



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

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
AND**

**SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकरअपीलसं./ITA No.127/RJT/2022

**Assessment Year: (2017-18)**

**(HybridHearing)**

PareshkumarNarsibhaiSiroy. Prop. Aadesh Enterprise, Jetpur Road, Dhoraji, Rajkot -360410- Gujarat	<b>Vs.</b>	PCIT, Rajkot-1
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>BEJPS7256E</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**Appellant by** : Shri Samir Bhuptani, Ld. A.R.  
**Respondent by** : Shri Shramdeep Sinha, Ld. CIT. DR  
**Date of Hearing** : 24/12/2024  
**Date of Pronouncement** : 17/03/2025

**ORDER**

**Per, Dr. A. L. Saini-AM**

By way of this appeal, the assessee has challenged the correctness of the order dated 02.03.2022 passed by the Learned Principal Commissioner of Income-tax (in short "Ld PCIT") under section 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), for the assessment year 2017-18. Grievances raised by the assessee, which, being interconnected, will be taken up together, are as follows:

*1.Ld. Pr. CIT erred in law as well as on facts in initiating proceedings u/s, 263 of the income-tax Act, 1961, which is bad in law and without appropriate jurisdiction.*

*2. Ld. Pr. CIT erred in law as well as on facts in contending that the assessment order passed u/s. 143(3) of the Act was (i) the order of the Assessing Officer sought to be revised is erroneous and (ii) it is prejudicial, to the interests of the revenue.*



*3. Ld Pr. CIT erred in law as well as on facts in contending that Id. assessing officer did not conduct any inquiry, which is factually incorrect.*

*4. Ld. Pr. CIT erred in law as well as on facts in contending that Id. assessing officer computed total income u/s. 44AD of the Act.*

*5. Ld. Pr. CIT erred in law as well as on facts in contending that assessing officer ought to have applied provision of section 68 of the Act.*

*6. Ld. Pr. CIT erred in law, as well as, on facts in contending that gross deposit in bank account and not income element embedded therein has to be taxed.*

*7. Ld. Pr. CIT erred in law as well as on facts in not considering the fact that Id. assessing officer estimated profit on the gross deposits made in the bank account, which is in accordance with the ratio laid down by jurisdictional high court.*

*8. Ld. Pr. CIT erred in law as well as on facts in not appreciating the facts that Id. assessing officer did conduct inquiry of the transactions and came to a plausible view, which is supported by the decision of jurisdictional, high court and hence rightly applied his discretion to not to invoke any deeming provision.*

2.The relevant material facts, as culled out from the material on record, are as follows.The assessee filed return of income on 30/07/2017, declaring total income of Rs. 3,38,450/-. The assessment was completed u/s 143(3) of the Income-tax Act, on 19/12/2019, determining total income of Rs. 28,50,850/-. While finalizing the assessment an addition of Rs. 25,12,400/- was made to the total income of the assessee.

3. Later on,Learned Principal Commissioner of Income-tax (in short “Ld PCIT”), exercise his jurisdiction under section 263 of the Income-tax Act, 1961.On verification of the details on records it was noticed by the ld. PCIT that the assessee has deposited cash and cheque in his bank account to the tune of Rs. 38,01,13,684/-. During the course of assessment proceedings, the assessee was asked to explain high cash deposit transactions. In response the assessee



submitted that the said amount belonged to his customers but did not give the details of such customers. Accordingly, the assessing officer calculated the total Income @ 0.75% of total deposit of Rs. 38,01,13,684/-. The ld. PCIT noticed that the action of the assessing officer in computing the total income u/s 44AD of the Act, was not proper, as these provisions do not applicable in view of the huge turnover of the cash / credits deposits in the bank account. Therefore, the assessee was not eligible for the benefit of the section 44AD of the I.T. Act. Since the assessee did not provide details of cash and cheque deposited in his account, therefore the assessing officer was required to treat entire deposit as unexplained u/s. 68 of the I.T. Act. So, ld. PCIT noticed that there was lack of enquiry, non application of mind and non appreciating the facts by the assessing officer while completing the assessment. This action of the assessing officer is prejudicial to the interest of the revenue as the assessing officer has failed to treat unexplained deposit in the bank account, as unexplained cash credit. The assessing officer has wrongly treated the deposits, as turnover u/s 44AD of the I.T. Act. The entire deposit of Rs. 38,01,13,684/- should have been treated, as unexplained cash credit and added to the total income u/s 68 of the I.T. Act. The assessing officer while completing the assessment had not examined the facts of the case and the issue under consideration, therefore, this has rendered the order erroneous as well as prejudicial to the interest of the revenue.

4. In view of the above, a show cause notice dated 13-01-2022, was issued, by ld. PCIT, proposing to subject the assessment order of the assessing officer to revision u/s 263 of the Income tax Act fixing the date of submission on 21-01-2022, however no compliance was made by the assessee. Therefore, one more notice was issued on 03-02-2022, fixing the date of submission on 10-02-2022. In compliance to the above notice issued by ld PCIT, the assessee has filed written submission, vide letter dated 04/02/2022 which is reproduced by ld



PCIT, (vide page Nos. 2 to 4), in his revision order. The assessee has submitted that the assessing officer has applied the estimated profit @ 0.75% on the total sales after deducting the total income declared by the assessee in the return of income. Further, the assessing officer initiated the penalty proceedings u/s. 271B of I. T. Act for non- audit of the accounts u/s. 44AB of I. T. Act. Further the additions made by the assessing officer of treating the entire deposits in the bank account as turnover, the CIT(A), NAFC has uphold the assessing officers finding and dismissed the appeal of the assessee and confirmed the penalty also. Therefore, once the assessing officer has treated the deposits as turnover then there is no question to alter the nature of such transactions and brought to tax the same u/s. 68 of I. T. Act.

5. However, Id. PCIT, rejected the contention of the assessee and held that assessee, has failed to establish that it had derived the commission on the cash and cheque receipts from customers, its business. Once the cash and cheques are deposited in his bank accounts, the onus lies on assessee to prove that the said transactions did not represent the undisclosed income of his own and those were relating to the third parties. To take a stand that the cash and cheque deposits of the third parties, it was onus upon the assessee to prove it by adducing necessary evidences in support which the assessee has failed to prove. The assessee's submission that the CIT(A) has also accepted the such deposits as turnover is based upon the finding of the assessing officer. It is not the case that the CIT(A) has examined the transactions independently which were not even required. The CIT(A) has to adjudicate the grounds of appeal which were before him in the appeal, so the issue raised in the show cause notice by Id PCIT, in the present proceedings were not before the CIT(A) therefore his decision as cited was on different footage and cannot be relevant for the facts of the case as



receipt were more than Rs.1 crore in the case. Therefore, for want of supporting evidences in respect of all deposits of section 68 are relevant to be considered.

6. The Id PCIT noted that there are two essential condition for invoking the provisions of section 263 of I.T. Act, that the order passed by the assessing officer is erroneous and prejudicial to the interest of revenue. The Id. PCIT observed that above facts indicate that assessing officer has not conducted any inquiries/verification in respect of cash and cheque deposits in his bank accounts claimed to be belonging to the third parties and not to the assessee as submitted by the assessee during the course of assessment proceedings. The assessing officer has simply accepted self- serving contention of the assessee that the credits in the bank account were belonging to third parties without any confirmations / supporting evidences. In view of the above discussion it is apparent that such cases where the assessment has been completed without conducting any inquiries/ verification or incorrect application of law tantamount to erroneous orders as also order prejudicial to the interest of Revenue. For such proposition of law reliance was made by Id. PCIT on following cases:

1. Rampyari Devi Sarogi Vs. CIT (SC) 67 ITR 84
2. Malabar Industrial Co. Ltd. Vs. CIT(SC) 243 ITR 83
3. Swarup Vegetable Products Industries Ltd. Vs. CIT (ALL) 187 ITR 412
4. Gee Vee Enterprises Vs. Addl.CIT&Ors (Del.) 99 ITR 375
5. Rajalakshmi Mills Ltd. Vs. ITO (ITAT, SB-Chennai) 121 ITD 343, 313 ITR(AT) 182
6. SRM Systems & Software Pvt. Ltd. Vs. ACIT 2010-TIOL-646-HC- MAD-IT.
7. Shakti Credits Ltd Vs. CIT 2015 Tax Pub (DT) 3058 (Luck.'A<sup>1</sup> Trib)
8. Shoreline Hotel PvtLtd. Vs. CIT 2015 Tax Pub (DT) 2982 (Mum.'E" Trib.)
9. Kapil Ratan Associates Vs CIT 2015 Tax Pub (DT) 2931 (Mum.'A<sup>1</sup> Trib) 69 SOT 188 (Mum.)
10. Swadeshi Vilas Private Ltd Vs. ACIT ITA No.599/Hyd/201 3 dt:25-09-201 3
11. The Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. Vs CIT [2000] 109 Taxman 66 (SC)/[2000] 243 ITR 83 (SC)/[2000] 159 CTR 1 (SC), has also affirmed the same proposition of law.



7. From the above, it is evident that there was incorrect application of law. It is settled position that incorrect application of law constitutes an error and as such the assessment is erroneous and prejudicial to the interests of the Revenue, since there is loss of revenue. In this regard, Id. PCIT derived the support from the following decisions:

- i) CIT Vs. Jawahar Bhattacharjee, 341 ITR 434 (Gau.)
- ii) Jai Bharath Tanners Vs. CIT, 264 ITR 673 (Mad.)
- iii) Vashti Management Services Pvt. Ltd. Vs. ITO (ITAT, Del.) (2010-TIOL-642-ITAT-DEL)

8. In the case of **CIT Vs Emery Stone Manufacturing company (213 ITR 843) (Raj)**, it was held that even though the assessee had disclosed all the facts before the Assessing officer, the CIT can very well exercise his power u/s. 263 if the correct provisions of law have not been examined by the Assessing officer

9. The Id PCIT also relied on various judgements of various High Courts. The Hon'ble Courts have held that where the assessment has been completed by the assessing officer, without proper inquiries, by assuming incorrect facts of the case, by incorrect application of law or the assessing officer has not applied his mind properly then the said order has been held to be erroneous and prejudicial to the interest of revenue. Therefore, Id. PCIT relied on the following judgements.

**(i) The Hon'ble Gujarat High Court in the case of CIT vs. M M Khambhatwala (1992) 193 ITR 144** has upheld that the CIT can exercise his powers u/s. 263 of I T Act even where issue is debatable.

**(ii) The Hon'ble ITAT, A Bench, Ahmedabad in the case of Shri Vijaykumar Gupta vs. CIT Central-1, Ahmedabad in ITA No 1530/Ahd/2010** has held that when the assessing officer has not applied his mind on the issues in the reassessment stage, there is no question of having taken one view of the matter or taking two different views by the assessing officer or by the CIT.



**(iii)The Hon'ble ITAT, Cochin in the case of Shri Narayana Dharam Paripalana Yuvadhana Samiti vs. ITO, Exemption (2019) 111 taxmnan.com 416** has held that where the assessing officer has taken a wrong decision without considering material available on record or he takes a decision without making inquiry into a matter, where such enquiry was prima facie warranted CIT is empowered to initiate proceedings u/s. 263 of I T Act.

**(iv)The Hon'ble ITAT, Cochin in the case of Baby Memorial Hospital Ltd vs. ACIT(2019) 111.taxmann.com 189** has held that even in a case of limited scrutiny assessment, Commissioner can exercise jurisdiction u/s. 263 of I T Act.

**(v)The Hon'ble ITAT, Hyderabad in the case of Smt S Umadevi vs. CIT (2015) 62.taxmann.com 64** has held that where assessing officer had passed cryptic, non speaking order, CIT was justified in invoking jurisdiction u/s. 263 of I T Act.

**(vi)The Hon'ble M P High Court in the case of Nagal Garment Industries Pvt Ltd(2020) 113.taxmann.com 4** has held that where assessing officer had issued detailed questionnaire, in reply to which submissions have been made but assessing officer did not applied his mind nor did he conduct any enquiry while accepting claim of assessee although he recorded in note sheet that reply filed by the assessee was not satisfactory and did not explain the facts, the assessment order was held to be erroneous and prejudicial to the interest of revenue.

10. The ld. PCIT noticed that with effect from 01.06.2015, Explanation 2 to the section 263(1) has been inserted which reads as under-

*"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 interests of the revenue, it, 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."*

11. Therefore, ld. PCIT observed that as per the Explanation- 2, the order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if the order is passed allowing any



relief without inquiring into the claim. However, the assessing officer did not conduct any such inquiries or verification as outlined above and simply accepted the assessee's submission. In this manner the assessee's case is also covered under para 'a' of Explanation 2, of section 263(1) of I. T. Act. Therefore the order passed by the assessing officer is erroneous and prejudicial to the interest of revenue to that extent. Keeping in view these facts, ld. PCIT directed the assessing officer to make fresh assessment, keeping in view the observations made above, after conducting necessary verifications and inquiries and after providing proper opportunity of being heard.

12. Aggrieved, by the order passed of ld. PCIT, the assessee is in appeal before us.

14. Learned Counsel for the assessee submitted that assessee under consideration is an Angadia and he received cash and cheques from his customers and deposited the same in his bank account. Therefore, cash and the cheques deposited in his bank account, belong to his customers and the customers pay Commission to the assessee for the services rendered. The assessee has deposited cash and cheques in his bank account to the tune of Rs. 38,01,13,684/-. During the course of assessment proceedings, the assessing officer issued notice to the assessee and the assessee was asked to explain high cash deposit transactions. In response, the assessee submitted that the said amount belonged to his customers. However, the assessee failed to give details of such customers, therefore, ld. PCIT has exercised his jurisdiction under section 263 of the Act. The assessing officer took plausible and reasonable view and calculated the total income of the assessee @ 0.75% of total deposit of Rs. 38,01,13,684/-. The assessing officer has computed the total income of the assessee, u/s 44AD of the Act, which is reasonable considering the nature of the



business of the assessee. The Ld. Counsel submitted that during assessment proceeding, the assessee has provided documents and details which are also mentioned in the paper book of the assessee, submitted before the Bench. Therefore, the ld. Counsel contended that order passed by the assessing officer is neither erroneous nor prejudicial to the interest of the revenue. Therefore, order passed by the ld. PCIT may be quashed.

15. On the other hand, learned CIT-DR for the revenue, argued that during the assessment proceedings, assessee was asked to give the details of the customers from whom he received cash and cheques and deposited in his the bank account, however, the assessee failed to give details of such customers, therefore, ld. PCIT has exercised his jurisdiction under section 263 of the Act. The assessee has deposited cash and cheques in his bank account to the tune of Rs. 38,01,13,684/-, and assessee claimed that he received cash from his customers and deposited the same in his bank account, however, assessee has failed to give name an address of these customers from whom he received the cash. Since, the assessee did not furnish the name and address of these customers during the assessment proceedings, therefore, the assessing officer, could not issue the notices to these customers under section 133(6)/131 of the Act. Therefore, assessing officer, failed to conduct the enquiry with these customers, who has given uncounted cash to the assessee. Hence, it is a case of complete non- enquiry, on the part of the assessing officer, that is, assessing officer has not conducted any enquiry so far, this issue is concerned and the assessee has also failed to give the name and address of the customers, who have given the cash to the assessee to deposit in his bank account. Hence, there is a non-co-operation from the assessee`s side also.



16. The Id. DR further stated that assessing officer has not taken plausible view by calculating the total income of the assessee @ 0.75% of total deposit of Rs. 38,01,13,684/-, u/s 44AD of the Act. The assessee, having so much turnover of Rs. 38,01,13,684/-, cannot be classified or assessed under section 44AD of the Act, hence such view taken by the assessing officer is not plausible view, as such view taken by the assessing officer is not sustainable in the eye of law. During the assessment proceedings, the assessee has himself stated that since his turnover exceeded the minimum limit of audit, therefore, the provisions of section 44AD of the Act would not be applicable to him. Then after, the assessee, himself has put a proposal before the assessing officer that his income may be assessed at the rate of 0.75% of the turnover, which the assessing officer has accepted without application of mind. On what basis, the assessing officer, accepted the turnover of the assessee is not known. During the assessment proceedings, the assessee submitted before the assessing officer that he is getting Rs.200/- as commission on transaction of Rs.1,00,000/-, however, the assessing officer did not consider the same and stated that **as per his agreement**, the total income is determined at the rate of 0.75% of turnover. The assessee has not provided any copy of such agreement neither to the assessing officer nor to the Id. PCIT. In such a scenario, the view taken by the assessing officer cannot be said, as a plausible view, and such plausible view is not sustainable in the eye of law, also. Besides, the assessing officer initiated penalty proceedings against the assessee under section 271B of the Act for non-auditing of books of accounts, it means, the assessee is owner of the turnover of Rs. 38,01,13,684/-, however, the assessing officer took plausible view to tax, turnover of the assessee at the rate of 0.75%, which is contrary to the penalty levied by the assessing officer. Hence, the view taken by the assessing officer is not a plausible view and therefore order passed by the assessing officer is erroneous as well as prejudicial to the interest of the revenue, therefore, Id.



PCIT has rightly exercised his jurisdiction under section 263 of the Act, therefore, his order should be upheld.

17. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id PCIT and other materials brought on record. We find merit in the submissions of Id. CIT-DR for the revenue. We find that during the assessment proceedings, assessee was asked to give the details of the customers from whom he received cash and cheques and deposited in his the bank account, however, the assessee failed to give details of such customers. The assessee has deposited cash and cheques in his bank account to the tune of Rs. 38,01,13,684/-, and assessee claimed that he received cash from his customers and deposited the same in his bank account, therefore, the assessee, in order to discharge his onus and burden, supposed to give name and address of the customers from whom he received the cash and cheque, however, assessee has failed to do so. We also find that during the assessment proceedings, the assessee did not co-operate and we have observed non-compliance attitude of the assessee, as the assessee did not file even bank statement, before the assessing officer, and this fact is proved by para No.3 of the assessment order, which reads as follows:

*“3. During the year under consideration, assessee is engaged in the business of cash and cheque discounting activity. To verify the same details were called for from the bank by issuing 133(6) of the Act. The same is received. On verification of the same, it is seen that the assessee has deposited cash and cheque in his account to the tune of Rs.38,01,13,684/- during the year under consideration. The assessee was requested to justify the cash and cheque deposit transactions. However, assessee did not file the details as called for in the notice issued on various dates.”*

From the above para of the assessment order, it is vivid that during the assessment proceedings, the assessee even had not submitted bank statement to



the assessing officer. The assessing officer obtain the bank statement from the bank by issuing notice under section 133(6) of the Act. Therefore, the assessee cannot claim that he has submitted the required details and documents during the assessment proceedings to frame the assessment order under section 143(3) of the Act. Therefore, on this score only, the assessment order passed by the assessing officer is erroneous as well as prejudicial to the interest of the revenue. We note that in order to conduct scrutiny assessment under section 143(3) of the Act, the assessing officer issued notices under section 142(1) of the Act to the assessee, calling various details and documents to examine the claim of the assessee. The provisions of section 142(1) speaks of inquiry before assessment and gives immense power to the assessing officer for conducting enquiry. Therefore, the assessing officer u/s 142(1)(ii) & (iii) can ask the assessee almost any information which he things necessary for passing assessment. However, the assessee failed to furnish the details, documents and information before the assessing officer. Therefore, in this scenario, the assessing officer could not complete the assessment under section 143(3) of the Act and could not take plausible view. Hence, order passed by the assessing officer, by taking plausible view, to tax the turnover of the assessee, at the rate of 0.75%, is erroneous, as there was no document or information before the assessing officer to take the plausible view that turnover of assessee may be taxable at the rate of 0.75% , hence, such plausible view is not sustainable in the eye of law.

18. We note that the assessment proceedings and Penalty proceedings are interrelated, the penalty proceedings are initiated by the assessing officer in the assessment order as per the nature of the quantum addition made by the assessing officer. We note that in the assessee`s case under consideration, the penalty proceedings were started by the assessing officer, during the assessment



proceedings, vide para No.6 of the assessment order, which is reproduced below.

*“6. Since the turnover of the assessee is exceeded, the minimum limit prescribed for audit of books of accounts under section 44AB of the Act, the penalty proceedings is initiated under section 271B of the Act for non-auditing of books of accounts.”*

From the above para of the assessment order, it is abundantly clear that assessing officer treated the turnover of Rs. 38,01,13,684/-, as if, it is assessee's own turnover, and therefore, the assessing officer stated that assessee did not get his accounts audited under section 44AB of the Act and consequently the assessing officer initiated penalty proceedings under section 271B of the Act. This clearly shows that the turnover of the assessee of Rs. 38,01,13,684/-, belongs to the assessee. Therefore, in this scenario, the assessing officer cannot take a plausible view, which is contrary of the view taken by him in the assessment order itself, (that turnover of the assessee should be taxable at rate of 0.75%). Hence, such two contrary view, taken by the assessing officer in the assessment order itself, should not be considered a plausible view. Hence, the view taken by the assessing officer that turnover of the assessee should be taxable at rate of 0.75%, is not a plausible view. The plausible view is taken by the assessing officer based on the documents and evidences, however, we note that during the assessment proceedings, the assessee has not submitted any documents and evidences, before the assessing officer, to conduct the scrutiny assessment under section 143(3) of the Act. Hence, plausible view taken by the assessing officer is not sustainable in law.

19. From the above facts, it is clear that the assessing officer, speaks in a double way, that is, like a double speaking person (who cannot reach on final conclusion), therefore, in this situation, the assessing officer cannot take



plausible view, which can be sustainable in the eye of law. This is proved from para number 4(E) of the assessment order, which is reproduced below:

*“4(E). Assessee was, vide question no.9, requested to show -cause as to why the total credit of Rs.38,01,13,684/- should not be treated as his trading receipt and the income should not be determined in absence of names of the persons who have deposited the cash/cheque. Assessee, in reply, contended, that he is getting Rs.200/- as commission on transaction of Rs.100,000/-, however, he agreed for determining the net profit of 0.75% on total turnover. As per his agreement, the total income is determined at Rs.28,50,853/- (0.75% of 38,01,13,684/-).”*

From the above findings of the assessing officer, it is clear that assessing officer issued show -cause notice to the assessee, as to why the total credit of Rs.38,01,13,684/- should not be treated as his trading receipt and the income should not be determined in absence of names of the persons who have deposited the cash/cheque. In reply, assessee submitted before the assessing officer that he(assessee) is getting Rs.200/- as commission on transaction of Rs.100,000/-. The assessing officer, did not try to get any documentary evidence about Rs.200/-, as commission on transaction of Rs.100,000/-. The assessing officer, accepted the version of the assessee without any documentary evidence, hence, it is a case of no enquiry, incorrect facts, and non- application of mind, on the part of the assessing officer. It is like making a shot in the dark. After that the assessing officer agreed for determining the net profit of 0.75% on total turnover, without any documentary evidence, and the assessing officer did not disclose the base to determine the total income of the assessee at Rs.28,50,853/- (0.75% of 38,01,13,684/-).Hence, it is non-application of mind and on incorrect facts, the assessing officer determine the total income of the assessee at the rate of 0.75% of turnover, without getting from the assessee, any documentary evidence and the base of 0.75% of turnover in other similar business. The “plausible view” can be taken by the assessing officer based on documents and evidences. In the assessee`s case under consideration, no any



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document and evidence have been examined by the assessing officer to take the plausible view. The assessee stated that he is getting Rs.200/- commission perRs.1,00,000/-, however, the assessing officer took another plausible view, to tax turnover of assessee at the rate of 0.75% without any documentary evidence. Besides, the assessing officer initiated penalty proceedings on the assessee under section 271B of the Act, as if, the assessee is owner of the turnover. Therefore, the assessing officer on one hand treated the assessee to be owner of the turnover and on the other hand, he taxed the turnover at the rate of 0.75% without any documentary evidence and this way he could not reach on final conclusion. Hence, the view taken by the assessing officer is not a“plausible view”, as contended by the Id. Counsel for the assessee. Therefore, order passed by the assessing officer, is erroneous and prejudicial to the interest of the revenue.

20. The law with regard to exercise of jurisdiction u/s.263 of the Act on the ground that the AO failed to make enquiries which he ought to have made in the given circumstances of a case is well settled. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the case the Income-tax Officer should have made further inquiries before accepting the statements made by the assessee in his return. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. 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. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an enquiry. The



order becomes erroneous because such an inquiry 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. We derive support for the proposition as stated above from the decision of the Hon'ble Delhi High Court in the case of Gee Vee Enterprises 99 ITR 375 (Del). We note that in the assessee's case under consideration, what the talk about further enquiry, the assessing officer did not conduct any enquiry, about the issue raised by the Id. PCIT, the assessing officer accepted whatever the assessee said, without any documentary evidence, hence, there is no scrutiny assessment in real sense under section 143(3) of the Act. In order to do scrutiny assessment, it is the duty of the assessing officer, to call the documents and evidences from the assessee, by way of issuing notice under section 142(1) of the Act, and then examine the claim of the assessee with reference to the documents and evidences, and if the assessing officer does not satisfy, then he can provoke further enquiry and ask the assessee to submit further documents and evidences or witness. However, the assessing officer, did not call any documents and evidences from the assessee, and he accepted what the assessee said verbally, without any documents and evidences, hence, it is against the mandated provisions contained in section 143(3) of the Act.

21. Let us take the guidance of judicial precedents laid down by the Hon'ble Apex Court in *Malabar Industries Ltd. vs. CIT* [2000] 243 ITR 83(SC) wherein their Lordship have held that *twin* conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the PCIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii) Assessing Officer's order is in violation of the



principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the AO has not investigated the issue before him; then the order passed by the Assessing Officer can be termed as erroneous order. Coming next to the second limb, which is required to be examined as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (supra) held that this phrase i.e. "*prejudicial to the interest of the revenue*" has to be read in conjunction with an *erroneous order* passed by the Assessing Officer. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the PCIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue **"unless the view taken by the Assessing Officer is unsustainable in law"**.

22. We find that in assessee's case under consideration, the order passed by the assessing officer is erroneous and prejudicial to the interest of the revenue, as **the view taken by the Assessing Officer is unsustainable in law, as stated by us in above para of this order.** The Assessing Officer passed the order on incorrect assumption of fact, incorrect application of law and the order passed by the Assessing Officer is without application of mind and moreover the AO has not investigated the issue before him, with help of the documentary evidences. **Moreover, the assessee has not explained the source and nature of the cash and cheques deposited in the bank account. The assessee stated**



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**that the cash and cheques, so deposited in the bank account belonged to his customers, however, when the assessing officer, asked the assessee to submit the name and address of the customers, the assessee has failed to give name and address to the assessing officer, during the assessment proceedings . The assessee did not provide even a single name of his customer, whereas, there is huge cash deposit in the bank account of the assessee, to the tune of Rs. Rs.38,01,13,684/-, hence, there is loss to the revenue. Hence, order passed by the assessing officer is erroneous and prejudicial to the interest of the revenue. Hence, the view taken by the assessing officer is not a plausible view and therefore order passed by the assessing officer is erroneous as well as prejudicial to the interest of the revenue, therefore, Id. PCIT has rightly exercised his jurisdiction under section 263 of the Act. The conclusions arrived at by the Id. PCIT are, therefore, correct and admit no interference by us. We, approve and confirm the order of the Id. PCIT and dismiss the appeal of the assessee.**

23. Before parting we would like to mention that the Co-ordinate Bench of ITAT Rajkot has remitted the issue back to the file of the assessing officer in Angadia cases vide ITA No. 381/382/RJT/2024, order dated 26.02.2025 and upheld the revision proceedings under section 263 of the Act, on identical facts.

24. In the result, the appeal filed by the assessee is dismissed.

**Order pronounced in the open court on 17/ 03/2025.**

Sd/-  
(DINESH MOHAN SINHA)  
JUDICIAL MEMBER

Rajkot

(True Copy)

Sd/-  
(Dr. A.L. SAINI)  
ACCOUNTANT MEMBER



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दिनांक/ Date: 17 /03/2025

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot