IN THE INCOME TAX APPELLATE TRIBUNAL "RANCHI", BENCH, RANCHI

BEFORE SHRI S.S. GODARA, JM & DR. A.L. SAINI, AM

आयकरअपीलसं./ITA No.289/Ran/2019
(निर्धारणवर्ष / Assessment Year: 2012-13)

Padam Kumar Jain RatanlalSurajmal Compound, Main Road, Ranchi – 834001, Jharkhand	**Vs.**	**CIT, Central, CR Building, Beer Chand Patel Marg, Patna – 800001.**
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **ABRPJ 0001 E**		
(Assessee)	**..**	**(Revenue)**

Assessee by : Shri M.K. Chaudhury & Shri Devesh Poddar, Advocate
Respondent by : Shri Inderjeet Singh, CIT (DR)

सुनवाईकीतारीख/ **Date of Hearing : 06/03/2020**
घोषणाकीतारीख/**Date of Pronouncement: 08/07/2020**

आदेश / O R D E R

Per Bench

By way of this appeal, the assessee appellant has challenged correctness of the order dated 28.03.2019 passed by the learned Principal Commissioner of Income Tax (Central), Patna, (for short "PCIT")under section 263 of the Income Tax Act, 1961(Hereinafter referred to as the 'Act'). Grievances raised by the assessee are as follows:

i. For that the order u/s 263 passed by ld. CIT, Central Patna is illegal, unjustified, arbitrary and is liable to be quashed.

ii. For that Ld. Pr. CIT, Central, Patna erred in not appreciating that the assessment order u/s 153A/143(3) dated 28.12.2016, was duly cancelled by himself vide order u/s 263 dated 29.12.2017 and in pursuance thereof fresh assessment order u/s 143(3) read with section 263 of the IT Act was duly passed on 31.12.2018 and such there was no assessment order dated 28.12.2016 in existence which could have been cancelled. As such the order passed u/s 263 dated 28.03.2019 is perverse, illegal, ab-initio void and fit to be cancelled.

iii. For that in any view of the matter, Ld. CIT was not justified in passing order u/s 263 on simply change of opinion and only for re-verification.

iv. For that other grounds, if any, will be argued/taken up at the time of hearing"

2. Facts of the case which can be stated quite shortly are as follows:The assessee is mainly engaged in the business of Iron Ore Mining at Barbil, Orissa.Intheassessee`s case a search and seizure operation was carried out in the business and residential premises of Padam Kumar Jain group of cases at Ranchi on 03.07.2014. Soon after completion of search and seizure a notice under section 153A of the Income Tax Act was issued to the assessee on 09.02.2015. In response to the notice under section 153A, the assessee filed its return of income for assessment year 2012-13 on 02.10.2016 declaring total income of Rs.15,34,97,400/-. Thereafter, the original assessment order u/s 153A/143(3) was completed by the Assessing Officer on 28.12.2016.

3. Later on, ld Commissioner of Income Tax (Central) Patna, exercised his revisionary jurisdiction under section 263 of the Income Tax Act**(hereinafter referred to as "first 263 order")** on the premise that admitted undisclosed income of Rs.95,50,500/-, over and above the regular income on account of inflated expenses and other undisclosed income for the assessment year 2012-13 had not been offered by the assessee in the return of income filed by assessee under section 153A of the Act. Therefore, ld PCIT was of the view that neither the assessee had incorporated the income disclosed at the time of search nor the assessing officer carried out necessary enquiry in the matter as to why the income disclosed at the time of search was not incorporated in the return of income.As per the ld PCIT, since the assessing officer failed to examine admitted undisclosed income of Rs.95,50,500/- therefore, ld PCIT held that order passed by the assessing officer under section 153A/143(3) dated 28.12.2016 is erroneous and prejudicial to the interest of Revenue and hence ld PCIT cancelled the assessment order passed by assessing officer under section 153A/143(3) dated 28.12.2016 and directed the assessing officer to pass a fresh assessment order. The findings of the ld PCIT in the first 263 order is given below:

> "*6. The submission of the assessee has duly considered. The objection raised by the assessee is not acceptable as it is not based on facts of the case. The assessee has raised the objection through his AR that the amount of disclosure of Rs. 11.60 crore at the time of search & seizure operation was not related to the assessee only, but also his family members, companies and firms in which they were partners or directors. But the documentary evidence (L) No. 46 of statement recorded u/s 132(4) reflects a different picture. The same is reproduced here:*

Sl. No.	*For the Financial Year*	*Head*	*Amount (in Rupees)*
1	*2011-12*	*From inflated expenses and undisclosed other income*	*95,50,500/-*
2.	*2013-14*	*Do*	*4,95,65,500/-*
3.	*2014-15*	*Do*	*5,68,84,000/-*
4.		*Total*	*11,60,00,000/-*

It is therefore clear that the objection of assessee is not tenable as the disclosure is related to only one assessee i.e. Padam Kr. Jain. It is important to mention here that the amount of disclosure is not in round figure, which itself clarifies that the disclosure is based on fact and calculation made by the assessee for his undisclosed income. The family members of the assessee have made disclosure separately.

On careful consideration of above facts and circumstances, I am of the opinion that assessment order passed by the AO is erroneous and prejudicial to the interest of revenue. I, therefore, cancel the order of the AO passed u/s 143(3) of the I.T. Act for A.Y. 2012-13 and direct the AO to pass a fresh order after examination the issue discussed above. Due opportunity of being heard to be given before passing fresh order."

4. Thereafter, the assessing officer framed the assessment order under section 143(3) r.w.s. 263 of the Act, in pursuance of the direction of ld PCIT in first 263 order.

5. Subsequently, Ld PCIT has again exercised his jurisdiction under section 263 of the Act **(hereinafter referred to as the "second 263 order")** to revise the original assessment order passed by the assessing officer under section 153A/143(3) dated 28.12.2016. The second 263 order was passed by the ld PCIT on 28.03.2019 observing as follows:

"Subsequently, on a careful examination of the records, it was observed that the assessment order dated 28.12.2016 for the A.Y. 2012-13 was prima-facie erroneous and also prejudicial to the interest of revenue in so far as the Assessing Officer had omitted to examine the records and issues in the case properly and levy the tax lawfully being payable by the assessee. The omissions made by the Assessing Officer are observed as under:

(i).As per the para No. 5.2 of the relevant assessment order, omission to correctly compute the total amount of estimated additions of Rs.11,42,917/- instead of Rs.5,97,716/-.

(ii) Omission to properly verify the admissibility of exemption claimed to the tune of Rs.1,48,75,000/- for expenditure incurred on 'Scientific research' 35(i) (ii) of the I.T. Act, 1961,

(iii) Omission to properly verify admissibility of receipts on account of 'Advance received' to the tune of Rs.6,66,00,000/-,

(iv) Omission to properly verify the admissibility of expenditure of Rs.4,00,00,000/- under the head 'Loss and damage' and

(v) Omission to properly verify the admissibility of expenditure under the head 'incentive on sales', amounting to a total of Rs. 9,45,96,300/-.

Accordingly, a show-cause notice u/s 263 of the I.T. Act dated 18.03.2019 was served upon the assessee through the AO, confronting him on all the above issues and also asking him to show-cause as to why the action u/s 263 should not be invoked to revise the order u/s 153A/143(3) dated 28.12.2016, wherein the AO is found to have omitted to properly examine the above issues in the case. In response to the show-cause notice, the assessee filed his written submission and some related details of the case through e-mail on 25.03.2019. After a thorough examination of the assessment records and also the perusal of reply of the assessee, the following are observed:

(i) As per the para No. 5.2 of the relevant assessment order, the AO has disallowed expenses on estimate basis under 5 heads of accounts, but the amount of additions was erroneously computed of a total of Rs.5,97,716/- instead of a total of Rs.11,42,917/-, indicating that there was undercharge of income to the tune of Rs. 5,45,201/- during the year. As per the submission, the assessee has only contended that of the expenses were genuine and backed with proper bills/vouchers.

(ii) As per statement of accounts, the assessee has claimed exemption of Rs. 5,25,00,000/- u/s 35(1)(ii) of the I.T. Act, 1961 on account of expenditure incurred on scientific research amounting to Rs. 3,00,00,000/- during the year in respect of one organization namely, Bioved Research Society of 252A/4A. Om Gayatri Nagar, Tellargang, Allahabad – 211004 (UP). As per the assessee's explanation and other related materials available on record, the exemption claimed by the assessee appears to be justifiable to the extent of Rs. 3,76,25,000/- whereas the AO has also allowed the balance amount of exemption claimed by the assessee to the tune of Rs. 1,48,75,000/- at the time of assessment, which was prima facie not admissible to the assessee. As per the submission, the assessee has stated that exemption of one and three fourth times of Rs. 3 crores, amounting to Rs. 5,25,00,000/- was rightly claimed by the assessee because the expenditure was incurred in respect of such institute of scientific research which was approved and specified by notification in the Official Gazette by the Central Government. But the available case records prima facie indicate that the AO has omitted to properly appreciate and examine the supportive details and evidences before allowing the exemption to the tune of Rs. 1,48,75,000/- at the time of assessment. Therefore, the apparent omission on the part of the AO to properly examine the admissibility of the said exemption clearly renders the assessment order erroneous in so far as it is prejudicial to the interest of revenue on this issue.

(iii) As per statement of accounts, the assessee has also claimed to have received advance from customers at Rs. 7,53,00,000/- during the year. As per the available case records, the claim on account of advance received to the tune of Rs. 87,00,000/-, which the assessee had received from M/s. Corus Steel Pvt., appears to be justifiable, but the rest amount of advance received amounting to Rs. 6,66,00,000/- was prima facie not allowable, but the AO appears to have failed to appreciate the issue properly and allowed the same at the time of assessment without considering the relevant detail and documents. As per the submission, the assessee has contended that during the assessment proceedings, proper clarifications along with the relevant confirmation were produced before the AO who on being satisfied with the submission allowed the same. But, the available case records prima facie indicate that the AO has omitted to properly appreciate and examine the supportive details and evidences before accepting the assessee's claim on 'Advance received' to the tune of Rs. 6,66,00,000/- at the time of assessment. Therefore, the apparent omission on the part of the AO properly examine the issue clearly renders the assessment order erroneous in so far as it is prejudicial to the interest of revenue.

(iv) As per statement of accounts, the assessee is also found to have claimed expenses of Rs. 4,00,00,000/- under the head 'Loss and damage' which was paid to M/s. Ankit Metal & Power Ltd. of 132A, S.P. Mukherjee Road, Kolkata – 700026 during the year. As per the related materials available on record, it is observed that the AO has allowed the expenses on account of loss and damage amounting to Rs. 4,00,00,000/- at the time of assessment without considering supporting evidences thereof, which indicates that the admissibility of the expenditure during the year was not properly examined. As per the submission, the assessee has stated that during the assessment proceedings, the relevant confirmation and other details were produced before the AO, who on being satisfied with the submissions allowed the same. But the available case records prima facie indicate that the AO has omitted to properly appreciate and examine the supportive details and evidences before accepting the assessee's claim of expenditure on 'Loss and damage' of Rs. 4,00,00,000/- at the time of assessment. Therefore, the apparent omission on the part of the AO to properly examine the issue clearly renders the assessment order erroneous in so far as it is prejudicial to the interest of revenue.

(v) As per the statement of accounts, the assessee has further claimed to have made payments of Rs.8,40,68,190/- to M/s. Core Mineral & Rs. 1,05,28,110/- to M/s. Rajat Minerals as 'Incentive on sales' during the year. However, as per the related materials available on records. It is observed that the AO has allowed the expenses on account of incentive on sales amounting to a total of Rs. 9,45,96,300/- (being Rs. 8,40,68,190/- plus Rs.1,05,28,110/-) at the time of assessment without considering supportive evidences thereof, which indicates that the admissibility of the expenditure during the year was not properly examined. As per the submission, the assessee has contended that during the assessment proceedings, the confirmation of M/s. Core Minerals and M/s. Rajat Minerals along with the relevant materials in support of the expenditure were produced and on the basis of which it was proved before the AO that the expenditure was actually made.It has also been argued by the assessee that the trade discount on sale is a regular practice in all kind of businesses and hence it is allowable as business expenditure. But, the available case records prima facie indicate that the AO has omitted to properly appreciate and examine the supportive details and evidences before allowing the expenditure on 'Incentive on sales' amounting to Rs. 9,45,96,300/- at the time of assessment. Therefore, the apparent omission on the part of the AO to properly examine the admissibility of the said expense clearly renders the assessment order erroneous in so far as it is prejudicial to the interest of revenue on this issue.

It is evident from the materials on record that during the assessment proceedings in the case, the AO omitted to examine and consider the above issues in a proper manner. An order passed without proper enquiry and correct examination in respect of any issue, which is having substantial revenue effect, is indeed an order which is erroneous in so far as it is prejudicial to the interest of revenue as contemplated in section 263 of the I.T. Act. Hence, this case, in the opinion of the undersigned calls for action u/s 263 of the I.T. Act.
As per the Explanation 2 of Section 263 of the I.T. Act, an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of revenue if (a) the order is passed without making inquiries or verification which should have been made; and (b) the order is passed allowing any relief without inquiring into the claim…………………………………………………………………………………………
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In view of the above facts and legal position and as per the materials on record, it is concluded that the AO had failed to make proper enquiry and verification of the issues, as *discussed above and the consequent order passed by him is not only erroneous but also prejudicial to the interest of the revenue. The main condition to be satisfied for invoking action u/s 263 is that the AO has failed to make required enquiry and investigation on issues having a substantial bearing on the income of the assessee. The mere fact that the assessee has complied with the requisition made by the AO during assessment does not itself vitiate the action u/s 263.* ***Consequently, in exercise of the jurisdiction conferred by section 263 of the Act, the said order of assessment u/s 153A/143(3) dated 28.12.2016 passed by the AO is cancelled.*** *The Assessing Officer is directed to pass a fresh assessment order and recomputed the assesse's income after making proper enquiries on above lines discussed in paragraphs aforesaid, and after giving the assessee due opportunity of being heard."*

6. Aggrieved by the second 263 order of Ld. PCIT, the assessee is in appeal before us.

7. The Learned Counsels, Shri M.K. Choudhary and Shri Devesh Podder, appearing on behalf of the assessee submitted before us that in assessee`scase the original assessment order u/s 153A/143(3) was passed by Ld. AO on dated 28.12.2016. The said assessment order was duly cancelled by CIT, Central, Patna vide his order u/s 263 dated 29.12.2017 and ld PCIT directed the assessing officer to make fresh assessment order. Thereafter, notice u/s 142(1) along with fresh questionnaire was issued to the assessee and third party enquiries and verification were duly conducted by the then Assessing Officer and a fresh assessment order u/s 143(3) read with section 263 of the I.T.Act was passed on 31.12.2018. Then after, subsequent incumbent in the office of CIT, Central, Patna again took up proceedings u/s 263 (that is, second 263 order on the same issues) against the aforesaid assessment order u/s 153A/143(3) dated 28.12.2016 and passed second 263 order on 28.03.2019 cancelling the aforesaid first assessment order dated 28.12.2016 which was already cancelled by the ld PCIT by his first 263 order dated 29.12.2017. Therefore, to cancel the assessment order which was already cancelled by ld PCIT is not permitted under the law.Both the ld Counsels therefore submitted before us that the assessment order u/s 153A/143(3) passed on 28.12.2016 was a cancelled and non-existent order in law, for which no action u/s 263 could have been taken in second 263 order. Therefore, second 263 order passed by the ld PCIT is not sustainable in law.

On merits, both the ld Counsels submitted before us that the issues/points for which ld PCIT had passed second 263 order were already examined by the assessing officer in the original assessment order under section 153A/143(3), dated 18.12.2016 and in second assessment order passed by AO under section 143(3) r.w.s. 263 of the Act, in pursuance of direction of ld PCIT in the first 263 order. Therefore, the issues/points which were already examined by the assessing officer, and the assessing officer has taken a possible view, the ld PCIT should not have exercised his jurisdiction under section 263 of the Act hence,bothld Counsels prayed the Bench that second 263 order passed by the ld PCIT is bad in law and may be quashed.

8. On the other hand, ld. DR for the Revenue submits before us that ld PCIT was right in exercising his jurisdiction, second time, under section 263 of the Act, as the assessing officer has failed to examine the issues/points which were raised by the ld PCIT in second 263 order. Apart from this, ld. DR for the Revenuehas primarily reiterated the stand taken by the Ld. PCIT in his second 263 order, which we have already noted in our above para and the same is not being repeated for the sake of brevity.

9. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ldPCIT and other materials brought on record.First of all, we have to see whether the requisite jurisdiction necessary to assume revisional jurisdiction is there existing before the ldPr. CIT to exercise his power. For that, we have to examine as to whether in the first place the order of the Assessing Officer found fault by the Principal CIT is erroneous as well as prejudicial to the interest of the Revenue. For that, let us take the guidance of judicial precedents laid down by the Hon'ble Apex Court in Malabar Industries Ltd. vs. CIT [2000] 243 ITR 83(SC) wherein their Lordship have held that *twin* conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii)Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the AO has not investigated the issue before him; then the order passed by the Assessing Officer can be termed as erroneous order. Coming next to the second limb, which is required to be examined as to whether the actions of the AO can be termed as prejudicial

to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (supra) held that this phrase i.e. "*prejudicial to theinterest of the revenue*'' has to be read in conjunction with an *erroneous order* passed by the Assessing Officer. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue **"unless the view taken by the Assessing Officer is unsustainable in law".**

10. Taking note of the aforesaid dictum of law laid down by the Hon'ble ApexCourt, let us examine whether original assessment order passed by the assessing officer under section 153A/ 143(3) of the Act dated 28.12.2016, is erroneous as well as prejudicial to the interest of Revenue? In order to examine the validity of the proceedings under section 263 of the Act, let us first examine the documents and information furnished by the assessee and verified by the assessing officer at the time of original assessment u/s 153A read with section 143(3) of the Act dated 28.12.2016. During the course of hearing, the Bench asked ld DR for the Revenue to produce the assessment records, and accordingly, ld DR had produced the same before the Bench. The Bench has perused the assessment records. The Bench noted that at the time of original assessment u/s 153A read with section 143(3) of the Act dated 28.12.2016, the Assessing Officer asked the assessee about thefollowingdocuments and information, by way of issue of notice under section 142(1) of the Act, dated 20.06.2016, which were furnished by the assessee during the original assessment proceedings, the copy of notice u/s 142(1) of the Act is reproduced below for ready reference:

> *"Sub: Income Tax assessment in your case AY 2012-13 notice u/s 142(1) reg.*
>
> *Following details / explanations / clarifications may be furnished on or before 01.07.2016 at 11.30 AM.*
>
> *Please note that all questions are required to the replied in the same order of questions by mentioning the serial number of questions.*

With respect to the above, you are requested to furnish the following details:

(1) Brief note on nature of business and business activities carried on during the relevant previous year. Please state the Pvt. Ltd. companies in which you are share holder/director (alongwith the percentage of share holding in such companies) and partnership firm in which you are partner. Also state the details of proprietorship concern.

(2) Also furnish a copy of *hard copyITR and Tax Audit Report. Also furnish a copy of partnership agreement, if any. Also furnish the copies of development agreement entered into.*

(3) Complete address with tel. no. of all the premises from which business is being done (including branch office and godown). Give details of the premises on which Books of Account and cash etc. are kept.

(4) ***It is also seen that you have received an amount of Rs. 6,50,00,000/- in cash from M/s. Core Minerals / M/s. Orient Resources.*** *You are directed to explain the service rendered in lieu of which such cash has been received by you. You are also directed to submit relevant documents.*

(5) ***From your P&L account, it is seen that you have claimed "Mines development" expenses of Rs. 2,31,97,746/-****. Submit the ledger of the same along with relevant documentary evidence. Also submit under your bills & vouchers on this regard.*

From impounded documents, it is revealed that all mines development activity is to be done by M/s. Orient Resources. You are hence, directed to explain such expenses. You are also directed to prove the genuineness of such expenses incurred with relevant documentary evidences should be noted that the onus has been shifted on you to prove the genuineness of such expenses, as on earlier counts, you have submitted sufficient proof regarding the same and have given incomplete / evasive replies. You have also not justified as to ***why you are paying such sums (Rs. 9,60,000/- during the year) to your employer of Mr. Niraj Sharma.***

(6) ***From your accounts, it is seen that you have debited and amount of Rs. 9,45,96,300/- under the head 'Incentive on sale'****. You have further clarified during subsequent replies to the I.T. dept. that such amount had been paid to M/s. Rajat Minerals and M/s. Core Minerals and only to M/s. Core Minerals during AY. To verify the same, enquiry u/s 133(6) was conducted and it was found that M/s. Core Minerals denied having received any such "Incentive on Sale" from you. In view of this, your claim of Rs. 9,45,96,300/- stand disproved. Your are directed to explain as to why it should not be disallowed and added back to your income.*

(7) ***It is seen from the P&L account, that you have claimed Rs. 4 crores as loss & damage exp****. Being paid to Ankit Metal & Power Ltd. You are required to explain the basis of arriving at such amount of the exact natuRe, basis and legal stand taken by you in view of such claims from Ankit Metal & Power Ltd. You are also required to explain the basis of arriving at such amount of Rs. 4.00 crores to paid as damages. You are also directed to furnish a copy of your contract with Ankit Metal & Power Ltd. reg. the same.*

(8) Give the complete address and PAN of "Vedika Organic" to whom you have claimed to have paid "Sample testing fees" during the year.

(9) ***On perusal of the P&L account, it is seen that you have debited and amount of Rs. 3,00,00,000/- as donation to Bioved Research Society.*** *This society has confirmed having received only Rs. 1,50,00,000/- from you. Your claim is thus disproved. Donation is not an expense incidental to business. You are hence directed to explain as to why it should be allowed to be debited. You are also directed to furnish copy of 80G certificate if any, in such cases.*

(10) From the impounded documents, and as corroborated by the statement of Mr. Samar Das Gupta, it is seen that he has incurred an expense of Rs. 86,30,170/- in cash on receipt of such cash from you. You are required to explain the nature and source of such cash with you. You are also directed to substantiate the claim on the basis of cash book.

(11. Furnish address of the following companies in whose shares you have invested:
(i) Accent Developers & Promoters Pvt. Ltd.
(ii)RishabCommodeal Pvt. Ltd.
(iii) Shri ArihantCommodeal Pvt. Ltd.
(iv) Shri Mahavir Commodeal Pvt. Ltd.
(v) Jagdish Ore Industries Pvt. Ltd.

(12)You are directed to furnish the invoices against which you have received advance from customers. You are also directed to submit the PAN of such parties along with their ITR for AY 2012-13 and the bank account statements for this period. ***Also explain and give details of advances recoverable of Rs. 96,79,129/- shown in your balance sheet****.*

(13) ***Submit details of sundry debtors of Rs. 51,87,35,951/-.*** *Furnish their name, PAN, address, ITR invoices against which such transactions arouse.*

(14) ***Submit details of sundry creditors of Rs. 46,15,97,033/-.*** *Furnish their name, PAN, address, ITR, invoices against which such transaction arouse.*

*(15****)Submit details of purchases of Rs. 65,33,41,701/-.*** *Also submit the invoices of such purchase along with name and complete address of such parties.*

(16) Submit ledger of 'compensation paid to employees' Rs. 2,17,23,268/-.

(17) Submit proof of service tax of Rs. 6,89,59,617/- paid during the year.

(18) Submit ledger of "Advertisement" expense along with proof of TDS on the same.

(19) Submit ledger of "Other expenses" of Rs. 45,13,68,375/-.

(20) On perusal of the P&L account, it is seen that you have debited an amount of Rs. 6,86,000/- as donation. Donation is not an expense incidental to business. You are hence directed to explain as to why it should be allowed to be debited. You are also directed to furnish copy of 80G certificate if any, in such cases.

(21) Submit ledger of "interest paid" alongwith proof of TDS deducted on the same.

(22)Submit details of Short Term Capital Gains earned by you during the year. Also submit relevant proof regarding, the cost of acquisition cost of improvement, if any and Sale consideration received.

(23)Submit details reg. income from other sources earned by you during the year along with relevant documentary evidence.

(24) Submit details of all investments made by you during the year including investments on government securities along with documentary evidence.

(25) Please give details of bank accounts maintained by you in following Performa:

A/c No.	*Type of Account*	*Name of the Bank*	*Address of the Branch*

(26) Please also furnish copies of bank statements and a copy of 26AS copies of quarterly 26Q and copies of challans for TDS done.

(27) Please furnish the detail documentary evidence of deduction claimed under chapter VIA.

(28) Please furnish the details of exempt income earned and expenses incurred for earning same. Also furnish the detail documentary evidence of LTCG claimed. Also furnish the computation of STCG & LTCG, if any.

(29) Please furnish the evidence of TDS done on interest paid in lieu of unsecured loan.

(30) Please furnish the detail evidence of secured loan received. Please furnish the evidence of TDS done on interest paid on same (NBFC).

(31) Please furnish details of unsecured loan taken in the format given below, also furnish the copies of confirmation.

Sl. No.	Name & complete address of person from whom unsecured loan received	PAN	Amount & mode	Date of receive	Balance as on 31.3.2012

(32) Please state whether credit sales to P/L account on net basis or gross basis.

(33) Please furnish the details of short term loans and advances given and investment in shares, along with explanation reg. source of such investments.

(34) Please furnish detail of sundry debtors in the format given below:

Sl. No.	Name & complete address of person from whom goods sold	PAN	Amount & mode	Date of selling	Balance as on 31.3.2012

(35) Please furnish the detail of sundry creditors in the format given below also furnish the copies of confirmation

Sl. No.	Name & complete address of person from whom goods were purchased	PAN	Amount & mode	Date of receive	Balance as on 31.3.2012

(36) Please furnish details of fixed assets added, also furnish the documentary evidence of same.

(37) Please furnish the details of immovable property sold/purchased.

Sl. No.	Sale/purchase deed no with date	Area	Sale/purchase consideration	Stamp value

(38) Please furnish copies of sales tax / VAT return filed along with copies of challans of agricultural tax/sales tax/VAT paid/service tax/excise duty paid.

(39) Please furnish details of TDS done on salaries / wages expenses, copies of form 16A issued.

(40) Please furnish details of transportation expenses and evidence of TDS Done On Same.

(41) Please furnish details of Sub Contract expenses and evidence of TDS Done On Same.

(42) Please furnish the detail break up of 'other income'.

I may be noted that time and date of hearing must be strictly adhered to and no request for adjournment would be entertained. If you fail to comply on the above date, it shall be presumed that you have nothing to say in this matter, and assessment proceedings for AY 12-13 shall be accordingly completed.

Also note that failure to comply with the terms of the above notice, penalty u/s 271(1)(b) of the Income Tax Act, 1961 may be (in addition to tax, if any, payable imposed for a sum of ten thousand rupees for each such failure."

11. We note that by way of issue of notice under section 142(1) of the Act, as noted above, the assessing officer, during the original assessment proceedings u/s 153A/143(3) of the Act (that is, before first 263 order) sought the following documents and details information:

(i).An amount received of Rs. 6,50,00,000/- from M/s. Core Minerals / M/s. Orient Resources.

(ii) "Mines development" expenses of Rs. 2,31,97,746/-.

(iii). Amount paid to employer of Mr. Niraj Sharma, Rs. 9,60,000/-.

(iv). Amount debited of Rs. 9,45,96,300/- under the head 'Incentive on sale'.

(v). Amount claimed in profit and loss account, Rs. 4 crores as loss & damage expences.

(vi). Amount debited to profit and loss account of Rs. 3,00,00,000/- as donation to Bioved Research Society.

(vii) Expenses incurred of Rs. 86,30,170/- , by the statement of Mr. Samar Das Gupta.

(viii).Advances recoverable of Rs. 96,79,129/- shown in balance sheet.

(ix).Details of sundry debtors of Rs. 51,87,35,951/-.

(x).Details of purchases of Rs. 65,33,41,701/-.

(xi)Compensation paid to employees of Rs. 2,17,23,268/-.

(xii).Proof of service tax of Rs. 6,89,59,617/- paid during the year.

(xiii). "Advertisement" expense along with proof of TDS on the same.

(xiv). "Other expenses" of Rs. 45,13,68,375/-.

(xv).Amount debited of Rs. 6,86,000/- as donation.

(xvi).Proof of TDS deducted,fixed assets details, short/long term capital gain.

(xvii) Balance sheet, profit and loss account, bank statement etc.

The assessee submitted the documents and details, as mentioned above, during the original assessment proceedings u/s 153A/143(3) of the Act in response to notice under section 142(1) of the Act. During the original assessment proceedings(before first 263 order), the

Assessing Officer has examined and discussed with the assessee the above figures along with documents and details. Based on the above documents, evidences and explanation of the assessee, the original assessmentdated 28.12.2016 was framed by the assessing officer under section 153A/143(3) of the Act.

12. Thereafter, the Ld. PCIT has exercised jurisdiction u/s 263 of the Act(first 263 order) dated 29.12.2017 and declared the original assessment dated 28.12.2016 as cancelled which was framed by the assessing officer under section 153A/143(3) of the Act

13. In pursuance of the first 263 order dated 29.12.2017, the Assessing Officer has framed the consequential assessment order under section 143(3) read with section 263 of the Act dated 31.12.2018 and the assessment order so framed by the assessing officer is **hereinafter referred to as second assessment order under section 143(3) r.w.s. 263 of the Act.** While making the second assessment order u/s 143(3) r.w.s.263 of the Act, the following show cause notice u/s 142(1) of the Act, dated03.12.2018has been issued by assessing officer, which is reproduced below:

"Ld. Principal Commissioner of Income Tax (Central), Patna has passed an order under section 263 of the Income Tax Act, 1961 on 29.12.2017 for the assessment year 2012-13 and restored the matter to the file of assessing officer with a direction to pass fresh order after examining the expenses claimed during the year and disclosure of undisclosed income admitted during the course of search and seizure operation.

In this connection, you are requested to furnish the following details/documents/explanation.

1. *On examination of details filed by you it is seen that you have claimed expenses of Rs. 9,45,96,300/- under the head incentive on sales. During the course of search and seizure operation you have clarified that such amount had been paid to Core Minerals and Rajat Minerals Private Limited. You have stated that payments are in the nature of trade discount given to bulk buyers and discounts is given by issue of credit notes and the same is adjusted against payment receivable from the buyers, examination of accounts of different years it has been observed that in some of the years a substantial amount has been debited in the P & L account under the head incentive on sales. The comparative figure of the sale vis a vis the incentive on sale is given as under:*

Nature of entry	*AY 2009-10*	*AY 2010-11*	*AY 2011-12*	*AY 2012-13*	*AY 2013-14*
Sale of iron ore	*1081057218*	*696180874*	*1388863944*	*1371798854*	*0*
Incentive on sales	*26724112*	*0*	*145692391*	*945996300*	*0*
Percentage of incentive	*2.50%*	*0*	*10.50%*	*6.90%*	*0*

On perusal of above table it is very apparent that there is neither any consistency nor any rational in giving the substantial amount as incentive on sales. ***During the course of search and seizure operation and post search enquiry, Core Minerals in his submission dated 19.09.2014 denied to***

***have received any incentive from M/s. Padam Kumar Jain.** In view of the above facts, your claim of expenses under the head incentive on sales payment is not genuine. It is apparent that you have concealed your income by way of bogus expenses in form of incentive of sales given to aforesaid buyers in order to evade taxes.*

You are requested to show cause as to why expenses claimed under the head incentive on sales totaling amounting to Rs. 9,45,96,300/- should not be disallowed and added to the total income for the year under consideration.

2. *On examination of details filed by you it is seen that you have claimed expenses of Rs. 2,31,97,746/- under the head mines development expenses. From impounded documents bearing identification page 19 & 20 of CMB- 1, it is revealed that all mines development activity is to be done by M/s. Orient Resources. Examination of accounts of different years it has been observed that in some of the years a substantial amount has been debited in the P & L account under the head mines development. The comparative figure of the sale vis a vis the mines development is given as under:*

Nature of entry	*AY 2009-10*	*AY 2010-11*	*A.Y. 2011-12*	*AY 2012-13*	*AY 2013-14*
Sale of iron ore	*1081057218*	*696180874*	*1388863944*	*1371798854*	*0*
Mines Development	*173946916*	*3214337*	*27620500*	*23197746*	*1749300*
Percentage of incentive	*16%*	*0.50%*	*2%*	*1.70%*	*100%*

On perusal of above table, it is apparent that there is neither any consistency nor any rational in the expenditure incurred under the head Mines Development. During the course of search and seizure operation and post search enquiry, it was found that all mines development activity is to be done by M/s. Orient Resources.

In view of the above facts, your claim of expenses under the head Mines Development is appears to be not genuine. You are requested to furnish details note on justification of claim of such expenses along with evidences.

3. It is seen from the P & L account that you have claimed expenses of Rs. 4,00,00,000/- under the head Loss & Damage. During the course of search and seizure operation you have clarified that such amount had been paid to M/s. Ankit Metal & Power Limited for failure to supply the material in this connection you are requested to furnish following details.
a. Copy of agreement paper with the above said party for supply of materials.
b. Copy of ledger account along with copy of purchase order.

4. In addition to the above, this is to bring to your notice that in the course of search & seizure operation in the business/office and residential premises of your group, you have voluntarily disclosed and admitted an undisclosed income of Rs. 11,60,00,000/- (Rupees eleven crore and sixty lakhs). In this regard you are requested to furnish the following information:
a. Assessment Year wise break-up of the above mentioned additional income disclosed.
b. Specify the basis and substantiate the manner in which such undisclosed income has been derived.
c. Treatment of the undisclosed income as mentioned above in the balance sheet with complete particulars of assets shown therein.
d. Information as to whether the above noted undisclosed income has any nexus with any of the receipts / payments mentioned in the seized documents.

You are requested to furnish the above details, explanations and documents duly identified on 14.12.2018. Notice u/s 142(1) is enclosed for your compliance, it may be noted that time and date of hearing must be strictly adhered to and no request for adjournment would be entertained.

Please note that failure to comply with the terms of the above notice, penalty u/s 271(1)(b) of the Income tax Act, 1961 may be (in addition to tax, if any payable) imposed for a sum of ten thousand rupees for each such failure."

We note thatwhile making the second assessment order u/s 143(3) r.w.s.263 of the Act, the following issues were examined by the assessing officer:

(i).Incentive on sales totaling amounting to Rs. 9,45,96,300/-

(ii).Expenses of Rs. 4,00,00,000/- under the head Loss & Damage.

(iii). Section 14A disallowance Rs. 1,06,955/-

(iv).Expenses under different heads Rs. 6,05,900/-

(v). Disallowance of Donation Rs. 2,00,000/-.

It may be noted that assessee submitted details of first two expenses but assessing officer did not bring on record.

14. In response to the above mentioned show cause, notice under section 142(1) of the Act,the assessee has replied to the assessing officer by his letter which is reproduced below:

"To
The Assistant Commissioner of Income tax,
Central Circle -1, Ranchi.

Sub: Compliance to your notice no. ACIT/CC-1/142(1)/ABRPJ001E/1200 dated 03.12.2018 related to A.Y. 2012-13.

Respected Sir,

The assessee has received your above mentioned wherein you have raised certain queries with relation to reopening of proceedings as per the directions of learned PCIT, (Central), Patna vide his order dated 29.12.2017.

In the order, there were two issues on the basis on which Ld. PCIT (Central), Patna has issued the direction u/s 263 of Income tax Act, 1961 to pass a fresh order after examining the issues discussed in the order:

a. *Admitted undisclosed income of Rs. 95,50,500.00*
b. *Writing off Rs. 1.48 crore as bad debts on at account of transaction with NSEL, Mumbai (Copy of order enclosed)*

Further in compliance to your letter wherein in para 1, you have raised queries regarding incentive on sales provided to our buyers.

1. As required in para 1 of your notice, regarding the incentive on sales of Rs. 94596300.00, we would like to mention that we have provided a discount of Rs. 84068190.00 to M/s. Core Minerals *and of Rs. 10528110.00 to Rajat Mineral Private Limited during the relevant previous year 2011-12, this is duly reflected in our books of accounts. It may be possible that M/s. Core Minerals and Rajat Minerals Private Limited haves treated it differently in their books of accounts, but our balances are tallying as confirmed by them.*

Further we would like to mention that we have provided discounts against the receivables due from them for the sales. If you don't show it as discount and no payment has been received by us, then alternatively it is bad debts. Therefore, the amount should not be disallowed under any circumstances.

2. As required in para 2 of your notice, we would like to bring to your notice that the assessee has claimed the following expenses under the head "Mines Development" Expense for a total of Rs. 2,31,97,746.00 during the relevant previous year 2011-12:

Expenses	*Amount in (Rs.)*
Overburden Removal	*1,97,75,000.00*
Road Maintenance	*7,38,000.00*
Sample Testing Fee	*10,04,746.00*
Supervision Charge	*9,60,000.00*
Free plantation & D.G. Set	*7,20,000.00*

The ledgers of the above mentioned expenses along with relevant documentary evidence has been attached herewith for your reference. We would like to inform you that the agreement between the assessee and M/s. Orient Resources has been entered during the year 2013 and before that no transactions has been taken place between both the parties. As regard the payment of Rs. 9,60,000.00 to Mr. Niraj Sharma we would like to bring to your notice that Mr. Niraj Sharma is a mining engineer which is a very high qualification, moreover there is shortage of mining engineers in our county. He is the authorized agent of the assessee as per the MMDR Act, where the assessee is required to appoint a technical person as its agent for all its departmental work. Mr. Niraj Sharma is responsible for complete operations of mines which includes mining, shifting of over burden, stacking, trench cutting, blasting and many more technical works which can only be performed by a very technically competent and qualified person. Therefore, the supervision charges of Rs. 960000.00 paid to him is reasonable and justified.

3. As required in para 3 of your notice, we would like to bring to your notice that the assessee had agreed to sell iron ore in bulk quantity to Ankit Metal & Power Limited in the year 2011-12. But after taking the order the assessee could not supply the materials to them as the assessee had to close operations in his mines from January, 2012. Due to this the company M/s. Ankit Metal & Power Limited claimed for payment of loss from the assessee for their inability to supply the materials. After much negotiations the assessee entered into a settlement where the assessee had to pay them Rs. 400.00 lacs as loss & damages. We are hereby enclosing herewith the copy of ledger of loss and damages for the year 2011-12.

4. With regard to admitted undisclosed income of Rs. 95,50,000.00 we would like to mention that we could find anything material on record which we could offer for taxation as undisclosed income. However, we meet out the commitment we have disclosed an amount of Rs. 8011874.00 in the A.Y. 2015-16 towards the sales tax of earlier year. As these amounts were paid for the year 2011-12 but was paid in the FY 2014-15. As per the provision of section 43B was allowable in the year of payment. Therefore, we have made this disclosure in the year 2014-15 related to the transaction of FY 2014-15. Therefore we have almost declared the admitted amount of disclosures. Now we request you to look into the matter and complete the proceeding without making any further additions".

15. Therefore, while passing the assessment order in pursuance of first 263 order, the Assessing Officer had discussed and examined the following issues:

(i)..Incentives on sales amounting to Rs. 9,45,96,300/-,

(ii).Mines development expenses to the tune of Rs. 2,31,97,746/-,

(iii).Loss and damage expenses to the tune of Rs. 4,00,00,000/-.

(iv).Undisclosed income to the tune of Rs. 11,60,00,000/-.

Therefore, having examined these expenses, the Assessing Officer has framed the consequential assessment order under section 143(3) read with section 263 of the Act dated 31.12.2018,(that is, second assessment order under section 143(3) r.w.s. 263 of the Act).

16. However, subsequently the Ld. PCIT has exercised again his jurisdiction under section 263 of the Act (vide his second 263 order dated 28.03.2019) to revise the original assessment order dated 28.12.2016 which was passed by the assessing officer under section 153A/143(3) of the Act. It is important to note here that ld PCIT has not exercised his jurisdiction u/s 263 of the Act to revise the assessment order framed by the assessing officer u/s 143(3)r.w.s.263 dated 31.12.2018 which was framed by assessing officer in pursuance of direction given by his first 263 order.

That is, ld PCIT has exercised his jurisdiction under section 263 of the Act to revise the original assessment order u/s 153A/143(3) of the Act dated 28.12.2016, which was cancelled by him by his first 263 order dated 29.12.2017. At this juncture, ld Counsel submits before us that ld PCIT cannot exercise his jurisdiction twice under section 263 of the Act to revise the same original assessment order framed by assessing officer u/s 153A/143(3) dated 28.12.2016, especially when the ld PCIT had himself cancelled the assessment order u/s 153A/143(3) dated 28.12.2016, by his first 263 order dated 29.12.2017. The ld Counsel pointed out that one must also keep in mind the conceptual difference between power to review and power to re-assess, the ld PCIT has no power to review its own order, however, in assessee`s case, it is tantamount to review of its own order by the ld PCIT which is not permitted under the Act, therefore, the second 263 order passed by the ld PCIT is bad in law and should be quashed *in limine*.

17. It is also interesting to note here that ld PCIT has exercised his jurisdiction second time under section 263 of the Act mainly to examine the expenses/issues, which were already examined by the assessing officer while passing original assessment order u/s 153A/143(3) of the Act dated 28.12.2016 and while passing second assessment order u/s 143(3) r.w.s. 263 of the Act in pursuance of first 263 order. At the cost of repetition, we reproduce the relevant para of second 263 order dated 28.03.2019, as follows:

> *"Subsequently, on a careful examination of the records, it was observed that the assessment order dated 28.12.2016 for the A.Y. 2012-13 was prima-facie erroneous and also prejudicial to the interest of revenue in so far as the Assessing Officer had omitted to examine the records and issues in the case properly and levy the tax lawfully being payable by the assessee. The omissions made by the Assessing Officer are observed as under:*
>
> *(i).As per the para No. 5.2 of the relevant assessment order, omission to correctly compute the total amount of estimated additions of Rs.11,42,917/- instead of Rs.5,97,716/-.*
>
> *(ii) Omission to properly verify the admissibility of exemption claimed to the tune of Rs.1,48,75,000/- for expenditure incurred on 'Scientific research' 35(i) (ii) of the I.T. Act, 1961,*
>
> *(iii) Omission to properly verify admissibility of receipts on account of 'Advance received' to the tune of Rs.6,66,00,000/-,*
>
> *(iv) Omission to properly verify the admissibility of expenditure of Rs.4,00,00,000/- under the head 'Loss and damage' and*
>
> *(v) Omission to properly verify the admissibility of expenditure under the head 'incentive on sales', amounting to a total of Rs. 9,45,96,300/-.*

We note that first issue "*estimated additions of Rs.11,42,917/- instead of Rs.5,97,716/-"* is only typographical mistake. The correct total of the estimated addition should be at Rs. 11,42,917/-. In the assessment order due to typographical mistake the assessing officer mentioned the total at Rs.5,97,716/- which is an apparent mistake which can be rectified by assessing officer *suo-moto* under section 154 of the Act or it can be rectified by the assessing officer on being an application made by assessee under section 154 of the Act. Therefore, when the remedy is available under the Act to correct the apparent mistake on the face of the record by using section 154 of the Act, there is no necessity to exercise the jurisdiction under section 263 of the Act. For remaining expenses, ld counsel submit before us that these expenses were examined by the assessing officer in the original assessment order u/s 153A/143(3) of the Act dated 28.12.2016 and in the second assessment order passed by assessing officer u/s 143(3) r.w.s. 263 of the Act in pursuance of direction given by ld PCIT in first 263 order, therefore, order passed by the assessing officer is neither erroneous nor prejudicial to the interest of revenue.

18. We note that finality in the legal proceedingsis a must.There must be a point of finality in all legal proceedings and the stale issues should not be re-activitated beyond a particular stage and the lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it is must in other spheres of human activity. For that we rely on the judgment of the Hon'ble Supreme Court in the case of Parashuram Pottery Works Co. Ltd. vs. ITO (1977) 106 ITR 1 (SC), wherein it was held as follows:

> *"It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realizing that price should familiarize themselves with the relevant provisions and become well-versed with the law on the subject. Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi judicial controversies as it must in other spheres of human activity."*

We note that in assessee`s case the loss and damage expenses of Rs. 4,00,00,000/- has been examined by assessing officer in the original assessment u/s 153A/143(3) of the Act dated 28.12.2016, the said expenditure has also been examined by the assessing officer in the second assessment order passed by the assessing officer u/s 143(3) r.w.s. 263 of the Act which was framed by the assessing officer in pursuance of the direction given by ld PCIT, by his first 263 order. Therefore, the said loss and damage expenses of Rs. 4,00,00,000/- has been examined by the assessing officer twice. Again, in second 263 order, ld PCIT has directed the assessing officer to examine the said loss and damage expenses of Rs. 4,00,00,000/-, this means the assessing officer would examine third time said loss and damage expenses of Rs. 4,00,00,000/-.

Likewise, the sales incentive expenses of Rs. 9,45,96,300/- has been examined by assessing officer in the original assessment u/s 153A/143(3) of the Act dated 28.12.2016, the said expenditure has also been examined by the assessing officer in the second assessment order passed by the assessing officer u/s 143(3) r.w.s. 263 of the Act which was framed by the assessing officer in pursuance of the direction given by ld PCIT, by his first 263 order. Therefore, the saidsalesincentive expenses of Rs. 9,45,96,300/- has been examined by the assessing officer twice. Again, in second 263 order, ld PCIT has directed the assessing officer to examine the said,sales incentive expenses of Rs. 9,45,96,300/- this means the assessing officer would examine third time said sales incentive expenses of Rs. 9,45,96,300/-.

Since these expenses have already been scrutinized and examined by the assessing officer twice, that is, in the original assessment u/s 153A/143(3) of the Act dated 28.12.2016, and in the second assessment order passed by the assessing officer u/s 143(3) r.w.s. 263 of the Act. Now, the ld PCIT is directing again to the assessing officer by way of his second 263 order to examine these expenses again, we note that if this is allowed under section 263 of the Act, then there would not be any finality in the legal proceedings/ assessment proceedings in the assessee`s case, and this attitude of the Department is tantamount to do harassment to the assessee which is against the principle of natural justice and the main object of section 263 of the Act.

19. We note that assessee made the compliances of all the notices issued by assessing officer under section 142(1) of the Act. During the course of original assessment proceedings u/s 153A/143(3) of the Act, the assessee submitted books of accounts, Balance Sheet, profit and loss account, details of various expenses as asked by AO, details of creditors/debtors etc.We note that assessing officer has himself acknowledged the books of accounts, documents and evidences submitted by the assessee during the original assessment stage.

During the second assessment u/s 143(3) r.w.s.263, (in pursuance of first 263 order), the assessee submitted books of accounts, Balance Sheet, profit and loss account, details of various expenses as asked by AO, details of creditors/debtors etc.We note that assessing officer has himself acknowledged the books of accounts, documents and evidences submitted by the assessee during the second assessment u/s 143(3) r.w.s.263 of the Act.

The books of accounts of the assessee are audited by a chartered accountant. The assessing officer examined the books of accounts, documents and evidences submitted by the assessee and applied his mind. The assessing officer conducted sufficient inquiry. To gather more information and then prove the claim of the assessee wrong is not the object of section 263 of the Act. The object of section 263 is to examine whether order passed by the AO is erroneous as well as prejudicial to the interest of revenue. Therefore, based on this factual position, the order passed by the AO under section 153A / 143(3) dated 28.12.2016 should not be erroneous. We note that Coordinate Bench of I.T.A.T., Kolkata in the case of Plastic Concern vs. ACIT [61 TTJ 87 (Cal) has held that mere possibility of gathering more material to prove the claim of the assessee wrong would not make the concluded assessment erroneous so long as the ld. A.O. had acted judiciously and conducted enquiries in the course of assessment proceedings.

Wenote that Ld. A.O. having examined thebooks of accounts, documents relating to various expenses,bills & vouchers/invoices and the bank statements etc. and having satisfied himself about the correctness of the same and explanation of the assessee in regard to these expenses and completed the assessment and, therefore, there cannot be a reason to say that the A.O. has failed to conduct necessary enquiry before accepting the claim of the assessee.

20. We note that Ld. Pr. C.I.T. on analysis of assessment records derived satisfaction for issuing the impugned show-cause notice u/s. 263 of the Act. The expression *'record '* as used in section 263 of the Act is comprehensive enough to include the whole record of evidence on which the original assessment order is based. At the same time, if any information asked for by the assessing authority from the assessee or from others to whom he referred the matter during the course of assessment proceeding was not received but received subsequent to the completion of the assessment, in that situation the assessment order passed without receiving such report may appear to be erroneous within the meaning of sec.263 of the Act. In the case of the assessee, there is no denying the fact, as detailed above and acknowledged in the assessment order u/s.153A/ 143(3) dated 28.12.2016, that in response to notices u/s. 142(1) and further requisitions made during the course of assessment proceeding, the A/R of the assessee appeared from time to time and produced/

submitted necessary details/documents as per requisitions in relation to the issues raised by the Ld. Pr. C.I.T., which were examined by Assessing Officer. Therefore, it is the appraisal of the same records which are already with the Ld. A.O. and the Ld.Pr. C.I.T. took a different view than adopted by the A.O. on the same set of facts, which is not permissible u/s. 263 of the Act. In the above circumstances, the view taken by the A.O. was one of the possible views and the assessment order passed by him could not be held to be erroneous and prejudicial to the interests of revenue. There is difference between 'Lack of enquiry' and 'inadequate enquiry'. It is for the AO to decide the extent of enquiry to be made as it is his satisfaction as what is required under law. Reliance is placed on the decision of CIT v. Sunbeam Auto Ltd. [(2010) 332 ITR 167], wherein Hon'ble Delhi High Court has held that if there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass order u/s 263 of the Act, merely because the Commissioner has a different opinion in the matter and that only in cases where there is no enquiry, the power u/s 263 of the Act can be exercised. The ld. PCIT cannot pass the order u/s 263 of the Act on the ground that further/thorough enquiry should have been made by AO.

21. Further, it was settled by Hon`ble Supreme Court in the case of **Malabar Industrial Co. Ltd. vs. CIT [(2000) 243 ITR 83 (SC) (supra)]** wherein it was heldthat if the A.O. adopts one of the possible courses available in the scheme of the I.T. Act which results in any loss of revenue or when two views are possible and the A.O. adopts one of them with which the C.I.T. does not agree, then it would not be an order prejudicial to the interest of revenue for invoking the jurisdiction u/s. 263 of the Act. In other words, the Ld. Pr. C.I.T. on the same set of facts and evidences on record was of the opinion that the A.O. should have examined the various expenses, as explained above, and Assessing Officer should havetaken the stand which the Ld. Pr. C.I.T. hinted in the impugned order u/s 263 of the Act. This is not permissible under law. For better appreciation, the relevant portion of the judgment in the case of **Malabar Industrial Co. Ltd. vs. CIT** (supra) is quoted below :

> *"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".*

22. We note that the Ld. Pr. C.I.T. by invoking his jurisdiction u/s. 263 (Second 263 order) of the Act is giving another opportunity to the Ld. A.O., which is not permissible. Hon'ble Bombay High Court in the case of Ranka**Jewellers vs. Addl. CIT (328 ITR 148)** relying on the decisions of Hon'ble Supreme Court in the cases of Malabar Industrial Co. Ltd. vs. CIT (supra) and CIT vs. Max India Ltd. [(2007) 295 ITR 282 (SC)], has held that once the issue was considered by the A.O., the remedy of the revenue could not lie in invoking of the jurisdiction u/s. 263 of the Act. Therefore, the order of the Ld. C.I.T. was definitely outside the purview of section 263 of the Act. As noted above, the exercise aimed at ascertaining the correct income of the assessee has been fulfilled by the Ld. A.O. by exercising his quasi-judicial functions vis-a-vis passing the original assessment order u/s.153A/143(3) of the Act, dated 28.12.2016. Therefore, certainly it is not a case wherein adequate enquiries at the assessment stage were not carried out or assessment was made in haste. However, what is an opinion formed as a result ofthese enquiries and verification of the materials is something which is in exclusive domain of the AssessingOfficer, and even if Ld. Pr. Commissioner does not agree with the results of such enquiries, the resultantorder cannot be subjected to revision proceedings. For that we rely on the decision of the Coordinate Bench of I.T.A.T., Kolkata in the case of Smt. JuthikaKar vs. ITO [I.T.A. No.1128/Kol/ 2009, dated 16.5.2012], wherein it has been held as under (relevant portion) :-

> *"8……However, what is opinion formed as a result of these enquiries is something which is in exclusive domain of the Assessing Officer, and even if Commissioner has such results of enquiries, the resultant order cannot be subjected to revision proceedings. The conclusions arrived at as a result of enquiries cannot be tinkered with in the revision proceedings. The conclusions being drawn up as a result of enquiry is a highly subjective exercise and as to what is appropriate conclusion is something on which perceptions vary from person to persons. These variations in the perceptions of the Assessing Officer vis-a-vis that of the Commissioner, cannot render an order erroneous and prejudicial to the interest of the revenue."*

The aforesaid position gets further strength from the decision of Hon'ble jurisdictional High Court in the case of **CIT vs. J.L. Morrison (India) Ltd. (2014) 366 ITR 593 (Cal),** the relevant finding of which is applicable to the facts of the present assessee is quoted below :

> *"85. Whether the assessment order dated March 28, 2008, was passed without application of mind is basically a question of fact. The learned Tribunal has held that the assessment order was not passed without application of mind. The records of the assessment including*

the order-sheets go *to show thatheard from time to time. In deciding the question the court has to bear in mind the presumption in law laid down in Section 114 clause (e) of the Evidence Act: "that judicial and official acts have been regularly performed.*

86. Therefore, the court has to start with the presumption that the assessment order dated March 28, 2008, was regularly passed. There is evidence to show that the Assessing Officer had required the assessee to answer 17 questions and to file documents in regard thereto. If the Assessing Officer cannot be shown to have violated any form prescribed for writing an assessment order, it would not be correct to hold that he acted illegally or without applying his mind. " [Emphasis given]"

23. It is a settled position in law that provisions of sec. 263 of the Act do not permit substituting one opinion by another opinion. Therefore, the order of the Ld. Pr. C.I.T. cannot be sustained on the principle of 'erroneous' nature of the order of the A.O., as it is not erroneous. Further, in the instant case, to reiterate, there was no allegation by the Ld. revenue authorities that the evidences produced were fictitious or invented, thus accepted the authenticity of the same. Such an order cannot be called erroneous and prejudicial to interests of revenue only because the A.O. made the assessment without discussing such details therein, as held by the Coordinate Bench of ITAT Kolkata in the case of Chroma Business Ltd. vs. DCIT (2004) 82 TTJ 540 (Cal).Further support in this connection is taken from the decision of Hon'ble Delhi High Court in the case of **CIT vs. Vikas Polymers (2012) 341 ITR 537 (Del).** Relevant part of the observation in this regard reads as under :

" *This is for the reason that if a query is raised during the course of scrutiny by the Assessing Officer, which was answered to the satisfaction of the Assessing Officer, but neither the query nor the answer was reflected in the assessment order, that would not by itself lead to the conclusion that the order of the Assessing Officer called for interference and revision."* [Emphasis supplied]

Further, according to the decision of Coordinate Bench of I.T.A.T., Hyderabad in the case of Manisha Agri Biotech P. Ltd. vs. CIT (2014) 36 ITR (Trib.) 42 -, wherein it was held as follows:

"The respondent had no different or new material to take a different view from the one taken by the Assessing Officer and the reasons given by him to reopen the assessment and sustain the revision are totally unacceptable. The respondent is not vested with any power under section 263 to initiate proceedings for revision in every case and start re-examination and fresh enquiries in matters which have already been concluded under the law. "

Based on the above discussion on assessee`s facts as well as on various precedents applicable to assessee's facts, we are of the view that therevisionary jurisdiction exercised by the Ld. Pr. C.I.T. u/s. 263 of the Act was not in tune with the facts and evidences on record duly explained to the Ld. A.O. and verified by him in original assessment order u/s 153A / 143(3) dated 28.12.2016 and second assessment order u/s 143(3) r.w.s 263 of the Act dated 31.12.2018 and that being so the order passed u/s. 263 of the Act on such erroneous stand is liable to be quashed. Therefore, based on these facts and precedents narrated above, we quash the second 263 order of ld. PCIT.

24. Before parting, it is noted that the order is being pronounced after 90 days of hearing. However, taking note of the extraordinary situation in the light of the Covid-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, we rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of DCIT vs JCB Limited in ITA No. 6264/Mum/2018 and ITA No. 6103/Mum/2018 for A.Y. 2013-14 order dated 14.05.2020.

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

Order pronounced in the Court on 08.07.2020.

Sd/-	Sd/-
(S.S.GODARA)	**(A.L.SAINI)**
न्यायिकसदस्य/ JUDICIAL MEMBER	**लेखासदस्य / ACCOUNTANT MEMBER**

दिनांक/ Date: 08/07/2020
(*Biswajit, Sr.PS*)
Copy of the order forwarded to:
1. Padam Kumar Jain.
2. CIT, Central, Patna.
3. C.I.T(A)- 4. C.I.T.- Ranchi
5. CIT(DR), Ranchi
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Ranchi Bench