



**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH,  
RAJKOT**

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

<b>Sr. No.</b>	<b>ITA No.</b>	<b>Asstt. Year</b>	<b>Appellant</b>	<b>Respondent</b>
1.	324/Rjt/2024	2019-20	M/s. Deepmala Marine Exports New Fisheries Terminal Gate, Bhidiya Plot, Veraval-362269 PAN No.: <b>AABFD4284G</b>	The Pr. CIT-1, Rajkot Aayakar Bhavan, Race Course Ring Road, Rajkot-360001
2.	322/Rjt/2024	2019-20	M/s. Sun Exports Plot No.1313, GIDC Estate, Somnath Road, Veraval – 362269 PAN No.: <b>ACAFS3664A</b>	The Pr. CIT-1, Rajkot Aayakar Bhavan, Race Course Ring Road, Rajkot-360001
3.	323/Rjt/2024	2019-20	Shri Chunilal Govind Vanik Ashaganga Exports, Plot No. 310/B, Somnath Road, GIDC Estate, Veraval – 362267 PAN No.: <b>AAUPV5100G</b>	The Pr. CIT-1, Rajkot Aayakar Bhavan, Race Course Ring Road, Rajkot-360001
4.	312/Rjt/2024	2019-20	Shri BharatkumarKalyanjibhai Bhindi Prop. of M/s. K. D. Bhindi, Kalyan Complex, Haveli Lane, Junagadh- 362001 PAN No.: <b>ABWPB2758D</b>	The Pr. CIT-1, Rajkot Aayakar Bhavan, Race Course Ring Road, Rajkot-360001
5.	326/Rjt/2024	2019-	Shri Kishor VeljibhaiFofandi	The Pr. CIT-1,



		20	Prop. of Deepmala Fisheries, Plot No. 305, GIDC Estate, Veraval-362268 PAN No.: <b>AABPF9318D</b>	Rajkot Aayakar Bhavan, Race Course Ring Road, Rajkot-360001
6.	327/Rjt/2024	2018-19	Shri Samji Nathu Vaishya Prop. of Royal Traders & Somnath Bar, Bunder Chowk, Nr. Petrol Pump, Diu-362520 PAN No.: <b>AAYPV6872B</b>	The Pr. CIT-1, Rajkot Aayakar Bhavan, Race Course Ring Road, Rajkot-360001
7.	329/Rjt/2024	2018-19	Shri Hetalkumar Pravinchandra Rajyaguru Surya Nagar, Ambika Bhuvan, Opp. GEB Nana Mauva Main Road, Rajkot-360004 PAN No.: <b>AFBPR8480D</b>	The Pr. CIT-1, Rajkot Aayakar Bhavan, Race Course Ring Road, Rajkot-360001
8.	331/Rjt/2024	2019-20	M/s. Dhruv Print Pack Industries Survey No.31, Ghunda, Sanjapar, Morbi-363641 PAN No.: <b>AALFD7963L</b>	The Pr. CIT-1, Rajkot Aayakar Bhavan, Race Course Ring Road, Rajkot-360001
9.	335/Rjt/2024	2019-20	M/s. Dhruvcraft Mill Pvt. Ltd. S. No. 285, Nr. Fact Paper, Lilapar, Dist. Morbi-363641 PAN No.: <b>AADC6851E</b>	The Pr. CIT-1, Rajkot Aayakar Bhavan, Race Course Ring Road, Rajkot-360001
10.	371/Rjt/2024	2019-20	M/s. Soham Papers Pvt. Ltd. S. No. 237/1-2-3, Navagam Road, Lilapar, Morbi-363641 PAN No.: <b>AANCS2306R</b>	The Pr. CIT-1, Rajkot Aayakar Bhavan, Race Course Ring Road,



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Appellant by : Shri Mehul Ranpura, Ld. AR  
Respondent by : ShriSanjay Punglia, Ld.CIT(DR)  
**Date of Hearing** : 24/04/2025  
**Date of Pronouncement** : 30/06/2025

### आदेश / ORDER

#### **Per, Bench:**

By way of these ten appeals, the different assesseees have challenged the correctness of the order 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 and 2019-20. Grievances raised by these different ten assesseees, which, being interconnected, will be taken up together.

2. Since in these ten appeals, Learned Principal Commissioner of Income-tax (in short "Ld PCIT") has exercised his jurisdiction under section 263 of the Income-tax Act, 1961, on the common issue, stating that during the course of survey proceedings, excess stock of finished goods/ raw material, were found, which sources have not been explained by the assessee, therefore, learned PCIT observed that assessing officer ought to have assessed excess stock u/s 69A of the Act and same ought to have been taxed u/s 115BBE of the Act and the assessing officer had also not verified/inquired about down fall in gross profit as compared to previous year. Apart from this, there were other small issues raised by the ld. PCIT in these different assesseees' appeals, which we would adjudicate, appeal- wise, in this order, in the ensuing para, of this order.

3. We advert to the relevant facts, of the common issue raised by the ld PCIT in respect of excess stock of finished goods/ raw material, found during



survey proceedings, by taking the lead case in ITA No. 324/Rjt/2024, in the case of M/s Deepmala Marine Exports. The assessee had filed its return of income for assessment year (A.Y.) 2019-20, on 11/09/2019, declaring total income of Rs. 1,28,78,330/- The assessee's case was selected for complete scrutiny, on account of survey proceedings, carried out on 12.09.2018, at the business premises of the assessee. The Assessment was finalised u/s 143(3) of the Income-tax Act, 1961, on 27/09/2021, accepting returned income of Rs. 1,28,78,330/-.

4. Later on, the Learned Principal Commissioner of Income-tax (in short "Ld PCIT"), exercised his jurisdiction under section 263 of the Income-tax Act, 1961. On perusal of record, it was noticed by the Ld. PCIT that during the course of survey proceedings carried out on 12.09.2018, in the case of the assessee, the excess stock of finished goods of Rs. 81,32,250/- was found and which was disclosed by the assessee, as unaccounted stock with an explanation that the excess stock consists of unaccounted income of Rs. 76,56,017/-, generated from business income of current financial year, that is, the Financial Year (F.Y.) 2018-19. However, no any explanation for remaining excess stock for Rs. 4,76,233/- had been given. Further, the assessee has not furnished any cogent documentary evidence, like purchase bills, sales bills, name of purchaser, name of seller, source of payment, nature of transaction etc, in support of its claim that excess stock consist of unaccounted business income of Rs. 76,56,017/-, generated during the F.Y. 2018-19. Since, the assessee has not furnished any cogent documentary evidence in support its claim, such excess stock was required to be treated as unexplained within the meaning of section 69 of the Act and taxed u/s 115BBE of the IT Act.

5. It was also noticed by the learned PCIT that during the year under consideration, the assessee- firm has total turnover of Rs.



77,42,35,548/- and had earned a gross profit of Rs. 5,69,44,263/- @ 7.35%. As against this, the assessee-firm had a turnover of Rs. 77,92,16,706/- and had earned gross profit of Rs. 6,11,25,995/- @ 7.84% in the immediately preceding year. Thus, there is a downfall in gross profit by 00.49%( 7.84% - 7.35%). No apparent reason was found by Id. PCIT, in respect of fall in Gross Profit. The assessee had not furnished any explanation in this regard. Considering such facts, notice u/s 263 of the Income-tax Act, 1961, dated 07/02/2024 was issued by the Id. PCIT. Relevant portion of said show- cause notice is reproduced as under

*“In your case, the Assessment for AY 2019-20, was finalized u/s 143 (3) of the Act on 27.09.2021 accepting the return income of Rs. 1,28,78,330/-*

*On perusal of record, it is seen that during the course of survey proceedings carried out on 12.09.2018 in your case, excess stock of finished goods of Rs. 81,32,250/- was found and which was disclosed by you as unaccounted stock with an explanation that the excess stock consists of unaccounted income of Rs. 76,56,017/-, generated from transactions of purchase and sales of fishished goods made during the F.Y.2018-19. However, no explanation for remaining excess stock for Rs. 4,76,233/- had been given. Further, you have not furnished any cogent documentary evidence like purchase bills, sales bills, name of purchaser, name of seller, source of payment etc in support of your claim that excess stock consist of unaccounted income of Rs. 76,56,017/-, generated from transactions of purchase and sales made during the F.Y 2018-19. Since you have not furnished any cogent documentary evidence in support of your claim, such excess stock is required to be treated as unexplained within the meaning of sec. 69B of the Act and taxed u/s 115BBE of the I.T. Act. The assessing officer has failed to treat the excess stock of Rs. 76,56,017/- as unexplained within the meaning of section 69 of the IT Act and not charged tax u/s section 115BBE of the I.T. Act*

*Further, it is seen that during the year under consideration, the assessee firm has total turnover of Rs.77,42,35,548/- and had earned a gross profit of Rs. 5,69,44,263/- @ 7.35%. As against this, the assessee- firm had a turnover of Rs. 77,92,16,706/- and had earned gross profit of Rs. 6,11,25,995/- @ 7.84% in the immediately preceding year. Thus, there is a downfall in gross profit by 00.49%. No apparent reason is found in respect of fall in Gross Profit. However, the assessing officer while completing the assessment had not made any addition in this regards while passing the assessment order u/s 143(3) of the Income tax Act, 1961.*

*Thus, the assessment order passed by the Assessing Officer for A Y 2019-20 is erroneous in so far as it is prejudicial to interests of the revenue. Therefore, I hereby initiate proceedings u/s 263 of the Act with a view to pass a suitable order.*



*Before passing of such order, you are hereby given an opportunity of being heard in the matter. In this connection you are requested to furnish your reply / submission / explanation or objection if any by mail address id rajkot.cit1@incometax.gov.in/speed post/personally to this office on or before 14.02.2024.""*

6. In response to the above notice, the assessee, vide its letter dated 14.02.2024, has filed its reply before the learned PCIT, which is reproduced by learned PCIT in its revision order, under section 263 of the Act. The assessee submitted before the learned PCIT that said disclosure has been made by the partner after examining the noting made in a note book and loose papers found and seized from the office premises of the assessee, during the survey proceedings and as per explanation given by the assessee, the noting in the note book contained details of transactions of purchase and sales made by him during the year under consideration. The assessee has also agreed to pay the income tax on the disclosure amount during survey, and in fact, assessee has paid the taxes on the disclosed amount during the survey. Since the purchase and sale relates to assessee's business. Therefore, it is income of the assessee, from the assessee's business and should be assessed under the head income from business. Therefore, it should not be taxable under section 115BBE of the Act. In respect of fall in the gross profit ratio, the assessee submitted that it is very small and negligible fall in the gross profit, which is because of more expenses incurred during the year, for the purpose of business.

7. However, learned PCIT rejected the contention of the assessee, and observed that it is an admitted fact in the submission of assessee, that disclosure of Rs. 81,32,250/-, has been made by partner, Shri Jagadishbhai V. Fofandi, during the course of survey proceedings, as undisclosed income of the firm, in addition to regular income for the financial year 2018-19. Thus, the amount of Rs.81,32,250/- disclosed



during the survey action was not recorded in the books of accounts when the partner has admitted it. The learned PCIT also noticed that the disclosure has been made by the partner, after examining the noting made in a note book and loose papers found and seized from the office premises of the assessee, during the survey proceedings and as per explanation given by the assessee in his statement, the noting in the note book contained details of transactions of unaccounted purchase and sales made by him, during the year under consideration. Such explanation of the assessee, which is not backed by any corroborative evidence, was not accepted by ld PCIT. The ld PCIT also noticed that merely saying that the noting in the note book were unaccounted purchase and sales made by him during the year under consideration is not sufficient to claim these unaccounted receipts as business receipts. Therefore, ld. PCIT observed that excess stock found during the survey and admitted by the assessee, as its income earned during that year, should be treated, as deemed income in view of the provisions of section 69B of the Act. Therefore, Ld. PCIT observed that the value of admitted excess stock of Rs.81,32,250/- ought to have taxed as deemed income and taxed u/s 115BBE of the Act.

8. About decrease in gross profit ratio, the ld.PCIT noticed that during the year under consideration, the assessee -firm has total turnover of Rs. 77,42,35,548/- and had earned a gross profit of Rs.5,69,44,263/- (Excluding discloser) @ 7.35%. As against this, the assessee- firm had a turnover of Rs. 77,92,16,706/- and had earned gross profit of Rs.6,11,25,995/- @7.84% in the immediately preceding year. Thus, there is a downfall in gross profit by 00. 49%. No apparent reason is found in respect of fall in Gross Profit, neither the assessee has submitted any explanation for fall in gross profit ratio nor has the



assessing officer verified the issue. The assessing officer ought to have verified the issue while passing the assessment order u/s 143(3) of the Income tax Act, 1961. However, the assessing officer failed to do the same. Therefore, Id. PCIT held that the order passed u/s 143(3) of the Income- tax Act, 1961, on 27/09/2021 by the assessing officer, is erroneous since the assessing officer has not conducted sufficient and proper enquiry. Therefore, Ld. PCIT set-aside the impugned assessment order passed by the assessing officer, u/s 143(3) of the Income-tax Act, 1961 on 27.09.2021 and directed the Assessing Officer to pass a fresh assessment order after making necessary enquiries.

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

10. Learned Counsel for the assessee submitted that during the assessment proceedings, the assessee furnished documents and evidences, before the Assessing officer, in aspect of excess stock, which were examined by the assessing officer, as it is evident that during the assessment proceedings, the assessing officer issued notice under section 142(1) of the Act, asking the questions in respect of excess stock/ shortage of stock. Therefore, having examined the details and documents submitted by the assessee, the assessment order was framed by the assessing officer, after applying his mind. Hence, such assessment order should not be erroneous as well as prejudicial to the interest of revenue.

11. About fall in gross profit ratio, the learned Counsel for the assessee submitted that during the assessment proceedings, the assessee submitted Balance Sheet, Profit and Loss Account and other relevant



documents and from these documents, it is clear that fall in gross profit ratio is reasonable and therefore, assessing officer took plausible view, hence order passed by the assessing officer should not be erroneous. Therefore, learned Counsel contended and that jurisdiction exercised by the Id.PCIT, under section 263 of the Act, may be quashed.

12. On the other hand, Ld. DR for the revenue submitted that no doubt the working of excess stock, was submitted by the assessee, during the assessment proceedings, in response to the notice, issued under section 142(1) of the Act, however, the assessee has failed to explain the source of such excess stock. Therefore, Ld. PCIT has rightly exercised his jurisdiction, under section 263 of the Act, as the source of excess stock was out of business income and therefore, excess- stock should be taxable under section 153BBE of the Act.

13. About gross profit ratio, the Learned DR for the Revenue, submitted that no any question was raised, by the assessing officer during the assessment proceedings, by the Assessing Officer. Therefore, so far, the gross profit ratio is concerned, there was no enquiry made by the assessing officer, hence, order passed by the assessing officer is erroneous.

14. In re-joinder, the Ld. Counsel for the assessee submitted that the assessee submitted all documents and evidence, before the assessing officer, such as balance sheet, profit and loss account and cash flow statement, during the assessment proceedings, and assessing officer had worked out the gross profit ratio, based on these financial statements of the assessee.



15. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. Since in the present case, the Ld. PCIT has exercised his jurisdiction u/s. 263 of the Act, in case of all assessees, on the ground that the assessing officer while completing the assessment proceeding did not make enquiries which he ought to have made. Therefore, it is necessary to look into what enquiries the assessing officer made on the issues raised in the order u/s. 263 of the Act, in respect of all assessees' appeals, which are as follows, appeal-wise;

**(i). In respect of ITA No. 327/Rjt/2024 in the case of Shamji Nathu Vaishya:**

The Id. PCIT noticed in respect of disclosure on account of commission income of Rs. 1,54,00,000/- that the income of Rs. 1,54,00,000/-, disclosed during the survey and admitted by the assessee, as its income earned during that year ought to have treated as income from unexplained sources in view of the provisions of section 69A of the Act, 1961 and taxed u/s 115BBE of the Act. However, the assessing officer failed to do the same. Therefore, Ld. PCIT noticed that the order passed u/s 143(3) of the Income tax Act, 1961, on 08/04/2021, by the assessing officer is erroneous since the assessing officer had accepted the assessee's claim of commission income of Rs. 1,54,00,000/-, even when the assessee failed to submit relevant and necessary documents during the course of assessment proceedings. Therefore, learned PCIT held that the assessment order passed by the assessing officer, was passed without **proper examination, and enquiry**.



Learned Counsel for the assessee submitted that during the assessment proceedings, the assessing officer, issued notice under section 142(1) of the Act, dated 06.02.2024, vide para 2 of page no. 4 of the notice, the assessing officer has asked the assessee to submit the relevant documents and evidences, in respect of commission. In response to this notice of the assessing officer, the assessee submitted its reply before the assessing officer, on three occasions, on 12.02.2021, 18.02.2021, and 04.03.2021 (vide paper book page No.24 to 31). Therefore, learned Counsel for the assessee, submitted that assessing officer, during the assessment proceedings made detailed enquiry. Hence, order passed by the assessing officer, is neither erroneous nor prejudicial to the interest of the revenue. However, learned DR for the revenue, relied on the stand taken by the learned PCIT.

**(ii). In respect of ITA No. 329/Rjt/2024, in the case of Hetalkumar Rajyaguru:**

The ld. PCIT noticed in respect of disclosure of income on account of inflated expenses in the profit and loss account and noticed that the bogus expenses to the tune of Rs.90,00,000/-, ought to have taxed, as deemed income u/s 69C of the Act, and taxed u/s 115BBE of the Income Tax Act. However, the assessing officer failed to do the same. Therefore, learned PCIT noticed that order passed by the assessing officer is without proper inquiry and investigation, which is erroneous and prejudicial to the interest of revenue. Therefore, learned PCIT held that assessment order, passed by assessing officer, was **without proper examination, and enquiry**.

Learned Counsel for the assessee submitted that during the assessment proceedings, the assessing officer, issued notice under section 142(1) of the Act, dated 27.01.2021, vide para no. 2 of page no. 3 of the notice, wherein the assessing officer has raised this issue and asked the questions of the assessee, vide paper book page No.22. In response to this notice, the



assessee, submitted its reply, before the assessing officer, on 09.03.2021 (The assessee's reply is placed on paper book page Nos. 28 to 33.). Therefore, learned Counsel for the assessee, submitted that assessing officer, during the assessment proceedings made detailed enquiry. Hence, order passed by the assessing officer, is neither erroneous nor prejudicial to the interest of the revenue. However, learned DR for the revenue, relied on the stand taken by the learned PCIT.

**(iii). In respect of ITANo. 371/Rjt/2024,in the case of Soham Paper Pvt. Ltd.**

The ld. PCIT noticed in respect of shortage of stock of Raw material of Rs.2,33,05,730/- and excess stock of finished goods of Rs.7,02,780/-, that during the course of survey proceedings, carried out on 12.02.2019, in case of the assessee, shortage of stock of Raw Material of Rs. 2,33,05,730/-, and excess stock of finished goods of Rs.7,02,780/-, was found. The assessee has not furnished any concrete and satisfactory explanation regarding the shortage/ excess as noted above. The response of director of the company Shri Divyesh Marvaniya, at the time of survey is very vague. He blames that the quantification of stock made by Registered Valuer, was done by unscientific method and estimated basis. At this stage it should not be lost sight of the fact that the valuation was done by a Registered Surveyor and Loss Assessor. As a professional, such a person are competent in their work and are trained for stock measurement etc, in a scientific manner. The assessee has also made vague and indeterminate reply stating that the imported wastepaper, there is existence of moisture which results in 5% to 7% shortage in the volume. From this it was clear that the assessee impliedly accepted the shortage of stock but tried to justify the same on the ground of moisture. It was noticed by the ld PCIT that the assessee has neither during survey nor during the post survey proceedings, furnished satisfactory



reconciliation or explanation with regards to shortage/ excess of stock found at the time of survey. The primary onus isto reconcile the shortage of stock with corroborative documentary evidences, was on the assessee and, then, to confirm the veracity of the explanation/claims of the assessee, based on the supporting documents submitted was duty of the Assessing Officer. However, no such explanation is found from the assessment records. Therefore, learned PCIT noticed that neither the assessee has given any explanation nor has the assessing officer made any **proper enquiry** in this regard.

Learned Counsel for the assessee submitted that during the assessment proceedings, the assessing officer, issued notice under section 142(1) of the Act, dated 06.02.2024, vide para 2 & 3 of the notice, wherein the assessing officer has raised this issue and asked the questions from the assessee, vide paper book page No.22. The assessing officer has further issued show -cause notice to the assessee, wherein the assessing officer asked the questions relating to shortage of stock of raw material and stock of finished goods, vide paper book page No.27. In response to this notice, the assessee, submitted its reply, before the assessing officer, on 15.09.2021, 20.09.2021 and 06.03.2019 (The assessee's replies are placed on paper book page Nos. 25 to 26, page No.28 to 32 and page No.13 to 18). Therefore, learned Counsel for the assessee, submitted that assessing officer, during the assessment proceedings made detailed enquiry. Hence, order passed by the assessing officer, is neither erroneous nor prejudicial to the interest of the revenue. However, learned DR for the revenue, relied on the stand taken by the learned PCIT.

**(iv). In respect of ITA No. 331/Rjt/2024 in the case of Dhruv Print Pack Industires.**



The Id. PCIT noticed in respect of shortage of stock of raw material of Rs.16,31,394/- and excess stock of finished goods of Rs.14,04,558/-, (net discrepancy Rs. 2,26,836/-) that in the assessee's case, no elaborate explanation along with documentary evidence was given with regards to shortage of stock found during the course of survey proceedings. Neither explanation, along with documentary evidence has ever come from the assessee nor has the assessing officer insisted the assessee or conducted independent inquiry to ascertain the real reasons for shortage of stock found during the survey proceedings. The Id PCIT noticed that it is a case of accepting the claim of the assessee, on its face value, without going into the details. While conducting scrutiny assessment, the assessing officer is duty bound to appreciate each and every fact presented before him with corroborative evidences rather than accepting the claim on its face value. Otherwise, there is no point in conducting scrutiny assessment at all. Assessment carried out in such mechanical manner cannot be said to have been made after due application of mind and **no proper enquiry** was made by the assessing officer. Therefore, learned PCIT, noticed that shortage of stock of Rs.2,26,836/-, found during the survey and admitted by the assessee is to be added to the total income of the assessee. Therefore, learned PCIT held that the value of shortage of stock of Rs.2,26,836/-, ought to have been treated as undisclosed income of the assessee u/s 69A and taxed u/s 115BBA of the Income Tax Act.

**Apart from this, the learned PCIT noticed that in assessee's case, there is late payment of employee's contribution to PF of Rs. 1,41,718/-.**

The Id. PCIT noticed that there was delay in deposit of Employee's contribution to Provident Fund of Rs. 1,41,718/-, which required to be disallowed u/s 43B of the I.T, Act, however, the assessing officer had not disallowed the same while passing the assessment order u/s 143(3) of the Income tax Act, 1961. Therefore, learned PCIT held that the order passed u/s



143(3) of the Income-tax Act, 1961, on 24/09/2021 by the assessing officer is erroneous.

Learned Counsel for the assessee submitted that during the assessment proceedings, the assessing officer, issued notice under section 142(1) of the Act, dated 06.02.2021, vide para 2 & 3 of the notice, (paper book page No.13) wherein the assessing officer has raised the same issue, as raised by Id PCIT in a revision proceedings. The assessing officer asked the assessee to submit the relevant documents and details. In response to the notice of the assessing officer, the assessee submitted its reply before the assessing officer on 24.09.2021, (vide paper book page No. 24 to 27). Therefore, learned Counsel for the assessee, submitted that assessing officer, during the assessment proceedings made detailed enquiry. Hence, order passed by the assessing officer, is neither erroneous nor prejudicial to the interest of the revenue except Late Payment of employees contribution to P.F. Rs.1,41,718/- . However, learned DR for the revenue, relied on the stand taken by the learned PCIT.

**(v). In respect of ITA No. 312/Rjt/2024, in the case of Bharat Kalyanji Bhindi**

The Id. PCIT noticed in respect of excess stock of Rs.4,51,99,231/-, that the assessee's claim of reduction of amount of excess stock declared during the survey proceedings to Rs.4,51,99,231/-, ought to have been rejected by the assessing officer on the following reasons:

(i) In reply to question No.3 of the statement of the assessee, recorded during the course of survey proceedings, the assessee specifically stated that his books of account are being maintained in computer and the accounts of his



business are written till 18.02.2019. Therefore, the assessee's claim that 1011.51 grams of 22 ct Gold ornaments purchased were remained to be entered in the books is not tenable and acceptable.

(ii) As per submission filed by the assessee during the course of assessment proceedings, the assessee claimed to have purchased 34.490 gram ornaments for Rs.3,78,359/- from Junagadh Jewellery Pvt Ltd, on 24.11.2018 and also claimed that he has paid Rs.3,78,359/-, on 24.11.2018 to Junagadh Jewellery Pvt Ltd but due to reason that purchase bill dated 24.11.2018 was misplaced and hence entries could not be passed in the account. The contentions of the assessee is apparently not found to be tenable because if the bill was misplaced, the assessee can obtain duplicate bill from the seller and make entry in his books of account within reasonable time. However, in the instant case, though the purchase claimed to have made on 24.11.2018, no entry of such purchase made till date of survey i.e. 20.02.2019. Therefore, the claim of the assessee, ought to have verified deeply, however, the assessing officer failed to do the same.

(iii) Further, neither the assessee has furnished evidence of transportation of goods, mode of transportation, delivery challans etc, in respect of alleged purchases of 1011.500 gram gold as discussed above nor the assessing officer has called for and verified the same. The assessing officer ought to have also verified above transactions by way of issuing notice u/s 133(6) of the I.T. Act. The assessment carried out in such mechanical manner cannot be said to have been made after due application of mind. Therefore, Id. PCIT held that assessing officer did not make any efforts to verify the assessee's claim which clearly proves that assessing officer has passed the assessment order hurriedly, and **without proper enquiry** which makes such order as erroneous and prejudicial to interest of revenue.



Learned Counsel for the assessee submitted that during the assessment proceedings, the assessing officer, issued notices under section 142(1) of the Act, dated 06.02.2021, vide para 2 & 3 of the notice and assessing officer also issued show cause notice 08.09.2021 ( vide paper book page No. 26 and 59), wherein the assessing officer had asked the questions from the assessee, and asked the assessee to submit relevant documents and evidences. In response to these notices of the assessing officer, the assessee submitted its four replies, along with documentary evidences, before the assessing officer, on four occasions, that is, on 19.02.2021, 01.03.2021, 09.09.2019 and 28.05.2019, respectively ( vide paper book page Nos. 34, 35 to 40, 59 to 64 and 16 to 17). Therefore, learned Counsel for the assessee, submitted that assessing officer, during the assessment proceedings made detailed enquiry. Hence, order passed by the assessing officer, is neither erroneous nor prejudicial to the interest of the revenue. However, learned DR for the revenue, relied on the stand taken by the learned PCIT.

**(vi). In respect of ITA No. 324/Rjt/2024, in the case of Deepmala Marine Export**

The ld. PCIT noticed in respect of excess stock of Rs.81,32,250/-, that disclosure has been made by the partner after examining the noting made in a note book and loose papers found and seized from the office premises of the assessee, during the survey proceedings and as per explanation given by the year under his statement, the noting in the note book contained details of transactions of unaccounted purchase and sales made by him during the year under consideration. Therefore, ld PCIT noticed that such explanation of the assessee, which is not backed by any corroborative evidence, is not acceptable, merely saying that the noting in the note book were unaccounted purchase and sales made by him during the year under consideration is not



sufficient to claim these unaccounted receipts as business receipts. To claim the receipts as business receipts, the assessee should have explained the entries appearing in the note book before the assessing officer with corroborative documentary evidences, like purchase bills, sale bills, name of purchaser, name of seller etc, during the assessment proceedings. The primary onus to explain the receipts with corroborative documentary evidences was on the assessee and, then, to confirm the veracity of the explanation/claims of the assessee based on the supporting documents submitted. However, no such explanation is found from the assessment records. Therefore, ld. PCIT noticed that neither the assessee has given any explanation nor has the assessing officer made **any proper enquiry** in this regard.

The ld. PCIT noticed in respect of downfall in gross profit(GP) that there is a fall in gross profit by 00.49%. The ld PCIT noticed that explanation of issue of decrease in gross profit ratio, submitted by the assessee, should not be accepted because during the year under consideration, the assessee- firm has total turnover of Rs.77,42,35,548/- and had earned a gross profit of Rs.5,69,44,263/- (Excluding discloser) @ 7.35%. As against this, the assessee- firm had a turnover of Rs.77,92,16,706/- and had earned gross profit of Rs. 6,11,25,995/-, @ 7.84% in the immediately preceding year. Thus, there is a downfall in gross profit by 00.49%. The learned PCIT noticed that no apparent reason was found in respect of fall in Gross Profit, neither the assessee has submitted any explanation for fall in gross profit ratio nor has the assessing officer verified the issue. The assessing officer ought to have verified the issue while passing the assessment order u/s 143(3) of the Income tax Act, 1961, however, the assessing officer failed to do the same, therefore, order passed by the assessing officer is erroneous.



Learned Counsel for the assessee submitted that during the assessment proceedings, the assessing officer, issued notices under section 142(1) of the Act, dated 06.02.2021, 21.09.2021, and 06.02.2021, vide paper book page Nos. 21 and 22, wherein the assessing officer had asked the relevant questions from the assessee, and asked the assessee to submit relevant documents and evidences. In response to these notices of the assessing officer, the assessee submitted its three replies, along with documentary evidences, before the assessing officer, on three occasions, that is, on 12.02.2021, 23.09.2021, and 12.02.2021, respectively ( vide paper book page Nos. 28 and 26). Therefore, learned Counsel for the assessee, submitted that assessing officer, during the assessment proceedings made detailed enquiry. In respect of downfall in gross profit (GP) ratio, the learned Counsel for the assessee submitted that it is a very small downfall in gross profit (GP) ratio, due to increase of some expenses for business purpose. Therefore, learned Counsel for the assessee, submitted that assessing officer, during the assessment proceedings made detailed enquiry. Hence, order passed by the assessing officer, is neither erroneous nor prejudicial to the interest of the revenue. However, learned DR for the revenue, relied on the stand taken by the learned PCIT.

**(vii). In respect of ITA No. 335/Rjt/2024, in the case of Dhruv Craft Mill Pvt. Ltd**

The ld. PCIT noticed the contention of the assessee, in respect of excess stock of Rs.33,75,886/-, that the quantification of stock made by the Registered Surveyor on volume density basis, which is on estimate basis and cannot give exact quantification of stock and hence, the same was strongly objected by the assessee, however, in order to avoid long drawn litigation, to buy peace of mind and to save cost & time, assessee has voluntarily offered the



additional income to the extent of Rs.33.76 lakhs. The ld. PCIT did not accept the above contention of the assessee. The income which was ultimately brought to tax, pursuant to the disclosure made, which was voluntary on the part of the assessee. The ld. PCIT noticed that in the instant case, the assessee has disclosed additional income to the extent of Rs.33.76 lakhs, however, it did not specify how it fell in. Unless such facts are mentioned with specificity, it cannot be said the income disclosed by the assessee, representing unexplained business assets and it is taxable u/s 28, as part of business income. The primary onus to explain the source of income with corroborative documentary evidences was on the assessee and, then, to confirm the veracity of the explanation/claims of the assessee based on the supporting documents submitted, then it is the duty of the Assessing Officer. However, no such explanation is found from the assessment records. Therefore, ld. PCIT noticed that neither the assessee has given any explanation nor has the assessing officer made **any proper enquiry** in this regard.

Learned Counsel for the assessee submitted that during the assessment proceedings, the assessing officer, issued notices under section 142(1) of the Act, dated 06.02.2021, vide para 2 of the notice and assessing officer also issued show cause notice dated 08.09.2021, wherein the assessing officer had asked questions from the assessee in respect of source of the excess stock. In response to the notice of the assessing officer, the assessee submitted its reply before the assessing officer, on two occasions, on 22.02.2021 and 15.09.2021 ( vide paper book page Nos.26 to 27 and page no.30 to 36). Therefore, learned Counsel for the assessee, submitted that assessing officer, during the assessment proceedings made detailed enquiry. Therefore, learned Counsel for the assessee, submitted that assessing officer, during the assessment proceedings made detailed enquiry. Hence,



order passed by the assessing officer, is neither erroneous nor prejudicial to the interest of the revenue. However, learned DR for the revenue, relied on the stand taken by the learned PCIT.

**(viii). In respect of ITA No. 326/Rjt/2024, in the case of Kishor Veljibhai Fofandi**

The Id. PCIT noticed in respect of excess stock of Rs.41,30,340/- that the said disclosure has been made by the assessee, after examining the noting made in a note book and loose papers found and seized from the office premises of the assessee, during the survey proceedings and as per explanation given by the assessee in his statement, the noting in the note book contained details of transactions of unaccounted purchase and sales made by him during the year under consideration. Such explanation of the assessee, which is not backed by any corroborative evidence, is not acceptable, merely saying that the noting in the note book were unaccounted purchase and sales made by him during the year under consideration is not sufficient to claim these unaccounted receipts, as business receipts. To claim the receipts as business receipts, the assessee should have explained the entries appearing in the note book before the assessing officer with corroborative documentary evidences, like purchase bills, sale bills, name of purchaser, name of seller etc, during the assessment proceedings. The primary onus to explain the receipts with corroborative documentary evidences was on the assessee and, then, to confirm the veracity of the explanation/claims of the assessee based on the supporting documents submitted, was duty of the Assessing Officer. However, no such explanation is found from the assessment records. The Id PCIT noticed that neither the assessee has given any explanation nor has the assessing officer made any enquiry in this regard. The Id. PCIT noticed that



it is a case of accepting the claim of the assessee, on its face value, without going into the details. While conducting scrutiny assessment the assessing officer is duty bound to appreciate each and every fact presented before him with corroborative evidences rather than accepting the claim on its face value, otherwise there is no point in conducting scrutiny assessment at all. The Id. PCIT noticed that there is a downfall in gross profit ratio, also. The assessment carried out in such mechanical manner cannot be said to have been made after due application of mind and after making **proper enquiry**.

Learned Counsel for the assessee submitted that during the assessment proceedings, the assessing officer, issued notice under section 142(1) of the Act, dated 06.02.2021, vide paper book page No. 2. The assessing officer also issued show cause notice wherein the assessing officer had asked questions from the assessee, in respect of source of the excess stock. In response to the notice of the assessing officer, the assessee submitted its reply before the assessing officer, on 12.02.2021. About downfall in the gross profit ratio, the learned Counsel submitted that this is because of more expenses incurred during the year for the purpose of business. Therefore, learned Counsel for the assessee, submitted that assessing officer, during the assessment proceedings made detailed enquiry. Hence, order passed by the assessing officer, is neither erroneous nor prejudicial to the interest of the revenue. However, learned DR for the revenue, relied on the stand taken by the learned PCIT.

**(ix). In respect of ITA No. 322/Rjt/2024 in the case of Sun Export**

The Id. PCIT noticed in respect of excess stock of Rs.1,75,04,460/-, that the disclosure has been made by the assessee, after examining the noting made in a note book and loose papers found and seized from the office premises of the assessee, during the survey proceedings and as per explanation given by



the assessee in his statement, the noting in the note book contained details of transactions of unaccounted purchase and sales made by him during the year under consideration. Such explanation of the assessee, which is not backed by any corroborative evidence, is not acceptable and merely saying that the noting in the note book were unaccounted purchase and sales made by him during the year under consideration is not sufficient to claim these unaccounted receipts as business receipts. To claim the receipts as business receipts the assessee should have explained the entries appearing in the note book before the assessing officer with corroborative documentary evidences like purchase bills, sale bills, name of purchaser, name of seller etc. during the assessment proceedings. The primary onus to explain the receipts with corroborative documentary evidences was on the assessee and, then, to confirm the veracity of the explanation/claims of the assessee based on the supporting documents submitted, was duty of the Assessing Officer. However, no such explanation is found from the assessment records. The ld PCIT noticed that neither the assessee has given any explanation nor has the assessing officer made any enquiry in this regard. Neither explanation along with documentary evidence has ever come from the assessee nor has the assessing officer insisted the assessee or conducted independent inquiry to ascertain the real character of the amounts found noted in the note book during the survey proceedings. It is a case of accepting the claim of the assessee on its face value without going into the details. Therefore, learned PCIT noticed that assessment carried out in mechanical manner and assessing officer has not conducted **proper enquiry**. About downfall in gross profit (GP) ratio of 00.31%, the learned PCIT noticed that during the year under consideration, the assessee- firm has not explained the downfall. No apparent reason is found in respect of huge down fall in Gross Profit ratio.



Learned Counsel for the assessee submitted that during the assessment proceedings, the assessing officer, issued notice under section 142(1) of the Act, dated 06.02.2021, vide paper book page No.20. The assessing officer also issued show cause notice dated 08.09.2021, wherein the assessing officer had asked questions from the assessee, in respect of source of the excess stock. In response to the notice of the assessing officer, the assessee submitted its reply before the assessing officer, on 27.09.2021. About downfall in the gross profit ratio, the learned Counsel submitted that this is because of more expenses incurred during the year for the purpose of business. Therefore, learned Counsel for the assessee, submitted that assessing officer, during the assessment proceedings made detailed enquiry. During the course of assessment proceedings, the assessee in reply to notice u/s 142(1) 06.02.2021, vide his submission dated 12.02.2021 has submitted details of GP/NP of four years for comparison, to justify gross profit ratio.

Hence, order passed by the assessing officer, is neither erroneous nor prejudicial to the interest of the revenue. However, learned DR for the revenue, relied on the stand taken by the learned PCIT.

**(x). In respect of ITA No. 323/Rjt/2024 in the case of Chunilal G. Vanik**

The ld. PCIT noticed in respect of excess stock of Rs.1,35,50,792/-, that the said disclosure has been made by the assessee after examining the loose paper file found during the survey which was inventoried as annexure BF-1/6 found from the office premises of the assessee during the survey proceedings. As per the explanation given by the assessee in his statement, the noting in the loose paper contained details of transactions of unaccounted purchase and sales made by the assessee during the year under consideration. Such explanation of the assessee, which is not backed by any corroborative evidence, is not acceptable, merely saying that the noting in the



loose paper were unaccounted purchase and sales made by the assessee during the year under consideration is not sufficient to claim these unaccounted receipts as business receipts. To claim the receipts as business receipts the assessee should have explained entries appearing in the loose paper before the assessing officer with corroborative documentary evidences like purchase bills, sale bills, name of purchaser, name of seller etc, during the assessment proceedings. The assessee in the submission has mentioned that the excess stock found during the survey was part of the total stock. In this regard, merely saying that the excess stock found during the survey was part of the total stock is not sufficient to claim this unaccounted stock as part of business. To claim the stock as part of the business, the assessee ought to have explained the sources from which such stock was purchased before the assessing officer with corroborative documentary evidences during the assessment proceedings. The primary onus to explain the unaccounted stock with corroborative documentary evidences was on the assessee and, then, to confirm the veracity of the explanation/claims of the assessee based on the supporting documents submitted, was duty of the Assessing Officer. However, no such explanation is found from the assessment records, therefore, the assessing officer did not **conduct proper enquiry**.

Learned Counsel for the assessee submitted that during the assessment proceedings, the assessing officer, issued notice under section 142(1) of the Act, dated 06.02.2021, vide paper book page No.20. The assessing officer also issued show cause notice dated 08.09.2021, ( paper book page no.20 and 22) wherein the assessing officer had asked questions from the assessee, in respect of source of the excess stock. In response to the notice of the assessing officer, the assessee submitted its reply before the assessing officer, on 25.09.2021. Therefore, learned Counsel for the assessee, submitted that assessing officer, during the assessment proceedings made detailed



enquiry. Hence, order passed by the assessing officer, is neither erroneous nor prejudicial to the interest of the revenue. However, learned DR for the revenue, relied on the stand taken by the learned PCIT.

16. We have noticed the facts of these 10 appeals above. We find that in these 10 appeals of different assessee's one common grievance of learned PCIT was that assessing officer did not **make proper enquiry/ examination**, therefore, order passed by the assessing officer, in case of these 10 assessee's were found by the learned PCIT, as erroneous and prejudicial to the interest of the revenue. We find that in case of all these 10 assessee's the assessing officer issued notice under section 142(1) of the Act, wherein the assessing officer had asked questions from the assessee, in respect of source of the excess stock/ bogus expenditure and commission etc, as we have noted, appeal-wise, in the above above para of this order. In response to the notice of the assessing officer, the assessee submitted their replies before the assessing officer. Therefore, we find that enquiry was conducted by the assessing officer in case of all these 10 assessee's case, however, as per learned PCIT, **proper enquiry/ examination**, was not made by the assessing officer, in respect of the concerned issue, raised by the learned PCIT in these appeals. We find that in case of all these 10 assessee's, there is no denying the fact, as detailed above and acknowledged in the respective assessment order u/s. 143(3) of the Act, that in response to notices u/s. 143(2)/142(1) and further requisitions made during the course of assessment proceeding, the A/R of the assessee appeared from time to time and produced/ submitted necessary details/documents as per requisitions in relation to the issues raised by the Ld. Pr. C.I.T., which were examined by Assessing Officer. Therefore, it is the appraisal of the same records which are already with the Ld. A.O. and the Ld. Pr. C.I.T. took a different view than adopted by the A.O. on the same set of facts, which is not permissible



u/s. 263 of the Act. In the above circumstances, the view taken by the A.O. was one of the plausible views and the assessment order passed by him could not be held to be erroneous and prejudicial to the interests of revenue. There is difference between ‘Lack of enquiry’ and ‘inadequate enquiry’. It is for the AO to decide the extent of enquiry to be made as it is his satisfaction as what is required under law. Reliance is placed on the decision of CIT v. Sunbeam Auto Ltd. [(2010) 332 ITR 167], wherein Hon’ble Delhi High Court has held that if there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass order u/s 263 of the Act, merely because the Commissioner has a different opinion in the matter and that only in cases where there is no enquiry, the power u/s 263 of the Act can be exercised. The Id. PCIT cannot pass the order u/s 263 of the Act on the ground that further/thorough enquiry should have been made by assessing officer.

17. About fall in gross profit ratio, the assessee submitted before A.O. Balance Sheet, Profit and Loss account, wherefrom A.O. could easily compute the G.P. ratio and took a plausible view. Further, it was settled by Hon’ble Supreme Court in the case of **Malabar Industrial Co. Ltd. vs. CIT [(2000) 243 ITR 83 (SC)]** wherein it was held that if the A.O. adopts one of the possible courses available in the scheme of the I.T. Act which results in any loss of revenue or when two views are possible and the A.O. adopts one of them with which the PCIT does not agree, then it would not be an order prejudicial to the interest of revenue for invoking the jurisdiction u/s. 263 of the Act. In other words, the Ld. Pr. C.I.T. on the same set of facts and evidences on record was of the opinion that the A.O. should have examined the facts further and **AO has not made proper enquiry**, which the Ld. Pr. C.I.T. hinted in the impugned order u/s 263 of the Act. This is not permissible under law. For better appreciation, the relevant portion of the



judgment in the case of **Malabar Industrial Co. Ltd. vs. CIT** (supra) is quoted below :

*“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”.*

18. We note that the Ld. Pr. C.I.T. by invoking his jurisdiction u/s. 263 of the Act is giving another opportunity to the Ld. A.O., which is not permissible. Hon’ble Bombay High Court in the case of Ranka **Jewellers vs. Addl. CIT (328 ITR 148)** relying on the decisions of Hon’ble Supreme Court in the cases of Malabar Industrial Co. Ltd. vs. CIT (supra) and CIT vs. Max India Ltd. [(2007) 295 ITR 282 (SC)], has held that once the issue was considered by the A.O., the remedy of the revenue could not lie in invoking of the jurisdiction u/s. 263 of the Act. Therefore, the order of the Ld. C.I.T. was definitely outside the purview of section 263 of the Act. As noted above, the exercise aimed at ascertaining the correct income of the assessee has been fulfilled by the Ld. A.O. by exercising his quasi-judicial functions vis-a-vis passing the assessment order u/s.143(3) of the Act. Therefore, certainly it is not a case wherein adequate enquiries at the assessment stage were not carried out or assessment was made in haste. **However, what is an opinion formed as a result of these enquiries and verification of the materials is something which is in exclusive domain of the Assessing Officer, and even if Ld. Pr. Commissioner does not agree with the results of such enquiries, the resultant order cannot be subjected to revision proceedings.** For that we rely on the decision of the Coordinate Bench of I.T.A.T., Kolkata in the case of Smt. Juthika Kar vs. ITO [I.T.A.



No.1128/Kol/ 2009, dated 16.5.2012 ], wherein it has been held as under (relevant portion) :-

*“8.....However, what is opinion formed as a result of these enquiries is something which is inexclusive domain of the Assessing Officer, and even if Commissioner has such results of enquiries, the resultant order cannot be subjected to revision proceedings. The conclusions arrived at as a result of enquiries cannot be tinkered with in the revision proceedings. The conclusions being drawn up as a result of enquiry is a highly subjective exercise and as to what is appropriate conclusion is something on which perceptions vary from person to persons. These variations in the perceptions of the Assessing Officer vis-a-vis that of the Commissioner, cannot render an order erroneous and prejudicial to the interest of the revenue.”*

19.The aforesaid position gets further strength from the decision of Hon’ble High Court of Calcutta in the case of **CIT vs. J.L. Morrison (India) Ltd. (2014) 366 ITR 593 (Cal)**, the relevant finding of which is applicable to the facts of the present assessee is quoted below :

*“85. Whether the assessment order dated March 28, 2008, was passed without application of mind is basically a question of fact. The learned Tribunal has held that the assessment order was not passed without application of mind. The records of the assessment including the order-sheets go to show that heard from time to time. In deciding the question the court has to bear in mind the presumption in law laid down in Section 114 clause (e) of the Evidence Act: “that judicial and official acts have been regularly performed.*

*86. Therefore, the court has to start with the presumption that the assessment order dated March 28, 2008, was regularly passed. There is evidence to show that the Assessing Officer had required the assessee to answer 17 questions and to file documents in regard thereto. If the Assessing Officer cannot be shown to have violated any form prescribed for writing an assessment order, it would not be correct to hold that he acted illegally or without applying his mind. ” [Emphasis given]”*

It is a settled position in law that provisions of section 263 of the Act do not permit substituting one opinion by another opinion. Therefore, the order of the Ld. Pr. C.I.T. cannot be sustained on the principle of ‘erroneous’ nature



of the order of the A.O., as it is not erroneous. Further, in the instant case, to reiterate, there was no allegation by the Ld. DR for the revenue, that the evidences produced by these assesseees before assessing officer were fictitious or invented, thus accepted the authenticity of the same. Such an order cannot be called erroneous and prejudicial to interests of revenue only because the A.O. made the assessment without discussing such details therein, as held by the Coordinate Bench of ITAT Kolkata in the case of Chroma Business Ltd. vs. DCIT (2004) 82 TTJ 540 (Cal). Further support in this connection is taken from the decision of Hon'ble Delhi High Court in the case of **CIT vs. Vikas Polymers (2012) 341 ITR 537 (Del)**. Relevant part of the observation in this regard reads as under :

*" This is for the reason that if a query is raised during the course of scrutiny by the Assessing Officer, which was answered to the satisfaction of the Assessing Officer, but neither the query nor the answer was reflected in the assessment order, that would not by itself lead to the conclusion that the order of the Assessing Officer called for interference and revision." [Emphasis supplied]*

20. As we have noted above that in these 10 appeals of different assesseees`the Ld.PCIT has exercised jurisdiction u/s.263 of the Act on the ground that the assessing officer failed to **make proper enquiry** which he ought to have made before completing the assessment. We note that there is a distinction between "lack of enquiry" and "inadequate enquiry. If there is an enquiry, even inadequate, that would not by itself give occasion to the PCIT to pass order under section 263 of the Act, merely because he has a different opinion in the matter. Such a course of action is open only in cases of "lack of enquiry". Although apparently the assessment orders of these 10 assesseees and details and documents filed by these assesseees, before assessing officer, do not give any reasons that the AO has not applied his mind to the issue. The assessing officer had called for details and documents from the respective assessee and the respective assessee had



furnished his explanation and details before the assessing officer. Thus, it cannot be said that it is a case of 'lack of enquiry'. Therefore, the view taken by the AO was one of the plausible views and the assessment order passed by the AO could not be held to be prejudicial to the Revenue. We derive support for our conclusions, as above, from the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Sunbeam Auto Ltd. 332 ITR 167 (Del.).

21. It is pertinent to mention here that in respect of these 10 assessee's case, there was as such no allegation of 'no enquiry' or 'lack of enquiry' or verification, because the Ld. Pr.C.I.T. himself found all the details/evidences in the assessment record, that is, well within the A.O.'s possession and what Ld.PCIT alleged, was about the plausible view taken by the A.O. as against his perception and understanding on the same set of facts and documents. Therefore, the notices issued for examination of the issues during the assessment proceedings and submission and verification of the same has not been shown to be fallacious. In this connection it is pertinent to mention here that the way in which assessment should be finalized falls in the exclusive domain of the Assessing Officer. Section 142(1) speaks of inquiry before assessment and gives immense power to the A.O. for conducting enquiry. Therefore, the A.O. u/s 142(1)(ii) & (iii) can ask the assessee almost any information which he things necessary for passing assessment and even if Ld.PCIT has such results of enquiries, the resultant order cannot be subjected to revision proceedings. Therefore, the very initiation of proceeding u/s. 263 of the Act by the Ld. Pr. C.I.T. is in violation of the settled position in law.

22. We note that Ld Pr. CIT has taken support of the newly inserted Explanation 2(a) to sec. 263 of the Act. What is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after



carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquiries or verification that would have been carried out by a prudent officer. Hence, the said explanation, which was inserted by Finance Act 2015 w.e.f. 1.4.2015, would not be applicable to the year under consideration. For that we rely on the judgment of the Co-ordinate Bench of Mumbai in the case of Shri Narayan Tatu Rane vs. ITO in ITA Nos. 2690 & 2691/Mum/2016 for A.Y. 20108-09 dated 06.05.2016. We note that section 263 of the Act enables supervisory jurisdiction to the PCIT over the assessing officer (AO). The PCIT is empowered to act u/s. 263 of the Act when he considers that AO's order is erroneous in so far as it is prejudicial to the interest of Revenue. It is a settled position of law that the aforesaid twin condition i.e. AO's order is erroneous and prejudicial to the interest of revenue is sine qua non for assumption of revisionary jurisdiction by PCIT. As per the scheme of the Act, AO has a dual role to discharge while assessing the income of an assessee. He is both an investigator as well as an adjudicator. If the AO fails in discharging any of the two said duties, that is, as an investigator or that of an independent/impartial adjudicator, the CIT's supervisory jurisdiction is attracted because the order of the AO would be erroneous for lack of inquiry, that is if he does not investigate or it would be erroneous for failure of AO to adjudicate as an independent/impartial adjudicator which means that if the AO passes assessment order in violation of natural justice, or there is bias or arbitrariness etc. then also the order of AO would be erroneous. When we say that lack of inquiry makes an AO's order erroneous, one has to keep in



mind the difference between lack of inquiry and inadequate inquiry. The Lack of inquiry makes the AO's order erroneous, but inadequate inquiry does not make the order of AO erroneous. If the AO's view is a plausible view on the facts and circumstances of the case, then PCIT cannot exercise the 263 jurisdiction to impose his own view which may be a view possible to be taken in the very same facts of the case. Since the order of the Assessing Officer cannot be held to be erroneous as well as prejudicial to the interest of the revenue, in the facts and circumstances narrated above, the usurpation of jurisdiction exercising revisional jurisdiction by the Principal CIT is "null" in the eyes of law and, therefore, we are inclined to quash the very assumption of jurisdiction to invoke revisional jurisdiction u/s 263 by the Principal CIT. Therefore, we quash all these orders of the Principal CIT, being ab initio void, except issue in ITA No.331/RJT/2024, in case of Dhruv Print Pack Industries, in respect of late payment of employee's contribution to PF of Rs.1,41,718/-.

23. We note that in ITA No.331/RJT/2024, in case of Dhruv Print Pack Industries, there is late payment of employee's contribution to PF of Rs.1,41,718/-, which is covered against the assessee, by the judgment of the Hon'ble jurisdictional Gujarat High Court in the case of State Road Transport Corporation (GSRTC) 41 taxmann.com 100 (Guj). It is also covered against the assessee by the judgement of the Hon'ble Supreme Court, in the case of Checkmate Services Private Limited, in civil appeal No.2833/2016, dated 12.10.2022. Therefore, in the case of ITA No.331/RJT/2024, in case of Dhruv Print Pack Industries(supra) the order passed by the learned PCIT, is upheld to the extent of contribution of PF of Rs.1,41,718/-, hence assessee's appeal in ITA No.331/RJT/2024, in case of Dhruv Print Pack Industries, is partly allowed, therefore, assessing officer is directed to make addition in the hands of the assessee of Rs. 1,41,718/-.



24. In the combined result, appeals filed by all the assesseees (in ITA No.324/Ahd/2024, 322/Ahd/2024, 323/Ahd/2024, 312/Ahd/2024, 326/Ahd/2024,327/Ahd/2024, 329/Ahd/2024, 335/Ahd/2024 and 371/Ahd/2024) are allowed, except ITA No.331/RJT/2024, in case of Dhruv Print Pack Industries( supra), which is partly allowed to the extent indicated above.

**Order pronounced in the open court on 30-06-2025**

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

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

Rajkot

दिनांक/ Date: 30/ 06/2025

**Copy of the Order forwarded to**

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

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot