

आयकरअपीलीयअधिकरण,राजकोटन्यायपीठ,राजकोट।
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.609/RJT/2024

निर्धारणवर्ष /Assessment Year: 2018-19

Shree Samarth Switchgear and Transmission Pvt. Ltd. “Samarth House” Office No.101 25/1, Joiser State B/h. Atul Petrol Pump Nr.Digjam Circle Jamnagar 361 006. PAN : AASCS 8647 L	बनाम Vs.	The Pr.CIT-1 Jamnagar.
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आयकरअपीलसं/.ITA No.610/RJT/2024

निर्धारणवर्ष /Assessment Year: 2018-19

Shree Samarth Electricals Pvt. Ltd. “Samarth House” Ground Floor 25/1, Joiser State B/h. Atul Petrol Pump Nr.Digjam Circle Jamnagar 361 006. PAN : AASCS 8646M	बनाम Vs.	The Pr.CIT-1 Jamnagar.
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आयकरअपीलसं/.ITA No.612/RJT/2024

निर्धारणवर्ष /Assessment Year: 2018-19

GojiyaBhikhubhai Prop: Of Shree Samarth Engineering, Samarth House, Plot No.25/1 Joiser Park Estate B/H. Atul Petrol Pump Jamnagar 361 001.	बनाम Vs.	The Pr.CIT-1 Jamnagar.
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PAN : AIQPG 1300 B		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी/Respondent)

निर्धारितीकीओरसे/Assessee by : Shri Mahesh Paun, Id.AR

राजस्वकीओरसे/Revenue by : Shri Sanjay Punglia, Id.CIT-DR

सुनवाईकीतारीख/Date of Hearing : 06/03/2025

घोषणाकीतारीख/Date of Pronouncement : 25/04/2025

ORDER

PERDR. ARJUN LAL SAINI, ACCOUNTANT MEMBER:

By way of these three appeals, different assesseees have challenged the correctness of the separate orders passed by the Learned Principal Commissioner of Income Tax-1, Rajkot ("PCIT" for short) under section 263 of the Income Tax Act, 1961 ("the Act" for short), for assessment year 2018-19, all dated 21.02.2024.

2. Through these appeals, assessee assails the correctness of separate orders passed by the Learned Principal Commissioners of Income-tax (Ld.PCIT), in relation to the captioned assessment year 2018-19. Since these appeals are based on similar facts and common grounds of appeal, therefore, we are proceeding to dispose of them by this consolidated order for the sake of convenience.

3. Although, these three appeals pertain to different assesseees, however, these three assesseees belong to one group. In all these appeals, viz. ITA No.609, 610 and 612/RJT/2024, there are delay in filing appeals of 119 days, 119 days and 120 days, respectively, before this Tribunal. The assesseees have moved petition for condonation of delay in each appeal, separately on separate affidavit, requesting the Bench to condone the respective delays, noted above. Since these appeals are related to the same group, therefore, the assessee submitted the



identical and similar petitions for condonation of delay, that is, contents of the petition for condonation of delay in these three appeals are identical and common, therefore, we take the basis of the petition for condonation of the delay, in ITA No.612/RJT/2024, as a sample, for adjudicating the respective delay in filing these three appeals. The contents of the petition for donation of delay submitted before the Bench, in ITA No.612/RJT/2024, as a sample, are as follows:

“Departmental official survey have made at the business premises on 16-02-2018 Departmental official survey proceeding u/s 133A conducted at the business premises of Your Appellant on 16-02-2018. Your Appellant co-operated the survey team, provided all the required details like as Sales, Purchases, Expenses, Stock, Cashbook, Bank deposit withdrawal etc. The survey team didn't find any incriminating materials, unaccounted transactions, any tax evasion or any noticeable mistake during the survey. The survey team seem difference in stock value of Rs. 65,25,851/-. Due to first time proceeding at his business place, Your Appellant director was in little pressure. As a part of co-operation and for the peace of mind he made disclosure of difference in the valuation of business stock and cash to the Survey team, deposited applicable Income Tax there on.

Then after your Appellant's case was selected for compulsory scrutiny, your Appellant, necessary details, documents and explanations, Ld. assessing officer Accepted the retune income and passed assessment order u/s 143(3) on 15-04-2021.

Then after Ld. PCIT Jamnagar passed an order u/s. 263 for levy of higher rated tax u/s. 69 rws 115BBE of the Act. Ld. PCIT hold assessment order dated 15-04-2021 passed by Ld. assessing officer u/s 143(3) of the act, set aside the order on 21-02-2024.

