

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI M BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 2234/Del/2015

निर्धारणवर्ष/Assessment Year: 2011-12

THREEPENCE CRAFT, L-93, Chanakaya Place, Part-II, Uttam Nagar, New Delhi.	<u>बनाम</u> Vs.	CIT-IX, New Delhi.
PAN No.AAAF9580		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

ITA No. 5410/Del/2019

निर्धारणवर्ष/Assessment Year: 2011-12

THREEPENCE CRAFT, L-93, Chanakaya Place, Part-II, Uttam Nagar, New Delhi.	<u>बनाम</u> Vs.	INCOME TAX OFFICER, Ward-44(2), New Delhi.
PAN No.AAAF9580		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

&

ITA No. 5995/Del/2019

निर्धारणवर्ष/Assessment Year: 2011-12

INCOME TAX OFFICER, Ward-44(2), New Delhi.	<u>बनाम</u> Vs.	THREEPENCE CRAFT, L-93, Chanakaya Place, Part-II, Uttam Nagar, New Delhi.
PAN No.AAAF9580		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri Mukul Gupta, Adv.
Revenue by	Shri S.K. Jadhav, CIT DR

सुनवाईकीतारीख/ Date of hearing:	17.07.2025
उद्घोषणाकीतारीख/ Pronouncement on	24.09.2025

आदेश /O R D E R

PER C.N. PRASAD, J.M.

These appeals are filed by Assessee and Revenue against the order of the Ld. CIT-9, New Delhi dated 03.11.2014 passed u/s 263 of the Act and the order of the Ld. CIT(Appeals)-15, Delhi dated 08.04.2019 arising out of the assessment order passed u/s 143(3) r.w.s. 263 of the Act for the AY 2011-12.

2. The appeal filed by the Assessee in ITA 2234/Del/2015 against the order of the Ld. CIT dated 03.11.2014 passed u/s 263 of the Act is time barred by 38 days and the assessee filed petition for condonation of delay.

3. Heard rival submissions on the delay in filing the appeal.

4. The assessee explained that the delay so occurred in filing the appeal is due to the reasons beyond the control of the assessee and not due to any negligence on the part of the assessee since the copy

of the Ld.CIT was sent to the Counsel who represented the case of the assessee before the Ld.CIT. The assessee explained that the Counsel who represented the matter before the CIT to whom the assessee forwarded a copy of the order of CIT for filing appeal, could not file the appeal as he was not familiar with the matters before the Tribunal and this was communicated to the assessee later and the assessee took steps immediately to engage another Counsel for filing the appeal before the Tribunal and in this process delay of 38 days occurred in filing the appeal and therefore the assessee prayed that the delay since neither willful nor deliberate the same may be condoned.

5. Considering the rival submissions and perusal of the petition for condonation of delay and affidavit filed alongwith petition, we find that there is reasonable cause in not filing the appeal in time before the Tribunal by the assessee. Thus, the delay of 38 days in filing the appeal by the assessee is condoned.

6. Coming to the merits of the case, the assessee raised the following grounds in this appeal: -

1. *“On the facts and circumstances of the case, the order passed by the Ld. Commissioner of Income Tax u/s 263 of the Act is bad, both in the eye of law and on facts.*

2. *On the facts and circumstances of the case, the order passed by the Ld.CIT annulling the assessment order passed by the AO is untenable in the absence of order of the AO being erroneous as well as prejudicial to the interest of the Revenue.*
3. (i) *On the facts and circumstances of the case, the Ld.CIT has erred both on facts and in law in rejecting the contention of the appellant that the issue of withholding tax on the discount allowed to the buyer was before the AO in proceedings u/s 143(3) of the Act and was allowed after application of mind by him as such the same cannot be the matter for reassessment u/s 263 of the Act.*

(ii) *On the facts and circumstances of the case, the AO having taken one of the possible views the Ld. CIT was not justified in holding the assessment order as erroneous and prejudicial to the interest of the Revenue.*
4. *On the facts and circumstances of the case, the Ld.CIT has erred both on facts and in law in ignoring the contention of the appellant that the proceeding u/s 263 cannot be used for substituting opinion of the AO by that of the CIT.*
5. *On the facts and circumstances of the case, the Ld.CIT has erred both on facts and in law in invoking revisionary power u/s 263 of the Act despite the fact that even after thorough examination, no specific findings have been given on the issue of how the order is erroneous and prejudicial to the interest of Revenue.*
6. (i) *On the facts and circumstances of the case, the Ld. CIT has erred both on facts and in law in rejecting the contention of the assessee that the amount of Rs.12,04,16,230/- pertaining to discount allowed to the buyer and not commission, as such the provision of section 195(2) are not applicable to the same.*

(ii) That section 195(2) is not applicable to the given facts of the case, no disallowance u/s 40(a)(i) of the Act can be made.

7. That the appellant craves leave to add, amend or alter any of the grounds of appeal.”

7. The Ld. Counsel for the assessee submitted that based on the proposal made by the Assessing Officer a show-cause notice dated 05.05.2014 was issued by the Ld. CIT that the assessee failed to deduct tax at source as per the provisions of section 195 of the Act on the commission debited to Profit & Loss account and therefore the assessment completed u/s 143(3) on 10.03.2014 is erroneous as well as prejudicial to the interest of Revenue. A similar notice dated 29.05.2014 was also issued by the Ld. CIT stated that the assessee failed to deduct TDS under 195(2) on the commission paid to foreign agent and required the assessee to furnish supporting evidence explaining as to why the assessment framed by the Assessing Officer is not to be annulled.

8. Ld. Counsel for the assessee at the outset referring to page one of the Ld. CIT order submitted that as is evident from para 2 and 3, based on the proposal of the AO the Ld. CIT issued show cause notice for revision of the assessment order. It is submitted that such an action of the Ld. CIT is not permissible u/s 263 of the

Act and the same is bad in law. Reliance is placed on the decision of the coordinate bench of Pune Tribunal in the case of Volkswagen India Private Ltd. vs. PCIT in ITA Nos. 147 & 148/Pun/2019 dated 19.10.2023.

9. The Ld. Counsel further referring to page 84 of the Paper Book which is the letter furnished by the assessee in the course of assessment proceedings before the ITO, Ward-26(3), submitted that in the course of assessment proceedings assessee submitted before the Assessing Officer that it exported goods during the FY 2010-11 relevant to the AY 2011-12 which is under consideration to a single party M/s AAN Impex General Trading LLC, Dubai which is a partnership firm in Dubai with two partners. Assessee also explained that they do not have any business connection in India. The assessee allowed 12% on the order received from the buyer which is in the nature of trade discount given by the assessee to the buyer. Ld. Counsel submitted that the assessee explained to the AO that the buyer after deducting 12% of the invoice price remitted the balance to the assessee and the assessee also furnished copy of Inward remittance certificates and copy of purchase order and further explained that provisions of section 195 and section 9 of the

I.T. Act are not applicable as the assessee has not paid any amount during the year to the non-resident.

10. Ld. Counsel further referring to page 85 of the Paper Book submitted that this is a letter filed in the course of assessment proceedings before the Assessing Officer explaining that the 12% of the amount debited to Profit & loss account is in the nature of trade discount given by the assessee to the buyer. The Ld. Counsel further invited our attention to page 86 of the Paper Book and submitted that this is a copy of purchase agreement which the assessee agreed for allowing 12% discount on the goods exported by the assessee. Therefore, the Ld. Counsel for the assessee submitted that in the course of assessment proceedings the assessee submitted all the information details regarding the goods exported to M/s AAN Impex General Trading LLC, Dubai and the discount allowed by the assessee which the Assessing Officer thoroughly examined and allowed while completing the assessment.

11. Ld. Counsel further submitted that there is no lack of enquiry by the Assessing Officer in the course of assessment proceedings and when there is no lack of enquiry by the AO in the course of assessment proceedings the assessment order cannot be said to be erroneous and prejudicial to the interest of Revenue. Reliance was

placed on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Sunbeam Auto Limited (332 ITR 167). Reliance was also placed on the decisions of the Hon'ble Delhi High Court in the case of CIT vs. DLF Ltd. (350 ITR 555) and CIT vs. Vikas Polymers (341 ITR 537). Reliance was also placed on the decision of the coordinate bench in the case of SSG Infra Tech Pvt. Ltd. vs. PCIT (ITA No.2278/Del/2024 dated 12.03.2025).

12. Ld. Counsel further submitted that in so far as the direction of the Ld. CIT to verify the genuineness of the purchases and export sales are concerned, it is submitted that the Ld. CIT without issuing any show cause notice u/s 263 of the Act directed the AO to frame fresh assessment after examining all aspects in respect of genuineness of purchases and export sales apart from holding that trade discount allowed to non-resident (treating the said non-resident as an agent of the assessee) and assessing the trade discount allowed is nothing but commission paid on export sales, is deemed to accrue and arise in India. The Ld. Counsel submitted that for an issue which was not at all raised in the show-cause notice, the Ld. CIT gave directions on such issue without providing an opportunity, vitiates the proceedings u/s 263 of the Act. Reliance was placed on the decision of the Delhi Tribunal in the

case of Shail Gas Pvt. Ltd. vs. PCIT (ITA No.630/Del/2021 dated 05.08.2024).

13. On the other hand, the Ld. DR strongly supported the order of the Ld. CIT in invoking the provisions of section 263 of the Act and holding that the assessment order passed by the Assessing Officer u/s 143(3) of the Act is erroneous and prejudicial to the interest of the Revenue. Referring to assessment order dated 10.03.2014, Ld. DR submitted that the AO while completing the assessment did not examine at all the issue of TDS on the commission paid by the assessee to the non-resident agent and also the genuineness of the purchases and export sales made by the assessee. Therefore, the Ld. DR submitted that the Ld. CIT had rightly invoked the provisions of section 263 to hold that the assessment order is erroneous and prejudicial to the interest of the Revenue.

14. Heard rival submissions, perused the orders of the authorities below and the materials placed before us. We observed that the Ld.CIT in his order stated as under:

“1. These two appeals by the assessee are directed against the common order dated 19-11-2018 passed by the Principal Commissioner of Income-tax (PCIT) u/s.263 of the Income-tax Act, 1961 (hereinafter also called ‘the Act’) in relation to the assessment years 2012-13 & 2013-14. Since a common issue is raised in these appeals, we

are, therefore, proceeding to dispose them off by this consolidated order.

2. Briefly stated, the facts for the A.Y. 2012-13 are that the assessee filed its return declaring Nil income. The assessment was completed by making addition on account of certain transfer pricing adjustment. The Id. PCIT issued a show cause notice dated 29-05-2018 observing that the assessment proceedings for the A.Y. 2014-15 transpired that the assessee had received Government grants in the year under consideration also, which were taxable, but taken as capital receipt in the computation of total income. On the basis of a reference made by the AO, through proper channel, the Id. PCIT issued the above show cause notice and thereafter passed the order u/s.263 setting aside the assessment order and directing the AO to frame the assessment afresh after conducting enquiries and verification. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.”

As is evident from the above the AO moved a proposal u/s 263 of the Act proposing to annul the assessment order as he was under the belief that the assessment order framed was erroneous and prejudicial to the interest of Revenue as the AO did not examine the genuineness of purchases. On receipt of the proposal from the AO a show cause notice was issued by the Ld. CIT to the Assessee to show cause as to why the assessment framed by AO u/s 143(3) dated 10.03.2014 may not be annulled. It is amply clear the Ld. CIT exercised his revisional jurisdictional u/s 263 of the Act simply based on the proposal mooted by the AO and not on his calling for record and examining the record and came to the conclusion that

assessment order passed by AO is erroneous and prejudicial to the interest of Revenue.

15. We observed identical issue came up for consideration by the Pune Bench of the Tribunal in the case of Volkswagan India (P) Ltd. (supra) and the Tribunal held that the Ld. PCIT exercised his jurisdiction in a wrongful manner observing as under:

"5. At this juncture, it is relevant to note the mandate of [section 263\(1\)](#) of the Act providing that: "The Commissioner may call for and examine the record of any proceeding under this Act and considers if he considers that any order passed therein by the AO is erroneous in so far as it is prejudicial to the interests of the revenue, he may after giving the assessee an opportunity of bearing heard...pass such order thereon as the circumstances of the case justify....". This section which gives jurisdiction to the CIT to revise an order. It categorically provides that the Commissioner may call for and examine the record of any proceedings under this Act and thereafter if he considers that any order passed therein by the AO is erroneous, he may initiate the revision proceedings. Both the conditions, namely, the CIT calling for and examining the record and then considering the assessment order passed by the AO to be erroneous and prejudicial to the interest of the Revenue are to be cumulatively satisfied by the CIT alone. The use of the word `and' between the two expressions amply demonstrates that the calling for and examining the record by the CIT should precede and his such examination should culminate in getting satisfied that the order passed by the AO is erroneous and prejudicial to the interest of the Revenue. If one of these conditions gets negated, that is, either he does not call for and examine the record or such examination does not lead him to satisfying the assessment order erroneous etc., the jurisdiction [u/s.263](#) is not activated.

6. Extantly, we are confronted with a situation in which the AO wrote a letter, through the range JCIT, to the Id. PCIT that the assessment order passed for the year under consideration did not properly deal with the issue of taxability of subsidy from the Government. It was on the sole strength of this letter of the AO dt.22-03-2018, moving through the range JCIT with a covering letter dt.27-03-2018, that the Id. PCIT made up his mind and issued show cause notice on 29-05-2018 seeking to revise the assessment order. But for the AO's report, there is not even a slightest utterance or remotest clue to the effect that the Id. PCIT called for and examined any record of the proceeding for the year and then on the basis of such an examination considered the assessment order erroneous and prejudicial to the interest of the revenue. Au contraire, he specifically mentioned in the show cause notice that the AO reported about the issue of grant not having been properly dealt with during the course of assessment proceedings rendering the assessment order amenable to revision. It goes without saying that if some lacunae is left in the assessment order, which comes to the notice of the AO, he has ample power to take corrective measures either by way of rectification [u/s.154](#) or revision [u/s.147](#). Insofar as the revision [u/s.263](#) is concerned, it is the sole prerogative of the Pr. CIT, who needs to take suo motu action on calling for and examining the record of any proceedings under this Act and on the basis of such examination considering the assessment order erroneous and prejudicial to the interest of the Revenue. It is evident from the show cause notice that the Id. PCIT initiated revisionary proceedings just on the basis of the AO's report without carrying out any independent examination of the record followed by independently satisfying himself that the assessment order required revision.

7. The Id. AR relied on certain orders of the Tribunal, including the order dt. 02-11-2021 passed by the Pune Tribunal in [Alfa Laval Lund and AB Vs. CIT \(ITA No.1287/Pun/2017\)](#), holding the initiation of revision proceedings, based only on the proposal sent by the AO for making the revision, lacked jurisdiction. Per contra, the Id. DR relied on certain decisions in support of his

case. The first such case is the judgment of the Hon'ble Calcutta High Court in [Smt. Sumitra Devi Khirwal Vs. CIT](#) (1972) 84 ITR 26 (Cal.) in which the revision was upheld. In that case, the Commissioner did not himself call for any record but certain records were placed before him and he acted thereon. The assessee's contention before the Hon'ble High Court that the revision in such circumstances was not valid, came to be jettisoned by the Hon'ble High Court. What is significant to note [in that case](#) is that: 'certain records were placed before him (CIT) and he acted thereon' for revising the assessment order. As opposed to that, we are dealing with a situation in which the AO sent a proposal to the Id. Pr. CIT for revision and acting on the same, the latter issued show cause notice for revising the assessment order. Even [in that case](#), the Hon'ble High Court emphatically observed that: "All that the section requires is that before issuing a notice [u/s.33B](#) he must call for all relevant papers and documents, examine them and then issue the notice if he is satisfied that the interests of the revenue have suffered" (emphasis supplied by us). It is clear from the ratio of the judgment that the personal satisfaction of the CIT is paramount for revision. This satisfaction may be based on any relevant papers and documents, including the viewpoint of the AO. But, if the satisfaction of the CIT is missing and the notice [u/s.263](#) is based simply on the proposal sent by the AO, then it cannot be said that the twin conditions of examining the record of any proceedings under this Act and thereafter satisfying that the assessment order was erroneous and prejudicial to the interest of the Revenue, are satisfied.

8. The second judgment relied by the Id. DR is [CIT Vs. Bhagat Shyam & Co.](#) (1991) 188 ITR 608 (Allahabad). In that case also, the assessee contended that the ITO placed certain information or material before the Commissioner and hence, the revision [u/s.263](#) was not justified. Repelling such a contention, the Hon'ble High Court held that: "There is no bar to the ITO bringing that material to the notice of the Commissioner. What cannot, however, be denied is that the Commissioner must apply his mind to the material placed before him and satisfy himself that it is a case where he ought to exercise his revisional power".

Again, it is manifest that there is no bar on the AO placing certain information or material before the CIT justifying the invocation of power [u/s.263](#), but ultimately, it is the CIT who must apply his independent mind to such material and satisfy that the revision is warranted. What should follow from the examination of material, including that placed by the AO, is the independent satisfaction of the CIT, after due application of mind, that the assessment order was erroneous and prejudicial to the interest of the Revenue requiring revision. If such satisfaction of the CIT, which is crucial and sine qua non, is missing and the notice is based simply on the proposal sent by the AO for revision, as is the case under consideration, the revision cannot take-off.

9. In view of the foregoing discussion, we are satisfied that the Id. PCIT exercised his jurisdiction to initiate the revision proceedings in a wrongful manner, which, ergo, cannot be accorded our imprimatur.”

16. Further have perused the show-cause notices dated 05.05.2014 and 29.05.2014 issued by the CIT which were placed at pages 315 to 318 of the Paper Book filed by the assessee. On perusal of the show-cause notices, we observed that the Ld. CIT stated in the show-cause notices that the assessee failed to deduct tax at source u/s 195 of the Act on the commission paid to foreign agents and therefore the same is in violation of provisions of section 195 r.w.s. 40(a)(ia) of the Act and therefore show caused as to why the assessment order passed u/s 143(3) should not be held as erroneous and prejudicial to the interest of Revenue. Here, we observed that other than this issue no other issue has been raised by

the Ld. CIT in the show-cause notice issued by him. Therefore, the direction given by the Ld. CIT to verify the genuineness of the purchases and export sales declared by the assessee in the return without giving any opportunity to the assessee to explain vitiate the proceedings u/s 263 of the Act and consequently the order passed u/s 263 by the Ld. CIT on the said issue rendered bad in law and the same is invalid.

17. Coming to the issue of deduction of tax at source u/s 195 of the Act on the alleged commission paid by the assessee to foreign agent is concerned, we observed that in the course of assessment proceedings the Assessee made its submissions as under:

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Reg: **M/s THREEPENGE CRAFT,**
PAN NO. - AAAPK9580D
Assessment Year 2011-12

In continuation to the discussion which we had with you in the last hearing, we are submitting

Assessee exported goods during Financial Year 2010-11 (AY 2011-12) to a single buyer, AAN Impex General Trading LLC, Dubai. The buyer is a partnership firm, registered in Dubai. Both the partners are from Dubai. They don't have any business connection in India. Also it is further submitted that there is no Commission agent appointed in India for interaction between the Assessee and the Buyer. Assessee directly interact with the Buyer for getting export without any third party intervention. The Assessee has no link with the purchase of goods from the Buyer. No payment was made by the Assessee to the Purchase Agents of the Buyer as they have not provided any services to the Assessee. Also we would like to mention that as per order received from Buyer, the buyer has to deduct 12% against the purchase price. 12% is in nature of trade discount given by Seller to Buyer. The Buyer while paying this amount in foreign currency, has remitted balance amount. We have submitted the copy of inward remittance certificates and copy of order for your reference. Also it is further submitted that section 195 & Section 9 of the Income tax Act, 1962 is not applicable, as the Assessee has not paid any amount during the year to the Buyer who is a Resident.

Sd/-
Chartered Accountant

Certified True Copy

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Income Tax officer,
Ward-26(3),
New Delhi.

Dear Madam,

Reg: **M/s THREEPENGE CRAFT,**
PAN NO. - AAAPK9580D
Assessment Year 2011-12

This has reference to the discussion which we had with you in the last hearing, we are submitting our reply as under:-

1. Regarding commission stated in P & L account, we would like to state that as per order received from Buyer M/s AAN Impex, the buyer has to deduct 12% against every invoice. This 12% represents that the Buyer has to pay his purchase agent for handling his goods at various stores. Also the Assessee has no connection/ interaction with Buyer's Purchase Agent. 12% is in nature of trade discount given by Seller to Buyer. The Buyer after deducting this amount in foreign currency, has remitted balance amount. However at the time of booking of sales, the same has been booked at gross figure & the amount of discount has been stated as expenditure under the head commission. Rather it should be deducted from the sales & sales should be booked at net figures, or it should be shown as Discount instead of wrongly stating it as commission. We have already submitted the copy of inward remittance certificates for your reference. We enclosed herewith the copy of order for your reference. *Section 175 & Section 9 is not applicable in this case as no payment has been made by the assessee to any non-Resident.*
2. Copy of Income Tax return of both the partners are enclosed.

Thanking You,
 Yours Faithfully

 (Subhash Rout)
 Partner

Certified True Copy

18. We also further find that in the course of assessment proceedings the assessee furnished copy of purchase agreement entered with AAN Impex General Trading LLC in which the assessee clearly agreed to pay discount at 12% on the exports made. The copy of purchase agreement is as under: -

م م ذ العامة للتجارة IMPEX المستورد المسجلة بمقتضى المملكة العربية الإمارات من الشركات	AAN IMPEX GENERAL TRADING LLC. IMPORTER & EXPORTER P.O.Box No. 171402, Opp: Sabkha Bus Stand Daira, Dubai , UAE, Tel: 042946248, FAX: 042946249 Email: aan_impex786@gmail.com
Date: 05/09/2010	

Purchase Agreement
 الشراء اتفاق

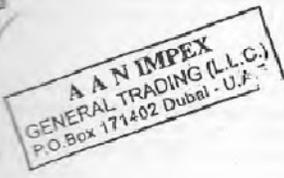
(Faint text, likely a stamp or additional signature area)

Attn: Mr. Dharampal

We have received all samples sent by you and we have approved the same. We have already discussed with you through telephonic that supply the goods to our various stores in various country and also some other payments made by our various sister concern please confirm are you agree/accept our conditions directly by telephone before 15th of this month .

Description of Goods	Qty. Sq.Ft /Pcs	Rate (USD)	Discount	Terms of Payments	Last Date of Delivery of Goods	Partial Shipments
Hand Made Woolen Woven Carpets	900000 Sq.Ft	11.50 (Sq.ft)	17% of Fob	DA Basis	before 31 st December 2010	Allowed
Tufted Carpet	1800000 Sq.Ft	6.90 (Sq.ft)	12% of Fob	DA Basis	before 31 st December 2010	Allowed
Hand Made Woolen Woven Carpets	65000 Sq.Ft	8.00 (Sq.ft)	12% of Fob	DA Basis	before 31 st December 2010	Allowed

With Best Regards


 Order Accepted
 For THREE PENCE CRAFT

 Partner

19. Thus, it is evident that the assessee in the course of assessment proceedings furnished a copy of purchase agreement and explained that the assessee is allowing trade discount on the exports and the provision of section 195 r.w.s. 9 have no application to the assessee. The AO after examining all the contentions of the assessee with reference to the evidences furnished by the assessee i.e. copy of purchase agreement, copy of inward remittance

services etc. allowed the claim of the assessee while completing the assessment. We observe that the AO in the course of assessment certainly conducted enquiries and concluded that the claim of the assessee is allowable.

20. In order to assume jurisdiction under section 263 of the Act, the pre-requisites are that, order passed by the Assessing Officer should be erroneous and it should be prejudicial to the interests of revenue. In other words the twin conditions have to be satisfied, namely, (i) the order of the Assessing Officer sought to be revised should be erroneous (ii) it should be prejudicial to the interests of the revenue. Both the conditions must be satisfied. In case the order of the Assessing Officer is erroneous but is not prejudicial to the interests of the revenue, the Commissioner would not be competent to exercise jurisdiction under section 263. In a case, where two views are possible and the Assessing Officer has taken a view with which the Commissioner does not agree, the said order cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the Assessing Officer is unsustainable in law.

21. The Hon'ble Delhi High Court the case of CIT vs. DLF Ltd. reported in 350 ITR 555 (Del). It is also not a case of- "lack of

enquiry” or “lack of investigation”. It is submitted that perusal of the show cause notice itself would show that it has not been stated in any manner how the learned Assessing Officer has failed to apply his mind, particularly when it has not been denied or disputed that all information including books of accounts, confirmations, bank statements etc have been furnished in the course of assessment proceedings. The Hon’ble Delhi High Court in the case of CIT vs. Vikas Polymers reported in 341 ITR 537 has held as under:

“13. It is also trite that there is a fine though subtle distinction between “lack of inquiry” and “inadequate inquiry’. It is only in cases of “lack of inquiry” that the Commissioner is empowered to exercise his revisional powers by calling for and examining the records of any proceedings under the Act and passing orders thereon. In Gabriel India Ltd. (supra), it was expressly observed:-

“The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity [see Parashuram Pottery Works Co. Ltd. vs. ITO, (1977) 106 ITR 1 (SC)].”

22. It was further observed that where Income-tax Officer had made enquiries- during the assessment proceedings; the assessee had given detailed explanation and the Income-tax Officer on being

was satisfied with the explanation of the assessee, such decision of the Income-tax Officer cannot be held to be "erroneous".

23. The Hon'ble Delhi high Court in the case of CIT vs. Sunbeam Auto Ltd. reported in 332 ITR 167 it has held as under:

“Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders under Section 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry" that such a course of action would be open.”

[Emphasis supplied]

24. Further in the case of ITO vs. D.G. Housing Projects Ltd. reported in 343 ITR 329 (Del) to has held that in cases of wrong opinion or wrong finding on merits, the CIT has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under Section 263 is passed. It was held as under:

“19. In the present case, the’ findings recorded by the Tribunal are correct as the CIT has not gone into and has not given any reason for observing that the order passed by the Assessing Officer was erroneous. The finding recorded by the CIT is that "order passed by the Assessing Officer may be erroneous". The CIT had

doubts about the valuation and sale consideration received but the CIT should have examined the said aspect himself and given a finding that the order passed by the Assessing Officer was erroneous. He came to the conclusion and finding that the Assessing Officer had examined the said aspect and accepted the respondent's computation figures but he had reservations. The CIT in the order has recorded that the consideration receivable was examined by the Assessing Officer but was not properly examined and therefore the assessment order is "erroneous". The said finding will be correct, if the CIT had examined and verified the said transaction himself and given a finding on \ merits. As held above, a distinction must be drawn in the cases where the Assessing Officer does not conduct an enquiry; as lack of enquiry by itself renders the order being erroneous and prejudicial to the interest of the Revenue and cases where the Assessing Officer conducts enquiry but finding recorded is erroneous and which is also prejudicial to the interest of the Revenue. In later cases, the CIT has to examine the order of the Assessing Officer on merits or the decision taken by the Assessing Officer on merits and then hold and form an opinion on merits that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. In the second set of cases, CIT cannot direct the Assessing Officer to conduct further enquiry to verify and find out whether the order passed is erroneous or not."

[Emphasis supplied]"

25. In view of the above discussion, we hold that the order passed by the PCIT dated 03.11.2014 u/s 263 of the Act annulling the assessment order dated 10.03.2014 passed u/s 143(3) for the AY 2011-12 and directing the AO to frame a fresh assessment order

after examining all aspects is bad in law and the same is hereby quashed.

26. Since we have quashed the order passed by the Ld. CIT u/s 263 of the Act the other two appeals filed by the Assessee and Revenue in ITA 5410/Del/2019 and 5995/Del/2019 respectively against the order of the Ld. CIT(Appeals) and arising out of the consequential assessment made by the AO u/s 143(3) pursue to the order passed by the CIT u/s 263 of the Act becomes infructuous and accordingly these appeals are dismissed.

27. In the result, the appeal of the assessee in ITA 2234/Del/2015 is allowed and the appeal of the assessee in ITA 5410/Del/2019 and appeal of the Revenue in ITA 5995/Del/2019 are dismissed as infructuous.

Order pronounced in the open court on 24/09/2025

Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 24.09.2025

**Kavita Arora, Sr. P.S.*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI