आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI S. R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.:1126/Chny/2024**
निर्धारण वर्ष / **Assessment Year: 2018-19**

M/s. City Union Bank, No.148-149, T.S.R Big Street, Kumbakonam – 621 001.	vs.	**PCIT,** Madurai - 1.
[PAN: AAACC-1287-E] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. S. Ananthan, F.C.A. &
Ms. R. Lalitha, F.C.A.
प्रत्यर्थी की ओर से/Respondent by : Shri. Bipin C.N., CIT.

सुनवाई की तारीख/Date of Hearing : 27.11.2025
घोषणा की तारीख/Date of Pronouncement : 18.12.2025

आदेश /O R D E R

PER S. R. RAGHUNATHA, AM :

The captioned appeal is filed by the assessee against the order u/s.263 of the Income Tax Act, 1961 passed by the learned Principal Commissioner of Income Tax, Madurai – 1, [In short "the Ld.PCIT"] for the A.Y. 2018-19.

2. The grounds raised by the assessee for A.Y. 2018-19 are as follows:

1. The order of the Learned Principal Commissioner of Income Tax, Madurai is against the law & contrary to the facts & circumstances that are prevalent in the case of the Appellant.

2. *The Learned Principal Commissioner erred in invoking the provisions of Section 263 of the Income Tax Act, 1961 and partially setting aside the Assessment order.*

2.1. The Learned Principal Commissioner erred in holding that the assessing officer has failed to cause enquiry in the assessment proceedings before completion of assessment.
2.2. The Learned Principal Commissioner failed to appreciate the fact that the assessing officer has called details of the issues involved during the course of assessment proceedings and finalized assessment.

2.3. The Learned Principal Commissioner failed to appreciate that the issues which have been set aside were allowed by appellate forums and latest decisions of the ITAT in appellant own case and the learned Assessing Officer has adopted one of the possible views.

3. *The Learned Principal Commissioner erred in setting aside the issue of deduction allowed u/s 36(1)(vii) of the Income Tax Act, 1961.*

3.1 The Learned Principal Commissioner erred in holding that the amount of Rs 147.38 crs claimed under section 36(1)(vii) is not a write off.

3.2 The Learned Principal Commissioner erred in holding that an amount Rs 155.55 crs has been claim excessively u/s 36(1)(vii) of the Act.

3.3 The Learned Principal Commissioner failed to consider the fact that the issues have been settled by the Hon'ble Supreme court and latest decisions of the ITAT in appellant own case.

3.4 The Learned Principal Commissioner erred in not considering the fact that the amount claimed was deducted from the total advances while preparing the balance sheet of the appellant bank.

4. *The Learned Principal Commissioner erred in holding that the amount of Rs.31.49 crs allowed by the assessing officer is erroneous and prejudicial to the interest of the revenue.*

4.1 The Learned Principal Commissioner erred in not considering the fact the issue has been decided by various appellate forums in favour of the appellant.

4.2 The Learned Principal Commissioner failed to appreciate the fact that the bank claimed ESOS expenses and on the same amount, the bank applied TDS on each employee by treating it as perquisite u/s 17(2) of the Act.

5. *The Learned Principal Commissioner erred in holding that the claim under section 36(1)(viia) is allowable on incremental advances only and not on outstanding advances.*

5.1 Learned Principal Commissioner failed to appreciate the fact that the issue has been settled in various appellate forums and especially in the appellant's own case.

For all these and other grounds, which may be urged at the time of hearing of this appeal, the appellant prays that the order passed u/s 263 of the act be set aside and render justice.

3. Brief facts of the case are that the assessee is a Banking Company carrying on the business of banking in India. The assessee filed its return of income electronically on 31.10.2018 admitting a total income of Rs.596,87,49,140/- under normal provisions and Rs.783,96,81,592/- under the provisions of section 115JB of Income Tax Act, 1961 (the Act). A notice u/s.143(2) of the Act was issued for scrutiny assessment on 22.09.2019 and notices u/s.142(1) of the Act were issued on various dates calling for details and documents in support of various claims made by the assessee in the return of income. The assessee submitted the details as and when called for. After going through the details and submissions made by the assessee the AO completed the assessment u/s.143(3) r.w.s 144B of the Act vide his order 19.04.2021 by making the following additions to the returned income:

i) Disallowance of deduction u/s 36(1)(vii) - Rs. 195,82,10,780/-
ii) Disallowance u/s 14A - Rs. 14,60,348/-
iii) Disallowance of expenditure towards Corporate Social Responsibility – Rs. 10,68,54,396/-.

4. Subsequently, the ld.PCIT on perusal of the assessment records found that the AO has failed to make necessary enquiries or verifications in respect of the following deductions claimed by the assessee:

i) Non rural write off claimed u/s.36(1)(vii) of Rs. 155,55,98,616/-
ii) Deduction claimed u/s.36(1)(vii) of Rs.147,38,00,000/-
iii) Expense on shares allotted to employees under ESOS of Rs.31,49,71,853/-
iv) Provision for Non Performing Assets (NPA) claimed u/s.36(1)(viia) of Rs.76,13,24,957/-.

5. The assessee gave a detailed reply to the notice u/s.263 of the Act. The ld.PCIT passed an impugned order u/s.263 of the Act dated 29.03.2024 by holding that the order dated 19.04.2021 passed by the AO is erroneous in so

far as it is prejudicial to the interest of the Revenue and set aside the order with the direction to the AO to pass a fresh Assessment order after making necessary inquiries and verification in accordance with Law and also duly considering the issues discussed in the impugned order.

6. Aggrieved by the order of the ld.PCIT, the assessee is in appeal before us.

7. The ld.ARs for the assessee Mr.S.Ananthan, FCA & Mrs.Lalitha.R, FCA, submitted that the ld.PCIT has invoked jurisdiction u/s.263 of the Act erroneously in contravention of the said provision. In the present case, the AO during the scrutiny assessment proceedings had called for the specific details in respect of all the issues dealt by the impugned order of the Ld. PCIT, by issuing notice. The assessee had duly submitted the details as called for and hence the AO allowed the deductions claimed by the assessee in the order passed u/s.143(3) r.w.s. 144B of the Act on 19.04.2021. Therefore, the ld.ARs stated that the order is neither erroneous nor prejudicial to the interest of revenue. Further, the ld.ARs drew our attention to the page 17 of the impugned order, wherein the Ld.PCIT has recorded the details of the query raised and the response submitted by the assessee.

8. The Ld.ARs drew our attention to Page Nos.256, 257, 296, 297, 302 & 304 of the appeal memorandum, wherein the queries raised by the AO and the response given by the assessee on all the issues covered by the impugned proceedings are attached. Therefore, the Ld. ARs argued that there is no error in the order of the Assessing Officer, since the Assessing Officer has passed the order, after making enquiry of the impugned issues. The Ld.ARs argued that all the three issues covered by the impugned order u/s.263 of the Act have been decided in favour of the assessee in its own case by the order of the co-ordinate Bench dated 11.03.2024, in ITA Nos.1120 & 1121/Chny/2019, ITA No.:672/Chny/2020, ITA Nos.:1418 & 1419/Chny/2019 And ITA No.:636/Chny/2020. The Ld.ARs argued that since the AO adopted the view

which has been upheld by the Hon'ble Tribunal in the assessee's own case, it is a possible view and there is no error in the order of the AO. The Ld.ARs further argued that the order of the co-ordinate Bench was brought to the notice of the Ld.PCIT and in the impugned order the Ld.PCIT without finding any error in the order of the AO remanded the issues to the AO to verify the claim of the assessee and decide the allowability of the eligible deduction. Hence, the Ld.ARs submitted that there is no reason to invoke Sec.263 of Act by the Ld.PCIT and prayed for set aside the order of the Ld.PCIT. In support of their arguments the Ld.ARs relied on the following judicial precedents:

- CIT (Central), Ludhiana vs Max India Ltd – [2007] 295 ITR 282 (SC)
- PCIT Vs.V-con Integrated Solutions Pvt. Ltd. – [2025] 173 taxmann.com 774 (SC)
- CIT Vs. A.R. Builders & Developers P Ltd – [2020] 425 ITR 272 (Mad)
- Shri Perinba Raja Ramesh Versus PCIT (Central) Chennai-1 And Shri PaulpandianUthamaraj Winston Versus PCIT (Central) Chennai-1 - ITA Nos. :418 to 421/Chny/2025 And ITA Nos. :422 to 425/Chny/2025 – order dated 03-06-2025.

9. The ld.ARs further submitted that on similar set of facts in assessee's own case the orders passed u/s.263 of the Act for the A.Ys. 2020-21 & 2021-22 in ITA Nos.1478 & 1479/Chny/2025, the co-ordinate bench of the Tribunal vide its order dated 09.09.2025 set aside the orders of the ld.PCIT. The facts and law being the same in the impugned A.Y., following the earlier orders, the impugned order passed u/s.263 of the Act may also be set aside.

10. Per contra the Mr.Bipin.C.N. ld.CIT-DR, submitted that while passing the assessment order the AO has not applied his mind and relied on the order of the Ld.PCIT. Therefore, the action of the ld.PCIT for invoking section 263 of the Act is justified and hence prayed for confirming the order of the ld. PCIT.

11. We have heard the rival contentions perused the material available on record and gone through the orders of the authorities along with the details contained in the appeal memorandum, and case laws relied upon. Admittedly the assessee filed the return of income u/s.139(1) of the Act and the assessment was made under scrutiny by issuing the notice u/s.143(2) of the

Act. During the assessment proceedings, the AO raised queries and the assessee filed the complete details with regard to all the three issues, pursuant to statutory notices issued u/s.143(2) and 142(1) of the Act. On perusal of para 1 of the assessment order passed u/s.143(3) of the Act, we find that various details have been examined and verified by the AO and on satisfaction completed the assessment by allowing the three claims made by the assessee. It is a settled law that there is a difference between “lack of enquiry” and “inadequate enquiry”. In the present case, it is certainly not a case of “lack of enquiry". The moment the AO issued notice u/s.142(1) / 143(2) of the Act by calling for information, it is the trigger of initiation of enquiry.

12. We find that on the similar set of facts, the co-ordinate bench of the Tribunal vide order dated 09.09.2025 in ITA Nos.1478 & 1479/Chny/2025, in assessee’s own case, set aside the orders u/s.263 of the Act passed by ld. PCIT for the A.Ys. 2020-21 & 2021-22. The relevant findings of the Tribunal are as under:

> *8. We have heard the rival contentions perused the material available on record and gone through the orders of the authorities along with the details contained in the appeal memorandum, and case laws relied upon. Admittedly the assessee filed the return of income u/s.139(1) of the Act and the assessment was made under scrutiny by issuing the notice u/s.143(2) of the Act. We find that during the assessment proceedings, the AO raised queries, and the assessee filed the complete details with regard to all the three issues, pursuant to statutory notices issued u/s.143(2) and 142(1) of the Act. On perusal of para 3 of the assessment order passed u/s.143(3) of the Act, we find that various details have been examined and verified by the AO and on satisfaction completed the assessment allowing the three claims made by the assessee. It is a settled law that there is a difference between “lack of enquiry” and “inadequate enquiry”. In the present case, it is certainly not a case of “lack of enquiry". The moment the AO issued notice u/s.142(1) / 143(2) of the Act by calling for information, it is the trigger of initiation of enquiry.*
>
> *9. We find from the assessment order that the ld. PCIT is wrong in holding that “records do not indicate that the AO had obtained the necessary documents before concluding the assessment or had not conducted the enquiry or not applied mind to the issues”. Therefore, the action of the ld. PCIT in concluding that the assessment completed by the AO is erroneous as well as prejudicial to the interest of the revenue, is not justifiable. We find that in the following catena of decisions the Hon’ble Supreme Court and Hon’ble High courts have settled the principle relating to the jurisdiction of the PCIT to invoke powers u/s.263 of the Act.*

- PCIT Vs.V-con Integrated Solutions Pvt. Ltd. – SLP (Civil) Diary No.13205/25 dated 04.04.2025 [2025] 173 taxmann.com 774 (SC)

"O R D E R

1. Delay condoned.

2. In our opinion, the order passed by the High Court, which upheld the decision of the Tribunal, is correct on facts and in law. This case does not involve a failure by the assessing officer to conduct an investigation. Instead, according to the Revenue, it is a case where the assessing officer having made inquiries erred by not making additions.

3. The assessee does not have control over the pen of the Assessing Officer. Once the Assessing Officer carries out the investigation but does not make any addition, it can be taken that he accepts the plea and stand of the assessee.

4. In such cases, it would be wrong to say that the Revenue is remediless. The power under Section 263 of the Income Tax Act, 1961, can be exercised by the Commissioner of Income Tax, but by going into the merits and making an addition, and not by way of a remand, recording that there was failure to investigate. There is a distinction between the failure or absence of investigation and a wrong decision/conclusion. A wrong decision/conclusion can be corrected by the Commissioner of Income Tax with a decision on merits and by making an addition or disallowance.

5. There may be cases where the Assessing Officer undertakes a superficial and random investigation that may justify a remit, albeit the Commissioner of Income Tax must record the abject failure and lapse on the part of the Assessing Officer to establish both the error and the prejudice caused to the Revenue.

6. Recording the aforesaid, the special leave petition is dismissed. Pending application(s), if any, shall stand disposed of."

- CIT Vs.Vellore Institute of Technology – 175 taxmann.com 277 (Mds) Madras High Court

"10. It is true that the assessment order dated 14.12.2011 does not discuss the queries raised or the answers given thereto. But the fact is, the Assessing Officer had issued a questionnaire dated 26.07.2011 under Section 142 (1) of the Act raising 34 questions on various issues and assessee had given an explanation and also submitted materials. In our view, once a notice is issued and assessee is called upon to show cause or give explanation or submit documents and assessee has complied, not giving a finding or discussing the same would mean that the Assessing Officer was satisfied with the explanation given by the assessee.

11. In Aroni Commercials Limited v. Dy.CIT [2014] 44 taxmann.com 304 / 224 Taxman 13 (Mag.)/ 362 ITR 403 (Bom.), a Division Bench of the Bombay High Court, while dealing with the provisions of Section 148 of the Act, held that once a query is raised during the assessment proceedings and assessee has replied to it, it follows that the query was subject matter of consideration of the Assessing Officer while completing the assessment and the same is deemed to have been accepted. The Court also held that it is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of each and every query raised. Therefore, as there is no discussion or finding on the 34 questions raised under Section 142(1) of the Act, vide the communication dated 26.07.2011, the Assessing Officer should be taken as having accepted assessee's explanation. Paragraph 14 of Aroni Commercials Limited (supra) reads as under:

> *"14) We find that during the assessment proceedings the petitioner had by a letter dated 9 July 2010 pointed out that they were engaged in the business of financing trading and investment in shares and securities. Further, by a letter dated 8 September 2010 during the course of assessment proceedings on a specific query made by the Assessing Officer, the petitioner has disclosed in detail as to why its profit on sale of investments should not be taxed as business profits but charged to tax under the head capital gain. In support of its contention the petitioner had also relied upon CBDT Circular No.4/2007 dated 15 June 2007. (The reasons for reopening furnished by the Assessing Officer also places reliance upon CBDT Circular dated 15 June 2007). It would therefore, be noticed that the very ground on which the notice dated 28 March 2013 seeks to reopen the assessment for assessment year 2008-09 was considered by the Assessing Officer while originally passing assessment order dated 12 October 2010. This by itself demonstrates the fact that notice dated 28 March 2013 under Section 148 of the Act seeking to reopen assessment for A.Y. 2008-09 is based on mere change of opinion. However, according to Mr. Chhotaray, learned Counsel for the revenue the aforesaid issue now raised has not been considered earlier as the same is not referred to in the assessment order dated 12 October 2010 passed for A.Y. 200809. We are of the view that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect o f the query raised. If an Assessing Officer has to record the consideration bestowed by him on all issues raised by him during the assessment proceeding even where he is satisfied then it would be impossible for the Assessing Officer to complete all the assessments which are required to be scrutinized by him under Section 143(3) of the Act. Moreover, one must not forget that the manner in which an assessment order is to be drafted is the sole domain of the*

Assessing Officer and it is not open to an assessee to insist that the assessment order must record all the questions raised and the satisfaction in respect thereof of the Assessing Officer. The only requirement is that the Assessing Officer ought to have considered the objection now raised in the grounds for issuing notice under Section 148 of the Act, during the original assessment proceedings. There can be no doubt in the present facts as evidenced by a letter dated 8 September 2012 the very issue of taxability of sale of shares under the head capital gain or the head profits and gains from business was a subject matter of consideration by the Assessing Officer during the original assessment proceedings leading to an order dated 12 October 2010. It would therefore, follow that the reopening of the assessment by impugned notice dated 28 March 2013 is merely on the basis of change of opinion of the Assessing Officer from that held earlier during the course of assessment proceeding leading to the order dated 12 October 2010. This change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment. (emphasis supplied)

12. Therefore, we agree with the Tribunal that the Commissioner has exercised his power under Section 263 of the Act in an arbitrary manner and hence, the impugned order requires to be quashed. The substantial questions of law framed are answered accordingly."

10. The jurisdiction u/s.263 of the Act can be exercised only when both the following conditions are satisfied:

(i) the order of the Assessing Officer should be erroneous and
(ii) it should be prejudicial to the interest of the revenue.

These conditions are conjunctive. In the instant case, there was nothing erroneous and prejudicial. An order of assessment passed by the AO should not be interfered with only because another view is possible as held by Hon'ble Supreme Court in the case of Max India Ltd (supra). Further, the power u/s 263 cannot be invoked in the case of inadequate inquiry as held in catena of decisions. The said ratio has been upheld in the following decisions:

The Hon'ble Delhi High Court in the case of CIT v. Sunbeam Auto Ltd. [2009 SCC OnLine Del 4237], held that if the AO has not provided detailed reasons with respect to each and every item of deduction etc. in the assessment order, that by itself would not reflect a non-application of mind by the AO. It was further held that merely inadequacy of enquiry would not confer the power of revision under Section 263 of the Act on the Commissioner. The relevant paragraph of the said decision reads as under:-

"We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income-tax under section 263 of the Income-tax Act. As noted

above, the submission of learned counsel for the Revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order, which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. 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 a different opinion in the matter. It is only in cases of "lack of inquiry" that such a course of action would be open. In Gabriel India Ltd. (1993) 203 ITR 108 (Bom), law on this aspect was discussed in the following manner (page 113)."

A similar view was taken by Hon'ble Delhi High Court in the case of CIT v. Anil Kumar Sharma [2010 SCC OnLine Del 838], where in it was held that once it is inferred from the record of assessment that AO has applied his mind, the proceedings under Section 263 of the Act would fall in the category of Commissioner having a different opinion. Paragraph 8 of the said decision reads as under:

"8. In view of the above discussion, it is apparent that the Tribunal arrived at a conclusive finding that, though the assessment order does not patently indicate that the issue in question had been considered by the Assessing Officer, the record showed that the Assessing Officer had applied his mind. Once such application of mind is discernible from the record, the proceedings under section 263 would fall into the area of the Commissioner having a different opinion. We are of the view that the findings of facts arrived at by the Tribunal do not warrant interference of this court. That being the position, the present case would not be one of "lack of inquiry" and, even if the inquiry was termed inadequate, following the decision in Sunbeam Auto Ltd. (2011) 332 ITR 167 (Delhi) (page 180) : "that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter." No substantial question of law arises for our consideration."

In Ashish Rajpal as well, Hon'ble Delhi High Court was of the view that the fact that a query was raised during the course of scrutiny which was satisfactorily answered by the assessee but did not get reflected in the assessment order, would not by itself lead to a conclusion that there was no enquiry with respect to transactions carried out by the assessee.

The decision of the Hon'ble Supreme Court in the case of Malabar Industrial

Co. Ltd., enunciates the meaning and intent of the phrase 'prejudicial to the interest of the Revenue', in the following words:-

> *"8.The phrase 'prejudicial to the interests of the Revenue' is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The High Court of Calcutta in 'Dawjee Dadabhoy & Co.v.S.P. Jain[(1957) 31 ITR 872(Cal)], the High Court of Karnataka in CITv.T. Narayana Pai[(1975) 98 ITR 422(Kant)], the High Court of Bombay in CITv.Gabriel India Ltd.[(1993) 203 ITR 108(Bom)] and the High Court of Gujarat in CITv.Minalben S. Parikh[(1995) 215 ITR 81(Guj)] treated loss of tax as prejudicial to the interests of the Revenue. 9. Mr. Abraham relied on the judgment of the Division Bench of the High Court of Madras in Venkatakrishna Rice Co.v.CIT[(1987) 163 ITR 129(Mad)] interpreting 'prejudicial to the interests of the Revenue'. The High Court held: ' "In this context, (it must) be regarded as involving a conception of acts or orders which are subversive of the administration of revenue. There must be some grievous error in the order passed by the Income Tax Officer, which might set a bad trend or pattern for similar assessments, which on a broad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue Administration".*
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> *In our view this interpretation is too narrow to merit acceptance. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue. 10. The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income Tax Officer is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue. (See 'Rampyari Devi Saraogiv CIT[(1968) 67 ITR 84(SC)] and in "Tara Devi Aggarwalv.CIT[(1973) 3 SCC 482:1973 SCC (Tax) 318:(1973) 88 ITR 323].) [Emphasis supplied]"*

The Hon'ble Supreme Court in the case of CIT v. Paville Projects (P) Ltd. [2023 SCC OnLine SC 371], while relying upon Malabar Industrial Co. Ltd., has discussed the sanctity of two-fold conditions for the purpose of invoking jurisdiction under Section 263 of the Act. The relevant paragraph of the said decision reads as under:-

> *"Learned counsel appearing on behalf of the assessee has heavily relied upon the decision of this Court in the case of Malabar Industrial Co. Ltd.(supra). It is true that in the said decision and on interpretation of Section 263of the Income Tax Act, it is observed and held that in order to exercise the jurisdiction under Section 263(1) of the Income tax Act, the Commissioner has to be satisfied of twin conditions, namely,*
> *(i) the order of the Assessing Officer sought to be revised is erroneous; and*
> *(ii) it is prejudicial to the interests of the Revenue. It is further observed that if one of them is absent, recourse cannot be had to Section 263(1) of the Act."*

11. It is also a settled principle of law that when the AO has adopted a plausible view, then, no proceedings u/s.263 of the Act can be initiated. We find that in the following decisions, relied on by the Ld. ARs, the Hon'ble Supreme Court and jurisdictional Hon'ble Madras High Court have held that proceedings u/s.263 of the Act cannot be invoked if the AO has adopted a plausible view. In the case of CIT Vs. Max Inda Ltd., 295 ITR 282, the Hon'ble Supreme Court held as follows:

> *"1. In our view at the relevant time two views were possible on the word 'profits' in the proviso to section 80HHC(3). It is true that vide 2005 amendment the law has been clarified with retrospective effect by insertion of the word 'loss' in the new proviso. We express no opinion on the scope of the said amendment of 2005. Suffice it to state that in this particular case when the order of the Commissioner was passed under section 263 of the Income-tax Act two views on the said word 'profits' existed. In our view the matter is squarely covered by the judgment of this Court in the case of Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83 as also by the judgment of the Calcutta High Court in the case of Russell Properties (P.) Ltd. v. A. Chowdhury, Addl. CIT [1977] 109 ITR 229 at 243.*
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> *2. At this stage we may clarify that under para 10 of the judgment in the case of Malabar Industrial Co. Ltd. (supra) this Court has taken the view that the phrase "prejudicial to the interest of the revenue" under section 263 has to be read in conjunction with the expression "erroneous" order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. For example, when the Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law. According to the learned Additional Solicitor General on interpretation of the provision of section 80HHC(3) as it then stood the view taken by the Assessing Officer was unsustainable in law and therefore the Commissioner was right in invoking section 263 of the Income-tax Act. In this connection*

he has further submitted that in fact 2005 amendment which is clarificatory and retrospective in nature itself indicates that the view taken by the Assessing Officer at the relevant time was unsustainable in law. We find no merit in the said contentions. Firstly, it is not in dispute when the Order of the Commissioner was passed there were two views on the word 'profit' in that section. The problem with section 80HHC is that it has been amended eleven times. Different views existed on the day when the Commissioner passed the above order. Moreover the mechanics of the section have become so complicated over the years that two views were inherently possible. Therefore, subsequent amendment in 2005 even though retrospective will not attract the provision of section 263 particularly when as stated above we have to take into account the position of law as it stood on the date when the Commissioner passed the order dated 5-3-1997 in purported exercise of his powers under section 263 of the Income-tax Act."

(emphasis applied by us)*

The Hon'ble Madras High Court in the case of A.R. Builders P Ltd (supra) followed the decision of the Hon'ble Supreme Court in the case of Max India (supra) and held as follows:

"7. Though the assessing officer has not passed any detailed order, the authority had accepted the returns filed by the assessee. The present share holders of the assessee company paid capital gains tax considering the market value of the aforesaid landed property. The assessing officer has accepted the claim of the assessee that the calculation from the revised value is correct. In such view of the matter, the contention of the learned counsel for the appellant/Revenue that there is no speaking order and that order of the assessing officer was cryptic is not acceptable one. Though the Principal Commissioner of Income Tax has got power under Section 263 of the Act, to revise the order, if he considers that the Assessing Officer has not properly examined the materials or not properly calculated the income of the assessee, when the plausible two views are possible and the assessing officer adopted one of the views, the Principal Commissioner of Income Tax should not interfere with the order passed by the Assessing Officer.

8. In this case, even though there is no transfer of property by excluding the sale deed, but at the same time, the property has been revalued in accordance with law and capital gains tax also paid on the revised value. It is not the case of the department that for the purpose of evading the income tax, the assessee company has wrongly calculated the value of the lands which is less than the market value. Therefore, as pointed out by the Income tax Appellate Tribunal and the reliance placed in the case of CIT Vs. Max Inda Ltd., 295 ITR 282, referred to by the learned counsel, it is very clear that time and again, as held by the Honourable Supreme Court as well as this court, when two views are possible, if the Assessing Officer had taken one of the plausible views, the CIT has no authority to set aside the order of the Assessing Officer and adopt its one of the other views. Therefore, the citation above referred to reported in 295 ITR 282 is squarely

> *applicable to the facts of the present case and the Principal Commissioner of Income Tax could not substitute a lawful view taken by the Assessing Officer." (* emphasis applied by us)*

12. In the present case, the facts indicate that queries were raised by the AO and the assessee replied for the same in respect of all the three issues. The facts also indicate that all the 3 issues are decided in favour of the assessee in its own case by the co-ordinate bench (supra). Further, from the impugned order it can be seen that the Ld. PCIT has not recorded any error in the order of the AO, rather he has only remanded the issue to the AO to verify the claim of the assessee and decide the allowability. In para 6.1 of the impugned order he has concluded as follows with regard to the claim of deduction u/s 36(1)(vii):

> *"However, the assessee has claimed that the Hon'ble ITAT, has decided the issue in its favour in its own case for AY 2015-16 to 2017-18. Therefore, on the basis of the foregoing discussion, the Assessing Officer is directed to verify the claim of the assessee, consider the submission of the assessee and decide the allowability of eligible deduction u/s.36(1)(vii)."*

Further, in respect of the other two issues also, the Ld. PCIT has given the same finding. In other words, in respect of all the three issues the Ld. PCIT did not find any error in the order of the AO. In our opinion, even on this count, the impugned order passed by invoking the provisions of section 263 by Ld. PCIT, is not tenable in law based on the settled position of law by the Hon'ble Supreme Court and various Hon'ble High Courts.

13. We also note that all the three issues dealt with by the Ld. PCIT in the impugned order have been considered by the co-ordinate bench in assessee's own case in ITA Nos.1120 & 1121/Chny/2019, ITA No.:672/Chny/2020, ITA Nos.:1418 & 1419/Chny/2019 And ITA No.:636/Chny/2020 vide order dated 11.03.2024 and have been decided in favour of the assessee and against the Revenue. Therefore, in so far these issues are concerned, the Assessment order is neither erroneous nor prejudicial to the interest of Revenue.

14. In the present set of facts and circumstances and considering the aforesaid settled judicial pronouncements, it can be safely concluded that the ld. PCIT is wrong in invoking the powers u/s.263 of the Act. The Revenue in the instant case has not been able to make out a sufficient case that the Ld. PCIT 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. Hence the order u/s.263 of the Act passed by the Ld. PCIT is set aside.

13. In view of the above discussion and in the present facts and circumstances of the case, we are of the considered opinion that in the identical set of facts the Tribunal has set aside the order u/s.263 of the Act for the

A.Ys.2020-21 & 2021-22 (supra) and hence respectfully following the above decision of the Tribunal in assessee's own case, we set aside the impugned order passed u/s.263 of the Act by the ld.PCIT by allowing the grounds of appeal raised by the assessee.

14. In the result, the appeal for A.Y.2018-19 filed by the assessee is allowed.

Order pronounced in the open court on 18th December, 2025 at Chennai.

Sd/-	**Sd/-**
(एबी टी वर्की)	(एस. आर. रघुनाथा)
(ABY T VARKEY)	**(S. R. RAGHUNATHA)**
न्यायिक सदस्य/Judicial Member	लेखासदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated, the 18th December, 2025
SP
आदेश की प्रतिलिपि अग्रेषित/Copy to:
1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3.आयकर आयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF