

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

(VIRTUAL COURT)

**BEFORE SH. VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

I.T.A. No. 306/Asr/2024
Assessment Year: 2019-20

Poonam Marwaha
H. No. 102 Rose Street,
Majitha Road, Bhawani Nagar,
Amritsar, Punjab 143001

Vs.

ACIT, DCIT
Central Circle,
Amritsar

[PAN: DIVPM 1655M]

(Appellant)

(Respondent)

Appellant by : Sh. Rohit Kapoor, CA and
Sh. V.S. Aggarwal, ITP
Respondent by : Sh. Sunil Gautam, CIT-DR
Date of Hearing : 03.12.2024
Date of Pronouncement : 09.01.2025

ORDER

Per Udayan Dasgupta, J.M.:

This appeal is filed by the assessee against the order of the Ld. PCIT (Central) Ludhiana, passed u/s 263 of the Act 61, dated 19/03/2024, which has arisen out of the assessment order passed u/s 143(3) dated 17/09/2021, passed by ACIT Central Circle, Amritsar.

2. The grounds of appeal preferred by the assessee as per the memorandum of appeal are as follows:

- “1. That the order passed u/s 263 by the Ld. PCIT is illegal, bad in law and without jurisdiction. The order passed by the Ld. AO u/s 143(3) is neither erroneous nor prejudicial to the interests of the revenue.
2. That the Ld. PCIT has erred in law and/or facts in considering that the disclosed income of Rs. 50,00,000/- by way of excess stock found during the course of survey was not assessable under the head “Profit and loss of the business” but as deemed income under section 69 r.w.s. 115BBE of the act.
3. That the Ld. PCIT has erred in law in invoking the provisions of section 263 without there being any specific charge of no enquiry having been made the AO.
4. The Ld. PCIT-Central Circle Ludhiana has erred both on fact and law in not properly considering the submission made before him and further erred in assuming the jurisdiction u/s 263 of the IT Act, 1961 despite the fact that the assessing officer has conducted detailed inquiry before passing the assessment order. That the PCIT has failed to appreciate that the excess stock calculated by the survey team was to be inventorized at cost instead of MRP.
5. That the Ld. PCIT has erred in facts and in law in assuming jurisdiction u/s 263 by alleging that AO did not make any enquiries to verify the source of funds used for surrender on account of excess stock of Rs 50,00,000/- during the year. The Learned Principal Commissioner of Income Tax (PCIT) has failed to appreciate the fact that during the survey, loose slips were impounded, providing clear evidence that the assessee earned income from sales made outside the books of accounts.
6. The Ld. PCIT has erred in not believing contention of the Appellant that fully inquiry made by the Assessing Officer and AO has considered and accepted our explanation and taxed additional income as “business income @ 30%” and based on which assessment order u/s 143(3) was passed by the learned Assessing Officer.
7. That the learned PCIT has erred in not appreciating the facts that the AO after examining the details, has adopted a possible opinion on the point raised in the show cause notice issued by him and, therefore, the CIT lacks jurisdiction to invoke s. 263 of the Act.”. That the assessment u/s 143(3) was completed by the AO after

conducting detailed inquiry enquiry and thereafter came to conclusion that provisions of section 115BBE are not applicable in the case of the assessee.

- 7.1 *That the Ld. PCIT has erred invoking the provisions of section 263 without appreciating that the assessment u/s 143(3) cannot be set aside merely on the ground that inadequacy of enquiry by the AO with respect to source of surrender income would not in itself be a reason to invoke the powers enshrined in Section 263 of the Act.*
8. *That the Ld. PCIT has erred in passing order u/s 263 particularly in absence of any document found during the course of survey to prove that the assessee was in receipt of any income other than business income.*
9. *That the order passed u/s 263 is bad in law since the Ld. PCIT has erred in not appreciating that the powers of revision u/s 263 cannot be invoked merely because the Assessing Officer did not write specific reasons for accepting the explanation of the assessee.*
10. *That the Ld. PCIT has erred in invoking explanation 2 of section 263(1) as the explanation does not authorize unfettered powers to the CIT to revise each and every order passed by the AO if in his opinion the same has been passed without making enquiries/ verification which should have been made.*
11. *That the appellant craves leave to add, amend, or alter any of the above grounds of appeal before or during the course of appellate proceedings.”*

3. The brief facts of this case are that the individual assessee is the sole proprietor of M/s Mohinder Pal and Sons, engaged in wholesale and retail trading of “cosmetics” and has been regularly filing her return of income for earlier years, u/s 44AD of the Act 61. In course of survey u/s 133A of the Act 61, conducted at the business premises of the assessee on 7th February, 2019, excess stock of cosmetics , valued at Rs. 49,98,000/- was found and inventorised by the survey team and as per observation in the survey report u/s 133A(1) , dated 08/02/2019, some loose papers

and diaries were impounded as evidence of purchase and sales , out of books of accounts , even though no cash book was found at the business premises.

4. In course of survey, the assessee voluntarily disclosed an amount of Rs.50 lakhs, as business income, over and above her normal profits derived from the said business, to cover up and settle the alleged discrepancy of stock, and the same is also evidenced by her replies to the statements recorded by the survey team in course of survey.

5. Subsequently, the return of income filed by the assessee in due course disclosing a total income of Rs.56,05,590/-, which included the normal business profits and the additional income disclosure of Rs.50 lakhs, (*after considering deductions under Chapter VIA*) was accepted by the AO, in scrutiny u/s 143(3) , as per normal procedure , after considering explanations and submissions filed by the assessee in course of scrutiny proceedings, and the same has been subjected to tax at normal rates.

6. Subsequently, the Ld PCIT, (Central) Ludhiana, assumed jurisdiction u/s 263 of the Act 1961 , vide notice dated 01/03/2023, on the ground that income surrendered during survey action should be treated as if the assessee is in possession of unexplained money and treatment of tax liability thereon should be under the

provisions of section 69B of the Act 61 , and tax needs to be calculated as per section 115BBE of the Act, on the surrendered income.

7. In course of revision proceedings , the Ld PCIT , vide notice dated 14/03/2023, asked for details of opening stock (at the beginning of the year) , details of month wise purchase and sales throughout the year, details of stock as per books on survey date, explanation regarding difference of valuation of stock as per books and as per department valuation, evidence regarding incorrect valuation and comparative figures for subsequent years, against which the assessee has filed her response to all the required particulars as asked for along with written submission explaining the case in details.

