

| आयकर अपीलिय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 1858/Mum/2025
Assessment Year: 2020-21

Hari Krishna Exports Private Limited 1701, 7 th Floor The Capital, B Wing BKC Bandra East Maharashtra - 400051 [PAN: AACCH8430N]	Vs	Principal Commissioner of Income-tax - 5, Mumbai
अपीलकर्ता/ (Appellant)		प्रत्यर्था/ (Respondent)

Assessee by :	Shri Nitesh Joshi, A/R
Revenue by :	Shri Ritesh Misra, CIT D/R

सुनवाई की तारीख/Date of Hearing : 30/09/2025
घोषणा की तारीख /Date of Pronouncement: 10/10/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the Id. Pr. CIT, Mumbai - 5 [hereinafter "the Id. Pr. CIT"] dated 04/03/2025 pertaining to AY 2020-21.

2. The sum and substance of the grievance of the assessee is that the Id. Pr. CIT erred in invoking the jurisdiction u/s 263 of the Act and set aside the assessment order dated 13/09/2022 framed u/s 143(3) of the Act holding it to be erroneous inasmuch as it is prejudicial to the interest of the revenue.
3. Representatives of both the sides were heard at length, case records carefully perused and the relevant documentary evidence

brought on record duly considered in the light of Rule 18(6) of the ITAT Rules, 1963.

4. Briefly stated the facts of the case are that the assessee is engaged in the business of manufacturing and export of cut and polished diamonds. The assessee filed its return of income on 10/02/2021 declaring total income at Rs. 2,92,66,46,240/-. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee. Various queries were raised during assessment proceedings to which the assessee replied point-wise. The assessment was completed vide order dated 13/09/2022 at total assessed income at Rs. 2,92,66,46,240/-. Assuming jurisdiction conferred upon him by the provisions of Section 263 of the Act, the Id. Pr. CIT served a notice which reads as under:-

GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX PCIT, Mumbai-5			
To, HARI KRISHNA EXPORTS PRIVATE LIMITED 1701, 17Th Floor, The Capital, B Wing, Bandra Kurla Complex Bandra East Mumbai 400051, Maharashtra India			
PAN/TAN: AACCH8430N	AY: 2020-21	DIN & Notice No : ITBA/REV/F/REV1/2024- 25/1069880283(1)	Dated: 23/10/2024
NOTICE FOR THE HEARING			
M/s/Mr/Ms			
Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the THE INCOME TAX ACT, 1961 – Assessment Year 2020-21 .			
In this regard, a hearing in the matter is fixed on 04/11/2024 at 03:30 PM . You are requested to attend in person or through an authorized representative to submit your representation, if any along with supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: incometaxindiaefiling.gov.in			
In the case of assessee the scrutiny assessment was completed by passing order u/s 143(3) r.w.s. 144B of the Income Tax Act on 13.09.2022 assessing total income at Rs. 292,66,46,240/-.			
2. It has been observed from the records that, assessee company has made remittance of Rs. 234,64,31,679/- to foreign companies towards identification and grading charges. The same was required to be disallowed u/s 40(a)(i) for non-deduction of TDS u/s 195 under the head Foreign remittances for technical services. Further labour charges of Rs. 1,81,38,63,366/- were required to be verified while passing the assessment order for AY 2020-21			
3. Considering the above facts, the order dated 13.09.2022 passed u/s. 143(3) r.w.s. 144B of the Income Tax Act appears to be erroneous and prejudicial to the interests of Revenue. Therefore, revision proceedings u/s.263 of the Income Tax Act, 1961 are required to be initiated. In view of this, you are required to show cause as			
<small>Note: If digitally signed, the date of digital signature is the date of the document.</small>			

to why said assessment order should not be revised under section 263 of the Income Tax Act.

4. In this connection, you are hereby given an opportunity to file submission/explanation on or before 04.11.2024 through ITBA Portal, along-with all supporting documents and evidences. If you wish to avail personal hearing, you are requested to attend the hearing on 04.11.2024 at 03.30pm at Room No. 515, 5th Floor, Aayakar Bhavan, Mumbai either in person or through an authorized representative. In case of non-compliance on the stipulated date and time, it will be presumed that you have no objection to the proposed revision of the assessment order passed by the Assessing Officer under section 143(3) r.w.s. 144B of the Act, on 13.09.2022.

DEVINDER KUMAR GUPTA
PCIT, Mumbai-5

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

4.1. On 04/11/2024, the Id. Pr. CIT issued second notice which reads as under:-

	GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX PCIT, Mumbai-5		
To, HARI KRISHNA EXPORTS PRIVATE LIMITED 1701, 17 th Floor, The Capital, B Wing, Bandra Kurla Complex Bandra East Mumbai 400051, Maharashtra India			
PAN/TAN: AACCH8430N	AY: 2020-21	DIN & Notice No : ITBA/REV/F/REV1/2024- 25/1070093945(1)	Dated: 04/11/2024
<u>NOTICE FOR THE HEARING</u>			
M/s/Mr/Ms			
Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the THE INCOME TAX ACT, 1961 – Assessment Year 2020-21 .			
In this regard, a hearing in the matter is fixed on 18/11/2024 at 11:30 AM . You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: incometaxindiaefiling.gov.in			
In the case of assessee opportunity of being heard was given to the assessee in the matter of revision u/s 263 of the Income Tax Act and hearing was fixed on 04.11.2024 at 3.30 pm. The assessee vide its letter dated 01.11.2024 has requested for adjournment.			
2. Accordingly, you are hereby given one more opportunity to file submission/explanation on or before 18.11.2024 through ITBA Portal, along-with all supporting documents and evidences. If you wish to avail personal hearing, you are requested to attend the hearing on 18.11.2024 at 11.30 am at Room No. 515, 5 th Floor, Aayakar Bhavan, Mumbai either in person or through an authorized representative. In case of non-compliance on the stipulated date and time, it will be presumed that you have no objection to the proposed revision of the assessment order passed by the Assessing Officer under section 143(3) r.w.s. 144B of the Act, on 13.09.2022.			

5. Finally on 06/02/2025, the Id. Pr. CIT issued third notice which reads as under:-

GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX PCIT, Mumbai-5			
To, HARI KRISHNA EXPORTS PRIVATE LIMITED 1701, 17Th Floor, The Capital, B Wing, Bandra Kurla Complex Bandra East Mumbai 400051, Maharashtra India			
PAN/TAN: AACCH8430N	AY: 2020-21	DIN & Notice No : ITBA/REV/F/REV1/2024- 25/1072997814(1)	Dated: 06/02/2025
NOTICE FOR THE HEARING			
M/s/Mr/Ms			
Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the THE INCOME TAX ACT, 1961 – Assessment Year 2020-21 .			
In this regard, a hearing in the matter is fixed on 14/02/2025 at 11:30 AM . You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: incometaxindiaefiling.gov.in			
Sub: Show-cause Notice under section.263 of the Income-tax Act			
Revision Proceedings under section 263 of the Income Tax Act, in the case of M/s. Hari Krishna Exports Pvt Ltd. , PAN- AACCH84320N are under process for A.Y. 2020-21.			
2. In this regard, the next hearing is fixed on 14.02.2025. you are hereby given one more opportunity to file submission/explanation on or before 14.02.2025 through ITBA Portal, along-with all supporting documents and evidences. If you wish that the Revision proceeding be concluded on the basis of your written submission/representations filed in this office, on or before the said due date, then you personal attendance is not required. You also have the option to file your submission from the e-filing portal .			
The case for hearing is scheduled on 14.02.2025 at 11.30 a.m. at Room No. 515, 5th Floor, Aayakar Bhavan, Mumbai.			

6. In these subsequent notices, the Id. Pr. CIT did not bring any new issue than stated in the first notice dated 23/10/2024 wherein only two issues were mentioned, namely, remittance of Rs. 2,34,64,31,679/- to foreign companies towards identification and grading charges which were required to be disallowed u/s 40(a)(i) of the Act and consequently labour charges of Rs. 1,81,38,63,366/- were required to be verified while passing the assessment order for AY 2020-21. During the course of

scrutiny assessment proceedings vide notice dated 23/11/2021 issued u/s 142(1) of the Act, the AO raised *interalia* the following query:-

“19. Further, it is seen that you have debited an amount of Rs. 233, 13,76,667/- to the Profit and Loss Account under the head 'Identification and Grading Expenses'. In this regard, you are required to furnish the following :-

- (a) Details of expenditure
- (b) Copy of ledger
- (c) Copy of bills above Rs. 50 lacs
- (d) Copy of Bank statement highlighting-the said expenses
- (e) Details of TDS liability”

7. Vide reply dated 14/01/2022, the assessee submitted the details as called by the AO. The details of identification and grading charges were submitted as under:-

HARI KRISHNA EXPORTS PVT LTD					
ACCOUNTING YEAR ENDED 31ST MARCH, 2020					
ASSESSMET YEAR 2020-21					
Details of Identification and Grading Charges					
Sr No	Name Of Party With Address	Country Name	Pan No	Rs.	TDS Rs.
A	Grading Charges				
1	FOREVERMARK LIMITED 20 Carlton House Terrace London Sw1Y 5An, Uk	UK	AABCF6335M	27,25,962	-
2	GIA INDIA LABORATORY PVT.LTD. 10Th Floor, Trade Centre, Bandra Kurla Complex, Bandra East, Mumbai-51	INDIA	AACCG9457G	1,39,18,30,080	13,93,03,251
3	GIA LABORATORY CARLSBAD 5355 Armada Dr, Carlsbad, Ca 92008, United States	USA	NA	37,33,72,188	-
4	HRD DIAMOND INSTITUTE PRIVATE LIMITED The Ifs Bulding, Bandra Kurla Complex, Bandra East, Mumbai- 400051	INDIA	AABCH9887J	1,26,77,519	17,34,655
5	IIDGR (UK) LTD. 20 Carlton House Terrace, London SW1Y5AN, United Kingdom	UK	AADC14467K	63,19,063	-
6	INTERNATIONAL GEMMOLOGICAL INSTITUTE 701, The Capital, Bandra Kurla Complex, Bandra East, Mumbai- 400051	INDIA	AAAC16824P	8,58,51,266	85,91,974
7	NGTC GEMMOLOGICAL GRADING INDIA PRIVATE LIMITED 1703/17Th Floor, The Capital Bandra Kurla Complex, Bandra , Mumbai -400051	INDIA	AAECN5558K	77,44,025	7,74,403
8	RAPAPORT DIAMOND SERVICES INDIA LLP 101 , B Wing, Plot No C 70 , Bkc , Bandra East, Mumbai-400051	INDIA	AAZFR3001P	45,03,73,331	3,95,69,118
9	BELOW 10LACS			4,83,234	96,358
B	Jewellery Certification				
1	Gemological Science International Pvt Ltd 601-B, 6th floor Trade Center, Bandra Kurla Complex, Bandra East, Mumbai- 400051	INDIA	AACCG7453N	1,50,44,377.00	15,04,658.00
2	BELOW 10LACS			10,635	1,064
	Total			2,34,64,31,679	19,15,75,481

7.1. Copies of simple invoices were also submitted which are extracted at pages 1135 to 1152 of paper book 3.

8. Vide notices dated 24/03/2022, the AO issued a showcause as to why the proposed variations should not be made. The relevant part of the showcause read as under:-

"3.1. During the course of assessment proceedings, it has been observed on perusal of the profit loss account, the assessee has claimed expenses for Identification and Grading expenses. Vide notice u/s 142(1) of the I.T. Act dated 04.03.2022, the assessee company was asked to furnish the details of these expenses claimed. The assessee submitted the details vide its reply dated 13.03.2022. On perusal of the submission, the assessee company has entered into following transaction with regard to grading charges with the foreign concerns.

S.No.	Grading charges	Country	PAN	Rs.	TDS
1.	Forevermark Ltd.	UK	AABCF6335M	27,25,962	-
2.	GIA Laboratory Carlsbad	USA	NA	37,33,72,188	-
3.	IIDGR (UK)Ltd.	UK	AADC1467K	63,19,063	-
	Total			38,24,17,213	

3.2 On perusal of the details, the assessee company has not deducted any tax at source on the amount remitted. There is no doubt that said expenditure is incurred for the purpose of the business of the Company and the assessee company has debited these expenses in the profit loss account for the period under consideration. The amount remitted are prima facie fees for technical services, which are taxable in the hands of the recipients, as the assessee company is resident Indian company and payees are foreign company as per the provisions of the section 5(2) of the income Tax Act, 1961. The assessee company has paid the fees for technical services which was covered under the section 195 of the Income Tax Act, 1961 in respect of the TDS and assessee company has failed to deduct the tax at source."

9. The assessee filed a detailed reply, which reads as under:-

"1.2. Grading Charges amounting to Rs. 38,24,17,213/- paid to various parties outside India is proposed to be treated as "fees for technical services" under the Provisions of Section 9 of the Act, accordingly we are called upon to state why the disallowance of Rs. 38,24,17,213/- should not be made under Section 40(a)(i) of the Act as we have contravened the provision of Section 195 of the Act. In this regard we state as under:

1.2.1. We have paid grading charges aggregating to Rs. 233,13,76,667 / - to the parties listed in the details submitted on 17.01.2022 for diamond grading reports. A diamond grading report is a formal document that contains a detailed description of the specific diamond. The diamond grading report contains verified information about the diamond's unique characteristics, the cut, carat weight, colour and clarity with a few additional comments in regard to the diamond's symmetry, polish and fluorescence. A diamond grading report proves the unique gemstone's identity.

1.2.2. As per the industry practice, diamonds are presented to customers along with diamond grading report in order to give an assurance about the quality of the diamond to the customer. The customers may ensure themselves by matching the details of diamond grading report with the description of the diamonds on the invoice. A diamond grading report isn't an appraisal of the diamond but merely is an assertion of facts about the diamond which is not discernable to the consumer.

1.2.3. The grading report is akin to a brochure for a product. For eg. a laptop with hardware and software components cannot be examined by a consumer by mere observation of the laptop. Thus, at the time of purchase, a brochure is provided with details of the hardware components of the computer and hologram/sticker of the software provider such as Microsoft or chip manufacturing company such as Intel is pasted onto the device in a visible location to satisfy the customer that the product comes pre-installed with such software/chip. The hologram/sticker acts as a certificate issued by the software provider/chip manufacturer for the particular device manufactured by a third party i.e. Laptop manufacturer such as Dell, Lenovo, etc. In the present case, these parties, having examined the diamond, merely provides information about the diamond to the customer in the form of a report. The diamond grading report does not benefit the assessee in any manner whatsoever as examination and issuance of report is a post manufacturing activity.

The assessee cannot rectify/improve upon the characteristics of the diamond based on such report.

1.2.4. The term 'fees for technical services' has been defined in Explanation 2 to Section 9(1)(vii) of the Act which is reproduced below:

"Explanation 2. - For the purposes of this clause, "fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries". "

1.2.5. Party-wise details of grading charges paid during the year are as under:

Sr No	Name of Party with Address	Country Name	PAN	Amount
1	FOREVERMARK LIMITED 20 Carlton House Terrace London Sw1Y 5An, Uk	UK	AABCF6335M	27,25,962
2	GIA INDIA LABORATORY PVT.LTD. 10Th Floor, Trade Centre, Bandra Kurla Complex, Bandra East, Mumbai-51	INDIA	AACCG9457G	1,39,18,30,080
3	GIA LABORATORY CARLSBAD 5355 Armada Dr, Carlsbad, Ca 92008, United States	USA	N/A	37,33,72,188
4	HRD DIAMOND INSTITUTE PRIVATE LIMITED The IIFS Building, Bandra Kurla Complex, Bandra East, Mumbai-400051	INDIA	AABCH9887J	1,26,77,519
5	IIDGR (UK) LTD. 20 Carlton House Terrace, London SW1Y5AN, United Kingdom	UK	AADCI4467K	63,19,063
6	INTERNATIONAL GEMMOLOGICAL INSTITUTE 701, The Capital, Bandra Kurla Complex, Bandra East, Mumbai-400051	INDIA	AAACI6824P	8,58,51,266
7	NGTC GEMMOLOGICAL GRADING INDIA PRIVATE LIMITED 1703/17 th Floor, The Capital Bandra Kurla Complex, Bandra, Mumbai - 400051	INDIA	AAECN5558K	77,44,025
8	RAPAPORT DIAMOND SERVICES INDIA LLP 101, B Wing, Plot No C70, BKC, Bandra East, Mumbai-400051	INDIA	AAZFR3001P	45,03,73,331
9	BELOW 10LACS			4,83,234
TOTAL				2,33,13,76,667

1.2.13. It is further submitted that mere use of technical personnel in rendering the service would not constitute technical services. The assessee had sufficient technical expertise in determining the grading of the diamond. The grading report was obtained only for the Purpose of assuring the customer that the product stated by them has also been independently certified by a third party. There is no mandatory requirement on the assessee to obtain and provide a grading report. The grading service did not provide any great commercial value to the assessee as it did not alter the cost of manufacturing the product or help improve the diamond characteristics in any manner. It is akin to Bureau of Indian Standards (BIS) Hallmark certificate for gold jewellery/coin. The BIS certificate does not have any value for the gold jewellery but is intended to provide an assurance to the customer acquiring the jewellery/coin. Thus, there is no commercial value that can be assigned to the grading report provided by these entities by virtue of obtaining the grading report. There is no enhancement in any quality of diamond as no technical process is carried on the diamond. It only certifies the pre-existing quality of the diamond. The grading is first conducted by the assessee which is the basis on which the type of diamond jewellery (ring, necklace, bracelet, etc.) is manufactured. The grading report merely provides an additional source for the same information which is already provided to the customer by the assessee at the time of sale. Thus, there is no value-added service provided by the grading entities to the assessee.

1.2.14. It is submitted that the disallowance under Section 40(a)(i) is proposed without appreciating the decision of Jurisdictional High Court which is binding of the department in the case of Diamond Services International (P) Ltd. v. Union of India (304 ITR 201) wherein it is held that the job of grading the diamonds in the laboratory and furnishing grading certificate did not amount to transferring any (technical) skill or knowledge to the customers nor did it amount to transfer of any industrial or commercial experience of the company which issued the certificates. The facts involved in the above-mentioned decision are squarely applicable to the facts in the present case.

1.2.15. Further, the proposed disallowance is without considering the ratio laid down by the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Private Limited Vs. CIT (432 IT 471) wherein it has been held that the definition under the DAA would override the provisions of the Act, to the extent it is more beneficial to the assessee.

1.2.16. In the present case, these entities to whom payments have been made for grading services fall within the ambit of business income and as these entities do not have any Permanent

Establishment/business connection in India, the grading services paid by the company are not chargeable to tax in India under the respective DAAs as well as Section 9 of the Act.

1.2.17. In view of the above, it is submitted that the assessee company was not liable to deduct tax under Section 195 of the Act on the payment of grading charges and accordingly no disallowance can be made under Section 40(a)(i) of the Act."

9.1. Vide notice dated 04/03/2022, issued u/s 142(1) of the Act, the AO raised several queries. The relevant query for our consideration, reads as under:-

"2. During the period under consideration, it seen that you have debited an amount of Rs. 181,38,63,366/- to the P&L Account under the head labour charges. In this regard, you are required to please furnish the following :-

- (i) Name & PAN of the parties to whom payments have been made*
- (ii) Details of TDS on the transactions made*
- (iii) Copy of ledger account*
- (iv) Copy of bank account highlighting the payment made*

10. The assessee filed detailed reply vide reply dated 13/03/2022 and furnished the details of labour charges for diamond polishing as under:-

Hari Krishna Exports Pvt. Ltd.					
AACCH8430N					
A.Y. 2020-21 (F.Y. 2019-20)					
Details of Labour Charges for Diamond Polishing					
Sr. No.	Name	Address	Pan No	Amount	TDS
1	H K Diamond Polishing LLP	9-15, Hari Krishna Complex, Gotalawadi, Katargam, Surat	A AFFH7347L	1,68,13,36,676	3,36,26,733.52
2	Shree Mahalaxmi Enterprises	Namskar Majas madhu CHS, A/9, Poonam Nagar, Near J V Link Road, Andheri (E), Mumbai - 400093	AYWPS0348H	6,64,32,113	6,64,320.00
3	Shree Swami Samarth Enterprises	G-24, Thakur Chawl, MIDC, Central Road, Andheri (E), Mumbai - 400093	CFUPS1868H	1,86,79,203	1,86,796.00
4	Om Enterprise	Room No.1, Kamla Shankar R. Shukls chawl, Pratap Nagar, J V Link Road, Jogeshwari (E), Mumbai - 400060	AHVPG4197J	1,80,81,248	1,80,814.00
5	Jai Bhavani Enterprise	Shree Ram Vikas Sansta, Regbello Compound, Galli No. 2, Subhas Nagar Takdi No.2, MIDC, Andheri (E), Mumbai - 400093	BLLPS8473A	1,75,70,793	1,75,708.00
6	Bhagya Jyoti Enterprises	GALLY NO-02, SHRI RAM NAGAR VIKAS SANSTHA, NR.SUBHASH NAGAR-2,REBELLOW COMP, MIDC,ANDHERI	AYIPM4528R	32,74,632	32,744.00
7	H.K Jewels Pvt.Ltd	1701-A,The capital Building,B-Wing,17th Floor, Opp ICICI Bank,Bandra Kurla Complex,Bandra (E),Mumbai-400051.	AACCH2454E	21,80,212	43,603.00
8	VITTHAL BABUBHAI CHODAVADIYA	1st Floor 134, Agarwal IND Estate, S.V. Road, Mumbai	ADHPP3104E	18,75,761	18,757.60
9	MANASAVI DIAMOND	Gala No Vardhman Industrial Estate, SVP Road Dahisar	ABKFM4256D	16,07,887	32,157.70
10	Triveni International	B-32 Nandbhauvan Indl Est,Opp Onida House, Off Mahakali Caves Rd, Andheri (E),Mumbai-400093	AAHFTS330M	15,55,541	31,110.00
11	Below Rs.10 Lakh			12,69,299	25,160
	Total			1,81,38,63,365	3,50,17,903.82

11. From the above factual discussion, it is amply clear that during the scrutiny assessment proceedings itself, the AO has raised several specific queries to which specific replies were furnished by the assessee and after considering the replies along with supporting evidence, the AO framed the impugned assessment order. Therefore, it can be safely concluded that it is not a case where no enquiry was done by the AO on the points raised by the Id. Pr. CIT in his showcause notice issued u/s 263 of the Act.

11.1. Insofar as labour charges are concerned, the entire formation of belief is based upon the assessment of AY 2018-19. We find that while completing the assessment u/s 143(3) r.w.s. 144B vide order dated 21/04/2021, the AO has made disallowance of the excess labour charges at Rs. 49,67,75,985/- which was subsequently upheld by the Id. CIT(A). In AY 2017-18 also similar queries were raised by the AO in respect of grading charges and labour charges and no additions were made in the assessment year as per the assessment order dated 10/12/2019. We further find that during the scrutiny assessment proceedings for AY 2021-22, the AO has raised similar queries as per notice issued u/s 142(1) of the Act exhibited at pages 1155 to 1159 of the paper book and after considering the replies of the assessee, the assessment was framed u/s 143(3) r.w.s. 144B of the Act vide order dated 21/12/2022 and no additions were made on the points raised by the Id. Pr. CIT in his notice u/s 263 of the Act.

12. Considering the entire factual matrix discussed hereinabove in the assessment proceedings, the assessment under consideration and in the assessment subsequent to the assessment under consideration no adverse view was taken by the AO and as mentioned elsewhere during

the year under consideration, to the specific queries raised by the AO specific replies were furnished, therefore, complete enquiries were made by the AO while completing the assessment proceedings, therefore, by no stretch of imagination it can be said that the assessment order is erroneous inasmuch as it is prejudicial to the interest of the revenue.

13. The Hon'ble High Court of Bombay in the case of *PCIT vs. Cartier Leafin (P) Ltd.* 112 *taxmann.com* 63, had the occasion to consider a similar grievance and held as under:-

"7. We find that the finding of fact order of the Tribunal that the proceedings under section 263 of the Act, on the face of it, have been initiated without examination of records before the Assessing Officer is not shown to be perverse. It is clear that the show cause notice proceeds on the basis that the books of accounts, transaction accounts of share trading carried out by the assessee vis-a-vis D-mat accounts have not been examined by the Assessing Officer during the course of assessment proceedings. However, we note that in the assessment order dated 28 March 2014 itself in paragraph-5.2, the Assessing Officer has recorded that he examined D-mat account in order to verify the share trading activities claimed by the assessee. Moreover the before passing the assessment order, sale, purchase and closing stocks were also examined by the Assessing Officer. Thus, the basis to invoke section 263 of the Act factually did not exist as there was due enquiry by the Assessing Officer during the assessment proceedings leading to the assessment order dated 28 March 2014. Thus, it is amply clear that the Assessing Officer has applied his mind while accepting the claim of the Respondent of operating loss of Rs.8.79 crore making the proceedings under section 263 of the Act bad in law. In any event, the view taken on fact by the Assessing Officer is a possible view and the same is not shown to be bad."

14. Similar view was taken by the Hon'ble High Court of Bombay in the case of *CIT vs. Nirav Modi* 390 *ITR* 292. The relevant findings read as under:-

"12. In the present facts, the Assessing Officer was satisfied, consequent to making an enquiry and examining the evidence produced by the Assessing Officer, establishing the identity and creditworthiness of the donor as also the genuineness of the gift. The CIT in his order of Revision, does not indicate any doubts in respect of the genuineness of the evidence produced by the Assessee. The satisfaction of the Assessing Officer on the basis of the documents produced is not shown to be erroneous in the absence of making a further enquiry. It is made clear that our above observations should not be inferred to mean that it is open to the Assessing Officer to enquire into the source of

source for the purpose of the present facts. This is a case where a view has been taken by the Assessing Officer on enquiry. Even if this view, in the opinion of the CIT is not correct, it would not permit him to exercise power under Section 263 of the Act. In fact, the Apex Court in *Amitabh Bachchan (supra)* has observed that there can be no doubt that where the view taken by the Assessing Officer is a possible view, interference under Section 263 of the Act, is not permissible."

15. The Hon'ble High Court of Delhi in the case of *PCIT vs. Clix Finance India (P) Ltd.* [2025] 473 ITR 650 (Delhi) *inter alia* held as under:-

27. Considering the aforesaid judicial pronouncements, it can be safely concluded that inadequacy of enquiry by the AO with respect to certain claims would not in itself be a reason to invoke the powers enshrined in Section 263 of the Act. The Revenue in the instant case has not been able to make out a sufficient case that the CIT has exercised the power in accordance with law. Rather, in our considered opinion, the facts of the case do not indicate that the twin conditions contained in Section 263 of the Act are fulfilled in its letter and spirit.

28. Notably, the ITAT, while making a categorical finding that the CIT had failed to point out any definite or specific error in the assessment order, has satisfactorily explained both the claims in question in Paragraph 8.2 of its order, which reads as under:-

"8.2 In the Impugned Order, the Ld. Commissioner of Income Tax-IV, Delhi held that the AO had not examined the aforesaid two issues properly and, therefore, set aside the issues for further inquiries to be conducted by the AO. As regards the first issue is concerned, we note that out of total provision of Rs. 1114.68 lacs, a sum of Rs. 7,60,76,105/- was suo moto added back in the computation of income and a further sum of Rs. 73,46,160- was disallowed by the AO in the original assessment order dated 30.3.2005. Therefore, out of Rs. 1114.68 lacs, Rs. 834.22 lacs already stood disallowed in the original assessment order. The balance amount represented actual write off which was palpably clear from page 2 of the impugned order itself. No deduction on account of any such provision was, therefore, allowed to the assessee. Hence, there is no error or prejudice to the interest of revenue. As regards second issue it was noted that interest rate swap was an actual loss and only the net loss of Rs. 114.05 lacs after setting of gain of interest rate swap was claimed as deduction. However, we find that both these issues were duly examined by the AO vide Questionnaire dated 2.11.2004 (Page 1-2 of the Paper Book) to which replies dated 9.12.2004, 20.12.2004 and 6.1.2005 (Page No. 3-39 of Paper Book-1) were furnished and, therefore, the finding of the Ld. CIT that the issues were not examined properly was not correct. Even the Ld. CIT has not pointed out the definite and specific error in the original assessment order and observed that the inquiry made by the AO was inadequate or improper without first pointing out the error in the original assessment order passed by the AO, particularly because both the aforesaid issues were duly examined at the stage of the original assessment proceedings, hence, the impugned order is beyond jurisdiction, bad in law and void-ab-initio."

29. It is discernible from the aforesaid findings of the ITAT that both the claims were duly examined during the original assessment proceedings itself and neither there was any error nor the same was prejudicial to the interests of the Revenue.

Thus, the findings of fact arrived at by the ITAT do not warrant any interference of this Court.

30. So far as the reliance placed by the CIT on Umashankar Rice Mill is concerned, the same is misplaced, particularly in light of the insertion of Explanation 2 to Section 263 of the Act, brought in place by the Finance Act, 2015. The said amendment markedly specifies various conditions to exercise the authority vested in the Commissioner under Section 263 of the Act, leaving no ambiguity in the interpretation of the said provision.

31. In view of the aforesaid, the appeal preferred by the Revenue is dismissed alongwith the pending application(s), if any."

16. Considering the facts of the case in totality, in light of the judicial decisions discussed hereinabove, we set aside the order of the Id. Pr. CIT dated 04/03/2025 and restore that of the AO dated 13/09/2022 framed u/s 143(3) r.w.s. 144B of the Act.

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

Order pronounced in the Court on October, 2025 at Mumbai.

(SAKTIJIT DEY)
VICE PRESIDENT

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated /10/2025

SCS

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

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

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on	30/09/2025	shamik +	Sr.PS
2.	Draft placed before author	07/10/2025		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS	/10/2025	shamik +	Sr.PS/PS
6.	File pronounced on	/10/2025		Sr.PS
7.	File sent to the Bench Clerk	/10/2025		Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed	Yes		