

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.83/RJT/2023

निर्धारणवर्ष /Assessment Year: 2018-19

Sarju Vitrified P Ltd. Survey NO.149 & 150 At- Unchi Mandal Halvad Road Morbi – 363 641. PAN : AAXCS 3533 L	बनाम Vs.	The Pr.CIT-1 Rajkot.
(अपीलार्थी/Assessee)	:	(प्रत्यर्थी/Respondent)

निर्धारितीकीओरसे/Assessee by : Shri Vimal Desai, Id.AR

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

सुनवाईकीतारीख/Date of Hearing : 06/03/2025

घोषणाकीतारीख/Date of Pronouncement : 24/04/2025

**ORDER**

**PERDR. ARJUN LAL SAINI, ACCOUNTANT MEMBER:**

By way of this appeal, the assessee, appellant has called into question correctness of impugned order passed by the learned Principal Commissioner of Income Tax under section 263 of the Income tax Act, 1961, in the matter of assessment under section 143(3) of the Act, for the assessment year 2018-19, on the following grounds:



*1. The order u/s. 263 of the Act is bad in law.*

*2.The learned Pr. CIT has erred in law as well as on facts in not considering the submissions of the assessee on the strength of which the assessment order was neither erroneous nor prejudicial to the interest of revenue and therefore, the provisions of Section 263 of the Act were not applicable to the case of the assessee.*

*3.The learned Pr. CIT has erred in law as well as on facts in not appreciating that under the provisions of Section 68 as applicable to the year under appeal, the assessee was not required to prove the source of the source in respect of unsecured loans.*

*4.The learned Pr. CIT has erred in law as well as on facts in setting aside the assessment order passed by the ld. A.O. u/s. 143(3) and directing de-novo assessment regarding verification of unsecured loans of Rs.3,05,37,160.*

2.The facts of the case which can be stated quite shortly are as follows: The assessee, before us, is a private limited company, and had e-filed return of income for assessment year (AY) 2018-19, on 04.10.2018, declaring loss of Rs.9,59,81,462/-. Thereafter, the assessee's case was selected for Complete scrutiny through CASS for the reasons to verify (i) Large value outward remittance by a newly incorporated entity and (ii) Purchases shown in the income tax return (ITR) is less than the invoice value of imports shown in the export import data. The assessment was completed u/s.143(3) r.w.s. 143(3A) & 143(3B) of the I.T. Act, on 03.02.2021, determining assessed income at (-) Rs.9,50,92,451/-.

3. Later on, Learned Principal Commissioner of Income Tax (in brief Ld.PCIT), exercised his jurisdiction, under section 263 of the Income tax Act, 1961. The Ld PCIT on verification of records, it was observed that the Assessee had introduced huge amount in the company in the form of Unsecured loans money amounting to Rs.4,39,70,338/-. One of the reasons for selection of case under scrutiny was Large value outward remittance by a newly incorporated entity



during the year. Perusal of records, revealed that the assessee had submitted some details to prove the genuineness of the unsecured loans. The unsecured loan has been received by the assessee from 28 persons and out of 28 persons, some 11 Persons did not have sufficient creditworthiness to make such huge contribution. The total amount of such investment from these 11 persons comes to Rs.3,05,37,160/-. Their capital contribution is as high as 9 to 18 times their income and some of them are non-filers. Further, analysis revealed that some of the bank accounts of investors contained cash deposits, which are immediately invested in the assessee company. It was further noted by Id. PCIT that in some case, the bank statements of the investors have no major transactions other than the transaction with the assessee company. On perusal of assessment record, it was noticed by learned PCIT that in response to AO's notice u/s 142(1) dated 19.11.2020, the assessee submitted its reply vide letter dated 10.12.2020, wherein at point number 11 the assessee submitted the details of unsecured loan, however, it was noticed that the unsecured loans received by the assessee company from 11 persons (mentioned in the notice issued vide letter dated 19.03.2023) did not have sufficient creditworthiness to make such huge contribution. The total amount of such unsecured loan, investment in the company from 11 persons comes to Rs.3,05,37,160/-. As per the proviso to section 68 of the Income Tax Act, it is mandatory (as per law) to verify the **source of the source** and the AO failed to verify the source of the source of the unsecured loan and hence, there is clear violation of section 68 of the Income Tax Act and therefore, the aggregate amount of Rs.3,05,37,160/- was required to be disallowed u/s 68 r.w.s. 115BBE of the Act and added to the total income of the assessee while finalizing the assessment proceedings u/s. 143(3) of the I.T. Act which has not been done, by the assessing officer. The above facts are sufficient to reach to a conclusion that the A.O, has passed the assessment order without making proper enquiry and verification on the above issue. It is thus,



apparent that the order passed by the then AO in assessee's case for AY 2018-19 u/s. 143(3) r.w.s. 143(3A)&143(B)of the Act, dated 03.02.2021, is erroneous in so far as it is prejudicial to the interest of revenue to the above extent.

4.Considering the above facts, a notice u/s 263 of the Act, was issued by the ld PCIT, vide letter dated 09/03/2023, whichis reproduced by the ld.Pr.CIT, in his order, vide page no.3 to 5 of the revision order, under section 263 of the Act. In response to the notice of theld.Pr.CIT, the assesseehas submitted written submissions along with documents before theld.Pr.CIT. The Reply of the assessee, dated 23.3.2023, is reproduced below:

“The revision proceeding is initiated based on the following observations:

A. OBSERVATION: The records reveal that, you have submitted only details, like Acknowledgement of return of income for AY 2018-19 and bank statement of the depositors only. Other than these two details, no other details to prove the creditworthiness of the lender have been filed.

REPLY: This observation of your goodself is not true. The records are still intact and we would like to mention that, during the assessment proceedings u/s 143(3) we had submitted contra confirmation of account, acknowledgement of ITR along with computation of income and Balance Sheet for two years i.e. AY 2018-19 and AY 2017-18 and relevant part of the bank statement showing the transaction. In case of non-filers, the agriculture land papers are filed along with their ID proof and bank statement.

B. OBSERVATION: Your goodself found that some 11 persons from whom Unsecured loan has been received by us did not have sufficient creditworthiness. They had no real worth. The unsecured loan given by them is as high as 9 to 18 times their income and some of them are non-filers.



SR NO	NAME OF THE LONEE	AMOUNT	DOCUMENT SUBMITTED	REMARK	NO. OF TIME THE UNSECURED LOAN GIVEN VIS-a-VIS THEIR INCOME/FUNDS GENERATED
1	AmrutlalLaxmanbhai Patel	32,15,000	Contra confirmation of accounts, ITR, computation of income, Balance Sheet of AY 2017-18, 2018-19 and bank statement showing the transaction	Income during AY 18-19 = 8.67 Lakhs, Income during AY 17-18= 12.32 Lakhs, Balance Sheet Showing personal capital of Rs. 77.96 Lakhs, No cash was deposited in the bank A/C.	3.71
2	GirishbhaiSavjibhaiBhornaia	9,00,000	Contra confirmation of accounts, papers related to 24 Bigha Agriculture land, Aadhar Card, PAN card and bank statement showing the Transaction	He is an agriculturist not earning taxable income. He has given loan out of his past saving from his agriculture income. No cash was deposited in the bank account.	Non-filer



3	Jignesh MaganbhaiBhorania	30,01,360	Contra confirmation of accounts, ITR, computation of income, Balance Sheet of AY 2017-18, 2018-19 and bank statement showing the transaction	Income during AY 18-19 = 8.63 Lakhs, Income during AY 17-18= 29.62 Lakhs, Balance Sheet Showing personal capital of Rs. 62.92 Lakhs, No cash was deposited in the bank A/C. During AY 17-18 he sold his shares in Donato Vitrified Pvt. Ltd. for consideration of Rs. 67.28 Lakhs as per his computation of income for AY 2017-18.	3.48
4	KantabenMaganbhaiBhorania	43,23,140	Contra confirmation of accounts, ITR, computation of income, Balance Sheet of AY 2017-18, 2018-19 and bank statement showing the transaction	Income during AY 18-19 = 9.80 Lakhs, Income during AY 17-18= 8.66 Lakhs, Balance Sheet Showing personal capital of Rs. 66.33 Lakhs, No cash was deposited in the bank A/C. During AY 17-18 she sold her shares in Donato Vitrified Pvt. Ltd. for consideration of Rs. 37.84 Lakhs as per her computation of income for AY 2017-18.	4.31
5	Kaushik PrabhubhaiAdroja	18,90,000	Contra confirmation of accounts, ITR, computation of income, Balance Sheet of AY 2017-18, 2018-19 and bank statement showing the transaction	Income during AY 18-19 = 6.70 Lakhs, Income during AY 17-18= 15.67 Lakhs, Balance Sheet Showing personal capital of Rs. 61.98 Lakhs, No cash was deposited in the bank A/C.	2.82



6	MaganbhaiDamjibhaiBhorania	43,24,820	Contra confirmation of accounts, ITR, computation of income, Balance Sheet of AY 2017-18, 2018-19 and bank statement showing the transaction	Income during AY 18-19 = 10.06 Lakhs, Income during AY 17-18= 16.93 Lakhs, Balance Sheet Showing personal capital of Rs. 102.15 Lakhs, No cash was deposited in the bank A/C. During AY 17-18 he sold his shares in Donato Vitrified Pvt. Ltd. for consideration of Rs. 42.03 Lakhs, Sell agriculture land for consideration of Rs. 16.61 Lakhs as per his computation of income for AY 2017-18.	4.30
7	MamtabenJigneshbhaiBhorania	55,82,840	Contra confirmation of accounts, ITR, computation of income, Balance Sheet of AY 2017-18, 2018-19 and bank statement showing the transaction	Income during AY 18-19 = 3.20 Lakhs, Income during AY 17-18= 3.81 Lakhs, Balance Sheet Showing personal capital of Rs. 16.09 Lakhs, No cash was deposited in the bank A/C. During AY 17-18 she sold her shares in Donato Vitrified Pvt. Ltd. for consideration of Rs. 16.26 Lakhs as per her computation of income for AY 2017-18. She had also taken secured loan of Rs. 48.54 Lakhs from bank during the AY 2018-19	17.44
8	RameshbhaiRaghubhaiBhangia	12,00,000	Contra confirmation of accounts, papers related to 7 Bigha Agriculture land, Balance Sheet for 2 years, bank statement showing the Transaction	He is an agriculturist not earning taxable income. He has given loan out of his past saving from his agriculture income. No cash was deposited before issue of cheque in the bank account.	Non-filer



9	RasikAmrutlal Patel	28,00,000	Contra confirmation of accounts, ITR, computation of income, Balance Sheet of AY 2017-18, 2018-19 and bank statement showing the transaction	Income during AY 18-19 = 10.55 Lakhs, He also sold residential plot of Rs. 13.80 Lakhs as per ITR, Income during AY 17-18= 12.22 Lakhs, Sale residential plot of Rs. 5.60 Lakhs, Balance Sheet Showing personal capital of Rs. 59.12 Lakhs, no cash was deposited in the bank A/C.	2.65
10	MitalbenRaj nibhaiFefar	3,00,000	The loan was received and repaid during the year and therefore the AO might have taken the decision not to verify it or might have verified the details of Assessee from data base in ITD portal with her PAN quoted in the Tax Audit Report	AO is the best judge and he must have taken the decision judiciously.	
11	Shri Nidhi Shed Bolt Pvt. Ltd.	3000000	The loan was received and repaid during the year and therefore the AO might have taken the decision not to verify it or might have verified the details of Assessee from data base in the ITD portal with its PAN quoted in the Tax Audit report.	AO is the best judge and he must have taken the decision judiciously.	

*Your goodself has set the benchmark that, if the loan amount is less than 6 times the income of the lender than his credit worthiness is ok otherwise it is doubtful. In the above 11 lender as per your benchmark also, the creditworthiness of 6 persons cannot be doubted.*

*The details of this table given above is prepared from the documents submitted at the time of assessment proceedings u/s 143(3). If we read this table and details given therein carefully, we will find that apart from the taxable income and agriculture income, many of the lender such as serial no-3,4,6,7 and 9 has generated huge funds from sale of shares, property and by way of secured loan from financial institution. In some cases, the funds generated are more than the amount of loan. Also, the Balance sheet is showing very healthy capital in case of all the lender. All these details are mentioned in the computation of income and Balance sheet submitted at the time of assessment.*

*The contention that the Lender has shown, low income in comparison to investment becomes irrelevant when we have explained the nature and source of credit and place on record irrefutable evidences at the time of assessment. If genuineness of the funds in the hands of lender is not disproved, such contention does not assume any significance.*

*As we have explained the nature and source of credit with sufficient documentary evidences and when such evidences are not disproved or found to be false, no revision u/s 263 can be proposed.*

*C. OBSERVATION: Some of the bank accounts of the investors contain cash deposits, which are immediately invested in your company.*

*REPLY: This allegation is a so not correct. No cash deposit is there in any of the bank account of 11 lender shortlisted by your goodself. This can also be counter verified from the records submitted at the time of assessment.*

*D. OBSERVATION: The AO failed to verify the source of the capital contributed and hence, there is clear violation of sec 68 of the Income Tax Act. Thus, Rs. 3,05,37,160/- is required to be disallowed u/s 68 r.w.s. 115BBE of the Income Tax Act, 1961. Thus, there is under assessment to the tune of Rs. 3,05,37,160/-.*

*REPLY: Here the observation is regarding failure of the AO to verify the source of source of capital contribution. The word capital is written at many places in your SCN. This is not correct. We have considered this as a typing error as our whole reply is based on the Unsecured loan taken by the company from different persons. This is also the correct position and fact. This has been clarified, because, Sec. 68 placed different responsibilities on the shoulders of the assessing officer in the case of capital and unsecured loans during the current assessment year.*

*In this regard we want to highlight here, the necessary amendment proposed by the Finance Bill 2022, in Sec 68 and mentioned the date of its applicability also:*

*"Vide Finance Act, 2012, it was provided that the nature and source of any sum, in the nature of share application money, share capital, share premium or any such amount by whatever name called, credited in the books of a closely held company shall be treated as explained only if the source of funds is also explained in the hands of the shareholder. However, in case of loan or borrowing, the judicial decisions have held that only identity and creditworthiness of creditor and genuineness of transactions for explaining the credit in the books of account is sufficient, and the onus does not extend to explaining the source of funds in the hands of the creditor.*

*It is proposed to amend the provisions of section 68 of the Act so as to provide that the nature and source of any sum, whether in form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider. However, this additional onus of proof of satisfactorily explaining the source in the hands of the creditor, would not apply if the creditor is a well-regulated entity, i.e., it is a Venture Capital Fund, Venture Capital Company registered with SEBI.*



*This amendment will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.*

*Thus, in case of unsecured loans, the provision to verify the source is effective from 1st April, 2023 and hence, it is not applicable in our case relevant to A.Y. 2018-19.*

*We think, the AO has done wonderful work by asking for all the details required under Sec 68 as applicable during the relevant assessment year, such as two years ITR, computation of income, Balance Sheet and contra confirmation from the lender. In case of non-filer, the source of their income with documentary proves like papers of agriculture land etc. He has applied his mind judiciously and has taken all the due care while finalizing the order.*

*In view of the above discussion and presentation of facts before your goodself there seems to be no failure on the part of the A.O. to verify/ examine the facts and issues covered u/s 68. The order passed by the Assessing Officer cannot be said to be erroneous and prejudicial to the interests of the revenue and hence, we request your goodself to drop the proposed revision proceedings u/s 263 of the Income tax Act, on merit and oblige. Kindly take the above on record and oblige."*

5. However, the Id. Pr. CIT rejected the above submissions of the assessee and observed that the argument that the AO collected details/information during assessment proceedings does not hold good any more. Once in the opinion of PCIT, the order passed without making inquiries or verification which should have been done, is not done then such order need to be treated as "erroneous",.The Ld. PCIT noticed that AO has not considered real facts and passed the assessment order without making any further disallowance. Thus, assessee`s case is covered by, clause(a) of Explanation 2 to section 263 of the Act. Therefore, learned PCIT held that the assessment order passed by the A.O. u/s, 143(3) r.w.s.143(3A) & 143(3B) of the Act dated 03/02/2021 is erroneous and prejudicial to the interest of the Revenue, hencethe AO was directed to make proper inquiries in relation to such transaction of Rs.3,05,37,160/- and appropriately make disallowance u/s 68 r.w.s. 115BBE of the Act.

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

7. Shri Vimal Desai, Learned Counsel for the assessee submitted that during the assessment proceedings, the assessee submitted entire documents and evidences, before the assessing officer. The Id.AO issued notice under section



142(1) of the Act and the assessee has submitted its reply before the AO with documentary evidences. Therefore, the AO examined all the details submitted by the assessee and has taken a plausible view. Therefore, such order passed by the assessing officer, should not be erroneous and prejudicial to the interest of the Revenue. The Id. Counsel also submitted that Id. Pr. CIT has raised the issue regarding the source of source, however, it is an unsecured loan in the assessment year 2018-19 and for this assessment year, the assessee need not to explain the source of source, therefore, the observation of the Id. Pr. CIT, was itself wrong. During the assessment proceedings, notice was issued by the AO asking the assessee to furnish the details and evidences, in respect of the issue raised by the Id. PCIT, which is placed at PB Page no.28. The documents and details, which the assessee submitted before the assessing officer were, balance sheet, income-tax returns and bank statement. The AO has examined all these evidences and has taken a plausible view, therefore, the order passed by the AO should not be treated as erroneous and prejudicial to the interest of the Revenue.

8. On the other hand, the Id. DR for the Revenue submitted that the assessee has taken the loan from 28 persons, and only bank statement and income tax returns were filed by the assessee in respect of 28 persons. However, balance sheets were not filed in respect of these 11 persons. Therefore, credit-worthiness of these 11 persons, from whom the assessee took the loan, has not been proved by the assessee, and therefore, the order passed by the AO is erroneous and prejudicial to the interest of the Revenue. The Id. DR also submitted that the assessee has failed to furnish the details about these eleven persons, therefore, the AO has failed to initiate further inquiry against these 11 person, hence, the order passed by the assessing officer is clearly erroneous.

9. In rebuttal, the Id. Counsel for the assessee submitted that in assessee's case, there is no lack of inquiry and in the proceedings under section 143(3) of the



Act, the AO has examined all the issues. To conduct further enquiry or not to conduct, further enquiry is the prerogative right of the assessing officer in the circumstances of the case, therefore, his order is not erroneous and prejudicial to the interest of the Revenue.

10. We have heard both the parties and perused the material available on record. We note that the assessee is a private limited company and engaged in the business of manufacturing of vitrified tiles. The return of the assessee was e-filed on 04.10.2018, declaring a loss of Rs.9,59,81,462/-. A copy of the return of Income and computation of income was before the assessing officer. Subsequently, the case of the assessee was selected for the complete scrutiny. In the course of assessment proceedings, the assessee furnished details *inter alia* in respect of unsecured loans accepted in the year under appeal. The same was accepted by the AO after verification and the assessment was finalized u/s. 143(3) of the Act, vide order dated 03.02.2021, accepting the returned loss of Rs. 9,59,81,462/-. A copy of the assessment order u/s. 143(3) of the Act is furnished by the assessee before the Bench. Subsequently, the Id. PCIT issued a show cause notice u/s. 263 of the Act to the assessee on 09.03.2023 for proposed revision under section 263 of the Act in respect of unsecured loans, on the ground that 11 out of 28 lenders lacked creditworthiness for an aggregate amount of Rs. 3,05,37,160/- and that the assessee submitted only return of income for A.Y. 2018-19 and bank statements of these 11 lenders. In response to the show -cause notice, the assessee requested to Id. PCIT for providing the name of such 11 lenders vide reply dated 14.03.2023 and 16.03.2023. Thereafter, Id. PCIT vide notice dated 19.03.2023 provided the names of such 11 lenders whose creditworthiness according to him was not proven during the assessment. The Id. PCIT came to the above conclusion by comparing the returned income of the lender with the amount of the unsecured loan. A summary showing the above working of the Id. PCIT is evident from



the notice dated 19.03.2023. In response to the above notice, the assessee filed a detailed reply dated 23.03.2023, before the learned PCIT. The assessee submitted that the contention of the PCIT that only the return of income for A.Y. 2018-19 and bank statements of the lenders was provided was factually incorrect, as the assessee during the assessment proceedings had furnished the return of income, computation of income and Balance Sheet for two years i.e. assessment year (AY) 2018-19 and AY 2017-18, contra confirmation of the account, the relevant part of the bank statement, showing the transaction and in case of non-filers, the land proof for agricultural income along with their ID proof and bank statements. This fact is not disputed by the ld. PCIT in the order u/s 263. These documents are available and verifiable on the e-filing portal.

11. We find that the action of the ld. PCIT of comparing the returned income of the lenders with the unsecured loan taken is also not justifiable, as the ld. PCIT compared only total taxable income with unsecured loans and did not consider the exempt income earned by the lenders and funds available with them in the form of their own capital and loan funds. The assessee in his reply also furnished a party-wise chart of the concerned 11 lenders, showing details of the document submitted during the assessment proceedings, their total income (including exempt income) for A.Y. 2018-19 and 2017-18 and the total funds available with them to establish the creditworthiness of providing such unsecured loan. However, the ld. PCIT did not accept the above submissions of the assessee and stuck to his comparison of unsecured loans and passed the order u/s. 263 setting aside the assessment order on the ground that the AO has not made proper inquiries.



12. We note that the above observation of Id PCIT is not valid, as the AO did conduct inquiries before accepting unsecured loans of the assessee. In the course of the assessment proceedings, the AO inquired about the unsecured loans. This fact is evident from the notice u/s. 142(1) dated 19.11.2020, the AO inquired about the fresh unsecured loans. In response, the assessee filed an adjournment request on 30.11.2020 as the submission was under compilation. Thereafter, AO vide notice dated 04.12.2020 granted adjournment to the assessee to comply with the original notice dated 19.11.2020. Thereafter, the assessee filed a reply vide submission dated 10.12.2020, before the assessing officer and furnished a list of unsecured loans taken during the year under appeal along with contra confirmations, return of income, computation of income and balance sheet for A.Y. 2018-19 and A.Y. 2017-18, the relevant part of bank statement of the lenders and in case of non-filers, the land proof for agricultural income were furnished.

Therefore, we find that the AO has made due inquiries in the course of the assessment proceedings and the assessee has also furnished various evidence to discharge the onus under section 68 of the Act. Thus, it is not a case of lack of inquiry as assumed by the Id. PCIT. There is a clear difference between 'lack of inquiry' and 'inadequate inquiry'. The Id. PCIT cannot revise the assessment order u/s. 263 merely because he has a different opinion regarding the extent of inquiries than that is made by the AO during the course of the assessment proceedings. In this regard, reliance is placed upon the following judicial pronouncements:

- (i) Supreme Court in the case of Shreeji Prints (P.) Ltd. (2021) — 130 taxmann.com 294:
- (ii) Supreme Court in the case of Nirav Modi — 77 taxmann.com 78.
- (iii) Gujarat High Court in the case of Amit Corporation. — 21 taxmann.com 64.



13.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 inquiries 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 angle. 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 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."*

14. 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."*

15. Conclusion: Thus, from the assessee's facts, it is abundantly clear that during the assessment stage, the Assessing Officer asked the assessee to furnish the details and documents and in response, the assessee submitted reply which is placed at paper book. Thus all the documents, details and the explanations required by the Assessing Officer were submitted by the assessee. Just because the Assessing Officer does not bring these documents and details in his assessment order does not mean that assessing officer has not conducted proper enquiry during the assessment stage. In fact, assessing officer has applied his mind. The 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. 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. Therefore, in the assessee's case, it cannot be said that it is a case of 'lack of inquiry'. In view of the facts of the case and judicial pronouncements relied upon, it is well established that the impugned order passed the assessing officer, was passed by assessing officer, after calling for relevant information and after detailed examination of the same. The Assessing Officer has passed the assessment order after calling for details on the issue and after considering the reply and documents and after verification 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 27.03.2023 passed by the Id PCIT under section 263 of the Act.

16. In the result, the appeal of the assessee is allowed.

**Order is pronounced in the open court on 24/04/2025.**

**Sd/-  
(DINESH MOHAN SINHA)  
JUDICIAL MEMBER**

**Sd/-  
(DR.ARJUNLAL SAINI)  
ACCOUNTANT MEMBER**

राजकोट/Rajkot

(True Copy)

दिनांक/ Date:24/04/2025

\*v/k

आदेशकीप्रतिलिपिअब्रेषित/ Copy of the order forwarded to :

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

By order/आदेशसे,

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot