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.83/RJT/2024**

(निर्धारणवर्ष / **Assessment Year: (2018-19)**

(Physical Hearing)

Ashokkumar Projects India P. Ltd. Cholera Arcade, M.G. Road Opposite, Bhaveshwar Mahadev Temple, Porbandar – 360575	**Vs.**	The Pr. Commissioner of Income Tax, 4th Floor, Manek Centre, P.N. Marg, Jamnagar - 361008
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AAMCA5891Q**		
(Assessee)		**(Respondent)**

Assessee by	:	Shri Dushyant Maharshi, AR
Respondent by	:	Shri Sanjay Punglia, Ld. CIT(DR)
Date of Hearing	:	18/11/2024-Refixed for hearing on 17.03.2025
Date of Pronouncement	:	21/03/2024

आदेश / O R D E R

Per, Dr. A. L. SAINI, AM

By way of this appeal, the assessee has challenged the correctness of the order dated 02.01.2024 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 2018-19.Grievances raised by the assessee, which, being interconnected, will be taken up together, are as follows:

1.Hon'ble Pr. CIT, Jamnagar has erred in law and in facts in setting-aside the order passed by the assessing officer under section 143(3) of the Income tax Act, 1961 by invoking the provisions of section 263 of the Income tax Act,1961 even when the order as passed by the assessing officer was neither erroneous nor prejudicial to the interests of the revenue.

2.Hon'ble Pr. CIT, Jamnagar has erred in law and in facts in setting-aside the orderpassed by the assessing officer under section 143(3) of the Income- tax Act, 1961 even when the assessment order was passed by the assessing officer under section 143(3) of the Act, after conducting necessary enquiries and after due application of mind.

3.Hon'ble Pr. CIT, Jamnagar has erred in law and in facts by passing order u/s. 263 where assessing officer has accepted claim by assessee where assessee has considered labour, wages u/s 192 for salary. However, Hon'ble PCIT has considered payment to labour wages u/s 194C of Income Tax Act, 1961, by considering threshold Rs. 1,00,000/- p.a.

2.Succinctly, the factual panorama of the case is that assessee before us is a Private Limited Company and has filed return of income for assessment year (AY) 2018-19, on 27/02/2019, declaring total income of Rs.28,36,344/-. The assessee`s case was selected for complete scrutiny, through CASS and assessment was finalized u/s143(3) of the Income-tax Act, 1961, vide order dated 03/06/2021, by determining total income at Rs.28,36,340/-, thereby accepting returned income.

3. Later on, Learned Principal Commissioner of Income-tax (in short "Ld PCIT"), has exercised his jurisdiction, under section 263 of the Income-tax Act, 1961.On perusal of assessment records for assessment year, (AY) 2018-19, it was noticed by the ld. PCIT that a notice u/s 142(1) of the Act, was issued to the assessee- company, on 08.05.2020, with a request to provide complete details of subcontracts given, submit copy of one bill of each subcontractor, who has been credited with amounts more than Rs.2lakh during the financial year (FY) 2017-18, along with details of TDS made thereon. In response to the same, the assessee furnished a statement of labour wages, labour payments in Annexure for Rs.9,29,67,709/-. Out of said amount, Rs.4,93,22,122/-, tax was deductible at source and claimed to have deducted an amount of Rs.10,10,408/-, as

TDS. However, as per 3CD report, no TDS was deducted from the bills or shown outstanding for payment. That means, that the assessee has shown the amount of TDS deducted but the same is not paid and no such amount reflected in 3CD report resulting in under assessment of Rs. 1,47,96,637-(30% of Rs. 4,93,22,122/-). As the assessee has failed to deduct / deposit TDS on expenditure of Rs. 4,93,22,122/-, an amount of Rs 1,47,96,637/-(being 30% of Rs. 4,93,22,122/-), which was required to be disallowed u/s 40(a)(ia) of Act and added to the total income of the assessee. No addition in this respect was made in the assessment order passed by the assessing officer u/s. 143(3) of the Act, dated 03/06/2021.

4.Learned Principal Commissioner of Income-tax (in short "Ld PCIT"), has raised other issue stating that the assessee has made payment, which exceeds the threshold limit, as per TDS provisions and is liable to deduct TDS, on aggregating expenses of Rs.21,84,141/-, as per the provisions of section 194C of the Act. But the assessee has failed to deduct TDS on expenses aggregating to Rs. 21,84,141/- and thus violated the provisions of section 40(a)(ia) of the Act. As such, an amount of Rs.6,55,242/-, being 30% of Rs.21,84,141/- is required to be disallowed under section 40(a) (ia) of the Act.Therefore, Ld. PCIT noticed that such failure on the part of assessing officer rendered the assessment order erroneous in so far as it is prejudicial to the interest of the revenue within the meaning of the provisions of section 263 of the Act.

5.Accordingly, a show cause notice, for initiation of proceedings u/s. 263 of the Act dated 20.10.2023 was issued by ld. PCIT, to the assessee, through ITBA, which is reproduced by the ld. PCIT on page nos. 2 to 4 of his order.

6. In response to the above, the assessee has submitted online reply on 23.11.2023, before the ld. PCIT, which are summarized as under:

"With reference to above mentioned notice u/s 263 dated 20.10.2023 where in your honour intend to revise the order of the assessing officer passed u/s 143(3) of the Act dated 03.06.2021, by making addition on account of reasons that assessing officer has neither inquired nor verified in this regard which has resulted into an erroneous order prejudicial to the interest of the revenue. With respect to above, we would like to submit as under:

(A)Proposed Addition for Rs. 1,47,96,637/- on account of TDS not deducted on Labour wages of Rs. 4,93,22,122/-

Your honour has issued notice for initiation of action u/s 263 of I.T. Act, 1961, stating that on perusal of total labour wages of Rs. 9,29,67,709/-, out of that TDS of Rs. 10,10,408/-, on 4,93,22,122/-. However, no such amount is reflected in Form 3CD report. Hence, your honour has proposed addition of Rs.1,47,96,637/-, being 30% of Rs. 4,93,22,122/-, u/s. 40(a)(ia) of Income Tax Act, 1961, as TDS is deducted but not paid and no such amount reflected in Form 3CD.

Our Submission:

• In this regard we would like to submit that assessee company has deducted TDS of Rs.10,10,408/-, on Labour expenses of Rs. 4,93,22,122/-. TDS was deducted & paid ASHOKKUMAR PROJECTS INDIA PRIVATE LIMITED Cholera Arcade, M. G. Road Opposite Bhaveshwar Mahadev Temple, Porbandar – 360575, by the assessee-company. However, TDS was not reflected in clause 34 of Form 3CD due to mistake on part of Tax Auditor of the assessee- company.

Merely, non-disclosure of TDS in Form 3CD report does not amount to failure on part of assessee to deduct TDS. It is to be noted here that the company had already provided details for Labour expenses party wise along with TDS deducted on the same at the time of scrutiny assessment u/s 143(3) in submission - 2 on date 03.02.2021 & details for expenses below threshold in Point no. 5 in Submission-5 dated 10.04.2021. However, for sake of reference, we have attached herewith following documents for your kind perusal. (i)Copies of TDS Ledger for the year under consideration (ii)Copies of Acknowledgement for TDS return filed by assessee-company (iii)Copies of challan for TDS paid for the year.

Hence, in this case there is no failure on part of assessee- company for deposits of TDS of Rs. 10,10,408/-, on labour expenses Rs. 4,93,22,122/-. Therefore, there is no non-compliance by assessee- company, as TDS deducted & paid for labour expenses, revenue loss, since the deductee has paid the due tax on labour expenses of Rs. 4,93,22,122/-.

Since, there is no failure on part of assessee-company to section 201,assessee-company should not be penalized for non-deposit for non-deposit of TDS, since all due taxes have been paid.

(B) Proposed addition of Rs. 6,55,242/-, on account of labour expenses of Rs. 21,84,141/-

Your honour has issued notice on account of expenses claimed for Rs. 9,29,67,709/- in profit & loss account but TDS was not deducted on labour expenses of Rs. 4,35,38,841/- were, assessee- company has claimed that labour expenses of Rs. 4,35,38,841/- was not liable for TDS deduction as threshold limit was not exceeding, as per TDS provisions. In list provided in support of claim, assessee- company has paid/credited to various person above Rs. 1,00,000/- during the year which are as under:

Name of labour	*Amount*
Anil samani	*2,18,000*
Bind Komalprasad Meghaprasad	*1,03,650*
Devayat Bhura Odedra	*1,45,500*
Deviram Jog/ Labor	*1,42,250*
Jeinesh Rajpal	*1,42,200*
Keshu Parbat	*1,17,329*
Malde Samat	*2,35,800*
Meena MangelalGenaji	*1,92,000*
Menand Jivan Khant	*1,21,861*

RajujiHarbhamjiodedra	*2,48,500*
Raspal Labor	*1,59,280*
Shah JayshreebhaiRajkishor	*1,12,900*
SinghShardanandTilakdhari	*1,37,000*
Sudarshan Mandal	*1,07,871*
Total	*21,84,141*

Our Submission:

In this regard, we would like to submit that your honour has taken Outstanding Balance of above labour instead of Expenses debited in Profit & Loss A/c, during the year under consideration. Assessee- company has provided labour-wise details in Annuxure-B point No. 5 of submission –5, dated 10.04.2021, whereas your honour has considered. Annuxure – A for outstanding Balance of labour as on 31.03.2018 for threshold limit. Details for the same are as under:

Name of labour	*Outstanding amount*	*Expenses debited to P & L*
Anil Samani	*2,18,000*	*94,800*
Bind Komalprasad Meghaprasad	*1,03,650*	*1,03,650*
Devayatbhura Odedra	*1,45,500*	*94,800*
Deviram Jogi Labor	*1,42,250*	*1,42,250*
Jeinesh Rajpal	*1,42,200*	*1,42,200*
Keshu Parbat	*1,17,329*	*98,700*
Malde Samat	*2,35,800*	*2,35,800*
Meena MangelalGenaji	*1,92,000*	*1,92,000*
Menand Jivan Khant	*1,21,861*	*48,730*
RajujiHarbhamji Odedra	*2,48,500*	*2,48,500*
Raspallabour	*1,59,280*	*1,59,280*
Shah jayshreebhaiRajkishor	*1,12,900*	*1,12,900*
Singh ShardanandTilakdhari	*1,37,000*	*1,37,000*

Sudarshan Mandal	*1,07,871*	*1,07,871*
Total	***21,84,141***	***19,18,481***

Further, we would like to submit that your honour has taken threshold for Section 194C i.e. Rs. 1,00,000/-. However, above labourers were enrolled for daily basis wages and that too on temporary basis. The company had paid wages according to the work done by above labourers. Hence, TDS is required to be deducted under section 192 of Income Tax Act, 1961. It is pertinent to note here that TDS u/s 192 to be deducted as per slab rate applicable to individual. As per slab rate there is no tax payable up to basic exemption limit i.e. 2,50,000/-. However, wages of any above mentioned labourers does not exceed the basic exemption limit during the year under consideration. Hence, TDS was not deducted for above labourer's.

Hence, in this case, there is no failure on part of assessee- company for deduction of TDS as labour expenses, paid during the year does not exceed basic exemption limit. Therefore, there is no non-compliance by assessee- company as TDS not applicable as amount paid below threshold.

Since there is no failure on the part of assessee- company to section 201,assessee-company is not liable to deduct TDS on Expenses of Rs. 19,18,481/- (Rs. 21,84,141/- is outstanding labour balance as on 31.03.2018).

(C) Applicability for section 263

We would like to submit that we have provided details for labour expenses, party- wise along with TDS deducted on the same at the time of scrutiny assessment u/s 143(3) in submission – 2, on date 03.02.2021 & details for expenses below threshold in point no. 5 in submission- 5 dated 10.04.2021.

Hence, there is no such case that we have concealed the details or have not furnished the details. The Ld. assessing officer has verified the details and kept on the records during the assessment proceedings. So, there is not such case that the Ld. assessing officer has neither verified nor asked for the details as stated by your honour in the show- cause notice.

• It is to be noted that sec. 263 can be invoked where two conditions are satisfied i.e.

a. When assessing officer has passed erroneous order AND

b. It is prejudicial to interest of revenue.

Therefore, looking to scope of section 263, issue of non-deposit of TDS, on Labour expenses, should not be reviewed again for proposed addition in assessment.

Since there is no failure on part of assessee- company to section 201,assessee-company should not be penalized for non-deposit of TDS since all due taxes have been paid.

Kindly accede to us request and oblige us. If your honour do not wish to accede to our request then kindly grant us personal opportunity of hearing to present the case."

7.However, the Pr. CIT has rejected the above contention of the assessee and held that since the assessee has failed to deduct / deposit TDS on expenditure of Rs. 4,93,22,122/-, an amount of Rs 1,47,96,637/- (being 30% of Rs. 4,93,22,122/-), which was required to be disallowed u/s 40(a)(ia) of Act, by the assessing officer. The assessee has also failed to deduct TDS on expenses aggregating to Rs. 21,84,141/-, an amount of Rs.6,55,242/-, being 30% of Rs.21,84,141/-, which was required to be disallowed under section 40(a) (ia) of the Act, by the assessing officer. Therefore,the order passed by the assessing officer is erroneous and prejudicial to the interest of the revenue, hance, ld. PCIT directed the assessing officer to frame the fresh assessment order.

8.Aggrieved by the order of the ld. Pr. CIT, the assessee is in appeal before us.

9. Shri Dushyant Maharshi, Ld. Counsel for the assessee, vehemently argued that during the assessment proceedings, the assessee has not failed to deduct or deposit, the TDS on expenditure of Rs. 4,93,22,122/-, an amount of Rs. 1,47,96,637/- (being 30% of Rs. 4,93,22,122/-), and in fact said amount does not come in the ambit of the provisions of section 40(a)(ia) of Act. The said amount was not liable to TDS. The Ld. Counsel for the assessee submitted that the payment which is liable to be TDS has been shown in tax audit report and payment which is not liable for TDS has also been shown in the tax audit report. In fact, later on, the Chartered

Accountant, has also issued a certificate to that effect.During the assessment proceedings, the assessing officer issued a show -cause notice to the assessee, under section 142(1) of the Act, asking the assessee, to furnish the details of the TDS. In response to the notice of the assessing officer, the assessee has submitted, all the required documents, which were there before the assessing officer.About the second issue raised by the ld. PCIT, the ld. Counsel submitted that ld. PCIT has taken threshold for Section 194C of the Act,at Rs. 1,00,000/-. However, labourers were enrolled for daily basis wages and that too on temporary basis. The company had paid wages according to the work done by labourers. Hence, TDS is notrequired to be deducted under section 192 of Income Tax Act, 1961. It is pertinent to note that TDS u/s 192 to be deducted, as per slab rate applicable to individuals. As per slab rate, there is no tax payable, up to basic exemption limit, that is, 2,50,000/-. However, wages of any mentioned laborer does not exceed the basic exemption limit during the year under consideration. Hence, TDS was not deducted for the selabourers, whose payment does not exceed the maximum amount, which isnot chargeable to tax. Therefore, 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 learned PCIT may be quashed.

10. On the other hand, Learned DR for the revenue, argued that during the assessment proceedings, the assessing officer did not conduct sufficient inquiry.Infact, the order passed by the assessing officer is very cryptic wherein he did not discuss the issue raised by the Pr. CIT. The labour payments in Annexure was shownat Rs.9,29,67,709/-. Out of said amount, Rs.4,93,22,122/-, tax was deductible at source and claimed to have

deducted an amount of Rs.10,10,408/-, as TDS. However, as per 3CD report, no TDS was deducted from the bills or shown outstanding for paymenttherefore itresults in under assessment of Rs. 1,47,96,637- (30% of Rs. 4,93,22,122/-). The assessee has made payment, which exceeds the threshold limit, as per TDS provisions and is liable to deduct TDS, on aggregating expenses of Rs.21,84,141/-, as per the provisions of section 194C of the Act, however, the assessee has failed to deduct TDS on expenses aggregating to Rs. 21,84,141/-, an amount of Rs.6,55,242/-, being 30% of Rs.21,84,141/-Therefore, Ld. PCIT rightly noted thatsuch failure on the part of assessing officer rendered the assessment order erroneous in so far as it is prejudicial to the interest of the revenue.

11. We have heard the rival parties and have gone through the material placed on record. For the sake of clarity and also being pertinent, we reproduce conclusion, para of revision order under section 263 of the Act, passed by the learned PCIT, which reads as follows:

"10. During the course of assessment proceedings, the assessing officer has not enquired or the assessee has not provided any details / documentary evidences or explanation with respect to the issues in question. However, during the course of proceedings u/s 263 of the Act, the assessee has submitted copies of TDS ledger, copies of acknowledgement for TDS return and copies of challans for TDS paid and other documentary evidences as discussed above. Therefore, the assessing officer should examine /investigate / verify the various expenses, listed above, as claimed by the assessee, documentary evidences submitted by the assessee during the course of proceedings u/s 263 of the Act. The Assessing Officer is directed to revise the assessment after giving proper opportunity of being heard to the assessee."

12. From the above findings of the ld. PCIT, it is vivid that during the course of proceedings u/s 263 of the Act, the assessee has submitted copies of TDS ledger, copies of acknowledgement for TDS return and copies of challans for TDS paid and other documentary evidences. The ld PCIT instructed the

assessing officer to examine /investigate / verify the various expenses, listed above, as claimed by the assessee, and documentary evidences submitted by the assessee during the course of proceedings u/s 263 of the Act.We note that ld. PCIT has a supervisory role on the activities of the assessing officer, therefore ld. PCIT ought to have find out specific defects and errors in the documents submitted by the assessee, during the revision proceedings before him, and such specific defects and errors in the documents, and in the assessment order, should be communicated to the assessing officer. The documents submitted before the learned PCIT, by the assessee, were available in the file of the assessing officer. However, the ld. PCIT remitted these documents back to the file of the assessing officer to verify the same. It means ld. PCIT has failed to point out the specific defects and errors in the documents of the assessee, however, he delegated his authority to the assessing officer to examine the documents submitted by the assessee, during the revision proceedings and make a fresh assessment order. Such direction is not tenable in the eye of law.It is necessary for the ld PCIT to point out the exact error in the order which he proposes to revise, so that the assessee would have an adequate opportunity of meeting that error before the final order is made-CIT v. G.K. Kabra (1995) 211 ITR 336(AP). Where ld. PCIT has not applied his mind to relevant material on record and has not given reasons for his orders u/s 263, his order is not valid – CIT v. Kashi Nath & Co. (1987) 33 Taxman 577.(1988) 170 ITR 28 (All).Therefore, the ld PCIT has to pass a speaking order. It is necessary for the Commissioner to state in what manner he considered that the order of the Assessing Officer was erroneous and prejudicial to the interests of the revenue and what the basis was for such a conclusion – CIT v. R.K. Metal Works (1978) 112 ITR 445 (Punj.& Har.). Therefore, we find that revision order passed by the learned PCIT,under section 263 of the Act should be quashed on this score only.

13.We note that assessee-company had carried out the business of sub-contracting labour contract for bridge, underpass, roads, etc. Hence, assessee company had employed labourers on a contract basis as well as on payroll basis for providing subcontracting service for construction of bridge, underpass, roads, etc. during the year under consideration.In the construction industry, work was carried out by casual workers, who are floating move from one place to another. During the year under consideration the assessee had engaged casual workers for construction project, as it did in the past, so it was not first time that assessee had engaged the casual workers. All these casual labourers were engaged on daily wages basis under the direct supervision and control of assessee- company, so employer-employee relationship exists and hence it was not being a case of contractual payments. Moreover, there was no such any findings by assessing officer that the payment made for wages for these daily wage earners would come under the contractual payment. Theassessing officer have himself considered the nature of wages after verification of all details like - summary of Workers payment, TDS details, Annexure, Audit report, last assessment order etc. After considering the explanation and details filed during the assessment asst. proceedings, assessing officer had taken plausible view that the payment made to these casual workers would not come under the scope of TDS u/s 194C but instead it will come under section 192 of the Act.It is pertinent to note that the threshold for TDS deduction is different in section192 vis-à-vis in section 194C of the Act, as the assessee company had already furnished submission of details of payment made to casual labourers wherein none of these workers exceeds the threshold of basic exemption limit hence, no TDS was made u/s 192 of the Act. Besides the assessee company had already

deducted TDS u/s. 194C in respect of payment made to subcontractors, wherever is applicable.

14. The PCIT has alleged that there existed employer-employee relationship between the assessee and labourers, there would have been PF / ESI registration. However, the construction workers working at a construction site are not covered under ESI Act, 1948.It is applicable to workers working within a factory and that too is limited for a period during which they are working within a factory. None of the State Governments have extended the scheme to construction workers since they are mostly migratory. To support his contentions, the assessee relied on following case laws:

(1)Dy. CIT v. Laxmi Protein Products (P) Ltd. [2010] 195 Taxman 32 (Ahd.)

(2)CIT v. Mrinalini Biri Mfgg. Co. Ltd. [1992] 105 CTR 327 (Kol.)

(3)Samanwaya v. Asstt. CIT [2009] 34 SOT 332 (Kol.)

(4)CIT v. Bhagwati Steels [2010] 326 ITR 108.

(5)CIT v. United Rice Land Ltd. [2010] 322 ITR 594.

The ld. Counsel also submitted that that mere non-compliance of PF/ESI Act does not result in a change in nature of the payment made to Casual workers, as contractual payment, so as to attract TDS u/s. 194C of the Act. Section 194C of the Act is attracted when any payment is made for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person. In the facts of the present case there is no contract between the assessee and any specified person for carrying out any work as contemplated in the section. The assessee had got

the work done directly through labourers and had merely paid them through the head labourer or labourers. In the absence of any contract to carry out any work with a specified person, the provisions of section 194C of the Act would not be attracted and hence there would be no liability to deduct tax at source so as to attract the provisions section 40(a)(ia) of the Act. For that reliance is placed on the judgement of the Hon'ble Gujarat High Court in the case of Principal Commissioner of Income-tax-3 vs. Swastik Construction [2018] 91 taxmann.com 10 (Gujarat), wherein, it was held that in absence of any contract entered by assessee with a specific person to get any work done by such person, provisions of section 194C would not be attracted and assessee would have no liability to deduct TDS.

15. We note that the assessee has incurred total labour expenses of Rs. 9,29,67,709/-, during the year under consideration. Out of which TDS is deductible on Rs. 4,93,22,122/- and same was deducted and paid by assessee company. Further, the assessee- company had also employed laboures on a contract basis, as well as on a payroll basis for providing subcontracting service for construction of bridge, underpass, roads, etc; as contract given by M/s Sadbhav Engineering Ltd. Where in laborers were employed on payroll were taxable at basic exemption limit applicable as per section 192 of Income Tax Act, 1961. Same was accepted during the scrutiny assessment. The details furnished by the assessee, during the assessment proceedings, in this respect are summarised in the below chart:

Details provided during Scrutiny assessment is as under:

Details asked by AO	Reference	Submission of details by Appellant	Submission Dated
Details of contract receipts and expenses as per P & L account with documentary evidences.	Notice u/s. 142(1) dated 08.12.2020. (Question No. 3)	Details for Income & Expenses	Submission-1 dated 12.01.2021
		Ledger for Income & Expenses	Submission-2 dated 03.02.2021
Details of party wise direct expenses with supporting documents. TDS if applicable.	Notice u/s. 142(1) dated 08.12.2020. (Question No. 5)	Labour expenses party wise along with TDS deducted in Annexure – A.	Submission-2 dated 03.02.2021
Details for Refund claimed	Notice u/s. 142(1) dated 08.12.2020. (Question No. 6)	Justification regarding refund claimed & Comparative details for last three year for Refund claimed	Submission-1 dated 12.01.2021
Details of labour expenses of Rs. 4,35,38,841/-.	Notice u/s. 142(1) dated 16.03.2021. (Question No. 5)	Details of labour expenses of Rs. 4,35,38,841/- in Annexure – B	Submission-5 dated 10.04.2021

Copy of notices issued during assessment proceeding and reply filed by appellant is attached herewith for your kind reference. (Page No. **1-26** of Paper Book).

16. From the above chart, it is abundantly clear that assessee has submitted every kind of detail and documents during the assessment proceedings. Having examined these documents and details, the assessing officer, took plausible view. That is, in the case of the assessee- company, the Assessing officers has made detailed scrutiny regarding Labour wages and TDS paid on the same. Details were provided during the assessment proceeding, as mentioned in the above table. We also note that merely non-discloser in TDS, in the Tax Audit Report due to an inadvertent mistake by Tax auditor, does not amount to suppression of income. Thedetails of TDS deducted during the year was inquired by Assessing officer in scrutiny assessment and assessee has also

furnished details and documentary evidence as asked by assessing officer. We find that assessing officer was satisfied with the details provided during scrutiny assessment and had never asked the details of TDS return, copies of TDS challans etc; instead he had asked for TDS deducted party- wise, for which the assessee had already provided the details vide Submission 03.02.2021 (Page No. 10-11 of Paper Book) and Submission No. 2, dated 5 dated 10.04.2021 (Page No. 17-18 of Paper Book). After considering the above details, the assessing officer has verified the details and passed assessment order u/s. 143(3) with due application of mind.

17.We note that Section 263 of the Act, speaks of revision of orders prejudicial to revenue. As per the said section and various judicial precedents including those of Hon'ble Apex Court in the cases of Malabal Industrial Co. Ltd. vs. CIT (243 ITR 83) and CIT vs. Max India Ltd. (295 ITR 282), in order to invoke provisions of section 263 of the Act, twin conditions need to be satisfied exhaustively, viz. first, the order sought to be revised should be erroneous and secondly, it should be prejudicial to the interest of the Revenue. Such occasions arise when the assessing officer, while passing assessment order u/s. 143(3) did not have called for such information/ documents from the assessee to frame the assessment and did not consider the same before completing the assessment. Once the assessing officer conducts enquiry, as deem fit to complete the assessment u/s. 143(3) and takes a possible view on such enquiry and consideration of facts and explanation of the assessee, in that case, jurisdiction to invoke provisions of section 263 of the Act, does not lie. As stated above, during the course of the scrutiny assessment proceeding, the assessee furnished full details.

18.Hon`ble High Court of Bombay in the case of CIT Vs. Gabriel India Ltd (Bom) 263 ITR 108 - , on identical facts, as that of assessee, held as follows:

"The Income Tax Officer in the case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given a detailed explanation in that regard by a letter in writing. All these were part of the record of the case. Evidently, the claim was allowed by the Income Tax Officer on being satisfied with the explanation of the assessee. This decision of the Income Tax Officer could not be held to the "erroneous" simply because in his order he did not make an elaborate discussion in that regard. Moreover, in the instant case, the Commissioner himself, even after initiating proceedings for revision and hearing the assessee, could not say that the allowance of the claim of the assessee was erroneous and that the expenditure was not revenue expenditure but an expenditure of capital nature. He simply asked the income tax officer to re examine the matter. That was not permissible. The Tribunal was justified in setting aside the order passed by the Commissioner of Income Tax under Section 263"

19.From the above facts of the assessee`s case, we note that assessee during the assessment stage has submitted all the documents, details and the explanations required by the Assessing Officer and just because the Assessing Officer does not bring these facts in his assessment order does not mean that assessing officer has not conducted proper enquiry during the assessment stage. In this regard, the reliance can be placed on the judgment of Hon'ble Delhi High Court in the case of CIT vs. Sunbeam Auto Ltd. [189 Taxman 436 (Del.)], wherein it was held as follows:

"12. *We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income-tax under section 263 of the Income-tax Act. As noted above, the submission of learned counsel for the revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry", that such a course of action*

would be open. In Gabriel India Ltd.'s case (supra), law on this aspect was discussed in the following manner:

". . . From a reading of sub-section (1) of section, it is clear that the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the Income-tax Officer is 'erroneous insofar as it is prejudicial to the interests of the revenue'. It is not an arbitrary or unchartered power. It can be exercised only on fulfilment of the requirements laid down in sub-section (1). The consideration of the Commissioner as to whether an order is erroneous insofar as it is prejudicial to the interests of the revenue must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. [See: Parashuram Pottery Works Co. Ltd. v. ITO[1977] 106 ITR 1 (SC) at page 10].

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From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.

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We may now examine the facts of the present case in the light of the powers of the Commissioner set out above. The Income-tax Officer in this case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given detailed explanation on that regard by a letter in writing. All these are part of the record of the case. Evidently, the claim was allowed by the Income-tax Officer on being satisfied with the explanation of the assessee. Such decision of the Income-tax Officer cannot be held to be "erroneous" simply because in his order he did not make an elaborate discussion in that regard . . ." (pp. 113-117)

13. *When we examine the matter in the light of the aforesaid principle, we find that the Assessing Officer had called for explanation on this very items, from the assessee and the assessee had furnished his explanation vide letter dated 26-9-2002. This fact is even taken note of by the Commissioner himself in Para 3 of his order dated 3-11-2004. This order also reproduces the reply of the respondent in Para 3 of the order in the following manner :*

"The tools and dies have a very short life and can produce up to maximum 1 lakh permissible shorts and have to be replaced thereafter to retain the accuracy. Most of the parts manufactured are for the automobile industries which have to work on complete accuracy at high speed for a longer period. Since it is an ongoing procedure, a company had produced 10,75,000 sets whose selling rates is inclusive of the reimbursement of the dies cost. The purchase orders indicating the costing includes the reimbursement of dies cost are being produced before your honour. Since the sale rate includes the reimbursement of dies cost and to have the matching effect the cost of the dies has been claimed as a revenue expenditure."

14. *This clearly shows that the Assessing Officer had undertaken the exercise of examining as to whether the expenditure incurred by the assessee in the replacement of dyes and tools is to be treated as revenue expenditure or not. It appears that since the Assessing Officer was satisfied with the aforesaid explanation, he accepted the same. The CIT in his impugned order even accepts this in the following words :*

> *"Assessing Officer accepted the explanation without raising any further questions, and as stated earlier, completed the assessment at the returned income."*

15. *Thus, even the Commissioner conceded the position that the Assessing Officer made the inquiries, elicited replies and thereafter passed the assessment order. The grievance of the Commissioner was that the Assessing Officer should have made further inquires rather than accepting the explanation. Therefore, it cannot be said that it is a case of 'lack of inquiry'.*

16. *Having put the records straight on this aspect, let us proceed further. Is it a case where the Commissioner has concluded that the opinion of the Assessing Officer was clearly erroneous and not warranted on the facts before him and, viz., the expenditure incurred was not the revenue expenditure but should have been treated as capital expenditure ? Obviously not. Even the Commissioner in his order, passed under section 263 of the Act, is not clear as to whether the expenditure can be treated as capital expenditure or it is revenue in nature. No doubt, in certain cases, it may not be possible to come to a definite finding and therefore, it is not necessary that in all cases the Commissioner is bound to express final view, as held by this Court in Gee Vee Enterprises' case (supra). But, the least that was expected was to record a finding that order sought to be revised was erroneous and prejudicial to the interest of the revenue. [see : Seshasayee Paper & Board Ltd.'s case (supra)]. No basis for this is disclosed. In sum and substance, accounting practice of the assessee is questioned. However, that basis of the order vanishes in thin air when we find that this very accounting practice, followed for number of years, had the approval of the income-tax authorities. Interestingly, even for future assessment years, the same very accounting practice is accepted.*

17. *It is in this context the question that assumes importance is as to whether powers could be exercised under section 263 of the Act when two views are possible and following observations of the Tribunal, in this backdrop, become relevant :*

"38. Still further, the Hon'ble Supreme Court in Malabar Industrial Co. Ltd.'s case (supra) has held that when two views are possible and the Assessing Officer has taken one of the possible view, then the order cannot be held to be prejudicial to the interest of the Revenue. Since the CIT could not come

to a definite finding that the expenditure in question was a capital expenditure in the proceedings under section 263, in our opinion, the order of the Assessing Officer could not be held to be erroneous."

18. *Let us look into the matter from another angel. What was the material/information available with the Assessing Officer on the basis of which he allowed the expenditure as revenue? It was disclosed to him that the assessee is a manufacturer of car parts. In the manufacturing process, dyes are fitted in machines by which the car parts are manufactured. These dyes are thus the components of the machines. These dyes need constant replacement, as their life is not more than a year. The assessee had also explained that since these parts are manufactured for the automobile industry, which have to work on complete accuracy at high speed for a longer period, replacement of these parts at short intervals becomes imperative to retain accuracy. Because of these reasons, these tools and dyes have a very short span of life and it could produce maximum one lakh permissible shorts. Thereafter, they have to be replaced. With the replacement of such tools and dyes, which are the components of a machine, no new assets comes into existence, nor is their benefit of enduring nature. It does not even enhance the life of existing machine of which these tools and dyes are only parts. No production capacity of the existing machines is increased either. The Tribunal, in these circumstances, relied upon the judgment of Mysore Spun Concrete Pipe (P.) Ltd.'s case (supra) wherein Karnataka High Court held that the replacement of moulds was not in the nature of replacement of a capital machinery, but in the nature of replacement a part of the machinery which in turn was in the nature of maintenance of machinery installed in the factory. Such an expenditure was treated as revenue expenditure. With this position in law, it is clear that view taken by the Assessing Officer was one of the possible views and, therefore, the assessment order passed by the Assessing Officer could not be held to be prejudicial to the revenue. Such an order thus has rightly been set aside by the Tribunal.*

19. *When we consider the matter in the aforesaid perspective, it also becomes clear that the judgments under which Mr. Sanjeev Sabharwal, learned counsel for the revenue, had taken umbrage would not be applicable in the instant case and, therefore, would not come to his rescue. In Saravana Spg. Mills (P.) Ltd.'s case (supra) where the Supreme Court expounded the principle of "current repairs", clear finding recorded was that ring frames would constitute independent and separate machine capable of independent and specific functions, as is clear from the following observations :*

"In our view, the Assessing Officer was right in holding that each machine including the Ring Frame was an independent and separate machine capable of independent and specific function and, therefore, the expenditure incurred for replacement of the new machine would not come within the meaning of the words "current repairs". In the present case it is not the case of the assessee that a part of the machine (out of 25 machines) needed repairs. The entire machine had been replaced. Therefore, the expenditure incurred by the assessee did not fall within the meaning of "current repairs" in section."

In the present case, finding is just the opposite, viz., dyes and tools are part of the machines. Replacing these dyes the purpose is to maintain the existing assets, viz., machine and not to bring a new asset. Moreover, case at hand is not a case of "repairs of machinery" which was the situation is in Saravana Spg. Mills (P.) Ltd.'s case (supra). The present case proceeded on the controversy right from the order of Assessing Officer till ITAT as to whether this expenditure was revenue or capital in nature. Even before us, arguments rested on this aspect.

20. *Likewise, whether the Commissioner should have recorded definite finding or not, may not be very relevant factor in the present case where on the facts of this case we have found that the*

opinion of the Assessing Officer in treating the expenditure as revenue expenditure was plausible and thus there was no material before the CIT to vary that opinion and ask for fresh inquiry.

21. *Thus, from whatever the matter is to be looked into, the conclusion would be that the order of the Tribunal does not call for any interference as the question of law has rightly been decided. We, thus, answer this question in favour of the assessee and against the Revenue, consequence whereof this appeal is dismissed with cost."*

20.We note that on the similar facts, the Hon'ble Gujarat High Court in the case of Arvind Jewellers [259 ITR 0502] (Guj HC) in IT Ref. No.174 of 1989, held as follows:

"7. *Coming to the facts of the present case, it is the finding of fact given by the Tribunal that the assessee has produced relevant material and offered explanation in pursuance of the notices issued under section 142(1) as well as section 143(2) and after considering those materials and explanation, the ITO has come to a definite conclusion. The Commissioner did not agree with the conclusion reached by the ITO. Section 263 does not empower him to take action on these facts to arrive at the conclusion that the order passed by the ITO is erroneous and prejudicial to the interest of the revenue. Since the material was there on record and the said material was considered by the ITO and a particular view was taken, the mere fact that different view can be taken, should not be the basis for an action under section 263 and it cannot be held to be justified.*

8. *In view of this and following the principles laid down by the Supreme Court in Malabar Industrial Co. Ltd.'s case (supra), we are of the view that having regard to the facts and circumstances of the case, the Tribunal was justified in setting aside the order passed by the Commissioner under section 263. We, therefore, answer both the questions in the affirmative, i.e., in favour of the assessee and against the revenue. The reference is, accordingly, disposed of with no order as to costs."*

21.In view of the facts of the case and judicial pronouncements relied upon, it is well established that the impugned order passed u/s 143(3) of the Act dated 03.06.2021, was passed by assessing officer, after calling for relevant information and after detailed examination of the same, and after due application of mind passed the assessment order, so it cannot be termed as erroneous and prejudicial to the interest of the revenue. So, the Ld. PCIT's finding fault, with the order of the Assessing Officer is erroneous as well as prejudicial to the interest of revenue, on account of lack of inquiry, has to fail.Based on these facts and circumstances, we quash the order dated 02.01.2024 passed by the ld PCIT under section 263 of the Act.

22. In the result, appear of the assessee is allowed.

Order pronounced in the open court on 21/ 03/2025.

Sd/-	**Sd/-**
(DINESH MOHAN SINHA)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Rajkot **(True Copy)**

दिनांक/ Date: 21 / 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