Being aggrieved with the above order, your appellant preferred a respective Appeal before Hon. ITAT, Rajkot.

Your Appellant is assessed to tax since past many years i.e. starting up the business. Due ignorance of particular provisions of law and compliances, Your Appellant appointed a compliance person for the compliances of taxation.

The appeal before Hon'ble ITAT against the order of the Ld. PCIT is required to be filed within 60 days on receipt of the order i.e. 21/04/2024. Therefore, the appeal before Hon'ble ITAT is required to be filed on or before 21/04/2024.



Due of critical health of his grandfather, appointed compliance person Mr. Kirtikumar Paun taken long leave, after death of his grandfather, he extended his leave. After his re-joining in the month August-24, we could file the appeal on 15-08-2024.

Thus, due to ignorant of particular provision of law and absence of concern person it caused delay of 120 days in filling of appeal.

Therefore, there is reasonable cause in delay of filling appeal

- > Due to this order your appellant faces many hardships to run the business.*
- > There are so many judgments in which juridical authorities have accepted the genuine cause and hardship of tax payer for condonation of the delay in the interest of justice.*
- > Hon. Rajkot ITAT also accepted the genuine cause and hardship of tax payer for condone the delay in the interest of justice in so many cases.*

Your Appellant have enclosed herewith an affidavit, leave applications by compliance person and death certificate of his grandfather as supporting documents.

Your honor the delay is caused due to genuine reason, your appellant faces many hardships due to the often proceedings even after paid the applicable tax liability. Kindly note the same on your records, condone the delay and obliged.”

4. Learned Counsel for the assessee, also submitted that the grandfather used to look the taxation matters of this entire group, and he was feeling severe illness, and because of his severe illness, the grandfather appointed an advocate for compliance of taxation matters, however, because of the mistake of the Advocate, so appointed, there was a delay in filing these respective appeals, therefore, such delay may be condoned in the interest of the Justice. Since the reasons for the petition for condonation of delay are similar in ITA No.609 and 610/RJT/2024, therefore, the delay should be condoned in the interest of justice, in other group appeals also, based on the same sufficient cause.

5. On the other hand, the Id. DR for the Revenue submitted that these different three assesseees have explained the reasons of delay that the grandfather who



used to look the taxation matters of the entire group, was feeling severe illness and eventually he died, is not a 'sufficient cause', to condone such delay, therefore, the delay should not be condoned and these appeals of the assesseees should be dismissed.

6. We have heard both the parties on this preliminary issue. We note that these three assesseees, are the group and associated concerns and the group taxation matter used to look after by the grandfather, of the key managerial persons of these group concerns. These group concerns are managed by the same family members. Due of critical health of grandfather, the group management appointed an advocate for compliance of taxes and matters, namely, Mr. Kirtikumar Paun who took long leave, after death of grandfather. The Id. Counsel submitted that the grand-father of the assesseees-group, has died on 13.03.2024 and death certificate of the assessee's grand-father is placed before the Bench. The Id.Counsel for the assessee, also submitted before us that due to tension environment in the family members because death of their grand-father, and due to non-cooperation of the Advocate (for compliance of taxation matters), these assesseees, could not file appeal before the Tribunal, on time, prescribed it under the Act. We are of the view that provisions of law have to be adhered strictly and that one cannot be allowed to act in leisure and make a mockery of enacted law, because law & provisions are laid down to benefit both sides of litigation. Be that as it may, we have to do justice and the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs Mst. Katiji and others , reported in 167 ITR 471, (1988 SC 897) (7) observes

"4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non- deliberate delay."



When we weigh these two aspects then the side of justice becomes heavier and casts a duty on us to deliver justice. We note that the reasons given in the affidavit for condonation of delay were convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing these appeals. Having heard both the parties and after having gone through the affidavit as well the delay condonation, application, in each appeal, we are of the considered opinion that in the interest of justice, the delay deserves to be condoned. We, accordingly, condone the delay of 120 days in ITA No.612/RJT/2024, as also 119 days' delay, each in filing, the appeals in ITA No.609 and 610/RJT/2024, and admit these respective appeals for hearing.

7. For the sake of convenience, the grounds as well as the facts narrated in ITA No.612/RJT/2024, for assessment Year 2018-19, have been taken into consideration for deciding the above appeals *en masse*.

8. Grievances raised by the assessee, in lead case in ITA No. 612/RJT/2024, for assessment Year 2018-19, are as follows:

“All the below mentioned grounds of appeal are independent and without prejudicial to each other.

1. Learned PCIT Jamnagar erred in law as well on facts by holding that the assessment order, dated 15/04/2021, passed by the Assessing Officer u/s 143(3) of the Act for the A.Y. 2018-19 is erroneous and it is prejudicial to the interest of the revenue within the meaning of the provisions of section 263 of the Act, and set-aside the assessment order and giving direction to the assessing officer to revise the assessment order.

2. Learned PCIT Jamnagar erred in law as well facts by not giving effective opportunity of being heard, and passed order which is against the law and principle of natural justice.

Appellant craves leave to add, amend, alter or withdraw any ground of appeals.”



9.The relevant material facts, as culled out from the material on record, are as follows.The assessee has filed return of income for assessment year(AY) 2018-19, on 30/10/2018, declaring total income of Rs.71,57,260/-, for the year under consideration. The assessee`s case was selected for complete scrutiny, as in the case of assessee, a survey u/s 133A of the Act was carried out on the business premises of the assessee. The assessment u/s 143(3) of the Income-tax Act, 1961 (‘the Act’ for short) was finalized on 15/04/2021 accepting the returned income.

10. Later on, Learned Principal Commissioner of Income Tax-1, Rajkot (“Ld.PCIT” for short), exercised his jurisdiction under section 263 of the Income Tax Act, 1961.On perusal of assessment records for assessment year 2018-19, it was noticed by ld. PCIT that the assessee has debited contract and sub- contract expenses and job work expenses in the Profit& Loss account without deducting TDS from the said expenses, as required u/s 194C of the Act. Therefore, 30% of such expenses was required to be disallowed u/s 40(a)(ia) of the Act, by the assessing officer at the time of passing order u/s 143(3) of the Act, dated15/04/2021.

11.Further, ld. PCIT also noticed that the assessee has debited expenses in the name of Row Expenses, under the Direct Expenses in the Profit& Loss account for the assessment year (AY) under consideration. It was observed that Row expense is generally not claimed as revenue expenditure, instead the expenses is to be capitalized, as it has an expected useful life of greater than one year. The assessing officer has allowed the same without verifying the documentary evidences from which the nature and genuineness of the expense claimed by the assessee can be verified.



12. On verification of record for the assessment year (AY) under consideration, it was noticed that during the previous year, a survey proceedings u/s 133A of the Act, was conducted at the business premises of the assessee. As on date of survey, difference in the valuation of stock was found in physical stock and as recorded in the books of account of the assessee. Accordingly, in the statement recorded during the survey proceedings conducted u/s 133A of the Act, the Director of the assessee has admitted the same excess stock as unaccounted income which was not recorded in the books and account and agreed to offer this income as current year's income over and above his regular business income of the current year. However, the manner of earning of the same has not been admitted / explained by the assessee at the time of survey proceedings u/s 133A of the Act and as also during the course of assessment proceedings. As such unaccounted stock was required to be taxed as per the provisions of section 69 r.w.s. 115BBE of the Act. However, the assessing officer has failed to do so and has taxed such additional income as regular income of the assessee.

13. Accordingly, a show- cause notice for initiation of proceedings u/s 263 of Act, dated 21/11/2023, on the issue discussed above was issued to the assessee through ITBA, (with a request to submit the written submissions), which is reproduced as under:

“Please refer to the above.

2. On perusal of the case records for the AY 2018-19, it is observed that the assessment in your case has been finalized vide order u/s 143(3) of the Incometax Act (for short 'the Act') dated 15/04/21 by determining total income at Rs.71,57,260/- thereby accepting returned income.

3.1 On perusal of assessment records for AY 2018-19, it is seen that you had debited an amount of Rs 13,00,93,467/- on account of contract and sub contract expenses and Rs. 4,25,67,395/- on account of Job work expenses in the Profit & Loss account. However, you have not deducted TDS on said expenses in compliance to section 194C of Income-tax Act.



There were no documentary evidences available on records from which it can be ascertained whether you have deducted any TDS on the said payments. As you have failed to deduct / deposit TDS on expenditure of Rs 13,00,93,467/- and Rs 4,25,67,395/-, an amount of Rs 5,17,98,259/- being 30% of Rs 17,26,60,862 (13,00,93,467 + 4,25,67,395) is required to be disallowed u/s 40(a)(ia) of Act and added to your total income.

3.2 Further, on verification of the records, it is noticed that the you have debited P&L account with Rs. 1,36,50,985/- as direct Expenses w.r.t. ROW expenses being a contractor whereas Right of way is the right to pass over or through real property owned by someone else and expense included the amount paid to Government authorities or others towards permission to use of land for laying pipelines, along with cost of respective pipelines and the depreciations / amortization is being charged based on useful life of the pipelines. It is observed that ROW expense is generally not claimed as revenue expenditure, instead the expenses is to be capitalized as it has an expected useful life of greater than one year. There are no documentary evidences available on record from which the nature and genuineness of the expenses claimed by you can be verified.

4. Looking to the above facts and on perusal of case records, it is found that you have failed to deduct TDS from the job work expenses of Rs.4,25,67,395/- & contract and sub contract expenses of Rs.13,00,93,467/-. Further, you have not submitted/filed any documentary evidences in support of your claim of revenue expenditure of Rs.1,36,50,985/- under direct expenses w.r.t. ROW expenses. Therefore, the said amounts are required to be brought to tax and to be added to your total income.

5. As such, the order passed by the assessing officer prima facie is erroneous and prejudicial to the interest of the revenue within the meaning of the provisions of section 263 of the I.T. Act 1961. Therefore, I intend to revise the order of the assessing officer passed u/s 143(3) of the I.T. Act dated 15/04/21 for the AY 2018-19.

6. Under the circumstances, you are requested to show cause as to why the order dated 15/04/21 should not be revised u/s 263 of the Income-tax Act. You may submit your written submissions to this office either through e-proceedings module of your e-filing account on the website <https://www.incometax.gov.in> or email to jamnagar.pcit@incometax.gov.in or by any other postal modes / personal appearance or through your authorized representative latest by 28/11/2023 at 11:00 AM, failing which it may be presumed that you have no submission to make and revision order will be passed, based on the details and materials available on record.”

14. The Id.Pr.CIT, again issued show -cause notice, under section 263 of the Act on 30.01.2024, which is reproduced by the Id.Pr.CIT, on page no.4 to 5 of his order, wherein, the Id. PCIT raised the issue, relating to excess stock, the relevant portion of the show -cause notice is reproduced below:

“In addition to the issues raised in the above referred notice, on perusal of assessment records for assessment year 2018–19, it is seen that a survey under



section 133A of the Act was carried out in your business premises on 16.02.2018, and during the course of survey proceedings, uncounted stock worth Rs.65,25,851/- was found. During the course of statement recorded in this regard, it was admitted by you that you will disclose this disclosure amount of Rs.65,25,851/-, as additional income over and above your normal / regular income and due tax will be paid by you. However, you have not furnished the explanation about the source from which the unexplained stock has been purchased. Accordingly, you have offered gross disclosure of amount of Rs.65,25,851/-, in the return of income filed for the year under consideration”

15. In response to the above show -cause notices, the assessee, submitted written submissions before the Id.Pr.CIT and explained, the issues raised by the Id. PCIT. About the stock difference in the valuation of business stock, the assessee submitted before the learned PCIT that during the survey proceeding u/s 133A of the Act, the survey team did the valuation of the stock in a different way, than the valuation done by the assessee. It was nothing but due to changes in the measures of some stock items. However, to buy peace, the assessee agreed to pay the tax thereon and actually paid the same. Hence, there is no question about escaped income, or loss of revenue, as the assessee paid the taxes on the difference in valuation of business stock. Since the stock pertains to the business, hence no any tax liability may be imposed on the assessee under section 115BBE of the Act.

16. About TDS on contractor payment, the assessee submitted before the Id. PCIT that TDS on contractor payment, needs to be done when the amount credited or paid to a contractor or sub-contractor exceeds Rs. 30,000 in a single payment or Rs. 1,00,000 in aggregate during a financial year. As the individual-wise payment was less than these threshold limit, therefore, assessee was not liable to deduct the TDS on these expenses. Therefore, the assessee has not deducted nor made the payment of TDS on these transactions and list of these transactions were submitted before the Id. PCIT.



17. About the issue of row expenses of Rs. 1,36,50,985/-, the assessee stated before the Id. PCIT that he was a Job Work Contractor & Material Supplier in Electrical Line and doing various job works, like Erection, Installation, Repairing, Maintenance, Operating etc, of Electrical Sub-Station, Generator, Transformer, Electric Line etc, as per the requirements of customer. To pass over the electrical transmission line from agricultural or private land, it requires permission from the farmers or private land owner to pass an electrical line or to set-up electrical pole in their farm or private land. Which is known as Right of Way (ROW). Thus, assessee has to pay ROW compensation to the farmers or private land owners for the usages of their land. Which is being debited as ROW expenses into assessee's books of accounts. During the year assessee has paid ROW expenses of Rs. 1,36,50,985/-. Thus, these are not capital expenditure but revenue expenditure.

18. However, the Id.Pr.CIT rejected the contentions of the assessee and observed that the assessing officer failed to examine these aspects of the assessee's case, as discussed under three heads above, while finalising the assessment order. Such failure on the part of assessing officer rendered the assessment order passed u/s 143(3) of the Act, on 15/04/2021 for the A.Y. 2018-19, is 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. Therefore, Id. PCIT directed the assessing officer to examine and investigate and to verify these various expenses, as claimed by the assessee and documentary evidences submitted by the assessee, during the course of proceedings under section 263 of the Act. Thus, the assessing officer was directed to revise the assessment order.

19. Aggrieved by the order of Id.Pr.CIT, the assessee is in appeal before us.



20. About the issue of excess business stock, Learned Counsel for the assessee, argued that during the survey proceedings, the assessee has explained to the survey team, that excess stock was worked out by the survey team due to different valuation method adopted by the survey team, than the method adopted by the assessee. During the survey proceedings, the statement of the assessee was recorded and the assessee has categorically submitted that the excess stock related to the assessee's business and the assessee has admitted the quantum of the excess stock and also agreed to pay the tax on the excess stock, and in fact, tax was paid by the assessee, hence, there is no loss of revenue. To buy the peace, the excess stock, was admitted by the assessee and in fact the assessee has paid the taxes on the excess stock found during the course of survey proceedings, as per the statement of assessee recorded by the survey team. Therefore, Ld.Counsel for the assessee submitted that during the assessment proceedings, the assessing officer has examined all these facts, therefore, the order passed by the assessing officer should not be erroneous and prejudicial to the interest of the Revenue.

21. About the TDS issue raised by the Ld.PCIT, the Id Counsel submitted the List of these transactions, before the Bench, which was submitted by the assessee, before the assessing officer also and argued that TDS obligation in case of contract and sub-contract, arises when the amount credited or paid to a contractor or sub-contractor exceeds Rs. 30,000/- in a single payment or Rs. 1,00,000/- in aggregate during a financial year. As the individual-wise payment was less than these threshold limit, therefore assessee was not liable to deduct the TDS, on these expenses. Therefore, order passed by the assessing officer on this count should not be erroneous.



22.About the issue of row expenses of Rs. 1,36,50,985/-, the Id. Counsel submitted that no any fixed asset came into existence on account of these expenses, these are purely revenue expenses. Therefore, these expenses should be allowed as a revenue expenditure and should not be treated capital expenditure. The assessee has been doing the same business since last, many years and row expenses were claimed by the assessee in the past as a revenue expenditure and Department allowed the same. All these facts were explained with documentary evidences, before the assessing officer, hence order passed by the assessing officer should not be erroneous.

23.On the other hand, the Id.DR for the Revenue submitted that the assessee has explained the nature of excess stock, before the assessing officer, however, source of the excess stock has not been explained by the assessee, therefore, the order passed by the assessing officer is erroneous as well as prejudicial to the interest of the Revenue.

24.About the TDS issue raised by the Ld.PCIT, the Id. DR submitted that the assessee has failed to deduct the TDS, and assessing officer has not examined this aspect during the assessment proceedings, therefore assessment order passed by the assessing officer is erroneous.

25.About the issue of row expenses of Rs. 1,36,50,985/-, the Id. DR argued that assessee is going to get the benefit in the future, therefore, these expenses should be treated capital expenditure and assessee may claim the depreciation. However, considering the nature of these expenses, as these expenses will give enduring benefit to the assessee, therefore, these are capital in nature, therefore assessing officer has failed to examine the nature of these expenditure, hence



order passed by the assessing officer is erroneous as well as prejudicial to the interest of the revenue.

26. We have carefully considered the facts of the case, the submission of the Learned Counsel for the assessee and Id DR for the Revenue and evidences on record. Though facts have been discussed in detail in the foregoing paragraphs, however in the succinct manner, the relevant facts and background are reiterated in order to appreciate the controversy and the issue for adjudication. We note that learned PCIT has raised three issues in these appeals, which are as follows:

(1) Issue No.1 Excess stock found during survey processing. This issue is involved in the following appeals:

- (a) In ITA No.609/RJT/2024 Rs.72,46,345/-
- (b) In ITA No.610/RJT/2024 Rs.74,25,708/-
- (c) In ITA No.612/RJT/2024 Rs.65,25, 851/-

(2) Issue No.2 Job work expenses/ contract expenses/sub-contract expenses paid without deducting TDS Rs.5,17,98,259/-. This issue is in ITA No.612/RJT/2024, only.

(3) Row expenses, under the direct expenses Rs.1,36,50,985/-, assessee had treated revenue expenditure, however, as per Ld. PCIT it should be capital expenditure. This issue is in ITA No.612/RJT/2024, only.

27. Now we shall take these issues one by one as follows. The first issue raised by the Id. PCIT is the excess stock found during survey proceedings. The Id PCIT noticed that during the previous year, a survey proceedings u/s 133A of the Act, was conducted at the business premises of the assessee. As on date of



survey, difference in the valuation of stock was found in physical stock and as recorded in the books of account of the assessee and accordingly, the statement was recorded during the survey proceedings conducted u/s 133A of the Act, and the Director of the assessee has admitted the same excess stock as unaccounted income which was not recorded in the books and account and agreed to offer this income as current year's income over and above his regular business income of the current year. The Ld. PCIT noticed that assessee has paid the taxes on excess stock, however, the assessee has not explained the manner of earning of the excess stock, therefore, order passed by the assessing officer is erroneous and prejudicial to the interest of the revenue.

28. We note that during the assessment proceedings, the assessing officer has issued notice under section 142(1) of the Act, which is placed at PB Page No.13 to 19 of the assessee's paper book. In the said notice, the assessing officer has asked the question about the valuation of the closing stock and also asked the question whether this stock relates to the business. The important question raised by the assessing officer, during the assessment proceedings, by way of notice under section 142(1) of the Act, is reproduced below:

1. *Details of other income with supporting documents:*
2. *Valuation of closing stock.*
3. *Details of income offered for taxation u/s.133A.*
4. *Please explain the details of noting appearing on the papers impounded during the course of survey carried out at your business premises u/s.133A.*
5. *During the course of survey u/s.133A at your business premises, you have admitted undisclosed income of Rs.65,25,851 + 20,301/-. Please explain in detail show you have accounted for this disclosure amounts in your books of accounts and the return of income filed for the year undern consideration.*

29. In response to the notice of the assessing officer, the assessee has submitted detailed reply before the assessing officer, which is placed at paper book Page no.25 and relevant reply of the assessee is reproduced below:



“The provision of section 15BBE are applicable when income chargeable assessable u/s. 68 to 69. The Scheme of Sections 69,69A, 69B and 69C of the Income - Tax Act 1961 would show that in cases where the nature and source of investments made by the assessee or the nature and source of acquisition of money, bullion etc. owned by, the assessee or the source of expenditure incurred by the assessee are not explained at all, or not satisfactorily explained, than, the value of such investments and money or the value of articles not recorded in the books of account or the unexplained expenditure may be deemed to be the income of the assessee. It follows that the moment a satisfactory explanation is given about such nature and source by the assessee, than the source would stand disclosed and will, therefore, be known and the income would be treated under the appropriate head of income for assessment as per the provisions of the Act.For invoking provision of sections 69, 69A, 69B & 69C two conditions are required to be satisfied. They are (i) investment/ expenditure are not recorded in the book; of account of assessee and (ii) the nature and source of acquisition of asset; or expenditure are not explained or not explained Satisfactorily.In case of survey u/s 133A it is to be noted that once a specific surrender made by the assessee has been realized, the department cannot take a U turn while framing the assessment of the assessee by taxing the same under the head income from other sources under section 69, 69A and 69B. It has to be assessed under the Head Income from Business.

We have explained the source of income disclosed during survey satisfactorily to the income tax authority at the time of survey. And as the income tax authority was satisfied with the nature and source of income, the tax at applicable rate were agreed to be deposited and subsequently the challan copy was sent to the income tax authority. Hence in our case provision of section 68 to 69 cannot be invoked.

Both the aspect being nature and source of the impugned amount were explained by us and our explanation was accepted by the survey officer and no further question or doubt were raised and the survey was closed.

As a result of evidence of my statement on record, the question of invoking provisions of sec. 69 etc, does not arise because the source and nature having been explained and accepted in authorized survey proceeding in a statement on oath sees. 69 etc, become inapplicable and consequently, section 115BBE too does not apply to facts of our case. The income declared during the course of survey is from our business income is evident from the statement given during the course of survey.The stock was from the current business,shown in our books of accounts and treated as our Business Income.”

30. From the above reply by the assessee, during the assessment proceedings, it is abundantly clear that assessee has explained the source of income disclosed during survey,and as the Survey team was satisfied with the nature and source of income. The assessee has agreed to pay the tax on excess stock and subsequently assessee has paid the taxes on excess stock, and hence there is no



loss to the revenue. Thus, we find that both the aspects, being nature and source of the impugned amount were explained by the assessee and such explanation of the assessee, was accepted by the assessing officer, therefore we note that assessing officer has applied his mind and framed the assessment order by taking the plausible view. Therefore, the order passed by the assessing officer is neither erroneous nor prejudicial to the interest of the revenue, hence consequently, section 115BBE of the Act, too does not apply to the facts of the assessee's case. The income declared during the course of survey is from assessee's business, which is evident from the statement given during the course of survey by the assessee. The stock was from the current business of the assessee, and the excess stock found by the survey team was because of different valuation technique adopted by the survey team. Therefore, we find that assessee has explained the source and nature of the stock and moreover the assessee has paid the taxes on excess stock, as per his statement recorded, during the survey proceedings. Therefore, there is no loss to the revenue, hence, the order passed by the assessing officer is neither erroneous nor prejudicial to the interest of the revenue.

31. According to us, the present order of assessing officer passed u/s 143(3) of the Act dated 15.04.2021 of the Act, cannot be termed as **erroneous**, since enquiry was, in fact, carried out by him on the issue on which the Id PCIT has found fault with and has taken a plausible view. We note that the assessing officer has made enquiry during the assessment proceedings about excess stock and assessee has explained the nature and source of the stock. Thus, we note that the assessing officer enquired during assessment proceedings and the assessee had filed details before him. So, we find that the assessing officer's action cannot be termed "**erroneous**". Since not only enquiry was carried out by the assessing officer on the issue under consideration and based on the



evidence gathered, he has taken a plausible view, which at any rate cannot be called, as an un-sustainable view.

32. 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 assessing officer 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 assessing officer 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 assessing officer 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”**. Therefore, we are of the considered opinion that assessing officer’s order cannot be termed as *erroneous as well as prejudicial to the interest of the revenue* and therefore, jurisdictional condition precedent as prescribed by statute for invoking revisional jurisdiction is absent and therefore, we are inclined to quash the impugned order dated 21-02-2024 of the Id. PCIT.

33. In the result, appeal filed by the assessee, in ITA No. 612/RJT/2024, is allowed.

34. Since we have adjudicated the issue relating to excess stock by taking the lead case, in ITA No. 612/RJT/2024, for assessment Year 2018-19, the same and identical issues are involved in other group appeals of the assessee, Viz: in ITA No.609/RJT/2024, and in ITA No.610/RJT/2024. Accordingly, our observations made in ITA No. 612/RJT/2024, for assessment Year 2018-19, shall apply *mutatis mutandis* to the aforesaid other appeals of Assesseees, namely, ITA No.609/RJT/2024, and ITA No.610/RJT/2024. For the parity of reasons, we allow the abovementioned appeals of the Assesseein terms of directions noted in in ITA No. 612/RJT/2024, for assessment Year 2018-19.

35. In the result, appeals of the assesseees (in ITA No.609/RJT/2024, and ITA No.610/RJT/2024), are allowed.

36. Issue No.2 Job work expenses/ contract expenses/sub-contract expenses paid without deducting TDS Rs.5,17,98,259/-. This issue pertains to ITA No.612/RJT/2024 (GojjyaBhikhubhai). We note that during the assessment proceedings the assessee has explained the said issue, relating to TDS and in



fact, the assessing officer issued the notice under section 142(1) of the Act, asking the assessee to submit details of TDS. In response, the assessee submitted required details of the TDS which is placed at paper book Page no.80. Therefore, we find that in respect of TDS, on contract and sub -contract expenses of Rs.13,00,93,467/-, the assessee has submitted that TDS has already been deducted, as per applicable rates and the same was also deposited into the government account. In respect of the same, the assessee has submitted ledger account, copy of challan of TDS payment and acknowledgement of TDS return filed, during the assessment proceedings. In respect of TDS, on Job work expenses of Rs. 4,25,67,395/-, the assessee has submitted that there was no liability of TDS as all the payment were below Rs 30,000/- in a single payment or below Rs.1,00,000/- in aggregate during a financial year. As the individual wise payment was less than these threshold limit, the assessee was not liable to deduct the TDS from this expenses. In respect of the same, the assessee has submitted the ledger account of job work expenses of Rs. 4,25,67,395/- .We note that as per Id. PCIT,an amount of Rs. 5,17,98,259/- being 30% of Rs. 17,26,60,862/- (13,00,93,467 + 4,25,67,395) is required to be disallowed u/s 40(a)(ia) of Act.

37. We find that in respect of TDS, on contract and sub -contract expenses of Rs.13,00,93,467/-, the assessee has submitted that TDS has already been deducted, as per applicable rates and the same was also deposited into the government account.In respect of TDS, on Job work expenses of Rs. 4,25,67,395/-, the assessee has submitted that there was no liability of TDS, as all the payments were below Rs. 30,000/- in a single payment or below Rs.1,00,000/- in aggregate during a financial year. As the individual- wise payment was less than these threshold limit, the assessee was not liable to deduct the TDS from this expenses. All these facts were examined by the



assessing officer during the assessment proceedings with supporting documentary evidences, and applied his mind and took the plausible view therefore, such order passed by the assessing officer is neither erroneous nor prejudicial to the interest of the revenue.

38. Therefore, we allow issue No.2 of Job work expenses/ contract expenses in ITA No.612/RJT/2024 (GojjyaBhikhubhai), and quash the order of the Id. PCIT.

39. Issue No. 3 : Row expenses, in ITA No.612/RJT/2024 (GojjyaBhikhubhai), pertains to revenue expenditure Vs. Capital expenditure. The assessee treated revenue expenditure, however, as per Ld. PCIT it should be capital expenditure. We note that assessee is in the business of Job Work Contractor & Material Supplier in Electrical Line and doing various job works, like Erection, Installation, Repairing, Maintenance, Operating etc, of Electrical Sub-Station, Generator, Transformer, Electric Line etc, as per the requirements of customers. The assessee has been doing the same business since last, many years and row expenses were claimed by the assessee, in the past, as a revenue expenditure and department did not raise any objection in the previous years. Therefore, based on the principle of consistency, the assessing officer took the plausible view and treated these expenses, as a revenue expenses. It is a well settled legal position that factual matters which permeate through more than one assessment year, if the Revenue has accepted a particular's view or proposition in the past, it is not open for the Revenue to take a entirely contrary or different stand in a later year on the same issue, involving identical facts unless and until a cogent case is made out by the Assessing Officer on the basis of change in facts. For that we rely on the order of the Hon'ble Supreme Court in Radhasoami Satsang vs. CIT 193 ITR 321 (SC), wherein it was held as follows:



"We are aware of the fact that, strictly speaking, res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. On these reasoning, in the absence of any material change justifying the Revenue to take a different view of the matter - and, if there was no change, it was in support of the assessee – we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-tax in the earlier proceedings, a different and contradictory stand should have been taken."

40. We note that in assessee`s case under consideration, there is no change in facts, and assessing officer took the plausible view based on the past trend and past assessment years. Therefore view taken by the assessing officer is a plausible view, which is not erroneous and prejudicial to the interest of the revenue. The assessee, during the assessment proceedings, has submitted the details of direct expenses, ledger account and other relevant documents before the assessing officer, in response to the notice under section 142(1) of the Act. Therefore, the order passed by the assessing officer should not be erroneous and prejudicial to the interest of the Revenue. We find that Id. PCIT has exercised jurisdiction u/s.263 of the Act on the ground that the assessing officer failed to make proper enquiry which he ought to have made before completing the assessment. However, there is a distinction between "lack of enquiry" and "inadequate enquiry. If there is an enquiry, even inadequate, that would not by itself give occasion to the PCIT to pass order under section 263 of the Act, merely because he has a different opinion in the matter. The assessing officer is not required to give detailed reason in respect of each and every item of issue in the assessment order. The assessing officer had called for explanation regarding various issues and the assessee had furnished his explanation. Therefore, the view taken by the assessing officer was one of the plausible views and the assessment order passed by the assessing officer could not be held to be



prejudicial to the Revenue. We derive support for our conclusions, as above, from the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Sunbeam Auto Ltd. 332 ITR 167 (Del.). For reasons stated above, we are of the view that the jurisdiction u/s.263 of the Act was not properly exercised by the PCIT, as the condition precedent for invoking the same viz., that the order of the assessing officer is erroneous and prejudicial to the interest of the revenue, is not shown to be present in the present case. We therefore quash the order u/s.263 of the Act and allow these three appeals of the different assessees.

41.In the combined result, the appeals of the assessees (in ITA No.612/RJT/2024,in ITA No.609 and 610/RJT/2024), are allowed.

Order is pronounced in the open court on 25/04/2025.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(DR.ARJUNLAL SAINI)
ACCOUNTANT MEMBER

राजकोट/Rajkot

दिनांक/ Date: 25/04/2025

*vk

आदेशकीप्रतिलिपिअब्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकरआयुक्त/ CIT
- आयकरआयुक्त(अपील)/ The CIT(A)
- विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File



By order
Assistant Registrar/Sr. PS/PS
ITAT, Rajkot