

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
Ms. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.1357/PUN/2025
Assessment year : 2020-21**

Bansilal Ramnath Agarwal Charitable Trust 251, Budhwar Peth, City Post Chowk, Pune – 411002	Vs.	CIT (Exemption), Pune
PAN: AAATB4383K		
(Appellant)		(Respondent)

Assessee by : Shri Kishor B Phadke
Department by : Shri Amol Khairnar, CIT-DR
Date of hearing : 11-12-2025
Date of pronouncement : 28-01-2026

ORDER

PER R.K. PANDA, V.P:

This appeal filed by the assessee is directed against the order dated 31.03.2025 passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the Ld. CIT(Exemption), Pune relating to assessment year 2020-21.

2. Facts of the case, in brief, are that the assessee, "The Bansilal Ramnath Agarwal Charitable Trust" was established on 16.06.1975 under the Bombay Public Trust Act, 1950 with the prime object to start schools, colleges to impart Technical, Medical & Management Education & also other charitable activity.

The various institute/schools run under the trust are as under:

- a. *Vishvakarma Institute of Technology (VIT)*
- b. *Vishvakarma Institute of Information Technology (VIIT)*
- c. *Vishvakarma Arts & Commerce (VCACS)*
- d. *Vishvakarma University*

3. The trust also runs Marathi & English Medium schools since 1982 up to higher secondary schools. It filed its return of income on 15.02.2021 declaring total income at Nil. The return was processed u/s 143(1) of the Act by the CPC, Bangalore. Subsequently the case was selected for limited scrutiny through CASS for the reason “Trust executing contracts, providing professional services, earning commission income or rent (verification as per proviso to section 2(15) or any other section) / Large payment of salary, rent, interest, etc made to specified persons”. Statutory notice u/s 143(2) of the Act was issued and served on the assessee. Notices u/s 142(1) of the Act were issued from time to time through Faceless assessment scheme in response to which the assessee filed the requisite details. The Assessing Officer completed the assessment on 20.09.2022 determining the total income of the assessee at Nil.

4. Subsequently the Ld. CIT(Exemption), Pune perused the assessment order and submissions of the assessee made from time to time and observed that the order passed by the Assessing Officer u/s 143(3) for assessment year 2020-21 appears to be erroneous and prejudicial to the interests of the Revenue within the meaning of section 263 of the Act. He, therefore, issued a show cause notice dated 18.02.2025 asking the assessee to explain as to why the assessment order should not be reviewed. The contents of the notice issued u/s 263 of the Act read as under:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
CIT EXEMPTION, PUNE

To, BANSILAL RAMNATH AGARWAL CHARITABLE TRUST 251 BUDHWAR PETH , CITY POST CHOWK Pune City PUNE 411002 , Maharashtra India	
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PAN/TAN: AAATB4383K	AY: 2020-21	DIN & Notice No : ITBA/REV/F/REV1/2024- 25/1073412337(1)	Dated: 18/02/2025
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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 **28/02/2025** 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

Please refer to the order passed u/s 143(3) r.w.s. 144B of the Income-tax Act, 1961 for the A.Y. 2020-21 dt. 20.09.2022 in your case determining the total income of Rs. Nil.

2. On subsequent review of the assessment and the case records, the following facts are observed:

A return of income was filed in your case on 15.02.2021 declaring the total income at Rs. Nil. The case was selected for limited scrutiny under CASS for the reason 'Trust executing contracts, providing professional services, earning commission income or rent (verification as per proviso to sec. 2(15) or any other section/ Large payment of salary, rent, interest etc made to specified persons'. The Assessing Officer completed the

assessment on 20.09.2022 determining the total income at Rs. Nil.

3. On perusal of assessment order and the submission of the assessee, it is observed that the trust has made substantial payments to trustees/ entities in which the trustees have a significant interest. As seen from the form 10B, the assessee has made the following payments to specified persons as defined in sec. 13(3) of the Income-tax Act, 1961:

S. No.	Specified person	Amount	Nature
1	Mrs. Trupti B Agarwal	36.63.000	Salary
2	Bharat R Agarwal	1,44,18,000	Administrative work
3	M/s Investronaut	1,18,57,000	Providing advt. & promotion facilities.
4	Vishwakarma Global Edu Services P. Ltd.	27,90,77,256	Subscription to online learning platform
5	Roott Square Stationery & Uniforms LLP	1.04,32,443	Purchase of stationery
6	Agrabh HR services LLP	78,02,477	For supplying admin and house-keeping staff

Further observations with respect to the payments to specified persons are as under:

- (i) In addition to the receipts of Rs. 36,63,000/- by way of salary as mentioned above, Mrs. Trupti B Agarwal is a partner in M/s Roott Square Stationery & Uniforms LLP with 90% share.
- (ii) Similarly, in addition to the receipts of Rs. 1,44,18,000/- as mentioned above,

Shri. Bharat R Agarwal is a partner in M/s Investronaut with 50% share.

(iii) In Vishwakarma Global Edu Services P. Ltd., Shri. Ramkumar B Agarwal and Smt. Ameeta B Agarwal have share holding of 90% and 10% respectively.

(iv) Shri. Bharat R Agarwal and Shri. Ramkumar B Agarwal are partners in Agrabh HR services LLP with 50% share each.

4. It has been further observed that a significant portion of the total revenue of these business entities is derived from transactions with the assessee trust. Notably, in the case of Vishwakarma Global Edu Services P. Ltd. and M/s Agrabh HR Services LLP, their entire receipts have been sourced from the assessee trust. Further, the profit margins in these transactions have been considerably high, raising concerns regarding the nature and intent of these financial transactions.

5. As per the provisions of section 13(1)(c) of the Income-tax Act, 1961, if any part of such income or any property of the trust or the institution during the previous year is used or applied, directly or indirectly for the benefit of any person referred to in section 13(3) of the Income-tax Act, 1961, the exemption u/s 11 & 12 in respect of such income shall not be allowed to the trust.

6. Further, as per the provisions of sec. 13(2)(c) of the Income-tax Act, 1961, if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services, it shall be deemed to have

been used or applied for the benefit of a person referred to in section 13(3) of the Income-tax Act, 1961. The Assessing Officer was, therefore, required to examine said payments of Rs. 30,91,69,176/- made to the specified persons. However, he failed to conduct necessary inquiries or verification in this regard. The Assessing Officer failed to examine the above issues and applicability of the relevant provisions of the Income-tax Act, 1961 and consider disallowance of the assessee's claim made u/s 11 of the Income-tax Act, 1961 while computing the total income. Thus, the Assessing Officer erred in allowing the assessee's claim made u/s 11 of the Income-tax Act, 1961 without conducting inquiries into the admissibility of the claim.

7. Failure on the part of the Assessing Officer in examining the above issues (as discussed in preceding Paras 3 to 6) while considering and allowing the assessee's claim of deduction u/s 11 of the Income-tax Act, 1961 has rendered the assessment order dated 20.09.2022 erroneous in so far as it is prejudicial to the interest of the revenue.

8. In view of the above, the order dt. 20.09.2022 passed by the Assessing Officer (FAO) u/s 143(3) for the A.Y 2020-21, thus appears to be erroneous and prejudicial to the interest of revenue within the meaning of section 263 of the Income-tax Act, 1961 and is proposed to be reviewed. Accordingly, **your case is fixed for hearing on 28.02.2025 at 11.30 a.m.** in my office. It is also requested to furnish your submission, if any, **through ITBA module or email (pune.cit.exmp@incometax.gov.in)** by this date which shall be taken into account while finalizing the proceedings. Necessary documentary evidences, wherever required, may also be submitted. Please note that in the event of failure to comply with the notice, it shall be presumed that you have nothing to say in this regard and the proceedings shall be completed on the basis of information available on record.

5. The assessee in response to the same submitted that the Assessing Officer has critically examined the matter and taken one plausible view. Hence, the Assessing Officer has not committed any error of examination and as such the issue of disallowance u/s 11 does not arise. So far as the issue of considerable payments to specified persons is concerned, the assessee made elaborate submissions.

(a) So far as the payments made to Smt. Trupti Agarwal is concerned, it was submitted that Smt. Agarwal was handling many more functions of monitoring and co-ordination of academic, administrative, commercial and financial functioning of Vishwakarma Schools. She is the final authority overseeing eight (8) schools in Pune, wherein, about 3500 students were being educated. It was contended that since last 3 years, the payment made to Smt. Agarwal has remained almost same.

(b) As regards the payment to Shri. Bharat Agarwal is concerned, it was contended that Shri. Agarwal is holding the post of a Managing Trustee of the assessee trust, who himself is highly qualified. He oversees all key affairs of the trust, including academic, administrative, commercial and financial functions of the Vishwakarma Group, managing five colleges in Pune with 13,692 students. As the final authority, he signs all loan documents and has provided personal guarantees to lending banks.

(c) So far as payments to M/s Investronaut is concerned, it was argued that the said concern provides advertising and promotional services to the assessee. The firm specializes in online promotional material, crucial for capturing user interest on platforms like Google and Yahoo. It employs strategic methods to secure initial inquiries for educational institutes. It was argued that the said company's net profit percentage is about 8% which shows that there is no excessive charging by the said concern.

(d) In respect of the other related concern i.e. Vishwakarma Global Edu Services P. Ltd. (VGSPL), the assessee submitted that it provided real-time online software support, training, and navigation for students and integrating banking facilities for payments. The assessee contended that VGSPL also served other institutions, where it has charged higher amount than the assessee. It was further submitted that since 2021, the assessee has discontinued services of VGSPL and switched to Educational Tantra

Software Consulting Services, a non-related party, to which higher charges per student per month are paid.

(e) In respect of M/s Roott Square, another related concern it was submitted that the said concern supplies stationery to many educational institutions including the assessee. However, the stationery is procured by the said party from outside vendors.

(f) As regards M/s Agrabodh, another related concern, the assessee stated that the said party extends HR & Admin staff services to assessee trust and the profit margin of the said party is about 10% which is reasonable and as such, amount charged to the assessee is also fair.

6. The assessee also furnished a chart showing the percentage of revenue of specified parties from the transactions with the assessee trust, profit percentage and no. of employees of such concerns the details of which are as under:

<i>Name of related party</i>	<i>Revenue share from transactions with the assessee</i>	<i>Profit %</i>	<i>No. of employees</i>
<i>Investronaut</i>	<i>100%</i>	<i>7.53%</i>	<i>13</i>
<i>VGSPL</i>	<i>88.87%</i>	<i>30.51%</i>	<i>35</i>
<i>Roott Square</i>	<i>26.60%</i>	<i>21.92%</i>	<i>11</i>
<i>Agrabh</i>	<i>100%</i>	<i>9.74%</i>	<i>30</i>

7. However, the Ld. CIT(Exemption) was not satisfied with the arguments advanced by the assessee. So far as the argument of the Ld. Counsel for the assessee that the payments made to the related parties are reasonable and justified

based on the nature of services rendered by them and that the issue has been examined by the Assessing Officer is concerned, he noted that the financial statements and profitability ratios of these related entities clearly indicate that the margins earned are significantly high. He noted that in the case of Vishwakarma Global Edu Services P. Ltd. (VGSP) and Roott Square Stationery & Uniforms LLP, most of the revenue of these entities is from the assessee trust only. He observed that in the case of M/s VGSP it has received total amount of Rs.27,90,77,256/- during the year out of which an amount of Rs.21,36,36,822/- pertains to the year under consideration. He observed from the Income & Expenditure A/c of M/s VGSP that the total revenue from operations is Rs.22,20,65,484/- and thus the percentage of revenue share of this entity from transactions with the assessee is about 96.20%. Further, the profit margin works out to 44.25%.

8. So far as the argument of the Ld. Counsel for the assessee that M/s VGSP has also provided software to other parties at a slightly higher rate is concerned, he noted that the amount received from other parties is very miniscule compared to the assessee trust. He therefore was of the opinion that this unusual high profit margin in a related party transaction suggests that the payments made to VGSP were disproportionately high leading to the conclusion that the transactions lack commercial prudence and were designed to unduly benefit the related concern at the expense of the trust's corpus. He referred to the decision of Hon'ble Punjab & Haryana High Court in the case of CIT v. Abhishek Industries Ltd. Reported in [(2006) 286 ITR 1 (P&H)] wherein the Hon'ble High Court has held that excessive

payments made to related parties need to be scrutinized and disallowed if found unreasonable. However, the Assessing Officer in the instant case has failed to appreciate this issue resulting in an erroneous order.

9. So far as M/s Investronaut is concerned, he noted that 100% of its transactions are exclusively with the assessee trust. He noted that this company was incorporated on 05.12.2013 and despite being in existence for more than seven years, it has failed to establish any business transactions with entities other than the assessee trust. This lack of independent commercial activity according to the Ld. CIT(Exemption) was not set up as a genuine business enterprise but rather as a medium to channel trust funds for the benefit of specified persons in contravention of provisions of Section 13(1)(c). According to him, the nature of these transactions raises concerns regarding financial propriety as they indicate a structured arrangement to divert funds of charitable organization for private gain. He referred to the decision of Hon'ble Gujarat High Court in the case of N. N. Desai Charitable Trust v. CIT reported in [(2000) 246 ITR 452 (Guj)] wherein the Hon'ble High Court has held that when the transactions between a charitable trust and its related concerns are excessive and lack commercial prudence, the trust forfeits exemption under Section 11. He further noted that in the case of M/s Agrabh also 100% of the revenue is received from the assessee only. Since the Assessing Officer in the instant case has passed the order without scrutinizing the commercial viability, necessity and reasonableness of the payments made to Investronaut and M/s Agrabh, he was of the opinion that the assessment order has become erroneous and prejudicial to the interest of the Revenue.

10. In view of the above, the Ld. CIT(Exemption) held that the Assessing Officer has failed to conduct proper inquiry and verification regarding the substantial payments made by the assessee trust to specified persons as per section 13(3) of the Act. The failure to conduct such an inquiry has resulted in an erroneous assessment order. Relying on various decisions he held that the assessment order dated 20.09.2022 passed u/s 143(3) r.w.s. 144B of the Act by the Faceless the Assessing Officer is erroneous and prejudicial to the interests of the Revenue. He, therefore, set aside the order to the file of the Assessing Officer with a direction to re-frame the assessment as per the provisions of law, after considering proper facts, submissions of the assessee and also after necessary verification.

11. Aggrieved with such order of the Ld. CIT(Exemption), the assessee is in appeal before the Tribunal by raising the following grounds:

1. *The learned PCIT(Exemption), Pune erred in law and on facts in assuming jurisdiction u/s 263 of the ITA, 1961 on the analogy that the order passed u/s 143(3) of the ITA, 1961 dated 20/09/20 was erroneous and prejudicial to the interest of the revenue.*
2. *The learned PCIT(Exemption), Pune erred in law and on facts in not appreciating that details/Information relating to the payments made to specified persons u/s 13(3) of the ITA, 1961*

- *were called for by the learned AO:*
- *were submitted during the scrutiny proceedings u/s 143(3), and*
- *were duly verified by the learned AO*

As such the order u/s 143(3) of the ITA, 1961 ought not to have been held as "erroneous"

3. *Learned CIT(E) erred on facts in not appreciating that, detailed justification was given w.r.t. payments made to specified persons u/s 13(3) of ITA, 1961 during the 263 proceedings. Appellant contends that the detailed submission justifying Bonafides of payments to various specified persons was summarily glossed over by learned CIT(E), Pune.*

4. *Learned CIT(E), Pune, as regards four commercial entities tabulated in Para-6.1 of the 263 order, erred in law and on facts in observing that, most of the revenue of these entities is from assessee trust and, "margins earned by these four entitles are excessive". Appellant contends that, facts are besides these observations.*
5. *Learned CIT(E), Pune erred in law and on facts in holding on one hand that order of learned AO is "erroneous" for lack of adequate enquiry, and on the other hand, not carrying out the stipulated enquiry himself. Appellant contends that learned CIT(E), before disturbing the order of learned AO, ought to have carried out the enquiries and concluded matters himself.*
6. *Appellant contends that, learned CIT(E), at the most, ought to have disturbed alleged excessive payments to the specified persons, and ought not to have disturbed entire transaction with the specified persons. Appellant contends that, disallowance of "Application of income" ought to be confined to alleged excessive/violative portion of the payments to specified persons.*
7. *Appellant craves leave to add/modify/delete/amend all/ any of the grounds of appeal.*

12. The Ld. Counsel for the assessee strongly challenged the order of the Ld. CIT(E) in assuming jurisdiction u/s 263 of the Act. He submitted that the Assessing Officer in the present case has framed the assessment after a detailed scrutiny with multiple pointed notices on the very same subject of payments to specified persons and after comprehensive replies filed by the assessee. Therefore, the order, *per se*, cannot be termed as 'erroneous'. Secondly, there is no loss to the Revenue of whatsoever nature since the entire income is exempt and therefore, the scrutiny order cannot be profiled as 'prejudicial to interest of the Revenue.'

13. Referring to various decisions he submitted that it is the settled proposition of law that for assuming jurisdiction u/s 263 of the Act, both the conditions namely the order is erroneous and the order is prejudicial to the interest of the Revenue must be fulfilled. However, in the instant case the order is neither erroneous nor

prejudicial to the interests of the Revenue. Therefore, the 263 order passed by the Ld. CIT(E) is not in accordance with law. In the instant case the Ld. CIT(Exemption) merely substituted his opinion for that of the Assessing Officer which is impermissible u/s 263 of the Act. Accordingly he submitted that assumption of jurisdiction itself is bad in law and is liable to be quashed.

14. The Ld. Counsel for the assessee submitted that the findings of the Ld. CIT(Exemption) regarding non-examination of payments made to specified persons u/s 13(3) are factually incorrect and contrary to the assessment records. He submitted that the issue of transaction with the specified persons was specifically within the scope of limited scrutiny of payment to specified persons and was subjected to detailed and repeated examination by the Assessing Officer.

15. Referring to the first notice issued u/s 142(1) of the Act dated 15.11.2021, the Ld. Counsel for the assessee drew the attention of the Bench to clause 8 of the notice which reads as under:

8. With respect to the payments made to the specified persons during the year under consideration as referred in section 13(3) of the Income-tax Act, you are requested to provide the following details:-

- a) Nature and mode of payment made to the specified persons.
- b) Details of the services provided by specified person in lieu of the payment made by the trust.
- c) Justification with supporting documentary evidence for the payments made to the specified persons.
- d) Need of the service for fulfillment of the object of trust.
- e) Educational qualification and experience of the specified persons with concrete documentary proof.

• In case a query is not applicable, kindly specify the same in your reply.

16. Referring to the second notice issued u/s 142(1) of the Act dated 01.12.2021, he drew the attention of the Bench to clause 8 of the said notice where the Assessing Officer has again asked the assessee to provide the details of payments made to the specified persons as referred in section 13(3) of the Act.

17. Referring to the reply given by the assessee dated 08.12.2021, copy of which is placed at pages 20 to 33 of the paper book, the Ld. Counsel for the assessee drew the attention of the Bench to the details where the assessee has given elaborate details on this issue as per the query raised by the Assessing Officer.

18. Referring to the notice issued u/s 142(1) of the Act dated 04.01.2022, copy of which is placed at pages 54 to 57 of the paper book, the Ld. Counsel for the assessee drew the attention of the Bench to clause 5 of the said notice where the Assessing Officer has asked the assessee to give the following details:

5. With respect to the payments made to the specified persons during the year under consideration as referred in section 13(3) of the Income-tax Act, you are requested to provide a confirmation letter from the specified persons alongwith the documentary evidences/Bank transactions detail in respect of payment made to them.

• In case a query is not applicable, kindly specify the same in your reply.

19. Referring to the show cause notice dated 12.02.2022 issued by the Assessing Officer, copy of which is placed at pages 58 to 62 of the paper book, he drew the attention of the Bench to clause 5 of the said notice where the Assessing Officer has again asked the assessee to file certain details in respect of the payments made to the specified persons as referred in section 13(3) of the Act.

20. Referring to the reply dated 17.02.2022, copy of which is placed at pages 63 to 66 of the paper book and the reply dated 24.02.2022, copy of which is placed at pages 67 to 342 of the paper book, the Ld. Counsel for the assessee drew the attention of the Bench to the various details given by the assessee including the confirmation of the related parties specified in section 13(3) of the Act.

21. Referring to various other notices issued by the Assessing Officer, he submitted that the Assessing Officer has duly asked various details from the assessee to which the assessee has given specific replies.

22. The Ld. Counsel for the assessee accordingly submitted that the Assessing Officer after due consideration of the replies given by the assessee from time to time has consciously accepted the returned income. Therefore, it cannot be alleged that there was no enquiry. He submitted that once the issue has been examined, the order cannot be revised merely because the Ld. CIT(E) believes that further enquiry was warranted.

23. Referring to the decision of Hon'ble Bombay High Court in the case of CIT vs B. Nirav Modi reported in (2017) 390 ITR 292 (Bom), he submitted that the Hon'ble High Court in the said decision has held that where the Assessing Officer after making proper and detailed enquiries, took a view that amount received by the assessee as gift from his relatives was a genuine transaction, impugned revisional order passed by Commissioner directing the Assessing Officer to

enquire into capacity of donors and to decide about genuineness of gift afresh, was not sustainable.

24. Referring to the decision of Hon'ble Bombay High Court in the case of CIT vs. Shreepati Holdings & Amp Finance Pvt. Ltd. vide ITA No.1879 of 2013, order dated 05.10.2015, he submitted that the Hon'ble High Court in the said decision has held that inadequate enquiry by itself would not justify invoking the jurisdiction u/s 263 of the Act unless the order is erroneous.

25. Referring to the decision of Hon'ble Delhi High Court in the case of CIT vs. Anil Kumar Sharma reported in 335 ITR 83 (Del), he submitted that the Hon'ble High Court in the said decision has held that where it was discernible from record that the Assessing Officer had applied his mind to the issue in question, Commissioner could not invoke section 263 merely because he had different opinion.

26. Referring to the decision of Hon'ble Bombay High Court in the case of CIT vs. Audyogik Shikshan Mandal reported in (2019) 101 taxmann.com 247 (Bom), he submitted that the Hon'ble High Court in the said decision has held that where funds of assessee-trust were utilized for purchase of car in name of its trustee, there was violation of section 13(2)(b) read with section 13(3); however, denial of exemption under section 11 should be limited only to the amount which was diverted in violation of section 13(2)(b) of the Act.

27. Referring to the decision of Hon'ble Karnataka High Court in the case of CIT and Another vs. Fr. Mullers Charitable Institutions reported in (2014) 363 ITR 230 (Kar), he submitted that Hon'ble High Court in the said decision has held that the CIT cannot exercise the power of revision solely on the ground that the order passed is erroneous. He gets jurisdiction only if such erroneous order is prejudicial to the interest of the Revenue. He submitted that the SLP filed by the Revenue against the above decision of Hon'ble Karnataka High Court was dismissed by the Hon'ble Supreme Court as reported in (2014) 227 Taxman 369 (SC).

28. Referring to the decision of Hon'ble Delhi High Court in the case of CIT vs. Vikas Polymers reported in (2012) 341 ITR 537 (Del), he submitted that the Hon'ble High Court in the said decision has held that where a query was raised during the course of scrutiny by the Assessing Officer which was answered to his satisfaction, but neither query nor answer was reflected in assessment order, that would not, by itself, lead to conclusion that the order of the Assessing Officer called for interference and revision.

29. Referring to the decision of Hon'ble Delhi High Court in the case of CIT vs. Leisure Wear Exports Ltd. reported in (2012) 341 ITR 166 (Del), he submitted that the Hon'ble High Court in the said decision has held that where assessment order has been passed by the Assessing Officer after taking into account assessee's submissions and documents furnished by him and no material whatsoever has been brought on record by Commissioner which showed that there was any discrepancy or falsity in evidences furnished by assessee, order of Assessing Officer cannot be

set aside for making deep inquiry only on presumption and assumption that something new may come out.

30. The Ld. Counsel for the assessee in his next plank of argument submitted that the assessee had filed a comprehensive reply dated 08.12.2021 before the Assessing Officer explaining the reasons for payment to the specified persons, the details of which are placed at pages 21 to 53 of the paper book. Further, some more replies were also filed before the Assessing Officer providing confirmations of the specified persons, bank statements, their ITR copies, etc from time to time. He submitted that even before the Ld. CIT(Exemption) also a detailed reply was filed on 28.02.2025 followed by a supplementary submission dated 17.03.2025 wherein each of the observations made in the notice u/s 263 of the Act was specifically addressed. The reasons for availing the services from the specified persons were also explained in detail. Further, detailed factual and benchmarking analysis was furnished to rebut the allegation that related entities, particularly Vishwakarma Global Education Services Pvt Ltd and Root Square earned excessive profits. Despite reproducing parts of the assessee's submissions in the impugned order, the Ld. CIT(Exemption) failed to examine, rebut or controvert the same with any cogent reasoning or independent verification. He accordingly submitted that such summary rejection and non-consideration of material submissions vitiates the order passed u/s 263 of the Act and renders the assumption of revisionary jurisdiction unsustainable in law.

31. The Ld. Counsel for the assessee in his yet another plank of argument submitted that mere payment to specified persons does not attract disallowance u/s 13 of the Act. The law mandates that the authority must establish that the payment is excessive or unreasonable having regard to the fair market value. However, the Ld. CIT(Exemption) in the instant case has not identified any excessive portion, has not quantified any unreasonable benefit and not compared the payments with market rates. In absence of such findings, the invocation of provisions of section 13 and consequently the order passed under section 263 is legally untenable.

32. So far as the observations of the Ld. CIT(Exemption) that in respect of certain entities a substantial portion of revenue is derived from the assessee trust and profit margins are excessive is concerned, he submitted that these observations are factually incorrect and contrary to material on record. He submitted that the assessee has furnished detailed submission explaining the revenue composition, benchmarking analysis of comparable companies and industry margin data for online education of software services. However, the Ld. CIT(Exemption) has ignored the assessee's explanation without rebutting the assessee's submissions with cogent evidence. Therefore, the conclusions of the Ld. CIT(Exemption) are unsustainable.

33. The Ld. Counsel for the assessee submitted that the gross revenue of the assessee's trust was Rs.190.21 crore and the net profit i.e. total income was Rs.1.22 crore i.e. less than 1% of the total revenue. It was explained as a proposition that, had the activities of the specified entities being carried out by the assessee itself at

the maximum, the net profit would have increased by about Rs.10 crore. However, no taxable income would have arisen in the hands of the assessee considering the heavy percentage of application of revenue. On the contrary, the specified entities have already paid taxes on the incomes earned by such entities and hence, there is no case of 'prejudice to revenue' of whatsoever nature.

34. So far as the allegation of the Ld. CIT(Exemption) that the assessment order is erroneous for lack of inadequate enquiry is concerned, the Ld. Counsel for the assessee submitted that even in cases of alleged inadequate enquiry, the Ld. CIT(Exemption) is duty bound to conduct his own enquiry and record a clear finding that the order is erroneous. However, the Ld. CIT(Exemption) in the instant case has not carried out any independent verification, instead he has merely remanded the matter back to the file of the Assessing Officer for re-examination. Such an approach is contrary to law as section 263 does not permit roving or fishing enquiries or remand for fresh verification without establishing error.

35. He accordingly submitted that the order of the Ld. CIT(Exemption) invoking jurisdiction is not in accordance with law and therefore the same be quashed.

36. The Ld. DR on the other hand heavily relied on the order of the Ld. CIT(Exemption) setting aside the order to the file of the Assessing Officer with a direction to re-frame the assessment as per the provisions of law, after considering proper facts, submissions of the assessee and also after necessary verification.

37. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(Exemption) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case completed the assessment u/s 143(3) r.w.s. 144B of the Act on 20.09.2022 accepting the Nil returned income. We find the Ld. CIT(E) on examination of the record noted that the assessee trust has made substantial payments to trustees / entities in which the trustees of the assessee trust have significant interest. According to him, the assessee has made substantial payment of Rs.27,90,77,256/- to Vishwakarma Global Edu Services P. Ltd on account of subscription to online learning platform out of which an amount of Rs.22,20,65,484/- is related to this year which amounts to Rs.96.20% of the total revenue from operations of the said concern. The profit margin shown by the said concern works out to 44.25% which is very excessive. Similarly, in the case of M/s. Investronaut, which provided advertisement and promotion facilities, the assessee trust has made payment of Rs.1,18,57,000/- and to Roott Square Stationery & Uniforms LLP the assessee trust has made payment of Rs.1,04,32,443/- towards purchase of stationery. Similarly the assessee trust has made payment of Rs.78,02,477/- to Agrabh HR Services LLP towards supply of administrative and housekeeping staff. In all these entities, the trustees are having substantial interest and the Assessing Officer has failed to scrutinize the commercial viability, necessity and reasonableness of the payments made to these concerns. According to him, the failure on the part of the Assessing Officer to conduct proper enquiries and verification regarding the substantial payments made by the assessee trust to specified persons as per section 13(3) of the Act has

resulted the assessment order being erroneous and prejudicial to the interest of the Revenue. He accordingly set aside the assessment order to the file of the Assessing Officer with a direction to re-frame the same after conduction proper enquiries and verification of facts and the submissions of the assessee.

38. It is the submission of the Ld. Counsel for the assessee that the Assessing Officer, in the instant case after examining various submissions made by the assessee from time to time towards the payments made to the specified persons, has passed the order. Since the Assessing Officer in the instant case after due application of mind has passed the order, therefore, merely because the Ld. CIT(E) does not agree with the view taken by the Assessing Officer and wants to substitute his own view, cannot be a reason for invoking the provisions of section 263 of the Act. Further, since the entire income of the assessee trust is exempt, therefore, it does not amount to any prejudice to the interest of the Revenue. It is the submission of the Ld. Counsel for the assessee that for invoking the provisions of section 263 of the Act, the twin conditions namely the order is erroneous and the order is prejudicial to the interest of the Revenue must be fulfilled. However, in the instant case since none of the conditions are satisfied, therefore, the order passed by the Ld. CIT(E) u/s 263 of the Act by setting aside the same to the file of the Assessing Officer for fresh examination is not in accordance with law and therefore the same is liable to be quashed.

39. We find some force in the above arguments of the Ld. Counsel for the assessee. As reproduced in the preceding paragraphs, the Assessing Officer vide

notice u/s 142(1) dated 15.11.2021, copy of which is placed at pages 14 to 16 of the paper book at clause 8 of the notice has asked the assessee to furnish the following details:

8. With respect to the payments made to the specified persons during the year under consideration as referred in section 13(3) of the Income-tax Act, you are requested to provide the following details:-

- a) Nature and mode of payment made to the specified persons.
- b) Details of the services provided by specified person in lieu of the payment made by the trust.
- c) Justification with supporting documentary evidence for the payments made to the specified persons.
- d) Need of the service for fulfillment of the object of trust.
- e) Educational qualification and experience of the specified persons with concrete documentary proof.

• In case a query is not applicable, kindly specify the same in your reply.

40. We find the Assessing Officer vide second notice issued u/s 142(1) of the Act dated 01.12.2021 has again asked the assessee to provide the details of payments made to the specified persons as referred to in section 13(3) of the Act. We find the assessee vide reply dated 08.12.2021, copy of which is placed at pages 20 to 33 of the paper book has given elaborate details on this issue as per the query raised by the Assessing Officer. Further, we find vide notice issued u/s 142(1) of the Act dated 04.01.2022, copy of which is placed at pages 54 to 57 of the paper book, the Assessing Officer has asked the assessee to give the following details:

5. With respect to the payments made to the specified persons during the year under consideration as referred in section 13(3) of the Income-tax Act, you are requested to provide a confirmation letter from the specified persons alongwith the documentary evidences/Bank transactions detail in respect of payment made to them.

• In case a query is not applicable, kindly specify the same in your reply.

41. We find vide show cause notice dated 12.02.2022 issued by the Assessing Officer, copy of which is placed at pages 58 to 62 of the paper book, he has again asked the assessee to file certain details in respect of the payments made to the specified persons as referred in section 13(3) of the Act. Further vide reply dated 17.02.2022, copy of which is placed at pages 63 to 66 of the paper book and the reply dated 24.02.2022, copy of which is placed at pages 67 to 342 of the paper book, the assessee has submitted various details including the confirmation of the related parties of the persons specified in section 13(3) of the Act.

42. We find the assessee vide reply dated 08.12.2021 addressed to the Addl./ Joint/Deputy/ACIT, National e-Asst. Centre, Delhi at para 8 of the submission has given the details of payments made to the specified persons which are as under:

8) Details of Payment made to Specified person u/s.13(3) of the ITA:

A. Payment to Mrs. Trupti B Agarwal

The assessee trust has paid an amount of Rs. 36,63,000/- to Mrs. Trupti Agarwal. It is to be noted that Mrs Trupti Bharat Agarwal holds a post graduate degree in Management i.e. MBA (copy of Qualification certificate enclosed (**Annex-H**)). Her day to day role in Management is crucial due to the changing governance and regulatory concerns and encompasses many duties and responsibilities which includes but not limited to Monitoring / mentoring and Co-ordination of academic, administrative, commercial and financial functioning of "Vishwakarma Schools". Further, it is to be noted that Mrs. Agarwal is also actively engaged in the infrastructure development of the trust which includes various colleges and schools. Infrastructure development includes construction of new campuses, development and maintenance of existing campuses and buildings. The various functions performed by her at a glance are as under :

1. Responsible for strategic planning and expansion of entire Vishwakarma Schools
2. Responsible for developing and approving the School's strategy for student and staff.
3. Ensure Institutional effectiveness through professional Management.
4. To lead discussions with Architects, Engineers & other professionals for infrastructure development by putting up buildings & providing other infrastructure facilities for various institutes and schools of the trust.
5. Provide the direction to various Schools of the trust and ensure that the Schools are progressing towards the objectives laid down by the Trust and in compliances to all concerned authorities like affiliating Boards, Govt of Maharashtra etc and all similar statutory bodies
6. Coordinating and Chairing Board of Management/ Governing Body/ Executive Committee Meetings and School Management Committee Meetings / advisory Board and Keeping the Hon'ble members informed regarding the working of Schools under the group and their progress report etc
7. To help in legal compliance & liasoning with internal / external legal advisory team & internal / external auditors .
8. To offer advice and counsel to the Principal / Section Incharge/ Faculties/ Staff on various academic, administrative, commercial and financial matters for the same.
9. To motivate Faculty & staff members of various schools of the trust by coordinating & addressing their issues.

10. Provide guidance to the schools for finalisation of structure , syllabi, various co- curricular and extra curricular activities.
11. Interacting and counsel with the parents in order to satisfy their queries and seeing that their wards are progressing satisfactorily
12. Mentoring/ Coordinating with Principals/ Examination for introducing reforms in Examination , Evaluating & result declaration of the students and suggesting the changes in the direction of improving performance .
13. Interacting with the staff / faculty members at the human and social level to solve their problems and enhance their quality of life on campus and to develop good moral values and overall personality development

B. Payment made to Bharat R Agarwal

The assessee trust has paid to Mr. Bharat Rajkumar Agarwal who is the Managing Trustee of the assessee trust. The assessee submits that Mr. Bharat Agarwal is a qualified Mechanical Engineer & MBA (Finance) (copy of mark sheet is enclosed (**Annex-H**)). He has also worked for a short span with Tata Motors Ltd. Pimpri to gain experience.. He has also under taken training from Harvard Business School in Management program.

He is handling the various affairs of the assessee trust for more than 15 years. Mr. Agarwal is the main person who is driving the various institutes of the assessee to new heights.

The various duties and responsibilities which includes but not limited to Monitoring / mentoring and Co-ordination of academic, administrative, commercial and financial functioning of “Vishwakarma Educational Group” (VIT, VIIT, VU, VCACS and other Institutions run by the Trust) :

1. Responsible for strategic planning and expansion of entire Vishwakarma Educational Group
2. Responsible for developing and approving the Institute's goals and objectives, and establishing policies related to programs and all types of services like student/ staff / employment/ research .
3. Monitor the progress & direction of various Institutions run by the Trust and ensure that the Institutions are progressing towards the objectives laid down by the Trust and are in compliance with the policies of concerned authorities like AICTE, DTE, UGC, BCI, PCI, COA, Govt of Maharashtra and all similar statutory bodies
4. Mentoring/ Coordinating/ Monitoring for overall quality standard achievement by regular Internal reviews/ audits of all Institutions under Group for NBA, NAAC, ISO 9001 or 27001
5. Coordinating and Chairing Board of Management/ Governing Body/ Executive Committee Meetings and School Management Committee Meetings / Industry advisory Board
6. To offer advice and counsel to the Director/ Principal/ Deans/ HODs/ Section Incharge/ Faculties/ Staff on various academic, administrative, commercial and financial matters
7. To help in legal compliance and liasoning with internal / external Legal advisory team / internal / external Auditors.
8. To motivate Faculty / Staff by co-ordinating & addressing their issues.
9. To initiate talks with more and more National Universities/International Universities/ Institutes/ Companies which leads to signing of MoU between both parties & which ultimately benefits the students/ staff by having various joint programs/ collaboration/ internships/ projects/ placements etc
- 10.Coordinating with Marketing/ Digital marketing Teams for devising marketing strategy for students seeking admissions.
- 11.Provide guidance to Director/ Principal for finalisation of course structure, syllabi, various co- curricular and extra curricular activities, , Staff/ Faculty appraisal systems, welfare, administration & ERP team.

12. Interacting and counselling with the parents in order to satisfy their queries and seeing that their wards are progressing satisfactorily
13. Day to day co-ordination & monitoring of various functions of the Trust , Institutes & Schools.
14. Mentoring/ Coordinating with Principals/ Directors/ Controller of Examination for introducing reforms in Examination , Evaluating & result declaration of the students and suggesting the changes in the direction of improving performance – conduct regular Management / Faculty training programs for the same
15. Interacting with the staff / faculty members at the human and social level to solve their problems and enhance their quality of life on campus and in general
16. Interacting with the staff / faculty / students in order to develop good moral values and overall personality development.

C. Payment to Vishwakarma Global Education Services P Ltd(VGESPL)

- 1) The assessee has made payment to VGESPL for subscription to the online learning platform of the said entity. It is to be noted that the online learning platform of VGESPL provides various benefits in the form of online admission process, online examination, learning, administrative and onsite support. Further, it also provides online learning modules using which institutes can deliver interactive courses to the students and promote interactive learning environment. The said platform also provides inbuilt notification and messaging system which enables the users to communicate effectively with the staff, teachers and administration of the college.
- 2) It is to be noted that VGESPL was charging Rs.1100/- per month per user for providing E subscription for its online learning platform for the period from April to June, 2019. Subsequently, w.e.f. 1st July, 2019, VGESPL has started charging Rs.1150/- per month per user for the online subscription of their platform. Copy of sample invoices are enclosed herewith (**Annex-I**).
- 3) The assessee submits that by using this online platform, the following are the main benefits received by the institutes –
 - a. Providing facility to the students for online examination.

- b. Easy online platform for admission process.
 - c. Online data base of the students of their own performance for their entire course period.
 - d. Effective online interaction between the students and the teachers.
 - e. Online data base of the course material.
- 4) Considering the above benefits, it is submitted that the payment made to VGESPL is reasonable and justified. It is also to be noted that after the changed scenario on account of Covid – 19 pandemic, the normal activity of the institutes has not been affected on account of use of the online learning platform of VGESPL.
- 5) It is also to be clarified that VGESPL has also provided similar online subscription for its online learning platform to K.K. Wagh and Pimpri Chinchwad Education Trust. The rate charged to them is Rs.1250/- per month, for the entire period from April-2019 to March- 2020. Sample copies of the invoice raised on the above two entities are enclosed herewith as (**Annex-J**). Thus, since the rate charged to them is much higher as compared to the rate charged to the assessee trust for the similar online subscription, we submit that the payment made to VGESPL is reasonable and justified.

D. Payment to Investronaut

- 1) The assessee has made payment to Investronaut for providing advertising and promotion facilities. It is to be noted that we have various colleges and schools and deemed University by the name of VU in our trust which are located at Pune and Kolhapur. Now, considering the various courses provided by the various institutes, it is very important to provide timely details of the admission process, dates and venues. For all these purposes, continues advertising is required through newspapers, online platforms and other media. All the relevant details and information is to be updated regularly.
- 2) For this purpose, the assessee has appointed Investronaut to provide advertising and promotion facility. The role of Investronaut is to design, content writing and prepare the advertisement. It is to be noted that in this digital era, the assessee is required to advertise its courses on

various social media plat forms. Investronaut is responsible for designing and content writing the advertisements which are required to be published through social media plat forms. Further, they also publish advertisements of the various schools and colleges in the newspapers. Investronaut is also responsible for putting up various hoardings wherein the details of the colleges, schools and the various courses are given. For providing all these services, the assessee trust has paid an amount of Rs. 1,18,57,000/- to Investronaut. It is submitted that considering the services rendered, the payment made to the said entity is reasonable. Sample copies of the invoice raised on the above two entities are enclosed herewith as (**Annex-K**).

E. Payment to Roott Square Stationery & Uniforms LLP

- 1) The assessee has further made payment to Root Square LLP for providing stationery material. As clarified earlier, the assessee has around various schools and colleges. Now, while running such huge institute, there is lot of requirements of registers and stationery material. It is also to be noted that if proper control is not maintained, there is a possibility of some employee embezzlement in this activity. Further, considering the large requirement it is necessary to keep certain quantity in the stock. Accordingly, the assessee decided to appoint Root Square LLP for providing stationery material all year round to the various schools and colleges of the assessee trust. Now, by appointing Root Square, the following benefits are derived –
 - a. Root Square maintains healthy amount of stock which provides timely delivery of the required material to the assessee trust.
 - b. Delivery is provided irrespective of the quantity of order which is not the case with the other vendors. Thus, even for small requirements, timely delivery is provided by Root Square.
 - c. Root Square provides replacement of the material in case of any defect which is also not the case with most of the other vendors.
 - d. They provide various options to the assessee and provide quality material.
 - e. They provide very good after sale support service.
 - f. Dedicated team is available to guide us to select the best products.

- g. Very low level of inventory is required to be maintained at institute level due to this arrangement, resulting in lower investment in stock.
 - h. In the earlier arrangement store keepers were required to be appointed at institute level for maintain huge inventory which after this arrangement is not required and these staff members(store keepers) are now looking after other administrative and office job of the institutes.
- 2) All these factors are very important and the assessee has received tremendous benefit by appointing Root Square for supplying stationery material. It is also to noted that Root Square has also supplied stationery material to third parties and the rate charged to the assessee and third parties is the same. Copies of sample invoices are enclosed herewith (**Annex-L**). In view of the above facts, it is submitted that the payment made to Root Square is reasonable.

F. Payment to Agrabh HR Services LLP

- 1) The assessee has paid an amount of Rs. 78,02,477/- to M/s. Agrabh HR Services for providing admin and housekeeping staff. It is to be noted that the considering the substantial number of schools and colleges there is large requirement of support staff. The assessee has appointed M/s. Agrabh HR Services to provide support staff as per the requirement of various schools and colleges. The salary of the staff provided is borne by M/s. Agrabh HR Services. Since there are number of schools and colleges, there is substantial requirement of the admin and support staff. Further, there is lot of attrition amongst such support staff. Accordingly, it is very difficult for the trust to manage admin and support staff. Thus, we have appointed Agrabh HR Services to provide us a staff. In case, any person resigns, appointment of a new person is taken care by Agrabh. Further, it is for Agrabh to fix their roles and responsibilities and also to decide on their remuneration. Thus, by appointing Agrabh, the assessee is able to focus on the teaching staff and reduces the time spent of the assessee in such non value addition activity. It is also to be noted that by appointing Agrabh, the assessee does not have bother about gratuity, and other future statutory liabilities of such staff. It is also to be noted that these staff members not being in the direct employment of the institutes are not required to be employed

permanently and their services can be terminated anytime as they are not employed by the institutes but are in the employment of Agrabh. Further such staff can be made available as per the requirements of the institute without carrying the responsibility of making salary payment on monthly basis as the services can be terminated/discontinued by the institutes. Copies of sample invoices are enclosed herewith (**Annex-M**).

G. Payment to Bansilal Cloth Market

The institutes of the trust have made payment of Rs. 2,96,049/- for purchase of cloth material from Bansilal Cloth Market from time to time in the year & the material mainly consists of upholstery material, staff uniform and shawls to be given to various guests as a mark of honor attending the various programs of the institute. The material purchased from this concern is at very reasonable price as would be evident from the copies of the sample bills submitted herewith (**Annex-N**) and thus there is no benefit in regard to the transaction to any of the persons specified in Sec. 13 (3). Further the sale of such goods to the institute is a very negligible portion of the total turnover of these business units & further it will be noted that they are offering discount of nearly 15% on the material provided by them.

43. Similarly, we find the assessee vide letter dated 24.02.2022 addressed to the Assessing Officer, copy of which is placed at pages 67 to 342 of the paper book has given the confirmations with details in respect of following parties:

- a) *Agrabh HR Services LLP*
- b) *Bansilal Cloth Market*
- c) *Bharat R Agarwal*
- d) *Investronaut*
- e) *Roott Square Stationery & Uniforms LLP*
- f) *Vishwakarma Global Education Services P Ltd*
- g) *Trupti Agarwal*

44. We find the assessee vide letter dated 09.03.2022 addressed to the Assessing Officer, copy of which is placed at pages 346 to 357 of the paper book, has filed the details of payments made to the specified persons with details of activities undertaken by them. Similarly, we find the assessee vide letter dated 17.03.2022 has again given the details along with clarification on account of difference in the amount mentioned in the confirmation letter vis-à-vis Form 10B, the details of TDS on payments to the specified persons referred to section 13(3) of the Act, etc. Thus, a perusal of various details furnished by the assessee clearly shows that the Assessing Officer in the instant case has passed the assessment order after a detailed scrutiny with multiple pointed queries on the very same payments to the specified persons. Further, the assessee has also filed detailed replies on account of the payment made to the specified persons. Therefore, in our opinion, it is neither a case of lack of enquiry or no enquiry.

45. We find the Ld. CIT(E) while passing the order has overlooked the various details filed by the assessee giving the details of payments made to specified persons. Even before the Ld. CIT(E) also we find the assessee has explained the reasons for availing the services from the specified persons. In our opinion, mere payments to the specified persons does not attract the disallowance u/s 13 especially when the Ld. CIT(E) in the instant case has not established that the payment made to the specified persons is excessive or unreasonable having regard to the fair market value. He has not identified any excessive portion nor quantified unreasonable benefit nor compared the payments to market rates. In absence of

such findings, invocation of provisions of section 13 and consequently 263 proceedings, in our opinion, is legally untenable.

46. We further find that the gross receipts of the assessee's trust was Rs.190.21 crore and the net profit i.e. total income was Rs.1.22 crore i.e. less than 1% of the total revenue. The Ld. Counsel for the assessee without prejudice to the other things has stated that even if a portion of the payment made to specified entities is added, the net profit would have been increased by the same amount and still no taxable income would have arisen in the hands of the assessee considering the heavy percentage of application of revenue. On the contrary, the specified entities have already paid taxes on the income earned by such entities and therefore, it is not a case of any prejudice to the Revenue. The Ld. DR could not controvert the above submission of the Ld. Counsel for the assessee. Further, the Ld. CIT(E) in the instant case has not conducted his own enquiry and has not given a clear-cut finding that the order is erroneous. He has merely remanded the matter back to the file of the Assessing Officer for re-examination. Such an approach, in our opinion, is contrary to law since the provisions of section 263 of the Act does not permit roving or fishing enquiries or remand for fresh verification.

47. We find the Hon'ble Bombay High Court in the case of CIT vs B. Nirav Modi (supra) has held that where the Assessing Officer after making proper and detailed enquiries, took a view that amount received by the assessee as gift from his relatives was a genuine transaction, impugned revisional order passed by Commissioner directing the Assessing Officer to enquire into capacity of donors

and to decide about genuineness of gift afresh, was not sustainable. The relevant observations of Hon'ble High Court 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.”

48. We find the Hon'ble Bombay High Court in the case of CIT vs. Shreepati Holdings & Amp Finance Pvt. Ltd. (supra) has held that inadequate enquiry by itself would not justify invoking the jurisdiction u/s 263 of the Act unless the order is erroneous. The relevant observations of Hon'ble High Court read as under:

“7. Moreover the CIT in exercise of powers under Section 263 of the Act directed the Assessing Officer to redetermine the rebate allowable under Section 88E of the Act after holding that the same needs more careful examination on the part of the Assessing Officer. This itself indication of the fact that this is not the case of lack of enquiry, but at the highest it can be a case of inadequate enquiry. It is settled position in law that inadequate enquiry by itself would not justify invoking the jurisdiction under Section 263 of the Act unless the order is erroneous. In the present facts, the CIT has not exercised jurisdiction under Section 263 of the Act on the ground that the order is erroneous. We find that the impugned order has correctly applied the principles laid down by this Court in Gabriel (I) Ltd. (supra). Accordingly, the question as formulated does not give rise to any substantial question of law. Thus not entertained.”

49. We find Hon'ble Delhi High Court in the case of CIT vs. Anil Kumar Sharma (supra) has held that where it was discernible from record that the Assessing Officer had applied his mind to issue in question, Commissioner could

not invoke section 263 merely because he had different opinion. The relevant observations of Hon'ble High Court read as under:

"5. The Tribunal after examining the facts of the case observed that although it is not discernible from the assessment order whether the Assessing Officer had applied his mind or not, but it was the prerogative of the Assessing Officer to draft his order, and if he failed to record certain findings, the assessee could not be penalized therefor. The Tribunal further observed that what has to be ascertained is whether the Assessing Officer had investigated the issue and applied his mind to the whole record. In this behalf it noted that the Assessing Officer had asked the assessee to submit the Purchase Deed in respect of the purchase of land at village Tughlakabad and that the assessee in response thereto had supplied requisite details and submitted a copy of the High Court's decision in relation to the award of compensation etc. The Tribunal, therefore, came to the conclusion that the complete details were filed before the Assessing Officer and that he applied his mind to the relevant material and facts, although such application of mind is not discernable from the assessment order. The Tribunal held that, the Commissioner in proceedings under Section 263 also had all these details and material available before it, but had not been able to point out defects conclusively in the said material, for arriving at a conclusion that particular income had escaped assessment on account of non-application of mind by the Assessing Officer. The Tribunal, therefore, allowed the appeal of the assessee and quashed the order of the Commissioner passed under Section 263 of the said Act.

6. In *Commissioner of Income Tax vs. M/s Sunbeam Auto Ltd: ITA No.1399/2006* decided on 11th September, 2009, it was observed that:

"As noted above, the submission of learned counsel for the Revenue was that while passing the assessment order, the AO 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 AO had not applied his mind on the issue. There are judgments galore laying down the principle that the AO in the assessing 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 different opinion in the matter".

The High Court in the said decision further went on to observe that:

"There must be some prima facie material on record to show that 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."

*7. 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 discernable 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 as inadequate, following the decision in *M/s Sunbeam Auto Ltd (supra)*, "that would not by itself give occasion to the Commissioner to pass orders under Section 263 of the said Act, merely because he has a different opinion in the matter." No substantial question of law arises for our consideration. Consequently, the appeal is dismissed."*

50. We find Hon'ble Karnataka High Court in the case of CIT and Another vs. Fr. Mullers Charitable Institutions (supra) has held that the Commissioner cannot invoke his revisionary power to correct each and every type of mistake committed by the Assessing Officer. The relevant observations of Hon'ble High Court read as under:

"9. The first substantial question of law framed in this appeal with regard to power of Commissioner under Section 263 of the Act is no more res- Integra. The Division Bench of this Court in ITA No.30/2006 considered the power of the Commissioner to exercise his suo-motu power under Section 263, taking into consideration various judgments of the Hon'ble Supreme Court reported in (2000) 243 ITR 83 (MALABAR INDUSTRIAL CO. LIMITED v/s COMMISSIONER OF INCOME TAX) and another judgment reported in (1957) 31 ITR 872 (DAWJEE DADABHOY AND CO. v/s S.P.JAIN AND ANOTHER). The Division Bench of this Court in ITA No.30/2006 in Paragraph 16 has held as under:

16. As is clear from the wording in Section 263, the Commissioner gets the jurisdiction to revise any proceedings under this Act, if he considers that any order passed therein by the Assessing Officer is erroneous insofar as it is prejudicial to the interest of the Revenue.

Therefore, it is clear that he cannot exercise the power of revision solely on the ground that the order passed is erroneous. He gets jurisdiction only if such erroneous order is prejudicial to the interest of the Revenue. Prejudicial to the Revenue means, lawful revenue due to the State has not been realized or cannot be realized. In other words, by the order of the Assessing Authority if the lawful revenue to the State has not been realized or cannot be realized, as the said order

is prejudicial to the interest of the Revenue and also erroneous, he gets jurisdiction to interfere with the said order under Section 263. Therefore, for attracting Section 263, the condition precedent is (a) the order of Assessing Officer sought to be revised is erroneous and (b) it is prejudicial to the interest of the Revenue. If one of them is absent, i.e., if the order of the Income tax officer is erroneous but is not prejudicial to the Revenue, recourse cannot be had to Section 263(1) of the Act. The satisfaction of both the conditions stipulated in the Section is sine quo non for the Commissioner to exercise his jurisdiction under Section 263.

10. We respectfully agree with the order passed by the Division Bench of this Court. The law declared by the Hon'ble Supreme Court made it very clear that if one of the requirements for satisfaction of taking action under Section 263 of the Act is absent, then recourse cannot be made to Section 263 of the Act. The Commissioner cannot invoke his revisional power to correct each and every type of mistakes committed by the Assessing Officer. Accordingly, the first substantial question of law is held against the revenue and in favour of the assessee.”

51. We find when the Revenue challenged the decision of the Hon'ble Karnataka High Court, the Hon'ble Supreme Court dismissed the SLP filed by the Revenue as reported in (2014) 227 Taxman 369 (SC).

52. We find the Hon'ble Delhi High Court in the case of CIT vs. Vikas Polymers (supra) has held that where a query was raised during the course of scrutiny by the Assessing Officer which was answered to his satisfaction, but neither query nor answer was reflected in assessment order, that would not, by itself, lead to conclusion that the order of the Assessing Officer called for interference and revision.

53. Similarly, we find the Hon'ble Delhi High Court in the case of CIT vs. Leisure Wear Exports Ltd. (supra) has held that where assessment order has been passed by Assessing Officer after taking into account assessee's submissions and

documents furnished by him and no material whatsoever has been brought on record by Commissioner which showed that there was any discrepancy or falsity in evidences furnished by assessee, order of Assessing Officer cannot be set aside for making deep inquiry only on presumption and assumption that something new may come out. The relevant observations of Hon'ble Delhi High Court read as under:

“7. It is also well-settled principle that provisions of Section 263 of the Act would not be invoked merely to correct a mistake or error committed by the AO unless it has caused prejudice to the interest of the Revenue. If an order is based on incorrect assumption of facts or on incorrect application of law or without applying the principle of natural justice and without application of mind, it would be treated as erroneous. Likewise, the expression "prejudicial to the interest of the Revenue" is of wide import and is not confined to loss of tax. If due to an erroneous order of the AO the Revenue is losing tax lawfully payable by a person, it would be certainly prejudicial to the interest of the Revenue.

At the same time, as held in Malabar Industrial Co. Ltd. vs. Commissioner of Income-Tax (supra) where two views are possible and the AO has taken one view with which the Commissioner does not agree, that cannot be treated as erroneous order prejudicial to the interest of the Revenue. It has to be shown that the order of the AO was not in accordance with law, to term it as erroneous. It is also the principle of law, now well accepted, that an order passed by the AO cannot be set aside for making roving inquiry without pointing out any error in his order. The Commissioner has to specifically demonstrate that the order of the AO is erroneous.

The power of revision is not meant to be exercised for the purpose of directing the AO to hold another investigation without describing as to how the order of the AO is erroneous. From this it also follows that where the assessment order has been passed by the AO after taking into account the assessee's submissions and documents furnished by him and no material whatsoever has been brought on record by the Commissioner which showed that there was any discrepancy or falsity in evidences furnished by the assessee, the order of the AO cannot be set aside for making deep inquiry only on the presumption and assumption that something new may come out.

For making a valid order under Section 263 it is essential that the Commissioner has to record an express finding to the effect that order passed by the AO is erroneous which has caused loss to the Revenue. Furthermore, where acting in accordance with law the AO frames certain assessment order, same cannot be branded as erroneous simply because according to the Commissioner, the order should be written more elaborately. All these principles are highlighted in the judgments noted hereinafter.

8. In Gee Vee Enterprises v. Addl. Commissioner of Income-Tax, Delhi and others, 99 ITR 375 it was explained that the Commissioner was to only take prima facie

view as to how the order of the AO was erroneous and leave the matter at that with direction to the AO to conduct *de novo* inquiry and pass fresh orders. This is how the principle was explained:-

"These two decisions show that it is not necessary for the Commissioner to make further inquiries before cancelling the assessment order of the Income-tax Officer. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the case the Income-tax Officer should have made further inquiries before accepting the statements made by the assessee in his return.

The reason is obvious. The position and function of the Income-tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence may be accepted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word "erroneous" in section 263 emerges out of this context. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct."

9. This principle was reiterated in *Commissioner of Income-Tax v. Seshasayee Paper and Boards Ltd.*, 242 ITR 490 in the following manner:-

*"It is no doubt true that for making a valid order under section 263 of the Act, it is essential for the Commissioner to record an express finding that the order sought to be revised was erroneous as well as prejudicial to the interests of the Revenue. In the instant case, the Commissioner had recorded such a finding and with reference to some of the items he positively found that the orders were erroneous and prejudicial to the interests of the Revenue. But, in our opinion, there is nothing in section 263 of the Act to show that the Commissioner of Income-tax should in all cases record his final conclusion on the points in controversy before him. The above position of law is well-settled by the decision of Gujarat High Court in the case of *Addl. C IT v. Mukur Corporation* [1978] 111 ITR 312, wherein the Gujarat High Court held as under (page 325):*

"Now, even on this question, we find that there is nothing in section 263(1) to show that before passing the final order under that section, the Commissioner must necessarily and in all cases record final conclusions above the points in controversy before him. As already noted by us above, we would have expected him to record final

conclusions, which he thought proper if he was to settle the assessment finally but since he has not settled the assessment finally, and has preferred to direct the Income-tax Officer to make an order for fresh assessment, it was proper that he did not express any final conclusions and recorded only prima facie conclusions at which he had arrived with reference to the facts of the case. Here it should be noted that, as the assessment was to be freshly made by the Income-tax officer, the only proper course for the Commissioner was not to express any final opinion as regards the controversial points."

10. At the same time it is also recognised that there is no universal power with the Commissioner to provoke an inquiry as held in *Commissioner of Wealth-tax v. Prithvi Raj and Co.*, 199 ITR 424 as under:-

"It is true that ordinarily the Commissioner has been given jurisdiction to examine, under section 25(2), whether the order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue, but in the instant case, however, the Commissioner has nowhere formed an opinion that the assessment order was prejudicial to the interests of the Revenue. Apart from that jurisdictional infirmity, the Commissioner overlooked the fact that the rate of Rs.1,800 per square yard was in respect of commercial property. The Commissioner himself has referred to two different rates fixed by the D.D.A. in respect of industrial land and commercial land. This clearly shows that the rate of the commercial land is not necessarily the same as the rate of an industrial plot of land. Furthermore, the rate for an industrial plot is lower than that of the land for commercial use. What is more striking is that the two Governmental authorities, viz., the Ministry of Works and Housing and the D.D.A., have given rates for land which are at great variance with each other. Whereas the rate for commercial land has been fixed at Rs.1,800 per square yard by the Ministry of Works and Housing, the D.D.A., on the other hand, has fixed the value for the said land between Rs.287 and Rs.315 per square metre. This itself shows divergence in the opinion of the authorities with regard to the valuation of land. In the absence of specific instances of purchase and sale, it is obvious that certain amount of guess work is involved in determining the price of the land."

11. To the same effect is the judgment in the case of *J.P. Srivastava and Sons (Kanpur) Ltd. v. Commissioner of Income-Tax, UP*, 111 ITR 326, which can be found in the following observations of the Court:-

"Section 33B contemplates a notice to the assessee. In response to the notice the assessee may show to the Commissioner that the order sought to be revised is not prejudicial to the interests of the revenue. In that event, the Commissioner would have no jurisdiction to take any further action. He would be competent to take action only if he rejects the plea of the assessee. It thus becomes necessary for the Commissioner to examine the merits of the objection raised by the assessee. He cannot delegate that power to the Income-tax Officer by setting aside the assessment order and directing him

to make a fresh assessment after taking into consideration the objection of the assessee.

Now, in the instant case, the assessee claimed that a sum of rupees one lakh was not taxable. The Commissioner should have examined that plea on merits. He could take the action that he did only if he rejected the plea of the assessee. It must not be forgotten that under section 33B the Commissioner can himself modify or enhance the assessment and that he can only do if he considers and decides on merits the objection raised by the assessee. We are, therefore, of opinion that without going into the merits of the claim of the assessee it was not possible for the Commissioner to say that the order of the Income-tax Officer had caused any prejudice to the interests of the revenue and, as such, he was not competent to set aside the assessment order and remand the matter to the Income-tax Officer."

12. Keeping in mind the aforesaid principles, we proceed to discuss the issue at hand. It was argued by the learned counsel for the assessee that in the entire order passed by the Commissioner under Section 263 of the Act it is not mentioned as to how the order was erroneous and prejudicial to the interest of the Revenue. After scrutinising the said order minutely we are inclined to agree with the aforesaid argument of the learned counsel. In the entire order emphasis laid by the Commissioner is that in respect of four issues mentioned by him, no queries were raised by the AO. On this premise, though it is observed that there was no application of mind on the part of the AO and the AO has not recorded any reasons to justify the omission to consider the said facts, the Commissioner does not take the said order to its logical conclusion which was the prime duty of the Commissioner in order to justify exercise of power under Section 263 of the Act. There is not even a whisper that the order is erroneous. Even if we infer that non-consideration of the issues pointed out by the Commissioner would amount to an erroneous order, it is not stated as to how this order is prejudicial to the interest of the Revenue. The penultimate paragraphs of the orders, at best, contain the observations that the AO was satisfied with making flimsy additions which were deleted by the CIT(A). This is stated in the following terms:-

"7. In the instant case, the Assessing Officer was satisfied with making a flimsy addition disallowing the claim of Rs.17,38,106/- debited under the head, "selling and distributing expenses", and after further holding that the deduction under section 80HHC of Rs.32,25,486/- was unwarranted. These additions were not sustained at the appellate stage by the CIT (Appeals), who accepted the plea of the assessee "The Director being out of the country and the matter having not been properly attended to at the earlier stage as per the requisition is highly regretted.

8. The point which bears consideration is that the Assessing Officer made no third party enquiries, as a result of which he has passed a very weak order, which ignored the major issues involved, and left the assessee to benefit from its own non-compliance."

13. Thus, according to the Commissioner proper exercise was not done while making the assessment; deeper inquiries were not made; major issues involved

were ignored and a weak order was passed. There is not a whisper as to how this order was prejudicial to the interest of the Revenue.

14. That apart, we find that the approach of the Tribunal in discarding the observation of the Commissioner about not making proper inquiries in respect of the said four issues are also justified and without blemish.

15. First comment of the Commissioner was in respect of finished goods in the closing stock. The Commissioner found that these were to the tune of `5.28 crores. According to the Commissioner, when the total turnover of the assessee was `6.13 crores, the AO should have satisfied himself by calling for more details as to how there was closing stock of such a magnitude of ` 5.28 crores. Thus, the Commissioner has not doubted the statement of finished goods in the closing stock furnished by the assessee. He has only remarked that there should have been a deeper probe by calling for more details. This is neither here nor there, when we keep in view the ingredients of Section 263 of the Act.

16. In so far as the insurance claim is concerned, the Commissioner observed that the assessee had shown receivable on this account to the tune of `1.21 crores but no details had been furnished. The AO had also not made any inquiries. In the detailed discussion on this aspect the Tribunal has observed that insurance claim was lodged for the goods lost in transit. The assessee at that time had merely filed a claim with the insurance company. This claim had not been approved as the insurance company had neither accepted the same nor given any assurance for making payment. Therefore, no income had "accrued" which could be taxed. The Tribunal rightly held that ordinarily the income is said to have accrued to a person when he acquires the right to income and this should be enforceable right, though actual quantification or receipt may follow in due course. The mere claim to income without any enforceable right cannot be regarded as an accrued income for the purpose of Income-Tax Act. The Tribunal referred to the following judgments in support:-

i) In *CIT Vs. Finance (P) Ltd.* 124 ITR 619(P&H High Court), held as under:

"Income-tax is levied on income whether the accounts are maintained on mercantile system or on cash basis. If income does not result at all, there cannot be levy of tax. Even if an entry of hypothetical income is made in the books of accounts, where the income does not result at all as there is neither accrual nor receipt of income, no tax can be levied. Even in mercantile system of accountancy an assessee could forge the whole or part of a debt, which was irrecoverable, and the same could not be added to the income of the assessee".

Hon'ble Supreme Court in the case of Godhra Electricity Co. Ltd. vs. CIT (SC) 225 ITR 706, held that "income-tax is a levy on income. No doubt, the Income-Tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If the income does not result at all, there cannot be a tax, even though in book keeping, an entry is made about a hypothetical income, which does not materialize". At page 748 and 749, the Supreme Court further observed as under:

"Even though the assessee company was following the mercantile system of accounting and had made entries in the books regarding enhanced charges for the supply made to the consumers, no real income had accrued to the assessee company in respect of those enhanced charges. The Tribunal had rightly held that the claim at the increased rates as made by the assessee company on the basis of which necessary entries were made, represented only hypothetical Income, and the amounts in question brought to tax by the Income-Tax Officer did not represent income which had really accrued to the assessee company during the relevant previous year."

17. Coming to the claim under Section 80HHC of the Act, we are again inclined to agree with the Tribunal that it was totally uncalled for on the part of the Commissioner to say that the AO did not make requisite inquiries because of the simple reason that the AO had, in fact, declined and rejected this claim of the assessee. If the AO himself disallowed the deduction claimed by the assessee on this account under Section 80 HHC of the Act, we fail to understand what further inquiries were needed by the AO.

18. Lastly, the observations of the Commissioner are in respect of the income of Rs.1.61 crores shown by the assessee on account of variation in exchange rate. The Commissioner has only observed that in the immediate previous year no such gain was shown and therefore, it needed examination by the AO. However, the moot question would be examination for what purpose? It is an income shown by the assessee. Whether the Commissioner was of the opinion that there was no such income or he was nurturing an impression that income on this account as shown was lesser? There is no such indication in the order. The Commissioner also does not at all state as to what was the reason for doubting the income offered by the assessee. Even if it is found that part of such income was claimed as deduction under Section 80 HHC, no benefit enured to the assessee on this account as claim under Section 80 HHC was fully disallowed by the AO. We state at the cost of repetition that it is not at all observed as to how the order of the AO on this account was erroneous and further as to how it was prejudicial to the interest of the Revenue.

19. We, thus, are of the opinion that order of the Commissioner was rightly set aside by the Tribunal. As a result, we answer the question in the negative, that is, in favour of the assessee and against the Revenue and dismiss the appeal."

54. Since the Assessing Officer in the instant case admittedly has asked the details of payments made to the specified persons to which the assessee has given complete details and the Assessing Officer, after considering the replies given by the assessee from time to time, has passed the order, therefore, merely because the Ld. CIT(E) does not agree with

the view of the Assessing Officer, the same in our opinion cannot call for revision u/s 263 of the Act.

55. Further we also find merit in the arguments of the Ld. Counsel for the assessee that if the part of the payment made to the specified persons would have been added to the total profit / surplus generated by the assessee trust, still no taxable income would have arisen in the hands of the assessee considering the heavy percentage of application of revenue. Further, the specified persons have paid taxes on their income and the trust would not have paid any tax and therefore, there is no loss of any revenue meaning thereby, there is no prejudice to the interest of Revenue. In view of the above discussion and relying on the decisions cited (supra), we are of the considered opinion that the order is neither erroneous nor prejudicial to the interest of the Revenue and therefore, invocation of revisionary powers u/s 263 by the Ld. CIT(E) in the instant case, in our opinion, is not in accordance with law. We, therefore, set aside the order of the Ld. CIT(E) and allow the grounds raised by the assessee.

56. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 28th January, 2026.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER
पुणे Pune; दिनांक Dated : 28th January, 2026
GCVSR

Sd/-
(R. K. PANDA)
VICE PRESIDENT

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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2	Draft placed before author	21.01.2026		Sr. PS/PS
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4	Draft discussed/approved by Second Member			AM/AM
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