy Development Co Ltd [2023 (5) TMI 1266 - Delhi High Court]. Also Special Leave Petition (SLP) was preferred against Cheminvest Limited, which was dismissed [2018 (7) TMI 567 - SC ORDER]. Also whether the Finance Act, 2022 could have retrospective effect, the said aspect also stands covered by the judgment rendered in Principal Commissioner of Income Tax (Central)-2 v. M/s Era Infrastructure (India) Ltd. [2022 (7) TMI 1093 - Delhi High Court] - Decided against revenue.*

- Hon'ble Delhi High Court in the case of PCIT v. Telecommunications Consultants India Ltd. (2022) 8 TMI 1486: *Addition u/s 14A - exempt income earned or not? - direct and proximate nexus between exempted income which the investment shall generate and the expenditure directly or indirectly involved in earning the said income - HELD THAT:- The present case is covered by the judgment of this Court in Cheminvest Ltd. [2015 (9) TMI 238 - Delhi High Court] wherein this Court has held that the expression 'does not form part of the total income' in Section 14A of the Act that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year. Scope of amendment made by the Finance Act, 2022 to Section 14A - As decided in Era Infrastructure (India) Ltd.[2022 (7) TMI 1093 - DELHI HIGH COURT]Amendment to section 14A of the Act which is for removal of doubts cannot be presumed to be retrospective.*
- Hon'ble Delhi High Court in the case of PCIT v. Era Infrastructure (India) Ltd. (2022) 7 TMI 1093:*Whether ITAT erred in relying on the decision of this Court in PCIT vs. IL & FS Energy Development Company Ltd., [2017 (8) TMI 732 - Delhi High Court] wherein it has been held that no disallowance under Section 14A of the Act can be made if the assessee had not earned any exempt income? - HELD THAT:- A perusal of the Memorandum of the Finance Bill, 2022 reveals that it explicitly stipulates that the amendment made to Section 14A will take effect from 1st April, 2022 and will apply in relation to the assessment year 2022-23 and subsequent assessment years. The Supreme Court in Sedco Forex International Drill. Inc. v. CIT, (2005 (11) TMI 25 - SUPREME COURT] has held that a retrospective provision in a tax act which is "for the removal of doubts" cannot be presumed to be retrospective, even where such language is used, if it alters or changes the law as it earlier stood. Consequently, this Court is of the view that the amendment of Section 14A, which is "for removal of doubts" cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood.*

5.5. That the assessment order was passed on 12.04.2021, further explanation to section 14A was inserted subsequently by Finance Act, 2022. Thus, even otherwise the assessment order could not have been held to be erroneous.

5.6. Thus, the invocation of powers u/s. 263 by the ld. PCIT is bad in law and deserves to be quashed and set-aside.

Ground No. 5: Deduction under section 10AA of the Act:

6. That as submitted hereinabove subsequent to survey conducted on 17-18.08.2017, reassessment proceedings u/s. 148 of the Act were initiated and

passed for the Assessment Years 2012-2013 to 2015-2016 and scrutiny assessments u/s. 143(3) of the Act for Assessment Years 2016-2017 to 2018-2019 were also initiated and passed.

6.1. That for ready reference, summary chart of assessment / reassessment undertaken against the assessee appellant since its commencement of business in A.Y. 2010-11 till A.Y. 2018-2019, prior to survey and post survey and whether 263 / 148 proceedings were initiated by the Revenue or not is as hereunder:

Sno.	A.Y.	Order Passed u/s. 143(3)	Order Passed u/s. 147 w.r.s. 143(3)	263 proceedings initiated	148 proceedings initiated
1	2010-2011	28.03.2013		NO	NO
2	2011-2012	07.03.2014	18.12.2017	NO	NO
3	2012-2013	27.03.2015	17.12.2018	NO	NO
4	2013-2014	21.03.2016	17.12.2018	NO	NO
5	2014-2015	25.11.2016	17.12.2018	NO	NO
6	2015-2016		17.12.2018, 22.02.2019 (154 order)	**YES, quashed by Hon'ble ITAT vide order dated 07.03.2024**	NO
7	2016-2017	19.12.2018		NO	**YES, but dropped vide order dated 29.03.2024**
8	2017-2018	30.12.2019		NO	**YES, vide order dated 29.04.2024**
9	2018-2019	12.04.2021		**YES**	NO

6.2. That for ready reference section 10AA(4) of the Act is reproduced as hereunder:

Special provisions in respect of newly established Units in Special Economic Zones

(4) This section applies to any undertaking, being the Unit, which fulfils all the following conditions, namely:-

(i) it has begun or begins to manufacture or produce articles or things or provide services during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006 in any Special Economic Zone;

(ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of any undertaking, being the Unit, which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(iii) it is not formed by the transfer to a new business, of machinery or plant previously used for any purpose.

Explanation.-The provisions of Explanations 1 and 2 to sub-section (3) of section 80-IA shall apply for the purposes of clause (iii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.

6.3. That for ready reference Explanation (1) & (2) of section 80IA(3) of the Act is reproduced as hereunder:

Explanation 1.-*For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely :-*

(a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;

(b) such machinery or plant is imported into India from any country outside India; and

(c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the assessee.

Explanation 2.-*Where in the case of an undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with.*

6.4. That section 263 has been sought to be invoked against the assessee appellant by the ld. PCIT for the following reasons [PB 01-05]:

Upon examination of the assessment record, it is revealed that that M/s Pinkcity Colour Stone Pvt. Ltd. was having high profits but later on the same was closed and the plant & Machinery as well as building was rented over to the assessee company i.e. Pinkcity Jewelhouse Pvt. Ltd. The employees of M/s.PinkcityColourstones Pvt Ltd were also absorbed in M/s. Pinkcity Jewelhouse Pvt Ltd. The management and shareholders of both the companies were same. It is pertinent to state that the buyers as well as sellers of manufactured/semi-finished/raw material goods of assessee company i.e. M/s Pinkcity Jewelhouse Pvt Ltd remained same as the items were transferred from its Mahapura Unit to the Sitapura SEZ unit. It was found that assessee was transferring semi-finished goods from the Mahapura Unit (Non-

deduction claiming unit) to Sitapura Unit (SEZ Unit deduction claiming u/s 10AA) for onwards sale/exports from SEZ Unit. During the survey proceedings it was learnt that SEZ Unit did not make any value addition on the same.

6.5. That in response the assessee appellant submitted to the ld. PCIT as hereunder:

Firstly as submitted on Para 2 of our reply, PCS had accumulated business loss and depreciation of Rs. 81,58,486/- as on 31.3.2009 relevant to AY 2009-10 and only in the FY 2008-09 i.e. AY 2009-10 PCS earned a meagre profit of Rs. 4,22,686/-. Thus the foundational basis on which notice has been issued is factually incorrect and wrong.

Secondly though this fact that the assessee company rented the Machine from PinkcityColourstones P Ltd is correct but the same is not captured correctly as the Plant and Machine and Building was rented by the New domestic non deduction claiming unit situated at Mahapura, Jaipur and not by the SEZ Unit situated at Sitapura, Jaipur which has claimed deduction u/s 10AA. Thus the foundational basis on which notice has been issued is factually incorrect and wrong.

Though this fact that the assessee company had absorbed the employees from PinkcityColourstones P Ltd is correct but the same is not captured correctly as the employees were absorbed by the New domestic non deduction claiming unit situated at Mahapura, Jaipur and not by the SEZ Unit situated at Sitapura, Jaipur which has claimed deduction u/s 10AA. Thus the foundational basis on which notice has been issued is factually incorrect and wrong.

Further we would further like to highlight that in reasons recorded and during survey also the fact appeared that during the FY 2011-12 firstly the plant and machinery was taken on rent and thereafter in the next year the same was sold to Pinkcity Jewelhouse P Ltd, Mahapura Unit at book value. We would like to bring to your attention that SEZ Units are also governed by SEZ laws and for any unit in SEZ to take plant and machinery on rent, specific permission is required from authorities concerned and in the case of the Pinkcity Jewelhouse P Ltd neither any permission was ever sought and nor the same was allowed and in absence of the same, the plant and machinery could not have been shifted to SEZ Unit. NO part of Building and Plant & Machinery owned by M/s. Pink City Colorstones Pvt. Ltd. was given on lease/sold to M/s. Pinkcity Jewelhouse Pvt. Ltd. (Sitapura SEZ Unit). Sitapura SEZ Unit constructed its own Building on land owned by it and purchased the necessary Plant & Machinery required for the purpose of manufacturing. Thus the foundational basis on which notice has been issued is factually incorrect and wrong.

We would also like to draw your attention to the fact that in our reply to proceedings u/s 133A at Para 10 of our reply dated September 2, 2017 we had made it clear that the old Plant & Machinery was purchased by the Mahapura Unit which is situated in domestic area and on the income of Mahapura Unit we have never claimed any deduction u/s 10AA or 80IA or 80IB and the Mahapura Unit is a non-deduction claiming unit and provisions of section 10AA are not applicable on Mahapura Unit, the Old plant & machinery was purchased by Mahapura Unit in the financial year 2012-13. That case of the assessee company for FY 2012-13 relevant to AY 2013-14 was also completed u/s 143(3) and during the scrutiny proceedings, the copy of

bills for addition in Fixed Assets in SEZ unit as well as in domestic Unit were also filled and copies of ledger accounts etc are again enclosed.

Thirdly it is also not correct that the buyers and sellers of both the DTA unit as well as SEZ Unit were same. That during the assessment proceedings for AY 2010-11 in response to show cause notice this allegation was also made, in response to the same the assessee submitted as under: As regard to the application of provision of section 80 1A (10) of the I.T. Act, we submit that both the companies are independent and are managed and performs by separate set of person. The inference of arrangement is perhaps drawn as the assessee company has made purchases from M/s Pinkcity Color Stones (P) Ltd had the company not purchased goods this inference could not have been drawn in any circumstances. We are submitting reasons for which such inference drawn is based on mis conception of facts as below:

a) *As submitted earlier in our submissions that all transactions are made on a competitive commercial expediency. The purchases made by Assessee Company from the said company are on prices based on the prevailing market rate of the goods in local market at the given point of time. The assessing officer may examine as to whether the purchase are being made below the prevailing market prices which in the case of the assessee is not this is apparent from the Sample Cost Analysis (copy enclosed) taken on random basis in respect of purchases made of casting jewellery from PinkcityColorstones P Ltd, from the Analysis sheet following picture emerges*

i) *That we have made the cost analysis on the basis that If we had got the work done even on job work from other concern than we would have saved cost on each and every transaction which ranges between 5.51% to 10.54%.*

ii) *Had if the assessee company undertaken the entire work itself that is not on job work than the profit would have surely increase by another 1% to 2%. Apart from 5.51% to 10.54% that is cost saving would have been in the range of 7.51% to 12.54% on higher side and 6.51% to 11.54% on lower side.*

b) *As it is already evident from our cost analysis sheet that the seller company has sold the goods after adding its profit to the cost of goods sold to the assessee company. The purchases made from the assessee company are of semi finished goods/raw materials and the profit margin on the finished goods are usually much higher than that of semi finished goods/ raw materials. The only concern of the assessee company is the quality and the price of the goods purchased.*

c) *That M/s PinkcityColorstone (P) Ltd. does its business in local market and also in foreign market whereas the assessee company is 100% export oriented company and only makes exports to the foreign buyers only and the profit margin in exports is more than the local sales.*

d) *That the turnover of PinkcityColorstones P Ltd in FY 2009-10 i.e. AY. 2010-11 is Rs 91182218.99 as compared to Rs. 42752592/-in the immediately preceding year i.e. an increase of 113.27% of turnover even if we exclude the turnover of PinkcityColorstones P Ltd with the assessee company there is an increase of 68.87% Had if there being any arrangement than the turnover of PinkcityColorstones P Ltd must have dropped.*

e) *That the unit of the assessee company is situated in Special Economic Zone which has been set up by the government to promote export of goods and have given special incentives / beneficial advantages like exemption from VAT, Excise, Custom and other taxes etc and also as there are many units located in that year in cluster*

than they have added advantage in respect of availability of skilled labour un interrupted power and many other advantages.

f) Please provide us the reasons for doubting that the assessee company has earned abnormal profits. The profit margin declared by the assessee company is in the vicinity of profit margin declared by the other 100% Export oriented SEZ Units.

g) That the assessee company has kept total transparency in its affairs and there is no window dressing or any arrangement to hide or route through sales and purchases so as to avoid any disclosure.

h) That the assessee company has sold its goods to following three parties in AY 2010-11

i) MW Samara LLC Rs 39983024

ii) Jasmin Noir Rs 1043585

iii) The Genuine Gem Stone Company Rs 1085706/-

That the PinkcityColorstones P Ltd has not made any sales to all the three companies in AY 2009-10 and have sold goods worth Rs 4897561/- only to MW Samara in AY 2010-11 from this also it is apparently clear that there is no diversion of turnover from PinkcityColorstone P Ltd to the assessee company and it defies any logic of any arrangement between the two companies to transfer the profit to the SEZ Company, Further out of the sales of Rs 4897561/- there is a single export sales of Rs 3984040 on 15.9.2009 i.e. US$ 82400 (copy enclosed) in this export sales invoice the value addition is of US$ 15970.74 and in the same month the assessee company has exported sales goods worth Rs 5314254 i.e. US$ 110300 on 19.9.2009 to the same party i.e. MW Samara LLC and the value addition is of US$ 17361.72 in this invoice (copy enclosed). The said assessment order for A.Y. 2010-2011 has become final as the same was neither reassessed u/s. 148 nor u/s. 263 of the Act. Thus the foundational basis on which notice has been issued is factually incorrect and wrong.

Fourthly it is also not correct that the assessee company did not make any value addition on the goods exported from SEZ Unit. That during the survey only ten instances were pointed out in which proper explanation was not provided for the value addition made, however, in response to queries posed after survey proceedings u/s 131 our reply dated September 2, 2017 at Para 5 of our reply following explanation was given.

5. During the course of survey of Sitapura Unit – I, observation was raised that in ten cases of purchases, items are exported without doing any manufacturing. The said observation was raised for the reason that during the course of survey assessee could not produce process chart in respect of these invoice. It is submitted that entire movement of manufacturing of goods is verifiable from computer software for which hard-disk of computer system was impounded during the course of survey. During survey, production process report in respect of all the invoices has made available for verification of survey team except these ten invoices. Now assessee has trace out process movement of these invoices containing following supporting documents are enclosed for your verification:

i). Copy of Purchase Invoice

ii). Purchase/ Sale Transaction Listing

iii). Bag Movement Register

iv). Production Report showing the name of Karigar to whom job was assigned and also containing brief history of process

v). Finish Goods Bag Raw Material Report which shows the finish goods and the resulting weight thereof

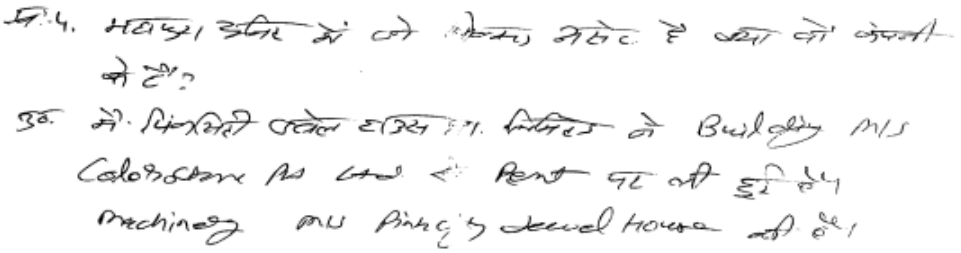
vi). Finished Goods Packing List for Export Invoice

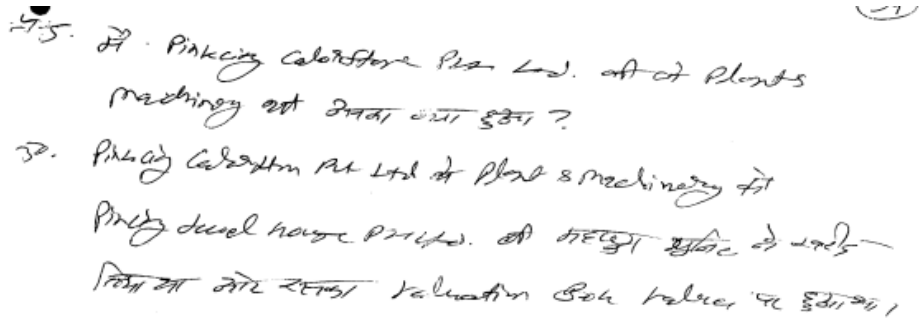
All these reports are generated from software system are enclosed herewith. If your good self is having observation in respect of any other invoice or desire information in respect of some other invoice, please let us know so that requisite detail may be submitted in respect of other invoices. It is further submitted that all these details can also be verified from the hard disk impounded from the Sitapura Unit.

And moreover, during the FY 2017-18 relevant to AY 2018-19 no Semi- Finished goods were transferred from Mahapura Unit to Sitapura Unit and what was transferred was only colourstones which are raw material for Jewellery and this fact was also available at the time of survey also, as during the survey proceedings also only ten instances were identified in which no record of further value addition was available during that time and all these ten instances relate to FY 2011-12 or earlier year only, and no instance was pointed out or was available at the time of survey or were pointed out during the course of after survey proceedings us 131. <u>Thus the foundational basis on which notice has been issued is factually incorrect and wrong</u>.

6.6. That during the proceedings u/s. 263 the assessee appellant further submitted to the ld. PCIT that:

- The issue has already been considered in detail in the regular assessment & reassessments since its commencement of business in A.Y. 2010-11 to A.Y. 2018-2019.
- Entire basis for issuing notice u/s. 263 is based on incorrect facts,
- All issues relevant for scrutiny assessment have been considered by the Assessing Officer and all relevant enquiries were carried out.
- Rental of plant & machinery and building by M/s PinkcityColorstones Pvt. Ltd. was to assessee's DTA Unit, i.e., Mahapura Unit and not to Sitapura SEZ Unit.
- SEZ Rules do not permit to take Building / Plant & Machinery on rent, without prior permission of the Development Commissioner and no such permission was taken.
- No statement by any Director or Employee that plant & machinery and building have been given on rent by M/s PinkcityColorstones Pvt. Ltd. to <u>Sitapura SEZ Unit</u>.
- During the course of survey specific query was made to the Director Shri Manuj Goyal with regards to transfer of Plant & Machinery by PinkcityColourstones Pvt Ltd to which it was categorically submitted that the same was transferred to assessee appellants DTA Unit at Mahapura [PB 816-822]





- Sitapura SEZ unit has constructed its own Building and has purchased Plant & Machinery.
- M/s PinkcityColorstones Pvt. Ltd. has not sold any plant& machinery to Sitapura SEZ Unit.
- M/s PinkcityColorstones Pvt. Ltd. has sold the plant& machinery to Mahapura DTA Unit.
- M/s PinkcityColorstones Pvt. Ltd. was not having strong profits but on the contrary was incurring regular losses.
- Employees of M/s PinkcityColorstones Pvt. Ltd. were absorbed by its DTA Unit, i.e., Mahapura Unit and not by Sitapura SEZ Unit.
- There is no bar that deduction u/s. 10AA will not be permitted if the management of two companies is similar.
- Items were not transferred from its Mahapura Unit to Sitapura SEZ unit, even otherwise, some raw-materials (gemstones) were sold which were used for manufacturing by SEZ unit, even otherwise there is no bar under the Act in order to claim deduction u/s. 10AA.
- In initial years casting machine were not available in Sitapura SEZ unit, hence, casted components were purchased from Pink City Colorstones Pvt Ltd.
- Subsequently Sitapura SEZ unit purchased its own casting machine. The said machine was imported from M/s. Cascade Star Inc, USA.
- Manufacturing process at Sitapura SEZ unit mainly involves Filling process, Pre Polish, Gem Stone Bagging, Stone Setting, Polishing, Plating, Quality Control and Packaging.
- Entire process of making jewellery from metal & stones is done at Sitapura SEZ unit only and after July 2011 no Semi Finished Goods were transferred from DTA Unit (Mahapura) or from PinkcityColorstones Pvt. Ltd. to SEZ Unit (Sitapura).
- The Company is maintaining complete records of stock movement at each stage of production process.
- The **SEZ Unit is not in the business of exporting ofGem Stones** but SEZ Unit exports only Jewellery whether Studded or not.
- In assessment year 2010-2011, i.e., the first year in which deduction u/s. 10AA was claimed the Assessing Officer had issued show cause notice dated 12.03.2013 proposing disallowing the benefit by referring to section 80IA(10) of the Act. Detailed reply was filed by the assessee vide its letter dated 18.03.2013 and the Assessing Officer was satisfied with the submissions made and thereafter accepted the returned Income vide order dated 28.03.2013.
- Assessments for assessment years 2011-2012 to 2014-2015 were carried out under scrutiny u/s. 143(3) and after satisfaction benefit of deduction u/s. 10AA was granted.

- After survey at the premises of the assessee on 17-18.08.2017, reassessments for assessment years 2012-2013 to 2015-2016 were carried out u/s. 148 and after satisfaction benefit of deduction u/s. 10AA was granted.
- After survey at the premises of the assessee on 17-18.08.2017, assessments for assessment years 2016-2017 to 2018-2019 were carried out u/s. 143(3) and after satisfaction benefit of deduction u/s. 10AA was granted.
- Provisions of section *10AA(4)(iii)* are applicableonly when the unit is **formed** and whereas the case of the assessee for all the years from AY 2010-11 to AY 2018-19 have been completed u/s 143(3) / 148 after due verification and scrutiny and in none of these years the deduction was not disallowed for the frivolous reason that some plant & machinery have been transferred from domestic unit to SEZ Unit (*which itself is factually wrong*).
- Fixed Asset Register of both DTA Unit at Mahapura& SEZ Unit at Sitapura were submitted to prove that plant & machinery was purchased by Mahapura DTA Unit from PinkcityColorstones Pvt. Ltd.
- VAT was not leviable on purchases made by Sitapura SEZ Unit (Vide Notification dated 01.01.2003 & 09.06.2006). Whereas VAT was leviable on purchases made by Mahapura DTA Unit. On the plant & machinery purchased by Mahapura DTA Unit from PinkcityColorstones Pvt. Ltd. VAT has been charged. If the said plant & machinery was purchased by SEZ Unit from PinkcityColorstones Pvt. Ltd. then there would have been no requirement to charge VAT.
- Bank Accounts of DTA Unit at Mahapura& SEZ Unit at Sitapura are different. Payment towards plant & machinery purchased by Mahapura DTA Unit from PinkcityColorstones Pvt. Ltd. was made from the bank account held with Mahapura DTA Unit Bank Account.
- TDS has been duly deducted & paid on rent paid by Mahapura DTA Unit to PinkcityColorstones Pvt. Ltd. during Financial Year 2011-2012 & 2012-2013.
- Entire proceedings have been initiated on the basis of wrong Audit Objection of the Audit Wing of the department that plant & machinery was purchased by Sitapura SEZ Unit from PinkcityColorstones Pvt. Ltd.
- *Even otherwise the SEZ unit was formed in financial year 2009-10 and alleged purchase of old plant & machinery (that too by DTA Mahapura Unit) was done in financial year 2012-13, therefore it can't to be said that SEZ Unit was formed by transfer of old plant & machinery. Section 10AA(3)(iii) uses the terminology it is not formed by the transfer to a new business. There is no bar on purchases made subsequent to formation of the Unit.*

6.7. That the ld. PCIT in the impugned order has ignored the submission of the assessee appellant and has doubted the veracity of rent agreement entered into by and between the DTA Mahapura Unit &PinkcityColorstones Pvt. Ltd. The ld. PCIT has held that payment by DTA Mahapura Unit to PinkcityColorstones Pvt. Ltd. do not prove ultimate usage. The ld. PCIT has held that Audit Reports for AY 2012-13 & 2013-14 were not submitted by the assessee appellant at the time of filing of ITR, thus, bifurcated final accounts could be an afterthought. The ld. PCIT has held that bank accounts are internal documents of the assessee appellant. No independent documents show that Plant & Machinery was used by DTA Mahapura Unit only. The ld. PCIT has held that Inspection Report of Casting Machine not provided. The

ld. PCIT has held that payment details towards Casting Machine is also not provided. The ld. PCIT has held no proof has been submitted that casting machine is fresh or different from purchased from PinkcityColorstones Pvt. Ltd. The ld. PCIT has held that payment of VAT is of no significance as the same has been done to get the larger benefit of deduction u/s. 10AA. The ld. PCIT has relied upon **Distributors (Baroda) Pvt. Ltd. v. Union of India**& Ors. (1986) 1 SCC 43 that *Court can overrule decision, if it is manifestly wrong or proceeds on mistaken assumption*. The ld. PCIT has invoked explanation (2) clause (a) of section 263 of the Act to set-aside the assessment order.

6.8. That on perusal of the order passed by the ld. PCIT it is apparent that:

- The ld. PCIT has doubted the business of the assessee just for the sake of doubting and to somehow justify its order in order to disallow the benefit of deduction u/s. 10AA of the Act.
- The ld. PCIT in the year 2024 is doubting the formation of SEZ Unit which happened in the year 2006 as doubtful, that too, without any positive evidence and only by doubting the evidences& documents submitted by the assessee appellant.
- The ld. PCIT in order to justify its order had to disprove the evidences& documents submitted by the assessee appellant and not to simply doubt it.
- The ld. PCIT failed to appreciate that since day 1, the assessee appellant was maintaining separate books of accounts of DTA Unit & SEZ Unit, the said is not only the requirement for assessee's convenience, but also for compliance with other statutory laws such as Labour Laws & VAT Laws, etc.
- The ld. PCIT failed to appreciate that for any item to enter or exit into/from SEZ Unit whether imported or local purchase, whether raw material or semi-finished or finished goods, whether building material or otherwise, requires entries to me made at the SEZ area, which is maintained by SEZ authorities (Customs Preventive Authorities).
- The ld. PCIT has accepted that the assessee has made payment from DTA Mahapura Unit to PinkcityColorstones Pvt. Ltd. towards purchase of plant & machinery in FY 2011-12 & FY 2012-13, then how can the transaction be fabricated later-on in FY 2017-18, the ld. PCIT failed to understand that the same cannot be backdated.
- The ld. PCIT failed to appreciate that the survey officials did not find any plant & machinery which was appearing in the books of accounts as not available in the respective Unit.
- The ld. PCIT failed to appreciate that the survey officials did not find any old plant & machinery which was installed at SEZ unit.
- The ld. PCIT failed to appreciate that the customs authorities have not passed any order that the assessee has misguided / mis-declared for the plant & machinery installed at the SEZ Unit.
- The ld. PCIT appears to have even ignored the survey report & reasons recorded by the Survey Officials of the Income tax department itself subsequent tosurvey carried out by them.
- The ld. PCIT failed to appreciate the replies submitted by the assessee appellant subsequent to survey and the statements recorded of the Director at the time of survey on 18.08.2017.

- The ld. PCIT failed to appreciate that it is only figment of imagination of the Audit Wing of the department to allege that old plant & machinery was installed at SEZ Unit and was not installed at DTA Unit.
- The ld. PCIT failed to spell out the source of information on the basis of which it has come to this conclusion that old plant & machinery was installed at SEZ Unit and was not installed at DTA Unit.
- The ld. PCIT failed to appreciate that the Commercial Taxes authorities have not passed any order that the assessee has misguided / mis-declared for the plant & machinery installed at the Mahapura DTA Unit.
- The ld. PCIT failed to appreciate that in the invoice & bill of entry of casting machine the address of SEZ Unit it mentioned and not DTA Unit.
- The ld. PCIT failed to appreciate that the goods which are installed in the SEZ unit require permission from SEZ unit, whereas no such permission has been taken by the SEZ Unit since the old casting machine was purchased by DTA unit and which does not require any permission from any authority.
- The ld. PCIT failed to appreciate that the turnover of SEZ Unit was Rs. 64.83 crores & DTA Unit was Rs. 52.68 Crores.
- The ld. PCIT failed to appreciate that substantial amount was invested by the assessee appellant towards Plant & Machinery even in its DTA Unit.
- The ld. PCIT has failed to appreciate and has conveniently ignored the fact that TDS has been duly deducted & paid on rent paid by Mahapura DTA Unit to PinkcityColorstones Pvt. Ltd. during Financial Year 2011-2012 & 2012-2013 itself.
- The ld. PCIT has failed to appreciate that if the assessee appellant actually wanted to fabricate the rent agreement, then it would have endeavored to back-date the notary stamp as well, no such thing was done, it was notarized when the need to get it notarized for felt, further even if the date of notary is taken to be the actual date, then too, it has no impact as far as allowability of deduction u/s. 10AA of the Act is concerned.
- The reliance placed upon **Suraj Lamp** by the ld. PCIT is misplaced as the same relates to transfer of immovable property whereas the instant case of giving on rent, that too Plant & Machinery and Building.
- The ld. PCIT has wrongly relied upon **Distributors (Baroda)** (Supra) as the same is inapplicable upon the facts & law of the instant case. The ld. PCIT can only overrule decision of its predecessor and not of superior authority, i.e., Hon'ble Tribunal. Even otherwise the conditions referred in **Distributors (Baroda)** are not met in the instant case since the assessment orders passed by the Assessing Officers are neither manifestly wrong nor proceeds on mistaken assumption.
- On the contrary, it's the ld. PCIT which proceeds on mistaken assumption. The ld. PCIT without any verification or spot inspection by any of the officers of the department, just sitting in the cool comforts of her chambers has disbelieved the assessee appellants submission as well as the Assessing Officers.
- The ld. PCIT has wrongly invoked Clause (a) of explanation 2 of section 263 in the instant case. Clause (a) of explanation 2 of section 263 can be invoked when the assessment order is passed without making inquiries or verification which should have been made. In the instant case, the ld. Assessing Officer was having the benefit of assessment / reassessment orders passed in assessee appellants own case for A.Y. 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2016-17 & 2017-18 as well as the survey records. He has passed assessment order for A.Y. 2018-2019 after due application of mind and verification of records. He has passed assessment order for A.Y. 2018-2019 even after knowing that assessment order for A.Y. 2015-2016 has been set-aside by the ld. PCIT, since, he

himself was satisfied with the assessee's explanation and submission with regards to grant of deduction u/s. 10AA of the Act.

6.9. That the ld. PCIT has failed to appreciate that the assessment / reassessment orders passed in assessee appellants case for A.Y. 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2016-17 & 2017-18 were found neither to be erroneous nor prejudicial to the interest of the revenue by the ld. PCIT. The reassessment order passed in assessee appellants case for A.Y. 2015-16 was found to be erroneous / prejudicial to the interest of the revenue, which was subsequently quashed by the Hon'ble ITAT. The assessment order passed in assessee appellants case for A.Y. 2016-17 was sought to be reassessed alleging escapement of income but was dropped vide order dated 29.03.2024 passed by the ld. Assessing Officer himself. The assessment order passed in assessee appellants case for A.Y. 2017-18 was sought to be reassessed alleging escapement of income was initially dropped vide order dated 29.03.2024 passed by the ld. Assessing Officer, however, subsequent to ld. PCIT order u/s. 263 has been reopened vide order dated 29.04.2024 passed u/s. 148A(d) by the ld. Assessing Officer. That the proceedings sought to be initiated by the revenue department either through invoking 148 or through invoking 263 or through invoking 251(1) shows that in their eyes such powers are overlapping. If the assessee cannot be caught in the web of 148 then the department can jump to 263 and if the assessee cannot be caught in the web of 263 then the department can jump to 148 and if the assessee cannot be caught in the web of 148 or 263 then jump to 251(1).

6.10. That furthermore the assessment / reassessment orders passed for A.Y. 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 & 2018-19 was passed by different Assessing Officers. For A.Y. 2010-11 [ITO, Ward 2(2), Jaipur], A.Y. 2011-12 [DCIT Circle 2, Jaipur], A.Y. 2012-13 [ACIT Circle 2, Jaipur], A.Y. 2013-14 [ACIT Circle 2, Jaipur], A.Y. 2014-15 [ACIT Circle 2, Jaipur], A.Y. 2015-16 [ACIT Circle 2, Jaipur], A.Y. 2016-17 [ACIT Circle 2, Jaipur], A.Y. 2017-18 [ACIT Circle 2, Jaipur], A.Y. 2018-19 [ACIT Central Circle 2, Jaipur].

6.11. That surprisingly the order dated 07.03.2024 passed by the Hon'ble ITAT, Jaipur Bench in assessee appellants own case for the Assessment Year 2015-2016 in ITA No. 63/JP/2021 [**PB 218-265**] involving similar controversy has been completely overlooked, ignored & bypassed by the ld. PCIT while passing the impugned order dated 30.03.2024 for A.Y. 2018-2019. The impugned order has been passed by the ld. PCIT with preconceived notions and suffers from factual infirmities. The impugned order passed by the ld. PCIT is without jurisdiction, is arbitrary, is illegal, is contrary to the principle of Judicial Discipline and Consistency, and, therefore liable to be quashed. It is a settled principle that the *decision of a higher forum is binding upon the lower authorities unless the decision has been stayed or overturned and an*

order passed without following the binding precedents is bad in law. In this regard, reliance is placed on the judgments of the Hon'ble Supreme Court in the cases of **Union of India v. Kamlakshi Finance Corporation Limited** [1991 (9) TMI 72 (SC)]**; Birla Corporation Ltd. v. Commissioner of Central Excise** [2005 (186) ELT 266 (SC)]; **Jayaswal Neco Ltd. v. Commissioner of Central Excise** [2007 (8) STR 305 (SC), **Central Board of Dawoodi Bohra Community v. State of Maharashtra** [2010 (254) ELT 196 (SC)]. The ld. PCIT has violated the doctrine of binding precedent and has led to uncertainty and inconsistency which is against the settled principles of law. We wish to refer:

- Hon'ble Supreme Court in **East India Commercial Co. Ltd. v. Collector of Customs** [1983 (13) ELT 1342 (SC)] has held that *proceedings initiated by a subordinate authority, contrary to the findings of a superior authority which have not been challenged, will be treated as without jurisdiction*. The relevant findings of the Hon'ble Supreme Court are as under:

29…… It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence and they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction.

- Hon'ble Bombay High Court in **Karanja Terminal & Logistic Pvt. Ltd. v. PCIT** (2022) 2 TMI 442 has held: *Validity of order u/s 264 read with Section 260 of the Income Tax Act - interest earned on fixed deposits as revenue receipt - subsequent assessment years, the assessee has changed its stand and has claimed the interest income as capital receipt which was not accepted by the AO and addition to the income was made treating the same as revenue receipt also confirmed by the CIT (A) - ITAT has deleted the addition made by AO for A.Y. 2012-13 to 2015-16 the Department has not accepted the decision of ITAT and has preferred appeal before Hon'ble High Court as Various Courts have held that interest earned on the circumstances similar to the facts and circumstances of the cased of present assessee, as discussed above, to be revenue in nature chargeable to tax - HELD THAT:- The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not acceptable to the department and is the subject matter of an appeal cannot be a ground for not following it unless its operation has been suspended by a competent Court. See Kamlakshi Finance Corporation Ltd. [1991 (9) TMI 72 - Supreme Court].*

It is not respondents' case that the order of ITAT or the operation of the said order has been suspended by any Court. In the circumstances, we set aside the order dated

16th January 2020 impugned in the petition and remand the matter for denovo consideration. Unless there is a stay by a competent Court of the operation of the order of ITAT, respondent no.1 shall give effect to the same and pass an order in accordance with law.

- Hon'ble ITAT Mumbai Bench in **Jyoti Harshad Mehta v. PCIT** (2021) 3 TMI 1163 has held:*The entire action of the ld. PCIT goes to prove that the entire issue has been addressed with a pre-conceived notion in order to reach a pre-conceived destination by forgetting the legal tenets, factual verifications, verification of documents carried out by the ld. AO, improperly applying provisions of Explanation-2 to Section 263, not respecting the judicial hierarchy by ignoring the order of this Tribunal dated 14/01/2019 wherein the Tribunal had already quashed the assessment order dated 15/03/2016 but also granting relief to the assessee on merits on each of the five issues that were subject matter of revision proceedings, thereby proving his highhandedness. Hence, it could be safely concluded that proper and requisite enquiries were indeed carried out by the ld. AO while passing the order dated 02/05/2018 giving effect to the order of the ld. CIT(A) dated 28/06/2017 and hence, the ld. PCIT grossly erred in invoking revisionary jurisdiction u/s.263 of the Act on the ground that the order of the ld. AO is erroneous and prejudicial to the interest of the revenue because proper enquiries were not carried out by the ld. AO.*

No hesitation in quashing the revision order passed by the ld. PCIT u/s.263 - Decided in favour of assessee.

6.12. That it is submitted that the view taken by the learned Assessing Officer is in accordance with past history of the case, detailed replies filed before the learned Assessing Officer during the course of assessment and material available on record including as derived during course of survey. This view taken by the learned Assessing officer cannot be said to erroneous and prejudicial to the interest of the revenue as the assessee appellant itself being aggrieved from the decision taken by the ld. Assessing Officer has preferred an appeal before the ld. CIT(A).

6.13. That it is trite that the exercise of power u/s. 263 of the Act is ousted in case of a debatable issue. An assessment order can be termed as erroneous and prejudicial to the interest of the Revenue, if the Assessing Officer has taken a view which is not legally tenable. Per contra, if two views are available on a particular issue and the ld. Assessing Officer adopts one of such views, the case goes outside the purview of revisional power exercisable by the ld. Principal Commissioner of Income-tax u/s. 263 of the Act. Proceedings u/s. 263 cannot be sustained where the ld. Principal Commissioner of Income-tax holds a view which was different from that of the ld. Assessing Officer. Section 263 of the Act does not visualize a case of substitution of the judgment of the Revisional Commissioner for that of ld. Assessing Officer unless the decision of the ld. Assessing Officer is found to be erroneous.

6.14. That the language used by the legislature in section 263 is to the effect that the Principal Commissioner of Income-tax may interfere in revision, if he considers that the order passed by the ld. Assessing Officer is erroneous insofar as it is

prejudicial to the interest of the revenue. It is quite clear that two conditions must coexist in order to give jurisdiction to the Principal Commissioner of Income-tax to interfere in revision. The order of the Assessing Officer in question must not only be erroneous but also it must be prejudicial to the interest of the revenue. In other words, merely because the assessment order is erroneous, the Principal Commissioner of Income-tax cannot interfere. Again, merely because the order of the ld. Assessing Officer is prejudicial to the interest of the revenue, then that is not enough to confer jurisdiction on the Principal Commissioner of Income-tax to interfere in revision. The Principal Commissioner of Income-tax cannot assume jurisdiction u/s 263, if the two conditions prescribed under the provisions of Act, viz. (i) the order is erroneous; and (ii) the same is also prejudicial to the interest of the revenue is not satisfied. Each and every erroneous order cannot be the subject matter of revision because the second requirement also must be fulfilled. 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.

6.15. That the phrase "*prejudicial to the interest of the revenue*" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue has a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. For example, when an Assessing Officer adopted one of the courses permissible in law and it has resulted in loss of revenue or where two views are possible and the Assessing Officer has taken one view with which the CIT did not agree with, it cannot be treated as an erroneous order prejudicial to the interest of the revenue because the view taken by the Assessing Officer is unsustainable in law.

6.16. That the ld. Assessing Officer has examined that issue as it is evident from the query posed and reply filed by the assessee. Since, in this case ld. Assessing Officer has clearly conducted the enquiry and revenue did not pin point the error on the part of the ld. Assessing Officer, the assessment order passed after due application of mind cannot be subjected to proceeding u/s. 263 of the Act.

6.17. That it may be highlighted that at one end the ld. Assessing Officer proposed the ld. PCIT to take action against the assessee u/s. 263 of the Act vide its letter dated 19.02.2021 for A.Y. 2015-2016 [**PB 676-678**], however, he himself has while passing the assessment order for A.Y. 2018-2019 subsequently on 12.04.2021 has not disallowed the entire claim of deduction u/s. 10AA of the Act and has disallowed the claim of deduction by dividing the common expenses incurred by Mahapura Domestic Tariff Area Unit &Sitapura SEZ Unit- I proportionately. It is apparent that the Assessing

Officer was himself not satisfied with the Audit Memo prepared by the Internal Audit Wing of the department.

6.18. That the ld. Assessing Officer while framing the assessment has taken a possible view, and the show cause notice u/s. 263 does not demonstrate the error remained on the part of the ld. Assessing Officer. In fact, when the ld. Assessing Officer has conducted the required enquiry and not violated any of the conditions mentioned for revision of order as required by Explanation 2 of Section 263 of the Act, the order passed by the ld. Assessing Officer could not be deemed to be erroneous so as to be prejudicial to the interests of the revenue.

6.19. That the instant order passed by the ld. PCIT suffers from change of opinion as that held by the ld. Assessing Officer, which is impermissible while invoking the powers u/s. 263 of the Act.

6.20. That it can be noted that in the instant case, the rules of consistency has been given a complete by-pass by the ld. PCIT which is impermissible. We wish to rely:

- Hon'ble Supreme Court in Radha Soami Satsang v. CIT (1991) 11 TMI 2 observed that:*We are aware of the fact that, strictly speaking, res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. On these reasonings, in the absence of any material change justifying the Revenue to take a different view of the matter and, if there was no change, it was in support of the assessee-we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-tax in the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be allowed and the question should be answered in the affirmative, namely, that the Tribunal was justified in holding that the income derived by the Radhasoami Satsang was entitled to exemption under sections 11 and 12 of the Income-tax Act of 1961*.
- Hon'ble Supreme Court in PCIT v. Maruti Suzuki India Limited (2019) 7 TMI 1449 observed that:*We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable*.
- Hon'ble Supreme Court in Parashuram Pottery Works Co. Ltd. v. ITO (1976) 11 TMI 1has held: *At the same time, we have to bear in mind that the policy of law is that*

there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi judicial controversies as it must in other spheres of human activity.

- Hon'ble Supreme Court in Government of Andhra Pradesh v. A.P. Jaiswal [AIR 2001 SC 499] has observed: *Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the Courts have evolved the rule of precedents, principle of stare decisis etc. These rules and principle are based on public policy...*

6.21. That the assessee also wishes to refer and rely upon the Hon'ble Jurisdictional Rajasthan High Court in **PCIT v. Manna Trust**(2022) 1 TMI 693 has held:*We are broadly in agreement with the view of the Tribunal. It is well settled through a series of judgments that power under Section 263 of the Act can be exercised only when twin conditions of the order of assessing officer being erroneous and prejudicial to the interest of revenue are satisfied. The Jurisdiction of the Commissioner under Section 263 of the Act is restricted and cannot be equated with the appellate jurisdiction. The Commissioner does not sit in appeal*. Hon'ble Jurisdictional ITAT Jaipur Bench in **Gayatri Devi v. PCIT** (2023) 10 TMI 23 has held: *It is well settled that the prerequisites to exercise of jurisdiction by the ld PCIT under s. 263 of the Act is that to establish order of the AO is to be erroneous insofar as it is prejudicial to the interest of the Revenue, the PCIT has to satisfy of twin conditions simultaneously, namely (i) the order of the AO sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If any one of them is absent, s. 263 cannot be invoked. This provision cannot be invoked to correct each and every type of mistake or error committed by the AO; it is only when an order is erroneous as also prejudicial to Revenue's interest, that the provision will be attracted. An incorrect assumption of the fact or an incorrect application of law will satisfy the requirement of the order being erroneous. The phrase 'prejudicial to the interest of the Revenue' has to be read in conjunction with an erroneous order passed by the AO. However, every loss of revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. For example, if the AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with which the PCIT does not agree, it cannot be treated as an erroneous order and it is prejudicial to the interest of the Revenue, unless the view taken by the AO is totally unsustainable in law. We draw strength from case of Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC) and also from the case of CIT vs. Max India Ltd. (2007) 295 ITR 282 (SC).*

In light of above we thus humbly submits that the impugned order dated 30.03.2024 passed by the ld. PCIT is completely illegal, devoid of any merits, passed with predetermined motive, on the basis of assumption and presumption, ignoring the correct factual position, on wrong understanding of statutory provision, is bad in law and therefore the same is deserves to be quashed & set-aside.

6. To support the contention so raised in the written submission reliance was also placed on the following evidence / records / decisions:

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	• Reply dated 02.09.2017 submitted by the assessee appellant in consequence to survey proceedings	207	213
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10.	Copy of reasons recorded & objection letter dated 29.10.2018 submitted by the assessee appellant for A.Y. 2015-2016	656 667	666 670
11. 11.1	Copy of Audit Objection dated 17.11.2020 for A.Y. 2015-2016 alongwith Audit Memo Copy letter dated 19.02.2021 sent by the ld. ACIT to the ld. PCIT.	671 672 676	671 675 678

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- **Case laws relied upon:**

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7. The ld. AR of the assessee in addition to the written submission vehemently argued that the proceedings initiated by ld. PCIT as per provisions of section 263 of the Act merely based on the audit objections raised. To support that contention, ld. AR of the assessee invited attention to the audit memo in the paper book page 680 to 688, 682 to 702 raising therein all the issues raised by ld. PCIT were raised by the revenue audit party. That fact is evident from the order it self wherein the PCIT held that

> I wish to make it clear that I am not disturbing the assessment that has already been made. I am only passing an order for the issues discussed in the order and as detailed above based upon independent satisfaction of the assessing officer, who will duly consider the replies of the taxpayer.

7.1 Based on that audit objectionsso raised, ld. AO vide his letter dated 17.11.2023 (paper book page 703 to 708) proposed remedial action as per provisions of section 263 of the Act by ld. AO. This fact clearly establishes that the provisions of section 263 of the Act invoked as remedial action considering the audit objections so raised in this case and by ld. PCIT while examining the case record of the assessee. To drive home to this contention ld. AR of the assessee relied upon the decision of Punjab and Hariyana High Court in the case of CIT Vs. Sohan Woolen Mills 9 TMI 157, that of Co-ordinate bench of Jodhpur in the case of Jain Carrying

Corporation Vs PCIT 3 TMI 945and Delhi Bench of ITAT in the case of Majestic Properties Pvt. Ltd. Vs PCIT 8 TMI 673 and so on filed their written submission. Therefore, he emphasized that ground No. 1 may be decided based on that factor.

7.2 So far as ground Nos. 2 to 5 being issued based on merits, two issues dropped by ld. PCIT therefore, considering that aspect of the matter even though the audit objection was there she considered that the order of AO is not prejudicial to the interest of the revenue.

7.3 So far as the excess stock applying the provisions of section 69 read with section 115BBE of the Act, as is clear that the assessee has surrendered the income based on stock and it emanated from the business income. Merely based on the audit objection, when the ld. AO has taken a plausible view the order cannot be held prejudicial when the ld. AO has already made in detailed scrutiny of the records and examined that issue also and that order cannot be revised. The ld. AR of the assessee also submitted that the reply that aspect has been made before Assessing Officer vide letter dated 08.03.2021 wherein the ld. AO has examined that the issue and accepted the disclosure as business income. Therefore, when AO has taken plausible view, the revision cannot be made.

As regards the disallowance the provisions of section 14A read with rule 8D of the Act. The same was not form part of the show cause notice. Not only that disallowance of 14A as amended vide Finance Act, 2022 made it mandatory to disallow the expenditure even though there is no exempt income therefore, that amended cannot be applied retrospective in Assessment Year 2018-19, as the provisions is not retrospectively and therefore, considering the decision of Calcutta High Court, Delhi High Court and Madras High Court and quoted in the written submission view taken by ld. AO is neither erroneous not prejudicial to the interest of the revenue.

7.4 The last and 4th issue regarding allowability deduction u/s 10AA of the Act it is to be noted that the assessment has been completed u/s 143(3) of the Act, based on survey which took place at the premises of the assessee and assessment has been completed after making detailed survey of the business premises of the assessee. The issue of allowability of section 10AA not only verified but the variation was also proposed in the original order of the assessment. Accordingly, in this case after the survey carried out the Assessment Years 2011-12 & 2012-13 were reopened by the revenue wherein the provisions of section 263 were not done but here only based on some audit objection, provisions of section 263 invoked. Even for the Assessment Year 2016-17 the provisions of section 263 were not

invoked but A.Y 2015-16, the provision of section 263 of the Act was invoked but that has also been decided in favourof the assessee by the Co-ordinate Bench.

Summarily, ld. AR heavily pressed ground no. 1 and even on merits he placed his arguments that the ld. PCIT trying to invoke the provision on the issue which are either not erroneous or not prejudicial to the interest of the revenue.

8. Per contra, ld. DR relied upon the detailed findings recorded in para C,D,E & F discussed in detail in para 4 of the order of ld. PCITfor which valid show cause notice was issued and ld. PCIT has passed very reasoned order and thereby ld. DR supported the order of the PCIT.

9. Ground no. 1 raised by the assessee challenges the order of the PCIT on technical ground and ground no 2 to 5 raised by the assessee deals with the merits of each of the issue stating that on all those issues raised even on merits does not constitute the order of the assessment as erroneous or prejudicial to the interest of the revenue. Ground no. 6 being general in nature does not require our adjudication.

9.1 As regards, ground no. 1 raised by the assessee challenging the order of the PCIT on the technical ground. As argued by the ld. AR of

the assessee very strongly and straightforward attacking the jurisdictional deficit in the revisionary – action invoked by the ld. PCIT. He submitted that ld. PCIT had not invoked the provisions of section 263 while examining the assessment record. But when the assessment record was examined by the revenue audit party, they raised certain audit objections in the order of the assessment. Against that audit objection ld. AO proposed action u/s. 263 as remedial action to review his own order page 703 to 708. To demonstrate further to this factual aspect of the matter ld. AR referred to the audit memo in the paper book page 680 to 688 which deals issue of 10AA, page 689 to 691 deal the issue of section 14A r.w.r. 8D, page 692 to 693 deals the issue of PF/ESI, page 694 to 702 deal the issue of invoking of the provision of section 69 and 115BBE in respect of excess stock.

Thus, read with those objections of the revenue audit party with that of the show cause notice issued by the PCIT the issue raised are same. That fact gains more strengthen from the following finding of the ld. PCIT;

> I wish to make it clear that I am not disturbing the assessment that has already been made. I am only passing an order for the issues discussed in the order and as detailed above based upon independent satisfaction of the assessing officer, who will duly consider the replies of the taxpayer.

Thus, it clear beyond doubt that the proceeding initiated in this case by ld. PCIT emanates from the recommendation of the ld. AO so as to take remedial action on the audit objection and there is no independent examination of the records by the ld. PCIT.

As regards the judicial precedent on the issue of initiating the provision of section 263 of the Act merely based on the audit objection invalidate the jurisdiction of the PCIT, various judicial precedents were cited as listed on page 823 to 870 including the latest decision by co-ordinate bench of Jaipur in ITA no. 725/JP/2024 wherein all the referred to judgments were followed to hold ;

> 10. We have heard the rival contentions and perused the material placed on record and gone through the judicial precedent cited by the parties to drive home this contention so raised. The bench noted that in this case survey action u/s 133A of the Act was carried out on 06.02.2019 at the business premises of M/s Laxminath Infrastructure Pvt. Ltd., Churu. In that proceedings, the assessee disclosed a sum of Rs. 40,00,000/- to buy the mental peace and has duly offered that income while filing the return of income. Subsequent to filing the return of income, the case of the assessee was selected for scrutiny wherein the ld. Assessing Officer after raising the queries assessed return of income.
>
> In the meantime, as is evident from the record that the internal audit party raised and audit objections to the levy of the tax in the case of the assessee. Therefore, ld. Assessing Officer made a proposal before ld. PCIT to initiate the provisions of section 263 of the Act vide his letter dated 30.10.2023 to charge that additional income as per provisions of section 155BBE of the Act. This shows that proposal has been sent by the ld. Assessing Officer to review of order passed by him, though a proposal sent by the Assessing Officer. The ld. PCIT has invoked the provisions of section 263 of the Act based on that proposal so submitted by the ld. AO. Thus, as is evident that review of an order passed is not permitted and are bad in law. We get support of this view from the decision so cited by the assessee in the case of Jain Carrying Corporation v. PCIT in ITA No. 134/Jodh/2018 wherein author of the bench are the same and in that case the bench has held as under:-

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

In the meantime, as is evident from the record that the internal audit party raised and audit objections to the levy of the tax in the case of the assessee. Therefore, ld. Assessing Officer made a proposal before ld. PCIT to initiate the provisions of section 263 of the Act vide his letter dated 30.10.2023 to charge that additional income as per provisions of section 155BBE of the Act. This shows that proposal has been sent by the ld. Assessing Officer to review of order passed by him, though a proposal sent by the Assessing Officer. The ld. PCIT has invoked the provisions of section 263 of the Act based on that proposal so submitted by the ld. AO. Thus, as is evident that review of an order passed is not permitted and are bad in law. We get support of this view from the decision so cited by the assessee in the case of Jain Carrying Corporation v. PCIT in ITA No. 134/Jodh/2018 wherein author of the bench are the same and in that case the bench has held as under:-

"7. We have heard the rival contentions, perused the material placed on record and gone through the judicial precedent cited by both the parties to drive home their respective contentions. The bench noted the ld. PCIT has raised four issues, on four issue the ld. AO has raised the issue, the assessee submitted the reply and the ld. AO has taken a plausible view on the matter. The ld. AO taken a view based on the submission made by the assessee which the ld. PCIT merely based on the audit objection and PCIT's observation that the view taken by the ld. AO on which the ld. PCIT is not in agreement cannot hold the order liable to be sustained. On the first issue that has been flagged by the PCIT we note that the allegation made is to justify the audit objection raised even the ld PCIT stated that he has no hesitation in holding that the AO has not examined the issue in question properly but he failed point where the ld. AO has called for the details and based on the details called for he has taken a view based on the record produced before him which merely there is audit objection the order passed after examination of the issue cannot be taken again. To drive home to this contention we take support on a decision of apex court in the case of Parashuram Pottery Works Co. Ltd Vs ITO [1977] 106 ITR 1 "At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and

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

8. The bench also noted from the order of the PCIT that the reasons for taking the proceeding u/s. 263 is not an independent view of the ld. PCIT but it is borrowed from the audit memo issued by the C&AG. Thus, it is undisputed that the action u/s. 263 based on the audit objection and it has been held in various case law cited by the ld. AR of the assessee holding that proceedings u/s. 263 at the instance of Revenue Audit is impermissible. The ld. AR of the assessee has relied upon the decision in the case of M/s. Grasim Industries

Ltd., in ITA no. 1964/Mum/2019 wherein the co-ordinate bench while dealing with the similar set of facts held that-

"9. We hold that a possible view has been taken by the ld AO in the matter and merely because the ld PCIT is of a different view on the same issue, he cannot resort to invoke revision proceedings u/s 263 of the Act. This is only a case wherein the ld PCIT is trying to substitute his view in lieu of a possible view already taken by the ld AO on the impugned issue on the allowability of LTCL. Reliance in this regard is placed on the decisions of Hon'ble Jurisdictional High Court in the case of Gabriel India Ltd reported in 203 ITR 108 (Bom) and in the case of Nirav Modi reported in 390 ITR 292 (Bom). It is also pertinent to note that the Special Leave Petition (SLP) preferred by the Revenue before the Hon'ble Supreme Court against the judgement of Nirav Modi was dismissed in 77 taxmann.com 15 (SC).

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

b) A possible view has been taken by the ld AO on the issue of LTCL on the facts of the case and also by placing reliance on the available case laws on the subject and hence the ld PCIT was not justified in invoking revisionary jurisdiction u/s 263 of the Act merely because he is of a completely different view and opinion on the issue of allowability of LTCL to be carried forward to subsequent years; c) The ld AO had defended his original assessment order before the Revenue Audit Party by accepting the contentions of the assessee and by stating that there was no misrepresentation of facts by the assessee. The evidences in this regard are already on record and already reproduced elsewhere in this order. Hence it could be safely concluded that the revision proceedings u/s 263 of the Act had been apparently triggered only based on borrowed satisfaction i.e Audit Objection and not based on independent application of mind by the ld PCIT. Infact the show cause notice issued by the ld PCIT u/s 263 of the Act also uses the same language used by the Revenue

> Audit Party in its Audit Objection. Hence revision proceedings could not be invoked by the ld PCIT based on borrowed satisfaction. 12. Since the revision order passed by the ld PCIT u/s 263 of the Act is hereby directed to be quashed, the other arguments advanced by the ld AR on the applicability of provisions of section 170(2) of the Act and on merits of the case need not be gone into and they are left open."
>
> Respectfully following that decision of the co-ordinate bench and since the ld. PCIT based on the borrowed information and has not established as to how the view taken by the ld. AO is not correct when the issue raised has already been form part of the proceeding before the ld. AO. Based on the discussion so recorded we are of the considered view that the proceeding initiated u/s. 263 is merely based on the audit objection, PCIT is not agreement with the ld. AO and the observation on the stock, in the audit reportalready filed by the assessee. Thus, there is clear absence of his satisfaction and there is no independent view of the ld. PCIT even on merits thus, the assessee which has been completed there cannot be the second inning to the revenue without justifying the twin condition to the order passed by the ld. AO.
>
> 9. In the light of the discussion so recorded we considered the ground raised by the assessee and quash the order of the PCIT, Bikaner. In the result the appeal of the assessee is allowed.

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

At the time of hearing the appeal ld. DR did not cite any contrary judgment and therefore, having regard to the findings recorded by this co-ordinate bench in the case of Mahendra Kumar Sharma Vs. PCIT (Supra), there is merit in the ground no. 1 raised by the assessee.

10. Now coming to ground no 2, as per show cause notice dated 08.03.2024 ld. PCIT proposed to disallow ESI/PF for the month of February 2018 to March 2018 on account of delay in depositing the same based on

the provision of section 36(1)(va). The assessee replied that query and PCIT satisfied on that aspect and she had dropped that matter. But while passing the order without issuance of any show cause notice she went to observe that AO ought to have verified whether the ESI/PF were paid in compliance with Rule 87 of the Income Tax Rules and excess PF/ESI deserve to be disallowed. On this aspect as submitted said observation of the PCIT was against the principles of nature justice, fair play, reasonableness, equity and equality. Without prejudice to that as submitted during the assessment proceeding the Assessing Officer noted that there was some mismatch in the figures of salary as per Audit Report and as per Income Tax Return and had asked the assessee to clarify the same and asked the assessee as to why-not Rule 87 of the Income-tax Rules be invoked to disallow excess PF/ESI deposited. The assessee-appellant vide its letter [PB 558-559] submitted to the Assessing Officer had clarified that issue and ld. AO after due verification of books of accounts & other relevant records was satisfied that there was some mismatch in the figures of salary as per Audit Report and as per Income Tax Return as the same was merely a grouping error, while filing the income tax return, however, overall salary remained same and he thus chose not to disallow. When the issue raised by the ld. PCIT is neither erroneous nor prejudicial to the interest of the

revenue the same could not be subjected to revision merely based on the making the enquiry a fresh. Thus, ground no. 2 raised by the assessee stands allowed.

11. Coming to the ground no. 3 raised by the assessee, during survey, variance in stock of Rs. 1,50,00,000/- was found which was offered for tax as business income by the assessee-appellant. While in assessment proceeding ld. AO raised queries towards the same and were replied vide letter dated 08.03.2021 [PB 560-563]. The ld. Assessing Officer after verification of books of accounts & other relevant records satisfied and chose not to disturb the same, and thereby accepted the submission made. Whereas in the proceeding u/s. 263 ld. PCIT in the impugned order has opined that the said difference in stock was in the nature of 'Other Income' and thus provisions of section 69 read with section of the Act 115BBE should have been invoked by the ld. Assessing Officer.

When there was proper application of mind on the part of the ld. Assessing Officer after having examined during the course of assessment proceedings, it is not a case where necessary inquiries have not been carried out by the ld. Assessing Officer. Furthermore, when two views are possible ld. AO after considering the submission accepted the view of the

assessee-appellant, and said approach does not automatically hold the assessment order erroneous or prejudicial to the interest of the revenue. Ld. AO accepted the plea that assessee appellant has no other income other than business income. Even our own Hon'ble High Court in PCIT v. Bajargan Traders (2017) 11 TMI 388 has held that *the investment in the excess stock has to be brought to tax under the head "business income" and not under the head income from other* sources. This view has also been taken by Hon'ble Gujarat High Court in PCIT v. Dharti Estate (2024) 1 TMI 1197, Co-ordinate bench of Jaipur Bench in Gayatri Devi v. PCIT (2023) 10 TMI 23, Chandigarh Bench in Ravinder Kumar Bansal v. PCIT (2023) 12 TMI 716, ITAT, Rajkot Bench in Vaidya Realities v. PCIT (2024) 1 TMI 970 and other decisions cited in the written submission. Thus, ground no. 3 raised by the assessee-appellant has also merit.

12. Vide ground no. 4 assessee – appellant challenged the findings of the PCIT to disallow interest expenses of Rs. 38,35,156/- u/s. 14A r.w.r. 8D. As is evident from the record in the year under consideration, i.e., A.Y. 2018-2019 no exempt income was earned by the assessee appellant from its investments with Mutual Fund & share in partnership firm [PB 202-203], details of investment held [PB 628]. Thus, section 14A of the Act was not invocable, the ld. Assessing Officer being satisfied, did not invoke, section

14A and did not disallow any expense at the time of passing of assessment order. In the proceedings before the PCIT the assessee-appellant contended that as there was no exempt income earned, no disallowance u/s 14A could be made. But ld. PCIT has held that actual earning of exempt income is not necessary, and in this regard, she relied upon Circular No. 5/2014 and has further on the amendment made by Finance Act, 2022 whereby "Explanation" has been inserted to justify the disallowance u/s. 14A of the Act. Accordingly, she held that interest expenses of Rs. 38,35,156/- should have been disallowed.

However, the amendment made by Finance Act, 2022 whereby the Explanation was inserted is prospective in nature and would not apply retrospectively. In this regard, reference may be made to decision of Hon'ble Calcutta High Court in the case of PCIT v. Avantha Realty Ltd. (2024) 6 TMI 987and High Court of Delhi in PCIT Vs. Era Infrastructure Ltd. [2022 (7) TMI 1093 - Delhi High Court] which had taken note of the decision in the case of Cheminvest Ltd. [2015 (9) TMI 238 - Delhi High Court] wherein it was held that amendment by the Finance Act, 2022 of Section 14A of the Act by inserting a non-obstante clause and explanation was to take effect from 01.04.22 and cannot be presumed to have retrospective effect and, therefore, on facts the amendment cannot be applied to the assessment

year under consideration. Based on these observations, ground no. 4 raised by the assessee is also allowed.

13. Ground no. 5 raised by the assessee deals with the observation of the ld. PCIT to disallow the claim of deduction u/s. 10AA of the Act made in the return of income so filed. Ld. AO verified the claim of the assessee after the survey and also made variation on account of price variation between the SEZ unit and that of the DTA unit.

As is evident from the submission subsequent to survey conducted on 17-18.08.2017, reassessment proceedings u/s. 148 of the Act were initiated and orders passed for the Assessment Years 2012-2013 to 2015-2016 and scrutiny assessments u/s. 143(3) of the Act for Assessment Years 2016-2017 to 2018-2019 were also initiated and passed. The claim of the assessee was verified in that proceeding from A.Y. 2010-11 till A.Y. 2018-2019, prior to survey and post survey and the year under consideration is one of those years. As is evident from the order of the PCIT that he has invoked the explanation (2) clause (a) of section 263 of the Act. On that aspect, it is observed that amendment [i.eExpl. 2(a)] does not confer blind powers. It is held that despite there being an amendment, enlarging the scope of the revisionary power of the ld. PCIT u/s 263 to

some extent, it cannot justify the invoking of the Expl. 2(a) in the facts of the present case. Before referring to that Explanation, one has to understand what the true meaning of the Explanation in the context of application of mind by a quasi-judicial authority was. In **Narayan Tatu Rane Vs. ITO** (2013) 7 NYPTTJ 1493 (Mum.),it was held that newly inserted Explanation 2(a) to Sec. 263 does not authorize or give unfettered powers to Commissioner to revise each and every order, if in his (subjective) opinion, same has been passed without making enquiries or verification which should have been made.

Here, ld. AO had examined the issue of allowability of section 10AA in hands of the assessee. In the case of Parashuram Pottery Works Co. Ltd. Vs. ITO 106 ITR 1 wherein Hon'ble Apex Court held "At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi judicial controversies as it must in other spheres of human activity".

In the light of this discussion ground no. 5 raised by the assessee stands allowed.

As a result, the order passed by the PCIT, Central, Jaipur is set aside while allowing the appeal filed by the assessee.

Order pronounced in the open court on 26/12/2024.

Sd/-	Sd/-
(नरेन्द्र कुमार)	(राठौड़ कमलेश जयन्तभाई)
(NARINDER KUMAR)	(RATHOD KAMLESH JAYANTBHAI)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य /Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 26/12/2024
*Ganesh Kumar, Sr. PS
आदेश की प्रतिलिपि अग्रेशित/Copy of the order forwarded to:

1. The Appellant- Pinkcity Jewelhouse Private Limited, Jaipur
2. प्रत्यर्थी/ The Respondent- PCIT (Central), Jaipur
3. आयकरआयुक्त/ The ld CIT
4. आयकर आयुक्त(अपील)/The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्डफाईल/ Guard File (ITA No. 598/JP/2024)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar