आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL,

INDORE BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.350/Ind/2017
Assessment Year: 2012-13

Shri Vinod Bhandari, 21- GF, Bhandari House, Talkies, Scheme No.54, Vijay Nagar, Indore	***Vs.***	Pr. CIT(1), Indore
(Appellant)		***(Revenue)***
PAN No.ABNPB6240M		

ITA No.66/Ind/2017
Assessment Year: 2012-13

Shri Vinod Bhandari, 21- GF, Bhandari House, Talkies, Scheme No.54, Vijay Nagar, Indore	***Vs.***	ACIT-2(1), Indore
(Appellant)		***(Revenue)***
PAN No.ABNPB6240M		

ITA No.57/Ind/2019
Assessment Year: 2012-13

Shri Vinod Bhandari, 21- GF, Bhandari House, Talkies, Scheme No.54, Vijay Nagar, Indore	***Vs.***	DCIT-2(1), Indore
(Appellant)		***(Revenue)***
PAN No.ABNPB6240M		

Appellant by	S/Shri Sumit Nema, Gagan Tiwari & Ayush Gupta, ARs
Revenue by	Shri S.S.Mantri, CIT- DR
Date of Hearing	07.01.2020
Date of Pronouncement	20.03.2020

O R D E R

PER MANISH BORAD, AM.

The above captioned appeals are filed at the instance of assessee pertaining to the Assessment Year 2012-13. ITA No.350/Ind/2017 is directed against the order of Ld. Pr. Commissioner of Income Tax-1 dated 30.03.2017 passed u/s 263 of the Act. ITA No.57/Ind/2017 is directed against the order of Ld. Commissioner of Income Tax-1, Indore dated 22.11.2018 which is arising out of the order u/s 143(3) r.w.s. 263 of the Act dated 27.12.2017 framed by DCIT-2(1), Indore. ITA No.66/Ind/2017 is directed against the order of Ld. Commissioner of Income Tax-III, Indore dated 23.11.2016 which is arising out of the order u/s 143(3) of the Act dated 24.03.2015 framed by ACIT-2(1), Indore.

2. As the issues raised in these appeals are common and relates to same assessee these were heard together and are being disposed

off by way of this consolidated order for sake of convenience and brevity.

3. Brief facts as culled out from the records are that the assessee is a Doctor by profession and earns income from Remuneration, House property, Share of profit and income from other sources. Survey proceedings u/s 133A of the Act was carried out at the premises of M/s Bhandari Hospital & Research Centre (In short BHRC) on 24.09.2011. During the course of survey proceedings certain discrepancies were noticed. Incriminating material in the form of Hundis were found and impounded. The assessee in his individual capacity admitted the discrepancies of un secured loan given to various persons and surrendered additional income of Rs.7 crores for Financial Year 2011-12 relevant to Assessment Year 2012-13. Subsequently assessee e-filed return of income for Assessment Year 2012-13 on 28.03.2013 declaring income of Rs.7,01,74,054/- which was further revised on 18.07.2013 declaring income of Rs.7,41,07,850/- The case was selected for scrutiny and notices u/s 143(2) and 142(1) of the Act were duly served upon the assessee.

4. During the course of assessment proceedings Ld. A.O observed that the original return is a belated return as provided u/s 139(4) of the Act and thus cannot be revised. Ld. A.O therefore treated the revised return filed on 18.07.2013 as invalid return and assessment proceedings were carried out taking the basis of original return filed on 28.03.2013. In the original return filed the assessee claimed deduction of interest expenditure u/s 57 at Rs. 93,56,983/- and in the revised return it was claimed at Rs.54,23,189/-. Since the Ld. A.O treated the revised return as invalid the alleged difference of interest expenditure of Rs. 39,33,844/- (Rs.93,56,983/- (-) Rs.54,23,189/-) was disallowed. Ld. A.O also observed that there were huge cash deposits in the bank account of the assessee during the month of February and March. Assessee claimed that the surrendered income of Rs.7 crores which was invested in the form of hundi matured during the year and the money so received (Principal and Interest) was deposited in the bank account and the same were duly recorded in regular books. However Ld. A.O in view of Vyapam scam which involved the allegation of bribe of illegal money for admission in medical colleges in Madhya Pradesh, took a

view that the assessee being unable to explain the source of cash deposited in bank account by not providing the information about the persons named in the hundi found during the course of survey, did not accept the source of cash explained by the assessee thus the alleged cash deposit of Rs.7,34,79,097/- was treated as unaccounted income earned from Vyapam scam and made addition thereof. Accordingly income assessed at Rs.14,75,87,000/-. Against the addition made by the Ld. A.O assessee filed appeal before Ld. CIT(A) who did not give any relief to the assessee against which the assessee is in appeal before the Tribunal vide ITA No.66/Ind/2017 which will be dealt by us in the subsequent paras.

5. Subsequent to the assessment order for Assessment Year 2012-13 framed u/s 143(3) of the Act on 24.03.2015, Ld. Pr. CIT-1 assuming jurisdiction u/s 263 of the Act issued show cause notice after being satisfied that the assessment framed u/s 143(3) of the Act dated 24.03.2015 is erroneous and prejudicial to the interest of revenue. Ld. PCIT-1 after considering the submission made by the assessee directed the Ld. A.O to pass a fresh assessment after making proper enquiries and investigation as directed in the order

u/s 263 of the Act. Against the order u/s 263 assessee is in appeal before the Tribunal by way of filing ITA No.350/Ind/2017.

6. As regards ITA No.57/Ind/2017 the same is arising out of the assessment order u/s 143(3) r.w.s. 263 of the Act wherein the Ld. A.O did not made any new addition and same income of Rs.14,75,87,000/- assessed as was assessed u/s 143(3) of the Act. Against this order also assessee went before Ld. CIT(A) but could not succeed and now the assessee is in appeal before the Tribunal vide ITA No.57/Ind/2017. The fate of this appeal will depend on the outcome of our decision to be taken in the case of ITA No.350/Ind/2017.

7. Now we first take up ITA No.350/Ind/2017 wherein the assessee has raised various grounds but the substantial issue is challenging the order issued u/s 263 of the Act passed by Ld. PCIT-1 contending that Ld. PCIT exceeded his jurisdiction by wrongly invoking the provisions of 263 of the Act and the impugned order is bad in law and void initio. Following grounds of appeal have been raised:-

THE ORDER U/S 263 DATED 30.3.2017 IS ILLEGAL, VOID AND WITHOUT JURISDICTION:

1.1 That on the facts and circumstances of the case and in law, the order dated 30.3.2017 passed by the Commissioner of Income-tax (CIT), u/s 263 of the Income-tax Act, 1961 ('the Act') setting aside the assessment framed u/s 143(3) of the Act as erroneous and prejudicial to the interest of the revenue is without jurisdiction, bad in law and void ab-initio.

1.2 That the AO having already added the surrendered income of 7 crore there cannot be any prejudice attributed u/s 263 and thus the order of assessment dated 24.3.2015 cannot be regarded as prejudicial to the interest of revenue merely because ld. CIT held that the AO should have acted as a police officer and not as a taxing authority and should have tried to probe the source of already taxed income.

1.3 That ld. CIT also failed to appreciate that, u/ s 263 of the Act, an order of assessment cannot be set-aside to AO to simply to make further enquiries <u>on already taxed income</u> and thereafter pass fresh order of assessment. Therefore, and as such, impugned order and directions issued u/s 263 are untenable, contrary to law unsustainable.

2.NO JUSTIFICATION EITHER IN LAW OR ON FACTS FOR THE CIT TO INVOKE HIS POWERS U/S 263 ON THE ALREADY TAXED INCOME.

2.1 The powers under section 263 cannot be invoked to ask the AO to tarnish the image of the assessee and thus <u>the following directions made by the CIT in his order deserve to be quashed</u>

i)The AO has accepted surrender of Rs. 7 crore as income from other sources without examining the real source of such income. No conclusive inquiry regarding the source of such income was made.

ii) The AO was required to examine the impounded material properly to assess the correct income of the assessee but the AO has not done the same.

iii) The AO has not examined the source of Rs. 7 crore surrendered with the Vypam case as to whether this is income generated by contravening the established law.

iv) The AO should have asked the involved agencies such as Police, ED etc the information to establish the correct source of income.

3.NO JUSTIFICATION FOR THE CIT TO ATTRIBUTE NON-INITIATION OF (PENALTY ON Rs. 39,33,844 AS AN ERROR.

3.1 That the assessment order clearly points out the fact that the disallowance of Rs. 39,33,844 was intimated by the assessee himself and was not discovered by the AO thus the Ld. CIT failed to appreciate that there was no occasion for the AO to initiate penalty.

4.NO JUSTIFICATION EITHER IN LAW OR IN FACTS IN EXERCISING JURISIDCTION U/S 263 IN RESPECT OF THE FOLLOWING ITEMS SINCE THERE WAS NO ERROR IN THE ORDER OF THE ASSESSING OFFICER AND THE ORDER IN RESPECT OF THESE ITEMS WAS PASSED AFTER DUE AND SUFFICIENT ENQUIRY AND THE SAME WAS ALREDAY TAXED :-

4.1 No justification to regard increase in income of Rs. 41,07,848 shown in the return as causing any prejudice to the Income-tax department.

4.2 No justification to ask the AO to make independent verification of certificate of done uls80G(S)(vi) and LIC receipt as these were duly and sufficiently verified by the AO and even the CIT could not point out any error in the documents filed.

4.3 No justification to ask the AO to make enquiry regarding year-wise investment made in movable and immovable properties which was already done by the AO.

THAT EXTENSIVE INFORMATION WAS SOUGHT BY THE AO AND WHICH WAS DULY PRODUCED AND EXAMINED BY THE AO WHICH COVER ALL ASPECTS WHICH HAVE NOW BEEN AGAIN SET-ASIDE FOR REEXAMINATION BY THE CIT UIS 263. THUS THE PRESENT ORDER UIS 263 IS ONLY AN ATTEMPT TO MAKE FISHING AND ROVING ENQUIRIES INTO ALL ASPECTS WHICH HAVE ALL BEEN PREVIOUSLY EXAMINED BY THE AO. THE ORDER U/S 263 IS THEREFORE ILLEGAL, VOID AND WITHOUT

JURISDICTION.

8. Ld. PCIT after pursuing the assessment records and the assessment order framed u/s 143(3) dated 24.03.2015 invoked the provisions of Section 263 of the Act which is meant for revision of orders which are considered as erroneous and prejudicial to the revenue. Following show cause notice was issued to the assessee on 15.3.2017.

"A. The AO has added interest. income of Rs. 39,33,844/-- based on its acceptance of the assessee in the non-est return. However no penalty u/s 271(1)(C) for inaccurate particulars of income filed in original income was initiated.

B. The AO, has not obtained the break-up of income of Rs. 41,07,848/- (excluding 7 Crores surrendered), while in earlier Year income was only Rs. 6,37,300/- .The AO has also accepted surrender of Rs.7 crores represented by Hundis as 'income from other sources' without examining the real sources of said income. The AO herself has mentioned in page 5 that assessee is involved in Vyapam case and sources of these funds should have been examined.

C. The AO has mentioned that impounded material l was verified on test check basis which is not proper as it has be complete check in respect of impounded material. The AO has not mentioned as to' from which books of account said verification was carried out.

D. The AO, has not examined the link of Sources of Rs. 7 Crores surrendered with the Vyapam case as per which money Was illegally

Obtained for admissions etc in the medical college controlled by assessee. In that case it will be income generated by the assessee by contravening the established law.

E. The AO has not collected information from various agencies involved in investigation of Vyapam case i.e. Police Enforcement Directorate and other law enforcement agencies to determine correct income of the assessee.

F. In respect of claim of deduction under chapter VIA, no. LlC receipt of Rs. 49,062/- is on record and for claim of 8OG of Rs.26 Lakhs as donation to SAIMS and SAIMST, the certificate given by the competent authority is only up to 31.03.2011. Proper investigation was not made before allowing the said deduction and claim allowed contrary to law.

G. The enquiry regarding year wise investment made in movable and immovable property and accretion in wealth was not made".

9. On receiving the show cause notice assessee made detailed written submissions which read as follows:-

1. With reference to the show cause notice issued to us, as a general submission against all of your observations, we would like to bring to your attention that the explanation (2) to sub-section 1 of section 263 has been inserted w.e.f 1/6/2015 and is thus applicable to assessment orders passed after 1/6/2015. Consequently, the discretionary powers bestowed on you by virtue of sub-clause (a) of Explanation (2) are not applicable to the Assessment order passed in our case which was passed in January 2015 and which is subject matter, of your referred notice. Also the explanation inserted is not retrospective in nature as has been clarified / held in the following order of the Supreme court.

2. The Supreme Court in CIT v. Vatika Township P. Ltd (2014) 367 ITR

466 observed: " The fundamental rule is that no statute shall be construed to have a retrospective operation unless such a construction appears very dearly in the terms of the Act, or arises by necessary and distinct implication'. It has been consistently held that a provision must be read subject to the rule that in the absence of an express provision or clear implication, the Legislature does not intend to attribute to the amending provision, a greater retrospectivity than is expressly mentioned'. It is settled law that a taxing provision imposing liability is governed by the normal presumption that it is not retrospective as held in 5.5. Gadgil v. Lal And Co. (1964) 531TR 231 (SC).

3. Sir the assessee had filed the revised return suo moto on 18/10/2013 Le. before the issue of notice u/s 143(2) (Dt. 14/08/2013).Therefore there is no question of penalty U/s 271(1)(c) in the above case for furnishing inaccurate particulars of income filed in original return of income.

Assessee had already paid the applicable taxes on the above before filing the revised return. Therefore it cannot also be said that there was anything prejudicial to the interest of the Revenue.

Further mere non initiation of penalty u/s 271(1)(c) cannot be considered a good ground for invoking section 263 Master Vijay Oswal ITO [2003] 87 ITO 95 (Rajkot)(Trib).

4. Total income of the assessee was Rs. 7,41,07,848 including surrender income. It is incorrect to say that the AD has not obtained the break-up of income of Rs.41,07,848/- (excluding 7 crores surrendered)

1. AO had obtained

a. Copies of return of income with detailed computation of income

b. Capltal account, Statement of affairs with (submission dt.

27/08/2013)

c. Revised return of income "with complete breakup of Rs.7,41,07,848/- (Submission dated 08/08/2014)

2. AO had enquired the following vide his (Notice dt.14/02/2014 and reply dt. 24th Feb 2014)

a. Details of sources of income

b. Details of expenses above Rs.5,OOO/-

c. Details of declared incomes during survey

d. Evidences of Deductions claimed under chapter VI-A

3. Again obtained the following with submission dt. 8th august 2014

a. Copy of Housing loan certificate (Which means she had verified income from house property)

b. Certificate of approval u/s 80G of the institutions to whom donations were made, which- means she had verified the deductions claimed.-

c. Details of disallowance of excess interest u/s 57

d. Details of amounts appearing in 26AS Statement

4. Further the A.O had - in its show cause notice dt./ 18/03/2015 also mentioned interest amount of Rs. 3479097/- in addition to Rs.7.00 Crores surrendered during the Survey.

From all the above it is clear that the A.D had obtained the details of all the heads of the assessment proceedings. It may kindly be noted that the amount of 41,07,848/- was higher than previous year and tax has already been paid on the above.

5.There was nothing in the impound material related to the assessee other than the documents on the basis of which surrender of Rs.7.00 cores was made. So mere

mention of test check by the AD. that impounded material does not render the order as erroneous and prejudicial to the interest of the revenue since the AO had already made unjust and high pitched order in the favour of revenue by adding the same income twice.

The AO has verified the transactions from the following books

a. Cash book and other books of the assessee submitted for verification on 16/03/2015

b. Capital account and Statement of affairs of the assessee

c. Copies of the computation of incomes, Capital accounts of the firms where the assessee is partner.

Therefore it is dear that from the books of account the AO means the books of the assessee only. From the above it is clear that both the reasons in clause C are not correct. Nothing has been brought which can prove that the order was erroneous and prejudicial to the interest of revenue without bringing anything tangible evidence.

6. The above is grossly incorrect since the AO had tried here hard to link the above income with Vyapam case which is already mentioned in here order. She issued the show notice dated 18/03/2015 and despite of our clarifications she linked the above amounts with the Vypam and added to the income of assessee despite of assessee having paid the tax on the above in his return of income. We had clarified with submissions given during the course of hearing. It is not clear what has not been examined here, when she already has added the above amount and also initiated penalty on the above.

7. The above is grossly incorrect with the same argument as against the D. Though the A.O. is not expected to. or required to collect information

from various agencies involved in the investigation since she was aware that nothing had been proved against the assessee in court of law and not even charge sheet was filed against the assessee till the date of passing the order by her. Assessee was mere suspect and nothing had been proved in the court of law against the assessee till the date of order.

Regarding Dr. Bhandari's linkage with Vyapam case the following are the related facts of the case as per FIR's/ Challans filed before the relevant authorities.

- *That Dr. Vinod Bhandari was named as an accused in case no.12/13.and case no.14/13. The case no. 12/13 is with respect to PMT 2012 and case no.14/13 is with respect to PPG 2012 both of which happened in the financial year 2012-13, whereas the assessment of the assesse which is the subject matter here is for the financial-year 2011-12 (Copy of FIR of both the cases enclosed as page No. _).*
- *Dr. Bhandari is accused in the matter of 6 students in case no.14/13 and for 8 students in case no.12/13. He has not been named as an accused in any other cases of this Matter.*
- *The total amount involved in the above cases was Rs.50.00 Lacs and Rs.142.00 Lacs in case no.12/13 and 14/13 respectively which has already been fully seized from Shree Pradeep Raghuvanshi's house at Indore by the Police authorities as is brought out in the FIR statement enclosed as page No. _.*

Consequently, there is no cash specific to the above cases which is presently not found or not seized by Police authorities. Further and more importantly the matter referred in which Dr. Vinod Bhandari is accused is with reference to the F.Y. 2012-13 whereas our assessment orders which are subject matter of show cause notice u/s 263 are with respect to FY 2011-12 Le. A.Y. 2012-13.

Despite of above, and without bringing any evidence to the contrary and only based on pure conjecture, the A.D. has double added surrendered income as income from unknown sources alleging his involvement in Vyapam case.

8. The assessee had paid L1C premium of Rs. 1026737/- however due to error deduction was claimed only for Rs. 49,062.

Copies of L1C were submitted along with submission dated 26/08/2013 and. also above fact was mentioned in letter dated 24/02/2014 Point no. 8.

The certificate of 80G approval was given up to 31/03/2011 however as per CIRCULAR NO. 7/2010 [F. NO. 197/21/2010ITAI], DATED 27102010 (Copy enclosed) it is clarified by CBDT that any approval is in force as on 01/10/2009 and approvals granted thereafter shall remain in force unless approval is withdrawn. Therefore the AO had required and assessee had submitted declaration from the said institutes that there approval was not withdrawn at any time in its submission dt, 16/03/2015.

9. We are enclosing the paper diary containing all the relevant notices and our submissions during the assessment proceedings for your kind perusal. With all the above and in light of various judicial pronouncements it is clear that none of the issues raised in the show cause notice meet the conditions requisite for invoking Section 263 of the I. T. Act, 1961. Please also refer to the following judicial pronouncements

1.The fact that AO has not recorded the inquiry and its satisfaction is not an evidence or does not leads to the proposition that he did not make any enquiry on this matter which would trigger 263 on the specific issue. Manish Kumar vs CIT (2012) 134 ITD 27 (Indore Trib),

and also 323 ITR 632 and Maithan International vs ACIT 134 ITD 393).

2. Merely because from a perfectionist point of view, it is felt that some more enquiries and verifications could have been made by the Assessing Officer while making assessment/assessment order cannot be declared to be erroneous and prejudicial to the interest of revenue. (Salora Cloth v. ACIT [2006J 991TD 300 (Chennai) (Trib.)

10. In the light of the above submissions against your observations in the referred show cause notice, we trust that you can observe based on our submissions that the assessment completed u/s 143(3) and JCIT's order u/s 144(A) are not erroneous and prejudicial to revenue. Consequently the twin pre-conditions of re-opening u/s 263 of the referred assessments as elaborated under Malabar Industrial Co. Limited vs CIT (243 ITR 83) (SC)are not met. We submit that in view of the same the proceedings u/s 263 may be dropped.

10. After considering the submission made by the assessee, Ld. PCIT was not convinced and observed that the Ld. A.O did not obtain break up of income of Rs. 41,07,848/-, A.O has not examined the real source of the surrendered income of Rs.7 crores allegedly represented by the assessee having earned unaccounted professional receipts which were invested in short term advances in the form of 'Hundis' which matured during the year. Ld. PCIT also brushed aside the submissions made by the assessee explaining that all the issues raised in the show cause notices have already

been examined by Ld. A.O and additions have also been made. Ld. PCIT directed the Ld. A.O to pass fresh assessment order after making proper enquiries of investments thereby treating the assessment order issued u/s 143(3) dated 24.3.2015 as erroneous and prejudicial to the interest of revenue. Relevant extract is reproduced below:-

> *14. It is apparent that AD has not investigated and examined the matter properly which should have been done.*
>
> *15. The Commissioner can regard the order as erroneous, on the ground that in the circumstances of the case, the Assessing Officer should have made further inquiries. It is duty of the Assessing Officer to ascertain the truth of the facts stated by the assessee. It is incumbent on the Assessing Officer to investigate the facts stated when circumstances would make such an inquiry prudent. The word "erroneous" in section includes the failure to make such an enquiry. Hence, the order becomes erroneous because such an inquiry has not been made.*
>
> *16. The assessee relies upon various decisions challenging the proceedings initiated u/s 263. Assessee's contention is not acceptable. As per provisions of section 263, the Commissioner of Income tax may call for and examine the record if any proceedings and if he considers that any order passed therein by the Assessing Officer. is erroneous in so far as it is prejudicial to the interest of the revenue, he may after giving the assessee an opportunity of being hear 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 an order enhancing or*

modifying the assessment or cancelling the assessment and directing a fresh assessment.

17. On perusal of record, it is clear that the enquiry and investigation which were required had not examined properly by the Assessing Officer. In this regard, Explanation-2 of the section 263 is produced as under :-

"For the purpose of this section, it is hereby declared 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 enquiries or verification which should have been made.

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

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

The above explanation is clarificatory in nature. Even before it the orders made without proper enquiry were were liable to be revised u/s 263 of I.T.Act. Further this explanation exists on the date on which proceedings u/s 263 have been undertaken and is existing law as on date. So it will be applicable in present proceedings. It is immaterial that order was passed u/s 143(3) earlier to 01.06.2015

18. As discussed the proper enquiry has not been made which ought to have been made by AO and AO did not apply her mind to relevant issues making the assessment order erroneous and prejudicial to the interest of revenue.

19. The assessment order made by the Assessing Officer, in respect of examination of facts/issues mentioned above is erroneous m so far as it is

prejudicial to the interest of revenue and is therefore hereby set aside u/s 263 of the Income tax Act,,1961 accordingly. The Assessing Officer is directed to pass the fresh assessment order after making proper enquiries and investigation as discussed on aforesaid issues and opportunities to the assessee of being heard.

11. Now the assessee is in appeal against the order issued u/s 263 of the Act by ITA No.350/Ind/2017 pertaining to Assessment Year 2012-13.

12. Ld. Counsel for the assessee apart from reiterating the submissions made before Ld. A.O during the course of assessment proceedings and before Ld. PCIT during the course of proceedings u/s 263 of the Act further argued that the order u/s 143(3) of the Act is passed by Ld. A.O after making inquiries and verification which should have been made. The AO, exercising its quasi-judicial power, had issued a detailed questionnaire u/s 142(1) which was duly answered by way of various details, explanations and letters. Complete books of account supported with documentary evidences were produced and examined by the AO during the assessment proceedings. The appellant had appeared before the AO and filed replies, however, the ld. PCIT has completely ignored the detailed enquiry conducted by the AO and has, therefore, erred in exercising

jurisdiction u/s 263 of the Act in respect of the issues which were already examined by the AO.

13. Relying on the decision of Apex Court in the case of *Malabar Industrial Co. Ltd. V. CIT* [(2000) 243 ITR 83], it is submitted that the power of CIT u/s 263 of the Act can only be exercised by the ld. PCIT when the twin conditions of the order being erroneous as well as prejudicial to the interest of revenue, are satisfied and the same cannot be exercised to substitute its own finding in place of the AO and therefore, the ld. PCIT cannot re-examine the issues already inquired into by the AO. Reliance is also placed on the Bombay High Court's decision in the case of CIT v. Gabriel India Ltd. [(1993) 203 ITR 108] wherein it is held that the power u/s 263 of the Act is to be exercised in the case of "no inquiry" and not in the case of "inadequate inquiry" or "lack of inquiry" whereas the case of the assessee is not even a case of lack of inquiry.

14. It is submitted that under the jurisdiction u/s 263 of the Act, the Ld. PCIT has initiated revision proceedings in order to carry out fishing and roving enquiries in the matters which are already concluded by the AO and therefore the exercise of jurisdiction u/s

263 of the Act is bad in law. The Ld. PCIT has erred in exercising jurisdiction u/s 263 of the Act when the issues raised therein were already enquired into by the AO during the assessment proceedings. The AO had passed the assessment order only after conducting detailed enquiry on various issues appearing in the show cause notice issued u/s 263 of the Act. The assessment order is passed after due application of mind, therefore, the impugned notice and order u/s 263 of the Act alleging that proper and adequate enquiry was not made, rendering the Assessment Order erroneous and prejudicial to the interest of revenue, is arbitrary based on conjecture and surmises.

15. The Ld. PCIT has not given any finding as to how and in what manner the order of the AO on the various issues noted in its order u/s 263 of the Act was erroneous and prejudicial to the interest of the Revenue. The ld. PCIT has not made any enquiry on his own but simply directed the AO to make further verification and examination therefore, the order of the ld. CIT u/s 263 of the Act deserves to be set aside. Recently, the Hon'ble Delhi High Court in the case of Ld. PCIT v. Delhi Airport Metro Express Pvt. Ltd. [ITA

No. 705/2017] has categorically held that for the purpose of exercising jurisdiction u/s 263 of the Act and reaching a conclusion that the order is erroneous and prejudicial to the interest of revenue, the ld. PCIT has to undertake some minimal inquiry and in fact where the ld. PCIT is of the view that AO had not undertaken any inquiry, it becomes incumbent on the Ld. PCIT to conduct such enquiry. Further in the case of PCIT v. Modicare Limited [ITA No. 759/2017] Hon'ble Delhi High Court has followed its decision in Income Tax Officer v. DG Housing Projects Limited [343 ITR 329], DIT v. Jyoti Foundation [357 ITR 388] and Ld. PCIT v. Delhi Airport Metro Express Pvt. Ltd. (supra) to hold that the exercise of jurisdiction u/s 263 of the Act cannot be outsourced by the PCIT to the AO and therefore, the PCIT cannot direct the AO to provide details of the facts on the basis of which the proceedings u/s 263 of the Act could have been initiated.

16. In the instant case, the ld. PCIT, unmindful of the enquiries conducted by the AO during the assessment proceedings and submissions made by the assessee in response to notice u/s 263 of the Act, has merely observed that the assessment order was passed

without making proper enquiries and it is a matter of record that Ld. PCIT has himself not undertaken any enquiry to reach a conclusion that the order is erroneous and prejudicial to the interest of revenue. Therefore, in the absence of any justification for exercise of jurisdiction u/s 263 of the Act, the order of ld. PCIT passed u/s 263 of the Act is liable to be set aside.

17. 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 Ld. PCIT to pass order u/s 263 of the Act, merely because the Ld. PCIT 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.

18. The ld. counsel for the assessee submitted that even though there has been an amendment in the provisions of section 263 of the Act by which Explanation 2 is inserted, w.e.f. 01.06.2015 but the same does not give unfettered powers to the Commissioner to assume jurisdiction u/s 263 of the Act to revise every order of the AO to re-examine the issues already examined during the course of assessment proceedings. The Hon'ble Mumbai ITAT has dealt with Explanation 2 as inserted by the Finance Act, 2015 in the case of Narayan Tatu Rane v. Income Tax Officer [(2016) 70 taxmann.com 227] to hold that the said Explanation cannot be said to have overridden the law as interpreted by the Hon'ble Delhi High Court, according to which the Ld. PCIT has to conduct an enquiry and verification to establish and show that the assessment order is unsustainable in law. The Tribunal has further held that the intention of the legislature could not have been to enable the ld. PCIT to find fault with each and every assessment order, without conducting any enquiry or verification in order to establish that the assessment order is not sustainable in law, since such an interpretation will lead to unending litigation and there would not

be any point of finality in the legal proceedings. The opinion of the Ld. PCIT referred to in section 263 of the Act has to be understood as legal and judicious opinion and not arbitrary opinion.

19. Ld. Counsel for the assessee also submitted that details of interest income of Rs.39,33,844/- was duly shown in the computation of income and due taxes paid therein. The surrendered income of Rs.7 crores is the unaccounted income from profession/ business income which were invested in hundis as short term advances for earning interest and the details of such hundis which were impounded during the course of survey were available with the Ld. A.O. As regards the alleged involvement of assessee in Vyapam case it was submitted that the assessee is accused in Case No.12/13 and 14/13 with respect to PMT 2012 and PPG 2012 which happened during the financial year 2012-13 whereas the assessment of the assessee which is the subject matter of the appeal is for financial year 2011-12. He also submitted that assessee has not been named as accused in any other cases of this matter and the amount involved in the alleged case No.12/13& 14/13

referred above have already been seized from Shri Pradeep Raghuvanshi's house at Indore by the police authorities.

20. He also submitted that even though there was no matter of Vyapam scam during financial year 2011-12, the Ld. A.O during the course of assessment proceedings u/s 143(3) of the Act did not accept the submissions of assessee and made addition of cash deposit at Rs.7,34,79,097/- which itself proves that the order passed by the Ld. A.O is neither erroneous nor prejudicial to the revenue. In support of the above contention reliance was placed on the following decisions;

(i) Cadila Pharmaceuticals Ltd (ITAT Ahmedabad Bench)
(ii) Madhusudan Industries Ltd (ITAT Ahmedabad Bench)
(iii) Pr. Commissioner of Income Tax Vs Narayan Balmukund Dubey (2017) 30 ITJ 335 (M.P)
(iv) Director of Income Tax V Jyoti Foundation (2013) 357 ITR 388 (Delhi)
(v) Commissioner of Income Tax V/s Ratlam Coal Ash. Co (1988) 171 ITR 141 (MP)
(vi) Commissioner of Income Tax V/s Mehrotra Brothers (2004) 270 ITR 157 M.P
(vii) Commissioner of Income Tax, Delhi v/s International Travel House Ltd (2012) ITR 554 (Delhi)

(viii) Income Tax Officer V/s D.G Housing Projects Ltd (2002) 343 ITR 329 Delhi

(ix) M/s Amira Pure Foods Pvt. Ltd (ITAT Bench Delhi)

(x) M/s Narayan Tatu Rane (ITAT Mumbai Delhi)

21. Reliance is also placed on the following decisions :-

a. CIT v/s. Software Consultants 341 ITR 240 (Del.)

b. CIT v/s. Anil Corporation 213 Taxmann 19

c. CIT v/s. Sunbeam Auto Ltd. 332 ITR 167 (Del.)

d. CIT v/s. Makal Suta Cotton Co. P. Ltd. 275 ITR 54(M.P)

e. CIT v/s R.K. Construction Co., 313 ITR 65 (Guj.)

f. CIT v/s Max India, 295 ITR 282 (SC)

g. CIT v/s Ratlam Coal Ash Co., 171 ITR 141 (M.P)

h. CIT v/s Arvind Jewellers, 259 ITR 502 (Guj.)

i. CIT v/s Vodafone Essar South Ltd, 212 Taxmann 184 (Del.)

j. CIT v/s Mehrotra Brothers, 270 ITR 157 (M.P)

k. CIT v/s Shri Govindram Seksariya Cahrity Trust, 166 ITR 580 (M.P)

l. Hari Iron Trading Co. v/s CIT, 263 ITR 437 (P&H)

m. CIT v/s HARI Singh & Associates, 267 CTR 442 (Raj.)

n. 335 ITR 83, CIT vs. Anil Kumar Sharma (Delhi),

o. 341 ITR 537 (Delhi), CIT vs. Vikas Polymers

p. 343 ITR 342, CIT vs. Hero Auto Ltd. (Delhi H.C.),

q. 344 ITR 554, CIT vs. International Travel House Ltd. (Delhi H.C.),

r. 343 ITR 329, CIT vs. D.G. Housing Projects Ltd. (Delhi H.C.),

s. 111 ITR 326, J.P. Srivastava & Sons Vs. CIT, (Allhd. H.C)

t. 320 ITR 674, CIT vs. Ashish Rajpal (Delhi H.C.). At

u. 323 ITR 632, CIT vs. Design and Automation Engineers (Bombay) P. Ltd. (Bombay H.C.), of

v. 323 ITR 206, CIT vs. Development Credit Bank Ltd.

w. 243 ITR 83, Malabar Industrial Co. Ltd. Vs. CIT(SC)

x. 203 ITR 108 CIT Vs. Gabriel India Ltd., (Bombay H.C.)

y. Mukesh Sharma v. CIT 25 ITJ 341 (Indore ITAT)

22. Per contra Ld. Departmental Representative strongly supported the order u/s 263 of the Act passed by Ld. PCIT and further submitted that assessee was required to furnish complete details of the persons named in the hundis so as to prove that they were genuine advances and the cash was received on maturity of such hundis. Since no such explanation was provided by the assessee during the course of assessment proceedings and the Ld. A.O has also not examined the link of source of Rs.7 crores surrendered and also about the mismatch in the deduction under Chapter VI-A, Ld. PCIT has rightly set aside the order of the Ld. A.O issued u/s 143(3) of the Act dated 23.3.2015 for passing a fresh assessment order after making proper enquiries and investments.

23. We have heard rival contentions and perused the records placed before us and carefully gone through the judgments and decisions relied by the assessee. Sole issue raised in this appeal is challenging the validity of order u/s 263 of the Act by Ld. PCIT and wrongly assuming jurisdiction u/s 263 of the Act.

24. The assessee was subject to survey u/s 133A on 24.9.2011 and during the course of survey proceedings he admitted the discrepancies of unsecured loans given to various persons and offered Rs.7 crores as undisclosed unaccounted income for tax for Assessment Year 2011-12. During the course of survey revenue authorities impounded various incriminating material including hundis which were claimed by the assessee to have been issued in lieu of advances given out of the unaccounted income from undisclosed professional income and other sources. The assessee has disclosed the surrendered income in the return of income and offered it to tax. As regards cash deposited in the bank account during the financial year 2011-12 at Rs. 7,34,79,097/- the assessee claimed that he received amount on maturity of hundis during the year along with interest the details of which are also available with

the Ld. A.O and the principal amount and interest received there on was sufficient enough to explain the cash deposited in the bank account. The Ld. A.O was not satisfied with this submission. Even though the details of hundis with specific interest amount were available on record but Ld. A.O rather than linking the source of cash deposited from hundis treated it as unaccounted income from "Vyapam scam" allegedly linking with the assessee and treated it as receipt of illegal money as bribe for admission in medical colleges in M.P and accordingly made the addition of Rs. 7,34,79,097/-. In this way as against the return of income at Rs.7,01,74,054/-, Ld. A.O assessed income at Rs.14,75,87,000/- and the additions included the addition made for alleged income from Vyapam scam. Ld. PCIT after assuming the jurisdiction u/s 263 of the Act has observed that the order of the Ld. A.O is erroneous in so far as it is prejudicial to the interest of the revenue and needs to be assessed afresh after making proper enquiries and investigations.

Before proceeding to examine the facts of the case we will first go through the provisions of Section 263 and various judgments and

decisions rendered with regard to Section 263 of the Act. Section 263 of the Act reads as under:-

> ***263.*** *(1) The 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 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 an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.*
>
> *Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—*
>
> *(a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include—*
>
> *(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner undersection 144A;*
>
> *(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;*
>
> *(b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner;*
>
> *(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or] Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.*
>
> *Explanation 2.—For the purposes of this section, it is hereby declared 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 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.

(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

25. From perusal of the aforesaid section, it is apparent that there are mainly four features of the power for revision to be exercised u/s 263 of the Act by the Pr. CIT.

i. The Pr. CIT may call for and examine the records of any proceedings under the Act and for this purpose he/she need not to show any reason or record any reason to belief as it is required u/s 147 or 143(2) of the Act.

ii. He/She may consider any order passed by the Assessing Officer as erroneous as well as prejudicial to the interest of the Revenue. This is exercised by calling for and examining the record available at this stage.

iii. If after calling for and examining the records the Commissioner considers that the order of the Assessing Officer is erroneous is so far it is prejudicial to the interest of the Revenue, he is bound to give an opportunity to the assessee of being heard and after that as he/she may deem fit, pass such order thereon as the circumstances of the case may justify including an order enhancing or modifying the assessment or cancelling assessment and directing a fresh assessment or make such enquiries as he deems necessary.

iv. Under the provisions of section 263 of the Act Pr. CIT/CIT can enhance or modify the assessment as a result of inquiry conducted and hearing of the assessee.

26. It is well settled law that for invoking the provisions of section 263 of the Act both the conditions that the order must be erroneous

and prejudicial to the interest of revenue needs to be satisfied. This ratio stands laid down by various Hon'ble Courts.

27. Hon'ble Jurisdictional High Court of Madhya Pradesh in the case of H.H. Maharaja Raja Power Dewas (1983) 15 Taxman 363 in para 10 of this order held that *"However, the first argument, viz., that an assessment order without compliance with the procedure laid down in section 144B is erroneous but not prejudicial to the interests of the revenue conferring revisional jurisdiction on the Commissioner under section 263(1), has force. Under section 263(1) two pre-requisites must be present before the Commissioner can exercise the revisional jurisdiction conferred on him. First is that the order passed by the ITO must be erroneous. Second is that the error must be such that it is prejudicial to the interests of the revenue. If the order is erroneous but it is not prejudicial to the interests of the revenue, the Commissioner can not exercise the revisional jurisdiction under section 263(1) .....There cannot be any prejudice to the revenue on account of the ITO's failure to follow the procedure prescribed under section 144B, and unless the prejudice to the interests of the revenue*

is shown, the jurisdiction under section 263(1) cannot be exercised by the Commissioner, even though the order is erroneous. The argument that such an order may possibly be challenged in appeal by the assessee, and for this reason it is prejudicial to the interests of the revenue, has no merit. Section 263(1) clearly contemplates that the order of assessment itself Should be prejudicial to the interests of the revenue and this prejudice has to be proved by reference to the assessment order only. It cannot be argued that there is some possibility of the assessment order being challenged or revised in appeal and, therefore, on account of this contingency, the order becomes prejudicial to the interests of the revenue." [emphasis supplied]

28. Hon'ble Apex Court in the case of *Malabar Industrial Co. Ltd. – [2000] 243 ITR 83 – order pronounced on 10.02.2000 – HEAD NOTE – "Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interests of revenue - Assessment year 1983-84 - Whether in order to invoke section 263 Assessing Officer's order must be erroneous and also prejudicial to revenue and if one of them is absent, i.e., if order of Income-tax Officer is erroneous but is not*

prejudicial to revenue or if it is not erroneous but is prejudicial to revenue, recourse cannot be had to section 263(1) - Held, yes - Whether if due to an erroneous order of ITO, revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to interests of revenue - Held, yes - Assessee-company entered into agreement for sale of estate of rubber plantation - As purchaser could not pay installments as scheduled in agreement, extension of time for payment of installments was given on condition of vendee paying damages for loss of agricultural income and assessee passed resolution to that effect - Assessee showed this receipt as agricultural income - Resolution passed by assessee was not placed before Assessing Officer - Assessing Officer accepted entry in statement of account filed by assessee and accepted same - Commissioner under section 263 held that said amount was not connected with agricultural activities and was liable to be taxed under head 'Income from other sources' - Whether, where Assessing Officer had accepted entry in statement of account filed by assessee, in absence of any supporting material without making any enquiry, exercise of

jurisdiction by Commissioner under section 263(1) was justified - Held, yes

29. Hon'ble Gujarat High Court in the case of Smt. Minalben S. Parikh – [1995] 215 ITR 81 – order pronounced on 17.10.1994 – Para 12 – *"From the aforesaid, it can well be said that the well-settled principle in considering the question as to whether an order is prejudicial to the interests of the revenue or not is to address oneself to the question whether the legitimate revenue due to the exchequer has been realised or not or can be realised or not if his orders under consideration are allowed to stand. For arriving at this conclusion, it becomes necessary and relevant to consider whether the income in respect of which tax is to be realised, has been subjected to tax or not or if it is subjected to tax, whether it has been subjected to tax at a rate at which it could yield the maximum revenue in accordance with law or not. If income in question has been taxed and legitimate revenue due in respect of that income had been realised, though as a result of erroneous order having been made in that respect, in our opinion, the Commissioner cannot exercise powers for revising the order under section 263 merely on the basis*

that the order under consideration is erroneous. If the material in that regard is available on the record of the assessee concerned, the Commissioner cannot exercise his powers by ignoring that material which links the income concerned with the tax realization made thereon. The two questions are inter-linked and the authority exercising powers under section 263 is under an obligation to consider the entire material about the existence of income and the tax which is realizable in accordance with law and further what tax has in fact been realised under the alleged assessment orders.[emphasis supplied]

30. Hon'ble Karnataka High Court in the case of V. G. Krishnamurthy – [1985] 20 Taxman 65 – order pronounced on 19.03.1984 – Para 10 – "*Section 263 can be invoked by the Commissioner only when he prima facie finds that the order made by the ITO was erroneous and was prejudicial to the interests of the revenue. Both these factors must simultaneously exist. An order that is erroneous must also have resulted in loss of revenue or prejudicial to the interests of the revenue. Unless both these factors co-exist or exist simultaneously, the Commissioner cannot invoke or resort to*

section 263. It cannot be exercised to correct every conceivable error committed by an ITO. Before the suomoto power of revision can be exercised, the Commissioner must at least prima facie find both the requirements of section 263, namely, that the order sought to be revised is prima facie erroneous and prejudicial to the interests of the revenue. If one of the other factor was absent, the Commissioner cannot exercise the suomoto power of revision under section 263." [emphasis supplied]

31. In the case of CIT V/s Nagesh Knitwears P. Ltd (2012) 345 ITR 135 (Delhi) the Hon'ble Delhi High Court has elucidated and explained the scope of provision of Section 263 of the Act and the same has been extracted by the Hon'ble Delhi High Court in the case of CIT V/s Goetze (India) Ltd 361 ITR 505 as under :-

> *"Thus, in cases of wrong opinion or finding on merits, the Commissioner of Income tax has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under section 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order is not sustainable in law and the said finding must be recorded. The Commissioner of Income tax cannot remand the matter to the*

Assessing Officer to decide whether the findings recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, again the Commissioner of Income tax must give and record a finding that the order/inquiry made is erroneous. This can happen if an enquiry and verification is conducted by the Commissioner of Income tax and he is able to establish and show the error or mistake made by the Assessing officer, making the order unsusstainable in law. In some cases possibly though rarely, the Commissioner of Income tax can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the Assessing officer had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the Assessing Officer to conduct further enquiries without a finding that the order is erroneous. Finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction under section 263 of the Act. In such matters, to remand the matter/issue to the Assessing Officer would imply and mean the Commissioner of Income tax has not examined and decided whether or not the order is erroneous but has directed the Assessing Officer to decide the aspect/question…." Similar view has been expressed by Hon'ble Madras High Court in the case of CIT Vs. Amalgamations Ltd (238 ITR 963)

32. The law interpreted by the Hon'ble courts makes it clear that Ld. PCIT before holding the order of the Ld. A.O as erroneous in so far as prejudicial to the interest of revenue should have to conduct necessary enquiries or verification in order to show that the findings given by Ld. A.O is unsustainable in law. Similar view was taken by the Hon'ble Delhi High Court in the case of Income Tax Officer v/s D.G. Housing Projects Ltd (2012) 343 ITR 329 (Delhi) wherein the Hon'ble Court after referring to judgments of Hon'ble High Court in the case of Addl. CIT V/s Gee Vee Enterprise (1975) 99 ITR 375 (Delhi), CIT V/s Sunbean Auto Ltd (2011) 332 ITR 167(Delhi), Malabar Industries 243 ITR 83(SC) held in favour of the assessee confirming the order of the Tribunal observing as follows:-

> *19. In the present case, the findings recorded by the Tribunal are correct as the CIT has not gone into and has not given any reason for observing that the order passed by the Assessing Officer was erroneous. The finding recorded by the CIT is that "order passed by the Assessing Officer may be erroneous". The CIT had doubts about the valuation and sale consideration received but the CIT should have examined the said aspect himself and given a finding that the order passed by the Assessing Officer was erroneous. He came to the conclusion*

and finding that the Assessing Officer had examined the said aspect and accepted the respondent's computation figures but he had reservations. The CIT in the order has recorded that the consideration receivable was examined by the Assessing Officer but was not properly examined and therefore the assessment order is "erroneous". The said finding will be correct, if the CIT had examined and verified the said transaction himself and given a finding on merits. As held above, a distinction must be drawn in the cases where the Assessing Officer does not conduct an enquiry; as lack of enquiry by itself renders the order being erroneous and prejudicial to the interest of the Revenue and cases where the Assessing Officer conducts enquiry but finding recorded is erroneous and which is also prejudicial to the interest of the Revenue. In latter cases, the CIT has to examine the order of the Assessing Officer on merits or the decision taken by the Assessing Officer on merits and then hold and form an opinion on merits that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. In the second set of cases, CIT cannot direct the Assessing Officer to conduct further enquiry to verify and find out whether the order passed is erroneous or not. The CIT is patently wrong in mentioning and stating that Schedule III to the Wealth Tax Act, 1957 was not applicable but, the Assessing Officer should have adopted the said formula/method. The aforesaid reasoning cannot be accepted and does not show or establish that the assessment order was erroneous. In view of

the aforesaid reasoning, the question of law is answered in favour of respondent assessee and against the Revenue and the appeal is accordingly dismissed. No costs.

33. Now let us examine the facts in the light of above judgments so as to find that whether the assessment order passed u/s 143(3) is erroneous in so far as it is prejudicial to the interest of revenue. Ld. PCIT in the show cause notice dated 15.3.2017 has raised following issues referring to the assessment proceedings carried u/s 143(3) of the Act.

(a) Penalty u/s 271(1)(c) of the Act not initiating action for furnishing inaccurate particulars of income for claiming against interest expenditure of Rs.39,83,844/-.

(b) Break up of income of Rs.41,07,848/- not obtained.

(c) Not mentioning the link source of Rs. 7 crores surrendered with the Vyapam case.

(d) Not calling information from various agencies involved in investigation of Vyapam case.

(e) No proper investigation on claim of deduction under Chapter VIA.

(f) No enquiry made about the year wise investment made in moveable and immoveable property. The first thing we need to treat is that what type of details were asked by the Ld. A.O during the assessment proceedings and replies made there to by the assessee and details filed along there with.

34. We observe that the notice u/s 143(2) issued on 14.8.2013 fixing the date of hearing on 26.8.2013. Correspondence between the Learned Assessing office and the Assessee can be summarized in following chart which along with enclosures were filed before the Learned PCIT.

Sr. No.	**Correspondence Date**	**Submissions**	**Page no's of enclosure**
1.	14/08/2013	Notice u/s 143(2) from DCIT 2(1)	1
2.	27/08/2013	Submission of documents called for vide notice u/s 143(2) dated 14/08/2013 including the following: a.) Computation and ITR-V for AY 2012-13 b.) TDS Certificates c.) SAT Challan d.) Donation Receipts claimed u/s 80G e.) LIC Premium Receipts	2-47

3.	14/02/2014	Notice U/s 142(1) with detailed questionnaire from ACIT 2(1)	48-50
4.	24/02/2014	Submission of documents called for vide Notice U/s 142(1) dated 14/02/2014	51-53
5.	22/07/2014	Notice U/s 143(2) regarding Assessment proceedings u/s 143(3) from DCIT 2(1)	54
6.	08/08/2014	Submission of the information called for vide Notice U/s 142(1) dated 14/02/2014 in connection with the Assessment proceedings for the A.Y. 2012-13and hearing dated 24/02/2014 including a.) Copy of Revised return, b.) Copy of Order U/s 80G(5)(vi) of the Income Tax Act, 1961 for Sri Aurobindo Institute of Medical Sciences and Sri Aurobindo Institute of Management Sciences & Technology c.) Other documents.	55-92
7.	20/08/2014	Submission of the information called for vide notice u/s 142(1).	93-94
8.	08/09/2014	Notice u/s 143(2) from DCIT 2 (1)	95-96
9.	23/09/2014	Submission of documents called for vide Notice u/s 143(2) dated 08/09/2014	97
10.	16/03/2015	Submission of the information called for vide notice u/s 142(1)including the following: a.) Confirmation from Sri Aurobindo Institute of Management Science & Technology & Sri Aurobindo Institute of Medical Sciences that approval u/s 80G is not cancelled. b.) Sources of Undisclosed Income surrendered during the survey proceedings. c.) Other documents.	98-123
11.	18/03/2015	Notice u/s 142(1) from ACIT 2(1)	124-125
12.	23/03/2015	Reply to Notice u/s 142(1) dated 18/03/2015	126-128
13.	24/03/2015	Further Submission to Notice u/s 142(1) dt.18/03/2015	129-130

35. Assessee had filed submissions with documentary evidence on 26.8.13, 24.2.14, 10.3.14, 20.8.14 and 23.9.15. The submissions made on the above referred dates are mentioned below:-

Copy of letter dated 26.8.2013.

With reference to above, we are submitting the following documents as required by you vide above cited notice:-

I. Letter of Authority

2.Copy of acknowledgement of Income Tax return along with Computation of income
3.Evidences in support of payment of taxes

a.TDS certificates
b.Self assessment Challan

4. Evidence in respect of deduction claimed under chapter VIA of the Act

a. Copy of Donation receipts to certain funds for deduction U/s 80-G

Copy of letter dated 24.2.2014.

We are submitting the following documents as required by you vide above cited notice:-

1.Please specify the source of your income and Address of Head office and branches of the business carried by you.

Assessee is a Doctor practicing in as partner into firms as under.

Share in Firms:-

a) Bhandari Hospital and Research Centre: Firm is running a hospital at Scheme No. 54, Opp. Meghdoot Garden, Indore

b) Indore Institute of Medical Sciences: IIMS is running

paramedical college physiotherapy and Nursing courses, with its office at 21-22,GF, Sch. No.54, Opp. Meghdoot Garden, Vijay Nagar, Indore.

2.Please give The details of your family. Specify occupation of all the family members, their Pan, amount withdrawn by them for household expenses and justify the amount withdrawn by you in along with them in view of the expenses of the family.

Details of the family members and amount withdrawn by them during the A.Y. 2012-13

S.NO	NAME OF FAMILY MEMBERS	RELATION	OCCUPATION	PAN	AMOUNT WITHDRAWAL FOR HOUSE HOLD EXPENSES
1	Dr. Manjushree Bhandari	Wife	Practicing Doctor	ABNPB6251C	401302
2	Dr. Mohit Bhandari	Son	Practicing Doctor	AFAPB0534R	209332
3	Dr. Mahak Bhandari	Son	Student	AHLPB9367P	211372
4	Smt. Usha Bhandari	Mother	Pensioner	AEUPB0914J	60000
5	Dr. Vinod Bhandari	Self	Working Partner	ABNPB6240M	359776
				TOTAL	1241782

9.Please produce the original copies of the TDS certificates, Advance Tax and Self Assessment tax Challan

Copies of TDS certificates, Self Assessment tax Challan already submitted on 2ih Aug 2013, enclosed again now. Further the tax is already appearing in the form 26as of the assessee so same can be verified from there. (Copy enclosed)

10.Please provide the copies of the Chalan of Bonus, Vat Tax, C.S.T paid in Head Office and Professional Tax, Bonus and Service Taxes paid by branch office.

There was payment towards VAT, Service Tax or Bonus on Proprietorship firm. Copy of Professional Tax paid for Dr. Vinod Bhandari to be provided in next submission please.

11. Provide the Registered purchase deeds of Lands if any during the year.

Registered Purchase deeds of the land purchased during the F. Y. 2011-12 by the assessee is enclosed herewith.

PARTICULARS	ADDITION DURING THE YEAR
Land at Bhawrasala No. 5/2	7424500.00
Land at Bhawrasala No.6/2/1	11315565.00
Land at Bhawrasala No.6/2/2/1 & 7/3/1/1	15260420.00
Land at Bhawrasala No.7/2	19052080.00
TOTAL	53052565.00

12. Give the calculation of amount disallowable U/s 14A of the Income tax Act,1961

In view of Section 14A, Assessee has already not disallowed by not claiming deduction of interest paid on Term Loan to Bank of Maharashtra Rs. 33,47,429/which has been debited to the capital account. Apart from above there is no other disallowable expenditure U/s 14A of the Income tax Act, 1961.

13. Please produce all the Books of accounts, vouchers and bills etc.

NA - no business carried by' the assessee se no becks of accounts are required to be maintained by the assessee.

Copy of letter dated 10.3.2014

With reference to above, and further to our hearing held on 6th Aug 2014 we are submitting the following pending documents for your kind perusal:-

1 Details of AIR entries (Page 2)

Details of AIR - enclosed herewith

2 Copy of Housing Loan Certificate. (Page 3-4)

Copy of Housing Loan Account statement enclosed where total interest paid is reflected.

3.Furnish Copy of Capital account in partnership Firms Bhandari

Hospital and Research Centre and Indore Institute of Medical Sciences. (page 5-19)

Copy of Capital account in partnership Firms Bhandari Hospital and Research Centre and Indore Institute of Medical Sciences enclosed herewith

3 Certificate for approval U/s 80G Donations given during the year. (Page 20-21) Copy of Order U/s 80G(5)(vi) of the LT. Act 1961 enclosed herewith for

i. Sri Aurobindo Institute of Medical Sciences

ii. Sri Aurobindo Institute of Management Sciences & Technology

4 Copy of Statement recorded during Survey Proceedings enclosed (Page 22-29)

5 Copy of Wealth Tax Return for AY 2012-13 enclosed (Page30-34)

6 Disallowance of Excess interest claimed *u/s* 57 in the Return of Income (Page 35-38)

Sir, the assessee had in original return claimed full interest by error which was already rectified by revised return filed by the assessee where interest claimed U/s 57 has been restricted to interest earned during the year. A copy of revised return is enclosed herewith.

Copy of letter dated 20.8.2014

With reference to above, and further to our hearing held on 8th Aug 2014 we are submitting the following pending documents for your kind perusal:-

1 Details of Income Declared as to how it is incorporated in the Capital account

Undisclosed income of Rs. 7.00 Crores represents various cash loans granted by the assessee. The Loans were recorded in the books on *24/09/2011* and amount later realized with interest in cash and deposited in bank.

2 Details of Donations given and corresponding bank statements where the above are reflected. Also justify that the SAIMS Indore is branch of SAIMS Bhopal by documentary evidence.

Details of Donations are enclosed. Copy of Receipts are already furnished to you.

	Amount	Particulars	Mode	Remark
31/05/2011	300000	SAIMST	Cash	Receipt already furnished
16/06/2011	200000	SAIMST	Cash	
15/11/2011	100000	SAIMST	Cash	
06/03/2012	2000000	SAIMS	Cheque	Bank statement enclosed
12/03/2012	2600000	SAIMS	Cheque	

A certificate from the said institute in support of our claim that SAIMS Bhopal is same as SAIMS Indore is enclosed herewith for your kind perusal.

3 Whether the assessee is a Director of that institute or how otherwise interested to whom donations were granted.

Assessee is chairman of the above Institutes.

Copy of letter dated 23.9.2014

With reference to above, we are submitting the following documents as required by you vide above cited notice:-

1.Letter of Authority
2.Copy of acknowledgement of Income Tax return
3.Computation of income
4.Balance Sheet, Profit & Loss Accounts, Capital Account for the A.Y. 2012-13.

However it may kindly be noted that Assessment Year 2012-13 is already under assessment proceedings *u/s* 143(2) and is still pending for order. So all the required documents are already under proceedings.

36. Thereafter notices were issued u/s 143(2) of the Act on 18.3.15 specifically calling about the details of the surrendered

income, details of hundis. The copy of show cause notice is reproduced below:-

1. During the assessment proceedings you were asked to give details of amount deposited in bank, you have shown cash deposited in your account from available cash balance in your cash book. From copy of was that deposit of was shown by you in form repayment of unsecured loan by various persons (as in table below]. These deposits as claimed by you were out of repayment of loans given by you from undisclosed income of Rs.7,OO,OO,OOO/- during survey action u/s 133A in September 2011. Most of these deposits in cash book are reflecting in month of February to March. However as per copies of hundis the name of these persons are mentioned impounded the survey operation due date are maximum upto October. The description of cash deposit is as below:

Name	Amount in Rs.	Date of deposit	Due date
Bhavarlal Mahendra Kumar	50,00,000 + (150410 Interest amount)	23.10.2011	23.07.2011
Vijay Dhakad	25,00,000 +(113425 Interest amount)	19.02.2012	19.09.2011
Surendra Kothari	30,00,000 + (136110 interest amount)	20.02.2012	20.09.2011
Hukumchand Lodhi	50,00,000+ (2,26,850 interest amount)	23.02.2012	23.09.2011
Vijay Dhakad	40,00,000 +(179510 interest amount)	05.03.2012	05.10.2011
Kishan Singh Pawar	40,00,000 +(189510 interest amount)	06.03.2012	06.10.2011
Ramesh Agrawal	25,00,000+(112195 interest amount)	08.03.2012	08.10.2011
Manoj Shrivas	50,00,000+(2,62,605 interest amount)	12.03.2012	13.08.2011
Ramesh Chand Jain	50,00,000 +262605 interest amount)	13.03.2012	13.09.2011
Suresh & Sons	50,00,000+(337810 interest amount)	19.03.2012	19.07.2011
Mangilal Motwani	40,00,000 +(2,40,658 interest amount)	24.03.2012	24.08.2011
Vijay Vargi Rathore	45,00,000 +(2,36,350 interest amount)	27.03.2012	27.09.2011
Ram Singh	2500000 +(114045 interest amount)	27.03.2012	27.10.2011
Narendra Kumawat	35,00,000 +(183822 interest amount)	28.03.2012	28.09.2011
Vallabh Chandra	50,00,000 +(2,29,315	28.03.2012	28.10.2011

Mundra	interest amount)		
Suraj Kulkarni	50,00,000 +(2,29,315 interest amount)	28.03.2012	28.11.2011
Rajmohan Shah	45,00,000 + (2,36,345 interest amount)	29.03.2012	29.09.2011

Now you have not given addresses and persons in reply on 16.03.2015, therefore it is not verifiable that aforesaid cash were deposited by same persons as claimed by you in order to justify the cash deposits in bank. You are required to produce these persons for justification of your claim with their id proof and addresses else to show cause that why amount of Rs. *7,34,79,097/-* should not be added as unexplained cash credit under section of Income Tax Act in absence of justification of identity and genuineness of the source of these cash deposits?

2. You are also required to furnish the information about the source of immovable property purchased by you

37. The assessee duly replied to the above show cause notice dated 16.3.15 giving complete details about the information called for in the show cause notice and the same is extracted below:-

With reference to above, and further to our hearing held on *09/03/2015* we are submitting the following pending documents for your kind perusal:-

1. Credit entries and cash deposited in the bank accounts to be explained.

Asseseee has duly maintained his books of account. All the credit entries in bank account are duly entered by the name of person from whom amount was received. As regards to the Cash deposited in the bank account which was deposited out of the cash balance available at the hand of the assessee at particular point of time during the year. We have enclosed the explanations of all the credit entries in all the bank accounts and also cash book of the assessee for the relevant year. [Page 1 to 22]

2. Source of undisclosed income surrendered during the survey proceedings

Dr. Vinod Bhandari i.e. assessee is renowned doctor of the City and is in medical professional for last three decades. He is very good general surgeon. He has also established its own hospital under the partnership firm in Indore City and worked as a working partner in the Firm. He has done a number of surgeries, made visits and provided OPO and IPO consultations as a Doctor to the patients during his practice. Income surrendered by him at the time of survey proceedings was earned by him from his medical profession only as no other business is being carried out by him.

The Amount which was invested in Hundis which was seized during search proceedings was the amount which Dr. Bhandari realized during the FY 2011-12 , but part of which was against surgeries medical counselling land generally medical services rendered by him to number of patients at different points in time over several years, maybe realised in the current previous year or otherwise, which due to personal relations or local family constraints were not clarified/ascertainable/ computable/realized / demanded in earlier years.

Dr. Bhandari realised the amount in the FY 2011-12 due to his plans for construction of his own new house near SAIMS which was to be commenced in the said year and consequently the surplus liquidity was temporarily parked in HUNDIS and which was declared as Income during survey proceedings. From a source perspective they are from profession and from a year perspective they have crystallised in the current/previous year only.

3. A submission whether loans given from undisclosed income were recovered during the year, if yes please highlight such transactions in the bank statement

Loans given out of the undisclosed income were duly recovered within the year under consideration. Loans were repaid in cash by the parties and thereafter deposited by the assessee in his Bank account. Copy of Cash Book and Credit entries Bank Book are enclosed in hard copy and all books in soft copy also. Receipts from such loans are highlighted in cash book.

4. Also furnish the name and address of person to whom loans were given (related to undisclosed income) and if after getting back the amount is advanced to any other persons the names and addresses of such persons
Out of the undisclosed income loans were given to the following parties -:

S.NO.	*PAYEE NAME*	*AMOUNT*
1	*Bhavarlal Mahendra Kumar*	*5000000*

2	*Hukam Chand Lodhi*	*5000000*
3	*Kishan Singh Pawar*	*4000000*
4	*Mangilal Motwani*	*4000000*
5	*Manoj Shrivas*	*5000000*
6	*Narendra Kumavat*	*3500000*
7	*Rajmohan Shah*	*4500000*
8	*Ram Singh*	*2500000*
9	*Ramesh Agrawal*	*2500000*
10	*Ramesh Chand Jain*	*5000000*
11	*Suraj Kulkarni*	*5000000*
12	*Surendra Kothari*	*3000000*
13	*Suresh And Sons*	*5000000*
14	*Vallabh Chand Mundra*	*5000000*
15	*Viiav Dhakad*	*2500000*
16	*Viiav Dhakad*	*4000000*
17	*Viiav Varqiva Rathore*	*4500000*
	TOTAL	*70000000*

Addresses or other details of the above parties are not available with the assessee. Assessee has already paid taxes on this undisclosed income. After getting back the amount from above parties it has not been further given on loan to any other person.

5. To produce books of accounts and other documents

Other Books of accounts enclosed in CD.

6. To confirm that approval *u/s* 80G is not cancelled in case of the institutes to whom donations were given during the year.

Letters given by the Sri Aurobindo Institute of Medical Sciences, Indore and Sri Aurobindo Institute of Management Science and Technology, Indore to effect that its approval u/s 80G is still in effect and has not been cancelled at any point of time are enclosed. [Page 22 to 24]

38. All the above referred submissions were duly considered by the Ld. A.O and with regard to the Vyapam case the Ld. A.O has specifically mentioned in the assessment order about his observation on this issue before making the addition of unexplained

cash of Rs.7,34,79,097/- observing as follows:-

> "It is well known that assessee is accused of being involved in Vypam scam related to bribing illegal money for admission in Medical Colleges in state of Madhya Pradesh. Now it becomes more important to prove that the cash deposited in accounts of assessee is by persons from whom it is claiming so and not by other means. Further enquiring about the cash deposits in account of assessee especially in month of February and March becomes utmost importance keeping the fact in mind, that months of February to May are the period when admissions in these colleges take place. Although it is immaterial for taxation, as once an income is proved as unexplained in the hands of assessee, it is to be taxed, irrespective of the fact what the source is, but it requires some discussions in purview of background of assessee. But when assessee was asked to prove his claim by producing these persons or to provide their addresses, assessee was unable to prove the identity and genuineness of source of cash deposits Therefore the source of these deposits is not established and knowing the background of assessee's activities accepting his argument only on the basis of entries in books becomes difficult.
>
> It is to be emphasized that assessee was asked to justify and prove the claim that the cash deposits in his bank account were deposited by the persons from whom it is claiming so. As assessee has failed in discharging his onus hence the amount is to be treated his unexplained income. The source of which is unexplained to the department, drawing conjectures whether its source and nature is related to illegal admissions in colleges or any other unexplained income is neither required for taxation purpose nor is possible at this stage, but it is equally important looking to the background of the case, that such entries in his books

must have supporting proofs.

As the assessee has failed to explain the source of deposit of cash, the amount of Rs. 7,34,79,097/- is being added to total income of assessee as unexplained cash deposits. I am satisfied that assessee has concealed particulars of his income and has furnished in accurate particulars, hence penalty under section 271(1)(c) is initiated.

39. After referring to all the submissions made by the assessee we find that the same have been duly considered by the Ld. A.O before finalizing the assessment making addition of Rs.7,74,12,941/- to the returned income of Rs.7,01,74,054/-.

40. Now we take up each issue raised by Ld. PCIT in the show cause notice so as to see that whether enquiry was conducted by the Ld. A.O and whether the decision so taken on deciding the issue was erroneous or prejudicial to the interest of revenue.

(a) As regards not initiating the penalty u/s 271(1)(c) of the Act for the interest income of Rs.7,39,73,844/-, we observe that the assessee filed the original return on 28.3.2013 and revised return on 18.3.2015. In the revised return the correct claim of interest expenditure was made. Though the original return was belated but still in the given case where the assessee has

revised the return before the case of the assessee being selected for scrutiny proceedings thereby furnishing the correct particulars of income and even otherwise during the course of assessment proceedings itself if the assessee furnishes the correct particulars then the assessee should not be visited by penalty u/s 271(1)(c) of the Act for not furnishing the inaccurate particulars of income. Hon'ble Apex Court in the case of T. Ashok Pai vs. CIT 292 ITR 0011, (2007) held that *The word 'concealment' inherently carried with it the element of* mens rea. *Therefore, the mere fact that some figure or some particulars have been disclosed by itself, even if it takes out the case from the purview of non-disclosure, it cannot by itself, take out the case from the purview of furnishing inaccurate particulars. Mere omission from the return of an item of receipt does neither amount to concealment nor deliberate furnishing of inaccurate particulars of income unless and until there is some evidence to show or some circumstances found from which it can be gathered that the omission was attributable to an intention or desire on the part of*

the assessee to hide or conceal the income so as to avoid the imposition of tax thereon. In order that a penalty under s. 271(1)(iii) may be imposed, it has to be proved that the assessee has consciously made the concealment or furnished inaccurate particulars of his income."

Therefore in the case of assessee the Ld. A.O was justified in not initiating the penalty u/s 271(1)(c) of the Act.

(b) As regards the break up of income of Rs. 41,07,848/-, complete details were filed before the Ld. A.O with the computation of income. In the show cause notice issued by Ld. A.O he himself has referred to the interest income received by the assessee on the hundis which form part of show cause notice dated 18.3.2015. Therefore the issue raised in Clause B of the show cause notice issued u/s 263 of the Act also do not stand for.

(c) As regards type of books of accounts verified during the course of assessment proceedings it has been specifically mentioned in the assessment order that representatives of the assessee namely CA Manish Mittal and CA Sanjay Mehta appeared from

time to time. He also mentioned that books of accounts along with bills and vouchers which were checked on random basis. This is a general method adopted by the Assessing Officers during the course of assessment proceedings and there seems no logic in naming the type of books and amount verified because books of accounts itself cover up the financial details maintained by the assessee for the concerned year. Clause-C of show cause notice u/s 263 of the Act also do not stand for.

(d) As regards Clause-D wherein Ld. PCIT has alleged that Ld. A.O has not examined the link of source of Rs.7 crores surrendered with the vyapam case, we observe that the assessee has surrendered Rs.7 crores as his unaccounted undisclosed income for financial year 2011-12. The assessee is a medical practitioner and partner of BHRC which is engaged in providing medical services. The surrendered income was linked by the assessee to the unsecured loans given by him in the form of hundis which were found and impounded during the course of survey. In other words when the hundis were impounded the assessee surrendered

unaccounted income invested in the hundis. These hundis are for short period normally given as loans for few months. Complete details of hundis with respect to name, amount, interest and due date of receiving the interest are mentioned which also forms part of the assessment order itself. On the hundis amounting to Rs.7 crores, the interest received thereon is shown as 34,79,097/- and the due date of receipt of principal and interest is between 9.7.2007 to 28.11.2011. The claim of the assessee is that the original hundis impounded by the Income Tax Department were released in November 2011 &December 2011 thereafter assessee got the maturity amount. The amount so received on maturity of hundies subsequently deposited in the bank account. This submission of the assessee was not accepted by the Ld. A.O and he after specifically mentioning about the Vyapam scam though without bringing any material evidence on record to make a firm link still treated the cash deposit in the bank as unaccounted income earned from receiving alleged bribe for admission in medical colleges. In the given facts it is clearly

discernable that the Ld. A.O has made adequate enquiry with the motive of linking the source of Rs.7 crores surrendered during the survey to the Vyapam case and even when there was no material evidence on record to establish bribe, he still "in the interest of revenue" made the addition of Rs. 7,34,79,097/-. We are surprised to note that even when the Ld. A.O has made the addition of Rs.7,34,79,097/- for unexplained cash deposit how could Ld.PCIT can treat the assessment order as erroneous and prejudicial to the interest of revenue. In our considered view the issue raised in Clause-D of the show cause notice also did not stand for so as to be taken as a basis to invoke the provisions of section 263 of the Act.

(e) As regards Clause-E of the show cause notice where Ld. PCIT alleged that the Ld. A.O has not collected the information from various agencies involved in investigation of Vyapam case, we find that the Ld. A.O has to complete the assessment u/s 143(3) of the Act i.e. within the frame work of provision provided under Income Tax Act. The Ld. A.O is an officer working under the Income Tax Department. His duties are

casted upon him under the Income Tax Act. He cannot exceed his jurisdiction and work in the manner provided for other departments which in this case are Police, Enforcement Department and other law enforcing agencies. Under the Income Tax Act if the assessee do not credit any income in the books of accounts maintained by it or has not recorded investments in the books or is found to be the owner of money, bullion, jewellery or other valuable articles or any other unexplained expenditure and is unable to provide explanation about the nature and source of such income then Section 68 to 69C of the Act comes into play. For better understanding of proper provisions of Section 68 to 69C of the Act reads as follows:-

Section 68 (Cash Credits)

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

***Provided** that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—*

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

***Provided further** that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB)of section 10.*

Section 69 (Unexplained investment)

*Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any**,** maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year**.***

Section 69A (Unexplained money etc.)

*Where in any financial year the assessee is found to be the owner of any money, bullion, jewelry or other valuable article and such money, bullion, jewelry or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewelry or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewelry or other valuable article may be deemed to be the income of the assessee for such financial year**.***

Section 69B (Amount of investment etc not fully disclosed in books of accounts)

Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewelry or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewelry or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer,

satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.

Section 69C (Unexplained expenditure)

Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, ***or*** *the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year. Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.*

It is clear from the above referred provisions that if any income for which the assessee is unable to provide any explanation about the nature and its source then the same could be offered to tax as unexplained income which can be either unexplained cash credit (Section 68), unexplained investment (Section 69) unexplained money etc (Section 69A) amount of investment which fully not disclosed (Section 69B) and unexplained expenditure (Section 69C). In the instant case the assessee has claimed to have earned income from unexplained source which in this case can be treated as unexplained professional receipts since the assessee is a medical practitioner. The unexplained unrecorded income of Rs.7 crores was claimed to be invested in hundies i.e. short

term advances and interest earned thereon and the maturity proceeds were claimed to have been deposited in bank account.

The alleged "Vyapam scam" referred by Ld. PCIT was not applicable for the year under appeal since the case No. 12/13 and 14/13 with respect of PMT 2012 and PPG 2012 relates financial year 2012-13. Even the amount involved in these two cases was fully seized from the house of Mr. Pradeep Raghuvanshi by the appellate authorities and the taxation of such seized amount may have been taken in the hands of the concerned in the proceedings carried out for financial year 2012-13 (A.Y. 2013-14) in due course but certainly it cannot affect the assessment proceedings of financial year 2011-12 i.e. assessment year 2012-13. Therefore there was no requirement for the Ld. A.O to call for the details which were relevant to subsequent year, even then Ld. A.O has issued show cause notice giving details of the hundis found asking the basis of linking the same with the cash deposit in the bank in the year under appeal during February and March,2012. Though the assessee gave the details of linking the maturity of hundis to the cash deposited in the bank but Ld.

A.O acted extremely in the interest of revenue and made the addition for the unexplained cash deposited. In our view the Ld. A.O conducted necessary enquiry about the issue of source of surrendered income and after discussing about the "Vyapam scam" in the body of the assessment order made the additions of Rs.7,34,79,097/-. The Clause-E of the show cause notice u/s 263 of the Act therefore did not stand for as a basis for invoking of provisions of Section 263 o f the Act. Even otherwise in the assessment proceedings carried in pursuance to the order of Section 263 of the Act which were completed on 27.12.2017, same income as was assessed u/s 143(3) of the Act stands assessed in the assessment proceedings carried u/s 143(3) r.w.s. 263 of the Act. In the assessment order dated 27.12.2017 u/s 143(3) r.w.s. 263 of the Act the Ld. A.O has considered the fact that on 23.11.2017 the Central Bureau of Investigation has filed the charge sheet in the registered case No.12/13 but as stated by Ld. Senior Counsel for the assessee neither the name of the assessee nor any official of the institution or medical college having connection with the assessee have been named as accused in the said charge sheet. Even before us Revenue failed to bring any evidence on record to rebut the contention of Ld. Senior

Counsel for the assessee. In the back ground of these facts the issue raised by Ld. PCIT in Clause-E of the show cause notice u/s 263 of the Act do not stand for as a basis for invoking provisions u/s 263 of the Act.

(f&g) As regards Clause F & G pertaining to claim of deduction under Chapter VIA and year wise investment in moveable and immoveable property, we find that the assessee had paid LIC premium of Rs.10,26,737/- but claimed the deduction for Rs.49,062/-. Copies of LIC were submitted along with submissions dated 26.8.2013 and 24.2.2014. As regards the certificate for 80G approval which was valid up to 31.3.2011, the Central Board of Direct Taxes has clarified vide its circular No.7/10 dated 27.10.2010 that any approval in force as on 1.10.2009 and approval granted thereafter shall remain in force unless approval is withdrawn. Thus Clause F & G of the show cause notice u/s 263 of the Act do not stand for as a basis for invoking provisions u/s 263 of the Act.

41. In the instant case, the Learned Assessing officer has raised number of queries regarding the issues now sought to be revised by the CIT which were replied by the assessee through detailed submissions supported by relevant documents and other evidence coupled with legal propositions and decisions. It is also pertinent to note that the AO has passed a detailed order / note sheet entry while dealing and adjudicating the issues. There must be some prima facie material on the record to show that the order is unsustainable in law and the tax which was legally eligible has not been imposed. The present case is neither a case of "no enquiry" nor is a case where the AO, failed to make necessary enquiry and the assessment order was passed after making detailed inquiry and application of mind.

42. Hon'ble High Court of Delhi in the case of CIT vs. DLF Ltd. (2013) 350 ITR 555 (Delhi) laid down the ratio that it is not mere prejudice to the Revenue or a mere erroneous view which can be revised u/s 263 of the Act but also there should be the element of "unsustainability" in the order of the assessing officer, which empowers the commissioner to issue notice and to proceed to pass

an appropriate order. That Hon'ble High Court has held as under (at page 562) :

> *"In this case, the record reveals that the Assessing Officer had issued notice, and held proceedings on several dates (of hearing) before proceeding to frame the assessment. He added nearly Rs. 2 crores to the income at that time. The Commissioner took the view that the assessment order disclosed an error, in that the deduction under section14 A had not been made. Now, while the statutory direction to the Assessing Officer to calculate, proportionately, the expenditure which an assessee may incur to obtain the dividend income, for purposes of disallowance, cannot be lost sight of, equally, such a requirement has to be viewed in the context and circumstances of each given case. In the present case, it was repeatedly emphasized that the assessee's dividend income was confined to what it received from investment made in a sister concern, and that only one dividend warrant was received. These facts, in the opinion of this court, were material, and had been*

given weightage by the Tribunal in its impugned order. There is no dispute that the investment to the sister concern, was not questioned; even the Commissioner has not sought to undermine this aspect. Equally, there is no material to say that apart from that single dividend warrant, any other dividend income was received. Furthermore, there is nothing on record to say that the assessee had to expend effort, or specially allocate resources to keep track of its investments, especially dividend yielding ones. In these circumstances, it can be said that whether the deduction under section 14A was warranted, was a debatable fact. In any event, even if it were not debatable, the error by the Assessing Officer is not "unsustainable". Possibly he could have taken another view; yet, that he did not do so, would not render his opinion an unsustainable one, warranting exercise of section 263."

43. Hon'ble Gujarat High Court in the case of Arvind Jewellers (259 ITR 502) held that:

"Held, that the finding of fact by the Tribunal was that the assessee had produced relevant material and offered explanations in pursuance of the notices issued under section 142(1) as well as section 143(2) of the act and after considering the material and explanations, the Income-tax Officer had come to a definite conclusion. Since the material was there on record and the said material was considered by the Income-tax Officer and a particular view was taken, the mere fact that different view can be taken should not be the basis for an action under section 263. The order of revision was not justified."

44. Hence, the preposition and ratio laid down by Hon'ble Gujarat High Court is that, when the assessee had produced relevant material and offered explanation in pursuance of notices u/s 143(2) and 142(1) of the Act and after considering the material and explanations, the AO had come to a definite conclusion. Their Lordship further held that in this situation, since the material was there on record and the said material was considered by the AO and a particular view was taken, the mere fact that a different view can

be taken should not be the basis for a valid action u/s 263 of the Act and therefore, dismissing the appeal of the revenue the Hon'ble High Court held that the order u/s 263 of the Act was not justified and valid.

45. In the light of above judgments and applying the facts of the instant case and perusal of the assessment order, paper book and the note-sheet of the assessment proceedings show that the AO has raised several queries by way of note sheet entries and notices. The assessee submitted various relevant documents. It is also pertinent to note that the AO adjudicated the issue of queries and replies in regard to said claim by passing a detailed order. Further the note sheet entries clearly shows the deliberations between the AO and the assessee company on all the issues and adjudication by the AO which was further guided by order u/s 144A. Therefore in view of the above facts and circumstances, details submitted before Ld. A.O, enquiries conducted by the Ld. A.O, issuing various notices, conducting enquiry about the linkage of the surrendered income of Rs.7 crores, considering all the details of hundis found during the course of survey, alleged additions made by linking the

cash deposited with the unexplained income from Vyapam scam even though the assessee is having sufficient cash in hand in the books of accounts, we in view of judgment in the case of *Malabar Industrial Co. (supra)* as per which before invoking the provisions of Section 263 of the Act Ld. PCIT should have satisfied the twin conditions, namely order of the Ld. A.O stated to be erroneous and secondly it is prejudicial to the interest of revenue. But in the instant case wherein we have examined each and every issue raised by Ld. PCIT in the light of the reply filed by the assessee, information called by the Ld. A.O and the finding in the assessment order, we are of the considered view that under the given facts and in law the view taken by the AO in the order passed u.s143(3) of the Act dated 24.3.2015 seems to be reasonable and plausible which cannot be held as legally unsustainable and not in accordance with law. In our view it is passed with complete application of mind and thus it can neither be held as erroneous nor prejudicial to the interest of revenue. Therefore Ld. PCIT under the given facts and circumstances of the case erred in assuming jurisdiction u/s.263 of the Act since the Ld. A.O has made sufficient enquiry by way of

questionnaire to which detailed reply have been filed from time to time and the Ld. A.O in the interest of revenue have also made addition of Rs.7,74,12,941/- to the income disclosed by the assessee. It clearly appears that the Ld. A.O has applied his mind and therefore the assessment order is not vitiated on the ground that the order is erroneous and prejudicial to the interest of revenue because no enquiry were undertaken. Accordingly we find merit in the contention of the learned senior counsel for the assessee and are of the considered view that Ld. PCIT grossly erred in invoking the provisions of Section 263 of the Act on the basis of issues raised in the show cause notice. Thus the order of Ld. PCIT of setting aside the assessment order u/s 143(3) of the Act under consideration are beyond the scope of Section 263 of the Act and hence not valid and we accordingly quash the relevant order passed by Ld. PCIT u/s 263 of the Act dated 30.3.2017 and restore the assessment order u/s 143(3) dated 24.3.2015.

46. In the result all the grounds raised by the assessee in appeal No.350/Ind/2017 are allowed.

47. Now we take up Appeal No.57/Ind/2017 which is arising out of the order of Ld. PCIT dated 29.11.2018 which is framed against the order of Ld. A.O dated 22.12.2017 framed u/s 143(3) r.w.s. 263 of the Act. The assessment so carried on the directions of Ld. PCIT-1 vide its order u/s 263 dated 30.3.2017 to frame fresh assessment order.

48. Assessee has raised following grounds of appeal:-

> *That on the facts and circumstances of the case, ld. Commissioner of Income-tax (Appeals) was not justified in making an ex-parte order and the same is bad in law, arbitrary and in breach of principle of justice.*
> *That ld. Commissioner of Income-tax (Appeals) erred in passing ex-parte order and the same is illegal and arbitrary and the appeal has been disposed off on mechanical basis without proper adjudication of various grounds on merits.*
> *The LD AO erred in adding the unexplained cash deposit of Rs 7,34,79,097 u/s 68 of the Act and not accepting the assesee's explanation that these cash deposits were out of hundi loans already surrendered as income in return.*
> *The ld. Assessing Officer erred in initiating the penalty under section 271(1)(c) of in respect to excess interest although the same was voluntarily rectified by filing revised return computation during the assessment proceedings*
> *That the assessment order dated 27/12/2017 passed u/s 143(3) r/w 263 is without jurisdiction, illegal and bad in law as the order is passed in pursuant to order passed u/s 263 which is subject matter of Appeal before this tribunal.*
> *The Appellant humbly craves leave to add, alter , and or supplement any ground or grounds, if necessary, at any time during the Appellant proceeding*

49. Since while deciding ITA No.350/Ind/2017 we have quashed the proceedings u/s 263 of the Act carried out by the Ld. PCIT

holding that Ld. PCIT wrongly assumed jurisdiction u/s 263 of the Act. We have restored the assessment order u/s 143(3) dated 28.3.2015. The instant appeal No.57/Ind/2017 will become infructuous since the very basis of assessment i.e. order u/s 263 of the Act have been quashed therefore the proceedings carried thereafter are void. Accordingly ITA No.57/Ind/2017 is dismissed as infructuous.

50. Now we take up ITA No.66/Ind/2017 wherein the assessee has raised following grounds of appeal:-

> *"1. The Ld. CIT(A) has erred in law and on facts in upholding the order passed by the assessing officer u/s 143(3) of the Income Tax Act, 1961.*
>
> *2. The Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs.7,34,79,097/- made by the assessing officer u/s 68 of the Act.*
>
> *3. The appellant craves leave to add to, amend, alter or delete all or any of the forgoing grounds of appeal.*

51. From going through the ground we find that addition of Rs. 7,34,79,097/- was made by the Ld. A.O u/s 68 of the Act. At the cost of repetition brief facts are that the assessee surrendered income of Rs. 7 crores in his personal capacity for financial year 2011-12 during the course of survey proceedings u/s 133A of the Act on 24.09.2011. The surrender was made on account of various

hundis found and impounded from the possession of the assessee evidencing that unaccounted income given as loan for short term by way of issue of hundis. In the books of accounts during the financial year 2011-12 assessee entered the surrendered income by debiting the party account and crediting the income from undisclosed sources. The hundis were for short period of time maturing between 19.7.11 and 28.11.11. The cash was received on maturity i.e. principal and interest was accounted for in the cash book and available cash balance was used to deposit the amount in bank during February, 2012 and March,2012. There was a gap of 2-3 months between the last date of receiving the amount and maturity of hundi and the amount deposited in the bank. The Ld. A.O. during the course of assessment proceedings u/s 143(3) of the Act directed the assessee to furnish the complete details of the persons named in the hundis. The assessee failed to provide the details except the name, amount, date of making the hundi and due date of payment. In absence of ID proof and address, Ld. A.O added Rs. 7,34,79,097/- as unexplained cash credit u/s 68 of the Act thereby not allowing assessee's claim of giving telescoping

benefit of the amount surrendered to the amount deposited in the bank account. Aggrieved assessee filed appeal before Ld. CIT(A) but failed to succeed who confirmed the addition observing as follows:-

5.1 I have gone through the appellant's contentions, the verbal submissions made during the appellate proceedings and the assessment order. The appellant had submitted during the assessment proceedings that the cash deposits made in the bank were out of the repayment of the Hundis which were impounded during the survey action on account of which income of Rs.7,00,00,000/- had been disclosed. The survey was conducted in Sep 2011 and most of the Hundis were to mature in 2-3 months. As most of the cash deposits were in the month of February and March 2012 the Assessing Officer asked the appellant to furnish the name and addresses of the persons from whom repayment of hundis was being claimed. As the appellant failed to furnish the said information the Assessing Officer held that the onus of proving the identity and genuineness of source of cash deposits had not been discharged and treated the said amount as unexplained cash credits.

5.2 The appellant has challenged the addition of Rs.7,34,79,097/- u/s 68. It is submitted that as per section 68 any sum should have been "credited: in the books of the assessee and which should be unexplained. If sum is not credited in the books even though it is unexplained it is not taxable under section 68 of the IT Act. The details of the entries passed in the books of accounts to offer unexplained amount of Rs.7,00,00,000/- surrendered during the survey have been submitted as can be seen in the appellant's submissions reproduced above. It is seen that income account has been credited with Rs.7,00,00,000/- and cash amount debited at the time of recovering the amount from the borrowers. The appellant's

contention is that the cash deposit in the bank account came from cash available in hand, as per the books of account which was received from the recovery of loans already offered as income u/s 69 during the survey proceedings. Therefore, there was no credit to an account which was not accepted by the Department or which was unexplained and no addition can be made u/s 68. This contention of the appellant is devoid of merit. From the details of the hundis and the cash deposited in the bank account as given in the assessment order it is seen that the due date of the following deposits was made before the date of survey.

Name	*Amount in Rs.*	*Date of deposit*	*Due date*
Bhavarlal Mahendra Kumar	*50,00,000*	*23.10.2011*	*23.07.2011*
Vijay Dhakad	*25,00,000*	*19.02.2012*	*19.09.2011*
Surendra Kothan	*30,00,000*	*12.02.2012*	*20.09.2011*
Manoj Shrivas	*50,00,000*	*13.03.2012*	*13.09.2011*
Suresh &Sons	*50,00,000*	*19.03.2012*	*19.07.2011*
Mangilal Motwani	*40,00,000*	*24.03.2012*	*24.08.2011*
Total	*2,95,00,000*		

No explanation has been given as to why the amounts were not received on the due date. In all except the first hundi the deposits in the bank account are in the month of February and March 2012.

5.3 The due dates for the remaining hundis are as under

Name	*Amount in Rs.*	*Date of deposit*	*Due date*
Hukum Chand Lodhi	*50,00,000*	*23.02.2012*	*23.09.2011*
Vijay Dhakad	*40,00,000*	*05.03.2012*	*05.10.2011*
Kishan Singh Pawar	*40,00,000*	*06.03.2012*	*06.10.2011*
Ramesh Agrawal	*25,00,000*	*08.03.2012*	*08.10.2011*
Vijay Vargi Rathore	*45,00,000*	*27.03.2012*	*27.09.2011*
Ram Singh	*25,00,000*	*27.03.2012*	*27.09.2011*
Narendra Kumawat	*35,00,000*	*28.03.2012*	*28.09.2011*
Vallabh Chandra Mundra	*50,00,000*	*28.03.2012*	*28.10.2011*
Suraj Kulkarni	*50,00,000*	*28.03.2012*	*28.11.2011*
Rajmohan Shah	*45,00,000*	*29.03.2012*	*29.09.2011*
Total	*4,05,00,000*		

As can be seen from the above table the due dates for the hundis were in September and October, 2011 but here also the repayments are shown in February and March, 2012 and no explanation has been offered to explain the delay in repayment. Under the circumstances the Assessing Officer was justified in asking the appellant to furnish the name and addresses of the persons from whom he was claiming repayment of loan in cash. A show cause notice was issued on 18/03/2015 in response to which it was simply submitted that there should not be double taxation of the same amount. By simply passing entries in the books of accounts the appellant has not discharged his onus of justifying and providing the claim made. The bunching of all the cash deposits in the month of February and March makes it dubious considering the background of the appellant.

5.4 Various decisions have been cited to claim the benefit of telescoping. The benefit of telescoping is allowable but it had to be shown to the satisfaction of the Assessing Officer that the money surrendered during the survey is received back all repayment of the hundis. The onus was on the appellant to furnish the details of the persons from whom he was claiming the repayment of loan in cash in February and March 2012. Reliance is placed on the decision of Hon'ble I.T.A.T., Agra in the case of Poonam Gupta dated 17.07.2013 where in benefit telescoping was not allowed as the assessee had failed to furnish the reconciliation required for the purpose. It was held as under:-

> *The CIT(A) deleted the addition on merit without considering the crux of the aspect and without appreciating the facts merely mentioned that M/s Deepak Security is registered with SEBI and others that only proves the identity and not the nature of transaction as has been pointed out by the A.O. The Hon'ble Madras High Court in the case of CIT vs. Krishnaveni Ammal 158 ITR 826 (Mad) has held that the law of evidence mandates that if the best evidence is not placed before the Court, an adverse inference can be drawn against the persons who ought to have produced it. In that case, there were*

crossed cheques but they were not produced. Similarly, in the case under consideration , we asked the assessee to furnish copies of Bank accounts but the same were not produced. In the light of the facts of the case and failure on the part of the assessee, the addition made by the A.O while making assessment under section 153A is correct and in accordance with law.

5.5 The appellant has also pointed out that in the case of the firm BHRC it has been accepted that the deposits in the bank account came out of the cash in hand as per the books of account of BHRC in the scrutiny proceedings u/s 143(3) for A.Y. 2012-13. The cash in hand was built up on account of recovery of amount advanced as hundi loans against which income was surrendered during survey action by BHRC in the same F.Y. 2012-13. However, it is not submitted whether repayments of hundi loans in the case of BHRC were on the due dates or bunched in the months February and March, 2012 like in the case of the appellant. Further, as pointed out by the Assessing Officer the background of the appellant also has to be taken into consideration. Therefore, from the details on record it cannot be held that the case of appellant is identical to that of BHRC. The decision of Hon'ble Punjab and Haryana High Court relied upon by the appellant is not applicable to the facts of the case.

5.6 In view of the above the addition of Rs.7,34,79,097/- made as unexplained cash credit u/s 68 is confirmed. Ground no.2 is dismissed"

52. Now the aggrieved assessee is in appeal before the tribunal.

53. Ld. Senior Counsel for the assessee reiterated the submissions made before Ld. CIT(A) and also mentioned that there was a direct

nexus of the cash deposit in the bank account to the maturity proceeds of the hundis found during the course of survey proceedings. The unaccounted receipts in cash were used to provide short term loans and advances for earning interest income and for this purpose hundis were issued and the same were found during the survey proceedings. The maturity date of hundis were mentioned there on. The Ld. A.O has himself noted the details in the show cause notice. The surrendered income which was invested in hundis were received back in cash during the year under appeal on various dates as mentioned on the hundis. The cash receipt were duly accounted in the books of accounts. No other unaccounted source of income has been unearthed by the survey team or Ld. A.O. The cash deposit in the bank has a direct nexus with the surrendered income. Plethora of judgments are there supporting the assessee that telescoping benefit should be given.

54. Per contra Ld. Departmental Representative supported the findings of both the lower authorities.

55. We have heard rival contentions and perused the records placed before us. The sole grievance of the assessee is against the action of Ld. A.O confirming the addition of Rs.7,34,79,097/- as unexplained credit u/s 68 of the Act. This unexplained cash credit is the amount of cash deposited in the bank account held in the name of the assessee during February, 2012 and March, 2012. Ld. A.O refused to accept the contention of the assessee that source of cash deposited is the maturity proceeds of the hundis i.e. short term advances for which investment was made from unaccounted income surrendered during the course of survey and offered to tax in the return of income. Ld. A.O made the addition for unexplained cash deposit merely in order to prove that since the assessee is accused in "Vyapam case" cash so deposited should have been from the income earned from alleged bribe received for admission in medical colleges. In the preceding paras we have observed that the proceeding initiated against the assessee under the Vyapam case fall in financial year 2012-13 i.e. subsequent year whereas cash was deposited during Financial Year 2011-12. There is no evidence on the record to substantiate this fact that assessee received any

unaccounted income in the form of bribe for admission in medical college during financial year 2011-12. It seems that Ld. A.O merely on the basis of surmises and conjectures have taken this view. He ignored the fact that the assessee has surrendered Rs.7 crores as unaccounted income during the year. This unaccounted income in cash was used in earning interest income by way of giving short term advance on hundis. Such hundis are normally issued through brokers. Only the name of person receiving the money, his signature, amount given as advance, rate of interest, date of entering into the hundi agreement and the maturity date of receiving the money are provided. When the assessee shows the original hundi he receives the principal and interest. The assessee had surrendered his income from other source as unexplained money which was not recorded in the books of accounts and the assessee failed to offer any explanation about the nature and source of acquisition of these unexplained money/income. The hundis were impounded during the course of survey which itself is sufficient evidence that unaccounted income has been invested. The unaccounted income has been offered to tax which is not in dispute.

56. We find that the assessee subsequently fully recovered the hundi loans in the F.Y. 2011-12 but with a delay from their due dates, on account of original receipts being in possession of the Department. Interest on the delayed period was also recovered. The total sum against loans advanced and interest thereon was recovered in cash and deposited in Bank accounts of the Appellant. The appellant duly informed the Income tax department vide its letter filed on09/04/2012 of hundi loans having been recovered and deposited in his bank account. This unaccounted income was given as short term advance through hundis which were found during the course of survey. Necessary entries in the books of accounts were made on the date of survey by debiting parties account and crediting the income from undisclosed source offered to tax. The party account were made on the basis of names mentioned on the hundis. The original hundis impounded by the Income Tax Department were released and given to assessee in November, 2011 and December, 2011. The amounts were recovered from Hundis on following dates:-

DETAILS OF LOAN GIVEN TO HUNDI

S. NO.	PAYEE NAME	AMOUNT GIVEN ON HUNDI	INTEREST RECD. ON HUNDI AMOUNT	TOTAL AMOUNT RECEIVED	DUE DATE OF HUNDI	RECEIVED DATE OF HUNDI AMOUNT
1	BHAVARLAL MAHENDRA KUMAR	5000000	150410	5150410	23-Jul-11	23-Oct-11
2	HUKAM CHAND LODHI	5000000	226850	5226850	23-Sep-11	23-Feb-12
3	KISHAN SINGH PAWAR	4000000	189510	4189510	06-Oct-11	06-Mar-12
4	MANGILAL MOTWANI	4000000	240658	4240658	24-Aug-11	24-Mar-12
5	MANOJ SHRIVAS	5000000	300822	5300822	13-Aug-11	12-Mar-12
6	NARENDRA KUMAVAT	3500000	183822	3683822	28-Sep-11	28-Mar-12
7	RAJMOHAN SHAH	4500000	236345	4736345	29-Sep-11	29-Mar-12
8	RAM SINGH	2500000	114045	2614045	27-Oct-11	27-Mar-12
9	RAMESH AGRAWAL	2500000	112195	2612195	08-Oct-11	08-Mar-12
10	RAMESH CHAND JAIN	5000000	262605	5262605	13-Sep-11	13-Mar-12
11	SURAJ KULKARNI	5000000	229315	5229315	28-Nov-11	28-Mar-12
12	SURENDRA KOTHARI	3000000	136110	3136110	20-Sep-11	20-Feb-12
13	SURESH AND SONS	5000000	337810	5337810	19-Jul-11	19-Mar-12
14	VALLABH CHAND MUNDRA	5000000	229315	5229315	28-Oct-11	28-Mar-12
15	VIJAY DHAKAD	2500000	113425	2613425	19-Sep-11	19-Feb-12
16	VIJAY DHAKAD	4000000	179510	4179510	05-Oct-11	05-Mar-12
17	VIJAY VARGIYA RATHORE	4500000	236345	4736345	27-Sep-11	27-Mar-12
	TOTAL	**70000000**	**3479092**	73479092		

57. When the amount was recovered on belated dates as against the maturity dates mentioned in the show cause notice issued by Ld. A.O which included principal and interest, they were entered in the books and the cash in hand kept on increasing. Total of principal amount is Rs.7 crores and Rs. 34,79,097/- being the interest received on various dates and the assessee had this amount as cash in hand which was deposited in the bank on various dates in February 2012 and March, 2012. Apparently there is a direct nexus of the cash so received on maturity of hundis with

the cash deposited in the bank account. Whether the assessee is entitled to the telescoping benefit of the surrendered income with the cash deposited in the bank account needs to be analysed in light of following judicial pronouncements :-

a. *In Veerasinhaiah & co vs CIT (1980)* 123 *ITR* 457 *(SC), the Supreme court has clearly held that Secret profit/ Undisclosed income of an Appellant earned may constitute a fund, even thouqh concealed from which the Appellant may draw subsequently...*

b. In C*IT* V.s. *K.S.M. Guruswamy Nadar & Sons* (1984) 149 *ITR* 127 *(Madras) it was held that "In this case, in addition to the Bogus cash credit there is an addition towards the Suppression of profit, 171 such* a *case as this When there are two additions it is always open to the Assessee to explain that the suppressed profit during the year has been brought in as cash credits and therefore one has to be telescoped into the other and there can be only one addition".*

c. *In Addl CIT Vs. Dharamdas Agrawal (l983)* 144 *ITR* 143, *the Madhya Pradesh High court based on the Veerasinhaiah & Co's decision in Supreme court upheld the Assessee's contention of undisclosed Income of the Assessee earned in earlier asst. years being the source of Subsequent expenditure and or debits in Assessee's accounts.*

d. *In Arun Kala Vs. Asstt. CIT [2005}* 98 TT*J (Jp.)* 1046 *the tribunal ruled that "By considering the totality of the facts and*

circumstances of the case, we are of the view that benefit *of telescoping or set, Off Of secret profits or undisclosed income of the assessee may constitute a fund from which the assessee draw subsequently for meeting' the expenditure or making investments. The AO may also allow benefit of telescoping/ setting off of income against expenditure/*investment*, even during the current year) after looking into the fact that unexplained expenditure/investment could be reasonably attributed to the pre-existing fund of concealed income or they were reasonably explained by reference to the concealed income earned in the relevant year. Reliance* is placed on the case of Anantharam Veersinghaiah *& Co, (supra).*

e. *Jaqadnmba Construction CO. VS. ITO [2004] 3 SOT 670 (Jodh.) (c) Radhey Shyam Tanwar* Vs. *Asst. CIT /20C2] 77 TTJ (Jodh. 505.)*

58. From going through the above decisions it can be inferred that if there are two funds one which is already taxed and other has not and there was remittances during the accounting year for certain sum, the source of which is not indicated then the presumption is that the remittances should have been from the fund which has already suffered tax. It is noteworthy that the Ld. A.O has not rejected the books of accounts and its extracts produced before him. In such situation as held in the case of Tolaram Daga V/s CIT 59 ITR 632 such unchallenged account books are prima facie proof

of the correctness of the entries made therein. It is also brought to our notice that during the survey proceedings hundis of Rs.23.65 crores were found out of which hundis of Rs.7 crores were in the name of the assessee and hundis of Rs.16.65 crores in the name of BHRC. Ld. Senior Counsel for the assessee stated that in the scrutiny proceedings u/s 143(3) of the Act carried out in the case of BHRC for Assessment Year 2012-13 the Ld. A.O has accepted the assessee's contention that the deposit in bank account of BHRC are out of the cash in hand as per the books of accounts of BHRC which in turn was built up on account of recovery of amount advanced as hundi loans against which income was surrendered during survey action. Hon'ble High Court of Punjab & Haryana in the case of Jaswant Rai (1977) 107 ITR 477 has held that *"it was not open to department to adopt different yard sticks in the case of different assesses where the issue of addition to wealth pertained to the same common asset"*. Accordingly here also the hundi which were seized in one common survey account of one common parties office location i.e. in the case of assessee as well as BHRC of which the assessee is the partner the department should not have taken a

different view. We, therefore respectfully following above decisions are of the confirmed view that assessee is entitled for the telescoping benefit of the income surrendered during the year to the cash deposited in the bank account and thus find merit in the contention of the Ld. Senior Counsel for the assessee that the source of cash deposits of Rs.7,34,79,097/- is the maturity proceeds of hundis during the year which were made out of the unaccounted surrendered income offered to tax in the return of income for Assessment Year 2012-13. We therefore set aside the finding of Ld. CIT(A) and find no justification in the action of the Ld. A.O making addition u/s 68 of the Act for unexplained cash credit of Rs.7,34,79,097/-. We accordingly delete the addition and allow the sole ground No.2 raised by the assessee.

59. The other grounds are general in nature which needs no adjudication. In the result appeal of the assessee is allowed.

60. Accordingly assessee's Appeals No. 350/Ind/17, 66/Ind/17 are allowed and ITA No.57/Ind/17 is dismissed as infructuous.

The order pronounced in the open Court on 20.03.2020.

Sd/- Sd/-

(KUL BHARAT) (MANISH BORAD)
JUDICIAL MEMBER ACCOUNTANT MEMBER

दिनांक /Dated : 20th March, 2020

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore