

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

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND
SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

I.T.A. No.9/Alld/2022
Assessment year:2017-18

M/s Kesarwani Zarda Bhandar, Sahson, Allahabad PAN:AADFK6279N (Appellant)	Vs.	Pr. C.I.T., Allahabad (Respondent)
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Appellant by	Shri Praveen Godbole, C.A.
Respondent by	Shri Amalendu Nath Mishra, CIT, D.R.

ORDER

PER SUBHASH MALGURIA:J.M.

This appeal vide I.T.A. No.9/Alld/2022 has been filed by the assessee for assessment year 2017-18 against impugned order dated 22/03/2022 (DIN & Order No.ITBA/REV/F/REV5/2021-22/104126740(1) passed by learned Pr. Commissioner of Income Tax ("PCIT" for short), Allahabad u/s 263 of the Income Tax Act, 1961 ("the Act" for short). In this appeal the assessee has raised the following grounds:

- "1. *That in any view of the matter order passed u/s 263 dated 22.03.2022 is bad both on the facts and in law as well as without jurisdiction hence liable to be canceled.*
2. *That in any view of the matter the order u/s 263 of the I.T. Act, passed by the Commissioner of Income Act, is bad in law as the Commissioner of Income has failed to appreciate that such claim is genuine and claim was allowed and accepted in past and subsequent years after verification hence order u/s 263 is illegal and bad in law.*
3. *That in any view of the matter in the fact and circumstances of the case the Commissioner erred in law and on fact in holding that the assessment order passed by the assessing officer dated 07.11.2019 is erroneous as well as prejudicial to the interest of revenue when the issue was thoroughly examined and adjudicated by the assessing officer before passing the order.*
4. *That in any view of the matter in the facts and circumstances of the case the order of Commissioner of Income Tax is unjust, illegal and also bad in law because the amount of expenditure of Rs.22,35,16,844/- in connection with business purposes and in past and future and even during the year claim was accepted after verification of fact.*
5. *That in any view of the matter in the course of assessment proceeding a detailed questioner was issued to the appellant during the course of assessment proceeding and after satisfying with the reply of the appellant the claim was accepted/allowed hence the action u/s 263 is unwarranted.*
6. *That in any view of the matter Commissioner of Income Tax failed to appreciate the facts that the view taken by the assessing officer is a possible view and then allowed after through verification hence action u/s 263 is not correct.*
7. *That in any view of the matter the direction to the assessing officer in the order u/s 263 is not correct at all in the facts and circumstances of the case specially when the issue examined by the assessing officer before allowing the claim."*

2. The facts of the case, in brief, are that the assessee is a registered firm engaged in manufacturing and sale of chewing tobacco. The assessee is assessed to income tax for the last number of years. For the year under consideration, the assessee filed its return of income, declaring total income of Rs.3,34,12,470/-. The case of the assessee was selected for complete scrutiny and accordingly, notices u/s 143(2) of the Act was issued. Thereafter, notice u/s 142(1) of the Act along with queries, requiring the assessee to furnish information, was also issued to the assessee. In response thereto, the assessee made online/offline submissions. In the assessment order, the following observations were recorded by the Assessing Officer:

"2.1 Due to change of incumbent, notice u/s 142(1) of the I.T. Act was issued on 29.08.2019 along with queries. No compliance was received on this date, so reminder letter was issued on 05.10.2019 and compliance was sought by 09.10.2019. In compliance to the above reminder to notices/queries Shri Praveen Gadbole, Advocate & authorized representative of assessee complied and furnished filed submission on 09.10.2019 by online(e-proceedings) and due to voluminous documents & books of accounts were also submitted manually in office, which are studied/ examined and placed on record.

2.2 After going through the submission & the documents enclosed with reply, notice u/s 142(1) of I.T. Act was issued on 12.10.2019, along with further queries and compliance was sought by 16.10.2019. Authorized representative of assessee complied and furnished required information, details by online(e-proceedings) and due to voluminous documents & books of accounts were submitted manually in office, which are studied/ examined and placed on record."

3. Vide impugned order dated 22/03/2022 of the learned PCIT, the learned Pr.CIT took a fresh view of the assessee's claim for expenses under the head "Bhola Nath Kesarwani Memorial Expenses". The assessment order dated 07/11/2019 was set aside by learned PCIT to be framed again by the

Assessing Officer after providing proper opportunity of being heard to the assessee.

4. The present appeal has been filed by the assessee against the aforesaid impugned order dated 22/03/2022 passed under section 263 of the Act. In the course of appellate proceedings in Income Tax Appellate Tribunal ("ITAT" for short), the following particulars and case laws were filed from the assessee's side: -

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9.	account under the head shop expenses. Summary of latest case-laws u/s 263 of the Act along with copy of judgment.	34-157
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16.	Copy of decision Hon'ble Tribunal Amritsar Bench reported in 48 ITR (TRIB) 382.	232-245
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----- Appellant

101 A Panna Road

6. At the time of hearing before us, the Ld. Counsel for assessee submitted that the Assessing Officer had conducted all relevant inquiries. He drew our attention to the observation recorded by the Assessing Officer in paragraph no. 2.2 and 2.3 of the assessment order (reproduced in foregoing paragraph no. 2 of this order). Further, he contended that detailed submissions were made by the assessee in the course of assessment proceedings. In this regard, he drew our attention to the paper book containing copies of notice issued by the Assessing Officer and copy of replies filed by the assessee before the Assessing Officer during the assessment proceedings. He further submitted that the relevant queries were made by the Assessing Officer and the replies submitted by the assessee during the assessment proceedings were brought to the knowledge of the Ld. PCIT during the proceedings under section 263 of the Act, and detailed submissions were also submitted in writing as well as at the time of personal hearing. However, he contended the Ld. PCIT passed the order under section 263 of the Act with pre-mediated and biased mind-set against the assessee, which is clearly evidenced by the fact that there is no discussion in the impugned order dated 22/03/2022 passed by the Ld. PCIT under section 263 of the Act on the submissions made from the assessee's side and there is no discussion in the aforesaid order under section 263 of the Act of Ld. PCIT, why the Ld. PCIT did not agree with the submissions made from the assessee's side. Further, the Ld. Counsel for assessee submitted that in the absence of any discussion on assessee's submission in the impugned order of the Ld. PCIT, the order was non-speaking order, clearly in violation of principle of natural justice and should be quashed *in limine*. He drew our attention to the written submissions filed by the assessee in the office of the Ld. PCIT during the proceedings under section 263 of the Act which is reproduced as under: -

**BEFORE THE PRINCIPAL COMMISSIONER OF
INCOME TAX ALLAHABAD.**

**Ref. Reply to show cause notice in respect of
revision proceeding under section 263 of the I.T.
Act, in the matter of Kesarwani Zarda Bhandar,
Sahson, Allahabad.**

A.Y.2017-18

PAN NO. AADFK6279N

Madam,

That in the above noted case notice dated 07.01.2022 and 25.01.2022 was issued relating to revision proceeding under section 263 of the I.T. Act and as per said notice it is alleged that assessment order dated 07.11.2019 passed under section 143 (3) of the Act is erroneous and prejudicial to the interest of revenue in so far as during the year a sum of Rs.22,35,168.44 debited in profit and loss account under the head shop expense as per schedule 15 of audit report is not expended wholly and exclusively for purpose of business hence not allowable. In this regard the brief facts are as under:-

That the assessee is a registered firm engaged in manufacturing and sale of chewing tobacco for which regular books of accounts have been maintained and audited too. The assessee firm is assessed to tax for last more than 50 years and most of the assessments made u/s 143(3) of the Act. For the year under consideration a return was filed by declaring an income of Rs.3,34,12,470/- based on close books of accounts. Thereafter the case was selected for completes scrutiny and in compliances to the notice issued u/s 143(2) and 142(1) of the I.T. Act full compliances was made. The assessing officer has admitted in para 2.1 of the order that voluminous documents an books of accounts were furnished in the office which were studied and examined and place on record.

That during assessment proceeding vide notice dated 12.10.2019 specific query was made by then assessing officer regarding expenses claimed under

the head Bhola Nath Kesarwani Memorial expense which is reproduced as under:-

In P & L A/c under the head administrative expense & sub-head shop expenses (sec.) following non-business are notice, which are not allowable under the I.T. Act.

Bhola Nath Kesarwani

Memorial Expense	Rs.22,35,168/-
Smokeless Tobacco Traders Delhi	Rs. 2,00,000/-
Donation	<u>Rs. 51,000/-</u>
Total Rs.	Rs. 24,86,168/-

That in compliance to notice the assessee vide replied dated 22.10.2019 at page 6 narrated the facts in detail before the assessing officer and submitted reply which is reproduce as under:-

That regarding expenses claimed under head Bhola Nath Kesarwani Memorial expense amounting to Rs.22,35,168/- the said expenses were incurred for business purposes as Late Bhola Nath Kesarwani was the founder member of the firm and due to his

efforts during his lifetime and due to his brand name the firm is existing for last several years, and firm is recognized in his name as "Bhola Zarda hence **expenses incurred is for business purposes and the said expenses are incurred through cheque and TDS deducted and even service tax is also paid on said amount.** In this way in the memory of founder member Late Bhola Nath Kesarwani Memorial expenses are incurred under different head which are for business purposes. The said expenses are incurred on his death anniversary for last more than 20 years and in past the same was accepted by the department and assessment made u/s 143 (3) of the Act, and the details of expense are as under

Complaint figure of Bhola Nath Kesarwani Memorial Expenses

F.Y.2016-2017 (A.Y.2017-2018)

Sl no.	A.Y.	Expenses	Result as Assessment
1.	2015-16	20,01,672.00	Accepted u/s 143 (3)
2.	2016-17	20,68,632.18	Accepted u/s 143 (3)
3.	2017-18	22,35,168.44	Under consideration

That thus in this way the said issue was thoroughly examined/adjudicated by the then assessing officer and was fully satisfied about nature and purpose of said expense claimed.

That thereafter notice under section 154 of the Act, was issued dated 15.12.2020 by the learned DCIT Circle-1 Allahabad on same issue and it was alleged that said expenditure claimed is a mistake proposed to be rectified. The query is reproduced as under:-

As per profit & loss account it is noticed that the assessee had debited expenditure of Rs.22,35,168.44/- under the head Bhola Nath Kesarwani Memorial Expenses as mentioned Schedule-15 of shop expenses which is included in Scheduled-14 of sales and administrative expenses. As expenditure is not expended wholly and exclusively for the purpose of the business hence the same is not allowable and is liable to be added back to the income of assessee.

In compliance to said notice the assessee vide reply dated 22.12.2020 submitted detail reply stating that aforesaid issue regarding claim of expenditure does not come within the ambit of mistake apparant

from record since it is a settled/concluded issue.

Copy of notice and reply enclose at page ~~25~~-27

That thereafter notice under section 263 of the Act was issued on same issue of claim of expense under the head Bholanath Kesarwani Memorial expense amounting to Rs.22,35,168.44/- which is not correct at all since **said issue has already been examined/adjudicated by the then assessing officer in detail hence on same issue taking different view is not correct and does not come within the definition of revisional proceeding under section 263 of the Act.** The said issue was properly examined by the lower authorities and in earlier years also the said expense was accepted /allowed and assessment framed under section 143 (3) of the Act. The authorities below have examined the nature of expense claimed and formed a view that said expense was expended for business purpose hence taking different view in the garb of section 263 of the Act, is not correct. In this regard there are

plethora decision where it is held that were one of the plausible view has been taken by the assessing officer than taking different view is not correct and is not covered under revisional proceeding under section 263 of the Act. In this regard the assessee rely on following decisions-

437 ITR 349(2021)
243 ITR 83 (SC)
350 ITR 527
332 ITR 167
372 ITR 310
185 TTJ 366
155 DTR 243
214 TTJ 340/257. Copies of decision enclosed.

It is therefore prayed that in the light of submission made above and cited decision the notice as issued under section 263 of the Act is not correct and liable to be withdrawn.

Date: 31.01.2022

Your Faithfully

Krishna Chandra Kesarwani
Partner

7. The Ld. Counsel for the assessee also placed reliance on the aforesaid precedents referred to in foregoing paragraph of this order and submitted that impugned order dated 22/03/2022 of the Ld. PCIT passed under section 263 of the Act should be quashed even on merits of the expenses claimed under the head "Bhola Nath Kesarwani Memorial Expenses". He submitted that the assessee sells Zarda under the brand name "Bhola

Zarda”, which is based on the name of the founder (Late) Bhola Nath Kewarwani. The expenses incurred strengthened the brand value of “Bhola Zarda” manufactured and sold by the assessee; which contributed to sales. He contended that the expenses were essentially in the nature of Sales Promotion Expenses. He further contended that the expenses were fully allowable under section 37 of the I.T. Act, being both genuine and reasonable.

8. The Ld. Departmental Representative for Revenue relied on order passed by the Ld. PCIT. The following particulars and case laws were filed from the Revenue’s side: -

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S. No.	Description of Documents enclosed
1.	<p><u>As per AO’s records</u></p> <ul style="list-style-type: none"> • ITR-V (u/s 139(1), total income Rs. 3,34,12,470/-) • Computation of income • Notice u/s 143(2) dated 14.08.2018 (un-responded) • Notice u/s 142(1) dated 29.08.2019 (for hearing on 09.09.2019)/ un-responded on that date • Reminder notice dated 05.10.2019 (for hearing on 09.10.2019) • 1st reply dated 09.10.2019, <i>inter alia</i> alongwith- <ul style="list-style-type: none"> ➤ PoA ➤ Audit report u/s 44AB ➤ Balance sheet, P/L a/c • Notice u/s 142(1) dated 12.10.2019 (for hearing on 16.10.2019) • Adjournment application dated 16.10.2019 • 2nd reply dated 16.10.2019 (pp 56-64) • Assessment order u/s 143(3) dated 07.11.2019 (assessed at Rs. 3,37,57,261/-) • AO’s order sheet • AG Audit’s objection • Notice u/s 154 dated 15.12.2020 (by the AO) • Reply dated 22.12.2020 (filed by the assessee)
2.	<p><u>As per records of the Pr.CIT in proceedings u/s 263</u></p> <ul style="list-style-type: none"> • Show cause notice u/s 263 dated 07.01.2022 (for hearing on 25.01.2022/not responded to) • Another hearing notice dated 25.01.2022 (by the Pr.CIT) • Reply dated 31.01.2022 (filed before the Pr.CIT), alongwith <ul style="list-style-type: none"> ➤ Copy of reply dated 22.10.2019 filed before the AO (in the original assessment proceeding)

	<ul style="list-style-type: none"> • Adjournment application dated 01.02.2022 (allowed for 15.02.2022) • Another hearing notice dated 03.02.2022 (not responded thereafter) • Impugned order u/s 263 dated 22.03.2022
3.	<p>As per AO's records (in the fresh assessment proceedings)</p> <ul style="list-style-type: none"> • Notice u/s 142(1) dated 14.01.2023 • Reply dated 11.03.2023 • Fresh assessment order u/s 143(3) r.w.s. 263 & 144B dated 17.03.2023 • CIT(A)'s order dated 20.07.2023 against the original assessment order u/s 143(3) dated 07.11.2019 • Hearing notice u/s 250 dated 14.02.2025 in respect of appeal against fresh assessment order u/s 143(3) r.w.s.' 263.
4.	<ul style="list-style-type: none"> • Texts of Section 263 • CBDT's Circular No. 19/2015 dated 27.11.2015
	<u>CASE LAWS</u> , Relied on for Revenue
I	For the proposition that an order passed by the AO <u>without proper Enquiry or without Application of mind</u> is deemed to be erroneous and prejudicial to the interests of revenue.
1.	<p>[2000] 243 ITR 83 (SC) CIT v. Malabar Industrial Co. Ltd.</p> <p>Held that:- “ (para-7) An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without application of mind. (para-8)If due to an erroneous order of the ITO the revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the revenue. (para-10) In the instant case, the Commissioner noted that the ITO passed the order..... without application of mind..... the High Court recorded the finding that the ITO failed to apply his mind to the case in all perspective and the order passed by him was erroneous.... the Assessing Officer..... accepted the entry in the statement of the account filed by the appellant in the absence of any supporting material and without making any inquiry. On these facts, the conclusion that the order of the ITO was erroneous is irresistible.....”</p>
2.	<p>[2023] 453 ITR 447(SC) CIT v. Paville Projects (P.) Ltd.</p> <p>Held:- “ (Para-7.2) Thus, even as observed in paragraph 9 by this Court in <i>Malabar Industrial Co. Ltd. (supra)</i> 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.... (Para-7.3) Applying the law laid down by this Court in the case of <i>Malabar</i></p>

	<i>Industrial Co. Ltd. (supra)....”</i>
3.	<p>[2008] 306 ITR 52 (SC) CIT v. Toyota Motor Corporation</p> <p>Held that:- “ (para-4) ... According to the High Court, there was no basis indicated for dropping the proceedings..... What the High Court has done is to require the Assessing Officer to pass a reasoned order. The High Court was of the view that Tribunal could not have substituted its own reasonings which were required to be recorded by the Assessing Officer. According to the assessee all relevant aspects were placed for consideration and if the officer did not record reasons, assessee cannot be faulted.(para-5) We do not think it necessary to interfere at this stage. It goes without saying that when the matter be taken up by the Assessing Officer on remand, it shall be his duty to take into account all the relevant aspects and pass a reasoned order.”</p>
4.	<p>[2025] 303 Taxman 328 (SC) Pr.CIT v. M.R. Apparels (P.) Ltd. Dismissing SLP against [2024] 168 taxmann.com 197 (Delhi)</p> <p>Wherein observed that-“...(para-4) (para-9) The learned counsel for the appellant contends that all material and documents were available with the AO..... (para-10) Section 263 of the Act is set out below:.... <u>Explanation 2-... (a).... (para-11) We find no merit in the appellant's contention..... 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 <u>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.</u></u></p>
5.	<p>[2018] 95 taxmann.com 366 (SC), ITO v. Deniel Merchants (P.) Ltd.</p> <p>Held that:- “...(para-5) we find that the Commissioner of Income Tax had passed an order under section 263 of....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)....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.</p>
6.	<p>[2015] 370 ITR 14 0 (Allahabad), CIT v. Anand Kumar Jain</p> <p>Held that:- “ (Para-7)where an order has been passed by the Assessing Officer without application of mind or where the Assessing Officer has made an incorrect assessment of facts or an incorrect application of law, that would satisfy the requirement of the order being erroneous..... if due to an erroneous order of the Assessing Officer the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the</p>

	<p>interests of the Revenue.....(Para-8) A plain reading of the order would indicate that there has been no application of mind by the AO. There is nothing to indicate from the order that the Assessing Officer had brought his mind to(Para-9) it could not be deduced merely on the basis of the order-sheets of the Assessing Officer that there was a due and proper application of mind to the fundamental issue which has been raised while exercising jurisdiction under section 263. Evidently, therefore, the requirement of section 263 has been established and the Commissioner was justified in coming to the conclusion that the order passed by the Assessing Officer without application of mind was both erroneous and prejudicial to the interests of the Revenue....</p>	
7.	<p>[2014] 51 taxmann.com 201 (Allahabad), CIT v. R.S. Associates</p> <p>Held that:- "... (Para-10) we are of the view that the matter needs deep investigation. The CIT had rightly passed an order under Section 263 where he had directed the A.O. to make a fresh assessment order..... The Tribunal has set aside the order nearly by discussing the case laws, but without examining the facts of the case..... that the assessee will get fresh opportunity before the A.O. at the time of framing the de novo assessment...(Para-11).... we set aside the impugned order passed by the Tribunal and restore the order dated 25.03.2003 passed by the CIT under Section 263"</p>	
8.	<p>[2005] 277 ITR 346 (Alld), CIT v. Mannul Matadeen Allahabad</p> <p>Wherein observed that:- " (para-4) internal audit party Acting on the basis of the said report of the internal audit party the Commissioner of Income-tax examined the records and after coming to the conclusion that the assessment order was erroneous and also prejudicial to the interest of the revenue initiated proceedings under section 263 set aside the assessment order and....directed the Income-tax Officer to recompute the income of the applicant by disallowing a sum of...(para-4).Irresistible conclusion is that this exercise was done by the applicant just to bring down its taxable income there is no escape from the conclusion that the Income-tax Officer had not made necessary enquiries before allowing the deduction.... The Commissioner of Income-tax was, therefore, justified in drawing the proceeding under section 263"</p>	1
9.	<p>[2005] 272 ITR 309 (Allahabad) CIT v. PT. Lashkari Ram</p> <p>Wherein observed that- "(Page-3) In the assessment order it has also not been dealt that earlier the applicant was asked to furnish certain details and the assessee had furnished those details..... There is no mention of the details, which had been (Page-4) furnished by the assessee(Held that) the Commissioner of Income-tax by initiating the proceedings under section 263 of the Act had given reasons as to why the order is erroneous and prejudicial to the</p>	1

	interests of the Revenue.....The Tribunal was justified upholding the order of the Commissioner of Income-tax.”	
10.	<p>[1991] 187 ITR 412 (Allahabad) CIT v. Swarup Vegetable Products</p> <p>Held that:- “(para-5)The ITO had accepted the claim erroneously and passing that too without making proper enquiries. In view of these circumstances the Commissioner came to the conclusion that the ITO's order was erroneous inasmuch as it was not passed after a full enquiry and a proper investigation and that it is also prejudicial to the revenue..... (para-9). It is beyond dispute that under section 263 of the Commissioner does have the power to set aside the assessment order and send the matter for a fresh assessment if he is satisfied that further enquiry is necessary, and that the order of the ITO is prejudicial to the revenue.”</p>	
11.	<p>[2012] 341 ITR 434 CIT (Guhati) v. Jawahar Bhattacharjee</p> <p>Wherein “.....not holding such inquiry as is normal and not applying mind to relevant material would certainly be 'erroneously' assessment warranting exercise of revisional jurisdiction....(para-8) The object of the provision is to correct an erroneous order prejudicial to the interest of revenue, as the department has no right to file an appeal against the order of the AO.....(para-9) Interpretation of Section 263 has been subject matter of Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83.... (SC)....(para-23).... Cases of assessment order passed on wrong assumption of facts, on incorrect application of law, without due application of mind or without.....are not beyond the scope of Section 263....”</p>	
12.	<p>[2024] 205 ITD 571 (Mum) DCIT v. Play Games 24x7 (P.) Ltd.</p> <p>Wherein Assessee.... had filed detailed submissions before AO However, AO, without conducting any enquiry, passed assessment order - Commissioner invoked revisionary proceedings on ground that Assessing Officer failed to conduct enquiries and verification, it was evident from record that Assessing Officer had not examined/verified details so filed by assessee and, thus, Commissioner was justified in setting aside assessment order for limited purpose of examining issue.....(para-21).... from the assessment order, it is difficult to infer whether the AO was satisfied with the assessee's replies furnished from time to time or not the assessment order also does not indicate that the AO examined/verified the details furnished by the assessee.... Therefore, we are of the considered view the aforementioned observations do not support the plea of the assessee in the facts and circumstances of the present case. Accordingly, the impugned order passed under section 263 of the Act is upheld....</p>	1
13.	<p>[2023] 198 ITD 221 (KolKata) Pr. CIT v. Karabi Dealers (P.) Ltd.</p> <p>Whereinsince there was no entry in order sheet in assessment proceedings of AO had failed to conduct required verification and</p>	1

	<p>examination and had not applied his mind before passing assessment order thus, revisionary order passed by Principal Commissioner was to be upheld....(para-14.6.3).... Ld. AO has failed to conduct required verification and examination and has not applied his mind before passing the assessment order and accepting the returned income as assessed income. (para-14.7) Ld. Pr. CIT also referred to.... “Explanation 2.(a), (b).... (para-15) We note that Ld. Pr. CIT on his own examination of the assessment records has carefully and elaborately surfaced out the discrepancies proceedings..... In the revisionary proceedings also, assessee asserted to have made all the submissions before the ld. AO on the issues raised by the ld. Pr. CIT we have no hesitation in upholding the revisionary order passed by the ld. Pr. CIT u/s. 263.....”</p>
<p>II</p>	<p>For the proposition that- “where the order passed by a statutory authority is <u>silent</u> as to the reasons for the conclusion, it can well be said that the authority has <u>not applied its mind</u> to the issue before it <u>nor formed any opinion</u>”</p>
<p>14.</p>	<p>[2006] 281 ITR 394 (Delhi), Consolidated Photo & Finvest Ltd.</p> <p>Wherein held that- “ (para. 19).....the assessment order did not admittedly address itself to the question which the Assessing Officer proposes to examine in the course of reassessment proceedings. The submission of Mr. Vohra that even when the order of assessment did not record any explicit opinion on the aspects now sought to be examined, it must be presumed that those aspects were present to the mind of the Assessing Officer and had been held in favour of the assessee is too far fetched a proposition to merit acceptance. There may indeed be a presumption that the assessment proceedings have been regularly conducted, but there can be no presumption that even when the order of assessment is silent, all possible angles and aspects of a controversy had been examined and determined by the Assessing Officer. It is trite that a matter in issue can be validly determined only upon application of mind by the authority determining the same. Application of mind is, in turn, best demonstrated by disclosure of mind, which is best done by giving reasons for the view which the authority is taking. In cases where the order passed by a statutory authority is silent as to the reasons for the conclusion it has drawn, it can well be said that the authority has not applied its mind to the issue before it nor formed any opinion. The principle that a mere change of opinion cannot be a basis for reopening computed assessments would be applicable only to situations where the Assessing Officer has applied his mind and taken a conscious decision on a particular matter in issue. It will have no application where the order of assessment does not address itself to the aspect which is the basis for reopening of the assessment, as is the position in the present case. It is in that view inconsequential whether or not the material necessary for taking a decision was available to the Assessing Officer either generally or in the form of a reply to the questionnaire served upon the assessee. What is important is whether the Assessing Officer had based on the material available to him taken a view.....”</p>

III	For the proposition that- the Pr.CIT is not precluded from exercising his power u/s 263, just because a rectification notice u/s 154 was previously issued by the AO on the same issue.	
15.	[2007] 288 ITR 322 (SC) CIT v. Ralson Industries Ltd. Wherein Initiation of a proceeding under section 263 cannot be held to have become bad in law only because an order of rectification was passed under section 154..... (para-12) Initiation of a proceeding under Section 263 of the Act cannot be held to have become bad in law only because an order of rectification was passed..... in our opinion, it would not be correct to contend that only because a proceeding for rectification was initiated subsequently, the revisional jurisdiction could not have been invoked under any circumstances whatsoever.....	
IV	For the proposition that – “Commissioner can exercise the power under section 263 even in a case where the issue is debatable”	
16.	[1992] 198 ITR 144 (Guj) CIT v. M.M Khambhatwala WhereinCommissioner can exercise his power under section 263 even in case where issue is debatable..... (page-2) the Tribunal took the view that the Commissioner could not have invoked the provisions of section 263 of the Act since two views are possible This is a strange view taken by the Tribunal and it is conceded that this view taken by the Tribunal is not supported by any provision of the Act or any The Commissioner would be entitled to revise the order of the Income-tax Officer if he is of the view that the order of the Income-tax Officer is erroneous and prejudicial to the interests of the Revenue. The Commissioner can exercise the power under section 263 even in a case where the issue is debatable. Revisional power under section 263 is not comparable with the power of rectification of mistake under section 154 of the... It was only in the context of section 154 of the Act that the Supreme Court has in T.S. Balaram, ITO v. Volkart Brothers [1971] 82 ITR 50 , observed that, when the issue is debatable, the power of rectification cannot be exercised. This decision of the Supreme Court has no application whatsoever so far as powers under section 263 are concerned.....	
V	For the proposition that- in view of <u>Explanation-1(c)</u>, CIT’s power would extent to <u>matters to not consider and decided in appeal</u>	
17.	[1998] 231 ITR 50 (SC) CIT v. Shri Arbuda Mills Ltd.	1

	<p>Held that:- “....(para-5) We may refer to the amendment made in section 263 by the Finance Act, 1989, with retrospective effect from 1-6-1988."Explanation....(c)....The consequence of the said amendment made is that the Accordingly, even in respect of the aforesaid three items, the powers of the Commissioner under section 263 shall extend and shall be deemed always to have extended to them because the same had not been considered and decided in the appeal filed by the assessee. ...”</p>
18.	<p>[1999] 236 ITR 469 (SC) CIT v. Jaykumar B. Patil</p> <p>Wherein (Page-2)..... CIT v . Shri Arbuda Mills Ltd. [1998] 231 ITR 50.....covers the questions</p>
19.	<p>[2008] 299 ITR 300 (Allahabad) CIT v. Indo Persian Rugs</p> <p>Wherein by virtue of insertion of clause (c) in Explanation to section 263 by Finance Act, 1989 with retrospective effect from 1-6-1988, Commissioner has jurisdiction to take proceeding under section 263 in respect of that part of assessment order which was not subject matter of appeal....(para-5) We find that section 263 of the Act had undergone a sea change in the year 1988. Earlier uncertainty regarding the question as to whether the order of the Assessing Officer had merged in appeal or not even where in respect of the part of the assessment order, which was not the subject-matter of appeal has been set at rest by the insertion of clause (c) of the Explanation as inserted by Finance Act, 1989 with effect from 1-6-1988. This clause came up for consideration before the Apex Court in the case of CIT v. Shri Arbuda Mills Ltd.[1998] 231 ITR 501'Explanation....(c)..... (para-6).... In this view of the matter, the jurisdiction of the Commissioner of Income-tax to take proceedings under section 263 of the Act was very well within law even in respect of the part of that assessment order which was not the subject-matter of appeal.....</p>
20.	<p>[2004] 141 TAXMAN 354 (ALL.) CIT v. Smt. Sukhrani Devi</p> <p>Held that:- “(para-3) The case is squarely covered by the judgment of the Hon’ble Supreme Court Hindustan Aeronautics Ltd. v. CIT [2000] 243 ITR 8081 and CIT v. Shri Arbuda Mills Ltd. [1998] 231 ITR 502 (SC), wherein the Apex Court held that the powers of Commissioner of Income-tax shall extend and shall be deemed to have extended to matters not considered and decided in appeal filed by assessee before the Commissioner of Income-tax.”</p>
21.	<p>[2004] 135 TAXMAN 511 (ALL.) CIT v. Ram Kishore Raj Kishore</p> <p>Held that:- “(para-2). In CIT v. Shri Arbuda Mills Ltd. [1998] 231 ITR 501, For the provisions of section 263(1) along with clause (c) of its Explanation, The consequence of the amendment made with retrospective effect is that the powers under section 263 of the Commissioner shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in an appeal.”</p>

9. We have heard representative of both sides and have gone through the materials placed on record. It is not in dispute that the Assessing Officer has recorded in paragraph no. 2.1 and 2.2 of the assessment order, that explanation was called for from the assessee on all the points on which the case was selected for scrutiny, which has been placed on record. It is also not in dispute that the Assessing Officer made inquiries with the assessee through notices issued under section 142(1) of the Act dated 29/08/2019, 05/10/2019 & 12/10/2019 and that the assessee responded to these notices by way of written submissions which are placed at pages from 21 to 28 of paper book. Further, it is found that the detailed submissions made by the assessee before the Ld. PCIT in the course of proceedings under section 263 of the Act have been acknowledged by the Ld. PCIT in his impugned order dated 22/03/2022 at paragraph no. 4 & 5 but the Ld. PCIT failed to consider the submissions made by the assessee and also failed to pass a speaking order on why the submissions made by the assessee were not considered satisfactory. On perusal of record we are satisfied that relevant inquiries were made by the Assessing Officer during assessment proceeding. Further the learned Pr.CIT, in his impugned order, has merely stated that while passing the assessment order, the Assessing Officer failed to apply his mind to the legal and factual aspects of the case and failed to make addition and that the assessment order u/s 143(3) of the Act passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the Revenue as the Assessing Officer has failed to apply his mind to the legal and factual aspect of the case. The learned Pr.CIT has acknowledged that some inquiries were conducted on various issues discussed in the impugned order u/s 263 but has passed the impugned order on the sole ground that the Assessing Officer has failed to apply his mind to the legal and factual aspects of the case. The Assessing Officer in the impugned case has decided not to make the addition. This view has

been taken by the Assessing Officer in earlier years and in subsequent years also; but no adverse view was taken by learned Pr.CIT in these years, u/s 263 of the I.T. Act. The case laws relied upon by learned CIT (D.R.) are of no help to Revenue, as facts are distinguishable. The submissions made by the learned A.R. of the assessee are found to be convincing. The view taken by the Assessing Officer was one of the possible views and cannot be regarded to be the view unsustainable in the law. In view of the aforesaid discussion, we hold that the order passed by the learned Pr.CIT u/s 263 is unsustainable. Accordingly, the impugned order dated 22/03/2022 of the Ld. PCIT passed under section 263 of the Act is set aside and the aforesaid assessment order dated 07/11/2019 is restored.

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

(Order pronounced in the open court on 08/07/2025)

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Sd/.
(SUBHASH MALGURIA)
Judicial Member

Dated:08/07/2025
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. D.R., I.T.A.T., Allahabad