आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER,
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

ITA No.436/Ind/2024
Assessment Year:2014-15

Ritesh Bansal, G-16, Ganesh Complex Khajuri Bazar, Indore	**बनाम/** Vs.	Pr. CIT-1, Indore
(Assessee/Appellant)		(Revenue/Respondent)
PAN: ACIPB4025C		
Assessee by	Shri Kunal Agrawal & Harshit Chowkse, ARs	
Revenue by	Shri Ram Kumar Yadav, CIT-DR	
Date of Hearing	17.12.2024	
Date of Pronouncement	31.01.2025	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by revision-order dated 19.03.2024 passed by learned Pr. Commissioner of Income-Tax, Indore-1 ["PCIT"] u/s 263 of Income-tax Act, 1961 ["the Act"] which in turn arises out of assessment-order dated 22.03.2022 passed by learned NFAC, Delhi ["AO"] u/s 147 r.w.s. 144B of the Act for Assessment-Year ["AY"] 2014-15, the assessee has filed this appeal on the grounds raised in Appeal-Memo (Form No. 36).

2. The background facts leading to present appeal are such that the assessee filed original return of income of relevant AY 2014-15 declaring a total income of Rs. 10,31,630/- which was duly assessed. Subsequently, the AO re-opened assessee's case u/s 147 through notice dated 26.03.2021 u/s 148. In response, the assessee re-filed return on 28.04.2021 repeating the same income. The AO then issued notices u/s 143(2) and 142(1) which were also complied by assessee. Finally, the AO completed re-assessment vide order dated 22.03.2022 u/s 147 accepting assessee's submissions as well as returned income. Subsequently, Ld. PCIT examined the record of re-assessment proceeding and viewed that the order of re-assessment passed by AO is erroneous in so far it is prejudicial to the interest of revenue which attracts revisionary-jurisdiction u/s 263. Accordingly, the PCIT issued show-cause notice dated 29.02.2024 and finally passed revision-order dated 19.03.2024 u/s 263 setting aside the AO's order. Aggrieved by such revision-order, the assessee has come in this appeal before us.

3. Ld. AR for assessee carried us to revision-order and demonstrated that there is one single issue for which the PCIT undertook revision. The PCIT has noted following issue in show-cause notice:

> *"4. On perusal of the case records, it is observed that the search and seizure action u/s 132 was conducted on Jain and Dixit Group including the two residential premises of Shri Manish Bansal and Smt. Manorama Bansal on 12/07/2016. The business premises of Shri Rakesh Bansal and Shri Ritesh Bansal was also covered u/s 133A. During the course of search and survey proceedings, Shri Rakesh Bansal and Shri Ritesh Bansal both stated in their statement that their all the transactions related to shares were maintained by their elder brother Shri Manish Bansal. In his statement, Shri Manish Bansal stated that on behalf of his*

mother Smt. Manorama Devi Bansal and two brother Shri Rakesh Bansal and Shri Ritesh Bansal, he was managing all the share trading. He also accepted that he alongwith his mother and two brother, claimed bogus LTCG of Rs. 7,82,88,917/- for AY 2014-15. Moreover, Shri Manish Bansal admitted that he had payment of 5% of LTCG to bring unaccounted income back to the books. Further, as per the records, the assessee i.e. Shri Ritesh Bansal had shown LTCG of Rs. 2,22,82,125/- and claimed deduction u/s 10(38) thereon. In view of the above, the amount of Rs. 2,22,82,125/- was liable to be added as unexplained cash credits u/s 68. Also, the amount of Rs. 11,14,106/- (5% of Rs. 2,22,82,125/-) in lieu of commission paid, was liable to be added as unexplained expenditure u/s 69C to the total income of the assessee by completing scrutiny assessment proceedings.

5. ***During the course of assessment proceedings, you have neither furnished any details nor explained the issues involved with relevant documentary evidence with regard to issues narrated above. It appears that submission and details available on records was not enough to verify the reasons for reopening of case u/s 147. The Assessing Officer has not at all verified these issues and relevant facts involved therein while completing the assessment without any application of mind, without conducting proper inquiries and due verification.*** *As such, the assessment is erroneous in the sense that it is prejudicial to the interest of revenue. You are therefore, required to show cause why provisions of section 263 be not invoked in your case for the reasons mentioned above as the order of NFAC dated 22/03/2022 for A.Y 2014-15, is erroneous in so far as it is prejudicial to the interest of revenue."*

[Emphasis supplied]

4. Thus, the PCIT alleged in show-cause notice that during the course of assessment, the assessee has neither furnished any details nor explained the issue of bogus capital gain u/s 10(38) for which the assessee's case was re-opened u/s 147 and that the AO has not at all verified the issue and relevant facts involved. The assessee filed reply to show-cause notice which is re-produced by PCIT in Para No. 4 of revision-order. However, the PCIT rejected reply of assessee vide Para No. 5-7 of revision order. Ld. PCIT then referred certain case-laws. He further observed in Para No. 8 of revision-order that the case of assessee is hit by clause (a) of Explanation to section

263 reproduced below and hence the assessment-order is deemed to be erroneous-cum-prejudicial to the interest of revenue:

> *"Explanation 2 – "For the purpose of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue, if in the opinion of the Principal Commissioner or Commissioner -*
>
> *(a) the order is passed without making inquiries or verification which should have been made;*
>
> *(b) the order is passed allowing any relief without inquiring into the claim;*
>
> *(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*
>
> *(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."*

5. Having explained the basis of revision done by PCIT, Ld. AR strongly contended that the Ld. PCIT is very much wrong in undertaking revisionary action against assessee. He submitted that the PCIT is grossly wrong in observing that during the course of assessment, the assessee has neither furnished any details nor explained the issue involved with relevant documentary evidences and that the AO has not at all verified the issue and relevant facts involved therein while completing assessment. Ld. AR submitted that the documents available in assessment-record itself shows that the AO has made contemporary enquiries qua the issue. To show how the AO made enquiries, Ld. AR firstly drew us to the reasons for which case was re-opened u/s 147 as supplied by AO to assessee in the **Annexure to**

notice dated 15.12.2021 reading as under:

"*ANNEXURE*

Reasons for reopening u/s 147 of the IT Act, 1961

1. The assessee had filed original Return of Income u/s 139(1) on 26/07/2014 electronically declaring total income at Rs. 10,31,630/- and the same has been processed u/s 143(1) by CPC, Bangaluru. The assessee is having income from Salary, business and income from other source.

2. Search u/s 132 was conducted on Jain & Dixit group on 12/07/2016. Two residential premises of Shri Manish Bansal, Manorama Bansal, were covered and business premises at G-16, Ganesh Comples, Khajuri Bazar, Indore of Shri Rakesh Bansal, Ritesh Bansal was covered u/s 133A. During the course of survey statements of Shri Rakesh Bansal and Shri Ritesh Bansal were recorded. Questions related to investment in shares were asked from both the assessee and their statement they confirmed that all the transactions related to Shares are maintained by their elder brother Shri Manish Bansal. Shri Ritesh Bansal & Shri Rakesh Bansal had claimed Long Term Capital Gain arising out of sale of shares of Penny Stocks (Kappac Pharma Ltd.). Statement of Shri Rakesh Bansal brother of Shri Manish Bansal, also revealed that all the trading had been done by Shri Manish Bansal. Shri Manish Bansal, himself accepted in his statement that he on behalf of his mother Smt Manorma Devi Bansal, brothers Shri Ritesh Bansal and Shri Rakesh Bansal, was managing share trading and also accepted that he along with his mother and two brothers claimed bogus LTCG of Rs.7,82,88,917/- for A.Y. 2014-15 and also accepted the percentage expenses of such arrangement charged as commission by the intermediaries around 5%, Moreover, Shri Manish Bansal has accepted that he had made payment of 5% of LTCG to bring this unaccounted income back to the books.

3. Thus, it is clear from the above that Shri Ritesh Bansal claimed bogus LTCG of Rs.2,22,82,125/- and also made commission expenses @5% i.e. Rs. 11,14,105/- Hence total of Rs.2,33,96,230/- is undisclosed income of the assessee

4. Shri Ritesh Bansal has claimed exempt income of Rs.2,22,82,125/- u/s 10(38) of Income Tax Act on sale of shares of Kappac Pharma which is evident as per schedule 'EI' of the ITR filed by him. It is a well establish fact that Kappac Pharma is a penny stock and purchase/sale in penny stock is only a way to route unaccounted income in books without paying any tax.

5. Thus, Rs.2,33,96,230/- is unaccounted income of the assessee which was not offered for taxation and thus the same has escaped form assessment for the F.Y. 2013-14 relevant to A.Y. 2014-15.

6. Brother of assessee Shri Manish Bansal accepted in his statement that all four family member including Shri Ritesh Bansal had claimed bogus LTCG and

had offered their additional income for taxation.

7. In this case, a return of income was filed for the year under consideration but no scrutiny assessment u/s 143(3) of the Act was made. Accordingly, in this case, the only requirement to initiate proceeding u/s 147 is reason to believe which has been recorded above.

It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated u/s 2(40) of the Act was made and the return of income was only processed u/s 143(1) of the Act. In view of the above, provisions of clause (b) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.

In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue the notice u/s 148 is being sought from the Pr. Commissioner of Income Tax as per the provision of section 151 of the Act."

6. Then, Ld. AR drew our attention to various notices issued by AO u/s 142(1) and replies filed by assessee in Paper-Book as under:

(a) The AO issued notice u/s 142(1) dated 21.01.2022 with following Annexure to assessee:

"ANNEXURE

In connection with your assessment proceedings for the Assessment Year 2014-15 before the undersigned, notice u/s 148 was issued on 26/03/2021 requiring you to file a return in the prescribed form for the said Assessment Year within 30 days of receipt of notice. In response to notice issued u/s 148, you had filed return on 28/04/2021. Subsequently, notice u/s 143(2) had been issued on 15/12/2021 along with the reasons recorded. As per records of this office, no compliance/objection has been furnished till date. It is assumed you do not have to say anything against the reopening. Accordingly you are requested to explain following issue of reopening.

Search u/s 132 was conducted on Jain & Dixit group on 12/07/2016. Two residential premises of Shri Manish Bansal, Manorama Bansal, were covered and business premises at G-16, Ganesh Comples, Khajuri Bazar, Indore of Shri Rakesh Bansal, Ritesh Bansal was covered u/s 133A.

1. During the course of survey statements of Shri Rakesh Bansal

and Shri Ritesh Bansal were recorded. Questions related to investment in shares were asked from both the assessee and their statement they confirmed that all the transactions related to Shares are maintained by their elder brother Shri Manish Bansal. Shri Ritesh Bansal & Shri Rakesh Bansal had claimed Long Term Capital Gain arising out of sale of shares of Penny Stocks (Kappac Pharma Ltd.). Statement of Shri Rakesh Bansal brother of Shri Manish Bansal, also revealed that all the trading had been done by Shri Manish Bansal. Shri Manish Bansal, himself accepted in his statement that he on behalf of his mother Smt Manorma Devi Bansal, brothers Shri Ritesh Bansal and Shri Rakesh Bansal, was managing share trading and also accepted that he along with his mother and two brothers claimed bogus LTCG of Rs.7,82,88,917/- for AY 2014-15 and also accepted the percentage expenses of such arrangement charged as commission by the intermediaries around 5%. Moreover, Shri Manish Bansal has accepted that he had made payment of 5% of LTCG to bring this unaccounted income back to the books.

2. You had claimed exempt income of Rs.2,22,82,125/- u/s 10(38) of Income Tax Act on sale of shares of Kappac Pharma which is evident as per schedule 'EI' of the ITR filed. It is a well establish fact that Kappac Pharma is a penny stock and purchase/sale in penny stock is only a way to route unaccounted income in books without paying any tax.

3. Thus, it is clear from the above that you had claimed bogus LTCG of Rs. 2,22,82,125/- and also made commission expenses @5% i.e. Rs. 11,14,105/-. Hence total of Rs.2,33,96,230/- is your undisclosed income.

You are requested to explain the transactions and corresponding income there upon by 11:00 am on 27/01/2022. In absence of compliance by the given date and time, you are show caused to explain why amount of Rs.2,33,96,230/- be not treated as unexplained credit u/s 68 and why the same should not be added to your income for the AY 2014-15.

Please note that assessment proceeding in your case is scheduled to be completed immediately upon receipt of all relevant information as this is a time-barring matter, and hence no adjournment will be given in ordinary course. Non-compliance or incomplete compliance shall attract penalty proceedings as per provision of the Income Tax Act, 1961, and/or adverse inference in respect of the said issue and/in case, any difficulty/issue, please let this office know so that same may be addressed in natural justice."

(b) The AO again issued notice dated 01.03.2022 u/s 142(1) with following Annexure to assessee:

"ANNEXURE

In connection with your assessment proceedings for the A.Y. 2014-15, You are requested to explain following issue of reopening:

Search u/s 132 was conducted on Jain & Dixit group on 12/07/2016. Two residential premises of Shri Manish Bansal, Manorama Bansal, were covered and business premises at G-16, Ganesh Comples, Khajuri bazaar, indore of Shri Rakesh Bansal, Ritesh Bansal was covered u/s 133A

1. During the course of survey statements of Shri Rakesh Bansal and Shri Ritesh Bansal were recorded. Questions related to investment in shares were asked from both the assessee and their statement they confirmed that all the transactions related to Shares are maintained by their elder brother Shri Manish Bansal. Shri Ritesh Bansal & Shri Rakesh Bansal had claimed long Term Capital Gain arising out of sale of shares of Penny Stocks (Kappac Pharma Ltd.). Statement of Shri Rakesh Bansal brother of Shri Manish Bansal. Shri Manish Bansal, himself accepted in his statement that he on behalf of his mother Smt Marorma Devi Bansal, brothers Shri Ritesh Bansal and Shri Rakesh Bansal, was managing share trading and also accepted that he along with his mother and two brothers claimed bogus LTCG of Rs. 7,82,88,917/- for AY 2014-15 and also accepted the percentage expenses of such arrangement charged as commission by the intermediaries around 5% of LTCG to bring this unaccounted income back to the books.

2. You had claimed exempt income of Rs. 2,22,80,125/- u/s 10(38) of Income Tax Act on sale of Shares of Kappac Pharma which is evident as per schedule "EI" of the ITR filed. It is a well establish fact that Kappac Pharma is a penny stock and purchase/sale in penny stock is only a way to route unaccounted income in books without paying any tax.

3. Thus, it is clear from the above that you had claimed bogus LTCG OF Rs. 2,22,82,125/- and also made commission expenses @5% ie. Rs. 11,14,105/-. Hence total of Rs. 2,33,96,230/- is your undisclosed income.

You are requested to explain the above transactions.

1. Please furnish the total amount of transactions, category wise i.e. in equity shares, intra day etc. made through the said demat account during the relevant year.

2. Statement of Demat accounts for the period F.Y. 2013-14.

3. Details of Bank Accounts linked with the your demat account.

4. Complete details of the brocker/sub-brockers linked with the your demat account.

5. Details of all bank accounts during the relevant F.Y. 2013-14 and Bank statements which is maintained by you.

6. Copy of Income Computation, Audit Report, Trading and profit and loss Account, Balance sheet for the relevant year.

7. Details of Deduction claimed under Section 57 with documentary evidences.

8. Details of Income earned by you from Interest with documentary evidences.

9. Month wise Salary sleep with complete employer details which was received by you during the relevant F.Y.

10. Details of Deduction claimed Under Chapter VI-A with documentary evidence."

(c) The assessee filed a detailed reply dated 07.03.2022 to AO giving full explanation, the relevant portion of assessee's reply is re-produced below:

"07th March 2022

To,

Additional/ACIT/DCIT/ITO

National Faceless Assessment Centre

Delhi

OBJECTION

Reg: Your notice u/s 142(1) of the Income Tax Act in case of Shri Ritesh Bansal (PAN: ACIPB4025C) for the assessment year 2014-15.

Sir/Madam,

XXX

We here is provide the explanation/attachments as required by you in notice u/s 142(1) of the Act.

The brief facts of the case are as under:-

That during the Financial year 2012-13 the assessee has purchased 32,000 shares of a listed company M/s Kappac Pharma Ltd. @.90 per shares from a

registered company M/s Parixit Gas Company Limited who is the original share holder of the company.

Said company is duly registered with the Registrar of Companies, Gujrat and having Registered address at 304, Saffron Building, Panchwati, Ambawadi Road, Ahmedabad 38006.

The Said company is duly issued the debit note for such shares transaction vide debit note no. 42 dated 18/09/2012 which is duly seal and signed by the director/authorised person of the said company.

Since the said company is not able to sold its holding in the market at the market rate quoted on the exchange, the director of the company has found some persons who has purchased the same so that company has to get some small money on this account otherwise the company loose the cost of the share.

The assessee has purchased the said shares on such nominal cost and hold such shares on the basis that in such type of companies after some time the assessee has get the good price of such shares. Some times due to merger/acquisitions of the company the small share holder are bale to get benefited in huge amount and the same is prove in the past in so many companies and small investors are get handsome gain on such scripts. The assessee has purchased such shares as small investor.

As in share transactions which is off line transactions the seller is required to signed a share transfer deed in favor of the purchaser in the requisite format and such form is issued by the registrar of companies. In this transaction the required deed is issued by registrar of companies, Mumbai dated 16/08/2012. (Copy of transfer deed is enclosed herewith)

As required the assessee has paid the required stamp duly applicable to get transferred such shares in his owned name. The assessee has paid a sum of Rs. 80/- as stamp duty which is affixed on the transfer deed. The said amount is duly account for in the books of account maintained by the assessee and the assessee has enhanced the cost of the shares by this amount. The same is verifiable from the ledger account of the shares held as investment. (Copy of ledger account is enclosed herewith)

After getting the transfer deed and affixing the stamp duty on such deed the assessee has longed the same for transfer to his owned name to the authorised company called as registrar of the transfer. The said deed is duly seal and signed by the seller and on the other end the signature of the purchaser is also on such deed.

After getting the share transfer deed duly filed and stamped and signed by both the parties registrar of the transfer agency is found the same in order then transferred in the name of the assessee. In this case the same is completed on 09/10/12, and the contention of the assessee has been verifiable from the copy of the share certificate enclosed herewith in which on the back of the original shares the date of transfer and the name of the

transferees is appear. Therefore the assessee has the absolute owner of the shares.

Please note that after purchasing of the said shares the assessee has got the said shares in his demat account otherwise the assessee is not able to sold such shares, the is verifiable from the statement of holding under CDSL with Indira Securities Private Limited, a company is share broker and registered with SEBI for NSE, BSE, CDSL and USE.

After close watch of the trend of the share price the assessee has sold the same in three phase i.e. on 24/01/2014, 27/01/2014, 31/01/2014, 14/02/2014, 03/03/2014, 11/03/2014, 13/03/2014, 14/03/2014, 18/03/2014, 19/03/2014, 20/03/2014 and on 21/03/2014. The assessee has sold such shares online through the terminal of the Indira Securities Pvt Ltd. on which the assessee has not aware that who is the buyer. The assessee has paid the STT, Stamp charges, brokerage, service tax and other charges as charged by the SEBI/Broker on such transactions.

The assessee has received the entire sale proceed from such shares through the banking channel only and the same is verifiable from the bank account submitted in your office.

Sir, the assessee has earned the gain on such shares and as per the Income Tax Act Section 10(38) the entire gain earned on any shares which are listed are exempt if following conditions are fulfill by the assessee.

- *Shares should be listed in any stock exchange*
- *On sale of shares the required STT has been paid*
- *The holding period is more than one year.*
- *Shares should be sold through the terminal i.e. online transaction.*
- *Payment should be through account payee cheques/Draft*

As per Income Tax Act section 10(38) says that:

This section talks about the long-term capital gains obtained after the sale/transfer of securities that are not chargeable to tax under the Income Tax Act. A capital investment, such as equity shares, that has been invested for more than 12 months is called Long-Term capital investment. Long-term capital gain/loss is the profit/loss occurred at the time or selling or transferring of the securities. The difference amount of the selling value and the purchasing value is either a gain or a loss.

Conditions to be Satisfied for Tax Exemption

As per the Income Tax rules, tax can be exempted provided the assets are invested in:

a. Equity shares of a company,

b. Units of equity oriented mutual funds (Equity oriented mutual funds are the funds invested in equity shares of companies under recognised stock exchange holding more than 65% of total funds.)

c. Units of business trust.

•The transfer of equity shares or units of equity oriented from mutual funds or units of a business trust should be liable to Securities Transaction Tax (STT).

•These shares should fall under Long-term capital assets.

•The transfer of shares should have happened on or after 1st October 2004.

•The equity shares purchased or sold should be of existing listed under a recognised stock exchange.

Please note that the assessee has fulfill the all four limbs of the section 10(38) of the act to claim exemption i.e.

•The script is Equity Shares

•The transfer of equity shares is subject to liable to Securities Transaction Tax (STT)

•These shares are fall under the Long term Capital assets as define.

•The transfer of shares should have happened on or after 1st October 2004

•The equity shares purchased or sold should be of existing listed under a recognised stock exchange.

The assessee is just an investor and as the assessee received some tips and the assessee chose to invest based on these market tips and had taken a calculated risk and had gained in the process and that the assessee is not party to the scam etc., When a person claims that he has done these transactions in a bona fide and genuine manner and was benefitted, one cannot reject this submission based on surmises and conjectures.

A. Bogus Capital Gains from Penny Stocks:

If the transaction is supported by documents like contract notes, demat statements etc and is routed through the stock exchange and if the payments are by account- payee cheques after STT and other charges charged by SEBI/Broker and there is no evidence that the cash has gone back to the assessee's account, it has to be treated as a genuine transaction and cannot be assessed as unexplained credit.

That the assessee had sold shares through Indira Securities Pvt limited which is a SEBI registered Stock Broker. The payment for sale of shares was received through banking channels. All the documentary evidence being in favor of assessee. Therefore the sale transaction are also prove by the assessee.

Since the assessee has proved the purchases and sales and both are genuine hence the capital gain is also through this transaction are genuine and eligible for get exemption u/s 10(38).

The assessee is relied on the following decision:

1. PCIT vs. Smt. Krishna Devi (Delhi High Court)

2. Anchal Gupta vs. ITO (ITAT Lucknow)

3. Dipesh Ramesh Vardhan vs. DCIT (ITAT Mumbai)

4. Suresh Kumar Agrawal vs. ACIT (ITAT Delhi)

5. Neha Choudhary vs ITO (ITAT Kolkatta)

6. Vijayrattan Balkrishan Mital Vs DCIT (ITAT Mumbai)

7. Darshan Kumar Pahwa, Indore vs Dcit Circle5(1), Indore (ITAT Indore)

8. Pratap Bajaj vs ITO (ITAT Indore).”

(d) Alongwith above reply dated 07.03.2022, the assessee filed following contemporary documents to AO, copies of which are also filed in Paper-Book:

	Documents	Paper-Book Pages
(i)	Ledger A/c of Long-Term Capital Gain extracted from books of account of assessee	31
(ii)	Contracts Notes of shares sold through Indira Securities Pvt. Ltd., member of Bombay Stock Exchange containing complete details like	32-43

	Assessee's name, Assessee's PAN, Date, Settlement No., Order No., Order time, Trade No., Trade time, Security "Kappac", Quantity, Rate, Brokerage, Service-tax charged, Securities Transaction Tax charged, etc.	
(iii)	Share Transfer form under Companies Act by which the shares were transferred to assessee after purchase	44
(iv)	Debit Note No. 42 dated 18.09.2012 issued by M/s Parixit Gas Company Ltd. from whom the assessee purchased shares	45
(v)	Receipt No. 42 dated 09.11.2012 issued by M/s Parixit Gas Company Ltd. acknowledging the payment made by assessee	46
(vi)	Ledger Confirmation from of M/s Parixit Gas Company Ltd.	47
(vii)	Relevant Share Certificates of Kappac Pharma Limited	48-55
(viii)	Demat A/c in which the purchased shares were credited and subsequently debit at the time of sale	58-59
(ix)	Bank A/cs of assessee in which the proceeds of sale of shares was received	60-70

7. Ld. AR next carried us to the assessment-order passed by AO to demonstrate that the AO has categorically noted in very clear terms that the assessee submitted/furnished relevant documents, which were checked and verified and after considering the submissions/documents filed by the assessee, assessment is completed on returned income i.e. Rs. 10,31,630/-. The order passed by AO is re-produced below for an immediate reference:

> *"In response to the notice u/s 148, assessee filed return on 28.04.2021. Subsequently, notice u/s 143(2) issued to the assessee. In response to the notices u/s 142(1), the assessee furnished reply of the questionnaire, through e-compliance vide e-response dated 13/02/2022, 07/03/2022 & 16/03/2022 and submitted/furnished relevant documents, which were checked and verified. After considering the submissions/documents filed by the assessee, Assessment is completed on returned income i.e. Rs. 10,31,630/-."*

8. Thus, Ld. AR contended, the AO has made contemporary enquiries from assessee qua the issue raised by PCIT; in response the assessee has filed a detailed explanation supported by ample documents and after considering assessee's submissions and documents, the AO accepted returned income of assessee and finalised assessment. Thus, Ld. AR very strongly contended, the PCIT's observation that AO did not make any enquiry and the assessee did not furnish information/explanation is patently wrong.

9. Without prejudice, Ld. AR next submitted that the impugned capital gain u/s 10(38) declared by assessee was from shares of "M/s Kappac Pharma". The Ld. PCIT has stated, in Para 6.5 of revision-order, that M/s Kappac Pharma Ltd. is a penny stock and identity and credentials of the entity are suspicious in nature. Thus, the PCIT has invoked revisionary

exercise on mere suspicion whereas the ***Hon'ble Jurisdictional High Court of Madhya Pradesh in a very recent order dated 16.05.2024 in The Chief Commissioner of Income-tax Vs. Shri Jayesh Kumar Javia HUF*** has accepted "Kappac Pharma" as genuine and dismissed revenue's appeal, the order of Hon'ble High Court is re-produced below in entirety:

> *"This appeal is filed by the appellant under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act of 1961') being aggrieved by the order dated 25.05.2021 passed by the Income Tax Appellate Tribunal (ITAT), Bench Indore in ITA No.465/Ind/2019 for the Assessment Year - 2014 - 15 proposing following substantial question of law in this appeal:-*
>
> > *Whether on the facts and in the circumstances of the case and in law the ITAT was justified in deleting the addition of Rs.14,09,939/- made by AO, which was confirmed by CIT(A), ignoring the findings of Investigation Wing, Kolkata that Kappac Pharma Ltd was clearly established as a bogus penny stock script company which was used for claiming bogus Long Term Capital Gain as exempt Under Section 10(38) of the Income Tax Act, 1961?*
>
> *02. This issue came up for consideration in bunch of appeals, main case is ITA No.56 of 2021 and this Court has dismissed the appeals filed by the revenue vide common order dated 30.04.2024.*
>
> *03. In view of the aforesaid, the present appeal is dismissed and the order dated 30.04.2024 passed in ITA No.56 of 2021 shall be applicable mutatis mutandis in the facts and circumstances of the present case also."*

10. Lastly, Ld. AR placed a strong reliance upon a ***recent order dated 09.05.2024 of Kolkata Bench of ITAT in Ramotar Choudhary HUF Vs. PCIT-5, Kolkata*** holding that revision u/s 263 cannot be done in such cases. The relevant portion of order is re-produced below:

"3. We have heard the rival contentions and gone through the record. At the outset, the ld. Counsel for the assessee has invited our attention to the reasons recorded u/s 148 of the Act for reopening of the assessment, wherein, the reasons for the reopening of the assessment have been mentioned that "...as per the information furnished in the report, the assessee had transacted in shares of 'BLUE PRINT SECURITIES LIMITED' during F.Y 2012-13 and is one of the said beneficiaries. The information furnished by the Directorate of investigation is showing transaction in shares of 'BLUE PRINT SECURITIES LIMITED' at a trade value of Rs.12,30,000/- by the assessee and the said information is also suggesting accommodation entry in the guise of bogus LTCG by the assessee on such transactions..." The ld. Counsel in this respect has submitted that the reopening of the assessment was made only on the reason that the Assessing Officer had received information from the investigation wing that the assessee was beneficiary of a transaction from Blue Print Securities Limited. That the Assessing Officer in the reopened assessment proceedings thoroughly examined this issue. The assessee during the assessment proceedings submitted all the necessary documents to prove the genuineness of the transaction which are also reflected in the submissions made by the assessee before the ld. Pr. CIT as reproduced above. The ld. Counsel has also relied upon the paper-book to submit that the assessee company filed reply dated 28.12.2021 with enclosure of copy of ITR acknowledgement dated 05.12.2021 for A.Y 2013-14, copy of computation of income for A.Y 2013-14, copy of profit and loss a/c for F.Y 2012-13 before the Assessing Officer in response to the notice issued by him u/s 142(1) of the Act in the course of reassessment proceedings. Apart from that, the assessee also furnished details and evidences before the NFAC relating to the claim of exemption of long term capital gain u/s 10(38) on account of sale of shares of M/s Blueprint Securities Limited as under:

1. Purchase Bill and contract note for purchase of Shares of Blueprint Securities Ltd.

2. Copy of physical share certificiates being the name of the assessee

3. Copy of demat acknowledgement of the Eureka Stock and Share Broking Borker through whom assessee sold the shares in the F.Y 2012-13 relevant to A.Y 2013-14.

4. Copy of contract notes, account payee cheque and account confirmation of broker through whom the assessee sold the shares in the assessment year under consideration.

5. Bank statement showing receipt of the sale consideration of shares from the broker by account payee cheque.

6. Demat statement showing delivery of shares on event of sale.

The Assessing Officer/NFAC after examining all the details and evidences furnished by the assessee accepted the transaction as genuine and the claim of the exemption u/s 10(38) of the Act was accepted by the Assessing Officer and no addition was made u/s 68.

4. A perusal of the impugned order of the ld. Pr. CIT u/s 263 of the Act would reveal that the ld. Pr. CIT in the impugned order has not discussed about a single document or explanation furnished by the assessee during the reassessment proceedings u/s 147 of the Act. The ld. Pr. CIT has set aside the reassessment order passed u/s 147 of the Act solely on the ground that the information was received from Investigation Wing that the assessee has received an accommodation entry from Blue Print Securities Ltd. It is pertinent to mention here that the reopening of the assessment was also done on the basis of same information. However, after examining and scrutinizing the details and evidences furnished by the assessee to prove the genuineness of the transaction, the Assessing Officer accepted the said transaction and did not make any addition in this respect. Under the above facts and circumstances, the legal question raised by the ld. counsel is as to whether ld. Pr. CIT was justified in setting aside the assessment order citing the same reason for which the assessment was reopened, even without examination and pointing out any defect, error or infirmity in the evidences furnished by the assessee before the Assessing Officer and without making any further enquiries in this respect. At this stage, it will be relevant to reproduce the relevant provisions of section 263 of the Act as under:

> *"Section 263(1) of the Income- Tax Act reads as under:*
>
> *(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing] Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he, may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment. ……"*

9.2. The sum and substance of the above reproduced section 263(1) can be summarized in the following points:

1) The Commissioner may call for and examine the record of any proceeding under the Act;

2) If he considers that the order passed by the AO is erroneous; and (ii) is prejudicial to the interest of Revenue;

3) He has to give an opportunity of hearing in this respect to the assessee; and

4) He has to make or cause to make such enquiry as he deems necessary;

5) He may pass such order thereon as the circumstances of the case justify including, (i) an order enhancing or, (ii) modifying the assessment or (iii) cancelling the assessment and directing a fresh assessment."

5. As per the provisions of section 263, as enumerated above, after getting the explanation from the assessee, the Ld. Pr. CIT was supposed to examine the

contention of the assessee. Before passing an order of modifying, enhancing or cancelling the assessment, he was supposed either to himself make or cause to make such an enquiry as he deems necessary. The words "as he deems necessary", in our view, do not mean that the Ld. Pr. CIT is left with a choice either to make or not to make an enquiry. As per the relevant provisions of section 263, it was incumbent upon the Ld. Pr. CIT to make or cause to make such an enquiry. So far as the words "as he deems necessary" are concerned, the said words suggest that the enquiries which are necessary to form a view as to whether the order of the Assessing Officer is erroneous and prejudicial to the interest of Revenue? Once a point wise reply was given by the assessee, then a duty was cast upon the Ld. Pr. CIT to examine the reply of the assessee and form a prima-facie opinion as to whether the order of the Assessing Officer was erroneous so far as it was prejudicial to the interest of Revenue. We further note that the Ld. Pr. CIT did not raise any query as to what enquiries were made by the Assessing Officer before proceeding to pass the assessment order in question. The opinion of the Commissioner that the Assessing Officer had not made proper enquiries or verifications should be based on his objective satisfaction and not a subjective satisfaction from the assessment order. The reopening in this case was held on the basis of some information received from Investigation Wing, whereby, the Assessing Officer asked the assessee to furnish the necessary details from time to time which were duly furnished by the assessee and after considering the same the Assessing Officer passed the assessment order. However, a perusal of the revision order passed by the ld. Pr. CIT shows that the ld. Pr. CIT has not pointed out any error or discrepancy in the explanations and details furnished by the assessee and without examining such evidence and without counter questioning the assessee on the relevant points and even without considering the submission of the assessee furnished in reply to the show-cause notice, the ld. Pr. CIT, in our view, was not justified in setting aside the order, simply stating that in his view more enquiries were needed to be carried out by the Assessing Officer.

5.1 The ld. Pr. CIT, taking shelter in Explanation 2 to Section 263(1) of the Act, held that the order of the Assessing Officer was erroneous and prejudicial to the interest of the revenue on the ground of lack of enquiry, which, in our view, is a general observation and no specific observation has been made in respect of any of the details or evidence furnished by the assessee and as to why the ld. Pr. CIT was not satisfied about such details/replies furnished by the assessee. Simply because the ld. Pr. CIT felt that the Assessing Officer should have made further enquiries on the same issue or that the case was to be examined from some another angle, the same, in our view, cannot be a valid ground to set aside the assessment order. If such an action is allowed by the ld. Pr. CIT in his revision jurisdiction then, there would be no end to litigation and there would not be any finality to the assessment. The Explanation 2 to Section 263(1) of the Act does not give unbridled powers to the ld. Pr. CIT to simply set aside the assessment order by saying that the Assessing Officer was required to make further enquiries without pointing out as to what was lacking in the enquiries made by the Assessing Officer and why the ld. Pr. CIT was not satisfied with the reply and evidence furnished by the assessee.

6. Further, the Coordinate Kolkata Bench of the Tribunal in the case of 'M/s Rani Sati Agro Tech Pvt. Ltd. vs. ITO' in ITA No.85/Kol/2022 order dated

19.06.2023 while analysing the provisions of section 263 of the Act has considered various case laws, the relevant part of the order of the Coordinate Bench of the Tribunal is reproduced as under:

> *"10.1. On a bare perusal of the sub section-1 would reveal that powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned Commissioner was not required the assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show cause notice pointing out the reasons for the formation of his belief that action u/s 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the 4th compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order. He may set aside the order and direct the Assessing Officer to pass a fresh order. At this stage, before considering the multi-fold contentions of the ld. Representatives, we deem it pertinent to take note of the fundamental tests propounded in various judgments relevant for judging the action of the ld. Pr. CIT taken u/s 263.*
>
> *11. Hon'ble Supreme Court in the case of* ***Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC)*** *has laid down following ratio with regard to provisions of section 263 of the Act:*
>
> > ***"There can be no doubt that the 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 that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an ITO adopted one of the courses permissible in law and it has***

> ***resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the revenue - Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 (SC) and in Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC)". [Emphasis Supplied]***

11.1. Hon'ble Apex Court in the case of CIT vs. Max India Limited as reported in 295 ITR 0282 has held that:

> *"2. At this stage we may clarify that under para 10 of the judgment in the case of Malabar Industrial Co. Ltd. (supra) this Court has taken the view that the phrase "prejudicial to the interest of the Revenue" under s. 263 has to be read in conjunction with the expression "erroneous" order passed by the AO. Every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interest of the Revenue. For example, when the ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO 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 ITO is unsustainable in law."*

11.2. Hon'ble Madhya Pradesh High court in the case of CIT vs. Associated Food Products (P) Ltd as reported in 280 ITR 0377 has held that:

> *"10. In view of the aforesaid pronouncement of law and taking into consideration the language employed under s. 263 of the Act, it is clear as crystal that before exercise of powers two requisites are imperative to be present. In the absence of such foundation exercise of a suomoto power is impermissible. It should not be presumed that initiation of power under suomoto revision is merely an administrative act. It is an act of a quasijudicial authority and based on formation of an opinion with regard to existence of adequate material to satisfy that the decision taken by the AO is erroneous as well as prejudicial to the interests of the Revenue. The concept of "prejudicial to the interests of the Revenue" has to be correctly and soundly understood. It precisely means an order which has not been passed in consonance with the principles of law which has in ultimate eventuate affected realization of lawful revenue either by the State has not been realized or it has gone beyond realization. These two basic*

> *ingredients have to be satisfied as sine qua non for exercise of such power. On a perusal of the material brought on record and the order passed by the CIT it is perceptible that the said authority has not kept in view the requirement of s. 263 of the Act inasmuch as the order does not reflect any kind of satisfaction. As is manifest the said authority has been governed by a singular factor that the order of the AO is wrong. That may be so but that is not enough. What was the sequitur or consequence of such order qua prejudicial to the interest of the Revenue should have been focused upon. That having not been done, in our considered opinion, exercise of jurisdiction under s. 263 of the Act is totally erroneous and cannot withstand scrutiny. Hence, the Tribunal has correctly unsettled and dislodged the order of the CIT. [Emphasis supplied]"*

12. In the light of the provisions of section 263 of the Act and a settled position of law, powers u/s 263 of the Act can be exercised by the Pr. Commissioner/Commissioner on satisfaction of twin conditions, i.e., the assessment order should be erroneous and also prejudicial to the interest of the Revenue. By 'erroneous' is meant contrary to law. Thus, this power cannot be exercised unless the Commissioner is able to establish that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Thus, where there are two possible views and the Assessing Officer has taken one of the possible views, no action to exercise powers of revision can arise, nor can revisional power be exercised for directing a fuller enquiry to find out if the view taken is erroneous. This power of revision can be exercised only where no enquiry, as required under the law, is done. It is not open to enquire in case of inadequate inquiry. Our view is fortified by the judgment of Hon'ble High Court of Bombay in the case of CIT vs. Nirav Modi, [2016] 71 taxmann.com 272 (Bombay)

12.1. This view is further supported by the decision of the Hon'ble Gujarat High Court in the case of Shri Prakash Bhagchand Khatri in Tax Appeal No. 177 with Tax Appeal No.178 of 2016, wherein the Hon'ble Gujarat High Court was seized with the following substantial question of law:

> *"Whether the Tribunal is right in law and on facts in upholding the order passed by the CIT under section 263 of the Act on merits and still storing the issue of allowability of deduction under section 54 of the Act to the file of Assessing Officer even though the working of allowability of deduction under section 54F is available in the order under section 263 which is not disputed by the assessee before ITAT."*

13. We find that the Hon'ble Delhi High Court in the case of CIT vs. Anil Kumar reported in 335 ITR 83 has held that where it was discernible from record that the A.O has applied his mind to the issue in question, the ld. CIT cannot invoke section 263 of the Act merely because he has different opinion. Relevant observation of the High Court reads as under:

> *"63. We find the Hon'ble Delhi High Court in the case of Vikas Polymer reported in 341 ITR 537 has held as under: "We are thus of the opinion*

that the provisions of s. 263 of the Act, when read as a composite whole make it incumbent upon the CIT before exercising revisional powers to: (i) call for and examine the record, and (ii) give the assessee an opportunity of being heard and thereafter to make or cause to be made such enquiry as he deems necessary. It is only on fulfilment of these twin conditions that the CIT may pass an order exercising his power of revision. Minutely examined, the provisions of the section envisage that the CIT may call for the records and if he prima facie considers that any order passed therein by the AO is erroneous insofar as it is prejudicial to the interest of the Revenue, he may after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify. The twin requirements of the section are manifestly for a purpose. Merely because the CIT considers on examination of the record that the order has been erroneously passed so as to prejudice the interest of the Revenue will not suffice. The assessee must be called, his explanation sought for and examined by the CIT and thereafter if the CIT still feels that the order is erroneous and prejudicial to the interest of the Revenue, the CIT may pass revisional orders. If, on the other hand, the CIT is satisfied, after hearing the assessee, that the orders are not erroneous and prejudicial to the interest of the Revenue, he may choose not to exercise his power of revision. This is for the reason that if a query is raised during the course of scrutiny by the AO, which was answered to the satisfaction of the AO, but neither the query nor the answer were reflected in the assessment order, this would not by itself lead to the conclusion that the order of the AO called for interference and revision. In the instant case, for example, the CIT has observed in the order passed by him that the assessee has not filed certain documents on the record at the time of assessment. Assuming it to be so, in our opinion, this does not justify the conclusion arrived at by the CIT that the AO had shirked his responsibility of examining and investigating the case. More so, in view of the fact that the assessee explained that the capital investment made by the partners, which had been called into question by the CIT was duly reflected in the respective assessments of the partners who were I.T. assessees and the unsecured loan taken from M/s Stutee Chit & Finance (P) Ltd. was duly reflected in the assessment order of the said chit fund which was also an assessee." 64. Since in the instant case the A.O. after considering the various submissions made by the assessee from time to time and has taken a possible view, therefore, merely because the DIT does not agree with the opinion of the A.O., he cannot invoke the provisions of section 263 to substitute his own opinion. It has further been held in several decisions that when the A.O. has made enquiry to his satisfaction and it is not a case of no enquiry and the DIT/CIT wants that the case could have been investigated/ probed in a particular manner, he cannot assume jurisdiction u/s 263 of the Act. In view of the above discussion, we hold that the assumption of jurisdiction by the DIT u/s 263 of the Act is not in accordance with law. We, therefore, quash the same and grounds raised by the assessee are allowed."

13.1. The ITAT in the case of Mrs. Khatiza S. Oomerbhoy vs. ITO, Mumbai, 101 TTJ 1095, analyzed in detail various authoritative pronouncements including the decision of Hon'ble Supreme Court in the case of Malabar Industries 243 ITR 83 and has propounded the following broader principle to judge the action of CIT taken under section 263:

> *"(i) The CIT must record satisfaction that the order of the AO is erroneous and prejudicial to the interest of the Revenue. Both the conditions must be fulfilled.*
>
> *(ii) Sec. 263 cannot be invoked to correct each and every type of mistake or error committed by the AO and it was only when an order is erroneous that the section will be attracted.*
>
> *(iii) An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.*
>
> *(iv) If the order is passed without application of mind, such order will fall under the category of erroneous order.*
>
> *(v) Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the AO has adopted one of the courses permissible under law or where two views are possible and the AO has taken one view with which the CIT does not agree. If cannot be treated as an erroneous order, unless the view taken by the AO is unsustainable under law.*
>
> *(vi) If while making the assessment, the AO examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determine the income, the CIT, while exercising his power under s 263 is not permitted to substitute his estimate of income in place of the income estimated by the AO.*
>
> *(vii) The AO exercises quasi-judicial power vested in his and if he exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous simply because the CIT does not fee stratified with the conclusion.*
>
> *(viii) The CIT, before exercising his jurisdiction under s. 263 must have material on record to arrive at a satisfaction.*
>
> *(ix) If the AO has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the AO allows the claim on being satisfied with the explanation of the assessee, the decision of the AO cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard."*

13.2. Apart from above stated broader principles, one more principle needs to be added in view of the judgment of Hon'ble Delhi High Court in the case of ITO vs. D.G. Housing Projects Ltd. [2012] 343 ITR 329 (Delhi) that the ld. CIT

has to examine and verify the issue himself and give a finding on merits and form an opinion on merits that the order passed by the AO is erroneous and prejudicial to the interest of the Revenue. Relevant extract is reproduced below:

> *"In the present case, the findings recorded by the Tribunal are correct as the CIT has not gone into and has not given any reason for observing that the order passed by the Assessing Officer was erroneous. The finding recorded by the CIT is that "order passed by the Assessing Officer may be erroneous". The CIT had doubts about the valuation and sale consideration received but the CIT should have examined the said aspect himself and given a finding that the order passed by the Assessing Officer was erroneous. He came to the conclusion and finding that the Assessing Officer had examined the said aspect and accepted the respondent's computation figures but he had reservations. The CIT in the order has recorded that the consideration receivable was examined by the Assessing Officer but was not properly examined and therefore the assessment order is "erroneous". The said finding will be correct, if the CIT had examined and verified the said transaction himself and given a finding on merits. As held above, a distinction must be drawn in the cases where the Assessing Officer does not conduct an enquiry; as lack of enquiry by itself renders the order being erroneous and prejudicial to the interest of the Revenue and cases where the Assessing Officer conducts enquiry but finding recorded is erroneous and which is also prejudicial to the interest of the Revenue. In latter cases, the CIT has to examine the order of the Assessing Officer on merits or the decision taken by the Assessing Officer on merits and then hold and form an opinion on merits that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. In the second set of cases, CIT cannot direct the Assessing Officer to conduct further enquiry to verify and find out whether the order passed is erroneous or not."*

7. Further, the Coordinate Mumbai Bench of the Tribunal in the case of 'Narayan Tatu Rane v. ITO' reported in [2016] 70 taxmann.com 227 (Mum. – Trib.) has held that Explanation 2(a) to section 263 of the Act does not authorise or give unfettered power and to revise each and every order on the ground that the Assessing Officer should have made more enquiries and verifications. The relevant part of the order of the Tribunal is reproduced as under:

> *"20. Further clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the A.O vis-à-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our*

enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquires 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."

8. At this stage, the ld. counsel has placed reliance on the decision of the jurisdictional Calcutta High Court in the case of 'PCIT vs. Usha Polychem India (P) Ltd' reported in [2023] 149 taxmann.com 240 (Cal), wherein, the Hon'ble Calcutta High Court has held that where Principal Commissioner involved revision jurisdiction under section 263 in case of assessee on basis of an information received from Dy. Director (Investigation) regarding huge amount of unaccounted funds received in bank account of assessee, since a reassessment proceeding was already invoked and completed on basis of same information, impugned revision was unjustified. The relevant part of the order of the Hon'ble Calcutta High Court is reproduced as under:

"4. The short issue which falls for consideration in the instant case is whether the assumption of jurisdiction by the Principal Commissioner of Income Tax, Kolkata - 2 (PCIT) under section 263 of the Act was justified. The Tribunal had allowed the assessee's appeal and held that the PCIT has not recorded any finding that he has reason to believe that income assessable to tax has escaped assessment and the revenue being aggrieved by the said finding on an appeal before us. What is important to note in the instant case is that the assessment for the year under consideration, AY 2012-13 was completed on 30-3-2015. Subsequently, the assessment was reopened based on the information received from the DDIT (Investigation) Unit 2(2), Kolkata dated 6-3-2019. Thereafter, notice under section 148 of the Act was issued on 29-3-2019 and in response to such notice the assessee filed its return of income declaring a total income of Rs. 23,440/-. Subsequently, notices were issued under sections 143(2), 142(1) of the Act and the assessee filed his response along with documents. The Assessing Officer on considering the documents and the return furnished by the assessee accepted the stand taken by the assessee and completed the assessment. It is seen that PCIT has exercised jurisdiction under section 263 of the Act on the very same information furnished by the DDIT (Investigation) Unit 2 (2) dated 6- 3-2019. On perusal of the order passed by the PCIT dated 15-3-2021 in which the show cause notice issued under section 263 of the Act has been extracted, the PCIT has not recorded any finding that he has reason to believe that income that is assessable to tax has escaped assessment.

5. In the absence of such finding, we are of the view that the Tribunal was right in coming to the conclusion that the PCIT erred in exercising its jurisdiction. Our view is supported by the decision in the case of Pr.

CIT v. Anindita Steels Ltd. [2022] 137 taxmann.com 203 (Cal.).

6. The learned standing counsel for the appellant relied upon the decision of the Hon'ble Supreme Court in Malabar Industrial Co. Ltd. v. CIT [2000] 109 Taxman 66/243 ITR 83/[2000] 2 Supreme Court Cases 718 and, in particular two paragraphs 10 and 11 of the said decision.

7. In fact, the said decision would support the case of the respondent assessee and would lead us to affirm such an order.

8. Thus, in the light of the factual aspect brought out by the Tribunal while granting relief to the assessee, we find no substantial questions of law, much less substantial questions of law arising for consideration in this appeal."

9. In view of the discussion made above, the impugned order of the ld. Pr. CIT is not sustainable as per law and the same is set aside.

10. In the result, the appeal of the assessee stands allowed."

11. Clearly therefore, Ld. AR contended, the assessee had filed all details/ documents before AO during the course of assessment and the AO has considered assessee's submission/documents and thereafter taken a concious decision. Still Ld. PCIT is trying to treat the assessment-order as erroneous-cum-prejudicial on the set of his own thinking, or, in other words to substitute his own thinking in place of Ld. AO's conclusion. Ld. AR submitted that such an approach of PCIT is not permissible u/s 263, therefore the order passed by PCIT is not in accordance with the law of section 263 and liable to be quashed.

12. Per contra, Ld. DR supported the revision-order. He submitted that mere raising queries before assessee and keeping response of assessee in the departmental file cannot be treated as conduct of enquiries by AO. According to Ld. DR, had the AO analysed the replies of assessee, he would have certainly made a detailed noting in the assessment-order but this is

not so in present case. He submitted that the assessment-order is silent on the issue raised by Ld. PCIT, which clearly demonstrates that the AO has not made enquiries as required and hence Ld. PCIT was constrained to conduct revision-proceeding. Ld. DR submitted that the action of Ld. PCIT is very much in accordance with the mandate of section 263 and must be upheld.

13. We have considered rival contentions of both sides and perused the impugned order as well as the material held on record to which our attention has been drawn. On a careful consideration of various documents placed in Paper-Book as noted in the foregoing discussion, we find that during the course of assessment-proceeding, there were specific queries raised by AO with regard to the issue contemplated by Ld. PCIT and the assessee too made detailed replies / submissions. To this extent, there is no rebuttal by revenue. Clearly, therefore, it is discernible that the Ld. AO has considered those replies / submissions and thereafter taken a plausible view. Further, the action of AO in accepting the replies/submissions of assessee does not lack bonafides and cannot be said to be faulty. Thus, everything hinges on the point as to whether the assessment-order can be said to be erroneous-cum-prejudicial to the interest of revenue merely for the reason that the AO has not discussed those issues in the assessment-order or in other words not written his assessment-order as a perfectionist. In our considered view, the writing of assessment-order is a task of AO and the same is neither controlled nor helped by the assessee. In fact, the assessee

has no hand or mind in writing the assessment-order. Being so, we are afraid to accept the pleading of Ld. DR that the assessment-order could be said to be erroneous-cum-prejudicial for that reason. We are consciously aware of the decision taken by Hon'ble ITAT, Mumbai in **Reliance Payment Solutions Ltd. Vs. Pr. CIT (2022) 136 taxmann.com 277** where the same view was upheld:

> *"9. Clearly, therefore, as long as the action of the Assessing Officer cannot be said to be lacking bonafides, his action in accepting an explanation of the assessee cannot be faulted merely because it could have been lawful to make mere detailed inquiries or because he did not write specific reasons of accepting the explanation. As for learned PCIT's observations regarding accepting the explanation "without appropriate evidence", there is nothing to question the bonafides of the Assessing Officer or to elaborate as to what should have been 'appropriate' evidence.* ***The fact remains that the specific issue raised, in the revision order was specifically looked into, detailed submissions were made and these submissions were duly accepted by the Assessing Officer. Merely because the Assessing Officer did not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under section 263, and non-mentioning of these reasons do not render the assessment order "erroneous and prejudicial to the interest of the revenue****".*
>
> ***[Emphasis supplied]***

14. It is also noteworthy that in ***Jayesh Kumar Javia HUF (supra)*** quoted by Ld. AR, the shares of Kappac Pharma have been accepted by Hon'ble Jurisdictional High Court as genuine. The AO's view is, therefore, in consonance with the decision of Hon'ble Jurisdictional High Court also.

Hence, the AO cannot be said to have committed any mistake in accepting assessee's explanation that the capital gain declared by him from shares of Kappac was genuine.

15. Further, the case of assessee is also covered by the decision of ITAT, Kolkata in ***Ramodar Choudhary HUF (supra)*** which is on similar facts and the ITAT has, after consideration of several decisions including the decision of Hon'ble Supreme Court in ***Malabar Industrial Co. (supra)***, held that the order of revision passed by PCIT is not sustainable.

16. In view of above discussion and for the reasons stated therein, we are persuaded to hold that the facts of the present case do not warrant application of section 263. Therefore, the revision-order passed by Ld. PCIT is not a valid order. We, thus, quash the revision-order and restore the original assessment-order passed by AO. The assessee succeeds in this appeal.

17. Resultantly, this appeal is allowed.

Order pronounced by putting on notice board as per Rule 34 of ITAT Rules, 1963 on 31/01/2025

Sd/-	Sd/-
(DINESH MOHAN SINHA) JUDICIAL MEMBER	(B.M. BIYANI) ACCOUNTANT MEMBER

Indore
दिनांक /Dated : 31/01/2025
Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore