

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI MANJUNATHA G. ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.1056/Hyd/2025**
 Assessment Year 2021-2022

Worldview Education Services Private Limited, Hyderabad – 500 016. Telangana. PAN AAACW9480F	vs.	The Income Tax Officer, Ward-17(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	CA C. Maheshwar Reddy	
राजस्व द्वारा / Revenue by:	G Saratha, Sr. AR	
सुनवाई की तारीख / Date of hearing:	27.11.2025	
घोषणा की तारीख / Pronouncement:	19.12.2025	

आदेश / ORDER

PER VIJAY PAL RAO, VICE PRESIDENT :

This appeal by the Assessee is directed against the Order dated 28.03.2025 of the learned Principal Commissioner of Income Tax, Hyderabad-2, Hyderabad, for the assessment year 2021-2022.

2. The assessee is a private limited company engaged in the business of providing education tour services to the students of educational institutions. The assessee company had tie-up with the educational institutions situated at across India as well as Abroad which are actively looking for a structural educational tours and itineraries completely catering to the students. For the year under consideration, the assessee filed its return of income on 15.03.2022 declaring Rs. NIL income/loss of Rs.2,83,24,337/-. The case was selected for scrutiny under CASS and scrutiny assessment was completed u/sec.143(3) r.w.s.144B of the Income Tax Act [in short "the Act"], 1961 on 13.12.2022 whereby the Assessing Officer made the addition of Rs.6,95,691/-. Thereafter, the Pr. CIT noted that the assessee has shown income from revenue operations of Rs.75,69,911/-, against which, the assessee has debited aggregate expenditure of Rs.3,64,75,276/-. This expenditure includes an amount of Rs.1,06,63,541/- being refunds and returns, which in the view of Pr. CIT is not an allowable expenditure as the said amount was not offered as income in

this year. Accordingly, the Pr. CIT invoked provisions of sec.263 of the Act by issuing show cause notice dated 17.03.2025 whereby the assessee was asked to show cause as to why the claim of Rs.1,06,63,541/- should not be treated as an unallowable expenditure under the provisions of Sec.37 of the Act and consequently, the assessment order passed by the Faceless Assessment Officer [in short "FAO"] is erroneous and prejudicial to the interests of the revenue. The assessee has filed his reply/submissions dated 27.03.2025 along with the financial statements, computation of income, ITR for the assessment year 2021-2022 as well as the other records including the show cause notice issued by the Assessing Officer and reply filed by the assessee along with the evidences to show that this amount of Rs.1,06,63,541/- represents the payments received from the students in the preceding year and also offered to tax in the preceding year, but, due to the advent of Covid-2019 pandemic and restrictions on the movement, including the flights and other transport facilities of the tour programmes were cancelled and the payments were refunded to the students/

institutions. The Pr. CIT was not convinced with the reply and passed the impugned order whereby the assessment order dated 13.12.2022 was set-aside being erroneous in so far as prejudicial to the interests of the revenue with the direction that the Assessing Officer should examine the issue in detail, after giving an opportunity to the assessee.

3. Before the Tribunal, the learned Authorised Representative of the Assessee has explained the circumstances, under which, the assessee due to the Covid-2019 pandemic and restrictions on the movements by the Authorities and complete ban of international flights, the assessee has refunded the amounts to the customers to the tune of Rs.1,06,63,541/-. The learned Authorised Representative of the Assessee has submitted that the assessee company specialized in offering the tour operation services primarily catering to the educational institutions specially schools the assessee company had collected fees from the students based on the tour plans and terms agreed with them after tying-up with the parties, the assessee would start the programme like Visa processing, booking

accommodation in Abroad etc., and the programme continue finally it will be completed as per the timelines agreed between the parties. He has further submitted that due to the ban of international travelling on account of Covid-2019 pandemic, the schedule programmes against which the assessee has received the fees from the students were not commenced as per the schedule. Further, it was unclear whether these programmes would proceed as per the schedule or need to be cancelled. In such an uncertain situation, the assessee finally refunded the said fees of Rs.1,06,63,541/- during the year under consideration to the students and since this amount was already recognized as income in the preceding year i.e., assessment year 2020-2021, therefore, the same has been debited to the P & L A/c for the year under consideration. Thus, the learned Authorised Representative of the Assessee has submitted that this refund of the payment is in the nature of sales return and has been rightly deducted from the total revenue by debiting the P & L A/c as the income was already recognized in the preceding year, therefore, the refund made

during the year under consideration can be debited as business loss which is an allowable deduction. The learned Authorised Representative of the Assessee has further submitted that the Assessing Officer has issued notice u/sec.142(1) of the Act dated 20.10.2022 placed at page-61 to 64 of the paper book calling for information in respect of the refund made to the clients. In query no.4, the Assessing Officer has specifically asked the documentary evidences of refund and written expenses for the year under consideration. The learned Authorised Representative of the Assessee has referred to the reply dated 14.11.2022 placed at pages 176 and 177 of the paper book and submitted that the x produced all the relevant record and explained the facts relating to the refund made by the assessee to the clients during the year under consideration. He has then referred to the show cause notice issued by the Assessing Officer dated 24.12.2022 placed at pages-68 to 74 of the paper book and submitted that in query no.3, the Assessing Officer has again asked the assessee as to why this claim should not be disallowed. The assessee has duly replied to the show cause

notice vide reply dated 02.12.2022 placed at pages 188 to 189 of the paper book and furnished all the relevant record. After considering the reply and relevant documentary evidence filed by the assessee, the Assessing Officer was satisfied and accepted the claim of the assessee. Thus, the learned Authorised Representative of the Assessee has submitted that the Assessing Officer has conducted due enquiry while passing the assessment order and accepting the claim of the assessee. Thus, the issue was duly considered by the Assessing Officer while passing the assessment order, then, the Pr. CIT cannot exercise his powers u/sec.263 of the Act. He has further contended that the Pr. CIT has not made out a case of lack of enquiry on the part of the Assessing Officer and, therefore, set-aside the assessment order for further enquiry by the Assessing Officer, is not permissible under the provisions of sec.263 of the Act. The Assessing Officer has taken a view based on the relevant record and reply of the assessee, then, the Pr. CIT cannot invoke provisions of sec.263 of the Act merely because he does not agree with the view which is one of the possible view taken by the Assessing

Officer. The learned Authorised Representative of the Assessee has also relied upon the following decisions:

1. Spectra Shares & Scrips (P) Ltd vs. CIT reported in 354 ITR 35 (AP-HC);
2. CIT vs. V. Dhana Reddy and Co. 407 ITR 96 (AP-HC) which is upheld by the Hon'ble Supreme court [Principal Commissioner of Income-tax-1 vs. V. Dhana Reddy & Co. [2018] 100 taxmann.com 358 (SC);
3. Commissioner to Income-tax vs. Gabriel India Ltd. [1993] 71 Taxman 585 (Bombay);
4. India Research and Development (P) Ltd vs Add. CIT and Others 445 ITRI 83 (Kar.-HC);
5. CIT vs. Sunbeam Auto Ltd. 332 ITR 167 (Del.-HC);
6. Pr. CIT vs. Deccan Jewellers P. Ltd. 438 ITR 131 (AP-HC);
7. D. Pedda Reddaiah vs. ITO, dated 30.04.2020 (ITAT, Hyd. Tribu);
8. CIT vs. M. Chandra Sekhar 151 ITR 433 (SC).
9. CIT vs. Mulchand Bagri (108 CTR 206 Cal.).
10. CIT vs. D P Karai (266 ITR 113 Guj);

11. Paul Mathews vs. CIT (263 ITR 101 Ker);

12. Malabar Industrial Co. Ltd. vs. Commissioner of
Income-tax [2000] 109 Taxman 66 (SC)

3.1. He has submitted that the Hon'ble Jurisdictional High Court for the State of Telangana in the case of **CIT vs. V. Dhana Reddy and Co. [2018] 407 ITR 96 (T & AP)** has held that when the issue duly considered by the Assessing Officer, then, the Pr. CIT cannot exercise his powers u/sec.263 of the Act. **The said Judgment of the Hon'ble Jurisdictional High Court for the State of Telangana is also upheld by the Hon'ble Supreme Court reported in [2018] 100 taxmann.com 358 (SC).** Thus, the learned Authorised Representative of the Assessee has submitted that the impugned order passed by the Pr. CIT u/sec.263 of the Act is not sustainable in law and liable to be quashed.

4. On the other hand, the learned DR has submitted that the refund of the advance received from the students cannot be claimed as deduction until and unless the same is part of the revenue of the assessee for the year under consideration. He has further submitted that as per the

accounting standards, the refund of advance is neither considered as revenue nor as an expenditure and, therefore, the claim of deduction is not permissible under the law as rightly pointed out by the Pr. CIT that this claim is not allowable u/sec.37 of the Act. He has relied upon the impugned order of the learned Pr. CIT.

5. We have considered the rival submissions as well as the relevant material on record. The learned Pr. CIT has invoked provisions of sec.263 of the Act by issuing the show cause notice dated 17.03.2025 as under :

 GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX PCIT, Hyderabad-2			
To, WORLDVIEW EDUCATION SERVICES PRIVATE LIMITED 409 and 411, on 4th floor in Block - II White House Building , Begumpet Kundanbagh Hyderabad 500016 , Telangana India			
PAN/TAN: AAACW9480F	AY: 2021-22	DIN & Notice No : ITBA/REV/F/REV1/2024- 25/1074586688(1)	Dated: 17/03/2025
<u>NOTICE FOR THE HEARING</u>			
<u>M/s/Mr/Ms</u>			
Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the THE INCOME TAX ACT, 1961 – Assessment Year 2021-22.			

In this regard, a hearing in the matter is fixed on **24/03/2025** at **04:50 PM**. 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

The assessee has shown income from revenue operations of Rs. 75,69,911/-only. Against this income, the assessee debited aggregate expenditure of Rs.3,64,75,276/-. This expenditure includes an amount of Rs. 1,06,63,541/-represents refunds and returns which is not an allowable expenditure since the said amount was not offered as income in this year. Thus this expenditure is only a liability to be shown under trade payables and not a direct expenditure. In view of wrong claim, the excessive loss was allowed to be carried forward. This resulted in under assessment of income by an amount of Rs.1,06,63,541/- which is having a consequential notional tax effect of Rs.29,66,597/- (Tax Rs.26,65,885/-) + SC Rs.1,86,612/-+Cess Rs. 1,14,100/-).

2. Its associated P&L A/c and balance sheet as on 31.03.2021 and found that the audit observation seems to be genuine and acceptable. The expenditure not proportionate to the income earned and shown in the ITR by the Assessee. The refunds and returns which is not allowable expenditure under the provisions of section 37 of Income Tax Act, 1961. The issue was already examined and verified by the AO during the regular scrutiny proceedings, hence the same issue again could not be re-opened u/s 147 of Income Tax Act, 1961 without any new issue/evidence brought on record other than the issues involved during assessment proceedings.

3. In view of the same, it is noticed that the assessment order passed by the FAO is erroneous and prejudicial to the interest of revenue.

TOOM VIJAYA BHASKER REDDY
PCIT, Hyderabad-2

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

6. Thus, the learned Pr. CIT has taken-up the issue of allowability of the claim of deduction of Rs.1,06,63,541/- as the said expenditure is not allowable under the provisions of

sec.37 of the Act. The Pr. CIT in the show cause notice itself has admitted this fact that the issue was already examined and verified by the Assessing Officer during the regular scrutiny proceedings. Hence, the same, cannot be reopened u/sec.147 of the Act when no new issue or evidence is brought on record other than the issue involved during the assessment proceedings. Thus, this quotation of the Pr. CIT in the show cause notice as the proposal sent by the Assessing Officer clearly shows that the Assessing Officer while passing the assessment order has duly conducted enquiry and after considering the reply and evidence brought on record by the assessee, has accepted the claim. Therefore, the case in hand is admittedly and undisputedly does not fall in the category of 'lack of enquiry or inadequate enquiry' on the part of the Assessing Officer. It is manifest from the show cause notice itself that the Pr. CIT has initiated the proceedings u/sec.263 of the Act because the Assessing Officer wanted to review it's own order or the subsequent Assessing Officer wanted to reverse the earlier order and view taken by the Assessing Officer while passing the assessment

order, but, due to the restrictions for reopening of the assessment u/sec.147, a proposal is sent to the Pr. CIT for revision of the assessment order. The Pr. CIT has then passed the impugned order as under :

		GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX PCIT, Hyderabad-2	
To, WORLDVIEW EDUCATION SERVICES PRIVATE LIMITED 409 and 411, on 4th floor in Block - II White House Building , Begumpet Kundanbagh Hyderabad 500016 , Telangana India			
PAN/TAN: AAACW9480F	AY: 2021-22	DIN & Order No : ITBA/REV/F/REV5/2024- 25/1075187744(1)	Dated: 28/03/2025
Order u/s 263 of THE INCOME TAX ACT, 1961 Instituted on 17/03/2025 from the order of WARD 17(1), HYDERABAD/ dated 13/12/2022			
Revision No	PCIT, Hyderabad-2/Revision-263/100000790615/2025		
Order No. for the order sought to be revised			
Section under which order sought to be revised was passed	143(3)		
Date of Order sought to be revised	13/12/2022		
Date of Hearing(s)			
Present for the Assessee			
1. The assessee, a company, filed its Income Tax Return (ITR) for the Assessment Year 2021-22, declaring a total loss of Rs. 2,83,24,337/-. The case was selected for scrutiny, and the Assessing Officer (AO) completed the assessment under Section 143(3) of the Income Tax Act, 1961, on December 13, 2022. The AO made an aggregate addition of Rs. 6,95,691/- to the returned loss, resulting in an assessed loss of Rs. 2,76,28,646/-.			

2. As per the information available on record and the assessment order, the assessee has shown income from revenue operations of Rs. 75,69,911/-only. Against this income, the assessee debited aggregate expenditure of Rs.3,64,75,276/-. This expenditure includes an amount of Rs. 1,06,63,541/-represents refunds and returns which is not an allowable expenditure since the said amount was not offered as income in this year. Thus this expenditure is only a liability to be shown under trade payables and not a direct expenditure.

In view of wrong claim, the excessive loss was allowed to be carried forward. This resulted in under assessment of income by an amount of Rs.1,06,63,541/- which is having a consequential notional tax effect of Rs.29,66,597/- (Tax Rs.26,65,885/-) + SC Rs.1,86,612/- +Cess Rs. 1,14,100/-).

3. The JAO submitted a revision proceeding proposal u/s 263 of the Income Tax Act through proper channel on 13.03.2025. Accordingly,revision proceedings u/s 263 of the IT Act, 1961 are initiated in this case for the AY 2021-22. Notice for hearing to the assessee was issued 17.03.2025.The assessee has submitted a replyon 27/03/2025. The reply of the assessee requires verification.

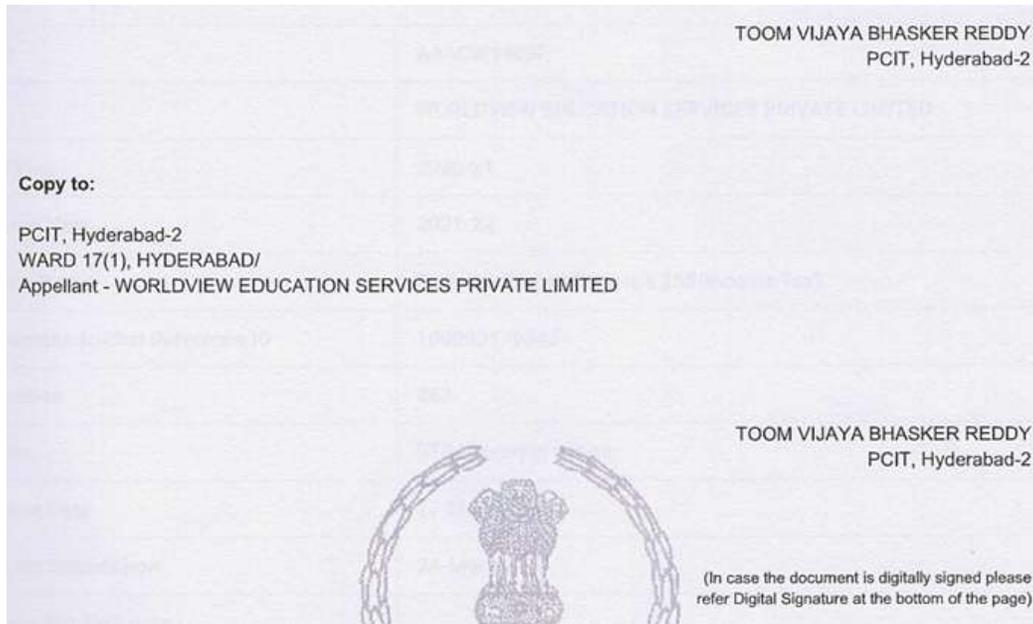
4 Upon examination of the assessee's return of income, P&L A/c, and balance sheet as on March 31, 2021, it is found that the expenditure claimed by the assessee, particularly the amount of Rs. 1,06,63,541/- under "refunds and returns," appears disproportionate to the income earned as reported in the ITR (i.e., Rs. 75,69,911/- from revenue operations). Furthermore, this expenditure does not qualify as an allowable deduction under Section 37 of the Income Tax Act, 1961, for the following reasons:

Section 37 allows expenditure (not being capital expenditure or personal expenses) that is wholly and exclusively incurred for the purposes of the business or profession. However, the amount claimed as "refunds and returns"needs to be verified. Whether the sale/income pertains to these have been offered in earlier years or this year.

5. The erroneous allowance of Rs. 1,06,63,541/- as expenditure has led to an excessive loss being carried forward, thereby reducing the taxable income in subsequent years. This underassessment of income by Rs. 1,06,63,541/- is prejudicial to the interests of the revenue.

6. Considering the above findings, the assessment order dated 13/12/2022 is hereby set aside with a direction to the Assessing Officer to examine the issue in detail after giving an opportunity to the assessee. Recompute the taxable income by making the necessary disallowance and pass a fresh assessment order in accordance with the provisions of the Income Tax Act.

Accordingly, compute the interest u/s 234 A and 234(B) on the tax arrived.



7. Thus, the proceedings u/sec.263 were initiated on the premise that the claim of Rs.1,06,63,541/- on account of refund to the clients is not an allowable expenditure, whereas during the scrutiny assessment, the Assessing Officer has conducted a proper enquiry and rather an extensive enquiry as evident from the show cause notice issued by the Assessing Officer u/sec.142(1) dated 20.10.2022 [page-61 of the paper book] along with questionnaire [page-50 of the paper book] and particularly, question no.4 which reads as under :

“4. Please furnish the documentary evidences of refunds and return expenses for A.Y. 2021-22 as mentioned in your reply dated 13.09.2022.”

8. Thereafter, another show cause notice issued by the Assessing Officer u/sec.142(1) of the Act dated 11.11.2022 whereby the Assessing Officer reiterated the questionnaire as under :

“1. The following accounts or documents or information is/are sought under section 142(1) of the Income-tax Act, 1961:

Kindly refer to the assessment proceedings for the A.Y. 2021-22 in your case. In this regard, certain details were sought vide notices u/s 142(1) dated 20.10.2022 and 03.11.2022 issued to you. However, it is observed that you have not submitted requisite details sought vide the above referred notices u/s 142(1) dated 20.10.2022 and 03.11.2022.

You are therefore once again requested to submit the point wise details along with documentary evidences as sought vide the above referred notice issued u/s 142(1) dated 20.10.2022 on or before date mentioned in this notice.”

9. Thereafter, the Assessing Officer again issued show cause notice dated 24.11.2022 and as per para-3 of the said show cause notice, the Assessing Officer proposed to disallow the said claim of expenditure as under :

“3. Further, as per your reply dated 14.11.2022 regarding Refunds and Return Expenses you have stated that

“... The Assessee Company collects Advance from the concerned schools and pay necessary expenses like hotel bookings as per the tour schedule. After completion of the tour, the company will collect entire amount as agreed at the time of initial negotiation and the same has been recognized as income....”

On perusal of afore mentioned reply, it is observed that you collect advance from schools before the commencement of tour and treat them as income only when the tour is over or completed. Further you have also stated that as the tour has been cancelled due to Covid pandemic your company has raised credit notes to return the advances taken from schools. As advances received for tours cancelled due to Covid were not recognized as income by you, therefore, the amount of credit notes and refunds on account of cancellation of tours cannot be claimed as direct expenses. In view of above-mentioned facts, you are requested to explain with documentary evidences that why the afore mentioned refunds and return expenses amounting to Rs.1,06,63,541/- claimed by you as other direct expenses should not be disallowed.”

10. These show cause notices were replied by the assessee vide reply dated 14.11.2022, 29.11.2022 and 02.12.2022. The assessee also filed the relevant record and entire details of the amount received and refund to the clients. Vide reply dated 29.11.2022 [page182 of the paper

book] the assessee has specifically replied to the query of claim of deduction on account of refunds as under :

“3. Refunds and Return Expenses:

The Assessee Company is in the Business of providing Tour Operational Services to Educational Institutions majorly schools for the students below the age of 16 years. The company approaches various schools across India with different Tour/Program plans. After all negotiations, the Assessee Company fixes the tour plan and Price. The Assessee Company starts collecting fee from the students based upon the agreed terms. For the programs which will be completed within the financial year the company issues invoices to the students as per the payments made by them and recognizes the same as income. For the programs ought to be happen in the coming year fee received form the same will be shown under advances and routed through balance sheet.

As explained above during the year under consideration, the Assessee Company has given Invoices to the Students for the programmes which will be completed within the Fin. Year 2019-20 and paid the GST on the same as per the provisions of the GST Law. Due to Covid-19 pandemic, from the December 2019 onwards all the countries have stated imposing restrictions on the travel as well as public gatherings. Due to the uncertainty persisted at the point of time we are unable to take the call whether to continue or cancel the programmes. Hence, the invoices issued to the customers have been offered to Tax in the year 2019-20 it-self. Further, we have waited for a considerable period of time 3 to 4 months to get the clarity on circumstances. As there is no improvement in the situations, the Management has finally decided to cancel the programmes and refund the fee to the

concerned students. As income is already recognized in the Fin. Year 2019-20, hence the refunds paid to the students have been debited to the P & L account by raising credit notes. In this regard the copies of invoices issued to the students in the financial year 2019-20 and against which the credit notes is already submitted in the earlier submission. Further, the evidences of Payments of refund are also submitted in the earlier submission for the kind consideration of the Assessing Officer. Hence it is prayed the Assessing Officer to consider the same.”

11. Thus, the assessee has specifically explained during the scrutiny assessment that the invoices issued to the customers have been offered to tax in the financial year 2019-2020 itself relevant for the assessment year 2020-2021 and thereafter, due to Covid-2019 pandemic and subsequent complete ban on the movement and flights of international travel, the assessee decided to refund the amount during the year under consideration and the same was debited to the profit and loss account for the year under consideration. Once this fact was brought on record along with the documentary evidences to show that the amount in question was duly taken as part of the revenue in the preceding assessment year and offered the same to tax, then, the refund of the said amount to the clients during the year is in the

nature of sales return and accordingly, an allowable claim of expenditure. Thus, by considering all these facts, the Assessing Officer has accepted the claim of the assessee when he was satisfied with the reply as well as the documentary evidence produced by the assessee. Once the Assessing Officer has conducted due enquiry and was satisfied with the claim of the assessee based on the documentary evidences, then, invoking the provisions of sec.263 by the Pr. CIT merely because he does not agree with the view taken by the Assessing Officer, is not permissible under law, so far as the view taken by the Assessing Officer is a possible and rather a correct view. Hence, it is not a case of complete lack of enquiry on the part of the Assessing Officer while passing the assessment order and this fact is already admitted by the Pr. CIT in the show cause notice itself, then, the order of the Assessing Officer cannot be held as erroneous on account of lack of enquiry or incomplete enquiry.

11.1. Though, the Commissioner has jurisdiction to invoke the provisions of sec.263 of the Act, even when the Assessing Officer has conducted an enquiry and taken a view, but, the said jurisdiction and power of the Commissioner is restricted only in the cases where the view taken by the Assessing Officer is absolutely wrong and against the provisions of law. The Pr. CIT has not given any conclusive finding in the impugned order as to how the view taken by the Assessing Officer is absolutely not permissible under law. Therefore, under the provisions of sec.263 of the Act, the Pr. CIT cannot ask the Assessing Officer to re-conduct the enquiry already conducted and to review it's own order passed based on the facts and record. It is also manifest from the impugned order as reproduced in the foregoing para of this order that the Pr. CIT has not carried out any enquiry on his own to show that the view taken by the Assessing Officer is not permissible in law or not based on the correct facts, but, simply set-aside the assessment order to the file of the Assessing Officer for re-examination of the issue which is not permissible. The **Hon'ble Delhi High Court in the case of**

ITO vs. DG Housing Project Ltd., [2012] 343 ITR 329 (Del.)

held that in the cases of wrong opinion/view taken by the Assessing Officer while giving the findings on merits, the Commissioner has to come to the conclusion and himself decide that the order is erroneous by conducting necessary enquiry if requires before the order u/sec.263 of the Act is passed. Therefore, under the provisions of sec.263, the Commissioner is required to give a conclusive finding to hold that the order passed by the Assessing Officer on merits after conducting enquiry, is not permissible under law. The Hon'ble High Court has further observed that while setting aside the matter to the record of the Assessing Officer, the Pr. CIT himself was not sure about the correctness of the claim. Hence, he has not given the concluding finding whether the order of the Assessing Officer allowing the claim of deduction after conducting enquiry is absolutely against the provisions of law. The relevant findings of the Hon'ble Delhi High Court in Para-18 are as under:

“18. It is in this context that the Supreme Court in Malabar Industrial Co. Ltd. vs. Commissioner of Income Tax, (2000) 243 ITR 83 (SC), had observed that the phrase „prejudicial to the interest

of 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 interest of Revenue. Thus, when the Assessing Officer had adopted one of the courses permissible and available to him, and this has resulted in loss to Revenue; or two views were possible and the Assessing Officer has taken one view with which the CIT may not agree; the said orders cannot be treated as an erroneous order prejudicial to the interest of Revenue unless the view taken by the Assessing Officer is unsustainable in law. In such matters, the CIT must give a finding that the view taken by the Assessing Officer is unsustainable in law and, therefore, the order is erroneous. He must also show that prejudice is caused to the interest of the Revenue.”

12. Thus, once the Assessing Officer was satisfied with the supporting evidences produced by the assessee in response to the show cause notice issued u/sec.142(1) of the Act, then, it is not necessary for the Assessing Officer to give an elaborate finding on the issue. The Hon’ble Andhra Pradesh High Court in the case of **Spectra Shares and Scrips Pvt. Ltd., vs. CIT [2013] 354 ITR 35 (AP)** has held in Paras-31 to 34 as under :

“31. From the above decisions, the following principles as to exercise of jurisdiction by the Commissioner u/s.263 of the Act can be culled out :

- (a)** *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. If one of them is absent - if the order of the Income Tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but it is prejudicial to the Revenue - recourse cannot be had to Section 263 (1) of the Act.*
- (b)** *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.*
- (c)** *To invoke suo motu revisional powers to reopen a concluded assessment under Sec.263, the Commissioner must give reasons; that a bare reiteration by him that the order of the Income Tax Officer is erroneous insofar as it is prejudicial to the interests of the Revenue, will not suffice; that the reasons must be such as to show that the enhancement or modification of the assessment or cancellation of the assessment or directions issued for a fresh assessment were called for, and must irresistibly lead to the conclusion that the order of the Income Tax Officer was not only erroneous but was prejudicial to the interests of the Revenue. Thus, while the Income Tax Officer is not called upon to write an elaborate judgment*

giving detailed reasons in respect of each and every disallowance, deduction, etc., it is incumbent upon the Commissioner not to exercise his suo motu revisional powers unless supported by adequate reasons for doing so; that if a query is raised during the course of the scrutiny by the Assessing Officer, which was answered to the satisfaction of the Assessing Officer, but neither the query nor the answer were reflected in the assessment order, this would not by itself lead to the conclusion that the order of the Assessing Officer called for interference and revision.

- (e)** *The Commissioner cannot initiate proceedings with a view to start fishing and roving inquiries in matters or orders which are already concluded; that the department cannot be permitted to begin fresh litigation because of new views they entertain on facts or new versions which they present as to what should be the inference or proper inference either of the facts disclosed or the weight of the circumstance; that if this is permitted, litigation would have no end except when legal ingenuity is exhausted.*
- (f)** *Whether there was application of mind before allowing the expenditure in question has to be seen; that if there was an inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders under Sec.263 merely because he has a different opinion in the matter; that it is only in cases of lack of inquiry that such a course of action would be open; that an assessment order made by the Income Tax Officer cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately; there must be some prima facie*

material on record to show that the tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation, a lesser tax than what was just, has been imposed.

- (g)** *The power of the Commissioner under Sec.263 (1) is not limited only to the material which was available before the Assessing Officer and, in order to protect the interests of the Revenue, the Commissioner is entitled to examine any other records which are available at the time of examination by him and to take into consideration even those events which arose subsequent to the order of assessment.*

32. *In the light of the above principles, we have to see whether the respondent has rightly exercised revisional powers under Sec.263 (1) of the Act.*

33. *The Assessing Officer had passed the assessment order on 16-12-2008 accepting the case of the assessee that its income has to be taxed under the head "Capital Gain" as he was satisfied with the explanation and data submitted by the assessee vide its letters dated 08-02-2008, 15-05-2008, 29-08-2008 (to his queries made vide his letter dated 22-01-2008, 17-04-2008, 04-08-2008), that it is an investment company carrying on business in shares and such investment is made for the sole purpose of deriving dividend income. The correspondence exchanged between the parties shows that the Assessing Officer raised specific queries about the business activity of the assessee and also its claim of LTCG income from quoted shares, unquoted shares and Mutual Fund Units apart from STCG from sale of shares and Mutual Fund Units. The assessee had also given details of computation of*

Capital Gains under various categories. It is settled law that the Assessing Officer is not called upon to write an elaborate judgment giving detailed reasons. In para-5 and 5.2 of his order dated 31-03-2011 u/Sec.263, the respondent also held that substantial information had been furnished by the assessee, and at Para 5.1 he held that there was application of mind by the Assessing Officer but the conclusion of the Assessing Officer is wrong.

34. *It may be that in the Assessment Order, the Assessing Officer has not made an elaborate discussion on the issue as to the nature of activity of the assessee i.e. whether it is an investment or whether it is business income and did not refer to his query on the issue to the assessee before passing the order (in his letter dt.4.8.2008) or the reply given by the assessee to his query (vide its letter dt.29.8.2008). As held in Vikas Polymers (supra), Sunbeam Auto (supra) and Gabriel India Ltd. (supra), when it is not incumbent on the Assessing Officer to pass a detailed order, merely because the order does not contain reasons as to why he accepted that the assessee is a trading company, his order does not become susceptible for revision. The Assessing Officer while making an assessment had examined the accounts, made inquiries, applied his mind to the facts and circumstances of the case and determined the income of the assessee. Therefore, it is not open to the Commissioner, on the ground that a different view is possible, to reopen the assessment on the ground that the Assessing Officer did not make an elaborate discussion in that regard.”*

12.1. Further, the Hon’ble Andhra Pradesh High Court in **Spectra Shares And Scrips Pvt. Ltd., (supra)** in Paras 61 to 63 as under :

....

....

.....

“61. We are of the view that the Assessing Officer had not only taken a possible view but in the circumstances the only view possible and therefore his order could not have been termed as erroneous or prejudicial to the revenue warranting exercise of revisional jurisdiction u/s.263 of the Act by the respondent. The respondent had no different or new material to take different view from the one taken by the Assessing Officer and the reasons given by him to reopen the assessment and sustain the revision are totally unacceptable. The respondent is not vested any power u/s.263 to initiate proceedings for revision in every case and start re- examination and fresh enquiries in matters which have already been concluded under the law. The Tribunal in our view had grossly erred in agreeing with the order of the respondent and in upholding it on grounds which have not been found in the show cause notice of the respondent, that too without considering the several issues of fact and law raised by the assessee in his written submissions and grounds of appeal. Both the respondent and the Tribunal have based their orders on preconceived notions, conjunctures and surmises, manifestly misread the facts and twisted them to justify their conclusions.

62. In *Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 (SC)*, held at Page 295 as follows:

"Where the fact finding authority has acted without any evidence or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant facts could have found, the court is entitled to interfere... "

It relied on the following passage in its decision in Omar Salay Mohamed Sait v. Commissioner of Income Tax.

"We are aware that the Income Tax Appellate Tribunal is a fact finding Tribunal and if it arrives at its own conclusions of fact after due consideration of the evidence before it this court will not interfere. It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the findings reached on the evidence on record before it. The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the assessee, the assessee should be given an opportunity of doing so. On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of the sort, its findings, even though on questions of fact, will be liable to be set aside by this Court."

63. *For the above reasons, the order 31.3.2011 of the respondent and the order dated 5.8.2011 in ITTA.No.512 of 2011 are set aside and the order of the Assessing Officer dated 16.12.2008 for the A.Y.2006-07 is restored. In view of this, no orders are necessary in ITA.No.177/2012. No costs."*

13. Therefore, when the Assessing Officer has not only taken a possible view, but, in the circumstances, the only view possible, then, his order could not have been termed as erroneous or prejudicial to the interests of revenue warranting exercising of revisional jurisdiction u/sec.263 of the Act.

14. In the case of **CIT vs. V. Dhana Reddy And Co.** **[2018] 407 ITR 96 (T & AP)** has held in Para nos.21 to 23 as under :

“21. In our opinion, the whole premise on which the CIT has invoked his revisional powers is the purported improper and incomplete examination of the transactions between the assessee and the Trusts. No findings have been rendered by the CIT that the AO has made an incorrect assessment of facts or incorrect application of law to satisfy the requirements of the order being erroneous and prejudicial to the interests of the Revenue, as held in *Malabar Industrial Company Ltd. (2 supra)*. In the opinion of the CIT, the AO ought to have made a further probe into the nature of the transactions between the assessee and the two Trusts. In other words, the CIT has desired a fishing and roving enquiry which is not permissible as per the settled legal position as discussed above. The CIT has arrogated to himself the role of appellate body forgetting that he was only exercising his revisional power, the scope of which is far narrower than the scope of appeal. It is not as if from the material on record the CIT has found the transactions

between the assessee and the two Trusts as sham or nominal, or any material was found revealing fraudulent nature of the transactions. He only wanted to know on a further appreciation/examination whether the transactions suffer from any such features. Therefore, the Tribunal, in our opinion, is justified in terming the order of the CIT as based on mere conjectures and surmises, and not on the facts borne out by the record. The Tribunal also recorded a finding that the assessments for the relevant assessment year relating to the two Trusts were carefully scrutinized after calling for the details and examining the same by the AO. Interestingly, the CIT having expressed his suspicion about the genuine nature of the transactions between the assessee and the Trusts, has not exercised his revisional powers under Section 263 of the Act with regard to the assessments completed under Section 143(3) of the Act pertaining to the two Trusts. It would be incongruous to interfere with the assessments completed in respect of the assessee, while leaving aside the assessment orders passed in respect of the two Trusts, whose returns of income are intricately connected with the suspected transactions of the assessee. The action of the CIT thus suffers from inherent contradiction.

22. *Regarding the judgment in Mc. Dowell & Co. Ltd. ([1985] 154 ITR 148 (SC), the concept of colourable tax planning device to reduce the tax liability (as propounded in the said judgment) is not applicable to the facts of the present case, as the CIT has not suspected the bona fides in creation of the Trusts and their activities or that no material is found showing that the assessee had made an effort to reduce the tax liability on the transactions entered with the two Trusts.*

23. *On a careful scrutiny of the orders of the CIT and the Tribunal, we have no hesitation to hold that the foremost requirement that the order must be erroneous for invoking the revisional jurisdiction under Section 263 of the Act by the CIT, has not been satisfied in the instant case. Once the order is not found erroneous, the CIT is denuded of his power to invoke Section 263 of the Act to revise the assessment order.”*

15. Therefore, the revisional powers u/sec.263 of the Act cannot be exercised merely on the suspicion about the allowability of the claim, but, the Commissioner to give a definite finding that the order of the Assessing Officer is not permissible under law. Accordingly, in the facts and circumstances of the case as well as in view of binding precedents, we hold that the order passed by the Pr. CIT u/sec.263 of the Income Tax Act, 1961 is not sustainable in law and the same is liable to be set-aside. We Order accordingly.

16. In the result, appeal of the Assessee is allowed.

Order pronounced in the open Court on 19th day of
December, 2025.

Sd/-
[MANJUNATHA G.]
ACCOUNTANT MEMBER

Sd/-
[VIJAY PAL RAO]
VICE PRESIDENT

Hyderabad, Dated 19th December, 2025

VBP

Copy to :

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2.	The Income Tax Officer, Ward-17(1), Signature Towers, Kondapur, Hyderabad – 500 084. Telangana.
3.	The Pr. CIT, Hyderabad-2, Hyderabad.
4.	The DR, ITAT, “A” Bench, Hyderabad.
5.	Guard file.

BY ORDER

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