

**IN THE INCOME-TAX APPELLATE TRIBUNAL “C” BENCH,
MUMBAI**

**BEFORESHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No. 2844/MUM/2024
(A.Y. 2019-20)**

| | | |
|--|--------------|---|
| Indiabulls Commercial Credit Limited , 5 th Floor, Building No. 27, K G Marg, Connaught Place, New Delhi – 110 001 | v/s. बनाम | Pr.CIT (Central), Mumbai–3 , Room No. 1901, 19 th Floor, Air India Building, Nariman Point, Mumbai 400 021, Maharashtra |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCI5559G | | |
| Appellant/अपीलार्थी | .. | Respondent/प्रतिवादी |

| | |
|-----------------|--|
| Appellant by : | Shri K. Gopal & Shri Om Kandalkar, ARs |
| Respondent by : | Mr. R.A. Dhyani (CIT DR) |

| | |
|-----------------------|------------|
| Date of Hearing | 12.02.2025 |
| Date of Pronouncement | 24.03.2025 |

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the Revision order passed u/s 263 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] 20.03.2024 by the Pr. Commissioner of Income-tax, (Central), Mumbai [hereinafter referred to ‘PCIT’] pertaining to assessment order passed u/s. 143(3) of the Act dated 27.09.2021 for the Assessment Year [A.Y.] 2019-20.



2. The grounds of appeal are as under:-

1. *Whether Ld. PCIT (Central) Mumbai -3 erred on facts and in law in opining that the assessment order passed u/s 143(3) r.w.s 144B of the Act is erroneous in so far it is prejudicial to the interest of revenue.*
2. *Whether Ld. PCIT (Central) Mumbai -3 erred on facts and in law in setting aside the assessment order dated 27.09.2021 with the direction to the AO to frame the assessment de-novo.*

3. The facts in brief are that the assessee company is engaged in the business of financing, investment and other allied activities. It filed its original return of income on 29.10.2019 declaring total income at Rs. 3,28,38,66,670/- which was later revised on 26.11.2020 declaring total income Rs. 3,28,38,66,670/- Subsequently, assessee's case was selected for '**Complete scrutiny**' as per scrutiny guideline of CBDT and the assessment was completed u/s 143(3) of the Act on 27.09.2021 accepting the returned income.

3.1 The ld.PCIT, on subsequent examination of the assessment records noticed on perusal of Col. No. 33 of the Schedule of BP in the ITR that assessee company had **claimed an amount of Rs. 238,92,33,023/- as 'Any other amount as deduction'**. However, during assessment proceedings, neither the AO asked any specific question/conduct inquiry about the said deduction nor did the assessee submit any detail pertaining to the same. It is stated that the assessment order being a scrutiny assessment u/s 143(3) of the Act initiated on the basis directions given by CBDT for verification of certain issues during



assessment which are binding on the AO which were not adhered to by him violating the same.

3.2 Similarly, in the ITR as per Col.5(c) of the Schedule-BP and Schedule-E, the assessee had earned dividend income of Rs. 101,01,94,006/- and the same has been claimed as exempt from tax. As per the records, it was seen that balance of investments in mutual funds was Rs. 292.65 cr. against which dividend earned was Rs. 101.02 cr. Therefore, in his opinion the dividend payout ratio as seen was more than 33% (Higher than normal industry standards). Also it was noticed that there was sale of unquoted financial assets at Rs.92018,32,55,859/- and cost of acquisition was Rs.92108,91,36,438/ resulting in short term capital loss of Rs.90,58,80,579/-. Thus, the value of mutual funds/equity decreased in short span of time which is possible only in case where dividend is distributed. The said facts indicated dividend earned included dividend from mutual funds/equity purchased and sold in the same year. It was further noted that the AO did not examine the issue of Dividend Stripping as laid down u/s 94(7) of the Act. Thus, he found that the order of the AO was erroneous and prejudicial to the interest of the revenue in terms of section 263 of the Act.

3.3 After show causing the assessee in terms of deeming provisions of Explanation 2(a) and (b) of section 263 of the Act and obtaining the



reply and examining the record, he concluded that the Assessing Officer while framing scrutiny assessment order u/s 143(3) of the Act dated 27.09.2021 had not at all examined the following issues:

- a. **Allowability of claim of 'Any other amount as deduction'**
- b. **Applicability of the provisions relating to Dividend Stripping i.e. S. 94(7)**

3.4 It was noted by the ld.PCIT that even basic enquiries were not conducted by him. Hence, exercising revisionary powers u/s 263 of the Act holding the assessment order to be erroneous and prejudicial to the interest of the revenue, he cancelled the assessment order passed u/s 143(3), for conducting de-novo assessment. He invoked the **deeming provisions of Explanation (2) of section 263 of the Act.**

4. Before us, the ld.AR has contented that the ld.PCIT has failed to make out a case of section 263 of the Act in much as he has not established that the assessment order was erroneous and prejudicial to the interest of the revenue. It may be a case of inadequate enquiry but not a case of no enquiry and Explanation 2 to section 263 of the Act has been wrongly applied to the facts of the case. Moreover, the assessee in response to the show cause notice issue by him had made a detailed reply on all the issues involved with full explanation. The ld.PCIT has failed to point out any infirmity therein. The assessee has also placed reliance on various judicial decisions in support of its contentions that



the ld.CIT was not correct in applying the provisions of section 263 of the Act and in cancelling the same for de novo assessment, i.e CIT vs Nirav Modi(2016) 71 Taxmann.com 272(Bom),PCIT vs Shivshahi P.Prakalp Ltd(2023) 155 Taxmann.com 408(Bom),Malabar Industrial Co. Ltd vs CIT(2000) 109 Taxman 66(SC),CIT vs Gabriel India Ltd(1993) 71 Taxman 585(Bom) and Hariom Iron Trading Co.vs CIT(2003) 131 Taxman 535(P&H).

4.1 Per contra, the ld.CIT, DR has relied on the impugned order stating that there was no enquiry worth the name on part of the AO. It is submitted that on the above two issues on which SCN was issued by the ld.CIT,while framing the assessment order, the ld.Assessing Officer has failed to examine them at all.

5. We have noticed that the AO has passed the assessment order in a rather very brief order which does not reflect any enquiry or verification so as to examine the on relevant aspects of the case which have been pointed out by the ld.PCIT as also issues as stated by him on the front page of the order, being part of **complete scrutiny** which he was supposed to do. A scanned copy of the assessment order is annexed here below which speaks for itself:-



ITA No. 2844/Mum/2024

A.Y. 2019-20

Indiabulls Commercial Credit Limited



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
National Faceless Assessment Centre
Delhi



| | | |
|-----|--|--|
| 1. | PAN | AABCI5559G |
| 2. | Name of the assessee | INDIABULLS COMMERCIAL CREDIT LIMITED |
| 3. | Address of the assessee | M 62 63 1ST FLOOR, CONNAUGHT PLACE, NEW DELHI 110001, Delhi, India |
| 4. | Assessment Year | 2019-20 |
| 5. | Status | COMPANY |
| 6. | Residential Status | Resident |
| 7. | Date of filing of Return of Income | 26/11/2020 |
| 8. | Acknowledgement Number of Return of Income | 750032011261120 |
| 9. | Date of processing u/s 143(1)(a) of the Income-tax Act. | 14/05/2020 |
| 10. | Date of service of Notice under section 143(2) of the Income-tax Act | 31/03/2021, 31/03/2021 |
| 11. | Date(s) of issue of Notice(s) under section 142(1) of the Income-tax Act | 11/08/2021 |
| 12. | Order passed under section | 143(3) read with section 144B of the Income-tax Act |
| 13. | Returned Income | Rs. 3,28,38,66,670 |
| 14. | Date of Order | 27/09/2021 |
| 15. | DIN | ITBA/AST/S/143(3)/2021-22/1035927360(1) |

ASSESSMENT ORDER

1. The case was selected for Complete Scrutiny assessment under the E-assessment Scheme, 2019 on the following issues:-

- | S. No. | Issues |
|--------|---|
| i. | Increase in TDS in Revised Return |
| ii. | Claim of Any Other Amount Allowable as Deduction in Schedule BP |
| iii. | High Creditors/ liabilities |
| iv. | Refund Claim |
| v. | ICDS Compliance and Adjustment |
| vi. | Securities Transaction |
| vii. | Capital Gains/Income on Sale of Property |
| viii. | Deduction from Total Income under Chapter VI-A |



Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.

Certified True Copy



ITA No. 2844/Mum/2024
A.Y. 2019-20
Indiabulls Commercial Credit Limited

AABC05550G- INDIABULLS COMMERCIAL CREDIT LIMITED
A.Y. 2019-20
ITB/AST/S-143(3)/2021-22/1035927J80(1)

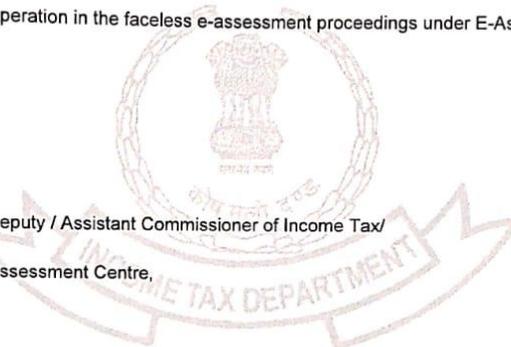
After taking into account all relevant material available on record an Assessment is hereby made without making any modification to the returned income and the sum payable or refund of any amount due on the basis of the assessment is determined as per the notice of demand.

Assessed u/s 143(3) rws 144B of the income tax act.

Please note: All NeAC be read as NaFAC.

Appreciate your cooperation in the faceless e-assessment proceedings under E-Assessment Scheme, 2019.

Yours faithfully,
Additional / Joint / Deputy / Assistant Commissioner of Income Tax/
Income-tax Officer,
National Faceless Assessment Centre,
Delhi



Copy to:
Assessee

Yours faithfully,
Additional / Joint / Deputy / Assistant Commissioner of Income Tax/
Income-tax Officer,
National Faceless Assessment Centre,
Delhi



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Certified True Copy

Certification signature by Vishesh Prakash
Date: 2021.08.15 15:13:06 IST



5.1 We have also gone through the notice issued by the AO u/s 142(1) of the Act dated in which he has raised certain queries. Scanned copy of the same is annexed below:

| | | | |
|--|-------------------------------------|-----------------------------|--|
|  <p>GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT National Faceless Assessment Centre Delhi</p>  | | | |
| <p>To, INDIABULLS COMMERCIAL CREDIT LIMITED M 62 63 1ST FLOOR, CONNAUGHT PLACE NEW DELHI 110001, Delhi India</p> | | | |
| <p>PAN: AABC15559G</p> | <p>Assessment Year: 2019-20</p> | <p>Date: 11/08/2021</p> | <p>DIN: ITBA/AST/F/142(1)/2021- 22/1034778573(1)</p> |

Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961

Dear Taxpayer,

Kindly refer to notice u/s 143(2) of the Income-tax Act, dated 31/03/2021 for A.Y 2019-20 for conducting assessment proceedings under E-assessment Scheme, 2019.

2. We appreciate the anxiety and uncertainty that is facing all of us in the times of Covid-19. This communication is to assist you in ending one uncertainty, which is pending e-Assessment in your case for the Assessment Year 2019-20.

3. You are requested and required to kindly furnish or cause to be furnished on or before **17/08/2021 by 11:53 AM**, the accounts and documents specified in the Annexure to this notice.

4. The accounts or documents, as mentioned above, are required to be submitted online electronically in 'E-proceedings' facility through your account in e-Filing website (www.incometaxindiaefiling.gov.in)

Yours faithfully,

Additional / Joint / Deputy / Assistant Commissioner of Income Tax,
National Faceless Assessment Centre,
Delhi

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.


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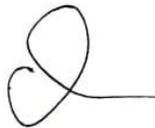
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AAB016669G- INDIABULLS COMMERCIAL CREDIT LIMITED
A.Y. 2019-20
ITBA/ASTIT/142(1)/2021-22/1004778878/17

ANNEXURE

Kindly furnish the speaking note on the following reason of scrutiny alongwith necessary details.

1. The sale consideration received on sale of securities/ mutual funds during the year by the assessee is substantially higher as compared to total of turnover in P & L Account . Please submit the details of the same along with the explanation of the same It is requested to furnish the said information in the tabular format having columns 1) securities sold 2) securities Purchase etc.
2. Why there is reduction in profit as compared to last year and also submit the reason for the same in detail.
3. As per the financials it is seen that assessee has claimed high liabilities in balance sheet as compared to low income / receipt declared in ITR. Please submit the explanation for the same. And submit the deatails of liabilities in details.
4. As you have filed revised return for the said assessment year it is seen that you have significantly claimed higher TDS in the revised ITR. Kindly reconcile it with the original return and furnish detail note on the same.
5. As the assessee had sold immoveable property during the year under consideration please submit the reason why property sold below the value determined by the Sub Registrar. The copies of the same has to be filed and also submit the total calculation of Purchase and Sold of Property.
6. The assessee has claimed large deduction under chapter VI-A (excluding deduction claimed u/s 80-IA/ 80-IAB/ 80-




Page 2 of 3



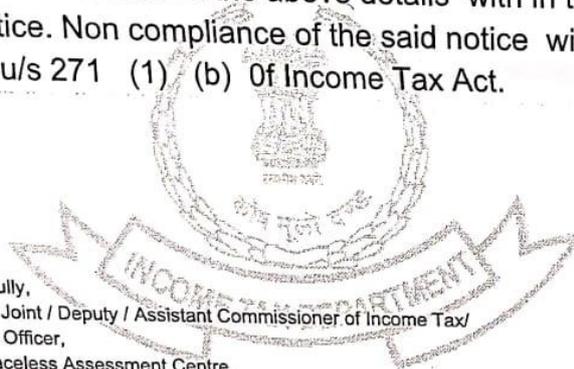
AASD16559G- INDIABULLS COMMERCIAL CREDIT LIMITED
A.Y. 2019-20
ITA/AST/IF/142(1)/2021-22/1034779573(1)

38

IAC/ 80-IB/ 80-IBA/ 80-IC/ 80-IE/ 80-ID). Please furnish note on deduction claimed by you and please furnish in tabular form having columns Sr. No. U/s which deduction claimed, amount of deduction, whether deduction is claimed first time during the year, Whether any govt authority issued the certificate to claim such deduction etc.

7. The assessee has claimed large refund out of self - assessment tax paid which is unusual as self-assessment tax is paid after final computation of income. kindly furnish the reason for the same.

It is requested to submit the above details with in time specified in the notice. Non compliance of the said notice will attract Penalty u/s 271 (1) (b) Of Income Tax Act.



Yours faithfully,
Additional / Joint / Deputy / Assistant Commissioner of Income Tax/
Income-tax Officer,
National Faceless Assessment Centre,
Delhi

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TRUE COPY

Signature Not Verified
Digitally signed by Vishesh
Prakash
Date: 2021.08.11 12:24:27 IST



5.2 It is noticed that the assessee has made a reply to the queries vide reply dated 17.08.2021. The AO has not issued any other notice/letter requesting for any further clarification in respect of any of issues including those mentioned by the Id.PCIT before passing the assessment order.

6. From the above facts on record, it is quite apparent that the Id.AO has not made any specific query on above two issues at all as pointed out by the Id.PCIT. Before us, the Id.AR has failed to demonstrate or controvert this fact on record in any manner. Thus, **the only notice u/s 142(1) of the Act issued on 11.08.2021 which was replied by the assessee on 17.08.2021 and the AO went on to complete the assessment order on 27.09.2021**. From the show cause notice issued by the Id.PCIT, it is apparent that both the issues were quite important prima facie. Once the case was selected for in-depth scrutiny in pursuance to the order of the CBDT, it was incumbent on the AO to make necessary queries in these matters for examination and scrutiny as is expected from the Assessing Officers in scrutiny assessment proceedings. However, for inexplicable reasons, he failed to examine such important issues and completed the assessment in hasty and hurried manner with no apparent reasons for rushing in finalizing the assessment. Therefore, on careful appreciation of facts on record and



as stated above, we are of the considered opinion that it is a clear case of no enquiry/verification in terms of the provisions of section 263 of the Act and more specifically Explanation 2 thereof brought into the statute from 01.04.2015.

6.1 Before proceeding further, it would be appropriate to examine the provisions of section 263 and Explanation 2 of the Act as below:

Section-263. Revision of orders prejudicial to revenue.

(1)The [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or Commissioner **may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, [including,—**

(i)an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment;

orXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(iii)XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Explanation 1.—XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Explanation 2.—For the purposes of this section, it is hereby declared that **an order passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner,—**

(a)the order is passed without making inquiries or verification which should have been made;

(b)the order is passed allowing any relief without inquiring into the claim;



(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

[Explanation 3.—XXXXXXXXXXXXXXXXXXXXXXXXXXXXX

6.2 The aim and object of introduction of aforesaid Explanation by Finance Act, 2015 was explained in CBDT Circular No. 19/2015 [F.NO.142I14/2015T PL], Dated 27-11-2015 which is reproduced hereunder:

"53. Revision of order that is erroneous in so far as it is prejudicial to the interests of revenue.

53.1 The provisions contained in sub-section (1) of section 263 of the Income-tax Act, before amendment by the Act, provided that if the Principal Commissioner or Commissioner considers that any order passed by the Assessing Officer is erroneous in so far as it/s prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making an enquiry pass an order modifying the assessment made by the Assessing Officer or cancelling the assessment and directing fresh assessment.

*53.2 The interpretation of expression "erroneous in so far as it prejudicial to the interests of the revenue" has been a contentious one. In order to provide clarity on the issue, section 263 of the Income-tax Act has been amended to provide that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner. **(a) the order is passed without making inquiries or verification which, should have been made;** (b) the order is passed allowing any relief without inquiring into the claim; (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or (d) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.*

53.3 Applicability: This amendment has taken effect from 1st day of June, 2015."

6.3 Clause (a) as reproduced above talks about the inquiry or investigation having not been made by the A.O., which 'should have been made'. In the amended provisions the phrase 'should have



been done' as provided in the newly inserted Explanation means the **verification/ enquiry which ought to have been done.** The Act nowhere provides the exact modalities to be followed to verify a specific claim made by the assessee. It is the prerogative of the Assessing Officer to decide the extent of verification. But by the amendment made, the Act gives a specific power to the Commissioner to revise the orders made without the inquiry to the extent he thinks fit. One should not be oblivious of the fact that the fiscal statute are to be read literally and no equity or logic has to be found in these. Therefore, the parliament in its wisdom has given power to the PCIT to decide the extent of enquiry. One must appreciate the fact that, the view, what ought to have been done in a specific situation, will always differ from person to person. What the A.O. found sufficient; the Commissioner may not find. What one Commissioner finds adequate may not be adequate for any other officer sitting in his place. In this manner, a discretion has been provided to the Commissioner in this context. However, it is a trite law that exercise of discretion requires the exercise of good judgement. Decision makers must use discretionary powers in good faith and for a proper, intended and authorised purpose. Decision makers must not act outside of their powers. No decision maker has an unfettered discretionary decision making power. It is not sufficient to exercise discretion and do some act



simply because it seems the right thing to do. When exercising discretion, decision makers need to act reasonably and impartially.

6.4 In so far as the requirement of due enquiry to be conducted by the Assessing Officer while scrutinising any case in the course of assessment order is concerned, it would be relevant to quote certain landmark decisions of hon'ble Supreme Court as in the case of **Ram Pyari Devi Saraogi Vs. CIT [1968] 67 ITR 84 [SC)** and **Tara Devi Aggarwal Vs. CIT(1973) 88 ITR 323 (SC)** that in a stereotyped order which simply accepts what the assessee has stated and fails to make enquiries which are called for in the circumstances is erroneous. In another order in the case of **K.A. Ramaswami Chettiar Vs. CIT (1966) 220 ITR 657 (Mad)**, it was also held that **the officer is expected to make an inquiry of a particular item of income and if he does not make an inquiry as expected, that would be a ground to interfere u/s 263 as such an order passed by the assessing officer is erroneous and prejudicial to the interest of revenue.**

6.5 In the case of **PVS Multiplex India Ltd V CIT** in **ITA No. 2370/Del /2013** on identical facts it was held that *"wherein the Assessing Officer conducted the assessment proceeding and passed impugned assessment order accepting the return of income of the assessee, we clearly observe that the Assessing Officer has not made inquiry on the issue of interest free advances and proportionate disallowance of interest thereon, on the issue of verification on TDS and on the claim and*



calculation of the assessee for the purpose of deduction u/s 80IB(7A) of the Act specially on the issue of exclusion of income/receipt on sale of shop and FDR interest. In this situation, we have no hesitation to hold that the order of the AO which is apparently very precise and cryptic, was not passed after due examination and verification of certain issues and therefore, there was an error on the part of AO which leads to a correct conclusion of the CIT that the order of the AO is not only erroneous but also prejudicial to the interest of Revenue. We may further point out that the assessment order suffers from lack of necessary enquiry on certain important issues which have been raised by the CIT in the notice issued to the assessee and impugned order u/s 263 of the Act. Therefore, we reach to a conclusion that the assessment order is not sustainable and in accordance with the provisions of the Act which is not only erroneous but also prejudicial to the interest of the Revenue. Hence, we are inclined to hold that the issuance of notice u/s 263 of the Act and impugned order passed by the CIT u/s 263 of the Act is validly assumed jurisdiction of revisional powers u/s 263 of the Act which cannot be alleged as invalid assumption of jurisdiction or bad in law and we confirm the same."

6.6 Section 263 has been elucidated and explained in **Commissioner of Income Tax versus Nagesh Knitwears Private Limited, (2012) 345 ITR 135 (Delhi)**. In the said decision, reference was also made to **Malabar Industrial Company Limited versus CIT, (2000) 243 ITR 83 (SC)** and decisions of Delhi High Court in **Nabha Investments Private Limited versus Union of India, (2000) 246 ITR 41 (Delhi)** and **ITO versus DG Housing Projects Limited, (2012) 343 ITR 329 (Delhi)**. It has been observed in Nagesh Knitwears Private Limited (supra):

"10. Section 263 has been enacted to empower the CIT to exercise power of revision and revise any order passed by the Assessing Officer, if two cumulative conditions are satisfied. Firstly, the order sought to be revised should be erroneous and secondly, it should be prejudicial to the interest of the Revenue. The expression 'prejudicial to the interest of the Revenue' is of wide import and is not confined to merely loss of tax. The term erroneous' means a wrong/incorrect decision deviating from law. This expression postulates an error which makes an order unsustainable in



law. The Assessing Officer is both an investigator and an adjudicator. If the Assessing Officer as an adjudicator decides a question or aspect and makes a wrong assessment which is unsustainable in law, it can be corrected by the Commissioner in exercise of revisionary power. As an investigator, it is incumbent upon the Assessing Officer to investigate the facts required to be examined and verified to compute the taxable income. If the Assessing Officer fails to conduct the said investigation, he commits an error and the word 'erroneous' includes failure to make the enquiry. In such cases, the order becomes erroneous because enquiry or verification has not been made and not because a wrong order has been passed on merits.

*The hon'ble Delhi High Court in **Gee Vee Enterprises v. Additional Commission of Income-Tax, Delhi-I, (1975) 99 ITR 375**, has observed as under:*

*“The position and function of the Income-tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence maybe accepted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The Income-tax Officer is not only an adjudicator but also an investigator. **He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word "erroneous" in section 263 emerges out of this context.** It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word “erroneous” in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct.”*

*Reference may also made to decisions of the **Supreme Court in Rampyari Devi Saraogi versus CIT, (1968) 67 ITR 84 (SC) and Tara Devi Aggarwal (Smt) versus CIT, (1973) 88 ITR 323 (SC)** wherein it has been observed that where the Assessing Officer had accepted a particular contention or issue without inquiry whatsoever, the order was erroneous and prejudicial to the interest of Revenue. These two decisions were explained in the case of **DG Housing Project Limited (supra)** in*



the following words: "These two decisions show that it is not necessary for the Commissioner to make further inquiries before cancelling the assessment order of the Income- tax Officer. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the case the Income-tax Officer should have made further inquiries before accepting the statements made by the assessee in his return.

*The aforesaid observations have to be understood in the factual background and matrix involved in the said two cases before the Supreme Court. **In the said cases, the Assessing Officer had not conducted any enquiry or examined evidence whatsoever. There was total absence of enquiry or verification.** These cases have to be distinguished from other cases:*

- (i) where there is enquiry but the findings are incorrect/erroneous; and*
- (ii) where there is failure to make proper or full verification or enquiry."*

6.7 Reliance is also placed on the recent judgements of ITAT, Delhi in **NUT v CIT (Central) [2015] 60 taxmann.com 313 (Delhi) holding that,**

*28.2.... **An inquiry which is just a farce or mere pretence of inquiry cannot be said to be an inquiry at all, much less an inquiry needed to reach the level of satisfaction of the AO on the given issue. The level of satisfaction would obviously mean that he has conducted the inquiry in a manner whereby he places on record the material enough to reach satisfaction, which a rational person, being informed of the nuances of tax laws would reach after due appreciation of such material.***

6.8 The co-ordinate bench of ITAT, Patna in **ITA Nos. 356 to 360/PAT/2024 in the case of Gandhipati Construction Private Limited** observed as below:



“Having said that, we may also add that while in a situation in which the necessary inquiries are not conducted or necessary verifications are not done, Commissioner may indeed have the powers to invoke his powers under [section 263](#) but that it does not necessarily follow that in all such cases the matters can be remitted back to the assessment stage for such inquiries and verifications. **There can be three mutually exclusive situations with regard to exercise of powers under [section 263](#), read with Explanation 2(a) thereto, with respect to lack of proper inquiries and verifications..**

The first situation could be this. Even if necessary inquiries and verifications are not made, the Commissioner can, based on the material before him, in certain cases straight away come to a conclusion that an addition to income, or disallowance from expenditure or some other adverse inference, is warranted. In such a situation, there will be no point in sending the matter back to the Assessing Officer for fresh inquiries or verification because an adverse inference against the assessee can be legitimately drawn, based on material on record, by the Commissioner. In exercise of his powers under [section 263](#), the Commissioner may as well direct the Assessing Officer that related addition to income or disallowance from expenditure be made, or remedial measures are taken. **The second category** of cases could be when the Commissioner finds that necessary inquiries are not made or verifications not done, but, based on material on record and in his considered view, even if the necessary inquiries were made or necessary verifications were done, no addition to income or disallowance of expenditure or any other adverse action would have been warranted. Clearly, in such cases, no prejudice is caused to the legitimate interests of the revenue. No interference will be, as such, justified in such a situation. ***That leaves us with the third possibility, and that is when the Commissioner is satisfied that the necessary inquiries are not made and necessary verifications are not done, and that, in the absence of this exercise by the Assessing Officer, a conclusive finding is not possible one way or the other. That is perhaps the situation in which, in our humble understanding, the Commissioner, in exercise of his powers under [section 263](#), can set aside an order, for lack of proper inquiry or verification, and the Assessing Officer to conduct such inquiries or verifications afresh.***”

6.9 **The co-ordinate Mumbai Bench of the ITAT w.r.t**
Explanation 2 through an elaborate order in the case of **Madhurima International (P.) Ltd. v. Pr.CIT** [ITA No.421/ Mumbai] has held that,



“ In the instant case, the AO has not enquired the fair value adopted by the assessee in proper perspective and in the manner indicated under law as detailed above. Moreover , explanation 2 to [Section 263](#) of the 1961 Act is inserted by [Finance Act, 2015](#), which deems an order to be erroneous in so far as prejudicial to the interest of Revenue if the order is passed without making inquiries or verification which should have been made. Thus, in the instant case , we have already held that proper enquiries were not made by the AO before passing assessment order dated 23-03-2016 [u/s 143\(3\)](#) of the 1961 Act , as are mandated [u/s 263](#) of the 1961 Act. In our considered view, the ld. Pr. CIT has rightly invoked the provisions of [section 263](#) of the Act, which we uphold/sustain. .”

6.10 The Hon’ble Delhi Court in the case of Pr. Commissioner of Income Tax, Delhi-7 vs M/S Paramount Propbuild Pvt. Ltd. In ITA 247/2023(Del-HC)on 19 March, 2024held as below:

“Unfortunately, the assessment order nowhere reflects any element of inquiry or verification. The discussion about the loan transactions in question is altogether missing. Furthermore, the assessment record would also reflect that the AO has not taken any concrete steps to ascertain the genuineness and creditworthiness of the transactions, which merits consideration in the light of the findings that emerged from the DDIT investigation report and assessment proceedings of M/s. Upaj Leasing & Finance Pvt. Ltd. It emerges that the present is a case where the AO failed not only to spell out any finding about the DDIT investigation report and assessment proceedings of M/s. Upaj Leasing & Finance Pvt. Ltd. but also to scrutinize the highlighted aspects in the said report qua the genuineness and creditworthiness of aforementioned loan transactions. Therefore, this is the minimum inquiry which atleast was expected to have been made by the AO.

25. At this juncture, it is apposite to point out that clause (a) of Explanation 2 of Section 263 of the Act introduces a deeming fiction to the effect that the order passed by the AO shall be considered erroneous and prejudicial to the interests of the Revenue, if the order is passed without making inquiries or verification, which should have been made. Henceforth, since neither there is any facet of discussion about the aforementioned aspects in the assessment order nor the assessment record duly reflects that the AO has done inquiry in the light of the findings of the investigation report. We find that the present is a fit case to invoke the revisional powers under [Section 263](#) of the Act.”

6.11 The co-ordinate bench of ITAT, in Shrenik Bothra, Rajim, Rajim vs PCIT (Central), Bhopal dated 25.09.2024 in ITA 238/RPR/2024 held as below:



“19. Our aforesaid view and observations is supported with the principle of law laid down by Hon'ble Apex Court in the case of [Daniel Merchants Pvt. Ltd. &Anr. Vs Income Tax Officer &Anr. Dated 30.11.2017](#) have approve the judgment of Hon'ble Kolkata High Court, having held as under:

"we find that the Commissioner of Income Tax had passed an order under [Section 263](#) of the Income Tax Act, 1961 with the observations that the Assessing Officer did not make any proper inquiry while making the assessment and accepting the explanation of the assessee(s) insofar as receipt of share application money is concerned. On that basis the Commissioner of Income Tax had, after setting aside the order of the Assessing Officer, simply directed the Assessing Officer to carry thorough and detailed inquiry. It is this order which is upheld by the High Court. We see no reason to interfere with the order of the High Court."

20. Respectfully following the guiding principles [laid down in](#) the case of M/s [Daniel Merchant Pvt. Ltd.](#) (supra), as undoubtedly, from the facts on record in present case, **Ld. AO had not made proper inquiries regarding the issue which has been picked up and for which the revisionary proceedings are initiated by the Ld. PCIT invoking the provisions of explanation 2(a) to [section 263](#), for which he was entitled.** We, thus, in terms of aforesaid observations, do not find any infirmity in the order of Ld. PCIT, thus, we are not supposed to interfere with the same.”

6.12 The co-ordinate bench of ITAT,Mumbai in the case of

Agricom Foods Private Limited ,Mumbai vs Principle

Commissioner Of Income Tax dated 9 .12.2024 in ITA Nos. 2709

& 2716/Mum/2024 held as below:

*“1. The Ld.PCIT, however, did not accept the above said contentions of the assessee. He held that the enquiries conducted by different official (the Investigation Wing) cannot be considered as the enquiry of AO and hence, it cannot be said that there was application of mind by the AO. The Ld.PCIT also observed that the AO did not discuss anything about the claim of depreciation on the intangible assets in the impugned assessment orders. Accordingly, he held that, the impugned assessment orders are rendered erroneous and prejudicial to the interests of revenue on this count also. In support of this proposition, the LdPCIT took support of the decision rendered by **Hon'ble Karnataka High Court in the case of Infosys Technologies Ltd., [341 ITR 293]**, wherein the **Hon'ble Karnataka High Court has held that non-discussion of claim of deduction allowed by the AO in the assessment order would make it erroneous and prejudicial to the interest of the Revenue.** Accordingly, the Ld.PCIT held that the assessment orders passed by the AO for both the years under consideration are rendered erroneous and prejudicial to the interest of the Revenue. Accordingly, he set aside the assessment orders passed for both the years and restored them to the file of the AO for the limited purpose of conducting enquiry with*



regard to the claim of depreciation of intangible assets and taking decision as per law. The assessee is aggrieved by the revision orders so passed by the Ld.PCIT in both the years under consideration.

4. We heard rival contentions and perused the record. We may first refer to the decisions rendered by Hon'ble High Courts, wherein the law relating to the scope of revision proceedings initiated u/s 263 of the Act have been laid down. We may first refer to the case of **Grasim Industries Ltd. V CIT (321 ITR 92)(Bom)**, wherein the Hon'ble Bombay High Court has rendered its decision taking into account the law laid down by the Hon'ble Supreme Court in the case of **Malabar Industrial Co Ltd vs. CIT (2000)(243 ITR 83)(SC)**. The relevant observations made by Hon'ble Bombay High Court are extracted below:

*“Section 263 of the Income-tax Act, 1961 empowers the Commissioner to call for and examine the record of any proceedings under the Act and, if he considers that any order passed therein, by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue, to pass an order upon hearing the assessee and after an enquiry as is necessary, enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. The key words that are used by section 263 are that the order must be considered by the Commissioner to be “erroneous in so far as it is prejudicial to the interests of the Revenue”. This provision has been interpreted by the Supreme Court in several judgments to which it is now necessary to turn. In **Malabar Industrial 243 ITR 83**, the Supreme Court held that the provision “cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer” and “it is only when an order is erroneous that the section will be attracted”. The Supreme Court held that an incorrect assumption of fact or an incorrect application of law, will satisfy the requirement of the order being erroneous. An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in that category. The expression “prejudicial to the interests of the Revenue”, the Supreme Court held, it is of wide import and is not confined to a loss of tax. What is prejudicial to the interest of the Revenue is explained in the judgment of the Supreme Court (headnote) :*

"The phrase “prejudicial to the interests of the Revenue” has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."

*The principle which has been laid down in **Malabar Industrial Co. Ltd. [2000] 243 ITR 83 (SC)** has been followed and explained in a subsequent judgment of the Supreme Court in **CIT v. Max India Ltd. [2007] 295 ITR 282.**”*

4.1. Under the provisions of sec. 263 of the Act, the Ld Pr. CIT can revise the order only if it is shown that the assessment order is erroneous in so far as prejudicial to the



interests of the revenue. The question as to when an order can be termed as "erroneous" was explained by the Hon'ble Bombay High Court in the case of **Gabriel India Ltd (203 ITR 108)** as under:-

*"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 the 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 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 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 a 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 the 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"***

5.1. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

5.2. We also notice that the AO did not examine the issue of allowing depreciation in both the years under consideration, even though he had taken a conscious decision to disallow the claim of depreciation in AY 2017-18 with the reasoning that the break-up details and nature of intangible assets were not available. In the absence of any specific enquiry on this issue conducted in both the years under consideration, in our view, it cannot be said that there was conscious application of ind by the AO in allowing depreciation claimed on intangible assets.2024 both the years under consideration. **We may refer to clause (b) of Explanation 2 to [sec.263](#) of the Act, wherein it is stated that an order passed allowing any relief without inquiring into the claim shall be deemed to be erroneous in so far as prejudicial to the interests of revenue.**

6. In view of the foregoing discussions, we hold the impugned revision orders passed by Ld.PCIT holding the assessment orders as erroneous and prejudicial to the interests of revenue, in the facts and circumstances of the case, cannot be found fault with. Since the assessee contends that the depreciation claimed by the assessee is in accordance with the law laid down by the Hon'ble Supreme Court in the case of [Smiffs Securities Ltd](#) (supra), we direct the AO to examine this issue of depreciation claimed on intangible assets by taking into consideration the above said decision of



Hon'ble Supreme Court. As directed by Ld.PCIT, the AO should decide this issue in accordance with law without being influenced by any of the observations of Ld PCIT and after affording adequate opportunity of being heard to the assessee."

6.13 Hon'ble Delhi High Court in the case of **M.R Apparels Private Limited vs Principal Chief Commissioner Of Income** dated **26.09. 2024** in Appeal Number in **ITA 287/2024 & CM APPL. 29090/2024(Del)(HC)** held as below:

"11. We find no merit in the appellant's contention. Concededly, the audit report could not have commented upon the dishonour of cheques, as the report was issued prior to the date of the cheques aggregating ₹1,45,00,000/-. The AO had accepted the said report. The assessment order does not indicate any enquiries in this regard. The learned CIT has rightly held that the Assessment Order was passed without making the necessary inquiries and verification. Thus, in terms of clause (a) of Explanation 2 to [Section 263](#) of the Act, the assessment order is deemed to be erroneous in so far as it is prejudicial to the interests of the revenue."

6.14 The Hon'ble Supreme Court in a recent case of **Commissioner of Income Tax v Paville Projects Private Limited, 2023 SCC OnLine SC 371** dated **06-04-2023**, held that CIT can revise erroneous order by Assessing Officer causing prejudice to revenue, holding that the **erroneous assessment order had resulted in loss of the Revenue in the form of tax**. Relevant portions of the order are extracted below for ready reference:

"7. In the present case, the Commissioner, in exercise of the powers under [Section 263](#) of the Income Tax Act and in exercise of the revisional jurisdiction, set aside the assessment order by specifically observing that the assessment order was erroneous as well as prejudicial to the interest of the Revenue. However, the High Court by the impugned judgment and order has set aside the order passed by the Commissioner by observing that the Commissioner wrongly invoked the powers under [Section 263](#) of the Act.



7.1 Learned counsel appearing on behalf of the assessee has heavily relied upon the decision of this Court in the case of [Malabar Industrial Co. Ltd.](#) (supra). It is true that in [the said decision](#) and on interpretation of [Section 263](#) of the Income Tax Act, it is observed and held that in order to exercise the jurisdiction under [Section 263\(1\)](#) of the Income tax Act, the Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. It is further observed that if one of them is absent, recourse cannot be had to [Section 263\(1\)](#) of the Act. “What can be said to be prejudicial to the interest of the Revenue” has been dealt with and considered in paragraphs 8 to 10 in the case of [Malabar Industrial Co. Ltd.](#) (supra), which are as under:-

“8. The phrase “prejudicial to the interests of the Revenue” is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The High Court of Calcutta in [Dawjee Dadabhoy & Co. v. S.P. Jain](#) [(1957) 31 ITR 872 (Cal)] , the High Court of Karnataka in [CIT v. T. Narayana Pai](#) [(1975) 98 ITR 422 (Kant)] , the High Court of Bombay in [CIT v. Gabriel India Ltd.](#) [(1993) 203 ITR 108 (Bom)] and the High Court of Gujarat in [CIT v. Minalben S. Parikh](#) [(1995) 215 ITR 81 (Guj)] treated loss of tax as prejudicial to the interests of the Revenue.

9. Mr Abraham relied on the judgment of the **Division Bench of the High Court of Madras in [Venkatakrishna Rice Co. v. CIT](#) [(1987) 163 ITR 129 (Mad)]** interpreting “prejudicial to the interests of the Revenue”. The High Court held:

“In this context, (it must) be regarded as involving a conception of acts or orders which are subversive of the administration of revenue. There must be some grievous error in the order passed by the Income Tax Officer, which might set a bad trend or pattern for similar assessments, which on a broad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue Administration.” In our view this interpretation is too narrow to merit acceptance. **The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue.**

10. The phrase “prejudicial to the interests of the Revenue” has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income Tax Officer is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue. ([Rampyari Devi Saraogi v. CIT](#) [(1968) 67 ITR 84 (SC)] and in [Tara Devi Aggarwal v. CIT](#) [(1973) 3 SCC 482 : 1973 SCC (Tax)



318 : (1973) 88 ITR 323] .)” 7.2 Thus, even as observed in paragraph 9 by this Court in the case of Malabar Industrial Co. Ltd.

(supra) that the scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. It is further observed that if due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue. However, only in a case where two views are possible and the Assessing Officer has adopted one view, such a decision, which might be plausible and it has resulted in loss of Revenue, such an order is not revisable under [Section 263](#).

7.3 Applying the law [laid down by](#) this Court in the case of [Malabar Industrial Co. Ltd.](#) (supra) to the facts of the case on hand and even as observed by the Commissioner, the order passed by the Assessing Officer is erroneous as well as prejudicial to the interest of the Revenue. Having gone through the assessment order as well as the order passed by the Commissioner of Income Tax, we are also of the opinion that the assessment order was not only erroneous but prejudicial to the interest of the Revenue also. In the facts and circumstances of the case, it cannot be said that the Commissioner exercised the jurisdiction under [Section 263](#) not vested in it. **The erroneous assessment order has resulted into loss of the Revenue in the form of tax.**

Under the Circumstances and in the facts and circumstances of the case narrated hereinabove, the High Court has committed a very serious error in setting aside the order passed by the Commissioner passed in exercise of powers under [Section 263](#) of the Income Tax Act.

8. In view of the above and for the reasons stated above, present appeal succeeds. The impugned judgment and order passed by the High Court is hereby quashed and set aside and that the order passed by the Commissioner passed in exercise of powers under [Section 263](#) of the Income Tax Act is hereby restored.”

7. We have also examined the case laws relied upon by the ld.AR.

In the case of CIT vs Nirav Modi(supra),the hon’ble court had noticed that the AO had made detailed enquiries and arrived at a certain conclusion which apparently is lacking in this case. The decision in the case of PCIT vs Shivshahi P.Prakalp Ltd(supra) is also not applicable to the facts of the case as it pertains to pre-amended period and even the hon’ble Court in para 32 of the order extracted below, has accepted this



fact by holding that the provisions of Explanation 2 was prospective and could not be considered in the relevant year:

*“32. In this appeal, we are concerned with the assessment year 2006- 07. Prior to the insertion of Explanation 2, it was the prerogative of the Assessing Officer to determine what enquiry he wants to make while completing the assessment. We have already observed that an enquiry was made by the Assessing Officer and the assessment order passed. Therefore, the CIT could not invoke jurisdiction under [Section 263](#) as the view taken by the Assessing Officer was a possible/plausible view. It was only if the Assessing Officer had not made any enquiry then it could be said that the order passed was erroneous. This is not a case of lack of enquiry though it may be a case of inadequate enquiry. **Inadequacy of enquiry as elucidated above does not give jurisdiction to the CIT to invoke provisions of [Section 263](#) prior to the insertion of Explanation 2. In our view, the Explanation 2 does not help the revenue in as much as the same is prospective and applicable with effect from 1st June, 2015.”***

7.1 The case of Malabar Industrial Co. Ltd vs CIT(supra) also pertains to pre-amended period. Likewise, decisions in the case of CIT vs Gabriel India Ltd(supra) and Hariom Iron Trading Co. vs CIT(supra) pertain to pre-amended period and also in the said decision, the hon’ble Courts had duly recorded the fact that the AO did make due enquiries on the issues involved.

8. We have carefully considered all the relevant facts of the case as also the provisions of law in the matter and the legal position emerging from the decisions of various courts on law. We are inclined to agree that in the instant case, ld.PCIT has validly assumed jurisdiction under section 263 r.w. Explanation 2 thereof as the AO has not made any inquiry in the impugned issues at all. It is not a case of inadequate



enquiry but a clear case of no enquiry or verification on part of the ld.AO. The ld.PCIT has rightly pointed out that the issues of deduction of Rs 238.92 cr. claimed u/s 37 in respect of the sum debited under the head '**Any other amount as deduction**' was not enquired or verified. Even basic details were not requisitioned by the AO. Likewise, the ld.PCIT is correct in concluding that the AO did not examine the **issue of Dividend Stripping as laid down u/s 94(7)** of the Act which was prima facie discernible and required further enquiry and investigation has not been touched upon by the AO. The broad principle that emerges from various decisions relied upon above is that if AO has merely accepted the assessee's explanation on various issues without proper inquiry then the same would come within the ambit of 'lack of inquiry' and not 'inadequate inquiry'. Moreover, there cannot be any dispute that in the instant case, there is no inquiry at all by the AO. The ld.CIT has merely set aside the assessment order for framing it *de novo*. Therefore, the AO would examine the issues involved and needless to say, he would also allow the assessee opportunity of hearing following the principles of natural justice. In view of these facts, we are of the view that the assessee should not be prejudiced by the revision order, otherwise also. Therefore, based upon the provisions of the Act and in the light of plethora of decisions of various courts on law, we do not have any



hesitation to conclude and concur with the ld.PCIT that the assessment order is not only erroneous but also prejudicial to the interests of the revenue and was therefore, correctly set aside by him by resorting to the revisionary powers u/s 263 of the Act. The order is, therefore, **upheld**.

8. In the result, the appeal is dismissed.

Order pronounced in the open court on **24/03/2025**.

Sd/-

NARENDER KUMAR CHOUDHRY

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 24.03.2025

Lubhna Shaikh / Steno

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

