

**IN THE INCOME-TAX APPELLATE TRIBUNAL “A” BENCH,
MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.3474/MUM/2025
(A.Y. 2019-20)**

Ambuja Cements Limited Adani Corporate House, Shantigram Near Vaishnodevi Circle, SG Highway, Khodiyar Gandhi Nagar, Gujarat - 382421, Gujarat	v/s. बनाम	Principal Commissioner of Income Tax, Mumbai - 3, Room No. 612, 6 th Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai - 400020, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACG0569P		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Sourabh Soparkar, AR (virtually appear)
Respondent by :	Shri Rajesh Kumar Yadav, (CIT-DR)

Date of Hearing	08.12.2025
Date of Pronouncement	05.02.2026

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal is filed by the assessee against the Revision order passed by the Principal Commissioner of Income-tax, PCIT, Mumbai-3 [hereinafter referred to as “PCIT”] u/s 263 of the Act, pertaining to the assessment order passed u/s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 29.09.2022 for the Assessment Year [A.Y.] 2019-20.



2. The grounds of appeal are as under:

1. *In law and in the facts and the circumstances of the case of the appellant, the order u/s 263 of the act passed by Ld. PCIT is bad in law and deserves to be quashed.*
2. *In law and in the facts and the circumstances of the case of the appellant, the Ld PCIT has erred in holding that assessment order passed u/s 143(3) r.w.s. 144C on 29/09/2022 is erroneous and prejudicial to interest of revenue and set aside such order u/s 263 of the Act.*
3. *In law and in the facts and the circumstances of the case of the appellant, the Ld. PCIT has erred in observing that AO failed to consider the necessity of revisiting the method of disallowance under Rule 8D read with Section 14A.*
 - 3.1 *In law and in the facts and the circumstances of the case of the appellant, the Ld. PCIT has failed to appreciate that the appellant has submitted all relevant details during assessment proceeding which are on record of Ld. Assessing Officer and he duly applied his mind and not made further addition u/s 14A. Thus, the assessment order was not erroneous and prejudicial to interest of revenue.*
4. *In law and in the facts and the circumstances of the case of the appellant, the Ld. PCIT has erred in concluding that appellant has received accommodation entry from Shri Dilip C. Patel in relation of Robin Goenka (Sankalp Group).*
 - 4.1 *In law and in the facts and the circumstances of the case of the appellant, the Ld. PCIT has erred in stating that the assessment order is erroneous merely on the basis of information received from insight portal.*
 - 4.2 *In law and in the facts and the circumstances of the case of the appellant, the Ld. PCIT has erred in stating that the assessment order is erroneous without making any independent inquiry to satisfy himself that assessment order is erroneous and prejudicial to interest of revenue.*
 - 4.3 *In law and in the facts and the circumstances of the case of the appellant, the Ld. PCIT has erred in stating that the assessment order is erroneous without providing material to appellant based on which he alleged that appellant has received accommodation entry.*

3. Facts of the case are that the assessment was completed under section 143(3) r.w.s. 144B of the Act determining total income at Rs. 14,82,47,32,193/- .According to the revision order, on examination of assessment records, it was observed by the ld.Pr.CIT that the AO failed



to verify certain material issues while completing the assessment. The assessee earned exempt income of Rs.274,21,78,924/- during the year but made a *suo motu* disallowance of only Rs.1,82,21,8671/- under section 14A of the Act. It was noticed that the assessee had Strategic Investments of Rs.11813.76 cr., on which no proportionate disallowance was computed as per Rule 8D. The Pr.CIT opined that correct disallowance should have been Rs.118.13 cr., resulting in a short disallowance of Rs.116.30 cr., thus making the assessment order erroneous and prejudicial to the interests of the Revenue.

3.1 It was further observed by the Pr.CIT that information from the INSIGHT portal of the Department showed that the assessee had received accommodation entries from Shri Dilip Chotalal Patel, linked to Shri Robin Goenka of Sankalp Group. A search in the said group on 30.10.2018 revealed incriminating evidence and a list of beneficiaries, including the assessee. However, the AO made no enquiry on this issue.

3.2 In view of the above stated lapses on part of the AO, the assessment order was found to be erroneous and prejudicial to the interests of the Revenue. Accordingly, a show cause notice under section 263 of the Act was issued to the assessee. However, none attended the hearing on the scheduled date nor filed any further submissions in



response to the notice. Therefore, the proceeding was finalized on the basis of the written submission filed by the assessee on 24.02.2025.

4. Before us, the ld.AR contested both the above findings claiming that the assessment order did not suffer from any error, making it prejudicial in terms section 263 of the Act. He made oral as also written submission on the issues involved alongwith a Factual Paper Book containing 112 sheets and a Legal PB of 48 pages. It is argued that in respect of applicability of the provisions of section 14A of the Act, the assessee had furnished all relevant details and explanations during the course of assessment proceedings, which were duly examined by the Assessing Officer, who applied his mind and correctly accepted the disallowance offered. Hence, the assessment order could not be regarded as erroneous or prejudicial to the interests of the Revenue within the meaning of Section 263 of the Act. In this regard, the AO issued various notices under section 142(1), including a detailed notice dated 21.09.2022 wherein he called for details with reference to dividend income amounting to Rs. 2,74,21,78,924/- and expenses of Rs. 1,82,21,8677/-, debited to profit and loss account which related to this exempt income and disallowed u/s 14A of the Act. In response, the assessee filed a comprehensive reply on 26.09.2022 placing on record an Expert's report explaining how the amount of *suo motu* disallowance u/s



14A of the Act had been arrived at. After considering the submissions and the expert report, the AO accepted the assessee's computation and made no further disallowance beyond the assessee's own disallowance of Rs. 1,82,21,867/- made in computation of total income. The assessment order was, therefore, passed after enquiry and verification of this precise issue. The Id.PCIT passed order u/s 263 stating that the AO failed to consider the necessity of revisiting the method of computing disallowance under Rule 8D without identifying any factual error in the submissions or expert report.

4.1 It is further contended that the AO had examined the details and evidences and had then taken a possible view, thus assessment order cannot be regarded as erroneous and prejudicial to the interest of the revenue. Reliance has been placed on Carties Leafin (P.) Ltd. [2023] 146 taxmann.com 281, Future Corporate Resources Ltd [132 taxmann.com 173], Narayan Tatu Rane[70 taxmann.com 227] etc. It was pleaded that the assessee had no control over the manner in which the Assessing Officer drafts or structures his order, and therefore the AO's order cannot be held erroneous merely because it is not elaborated. Reliance was placed on the decision of Hon'ble Supreme Court in the case of V-Con Integrated Solutions (P.) Ltd [173 taxmann.com 774] and NYA



International [173 taxmann.com 103], ACC Mineral resources limited vide ITA No. 2687/ Mum/2024.

5. In respect of the other issue involving alleged accommodation entries, the Id.AR submitted that the assessment order did not record any such issue concerning the accommodation entries from Sankalp group nor was any enquiry initiated by the AO in assessment proceeding in this regard. Subsequently, in the notice issued u/s 263, the Id. PCIT, for the first time, alleged that as per an information received from “Insight Portal” certain entities of the Sankalp Group were involved in providing accommodation entries and that the assessee had received such entries. The notice did not enclose any supporting evidence, such as bank trail, ledger trail, statements, Investigation Wing report, search material, or any document linking the assessee to the alleged entry providers. In response, the assessee asked for underlying evidence, to respond to the allegation of accommodation entries. Despite this, no material whatsoever was shared with it. Thereafter, Id.PCIT passed the order u/s 263 only on a system-generated Insight Portal flag, without any corroborative evidence and directed the AO to conduct a fresh enquiry, without recording a finding of error in original assessment. It is argued that in the absence of tangible material demonstrating error, assumption of jurisdiction u/s 263 is devoid of foundation and



therefore, bad in law. Reliance is placed on the decision of Hon'ble Chhatisgarh High Court in the case of Sun and Sun Inframetric Pvt. Ltd vide TAXC No. 5 & 7 of 2022 dated 03.08.2022. It is further contended that the impugned order merely sets aside the matter to the AO for conducting further verification, without demonstrating any specific error or prejudice caused by the original assessment order. Remand for re-examination on suspicion is outside the scope of Section 263, which cannot be used to initiate a fishing or roving investigation. Reliance is placed on decision of Hon'ble Supreme Court in the case of V-Con Integrated Solutions (P.) Ltd [173 taxmann.com 774].

6. Per contra, the ld. CIT(DR) has argued at length justifying the revision order. A written submission has also been made stating that the order passed by the ld. PCIT is valid in law, based on sound reasoning, and is fully justified in view of the facts and circumstances of the case as well as settled judicial principles governing the exercise of provisional jurisdiction under section 263 of the Act. It is contended that the ld. PCIT observed that the assessee had earned exempt income of Rs 274.21 cr. during the year but had made a disallowance of only Rs.1.82 cr. under section 14A of the Act. Further, the assessee had made strategic investments amounting to Rs 11,813.76 cr., on which proportionate expenditure was clearly attributable under section 14A read with Rule



8D. The AO failed to properly apply the mandatory provisions of Section 14A and Rule 8D, which require the AO to record satisfaction regarding the correctness of the assessee's claim before accepting any disallowance. The assessment record revealed no such satisfaction or independent computation by the AO. It is argued that mere submission of an expert's report by the assessee does not absolve the AO from his statutory duty to independently determine the correct quantum of disallowance under Section 14A read with Rule 8D. The AO is required to form his own satisfaction, having regard to the accounts, and cannot mechanically rely on the assessee's working or third-party opinion. In the present case, the AO failed to evaluate or apply the prescribed method under Rule 8D, thereby leading to a substantial underestimation of the disallowable expenditure. This clear omission to apply the correct legal provisions and make due verification renders the assessment order erroneous and prejudicial to the interests of the Revenue within the meaning of Section 263 of the Act. It is further submitted the Explanation 2(a) to Section 263 explicitly provides that an order shall be deemed erroneous and prejudicial where it is passed without making inquiries or verifications which should have been made. The AO's acceptance of a Rs. 1.82 cr. disallowance on exempt income exceeding Rs.274 cr., against investments of Rs. 11,813 cr., without testing the computation method



under Rule 8D, demonstrates clear inadequacy of enquiry. The AO's omission to apply Rule 8D and failure to determine the disallowance as per statutory formula resulted in under-assessment of income by Rs. 116.30 cr., directly causing loss to the exchequer. The Hon'ble Supreme Court in *Malabar Industrial. Co. Ltd. v. CIT* (243 ITR 83) clarified that an order that is contrary to law and results in loss of revenue is both erroneous and prejudicial. Therefore, the PCIT was duty-bound to step in and correct the assessment, as inaction would perpetuate an illegality and revenue leakage. The AO's acceptance of the expert's report without verification of its basis or reconciliation with investment figures clearly establishes non-application of mind. The PCIT's satisfaction that the AO failed to carry out proper enquiry is founded on record and not on conjecture. He has examined the assessment file, identified the precise error, quantified the potential prejudice, and passed a speaking order which comply with statutory requirements. Courts have consistently held that where the AO's order lacks reasoning, computation, or record of satisfaction, revision under section 263 of the Act is mandatory to protect the interests of the Revenue. The ld.PCIT has not substituted his view but corrected a legal error done by the AO in not applying the mandatory method under Rule 8D.



7. In respect of the other issue of accommodation entries not enquired into by the AO, the Id.DR has submitted that the Id. PCIT, upon verification of data available on the INSIGHT portal (CRIU module), found credible information indicating that the assessee had received accommodation entries from Shri Dilip Chotalal Patel, a key associate of Shri Robin Goenka (Sankalp Group), who was subjected to search and seizure action by the Investigation Directorate, Ahmedabad on 30.10.2018. The Investigation Wing had recorded statements, seized diaries, and compiled beneficiary lists identifying the assessee company as one of the recipients of accommodation entries. This crucial information was available to the AO at the time of assessment. However, he failed to make any inquiry, verification, or addition on this issue. The Pr.CIT, therefore, correctly held that the non-consideration of this vital Information amounted to failure to make inquiries which should have been made, squarely attracting clause (a) of Explanation 2 to Section 263 of the Act. It is pleaded that the direction issued by the PCIT merely requires the AO to examine this issue in detail and make additions, if warranted, after granting opportunity of being heard to the assessee. There is thus, no prejudice caused to the assessee's right to a fair hearing.



7.1 The Id.DR placed reliance on various judicial pronouncements in this regard. The Hon'ble Supreme Court in *Malabar Industrial Co. Ltd. v. CIT* (2000) 243 ITR 83 (SC) laid down that an order is erroneous if it is not in accordance with law, and prejudicial if it results in loss of lawful revenue. The Hon'ble Kerala High Court in *Cochin International Airport Ltd. v. CIT* [2025] 171 taxmann.com 222 reiterated that if the AO fails to make requisite verifications, the order is deemed erroneous and prejudicial under Explanation. Similarly, the Hon'ble Bombay High Court in *Jeevan Investment & Finance Pvt. Ltd. v. CIT* (2017) 88 taxmann.com 552 (Bom) and *Sesa Starlite Ltd. v. CIT* (2021) 123 taxmann.com 217 (Bom) held that mere issuance of queries without carrying them to their logical conclusion amounts to lack of enquiry, justifying revision under section 263 of the Act.

8. Before proceeding further, it would be appropriate to examine the provisions of section 263 and more specifically the deeming provisions of Explanation 2 of the Act brought into the statute w.e.f. 01.06.2025, as below:

Section-263. Revision of orders prejudicial to revenue.

(1)The [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] is erroneous



in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, [including,—

(i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment;

orXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(iii)XXXXXXXXXXXXXXXXXXXX

Explanation 1.—XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Explanation 2.—For the purposes of this section, it is hereby declared that **an order passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner,—**

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

[Explanation 3.—XXXXXXXXXXXXXXXXXXXXXXXXXXXX

8.1 The aim and object of introduction of aforesaid Explanation by Finance Act, 2015 was explained in **CBDT Circular No. 19/2015 [F.NO.142/14/2015 TPL], dated 27-11-2015** which is reproduced hereunder:

"53. Revision of order that is erroneous in so far as it is prejudicial to the interests of revenue.

53.1 The provisions contained in sub-section (1) of section 263 of the Income-tax Act, before amendment by the Act, provided that if the Principal Commissioner or Commissioner considers that any order passed by the Assessing Officer is erroneous



in so far as it/s prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making an enquiry pass an order modifying the assessment made by the Assessing Officer or cancelling the assessment and directing fresh assessment.

53.2 The interpretation of expression "erroneous in so far as it prejudicial to the interests of the revenue" has been a contentious one. In order to provide clarity on the issue, [section 263](#) of the Income-tax Act has been amended to provide that an order passed by the Assessing Officer **shall be deemed to be erroneous** in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner. **(a) the order is passed without making inquiries or verification which, should have been made;** (b) the order is passed allowing any relief without inquiring into the claim; (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under [section 119](#); or (d) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

53.3 Applicability: This amendment has taken effect from 1st day of June, 2015."

8.2 Clause (a) as reproduced above talks about the inquiry or investigation having not been made by the AO which 'should have been made'. *In the amended provisions, the phrase 'should have been done' as provided in the newly inserted Explanation means the verification/enquiry which ought to have been done.* The Act nowhere provides the exact modalities to be followed to verify a specific claim made by the assessee. It is the prerogative of the AO to decide the extent of verification. But by the amendment made, the Act gives a specific power to the Commissioner to revise the orders made without the inquiry to the extent, he thinks fit. One should not be oblivious of the fact that the fiscal statutes are to be read literally and no equity or logic has to be found in these. Therefore, the parliament in its wisdom has given power



to the PCIT to decide the extent of enquiry. A discretion has been provided to the Commissioner in this context.

8.3 In the instant case, in so far as the issue of disallowance u/s 14A of the Act is concerned, we have examined the record qua submissions made by both sides. It is noticed from page no.20-24 of the PB that the AO issued notice u/s 142(1) of the Act with a specific query no.1 on page-22 calling for details of dividend income. The assessee made submission as per page 26 claiming that only negligible expenditure was made for earning of the dividend and also appended an Expert report on the basis of which *suo moto* disallowance of Rs 1.82 cr. was offered u/s 14A r.w. Rule 8D. It is evident that no further query or clarification has been sought by the AO showing any further application of mind. The AO proceeded with the assessment and thereby accepting the *suo motu* disallowance offered by the assessee. The merits in assessee's submission qua provisions of section 14A of the Act r.w. Rule 8D have not been examined by him. The Pr.CIT has rightly pointed out the disallowance offered by the assessee, without taking into account its claim for excluding Strategic Investment, needed proper verification by the AO. His observations are in sync with the landmark decision of the hon'ble Supreme Court in the case of the Maxopp Investment Ltd. vs. CIT [2018] 402 ITR 640 (SC) in which similar issue of strategic



investment was decided in favour of the Revenue for the purposes of computation of disallowance under section 14A r.w. Rule 8D. We are of the considered opinion that it was incumbent on the AO to examine a third party report especially in the light of the Apex Court ruling and the provisions of the Act in this regard and more so, in the light of suo motu disallowance of mere Rs. 1.82 cr. on exempt income exceeding Rs.274 cr., against investments of Rs. 11,813 cr., without testing the computation method under Rule 8D, which demonstrates clear case of lack of any inquiry worth the name. Therefore, on the facts and the circumstances of the case, the deeming provisions of Explanation 2, clause(a) are clearly applicable.

8.4 As regard the other issue of accommodation entries, the AO did not examine the issue at all. According to the submission of the ld.DR, the information was already available to the AO on Insight Portal which he completely overlooked although the information revealed that the assessee was recipient of accommodation of accommodation entries as a consequence of search action on Sankalp Group. This fact has not been controverted by the ld.AR who kept on stressing that the ld.PCIT did not make available the said information to it during revision proceedings without taking due cognizance of the fact that the assessment order has been set aside for necessary verification and



enquiry allowing adequate opportunity of hearing to the assessee. This contention of the assessee cannot take away the fact on record that the AO failed to take any note of such vital piece of information which was very much available with him at the time of assessment proceedings. It is also clearly a case of no inquiry, hit by the deeming provisions of Explanation 2.

9. In so far as the requirement of due enquiry to be conducted by the Assessing Officer while scrutinising any case in the course of assessment order is concerned, it would be relevant to quote certain landmark decisions of hon'ble Supreme Court as in the case of **Ram Pyari Devi Saraogi Vs. CIT [1968) 67 ITR 84 [SC)** and **Tara Devi Aggarwal Vs. CIT(1973) 88 ITR 323 (SC)** holding that in a stereo-typed order which simply accepts what the assessee has stated and fails to make enquiries which are called for in the circumstances, is erroneous. The hon'ble Court further observed that where the Assessing Officer had accepted a particular contention or issue without inquiry whatsoever, the order was erroneous and prejudicial to the interest of Revenue. 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. These observations have to be understood in the factual background and matrix involved in the said two cases before the Supreme Court. **In the said cases, the Assessing Officer had not conducted any enquiry or examined evidence whatsoever. There was total absence of enquiry or verification.** These cases have to be distinguished from other cases (i) where there is enquiry but the findings are incorrect/erroneous; and (ii) where there is failure to make proper or full verification or enquiry.

9.1 In the case of **K.A. Ramaswami Chettiar Vs. CIT (1966) 220 ITR 657 (Mad)**, it was likewise held by hon'ble Madras High Court held that **the officer is expected to make an inquiry of a particular item of income and if he does not make an inquiry as expected, that would be a ground to interfere u/s 263 as such an order passed by the assessing officer is erroneous and prejudicial to the interest of revenue.** Section 263 has been elucidated and explained in **Commissioner of Income Tax versus Nagesh Knitwears Private Limited, (2012) 345 ITR 135 (Delhi)**. In the said decision, reference was also made to **Malabar Industrial Company Limited versus CIT, (2000) 243 ITR 83 (SC)** and



decisions of Delhi High Court in **Nabha Investments Private Limited versus Union of India, (2000) 246 ITR 41 (Delhi)** and **ITO versus DG Housing Projects Limited, (2012) 343 ITR 329 (Delhi)**. It has been observed in Nagesh Knitwears Private Limited (supra):

*"10. Section 263 has been enacted to empower the CIT to exercise power of revision and revise any order passed by the Assessing Officer, if two cumulative conditions are satisfied. Firstly, the order sought to be revised should be erroneous and secondly, it should be prejudicial to the interest of the Revenue. The expression 'prejudicial to the interest of the Revenue' is of wide import and is not confined to merely loss of tax. The term erroneous' means a wrong/incorrect decision deviating from law. This expression postulates an error which makes an order unsustainable in law. **The Assessing Officer is both an investigator and an adjudicator. If the Assessing Officer as an adjudicator decides a question or aspect and makes a wrong assessment which is unsustainable in law, it can be corrected by the Commissioner in exercise of revisionary power. As an investigator, it is incumbent upon the Assessing Officer to investigate the facts required to be examined and verified to compute the taxable income. If the Assessing Officer fails to conduct the said investigation, he commits an error and the word 'erroneous' includes failure to make the enquiry. In such cases, the order becomes erroneous because enquiry or verification has not been made and not because a wrong order has been passed on merits.***

9.2 The hon'ble Delhi High Court in **Gee Vee Enterprises v. Additional Commission of Income-Tax, Delhi-I, (1975) 99 ITR 375**, has observed as under:

*"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 maybe 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."

9.3 Reliance is also placed on the recent judgements of ITAT, Delhi in **NUT v CIT (Central) [2015] 60 taxmann.com 313 (Delhi)** holding that,

28.2.... An inquiry which is just a farce or mere pretence of inquiry cannot be said to be an inquiry at all, much less an inquiry needed to reach the level of satisfaction of the AO on the given issue. The level of satisfaction would obviously mean that he has conducted the inquiry in a manner whereby he places on record the material enough to reach satisfaction, which a rational person, being informed of the nuances of tax laws would reach after due appreciation of such material."

9.4 The Hon'ble Supreme Court in a recent case of **Commissioner of Income Tax v Paville Projects Private Limited, 2023 SCC OnLine SC 371 dated 06-04-2023**, held that CIT can revise erroneous order by Assessing Officer causing prejudice to revenue, holding that the **erroneous assessment order had resulted in loss of the Revenue in the form of tax**. Relevant portions of the order are extracted below for ready reference:

"7. In the present case, the Commissioner, in exercise of the powers under Section 263 of the Income Tax Act and in exercise of the revisional jurisdiction, set aside the assessment order by specifically observing that the



assessment order was erroneous as well as prejudicial to the interest of the Revenue. However, the High Court by the impugned judgment and order has set aside the order passed by the Commissioner by observing that the Commissioner wrongly invoked the powers under [Section 263](#) of the Act.

7.1 Learned counsel appearing on behalf of the assessee has heavily relied upon the decision of this Court in the case of [Malabar Industrial Co. Ltd.](#) (supra). It is true that in [the said decision](#) and on interpretation of [Section 263](#) of the Income Tax Act, it is observed and held that in order to exercise the jurisdiction under [Section 263\(1\)](#) of the Income tax Act, the Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. It is further observed that if one of them is absent, recourse cannot be had to [Section 263\(1\)](#) of the Act. “What can be said to be prejudicial to the interest of the Revenue” has been dealt with and considered in paragraphs 8 to 10 in the case of [Malabar Industrial Co. Ltd. \(supra\)](#), which are as under:-

“8. The phrase “prejudicial to the interests of the Revenue” is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The High Court of Calcutta in [Dawjee Dadabhoy & Co. v. S.P. Jain](#) [(1957) 31 ITR 872 (Cal)] , the High Court of Karnataka in [CIT v. T. Narayana Pai](#) [(1975) 98 ITR 422 (Kant)] , the High Court of Bombay in [CIT v. Gabriel India Ltd.](#) [(1993) 203 ITR 108 (Bom)] and the High Court of Gujarat in [CIT v. Minalben S. Parikh](#) [(1995) 215 ITR 81 (Guj)] **treated loss of tax as prejudicial to the interests of the Revenue.**

9. Mr Abraham relied on the judgment of the **Division Bench of the High Court of Madras in [Venkatakrishna Rice Co. v. CIT](#) [(1987) 163 ITR 129 (Mad)]** interpreting “prejudicial to the interests of the Revenue”. The High Court held:

“In this context, (it must) be regarded as involving a conception of acts or orders which are subversive of the administration of revenue. There must be some grievous error in the order passed by the Income Tax Officer, which might set a bad trend or pattern for similar assessments, which on a broad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue Administration.” In our view this interpretation is too narrow to merit acceptance. **The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue.**

10. The phrase “prejudicial to the interests of the Revenue” has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot



be treated as prejudicial to the interests of the Revenue, for example, when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income Tax Officer is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue. (*Rampyari Devi Saraogi v. CIT* [(1968) 67 ITR 84 (SC)] and in *Tara Devi Aggarwal v. CIT* [(1973) 3 SCC 482 : 1973 SCC (Tax) 318 : (1973) 88 ITR 323] .)” 7.2 Thus, even as observed in paragraph 9 by this Court in the case of *Malabar Industrial Co. Ltd.* (supra) that the scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. It is further observed that if due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue. However, only in a case where two views are possible and the Assessing Officer has adopted one view, such a decision, which might be plausible and it has resulted in loss of Revenue, such an order is not revisable under [Section 263](#).

7.3 Applying the law laid down by this Court in the case of *Malabar Industrial Co. Ltd.* (supra) to the facts of the case on hand and even as observed by the Commissioner, the order passed by the Assessing Officer is erroneous as well as prejudicial to the interest of the Revenue. Having gone through the assessment order as well as the order passed by the Commissioner of Income Tax, we are also of the opinion that the assessment order was not only erroneous but prejudicial to the interest of the Revenue also. In the facts and circumstances of the case, it cannot be said that the Commissioner exercised the jurisdiction under [Section 263](#) not vested in it. **The erroneous assessment order has resulted into loss of the Revenue in the form of tax.**

Under the Circumstances and in the facts and circumstances of the case narrated hereinabove, the High Court has committed a very serious error in setting aside the order passed by the Commissioner passed in exercise of powers under [Section 263](#) of the Income Tax Act.

8. In view of the above and for the reasons stated above, present appeal succeeds. The impugned judgment and order passed by the High Court is hereby quashed and set aside and that the order passed by the Commissioner passed in exercise of powers under [Section 263](#) of the Income Tax Act is hereby restored.”

9.5 We find that the deeming provisions of Explanation 2 has been considered by several courts of law applicable w.e.t.01.06.2015.



The co-ordinate Mumbai Bench of the ITAT w.r.t Explanation 2 through an elaborate order in the case of **Madhurima International (P.) Ltd. v. Pr.CIT [ITA No.421/ Mumbai]** has held that,

“In the instant case, the AO has not enquired the fair value adopted by the assessee in proper perspective and in the manner indicated under law as detailed above. Moreover, explanation 2 to Section 263 of the 1961 Act is inserted by Finance Act, 2015, which deems an order to be erroneous in so far as prejudicial to the interest of Revenue if the order is passed without making inquiries or verification which should have been made. Thus, in the instant case, we have already held that proper enquiries were not made by the AO before passing assessment order dated 23-03-2016 u/s 143(3) of the 1961 Act, as are mandated u/s 263 of the 1961 Act. In our considered view, the ld. Pr. CIT has rightly invoked the provisions of section 263 of the Act, which we uphold/sustain..”

9.6 The Hon’ble Delhi Court in the case of **Pr. Commissioner of Income Tax, Delhi-7 vs M/S Paramount Propbuild Pvt. Ltd.** In ITA 247/2023(Del-HC) on 19 March, 2024 held as below:

“Unfortunately, the assessment order nowhere reflects any element of inquiry or verification. The discussion about the loan transactions in question is altogether missing. Furthermore, the assessment record would also reflect that the AO has not taken any concrete steps to ascertain the genuineness and creditworthiness of the transactions, which merits consideration in the light of the findings that emerged from the DDIT investigation report and assessment proceedings of M/s. Upaj Leasing & Finance Pvt. Ltd. It emerges that the present is a case where the AO failed not only to spell out any finding about the DDIT investigation report and assessment proceedings of M/s. Upaj Leasing & Finance Pvt. Ltd. but also to scrutinize the highlighted aspects in the said report qua the genuineness and creditworthiness of aforementioned loan transactions. Therefore, this is the minimum inquiry which atleast was expected to have been made by the AO.

25. At this juncture, it is apposite to point out that clause (a) of Explanation 2 of Section 263 of the Act introduces a deeming fiction to the effect that the order passed by the AO shall be considered erroneous and prejudicial to the interests of the Revenue, if the order is passed without making inquiries or verification, which should have been made. Henceforth, since neither there is any facet of discussion about the aforementioned



aspects in the assessment order nor the assessment record duly reflects that the AO has done inquiry in the light of the findings of the investigation report. We find that the present is a fit case to invoke the revisional powers under [Section 263](#) of the Act.”

9.7 The co-ordinate bench of ITAT, Patna in **ITA Nos. 356 to 360/PAT/2024 in the case of Gandhipati Construction Private**

Limited observed as below:

*“Having said that, we may also add that while in a situation in which the necessary inquiries are not conducted or necessary verifications are not done, Commissioner may indeed have the powers to invoke his powers under [section 263](#) but that it does not necessarily follow that in all such cases the matters can be remitted back to the assessment stage or such inquiries and verifications. **There can be three mutually exclusive situations with regard to exercise of powers under [section 263](#), read with Explanation 2(a) thereto, with respect to lack of proper inquiries and verifications,***

The first situation** could be this. Even if necessary inquiries and verifications are not made, the Commissioner can, based on the material before him, in certain cases straight away come to a conclusion that an addition to income, or disallowance from expenditure or some other adverse inference, is warranted. In such a situation, there will be no point in sending the matter back to the Assessing Officer for fresh inquiries or verification because an adverse inference against the assessee can be legitimately drawn, based on material on record, by the Commissioner. In exercise of his powers under [section 263](#), the Commissioner may as well direct the Assessing Officer that related addition to income or disallowance from expenditure be made, or remedial measures are taken. **The second category** of cases could be when the Commissioner finds that necessary inquiries are not made or verifications not done, but, based on material on record and in his considered view, even if the necessary inquiries were made or necessary verifications were done, no addition to income or disallowance of expenditure or any other adverse action would have been warranted. Clearly, in such cases, no prejudice is caused to the legitimate interests of the revenue. No interference will be, as such, justified in such a situation. **That leaves us with the third possibility, and that is when the Commissioner is satisfied that the necessary inquiries are not made and necessary verifications are not done, and that, in the absence of this exercise by the Assessing Officer, a conclusive finding is not possible one way or the other. That is perhaps the situation in which, in our humble understanding, the Commissioner, in exercise of his powers under [section 263](#), can set aside an order, for lack of proper inquiry or verification, and the



Assessing Officer to conduct such inquiries or verifications afresh.”

9.8 The co-ordinate bench of ITAT, in **Shrenik Bothra, Rajim, Rajim vs PCIT (Central), Bhopal dated 25.09.2024 in ITA 238/RPR/2024** held as below:

“19. Our aforesaid view and observations is supported with the principle of law laid down by Hon'ble Apex Court in the case of **Daniel Merchants Pvt. Ltd. &Anr. Vs Income Tax Officer &Anr. Dated 30.11.2017** have approve the judgment of Hon'ble Kolkata High Court, having held as under:

*"we find that the Commissioner of Income Tax had passed an order under **Section 263** of the Income Tax Act, 1961 with the observations that the Assessing Officer did not make any proper inquiry while making the assessment and accepting the explanation of the assessee(s) insofar as receipt of share application money is concerned. On that basis the Commissioner of Income Tax had, after setting aside the order of the Assessing Officer, simply directed the Assessing Officer to carry thorough and detailed inquiry. It is this order which is upheld by the High Court. We see no reason to interfere with the order of the High Court."*

20. Respectfully following the guiding principles *laid down in* the case of *M/s Daniel Merchant Pvt. Ltd.* (supra), as undoubtedly, from the facts on record in present case, **Ld. AO had not made proper inquiries regarding the issue which has been picked up and for which the revisionary proceedings are initiated by the Ld. PCIT invoking the provisions of explanation 2(a) to section 263, for which he was entitled.** We, thus, in terms of aforesaid observations, do not find any infirmity in the order of Ld. PCIT, thus, we are not supposed to interfere with the same.”

9.9 The co-ordinate bench of ITAT,Mumbai in the case of **Agricom Foods Private Limited, Mumbai vs Principal Commissioner Of Income Tax** dated 09.12.2024 in **ITA Nos. 2709 & 2716/Mum/2024** held as below:

“1. The Ld.PCIT, however, did not accept the above said contentions of the assessee. He held that the enquiries conducted by different official (the Investigation Wing) cannot be considered as the enquiry of AO and hence, it



cannot be said that there was application of mind by the AO. The Ld.PCIT also observed that the AO did not discuss anything about the claim of depreciation on the intangible assets in the impugned assessment orders. Accordingly, he held that, the impugned assessment orders are rendered erroneous and prejudicial to the interests of revenue on this count also. In support of this proposition, the Ld.PCIT took support of the decision rendered by **Hon'ble Karnataka High Court in the case of Infosys Technologies Ltd., [341 ITR 293], wherein the Hon'ble Karnataka High Court has held that non-discussion of claim of deduction allowed by the AO in the assessment order would make it erroneous and prejudicial to the interest of the Revenue.** Accordingly, the Ld.PCIT held that the assessment orders passed by the AO for both the years under consideration are rendered erroneous and prejudicial to the interest of the Revenue. Accordingly, he set aside the assessment orders passed for both the years and restored them to the file of the AO for the limited purpose of conducting enquiry with regard to the claim of depreciation of intangible assets and taking decision as per law. The assessee is aggrieved by the revision orders so passed by the Ld.PCIT in both the years under consideration.

4. We heard rival contentions and perused the record. We may first refer to the decisions rendered by Hon'ble High Courts, wherein the law relating to the scope of revision proceedings initiated u/s 263 of the Act have been laid down. We may first refer to the case of **Grasim Industries Ltd. V CIT (321 ITR 92)(Bom)**, wherein the Hon'ble Bombay High Court has rendered its decision taking into account the law laid down by the Hon'ble Supreme Court in the case of **Malabar Industrial Co Ltd vs. CIT (2000)(243 ITR 83)(SC)**. The relevant observations made by Hon'ble Bombay High Court are extracted below:

“**Section 263** of the Income-tax Act, 1961 empowers the Commissioner to call for and examine the record of any proceedings under the Act and, if he considers that any order passed therein, by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue, to pass an order upon hearing the assessee and after an enquiry as is necessary, enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. The key words that are used by **section 263** are that the order must be considered by the Commissioner to be “erroneous in so far as it is prejudicial to the interests of the Revenue”. This provision has been interpreted by the Supreme Court in several judgments to which it is now necessary to turn. In **Malabar Industrial 243 ITR 83**, the Supreme Court held that the provision “cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer” and “it is only when an order is erroneous that the section will be attracted”. The Supreme Court held that an incorrect assumption of fact or an incorrect application of law, will satisfy the requirement of the order being erroneous. An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in that category. The expression



"prejudicial to the interests of the Revenue", the Supreme Court held, it is of wide import and is not confined to a loss of tax. What is prejudicial to the interest of the Revenue is explained in the judgment of the Supreme Court (headnote) :

"The phrase „prejudicial to the interests of the Revenue“ has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."

The principle which has been *laid down* in *Malabar Industrial Co. Ltd.* [2000] 243 ITR 83 (SC) has been followed and explained in a subsequent judgment of the Supreme Court in *CIT v. Max India Ltd.* [2007] 295 ITR 282."

4.1. Under the provisions of *sec. 263* of the Act, the Ld Pr. CIT can revise the order only if it is shown that the assessment order is erroneous in so far as prejudicial to the interests of the revenue. The question as to when an order can be termed as "erroneous" was explained by the Hon'ble Bombay High Court in the case of **Gabriel India Ltd (203 ITR 108)** as under:-

"From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an income tax officer acting in accordance with the law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order, unless the decision is held to be erroneous. Cases may be visualised where the Income tax officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income tax officer. That would not vest the Commissioner with power to examine the accounts and determine the income himself at a higher figure. It is because the Income tax officer has exercised the quasi judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion.... **There must be some prima facie material on record to show that the tax which was lawfully exigible has not been**



CIT has rightly held that the Assessment Order was passed without making the necessary inquiries and verification. Thus, in terms of clause (a) of Explanation 2 to Section 263 of the Act, the assessment order is deemed to be erroneous in so far as it is prejudicial to the interests of the revenue.”

10. The ld.AR has placed reliance on certain case laws. On going through the same, we find that they mostly pertain to the pre-amended provisions of section 263 of the Act before insertion of the deeming provisions contained in Explanation 2 to the section w.e.f.1.6.2015.

11. He referred to the decision of hon'ble Apex Court in V-Con Integrated Solutions P.Ltd(2025) 173 taxmann.com 774 by which the hon'ble Court dismissed SLP. It is claimed that by the ld.AR that in this case, the AO issued questionnaire which was duly answered by the assessee. Therefore, section 263 was not attracted. However, on going through the decision, it is evident that the hon'ble Apex Court has also observed that power can be exercised by the CIT must record abject failure and lapse on part of the AO to establish error and prejudice caused to revenue. We find that the decision all the more supports the impugned order in which the authority concerned has clearly made out a case of error as well prejudice. The reliance placed by the assessee on the decision in the case of NYA International 173 taxmann.com 103(SC) is also misplaced and inapplicable to the facts of the case as in that case, it



was found that the AO made sufficient enquiry and it was not a case of 'no inquiry'. The facts are not applicable to the instant appeal. Likewise, in the case of Cartier Leafin P.Ltd 146 taxmann.com 281(SC), the AO was found to have called for exhaustive details and documentary evidences and therefore, it was held that detailed enquiry was done which is not the position in the case before us. In the case of Chandan Parmar 135 taxmann.com 55(Bom) also, the AO had raised various queries with regard to the claim of capital gains before accepting the claim. Thus, facts are again distinguishable. Similarly the decision in the case of Future Corporate Resources 132 taxmann.com 173(Bom) is factually distinguishable as in the instant case, the issue of Strategic Investment has been categorically disputed by the PCIT especially in the light of hon'ble Apex Court in the case of Maxopp Investment Ltd(supra). It also appears that the decision was rendered w.r.t. pre-amended provisions before insertion of Explanation 2. Other decisions also are distinguishable either on the facts of the case or non consideration of Explanation 2 to section 263 of the Act.

12. We also find that the ld.PCIT has in the concluding para 10 of the order has clearly directed the AO to examine the above mentioned issues as directed and make addition/disallowances after due



verification and giving opportunity of being heard to the assessee. In respect of accommodation entries, in para 9.1. in the concluding lines, he has stated that the assessee will get all material during the course of assessment proceedings. The AO was directed to examine the issue of accommodation entries, make proper enquiries and make addition, 'if required'. Thus, seen in the light of such directions, both the issues are wide open before the AO and the assessee would be allowed opportunity of hearing. Therefore, we do not find any prejudice caused to the assessee on account of setting aside of the assessment order u/s 263 of the Act.

13. In the light of detailed discussion as above, we are of the considered view that the Assessing Officer passed impugned assessment order accepting the return of income of the assessee and has not made inquiry on the above stated issues of disallowance u/s 14A of the Act and accommodation entries. In this situation, we have no hesitation to hold that the order of the AO was not passed after due examination and verification and therefore, there was an error on the part of AO which led to a correct conclusion of the Id.PCIT that the assessment order was not only erroneous but also prejudicial to the interest of Revenue. Hence, we are inclined to hold that the issuance of notice u/s 263 of the



Act and impugned order passed by the PCIT u/s 263 of the Act is validly assumed jurisdiction of Revisionary powers which cannot be alleged as invalid assumption of jurisdiction or bad in law and we confirm the same. Accordingly, we conclude that there is no merit in the present appeal against the revisionary order. Therefore, the grounds of appeal are dismissed.

14. In the result, **the appeal filed by the assessee is dismissed.**

Order pronounced in the open court on **05/02/2026.**

Sd/-

SANDEEP GOSAIN

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 05.02.2026

Lubhna Shaikh / Steno

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.



ITA No. 3474/Mum/2025
A.Y. 2019-20
Ambuja Cements Limited, Mumbai

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