8. Subsequently, the Ld PCIT, has discussed the case in his order passed u/s 263 of the Act 61, and has referred to various decisions of various courts and tribunals, to arrive at the conclusion that in the instant case the AO has failed to examine the source of funds for making purchases of Rs.50 lakhs during the year and surrendered by the assessee (as excess stock) , and also failed to enquire as to whether the said funds are from business sources or unknown sources because according to him the AO has simply accepted the reply of the assessee without verification , and as such, the order being erroneous so far it is prejudicial to the interest of revenue , the same was set aside for fresh assessment.

9. In course of hearing before the tribunal the assessee has filed written submissions and a *judgment set* consisting various case laws on which he relied upon for arguments and a paper book consisting of various notices issued by the AO u/s 142(1) , in course of assessment proceedings and copies of assessee's reply and explanations filed before the AO on various dates , copy of survey report, computation of income and copy of statement of the assessee recorded by survey team, and other supporting papers.

10. The Ld AR of the assessee, at the onset, submitted that the determination of excess stock at Rs. 50 Lakhs (Rs. 49,98,000/-) , by the survey team itself is technically incorrect , because the same has been inventorised and valued at MRP instead of cost price. It was submitted that the inventory process conducted by the department consisted of about 60 pages, and the closing stock as on date of survey was calculated by drawing up a trading account by taking into consideration the gross profit rate for earlier years and the difference has been arrived at by taking into consideration the value of stock inventory noted by the department at MRP and closing stock calculated by applying GP rate as on date of survey. He further submitted that if the said stock is properly valued at cost price (instead of MRP) the calculation of excess stock value will be **Rs. 17. 77 lakhs only** (and not Rs. 50 lakhs) which is narrated as under, and the same has been duly brought to the notice of the AO vide letter dated 13/09/2021:

<i>Stock calculated by department at MRP</i>	<i>Rs.98,02,484/-</i>
<i>Less:-GST Elements</i>	<i>Rs.(14,24,292 /-)</i>
<i>Less:-Margin and Discount</i>	<i>Rs.(16,75, 638/-)</i>
<i>Less:-Stock as per books of A/c</i>	<i><u>Rs.(49, 25,138/-)</u></i>
<i>Excess stock</i>	<i><u>Rs.17,77, 416/-</u></i>

11. He further submitted that during recording of statement in survey proceedings, the appellant at *Question no 4* accepted the fact that the documents related to *annexure A-1 (Loose paper)*, represents cash sale slips not recorded in the books of accounts [placed in page no 51 of PB], and in order to resolve and settle the matter , before the survey team , the appellant chose to offer the excess stock valued by the survey team at Rs.49,98,000/- (r/o Rs.50 lakhs) as business income, over and above the normal business profits arising from the same cosmetic business itself , because no stock has been separately identified and it is the same nature and type of stock rolling in the same trading business.

12. He further submitted that regular return has been submitted disclosing a total income of Rs.56,05,590/-, (which included the normal business profits and the additional income disclosure of Rs.50 lakhs), and tax has been paid at normal rates. He further stated that even though the actual valuation of excess stock is only Rs.17.77 lakhs (*as demonstrated in his calculation in above paragraph*), the assessee on

good faith, as a gesture of cooperation, on the basis of surrender disclosure and verbal commitment, before the survey team , has offered the entire amount of Rs. 50 lakhs , as additional income, from cosmetics business to be taxed at normal rates , and paid taxes accordingly.

13. He further took us to various pages of the paper book , to submit that in course of scrutiny proceedings , notices u/s 142(1) has been issued by the AO , *and in the notice dated 18th January, 2021*, the AO has raised queries for the purpose of making verification in respect of purchases of goods , and has specifically raised question calling for explanation of source of purchase of excess stock with documentary evidences in connection with the disclosure of excess stock made in course of survey, *vis a vis* explanation regarding entries contained in impounded documents in Annexure A-1 and A-2 , consisting of loose sheets and diary.

14. He further referred to the replies and submissions made by the assessee , on various dates on 02/03/2021, 17/03/2021, 13/09/2021 and on 14/09/2021, explaining the fact with supporting sales invoices , that inventory has been prepared on the basis of MRP , which is valued at much on the higher side and in fact the excess stock rolling in business is much less around Rs.17 lakhs (approx) , which the Ld AR argued is directly co related to the unrecorded purchase and sales invoices found in course of survey, pertaining to cosmetics.

15. He further referred to the survey report u/s 133A(1) of the Act dated 08/02/2019, where there has been a clear finding of the survey team (in col- 15 of the report) **“Assessee has been found in the practice of purchase/ sales out of books of accounts ”**, to put forth his argument that the assessee is not engaged in any other business , other than cosmetics and the excess stock so found is also of the same nature and type which is regularly traded by the assessee and no other business activity or income generating activity has been found by the survey team , other than trading of cosmetics , and the excess stock found , is the excess that is rolling in the same business and has been acquired out of unrecorded purchase and sales of the same goods, and as such the additional income disclosed is to be assessed under the head business income and the deeming provisions of section 69B (and provisions of section 115BBE) , is not applicable to this case because the additional income so surrendered is generated out of the same business.

16. Finally concluding his submissions the Ld AR took us through the paper book to submit that written explanations has been furnished before the Ld PCIT vide reply dated 29/01/2024 in support of all the grounds raised in his arguments:

Sr. No	Arguments	Page of PB
1.	The A.O. had made Proper Enquiry while framing assessment u/s 143(3)	30
2.	That the assessee was making purchase and sales outside the regular books of accounts. Therefore, the additional income earned was invested in stock	31

3.	That the Assessing Officer had taken one of the plausible views and where there are two plausible views, no action to exercise powers of revision can arise, nor can revision power be exercised for directing a fuller enquiry to find out if the view taken is erroneous.	31
4.	The twin conditions that order passed by A.O. is erroneous and prejudicial to interest of revenue must be satisfied which is not satisfied in the instant case	32
5.	That the Excess stock was arising out of business dealings and as such the provisions of Section 69B, read with Section 115BBE, are not applicable in the instant case	32

17. Per Contra the Ld DR relied on the order of the Ld PCIT , and argued that he was justified in setting aside the order due to the fact that the order passed u/s 143(3) was erroneous and prejudicial to the interests of the Revenue, in view of provisions contained in explanation 2 to section 263(1) in as much as the assessing officer had failed to conduct inquiries and verification in respect of the source of funds for making purchases of Rs. 50,00,000/- during the year and surrendered by the appellant (as excess stock found during survey) was from business of the assessee or from the unknown sources and to be taxed as per the provisions of section 115BBE. (internal page no 27 of the order u/s 263) and he relied on various judicial decisions contained in the revision order u/s 263 of the Act dated 19/03/2024.

18. The Ld. AR of the assessee in rejoinder submitted that it is a settled law that the provisions of section 263 can only be invoked where both the condition vis *‘prejudicial to the interest of the revenue’* and expression *‘erroneous’* are simultaneously fulfilled. In the absence of any of the above condition, the provisions of section 263 stand vitiated.

19. The Principal Commissioner of Income Tax (PCIT) has exercised jurisdiction under Section 263 without satisfying the twin conditions prescribed by the section and as interpreted by various courts. Specifically, the condition of an order being "erroneous" can only be established if the Assessing Officer (AO) fails to conduct any enquiry, which is not applicable in the present case. It is pertinent to note that the appellant has provided detailed replies to the questionnaire, specifically addressing the issue of the source of the excess stock surrendered. That summary of the replies submitted on these specific points as contained in replies filed are as follows:-

Particulars	Comments	Page No
Statement dated 08.02.2019 admitting the fact that the appellant was making sale outside books of accounts	Question No 4 of statement dated 08.02.2019	51
Survey report dated 08.02.2019 stating the fact that the appellant was in practice of making sales outside books of accounts	Annexure A-1 Statement dated 08.02.2019	51
Question 6 of notice dated 18.01.2021 (Please refer page no 2 of paper book) <i>'6 It is observed that during the course of survey proceedings excess stock of Rs.49,98,000/- was found. Please explain source of purchase of excess stock with documentary evidence and explain why the same should not be added to your income as' unexplained investment in the form of stock. Also furnish updated stock register.</i>	Reply dated 08.02.2021 That a separate trading account was prepared and was also filed at the time of filing of Tax audit report and is on record. However copy is again enclosed at page no 92. The same figure was separately shown in computation of total income at page 4. Hence section 115BBE is not attracted. No stock register is maintained and this fact has also been given in the tax audit report by auditor in the form 3CB.	4-6
That the Ld. AO had issued various questionnaires along with statutory notice(s). The Ld. AO called for books of account vide notice dated 09.09.2021 page 10-11.	Reply No. 3 dated 17-03-2021 The assessee has explained that the survey team has wrongly calculated excess stock. The excess stock works at Rs.17,77,416/- against Rs.49,98,000/- calculated by the A.O.	8-9
	Reply no 4 dated 13.09.2021	12

	The appellant submitted that the inventory was prepared on MRP basis and not on cost basis. It was also submitted that the relevant bills and vouchers for verification will be furnished.	
	Reply No 6 dated 14-09-2021 Purchase bills as called for by the A.O. were submitted to verify the veracity of claim made by the assessee	14
	Reply No 6 dated 14-09-2021 Submitted legal reply regarding non applicability of section 115BBE was submitted	13

20. From the above facts and circumstances, it is noted that proper enquiry was made by the AO and it is not the case where no enquiry was made. It is settled law that this power of revision can be exercised only where there is no enquiry, as required under the law, is done. It is not open to enquire in case of inadequate inquiry.

21. That during the course of survey proceedings, the stock was inventoried by the department at Maximum Retail Price (MRP) of Rs.98,02,484/- against the stock value recorded at Rs 49,25,138/- in the regular books of accounts at cost price. It was highlighted that MRP, as per the Standard Weight & Measurement Act, incorporates taxes such as GST, and no additional charges can be levied from the customer beyond this. It was further clarified that the MRP includes GST element and is further subject to adjustment on account of margin on selling price. The correct value of excess stock as per cost as submitted before the AO is worked out and the assessee has put an alternate argument to demonstrate that the revenue is not prejudiced:

“Additional argument on the aspect of prejudicial to the interest of revenue:

That the appellant vide reply dated 17.03.2021 specifically requested the AO to consider the correct stock. (copy at page no 8-9 of the PB). In order to substantiate the same, the AO specifically asked the appellant to provide purchase bills and the same were also submitted vide reply dated 14.09.2021 (**page 14 of PB**). The AO framed the assessment u/s 143(3) without making any addition by stating that the appellant had duly considered the amount surrendered in the return of income filed.

That the same facts were presented before the PCIT and it was submitted that even if the correct excess stock amounting to Rs. 1777416/- is considered and tax is calculated as per the provisions of section 115BBE, the tax liability works out to Rs. 1386384/- [tax @78% including surcharge 25% and cess 4%]. In this regard your Honor’s kind attention is drawn towards the fact that the appellant has already offered a sum of Rs. 50,00,000/- under the head business income and has paid taxes amounting to Rs. 15,60,000/- which is higher than the tax liability of Rs. 13,86,384/- as per the working given below: -

Value of Excess Stock	17,77,416/-
Tax as per section 115BBE [1777416*60%*1.25*1.04]	13,86,384/-
Tax paid by the appellant on income of Rs. 50L surrendered in return of income [50L*30%*1.04]	15,60,000/-
Tax Payable	NIL

22. That before invoking the provisions of section 263, it is very much necessary to adhere to the twin conditions as embedded in section 263. In the circumstances where only one of the conditions is satisfied and the condition is not dealt with, in

such circumstances the proceedings initiated vide section 263 are without jurisdiction. That the said twin conditions are being produced hereunder: -

- “(i) *The order of the Assessing Officer sought to be revised is erroneous; and*
- (ii) *it is prejudicial to the interests of the Revenue. If any one of them is absent i.e. if the assessment order is not erroneous but it is prejudicial to the Revenue, Sec.263 cannot be invoked.”*

23. The Ld. AR argued that from the above facts and circumstances it is evident that no prejudice is caused to the revenue even if the correct excess stock is treated as income and tax is calculated as per the provisions of section 115BBE. It is a settled law that what is required to be taxed is the correct income and not the hypothetical income. In this regard reliance is placed upon the circular issued by CBDT dated 11-4-1955, 14(XL-35) wherein the Board ordered that the officers of the Income-tax should not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist the taxpayers in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard, the officer should take the initiative in guiding a taxpayer, where proceedings or other particulars before them indicate that some refund or relief is due to him.

24. The Ld AR further relied upon the following judgments for support.

25. It is a matter of record that proper enquiry was made by the AO and therefore, it cannot be stated that no enquiry was made by the AO. In this regard reliance is being placed upon the *order of Delhi High Court in Geevee Enterprises v. Addl. CIT 99 ITR 375 (Del.)* that order would be erroneous only when the AO makes no enquiries during the course of assessment proceedings. In arriving at this decision, the Delhi High Court drew strength from the principles laid down by the *Supreme Court in Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 and Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC)*. The underlying principle which emerges from these judgments is that if an assessment order is passed without making any enquiring, then such an order would be erroneous.

26. This provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer; it is only when an order is erroneous 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' must be read in conjunction with an erroneous order passed by the AO. Every loss of Revenue because 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 CIT does not agree, it cannot

be treated as an erroneous order prejudicial to the interest of the Revenue, unless the view taken by the AO is totally unsustainable in law. In this regard reliance is being placed upon the following case laws: -

“A) Malabar Industrial Co. Ltd. v/s CIT (2000) 243 ITR 83 (SC) in which it has been stated as under: -

Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interests of revenue - Assessment year 1983-84 - Whether in order to invoke section 263 Assessing Officer's order must be erroneous and also prejudicial to revenue and if one of them is absent, i.e., if order of Income-tax Officer is erroneous but is not prejudicial to revenue or if it is not erroneous but is prejudicial to revenue, recourse cannot be had to section 263(1) - Held, yes -

*B) [2023] 152 taxmann.com 565 (Delhi) HIGH COURT OF DELHI Principal Commissioner of Income-tax v. H.T.L Ltd.**

Section 50C, read with section 263, of the Income-tax Act, 1961 - Capital gains - Special provision for computation of full value consideration (Revision) - Assessee had filed its return and same was processed under section 143(1) - Subsequently, Principal Commissioner invoked revision under section 263 on ground that a land was sold by assessee to an entity below value adopted by concerned authority for levy of stamp duty, and therefore, there was under-assessment of income to extent of differential amount, and accordingly, assessment made was contrary to provisions of section 50C as this aspect had not been inquired into - It was noted that assessee had run into rough weather, whereby its net worth was eroded - Accordingly, assessee went under SARFAESI proceedings - Record revealed that it was not assessee who effectuated sale of subject land and land was actually sold by secured lenders to recover dues owed to them by assessee - Principal Commissioner had failed to notice these underlying facts while invoking his powers under section 263 - Whether twin conditions for invoking powers under section 263 i.e. not only order should be erroneous, but it should also be prejudicial to interest of revenue were not met, therefore, Tribunal was justified in setting aside impugned revision order of Principal Commissioner - Held, yes [Paras 14 and 16 to 18] [In favour of assessee]

*C) [2022] 141 taxmann.com 512 (Gujarat) HIGH COURT OF GUJARAT Principal Commissioner of Income-tax v. Shukla Dairy (P.) Ltd.**

*II. Section 40A(3), read with section 263, of the Income-tax Act, 1961 and rule 6DD of Income-tax Rules, 1962 - Business disallowance - Cash payment exceeding prescribed limit (Rule 6DD) - Assessment year 2013-14 - Assessee-company was engaged in business of manufacturing of dairy products - Assessee filed return and Assessing Officer passed assessment order after making certain additions - Principal Commissioner observed that assessee made cash payment in excess of Rs. 20,000 to milk sellers who were traders and said sellers would not be eligible for rule 6DD - Principal Commissioner invoked section 263 and remanded matter on ground that Assessing Officer failed to make any disallowances and cash payment in excess of Rs. 20,000 in a single day required detailed verification - Tribunal observed that during assessment proceedings, assessee submitted cash payment register and explained each item of proposed addition as per show cause notice of Assessing Officer and Assessing Officer, after going through cash payment register and explanation of each item, did not make addition - **Tribunal thus, quashed revisionary proceedings on ground that order passed by Assessing Officer was neither erroneous nor prejudicial to interest of revenue - Whether Tribunal was justified in quashing order passed under section 263 - Held, yes [Para 12] [In favour of assessee]***

D) [2021] 130 taxmann.com 496 (Gauhati) HIGH COURT OF GAUHATI CMJ Breweries (P.) Ltd. v. Union of India

Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interest of revenue (General Principles) - An order under section 263 was assailed on ground that condition precedent of initiating a proceeding under section 263 was absent and, therefore, impugned order was an order without jurisdiction - Whether two conditions of order being erroneous and prejudicial to interest of revenue have to be present at stage when Principal Commissioner or Commissioner initiates exercise of jurisdiction under section 263 - Held, yes - Whether where there was no prima facie satisfaction recorded by Principal Commissioner on basis of materials available on record that order of Assessing Officer which was sought to be reviewed under section 263 was an erroneous order as Principal Commissioner was yet to arrive at his prima facie conclusion and wanted matter to be examined further in-depth, no action could have been taken against assessee pursuant to proceeding initiated under section 263 - Held, yes [Paras 6 to 9]

*E) [2022] 145 taxmann.com 590 (Calcutta) HIGH COURT OF CALCUTTA Principal Commissioner of Income-tax v.ReetaLakhmani**

*Section 10(38), read with section 263, of the Income-tax Act, 1961 - Capital gains - Income arising from transfer of long term securities (Penny stock shares) - Assessment year 2014-15 - **Whether before exercise of power under section 263 it is Principal Commissioner who has to apply its mind to issue and thereafter record reasons as to how twin conditions***

of order of Assessing Officer being erroneous and prejudicial to interest of revenue are satisfied and then issue a show-cause notice to assessee - Held, yes - Whether where there was nothing on record to show that such an exercise was done by Principal Commissioner and rather, initiation of proceedings under section 263 on ground that assessee could not establish genuineness of transactions to prove that it had not indulged in any dubious share transactions meant to account for undisclosed income under garb of long term capital gain (LTCG) to claim exemption under section 10 (38) was based on a proposal given by Assessing Officer, exercise of jurisdiction under section 263 was not justified - Held, yes [Paras 8 and 9] [In favour of assessee]

27. The Ld AR further argued on applicability of clause(a) of explanation 2 to section 263 and relied upon the Judgment of *Sh. Narayan TatuRane Vs. ITO, I.T.A. No. 2690/2691/Mum/2016, 70 taxmann.com 227 dt. 06.05.2016* in which ITAT has held that what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our inquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorize or give unfettered powers to the ld. PCIT to revise each and every order, if in his opinion, the same has been passed without making inquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the inquiries or verification conducted by the AO was not in accordance with the inquiries or verification that would have been carried out by a prudent officer. Hence, in our view, the question as to whether the amendment brought in by way of Explanation 2(a) shall have retrospective or prospective application shall not be relevant.

28. Therefore , the Ld AR submits that if both the above propositions are put together, the conclusion would be that PCIT, in his revisionary jurisdiction, cannot say that the order with some enquiry done by the A.O. to be erroneous, he can hold the *non inquiry* cases to be erroneous. However, in such cases he himself has to bring on record the error and prejudice through independent verification and enquiry.

29. That the revisionary powers under section 263 allow the Principal Commissioner of Income Tax (PCIT) to revise an order if it is deemed erroneous and prejudicial to the interests of revenue. However, in this instance, the PCIT's revision order contradicts the facts and circumstances of the case duly supported by documentary evidence.

30. Further before concluding his arguments he also attempted to distinguish the case laws cited by the ld. PCIT in his order:

Sr. No	Citation	Brief	Rebuttal
1.	[2018] 95 taxmann.com 366 (SC) SUPREME COURT OF INDIA Deniel Merchants (P.) Ltd. v. Income-tax Officer	Section 68, read with section 263, of the Income-tax Act, 1961 - Cash credits (Revision) - Commissioner had passed an order under section 263 with observations that <u>Assessing Officer did not make any proper inquiry</u> while making assessment and accepting explanation of assessee insofar as receipt of share application money was concerned - High Court upheld order of revision - Whether	In the case relied upon by the PCIT, the AO had not made any enquiry. However, in the instant case, the AO had made proper enquiry and had duly verified the documents furnished by the appellant from time to time. The same has been explained in detail at para no 1 of brief synopsis.

			<i>there was no reason to interfere with order of High Court and, thus, SLP was to be dismissed - Held, yes [Paras 5 to 6] [In favour of revenue]</i>	
2.	[2015] taxmann.com (Kolkata - Trib.) <i>IN THE ITAT KOLKATA BENCH 'B'</i> <i>Subhlakshmi Vanijya (P.) Ltd. v. Commissioner of Income-tax-I, Kolkata</i>	60 60	<i>Section 68, read with section 263, of the Income-tax Act, 1961 - Cash credit (Share capital) - Assessment years 2008-09 to 2010-11 - Assessee filed return offering meagre income and issued share capital at huge premium, while making large investments in new companies at much higher price than their real worth - Upon reassessment, Assessing Officer did not invoke section 68, hence, Commissioner exercising his revisionary power under section 263 set aside assessment orders directing Assessing Officer to make fresh assessment after conducting detailed enquiry and upon satisfying on genuineness of transaction - Whether order of Commissioner was not based on irrelevant considerations and further in present circumstances, he was not obliged to positively indicate deficiencies in assessment order on merits on question of issue of share capital at a huge premium - Held, yes - <u>Whether since inadequate enquiry conducted by Assessing Officer was as good as no enquiry making order erroneous and prejudicial to interests of revenue, Commissioner was empowered to revise assessment order - Held, yes [Paras 17.i. & 20.g.] [In favour of revenue]</u></i>	<i>The cited case law pertains to share capital and is not relevant to the issue of excess stock. The case law in question involves an assessee who filed a return with minimal income while issuing share capital at a substantial premium and making significant investments in new companies at prices considerably above their actual value. This case law does not apply to the present situation, as the Assessing Officer (AO) conducted a thorough enquiry in the current case. Further the source is out of sales made outside books of accounts.</i>
3	[2019] taxmann.com	105 287	<i>Section 145, read with sections 133A and 263, of the Income-tax Act, 1961 - Method of accounting (Additions to</i>	<i>The case law relied upon by the Principal Commissioner of Income Tax (PCIT) is not</i>

	<p>(Punjab & Haryana)</p> <p>HIGH COURT OF PUNJAB AND HARYANA</p> <p>Principal Commissioner of Income-tax, Ludhiana v. Venus Woollen Mills, Ludhiana</p>	<p>income) - Assessment year 2008-09 - Assessee was engaged in business of manufacturing/trading of yarn and fiber waste etc. - A survey under section 133A was conducted at business premises of assessee and during said survey, a sum of Rs. 2.15 crores was surrendered as an additional income - Subsequently, assessee filed return declaring taxable income of Rs. 1.35 crores - Assessing Officer completed assessment under section 143(3) by making a small addition of Rs. 15,000 only - Commissioner opined that Assessing Officer was required to have carefully dealt with case especially where assessee had surrendered Rs. 2.15 crores during survey but in return filed subsequently, taxable income of only Rs. 1.35 crores was declared - He thus passed a revisional order setting aside assessment - <u>Whether in view of fact that Assessing Officer did not apply mind to correctness of books of account produced before her except to note that books of account were produced and test checked, impugned revisional order passed under section 263 was to be upheld - Held, yes [para 9][In favour of revenue]</u></p>	<p>applicable to the present case. In the cited case law, the issue centered around a discrepancy between the additional income surrendered during a survey and the income declared in the subsequent return. Specifically, the assessee in that case surrendered Rs. 2.15 crores during the survey but only declared Rs. 1.35 crores as taxable income in the return, which led the Commissioner to set aside the assessment for further examination.</p> <p>In contrast, in the present case, the assessee has surrendered the exact same amount of income in the return as was admitted during the survey. There is no discrepancy between the amount of excess stock surrendered and the income declared in the return. The Assessing Officer (AO) conducted a thorough enquiry and considered the correct figures, and thus the case law cited does not parallel the current facts. The proper application of Section 145, read with Sections 133A and 263, requires that the conditions of the case law be met, which is not the situation here.</p>
4	<p>[2013] 29 taxmann.com 70 (Hyderabad - Trib.)</p> <p>IN THE ITAT HYDERABAD</p>	<p>Section 263, read with sections 2(47) and 14A, of the Income-tax Act, 1961 - Revision - Of order prejudicial to interest of revenue - Scope of jurisdiction - Assessment year 2007-08 - Commissioner in exercise of power under section 263, set aside</p>	<p>In the case relied upon by the PCIT, the AO had not made any enquiry. However, in the instant case, the AO had made proper enquiry and had duly verified the documents furnished by the appellant from time to time.</p>

	<p><i>BENCH 'B'</i></p> <p><i>Mahalakshmi Liquor Promoters (P.) Ltd v. Commissioner of Income-tax-IV, Hyderabad</i></p>	<p><i>assessment order taking a view that Assessing Officer had not examined issues relating to investment of loan for non-business purposes and transfer of land within meaning of section 2(47) - <u>Whether, since, at time of making assessment, there was no enquiry by Assessing Officer on issues raised by Commissioner, impugned revisional order was to be upheld - Held, yes [Para 24] [In favour of revenue]</u></i></p>	
5	<p><i>[2009] 31 SOT 353 (Chennai) (SB)</i></p> <p><i>IN THE ITAT CHENNAI BENCH 'D' (SPECIAL BENCH)</i></p> <p><i>Rajalakshmi Mills Ltd. v. Income-tax Officer, Company Circle III, Coimbatore</i></p>	<p><i>Applicability of section 263</i></p> <p><i>It is not necessary for the Commissioner to make further enquiries before cancelling the assessment order of the Assessing Officer. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the case the Assessing Officer should have made further inquiries before accepting the statements made by the assessee in his return. The reason is obvious. Unlike the civil court which is neutral to give a decision on the basis of evidence produced before it, an Assessing Officer is not only an adjudicator but is also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further enquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word 'erroneous' in section 263 emerges out of this context. The word</i></p>	<p><i>In the case relied upon by the Principal Commissioner of Income Tax (PCIT), the Assessing Officer (AO) failed to make any enquiry, which was a key factor leading to the revisional order. However, in the present case, the AO conducted a thorough and proper enquiry. The AO duly verified all the documents furnished by the appellant and considered the explanations provided during the assessment proceedings. Therefore, the circumstances of the current case are materially different, as the AO actively engaged in the scrutiny of the appellant's records, unlike in the cited case. This distinction renders the case law relied upon by the PCIT inapplicable to the present situation.</i></p>

		<p><i>'erroneous' in that section includes cases where there has been failure to make the necessary inquiries. It is incumbent on the Assessing Officer to investigate the facts stated in the return when circumstances make such an inquiry prudent and the word 'erroneous' in section 263 includes the failure to make such an enquiry. The order becomes erroneous because such an enquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct. [Para 3]</i></p> <p><i>In the instant case, the Assessing Officer failed to make any enquiry in regard to the allowability of the provision for gratuity. As such, the order was erroneous and prejudicial to the interests of the revenue. Therefore, the conditions precedent for assuming jurisdiction under section 263 did exist in the facts of the instant case. [Para 4]</i></p>	
6	<p>[2011] 11 Taxmann.com 183(Ranchi)</p> <p>IN THE ITAT CIRCUIT BENCH, RANCHI</p> <p>Dr. Rabindra Kumar Singh v. Commissioner of</p>	<p>Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interest of revenue - Assessment years 1991-92 to 1993-94 - Whether Commissioner may consider an order of Assessing Officer to be erroneous not only when it contains some apparent error of reasoning or of law or of fact on face of it but also when it is a stereo-typed order which simply accepts what assessee has stated in his return and fails to make enquiries or examine genuineness of claim which are called</p>	<p>1. That the appellant vide reply dated 17.03.2021 specifically pointed out to the AO that the excess stock works out to Rs.1777416/- and not Rs. 50L as offered by the appellant. It was also requested to provide the benefit of excess income offered against the actual excess stock of Rs. 1777416/- and frame the assessment by taking into consideration the correct figures. The copy of reply as submitted before the AO is enclosed at page no 8-9 of the PB.</p>

<p><i>Income-tax (Central), Patna</i></p>	<p><i>for in circumstances of case - Held, yes - Assessee was employed in Department of Animal Husbandry of State Government - Search and seizure operations were carried out in case of assessee and his family members during course of which incriminating papers and documents were found and seized - Thus, notice under section 148 was issued calling upon assessee to file his return of income - In compliance, assessee filed his return which was accepted under section 143(3) - Commissioner in exercise of power under section 263, set aside assessment order holding that while completing assessment, Assessing Officer failed to make necessary enquiries from assessee and his relatives - Whether since, in instant case, search and seizure operations were carried out by Department leading to recovery of incriminating materials, it was incumbent upon Assessing Officer to collect relevant information not only from assessee but also from all concerned agencies - Held, yes - Whether, therefore, inaction and failure on part of Assessing Officer in making requisite inquiries and verifications rendered assessment order passed by him erroneous and prejudicial to interest of revenue - Held, yes - Whether in view of above, impugned revisional order passed by Commissioner was to be upheld - Held, yes</i></p>	<p><i>2. Furthermore, the issue regarding the valuation of stock by the authorized officer at MRP was once again apprised to the AO vide reply dated 13.09.2021 which is enclosed at page no 12.</i></p> <p><i>3. Further, it was also brought to the knowledge of the AO that the provisions of section 115BBE are not applicable in the present case and also relied upon the various judgements passed ITAT and high Courts. [Refer reply dated 14.09.2021 at page no 13 of the PB]</i></p> <p><i>4. The AO further asked to submit more purchase bills to substantiate the claim of the appellant that the inventory was worked out by applying MRP. The appellant submitted the same vide reply dated 14.09.2021 which is enclosed at page no 14 of the PB.</i></p> <p><i>5. Thereafter, the AO time and again issued notices to verify the claim of the appellant and only after careful examination of documents brought on record, completed the assessment for the AY 2019-20 vide order passed u/s 143(3) on 17.09.2021 whereby the returned income of Rs. 5605590/- was duly accepted.</i></p> <p><i>6. In the case law replied upon the A.O. has not made proper enquiry from the relatives on the contrary in extant case proper enquiry was made.</i></p>
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7	<p>[2005] 95 ITD 326 (PUNE)</p> <p><i>IN THE ITAT PUNE BENCH</i></p> <p><i>Ambika Agro Suppliers v. Income-tax Officer, Wd. 2(6), Jalgaon</i></p>	<p>Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interest of revenue - Assessment year 1995-96 - Commissioner set aside assessment order on grounds that Assessing Officer had not made proper enquiries in regard to (a) considerable increase in salary and account writing fees; (b) genuineness of debts; (c) genuineness of transactions on cash payment exceeding Rs. 10,000, identity of payee and circumstances compelling assessee to make cash payments; and (d) genuineness of unsecured loans taken from certain persons - Whether acceptance of assessee's explanation without any enquiry rendered assessment order erroneous as well as prejudicial to interests of revenue - Held, yes - Whether Commissioner had given cogent reasons in support of his action and, therefore, Commissioner, having wide powers under section 263, had rightly set aside assessment order - Held, yes</p>	<p>In the case relied upon by the Principal Commissioner of Income Tax (PCIT), the Assessing Officer (AO) failed to make any enquiry, which was a key factor leading to the revisional order. However, in the present case, the AO conducted a thorough and proper enquiry. The AO duly verified all the documents furnished by the appellant and considered the explanations provided during the assessment proceedings. Therefore, the circumstances of the current case are materially different, as the AO actively engaged in the scrutiny of the appellant's records, unlike in the cited case. This distinction renders the case law relied upon by the PCIT inapplicable to the present situation.</p>
8	<p>[2002] 121 TAXMAN 29 (AHD.) (MAG.)</p> <p><i>IN THE ITAT</i></p>	<p>Section 263, read with section 145, of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interests of revenue - Assessment year 1998-99 - Assessment order determining assessee-contractor's contract</p>	<p>The case law cited by the Principal Commissioner of Income Tax (PCIT) is not applicable to the present case for the following reasons:</p>

<p>AHMEDABAD BENCH 'A'</p> <p>RAMESHCHANDRA MALERAM VARMA V. DEPUTY COMMISSIONER OF INCOME-TAX</p>	<p>receipts was set aside by Commissioner (Appeals) with directions to Assessing Officer to reduce/delete addition after getting copies of accounts from payers - Assessing Officer passed order giving appeal effect without conducting required investigation, verification and probe - Whether order passed by Assessing Officer was patently erroneous and prejudicial to interest of revenue - Held, yes</p>	<p>In the cited case law, the issue arose because the Assessing Officer (AO) failed to conduct the required investigation, verification, and probe after receiving directions from the Commissioner (Appeals) to review the contract receipts. As a result, the AO's order was found to be patently erroneous and prejudicial to the interests of revenue.</p> <p>In contrast, the AO in the present case actively conducted a thorough investigation and verification of the appellant's records. The AO diligently reviewed and scrutinized all documents and explanations provided by the appellant, including those related to the surrender of excess stock. The assessment was carried out with due diligence and care, ensuring that all relevant facts and figures were appropriately considered. Therefore, unlike the AO in the cited case, the AO in this case did not exhibit any failure to investigate or verify, making the cited case law inapplicable to the current situation.</p>
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31. Therefore, the Ld AR rested his arguments by submitting that based on judicial pronouncements, the order passed u/s 263 be annulled, considering the facts and circumstances of the case and in the interest of natural justice.

32. We have heard the rival submissions and considered the materials on record and the paper book submitted by the assessee. We observe that the Ld PCIT , has basically raised two issues , firstly , it has been alleged that the AO has failed to examine the source of funds for making purchase of Rs. 50 lakhs during the year and surrendered by the assessee (in respect of the excess stock found during survey) and secondly , even if the queries has been raised in scrutiny proceedings , through notice u/s 142(1) , by the AO , it was not examined whether the surrendered income was generated in regular course of business or it has been generated from undisclosed source of income , and on this aspect of the matter the Ld PCIT , has relied upon the judgment of the jurisdictional High Court in the case of *M/s Khushi Ram and Sons Pvt Ltd in ITA No : 126 of 2015 dated 21/07/2016* , where it was held that *it is not necessary that the surrendered amount is from business income. It could be on account of any other transaction legal or otherwise. Merely because an assessee carries on certain business, it does not necessarily follow that the amounts surrendered by him are on account of its business transactions. There is no presumption that absent anything else an amount surrendered by an assessee is his business income. It is for the assessee to establish the source of such surrendered amount.*”

33. On the facts we find that the stock of goods that has been found in excess by the survey team, are the same nature and type of goods i.e. ***Cosmetics***, which is

regularly traded by the assessee in her usual course of business, and in course of survey the department has not been able to unearth any other documents or papers to arrive at any different conclusion that the assessee has any other source of income earning activity other than the business of cosmetics. In other words the excess STOCK has not been separately identified and the loose papers and documents , diaries , impounded as per Annexure - 1 and 2 (of impounded documents) points to the fact that there has been unrecorded transactions of purchase and sales outside books of accounts pertaining to the same business of“ *cosmetics* ”, in which the assessee transacts, in usual course of her business, and as such the *nexus* or the link in between the excess stock found and the assessee business is established and whatever excess that has been found , is the excess stock , that is rolling in the same business and it has no independent identity of its own and is part and parcel of the normal business stock and what is not declared to the department is the receipt from business (and not any investment) because it cannot be co-related with any specific assets .

34. On this aspect of the matter we would like to refer to the observation of the coordinate Bench decision in the case of of *M/s A.P. Knit Fab Vs. DCIT in ITA No. 732/Chd/2022, dated 15.02.2024* are as follows; relevant portion is reproduced below: *I.T.A.No.178/Asr/2024 Assessment Year: 2019-20 (relevant portion reproduced)*

“8.12. In the instant case as well, 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.

8.13. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, the income so surrendered on account of investment in excess stock during the course of survey cannot be brought to tax under the deeming provisions

of section 69B 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.”

35. Further on this issue we are also supported by the observation of the ***Hon’ble Rajasthan High Court in the case of PCIT vs. Bajargan Traders ITA 258/2017 dated 12.09.2017.*** (Only relevant portion reproduced)

“2.11. Having said that, the next issue that arises for consideration is 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”. 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 (supra) 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”.

(1) *Hon'ble Andhra Pradesh High Court in the case of Deccan Jewellery Pvt Ltd (2021) 132 taxmann.com73(Andhra Pradesh) dated 02/08/2021*, where on an almost identical facts, it was held by the court , that where nature and source of excess stock found during search was not specifically identifiable from profits which has accumulated from earlier years , AO was justified in holding that the excess stock was not undisclosed investment of the assessee and no case of perversity or lack of enquiry on part of assessing officer was made out so as to render this decision erroneous under explanation 2 to section 263 .

(2) Similar views has been taken by the **ITAT, Jaipur Bench in the case of Rajmal Kanwar vs CIT (2017) 82 taxmann.com119** (Jaipur ITAT No 142(JP)of 2015 , where the AO has made sufficient enqueries, considered survey records, and surrender made by assessee and after considering submissions of assessee completed assessment proceedings u/s 143(3) , assessment order could not be held to be an erroneous order which was prejudicial to the interest of revenue.

(3) **ITAT Amritsar Bench in the case of M/s Active Tools Pvt Ltd vs DCIT -II , Jalandhar [2021] 8 TMI 905 ITA No: 260/ ASR/2019** , where in an almost identical case it has been held that when two views are possible , then the view taken by the assessing officer cannot be said to be wrong as the same was not to the liking of the

opinion of the Ld PCIT , for which the Hon'ble bench relied on Supreme court in the case of Max India [2007]11 TMI 12- Supreme Court.

36. Now, coming further to the issue of valuation of the stock as done by the survey team, it is seen that the assessee in course of assessment proceedings has specifically demonstrated with supporting sales invoices and calculation of the entire inventory of stock, that if the said excess stock is valued at COSTS , the difference will only be of an amount of Rs. 17 lakhs (approx) , and not Rs.50 lakhs , as it is has been made out to be . Neither the AO nor the Ld PCIT, in course of proceedings, before them , has been able to counter the said argument of the assessee, nor could they find any fault in the computation and calculation put forth by the assessee as regards the stock value , at cost , as claimed by the assessee.

37. In course of hearing before us the Ld DR, also did not raise any counter arguments regarding the process of valuation of the stock at cost and did not find any fault in respect of such valuation. Leading through the said calculation in respect of valuation of the stock at costs, the assessee proceeded a step further to demonstrate by way of an alternate argument, that if the stock value is taken at costs and tax is imposed as per provisions of section 115BBE, even then also the tax so arrived at will be covered by the tax actually paid by the assessee and as such there is no prejudice to Government revenue.

38. Now coming to the issue as to whether proper enquiry was made by the AO , it is seen from records that specific queries were raised during assessment , and the assessee has furnished detail replies to all the queries in respect of purchase of stock , along with documentary evidences of purchase and sale bills and invoices , where it has been explained by way of written submissions , to have come out of receipts from unrecorded sales proceeds and the excess income earned, is naturally ploughed back into the same business , which is reflected as excess stock in trade , and it is the same income which is being surrendered to be taxed under the head “ *business income*” . As such the source of the amount required for purchase of excess stock is well explained to the satisfaction of the AO to have come out of sale proceeds of cosmetics, and he has accepted the same after examination of the purchase and sales invoice vis a vis impounded documents and stock inventory of identical goods.

39. As such under the circumstances it cannot be said that there has not been any enquiry on the part of the AO. In fact the AO has conducted enquiry and has applied his mind by raising queries and examining the documentary evidences produced before him and after conducting necessary enquiry , has taken a possible view in the matter, which is a legally acceptable view and as such there cannot be any basis to invoke the provisions of section 263 to revise the assessment.

40. We further observe that various High courts has laid down the law that powers of revision cannot be exercised on the ground that the assessing officer should have gone deeper into the matter or should have made a more elaborate discussion .

41. Some of the judgments all expressing almost the similar views in the matter are as under:

(1) CIT vs Hindusthan Marketing and Advertising Co Ltd 196taxmann368(Delhi High Court) : Whether in view of the fact that ITO had made reasonably detailed enquiries , had collected relevant materials and discussed facets of case with assessee , order of Commissioner to direct fresh assessment by going deeper into matter would not form a valid or legal basis to exercise jurisdiction under section 263 - Held YES.

(2) CIT vs Jain Uday fabrics pvt ltd [2024]165taxmann.com833 Punjab and Haryana High Court,

(3) PCIT vs Anindita Steels Ltd [2022] 137 taxmann.com203 (Calcutta High Court)

(4) CIT vs Goyal Private family Specific Trust [1987]35taxmann.522(Allahabad)

42. Lastly, it is also observed by us that neither the survey team in course of survey , nor the AO in course of assessment proceedings , has brought any adverse material on record , to prove the fact that the assessee had any income other than the business of cosmetics and the assessee has also explained the source of the income so surrendered before the survey team to have arisen out of business of cosmetics itself, and the said explanation has also been accepted by the AO after adequate enquiry and

verification of documents produced before him , and he has arrived at a logical conclusion , which a prudent person , would have arrived under the circumstances.

43. Under the circumstances we are of the opinion that the AO after careful examination of the submissions made by the assessee and after conducting detail enquiry, has taken a *plausible* view that the provisions of section 115BBE of the Act 61, is not applicable in the instant case and the said assessment cannot be set aside merely on the ground of inadequacy of enquiry by the AO with respect to source of surrender of income .

44. On this issue various High courts has laid down the law , that where the AO after applying his mind has made enquiries and has taken a plausible view and passed an assessment order same cannot be disturbed by *invoking the explanation 2 of section 263* merely because the view taken was not acceptable by the Ld. PCIT.

(1) *Gujrat High Court in the case of PCIT vs National Dairy Development Board [2024] 158 taxmann.com514,*

(2) *Calcutta High Court in the case of Britannia Industries Ltd [2023]146taxmann.com246,*

(3) *Bombay High Court in the case of PCIT vs Shivshahi Punarvasan Prkalp Ltd [2023]155taxmann.com408*

(4) *Calcutta High Court in the case of CIT vs M K Foundation [2023]148 taxmann.com314*

(5) *Karnataka High Court in the case of CIT vs Chemsworth Pvt Ltd [2020]119taxmann.com358*

(6) *Gujrat High Court in case of PCIT vs S.N.Trade Link Pvt Ltd [2022]145taxmann.com73*

45. As such, after taking into consideration the entire factual aspect of the matter, and being enlightened by the judicial precedents laid down by various High Courts, on the issue, we find that in the instant case , there is *no perversity or lack of enquiry* on the part of the assessing officer to render the decision erroneous *under explanation 2 to section 263 of the Act 61*, and the order passed by the AO , is neither erroneous nor prejudicial to the interest of revenue , and we hold that the assumption of jurisdiction u/s 263 by the Ld PCIT in the instant case is not legally justified and the consequential order passed u/s 263 of the Act 61, is hereby set aside.

46. In the result, the appeal filed by assessee is allowed.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 09.01.2025

Sd/-
(Vikram Singh Yadav)
Accountant Member

Sd/-
(Udayan Dasgupta)
Judicial Member

GP/Sr.PS

Copy of the order forwarded to:

- (1)The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T

True Copy

By Order