



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
IN THE INCOMETAXAPPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
And
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.372 /RJT/2024
(निर्धारण वर्ष/Assessment Year: (2018-19))

M/s. Pramukh Aranya Developers Office No. 5, First Floor, Cit Centre, Opp. New Collector Officer, B/h. Sardar Baug, Junagadh – 362001	Vs.	The Pr. CIT-1, Aayakar Bhawan, Race Course Ring Road, Rajkot – 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAOFP3393F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Appellant by : Shri Mehul Ranpura, Ld. AR
राजस्व की प्रत्यर्थी ओर से/Respondent by : Shri Sanjay Punglia, Ld.CIT (DR)

सुनवाई की तारीख/ **Date of Hearing** : **04/02/2025**
घोषणा की तारीख/**Date of Pronouncement** : **28/04/2025**

आदेश / ORDER

PER DR. A. L. SAINI, AM:

By way of this appeal, the assessee has challenged the correctness of the order dated 30.03.2024, passed by the Learned Principal Commissioner of Income-tax (in short "Ld PCIT"), under section 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), for the assessment year 2018-19. Grievances raised by the assessee, which, being interconnected, will be taken up together, are as follows:



1. *The grounds of appeal mentioned hereunder are without prejudice to one another.*
2. *The order passed by Pr. Commissioner of Income-tax, Rajkot-1 [hereinafter referred as to the "PCIT" is bad in law, invalid and requires to be quashed, the same may kindly be quashed.*
3. *The Ld. PCIT erred in law and on facts in arriving at a conclusion to the effect that the assessment order passed by the assessing officer has not applied his mind and not conducted any inquiry / verification in respect (1) applicability of section 23(5) of the Act and there by not offering notional rental income on unsold flats and (2) payment of interest on negative capital of partner as per clause of partnership deed. The order passed by PCIT requires to be quashed and may kindly be quashed.*
4. *The learned Pr. CIT erred on facts as also in law in setting aside the assessment order dated 08.04.2021 passed u/s 143(3) of the Income Tax Act, 1961, directing the assessing officer to pass afresh assessment order. The order passed u/s 263 of the Act by the learned Pr. CIT is totally unjustified on facts as also in law therefore the same may kindly be quashed.*
5. *Your Honour's assessee craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.*

3. The relevant material facts, as culled out from the material on record, are as follows. The assessee, before us, is a partnership firm and had filed return of income on 19/09/2018, declaring Nil Income. The Assessment u/s 143(3) read with sections 143(3A) & 143(3B) of the Income-tax Act, 1961, was completed on 08.04.2021, by accepting the returned income.

4. Later on, the Learned Principal Commissioner of Income-tax (in short "Ld PCIT"), has exercised his jurisdiction under section 263 of the Income-tax Act, 1961. The Learned PCIT, on perusal of the assessment records, observed that, during the year under consideration, the assessee-firm has debited of Rs.4,50,91,169/-, on account of interest expenses, on account of interest to depositors, on unsecured loan of Rs.25,37,43,447/-, taken from family members and others and also taken loan from ICICI bank for which interest of Rs. 16,96,410/- has been paid. Moreover, on perusal of the documents available on record, it has been found that the assessee has diverted the unsecured loans



from family members and other depositors including ICICI bank loan to partners instead of using the same in the business. At the same time, the firm has not collected interest from such partners. As per the condition of partnership deed mentioned in the para 5, interest income of Rs. 1,09,21,304/-, was required to be received from the partners of the firm during the year under consideration. The Assessing Officer has accepted the submission without examining that the issue that assessee had diverted unsecured loans from family members and other depositors including ICICI bank loan to partners, without charging any interest from them which has resulted into underassessment of Rs. 1,09,21,304/-.

5. Apart from the above, on perusal of records, it was found that the assessee was having the closing stock of Rs.25,06,20,120/-, as on 31.03.2018. Out of the total Closing Stock, the stock of Rs. 17,31,88,000/- pertained to Financial year (FY) 2016-17. However, the assessee has not offered notional rent as per section u/s 22 r.w.s. 23 of Act, for those unsold units which have been completed in previous year, that is, 2016-17. The BUC(Completion certificate) was received for building during the year FY 2016-17 and unsold units has been shown as closing stock of Rs. 17,31,88000/- in the Balance Sheet. The total fair market rent of unsold unit has been calculated at Rs. 84,86,212/-. The Assessing Officer has accepted the submission of the assessee without necessary verification of the fact that the assessee had not offered notional rent income as per section 22 r.w.s. 23 of the Act, which has resulted into underassessment to the tune of Rs.84,86,212/-. Considering such facts, notice u/s 263 of the Income-tax Act, 1961, dated 01/03/2024, was issued and duly served upon the assessee. The show cause notice is reproduced by the ld PCIT in the revision order under section 263 of the Act on page no. 2 to 3.

6. In response to above notice, the assessee has filed its reply before learned PCIT stating that assessment order under consideration passed by the assessing



officer is neither erroneous nor prejudicial to the interest of revenue nor is in the domain of proceedings u/s 263 of the Act. The assessee stated that first of all, the assessment has been finalized under the faceless e-assessment scheme. In this regard assessee stated that in the Union Budget 2019, the finance minister proposed the introduction of a scheme of Faceless e-assessment. The scheme seeks to eliminate the human interface between the taxpayer and the income tax department. The scheme lays down the procedure to carry out a faceless assessment through electronic mode. From 13th August 2020, the e-assessment scheme of 2019 stands amended and hence known as the Faceless Assessment Scheme. Briefly this scheme was brought to help the taxpayer public at large from human interference and not to harass the tax payer public under the cover of anonymity of individual incumbent in office. The taxpayer public at large looks forward for judicious and reasonable approach on the part of revenue. On the above backdrop the present proceeding is nothing, but breach of assurance given by the finance minister in the august house of parliament. The assessee submitted before the learned PCIT that in the course of assessment proceedings, the assessing officer, vide notice u/s 142(1) of the Act, dated 10.12.2020, has called for voluminous details. The assessee filed details and documents and explanations before the assessing officer by way of letter, dated 04.01.2021. The assessee has explained before the assessing officer, the details of opening balance and subsequent transactions in partners cases and the receipts/payments of all other loan and advances etc. Before the learned PCIT the assessee submitted copy of Balance Sheet, ledger of unsecured loans, current liabilities and capital account of partners and explained the entire financial statements.

7. About the second issue, the Id. Counsel for the assessee stated that presumptive taxation on vacant property has to be considered as per provisions of sub -section (5) of section 23 of the Act, and assessing officer, during the assessment proceedings, examined these facts and taken the plausible view, which is not erroneous and prejudicial to the interest of the revenue.



8. However, the learned PCIT rejected the above contention of the assessee and observed that the order passed u/s 143(3) read with sections 143(3A) & 143(3B) of the Income tax Act, 1961, on 08.04.2021, by the assessing officer, is erroneous since the assessing officer had accepted the returned income even though the assessee has not offered income of Rs. 1,09,21,304/-, on account of unpaid interest from partners and Rs. 84,86,212/-, as per section 22 r.w.s. 23 of the I.T. Act, during the year under consideration. The Id PCIT, therefore, held that order passed by the assessing officer is without proper inquiry and investigation, which is erroneous and prejudicial to the interest of revenue.

9. Aggrieved by the order of the learned PCIT, the assessee is in appeal before us.

10. Learned Counsel for the assessee, argued that Ld. PCIT has initiated the revision proceedings, based on the fact that no inquiry or sufficient inquiry was not conducted by the assessing officer, during the assessment proceedings. The Ld. Counsel stated that assessing officer has conducted the inquiry and examined the documents and evidences submitted before him by the assessee during the assessment proceedings. Therefore, the assessee's case cannot be considered in the category of "No Inquiry". What extend the inquiry should be conducted by the assessing officer, is to be decided by the assessing officer only, and it is the prerogative of the assessing officer to conduct further enquiry or not. The Ld. Counsel further submitted that during the revisionary proceedings, the Ld. PCIT has mainly raised two issues; Viz: one is unsecured loans given to family members and other depositors without charging interest, which has resulted under assessment, as per learned PCIT, to the tune of Rs.1,09,21,304/-. The other issue, which the Ld. PCIT has raised, is the notional



rent income under the head “House Property” u/s.22 r.w.s.23 of the Act, which has resulted into under assessment,as per learned PCIT, to the tune of Rs.84,86,212/-.

11.About the first issue, regarding unsecured loan, without charging interest given to family members and associated concerns, wherein the PCIT has worked out the interest to the tune of Rs.1,09,21,304/-. The Ld.Counsel submitted that such interest is a notional interest, computed by the Ld.PCIT, as the assessee has sufficient interest-free funds, and the loans were given to the family members and other depositors out of interest, free funds and this fact has been examined by the assessing officer by issuing the notice u/s.142(1) of the Act and assessee has replied to the assessing officer during the assessment proceedings, therefore on this issue the assessment order should not be erroneous. Therefore, the Ld. Counsel submitted that where the assessee has interest free funds, which is to be given to their parties/relatives, and the said facts have been examined by the assessing officer, besides, the assessee is following the project completion method to recognise the revenue, therefore, in these circumstances, the assessing officer took the plausible view, which is not erroneous at any rate and therefore the jurisdiction exercised by the ld. PCIT is bad in law, and hence the order passed by the ld. PCIT may be quashed.

12. About the second issue of notional rent, the Ld.Counsel submitted that Ld.PCIT has worked out the notional rent income,as per section 22 r.w.s.23 of the Act, to the tune of Rs.84,86,212/-, without looking into the facts that the assessee has not derived such notional rent and, therefore, the notional income should not be taxable in the hands of the assessee. The Ld.Counsel submitted that in the assessee’s case, the completion certificate were issued on 30/01/2017 and 28/06/2017 and, as such, the cooling period is not for during the assessment year under consideration and, hence, the assessee is not required to offer any



property income from stock-in-trade. For that, Ld.Counsel relied on the judgement of Hon'ble Supreme Court in the case of Canara Bank Securities reported at 114 Taxmann.com 545 (SC).The Ld. Counsel therefore, submitted that the assessing officer conducted sufficient inquiry in respect of issue, pertaining to section 23 of the Act. The assessing officer, issued a notice under section 142(1) of the Act, which is placed in Paper Book Page No. 18 of assessee's paper book. In response to that the assessee submitted its reply, which is placed on Paper book Page No. 20.

13.On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the ld.PCIT, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

14.We have carefully considered the facts of the case, the submission of the Learned Counsel for the assessee and ld DR for the Revenue and evidences on record. Before us, the assessee submitted the following documents and evidences:

- i. Copy of notice issued u/s. 142(1) of the Act dated 10.12.2020 by assessing officer.
- ii. Copy of reply dated 04.01.2021 filed before assessing officer.
- iii. Copy of balance sheet, schedule of partner's capital, Unsecured loan and current liabilities.
- iv. Copy of building completion certificate dated 30.01.2017 & 28.06.2017.

15. During the assessment proceedings, the assessing officer issued notice under section 142(1) of the Act dated 10th December 2020, wherein the assessing officer has specially raised the questions, about the issue raised by the learned PCIT. The relevant portion of the notice under section 142(1) of the Act is reproduced below.



“8. As per Col.23 of Form 3CD, payments amounting to Rs.548433/- were made to persons specified u/s 40A(2)(b). Please justify the reasonableness of payments, with evidence and mode of payment. Please furnish copies of acknowledgement for filing of ITR and statement of computation of total income, with its annexures, of the following persons listed against col.23;-

*Hardasbhai S. Khodbhay
Harshben Jagmalbhai Bhatu
Raj Virambhai Bhatu*

9. With respect to Turnover of Rs. 545206450/- reported in ITR, kindly upload the following details:

copy of Sales Ledger

copies of service tax return/VAT/SGST/Sales tax return filed during the year

Please reconcile the figures of gross turnover shown in ITR and service tax return and explain the reasons for difference.

Detailed description of the property with sale value including detailed measurement, detailed location address, documentary evidences of sale i.e.Registration Deed etc. and documentary evidences of payments received.”

16. In response to the notice of the assessing officer under section 142(1) of the Act, the assessee submitted its reply on 4th January 2021, which is reproduced below:

“4th January, 2021

*To Asst. Commissioner of Income Tax,
National e Assessment Centre,
Delhi*

Dear Sir,

Sub: Assessment proceedings u/s 143(3) of the IT Act for A.Y. 2018-19 Ref: Notice DIN: ITBA/AST/F/142(1)/2020-21/1028932555(1) (Point No 1 to 14 replied)

1) We have carried out the business of Builder and developer as per the partnership deed during the year under consideration. We have constructed a residential project in the name of Pramukh Aranya comprising of 6 towers of residential buildings. During the year under consideration, we have sold residential flats of Rs.54,52,06,450/

2) Please find enclosed party-wise detail of



- Construction expenses incurred during the year as per Annexure 1 attached herewith •
- Purchase expenses incurred during the year as per Annexure 2 attached herewith

(As per Q-002 Documents filed)

3) Please find enclosed herewith copy of Partnership Deed, ITR, Computation of Income, Financial Statements and Audit report for the year under consideration. (As per Q-003 Documents filed)

4) Please find enclosed herewith ledger copy of all partner's capital account. (As per Q-004 Documents filed). All funds transferred and received are through the bank from/to each partners. Transaction during the year are summarized as under:

	Name of Partners	Op Bal	Addition	Withdrawal	Profit & Loss	Closing Balance
1	Natubhai Bhatu	(13,923,926)	37,509,999	84,500,000	52,028,339	(8,885,588)
2	Hamir	(49,436,182)	-	13,800,000	52,028,339	(11,207,843)
3	Rajesh Bhatu	(345,762)	12,358,293	12,455,524	1,061,803	618,810
4	Kishorbhai Chavda	(280,309)	-	-	1,061,803	781,494
5	Total	(63,986,179)	49,868,292	110,755,524	106,180,284	(59,410,939)

From the above table your honour will appreciate that the total withdrawal of the partners is out of the profit/sales generated during the year,

5) During the year under consideration the firm has repaid term loan of ICICI Bank Ltd. A copy of the loan statement and No due Certificate is enclosed herewith for your perusal. A statement of Secured car Loan of Rs. 77,91,697/- is also enclosed herewith. (As per Q-005 Documents filed)

6) Please find enclosed herewith detail of unsecured loans, party PAN No. and address along with copy of confirmation from the party. It may be noted that unsecured loans of Rs. 22,78,71,303/- have also been paid off. (As per Q-006 Documents filed)

7) During the year under consideration a sum of Rs. 14,71,24,965/- has been paid back to related parties from whom unsecured loans were taken. All repayments have been made through account payee cheque/ banking transactions only. A copy of ledger of all the related parties are enclosed herewith for your perusal. (As per Q-007 Documents filed)

8) Details of payment made to persons specified u/s 40A(2)(8) are as under:

Sr.	Name	Relation	Transaction	Amount	Amount
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No					
1)	Hardasbhai Khodbhaya	Relative of partner	Rent	18000	Rent Agreement copy is attached**
2)	Harshaben Jagmalbhai Bhatu	Relative of partner	Interest Paid	3,06,000	Ledger and confirmation attached**
3)	Raj Virambhai	Relative of partner	Interest Paid	2,24,433	Ledger and confirmation attached**

*** (As per Q-008 Documents filed)*

9) Sales Turnover

- Copy of Sales Ledger for FY 2017-18 is enclosed herewith for your perusal.*
- Copy of Service Tax, VAT Returns for the financial year.*
- Copy of a sample sale deed is enclosed herewith for your perusal. You may please ask for any other Sale deed for further verification if needed.*

(As per Q-009 Documents filed)

• it is not possible to reconcile the turnovers of VAT/Service Tax as the event of tax deduction varies in each of the Acts. While service tax, VAT have been paid on receipt basis that may be recorded as advance or sale subjective to the nature of receipt, the sales Turnover is recognized only on the event of actual transfer of right and possession to the buyer. It is also pertinent to note that 4 building (A1,A2,B1 and B4) out of the 6 constructed in the Aranya project had received BUC (Completion certificate) as on 31/1/2017 and rest of the 2 buildings received BUC (Completion certificate) as on 28/06/2017 which are before the GST regime of tax was introduced. Therefore, Service tax and VAT were applicable only for 1 quarter of the year under consideration and registration under the GST regime was not applicable and not taken. It is difficult to reconcile turnovers of Service Tax/Vat with the turnover of Audited financial statements.

10) Please find enclosed herewith partywise details of TDS deducted during the financial year under question. Copies of 26 AS is also attached herewith. It may be noted that in the case of transactions below 50Lakhs value of flats the buyer has not deducted TDS as per section 194IA. Party-wise+ Amount-wise Sales break up for the year is also attached herewith for your perusal. (As per Q-010 Documents filed)

11) Not Applicable. The sales transaction of Rs. 2,64,60,13,950/- does not belong to us. Please furnish more details if any.

12) Please find herewith:

- Detail of total built up area constructed and sold upto 31/3/2018.*



•detail working of Opening Stock as on 1/4/2017

•detail working of Closing Stock as on 31/3/2018
(As per Q-012 Documents filed)

13) Please find break up of cost included in the stock valuation above”.

17. We find that in the course of assessment proceedings, the assessing officer, vide notice u/s 142(1) of the Act, dated 10.12.2020, has called for voluminous details covering 25 points which include the justification of borrowed money and payment of interest etc. Copy of the notice dated 12.12.2020 is attached as Annexure-1 in the paper book of the assessee. The assessee, in turn, vide para 3 to 8 of assessee's letter dated 04.01.2021, has categorically explained the details of opening balance and subsequent transactions in partners cases and the receipts/payments of all other loan and advances etc. The copy of reply dated 04.01.2021, is attached as Annexure-2, in the paper book of the assessee. Thus, the issue now raised in the notice u/s 263 of the Act, had been verified by the assessing officer in detail and as such the present proceedings are not within the provisions of section 263 of the Act. We find that before the learned PCIT also the assessee submitted copy of Balance Sheet, ledger of unsecured loans, current liabilities and capital account of partners as Annexure-3. It may be observed from the balance sheet that the assessee is having Interest free booking deposits of Rs. 2,47,01,636/-. Similarly the ledger of unsecured loans reflect unsecured loans interest free loans of Rs. 1,80,00,000/- from Mohanlal C. Patel. Thus, the assessee had interest free funds of Rs. 4,27,00,000/- [2.47+1.80 Cr). As against the above partners withdrawals reflects at Rs. 1.87 Crores. Further it may be seen from the ledger of current liabilities that at the beginning of the accounting year booking deposits was at Rs. 3,38,92,434/- and at the end of the year at Rs. 2,47,01,636/-. Thus, average interest free fund of Rs. 2,93,00,000/- was available $[3.39+2.47Cr/2]$. As against the same partner's average negative



balance comes to Rs. 4.13 [6.40+1.87Cr./2] against which interest free average customer deposits are Rs. 2.93Cr. [3.39+2.47/2], as such there is negative balance in partner's account comes to Rs. 1.20 Cr. [4.3-2.93], however, at the same time the assessee has average interest free unsecured loans at Rs. 2.05 Cr. [1.80+2.3/2] which covers deficit of Rs. 1.20 Cr. Thus, there is no case of any under assessment on account of payment of interest on unsecured loans, as alleged. Thus, the present exercise is nothing but change of opinion on same set of facts which do not fall within the purview of the provisions of section 263 of the Act.

18. As regards second issue of not adding presumptive letting value of rent on vacant closing stock, the Id. Counsel for the assessee stated that presumptive taxation on vacant property has to be considered as per provisions of sub - section (5) of section 23 of the Act. Sub-section (5) read as under.

“(5) Where the property consisting of any building or land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to two years from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil.]

19. In the present case, the completion certificates were issued on 30.01.2017 and 28.06.2017 and as such the cooling period is not over during the assessment year under consideration and hence the assessee is not required to offer any property income from this stock in trade.

20. We note that, Hon`ble Supreme Court in the case of Principal Commissioner of Income-tax-2, Meerut v. Canara Bank Securities Ltd [2020] 114 taxmann.com 545 (SC), dismissed the Revenue's SLP holding that 263 proceedings are invalid when assessing officer had made enquiries and taken a plausible view in law, with the following observations:



"Having heard learned counsel for the parties and having perused the documents on record, we see no reason to interfere with the view of the Tribunal. The question whether the income should be taxed as business income or as arising from the other source was a debatable issue. The Assessing Officer has taken a plausible view. More importantly, if the Commissioner was of the opinion that on the available facts from record it could be conclusively held that income arose from other sources, he could and ought to have so held in the order of revision. There was simply no necessity to remand the proceedings to the Assessing Officer when no further inquiries were called for or directed."

21. The Hon'ble Supreme Court of India has held in the case of CIT vs. Green world Corporation [2009] 314 ITR 81 (SC) that an order of assessment passed by ITO cannot be interfered with only because another view is possible. In fact, the Hon'ble Supreme Court has settled the issue in the case of Pr. CIT vs. Sumatichand Tolamal Gouti [2019] 111 taxmann.com 287 (SC) wherein it was held that:

"Where High Court upheld Tribunal's order holding that assessing officer had made detailed enquiries while allowing assessee's claim for deduction of business expenditure and, thus, revisional order passed by Commissioner was not sustainable, SLP filed against High Court's order was to be dismissed."

22. Similarly, the Hon'ble Supreme Court in the case of Pr. CIT vs. Shree Gyatri Associates (2019) 106 taxmann.com 31 (SC) has held that:

"Where Commissioner passed a revisional order making addition to assessee's income under section 69A in respect of on-money receipts, however, said order was set aside by Tribunal holding that assessing officer had made detailed enquiries in respect of on-money receipts and said view was also confirmed by High Court, SLP filed against decision of High Court was to be dismissed".

23. The consideration of the Id. PCIT 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 PCIT 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 PCIT cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded [Parashuram Pottery Works Co. Ltd. v. ITO [1977] 106 ITR 1 (SC)]. An order cannot be termed as 'erroneous' unless it is not in accordance with law. If an assessing officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the ld.PCIT, simply because, according to him, the order should have been written more elaborately [CIT v. Gabriel India Lid. [1993] 71 Taxman 585 (Bom.)]. Two pre-requisites must be present before the PCIT, who can exercise the revisional jurisdiction conferred on him. First is, that the order passed by the ITO must erroneous. Second is that the error must be such that it is prejudicial to the interests of the Revenue. If the order is erroneous but it is not prejudicial to the interests of the Revenue, the Commissioner cannot exercise the revisional jurisdiction u/s 263(1) [H. H. Maharaja Raja Pawan Dewas v. CIT [1982]].

24. 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 CIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii) Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the AO has not investigated the issue before him; then the order passed by the Assessing Officer can be termed as erroneous order. Coming next to the second limb, which is required to be examined as to whether the actions of the AO can be termed as prejudicial to the interest of



Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (supra) held that this phrase i.e. “*prejudicial to the interest of the revenue*” has to be read in conjunction with an *erroneous order* passed by the Assessing Officer. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue **“unless the view taken by the Assessing Officer is unsustainable in law”**. In the conclusion we are of the view that none of the reasons set out by the PCIT for invoking the jurisdiction u/s 263 of the Act are sustainable. The impugned order of the PCIT has to be quashed for the reason that order of the AO sought to be revised in the impugned order was neither erroneous nor prejudicial to the interest of the revenue for the reason of any lack of inquiry that the AO ought to have made in the given facts and circumstances of the case. We accordingly quash the order u/s 263 of the Act and allow the appeal of the assessee.

25. In the result, the appeal of the assessee (in ITA No.372/RJT/24) is allowed.

Order is pronounced on 28 /04/2025 in the Open Court.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

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

Rajkot

दिनांक/ Date:28/04/2025

Copy of the Order forwarded to:

1. The Assessee.
2. The Respondent



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

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A) / Pr.CIT, Rajko-1.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,राजकोट/DR,ITAT,
Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण,राजकोट / ITAT, Rajkot