IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
(Through Video Conferencing)

BEFORE,
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No.533/Del/2021
(ASSESSMENT YEAR 2017-18)

Kapil Mehta C-10, Phase-IV, Ashok Vihar, Delhi-110 052 PAN –AEYPM 8313A	Vs.	Pr.CIT(Central), Delhi-3.
(Appellant)		**(Respondent)**

Appellant By	**Sh. Parmod Jain, CA** **Sh. Mukul Gupta, Adv.**
Respondent by	**Ms. Sunita Singh, CIT-DR**
Date of Hearing	**15.07.2021**
Date of Pronouncement	**11.10.2021**

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the assessee against order dated 19.03.2021 passed by the Learned Principal Commissioner of Income Tax (Central), Delhi-3 (PCIT) and challenges the order passed u/s 263 of the Income Tax Act, 1961, (hereinafter called 'the Act') for Assessment Year 2017-18.

2.0 The brief facts of the case are that the return of income was filed in response to notice issued u/s 153A read with Section 143(3) of the Act declaring income of Rs.31,67,190/-. The assessment was completed at the returned income.

2.1 The Ld. Pr. CIT had called for assessment records in the case of assessee and noted that there was an information of seizure of cash amounting to Rs.2 Crores by the Police and, therefore, a search & seizure action u/s 132 & 132A of the Act was carried out in the case of the assessee. The Ld. Pr. CIT further noted that the assessee had claimed during the assessment proceedings that this cash of Rs.2 Crores belonged to his deceased father, Late Sh. Satish Mehta and that the source of this cash was agricultural income of his father which had been duly declared in the father's return of income for Assessment Year 2017-18. The Ld. Pr. CIT also noted that it was the assessee's submissions before the Assessing Officer that the assessee had received 2 Crores in cash after the demise of his father and it was the same cash which had been deposited in assessee's bank accounts and had been seized by the Department.

The Ld. Pr.CIT further noted that the Assessing Officer had accepted the assessee's claim that the source of cash found in his possession had been generated through the agricultural activities carried out by the father of the assessee by the Assessing Officer without any enquiry. The Ld. Pr. CIT also noted that the original return of income of assessee's father, which was filed on 08.03.2018, did not disclose any agricultural income and the return was revised on 30.03.2018 wherein an amount of Rs.2.05 Crores was mentioned as exempt income. The Ld. Pr. CIT noted that no proper enquiry, evidence has been found on record that the father of the assessee was having agricultural land and was carrying on agricultural activities in the earlier Assessment Years also. The Ld. Pr. CIT also noted that the Assessing Officer had not made any proper or independent inquiry to ascertain the genuineness of the agricultural activities carried out and agricultural income earned there from. Therefore, the Ld. Pr. CIT was of the view that the assessment order was not only erroneous but also prejudicial to the interest of the Revenue.

2.2 The Ld. Pr. CIT proceeded to issue show cause notice u/s 263(1) of the Act requiring the assessee to explain why the assessment order should not be revised as the same was erroneous and prejudicial to the interest of the Revenue.

2.3 It was the assessee's contention before the Ld. Pr. CIT that the Assessing Officer (AO) had made proper verification in respect of all the issues as per law. It was also the assessee's submission that all the necessary confirmations and explanations were taken by the Assessing Officer and that he had collected exhaustive evidence for framing of the assessment. It was also submitted that the Assessing Officer had made a detailed enquiry from the owner of the land taken on lease by the father of the assessee and had also recorded his statement u/s 131 of the Act.

2.4 However, the Ld. Pr. CIT did not find the explanations and submissions of the assessee satisfactory and he reached the conclusion that the assessment order for the captioned year was erroneous in so far as it was prejudicial to the interest of the Revenue. It was set aside for fresh adjudication by the Assessing

Officer with a direction to carry out thorough and detailed enquiries to ascertain the genuineness of accumulation of cash receipts of Rs.2.05 Crores shown as exempt income.

2.5 Against this order of the Ld. Pr. CIT setting aside the assessment order, the assessee has now approached this Tribunal challenging the revisionary order by raising the following grounds of appeal:-

> "1. *The order of CIT is bad in law and on facts.*
>
> *2. On the facts and under the circumstances the CIT has erred in invoking the provisions of section 263, alleging that the order of AO is erroneous and prejudicial to the interest of revenue.*
>
> *3. On the facts and under the circumstances of the case, the order of the AO was void-ab-initio as the same has been passed in pursuance to a mechanical approval of Add CIT u/s 153D and hence the consequential proceedings would also be a nullity.*
>
> *4. On the facts and under the circumstances of the case and having regard to the fact the draft approvals were sent on the same day when the approval was accorded, would prove beyond doubt that the approval was mechanical approval.*
>
> *5. On the facts and under the circumstances of the case & having regard to the fact that the approving authority has granted a consolidated approval, ignoring the mandatory language and correct PAN number would also prove beyond doubt that the approval was a mechanical approval and hence all proceedings are void ab initio.*

6. Without prejudice to the above, on the facts and under the circumstances of the case the CIT has failed to appreciate that the order of the AO has been passed with the approval of the Additional CIT, which orders are not covered in the provisions of section 263 of the Act.

7. On the facts and circumstances of the case the CIT has failed to appreciate that action of search is a full fledge enquiry of the facts & hence the order of the AO cannot be termed as erroneous & pr-judicial to the interest of revenue more so when the same has been passed, after taking approval from Add CIT u/s 153D of the Act.

8. The Ld.CIT while revising the order of the AO has failed to appreciate that nothing incriminating was unearthed during search which would show that the impugned sum was not agriculture income of assessee.

9. The Ld CIT has failed to appreciate that the AO while acting as an investigator has investigated the facts properly and while acting as an adjudicator has taken a plausible view and hence the order of the AO was neither erroneous nor prejudicial to the interest of revenue.

10. The Ld CIT has further ignored that in view of the provisions of explanation 2 of section 263, it is incumbent to point out what more enquiries would the AO ought to have conducted.

11. The CIT has failed to appreciate that powers of revision u/s 263 cannot be exercised for redoing the investigation, rather the CIT ought to have done the investigation himself before restoring the matter to the AO.

12. That the Appellant craves leave to amend alters, add or forego any of the above grounds."

3.0 The Ld. AR submitted that the revisionary order passed by the Ld. Pr. CIT was bad in law. It was argued that the Ld. Pr. CIT had erred in invoking the provisions of Section 263 because the Ld. Pr. CIT had failed to appreciate that the Assessing Officer had carried out detailed enquiries during the course of assessment and had also raised various queries before reaching the conclusion that the impugned amount was indeed agricultural income. It was also argued that during the course of search, no incriminating material was found in possession of the assessee which could point out that the impugned amount was unexplained income of the assessee. It was also argued that the Assessing Officer had taken a plausible view on the facts of the case and it was not open to the Ld. Pr. CIT to direct the Assessing Officer to take a view which was in accordance with the view of the Ld. Pr. CIT. It was also argued that it was a case where before passing the assessment order, the Assessing Officer had obtained approval of the Addl. CIT U/s 153D of the Act and, therefore, in such a circumstance orders passed after obtaining approval u/s 153D of the Act cannot be revised u/s

263 of the Act. The Ld. AR also argued that it was not a case of lack of enquiry as was being stated by the Ld. Pr. CIT. It was argued that the Assessing Officer had conducted due enquiry although, the same might not have been in the way the Ld. Pr. CIT would have wanted but this cannot be a reason for passing a revisionary order. The Ld. AR prayed that the impugned order u/s 263 of the Act deserved to be quashed.

4.0 Per contra, the Ld. CIT-DR placed extensive reliance on the order of the Ld. Pr. CIT and while reading out the relevant paragraphs from the impugned order, it was emphasized that the Ld. Pr. CIT had rightly passed the revisionary order as the Assessing Officer had completely failed to enquire into the source and nature of the cash deposit amounting to Rs.2 Crores and being claimed by the assessee as being agricultural income of his father.

5.0 We have heard the rival submissions and have also perused the material on record. The facts in the case are not in dispute. There was a seizure of cash by the Police in the case of the assessee and subsequently, the Income Tax Department was

informed. A search operation was carried out by the Department and this cash had by the then been deposited into three bank accounts of the assessee. The return filed by the assessee declared an income of Rs.31,67,190/- and the same was accepted by the Assessing Officer vide order dated 17.08.2019 passed u/s 153A of the Act. During the course of assessment proceedings u/s 153A, it was the assesse's submission before the Assessing Officer that the cash seized belonged to his father Late Sh. Satish Mehta, who was an agriculturist. It was also submitted by the assessee that Sh. Satish Mehta was carrying out agricultural activities in Gujrat and had taken land on lease from one Sh. Vijay Kumar, who was resident of 24, Bhuj Mundra Road, Mundra, Gujrat. The Assessing Officer required the assessee to produce Sh. Vijay Kumar and Sh. Vijay Kumar had attended the office and his statements u/s 131 of the Act was recorded. The Assessing Officer also noted that the documents in respect of lease agreement of land and agricultural details were produced and the claim of the assessee regarding agricultural produce were verified and were found genuine and, therefore, the returned income was being accepted.

5.1 During the course of hearing before us, the Ld. Authorized Representative (AR) has harped upon this observation of the Assessing Officer that he had called for the details which were verified and were found to be correct. The Ld. AR has further harped upon the fact that Sh. Vijay Kumar had been produced before the Assessing Officer whose statement U/s 131 of the Act had been recorded. It is the contention of the Ld. AR that the Assessing Officer had carried out all the necessary enquiries before reaching the conclusion that the impugned amount of Rs.2 Crores belonged to the assessee's father as agricultural income.

5.2 However, during the course of proceedings, the Ld. AR had been expressly asked by the Bench whether the assessee had any Paper Book to be filed before this Tribunal for the purpose of demonstrating that the assessee had filed required documents/details before the Assessing Officer during the course of assessment proceedings which could suitably establish that the Assessing Officer had raised pertinent queries which were duly responded to by the assessee. However, the Ld. AR expressed his

inability to file such documents. The Bench also required the assessee to show us a copy of questionnaire issued by the Assessing Officer while examining the issue of Rs.2 Crores being claimed by the assessee as agricultural income of his father. However, the Ld. AR again expressed his inability to provide a copy of such questionnaire. Thus, although it is the claim of the assessee that the Assessing Officer had carried out proper enquiries regarding the impugned issue, there is nothing on record to demonstrate and establish that proper enquiry had been conducted by the Assessing Officer. A perusal of the assessment order also shows that the Assessing Officer has discussed the issue in a very cryptic manner by just stating that he has examined the documents and the lease deed of land and has found it in order and that the statement of Sh. Vijay Kumar has been recorded u/s 131 of the Act. Thus, apparently and admittedly from the record before us, the assessee has failed to demonstrate that proper enquiry was made by the Assessing Officer during the course of assessment proceedings and that such enquiry had been duly responded to by the assessee in a proper manner in form of documents and

evidences which would establish that the impugned amount of Rs.2 Crores belonged to the father of the assessee as his agricultural income.

5.3 We also note that when the Ld. Pr. CIT issued a show cause notice to the assessee requiring him to explain as to why the impugned assessment order was not only been erroneous but also prejudicial to the interest of the Revenue, the assessee had only submitted that the Assessing Officer had undertaken proper verification in the matter and that all necessary explanations were taken by the Assessing Officer and that he had collected exhaustive evidences for the purpose of framing of the assessment. However, the Ld. Pr. CIT has also mentioned non-submission of any documents or evidences before him which could establish the fact that the impugned amount belonged to the father of the assessee as agricultural income.

5.4 During the course of proceedings, the Bench again specifically queried the Ld. AR if he could file copy of documents which the assessee had filed before the Ld. Pr. CIT during the

proceedings u/s 263 of the Act which could enable us to reach a conclusion as to the correctness and reliability of the assessee's claim of the impugned amount belonging to his father as agricultural income. However, again the Ld. AR has expressed his inability to produce such documents. Therefore, the continued inability of the Ld. AR to produce any document which could substantiate the claim of the assessee even after replated queries by the Bench leaves no doubts whatsoever that the assessee had not filed any such documents or evidences either during the course of assessment proceedings or before the Ld. Pr. CIT during the course of 263 proceedings. Therefore, it is very much evident that the Assessing Officer reached the conclusion that the income returned by the assessee was to be accepted without examining and considering the relevant documents. It is also to be noted that the original return of income of the assesse's father did not reflect any agricultural income and it was subsequently revised to show that the assessee's father was also in receipt of exempt agricultural income. The Ld. AR was asked a specific query by the Bench whether he could substantiate that the assessee's father was

earning agricultural income of this magnitude in earlier years also but the Ld. AR again expressed his inability to enlighten the Bench on the same. Even the lease deed of the land, which the assessee is claiming to have been taken on lease from Sh. Vijay Kumar of Mundra, Gujrat has not been placed before us and, therefore, we cannot but come to a conclusion that the entire claim of the assessee regarding the impugned amount belonging to the father of the assessee as agricultural income has no edifice to stand on and is rather more of an after thought when the seizure of cash by the Police Authorities during the demonetization came to the light of the Income Tax Department.

5.5 The Ld. Pr. CIT, in paragraph -8 of the impugned order has raised 10 points which have not been examined by the Assessing Officer before reaching the conclusion that impugned amount of Rs.2 Cores belonged to the father of the assessee as his agricultural income. The issues pointed out by the Ld. Pr. CIT in para 8 of the impugned order are being reproduced herein under for a ready reference:-

"1. *The assessing officer has failed to call report from the state authorities to ascertain the genuineness of the agricultural activities undertaken during the year under consideration or prior/subsequent to it on the said land.*

2. Nor details of persons from whom such income was received has not been called for by the AO neither any verification or enquiry has been made in this regard.

3. Similarly, the details of expenses incurred on so called agricultural activities and evidences of incurring such expenses have not been gathered.

4. Details of the Mandi or Market where such produce was sold not gathered

5. The stamp paper on which the lease deed has been stated to be recorded was purchased in Delhi during September 2012, where as the deed on it was recorded on 10.09.2015. This Lease Deed was neither registered nor notarized by any notary.

6. It has been stated on the Lease Deed that it was recorded at Mundra, Gujrat but both the witnesses as well as the Lessee were resident of Delhi. However, no evidences were found on record to suggest how they know or met with the Lessor. How the deal was finalized whether any broker was involved. No enquiry or investigation has been done to ascertain these facts. Similarly, no enquiry has been made from the witnesses either to ascertain these facts.

7. No evidence found on record to show that the Lessor of the land was indeed the owner of the land for which the stated Lease Deed has been recorded.

8. Hence, it is apparently clear that the claim of seized cash generated through agricultural activities was accepted by the assessing officer without desirable examination & inquiries as elaborated above and without proper scrutiny which is totally in contravention to the relevant provisions of the I.T. Act, 1961.

9. No enquiry or investigation made to ascertain what happened to any crop under process at the time of demise of the father of the assessee and how its claim has been settled.

10. Similarly, no evidences were gathered about transfer of any money or the rentals paid by the Lessee to the Lessor in lieu of the Lease Deed."

5.6 During the course of hearing before us, when the Ld. AR was asked to refute these observations of the Ld. Pr. CIT, he had again nothing state in form of concrete evidence to demonstrate that the observations and findings by the Ld. Pr. CIT were either perverse or were not in accordance with settled law. Therefore, on the factual matrix of the case, it is very much evident that the Assessing Officer had failed to make any sought of enquiry from the assessee regarding the impugned amount. The observations of the Ld. Pr. CIT that nothing was found in the case record also supports this view. Further the failure of the assessee to submit any kind of documentary evidences before us again strengthen this view.

Therefore, in our considered opinion, this is a case where the Assessing Officer did not make any enquiry whatsoever and simply accepted the return of income filed by the assessee. ….herein mentioning by the assessee that he has carried out the necessary enquiries and called for the required documents and has examined them would not absolve the Assessing Officer from the duty cast upon him as there is nothing in the case records which could suitably lend credence to the statement of the Assessing Officer as well as the claim of the assessee that the Assessing Officer had made adequate enquiries and that the assessee duly responded to such queries. Even the statement recorded u/s 131 of the Act of Sh. Vijay Kumar as mentioned in the assessment order, was not produced before us to substantiate the veracity of the Assessing Officer in the assessment order as well as the claim of the assessee of that having been done. Therefore, it is our considered view that this is not a case of inadequate enquiry as the Ld. AR would want us to accept, but is rather a case of complete "lack of enquiry" by the Assessing Officer and, therefore, we hold that the Ld. Pr. CIT

was absolutely correct in invoking his revisionary powers u/s 263 of the Act.

5.7. In the case of Gee Vee Enterprises speaking for High Court of Delhi their lordships made a clear distinction between the cases of "inadequate inquiry" and "lack of inquiry" by also considering the ratio of the decision of Hon'ble Apex Court in the case of Rampyari Devi Sarogi vs CIT (supra) and Tara Devi Aggarwal vs CIT (supra) and held that it is incumbent upon the ITO to further investigate the facts stated in the return when circumstances would make such an inquiry prudent with the word "erroneous" in Section 263 includes failure to make such an inquiry. It was further held that the order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are asummed to be correct. The relevant operative part of this decision reads as under:-

> *"In Rampyari Devi Saraogi* v. *Commissioner of Income -tax, the Income-tax Officer accepted the return of the assessee in respect of the initial capital, the gift received and the sale of jewellery, the income from business, etc., without any inquiry or evidence whatsoever. For this reason the Commissioner held the order to be erroneous. In revision, he cancelled the order and ordered*

the Income- tax Officer to make a fresh assessment. In his order the Commissioner had used certain new grounds which had not been disclosed to the assessee in the notice given to him to show cause why the order of the Income-tax Officer should not be revised. But, apart from these new grounds, the Supreme Court observed at page 88 of the report that:

"There was ample material to show that the Income-tax Officer made the assessments in undue hurry ... the assessee made a declaration giving the facts regarding initial capital, the ornaments and presents received at the time of marriage, other gifts received from her father-in-law, etc., which should have put any Income-tax Officer on his guard. But the Income tax Officer without making any inquiries to satisfy himself passed the assessment order.... A short stereo-typed assessment order was made for each assessment year ... No evidence whatsoever was produced in respect of the money- lending business done ... No names were given as to the parties to whom the loans were advanced.....

In Tara Devi Aggarwal v. Commissioner of Income-tax also the Income-tax officer, Howrah, while remarking that the source of income of the assessee was income from speculation and interest on investments stated that neither the assessee was able to produce the details and vouchers of the speculative transactions made during the accounting year nor was there evidence regarding the interest received by the assessee from different parties on her investments. Notwithstanding these defects the Income Tax Officer did not investigate into the various sources but assessed the assessee on a total income of Rs.9,037. The inquiries made by the Commissioner revealed that the assessee did not reside or carry on business at the address given in the return. The Commissioner was also of the view that the Income-tax Officer was not justified in accepting

the initial capital, the sale of ornaments, the income from business, the investments etc., without any inquiry or evidence whatsoever and that the order of assessment was erroneous and prejudicial to the interests of the revenue. The High Court held that there were materials to justify the Commissioner's finding that the order of assessment was erroneous in so far as it was prejudicial to the interests of the revenue. Shri Sharma tried to distinguish this decision on the ground that the address of the assessee in that case was given incorrectly. The decision of the High Court and that of the Supreme Court were not, however, based on that ground at all. On the contrary, the Supreme Court followed their previous decision in Rampyari Devi's case and upheld the decision of the High Court precisely on the same grounds. These two decisions show that it is not necessary for the Commissioner to make further inquiries before cancelling the assessmen t order of the Income-tax Officer. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the case the Income-tax Officer should have made further inquiries before accepting the statements made by the assessee in his return.

The reason is obvious. The position and function of the Income Tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence may be accepted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word" erroneous" in section 263

emerges out of this context. It is because it is incumbent on the. Income-tax Officer to further investigate the facts stated in' the return when circumstances would make such an inquiry prudent that the word" erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct."

5.8 In the case of CIT vs. Nagesh Knitwears Hon'ble Delhi High Court after considering the ratio of its earlier decisions including its decision in the case of ITO vs DG Housing Projects Ltd. 345 ITR 153 held as under:

"36. As far as Section 263 is concerned, we have examined the said Section in depth and detail in ITO Vs. D G Housing Projects Ltd. decided on 1st March, 2012, in ITA No. 179/2011 and observed as under:-

> *"10. Revenue does not have any right to appeal to the first appellate authority against an order passed by the Assessing Officer. Section 263 has been enacted to empower the CIT to exercise power of revision and revise any order passed by the Assessing Officer, if two cumulative conditions are satisfied. Firstly, the order sought to be revised should be erroneous and secondly, it should be prejudicial to the interest of the Revenue. The expressiono…..prejudicial to the interest of the Revenue" is of wide import and is not confined to merely loss of tax. The term "erroneous" means a wrong/incorrect decision deviating from law. This expression postulates an error which makes an order unsustainable in law.*

11. The Assessing Officer is both an investigator and an adjudicator. If the Assessing Officer as an adjudicator decides a question or aspect and makes a wrong assessment which is unsustainable in law, it can be corrected by the Commissioner in exercise of revisionary power. As an investigator, it is incumbent upon the Assessing Officer to investigate the facts required to be examined and verified to compute the taxable income. If the Assessing Officer fails to conduct the said investigation, he commits an error and the word ''erroneous" includes failure to make the enquiry. In such cases, the order becomes erroneous because enquiry or verification has not been made and not because a wrong order has been passed on merits.

12. Delhi High Court in Gee Vee Enterprises v. Additional Commission of Income-Tax, Delhi-1, (1975) 99 ITR 375, has observed as under:-

> *"The reason is obvious. The position and function of the Income-tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence may be accepted by a civil court in the absence of any rebuttal. 'The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The Income- tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of ITA No. 591/2008 and connected matters 29 a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word "erroneous'' in section 263 emerges out of this context. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an*

inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct."

13. In the said judgment, Delhi High Court had referred to earlier decisions of the Supreme Court in Rampyari Devi Sarogiv. CIT (1968) 67 ITR 84 (SC) and Tara Devi Aggarwal v. *CIT (1973) 88 ITR 323 (SC), wherein it has been held that where Assessing Officer has accepted a particular contention/issue without any enquiry or evidence whatsoever, the order is erroneous and prejudicial to the interest of the Revenue. After reference to these two decisions, the Delhi High Court observed:-*

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

14. The aforesaid observations have to be understood in the factual background and matrix involved in the said two cases before the Supreme Court. In the said cases, the Assessing Officer had not conducted any enquiry or examined evidence whatsoever. There was total absence of enquiry or verification. These cases have to be distinguished from other cases (i) where there is enquiry but the findings are incorrect/erroneous; and (ii) where there is failure to make proper or full verification or enquiry.

15. In the case of Commissioner of Income Tax **v.** *Sunbeam Auto Ltd. (2011) 332 ITR 167 (Del), Delhi High Court was considering the aspect, when there is no proper or full verification, and it was held as under:-*

> *"We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income-tax under section 263 of the Income-tax Act. As noted above, the submission of learned counsel for the Revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order, which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter. It is only in cases of "lack of inquiry" that such a course of action would be open. In Gabriel India Ltd. [1993] 203 ITR 108*

(Bom), law on this aspect was discussed in the following manner:-

"... From a rending of sub-section (1) of section 263, it is clear that the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue". It is not an arbitrary or unchartered power, it can be exercised only on fulfilment of the requirements laid down in subsection (I). The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. (See Parashuram Pottery Works Co. Ltd. v. 1TO [1977] 106 ITR I (SC) at page 10) ... From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be

branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may he of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be formed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion ... There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed ... We may now examine the facts of the present case in the light of the powers of the Commissioner set out above. The Income-tax Officer in this case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given detailed explanation in that regard by a letter in writing. All

these are part of the record of the case. Evidently, the claim was allowed by the Income-tax Officer on being satisfied with the explanation of the assessee. Such decision of the Income-tax Officer cannot be held to be ..erroneous" simply because in his order he did not make an elaborate discussion in that regard."

16. Thus, in cases of wrong opinion or finding on merits, the CIT 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 passed is not sustainable in law and the said finding must be recorded. CIT cannot remand the matter to the Assessing Officer to decide whether the findings ITA No. 591/200S and connected matters 33 recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, again the CIT 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 Cl'T and he is able to establish and show the error or mistake made by the Assessing Officer, making the order unsustainable in Law. In some cases possibly thoitgh rarely, the CIT 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 afresh 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 CIT has not examined

and decided whether or not the order is erroneous but has directed the Assessing Officer to decide the aspect/question.

17. This distinction must be kept in mind by the CIT while exercising jurisdiction under Section 263 of the Act and in the absence of the finding that the order is erroneous and prejudicial to the interest of Revenue, exercise of jurisdiction under the said section is not sustainable. In most cases of alleged "inadequate investigation", it will be difficult to hold that the order of the Assessing Officer, who had conducted enquiries and had acted as an investigator, is erroneous, without CIT conducting verification/inquiry. The order of the Assessing Officer may be or may not be wrong. CIT cannot direct reconsideration on this ground but only when the order is erroneous. An order of remit cannot be passed by the CIT to ask the Assessing Officer to decide whether the order was erroneous. This is not permissible. An order is not erroneous, unless the CIT hold and records reasons why it is erroneous. An order will not become erroneous because on remit, the Assessing Officer may decide that the order is erroneous. Therefore CIT must after recording reasons hold that the order is erroneous. The jurisdictional precondition stipulated is that the CIT must come to the conclusion that the order is erroneous and is unsustainable in law. We may notice that the material which the CIT can rely includes not only the record as it stands at the time when the order in question was passed by the Assessing Officer but also the record as it stands at the time of examination by the CIT [see CIT v. *Shree Manjunathesware Packing Products, 231 ITR 53 (SC)]. Nothing bars/prohibits the CIT from collecting and relying*

upon new/additional material/evidence to show and state that the order of the Assessing Officer is erroneous.

18. It is in this context that the Supreme Court in Malabar Industrial Co. Ltd. v. *Commissioner of Income Tax, (2000) 243 ITR 83 (SC), had observed that the phrase „prejudicial to the interest of Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of Revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of Revenue. Thus, when the Assessing Officer had adopted one of the courses permissible and available to him, and this has resulted in loss to Revenue; or two views were possible and the Assessing Officer has taken one view with which the CIT may not agree; the said orders cannot be treated as an erroneous order prejudicial to the interest of Revenue unless the view taken by the Assessing Officer is unsustainable in law. In such matters, the CIT must give a finding that the view taken by the Assessing Officer is unsustainable in law and, therefore, the order is erroneous. He must also show that prejudice is caused to the interest of the Revenue."*

5.9 In view of foregoing discussions, we are inclined to hold that the present case is squarely covered in favour of the revenue by the decisions of Hon'ble Jurisdictional High Court of Delhi in the case of Gee Vee Enterprises vs. ACIT (supra) and CIT vs. Nagesh Knitwears P. Ltd. (supra) as in the present case, the AO did not raise any query of make any inquiry pertaining to the claim of

expenses submitted by the assessee in its books and statements of accounts submitted along with return and this is a clear case of "lack of inquiry". We may also point out that if the AO fails to conduct the said investigation, he commits the error and the word "erroneous" includes failure to make inquiry. In such cases, the order becomes erroneous because necessary inquiry or verification has not been made and not because a wrong order has been passed on merits. Therefore, on this ground the appeal of the assessee fails.

6.0 We further note that the assessee has raised another issue that since the approval of the Addl. CIT had been received u/s 153 D of the Act, the assessment order passed u/s 153A of the Act would not be subjected to revision u/s 263 of the Act. In this regard, the Ld. AR has placed reliance on a principle of judicial precedents and has prayed that the 263 order deserves to be quashed for this reason alone. We note that this ground has been taken by the assessee in ground No.7 in grounds of appeal. However, the assessee has also taken ground No.3 which is

contradictory to Ground No.7. Both these grounds are being reproduced herein under for a ready reference:-

> "*7. On the facts and circumstances of the case the CIT has failed to appreciate that action of search is a full fledge enquiry of the facts & hence the order of the AO cannot be termed as erroneous & pr-judicial to the interest of revenue more so when the same has been passed, after taking approval from Add CIT u/s 153D of the Act.*"
>
> *"3. On the facts and under the circumstances of the case, the order of the AO was void-ab-initio as the same has been passed in pursuance to a mechanical approval of Add CIT u/s 153D and hence the consequential proceedings would also be a nullity."*

6.1 However, even if we ignore the Ground No.3 raised by the assessee and consider the pleadings with reference to Ground No.7, it is the assessee's plea that once approval has been obtained u/s 153D of the Act, the Ld. Pr. CIT cannot exercise jurisdiction u/s 263 of the Act. The assessee has taken place reliance on the following judicial precedents.

(i) Hon'ble Delhi ITAT in Abha Bansal vs. Pr. CIT, ITA No. 383/Del/2021, dated 31/05.2021

(ii) Hon'ble Allahabad High Court in CIT vs. Dr. Ashok Kumar in ITA No. 192/2000 Dated 06.08.2012

(iii) Hon'ble Lucknow ITAT in Mehtab Alam vs. ACIT ITA Nos.288 to 294/Lkw/2014 order dated 18-11-2014

(iv) Hon'ble Pune ITAT in M/s BU Bhandari Schemes cs. PCIT, ITA no. 634-641 / Pune/ 2018, dated 14.11.2018

(v) Hon'ble Pune ITAT in Vishwa Infraways (P) Ltd., vs., CIT (Central), ITA No. 596/Pune/2015

6.2 We have carefully considered the above plea of the assessee. The assessee has relied heavily mainly on the decision of the Hon'ble Allahabad High Court in the case of CIT Vs. Dr. Ashok Kumar[INCOME TAX APPEAL No. - 192 of 2000 dated 06.08.2012. We have carefully considered the above decision. The Hon'ble High Court in that decision upheld the order of the Co-ordinate Bench quashing the 263 order passed by the Ld. CIT as per para No. 8 wherein it has been held that the Tribunal has found that the assessee had sufficiently explained the retraction of his statement given on 12.12.1994 and the Ld. CIT could not point out as to whether the Assessing Officer had failed to work out the amount of concealed income correctly. Hon'ble High Court further held that the Assessing Officer had made the addition on estimate basis for all the assessment years and there was no material indicating

suppression of receipts. Therefore, the Hon'ble High Court on this issue upheld the order of the ITAT quashing the order of the Ld. CIT passed under Section 263 of the Act. The Hon'ble High Court though has reproduced para No.5.2 of the order of the Co-ordinate bench, but it has mainly agreed with the order of the Co-ordinate Bench as in para No. 1 of the order of the co-ordinate bench. The complete order of the Hon'ble High Court is as under:-

> *"1. We have heard Sri R.K. Upadhyay, learned counsel for the appellants and Sri R.R. Agrawal, learned counsel appears for the respondent-assessee.*
>
> *2. The revenue is aggrieved by the order of the Income Tax Appellate Tribunal dated 12.1.2000, which was set-aside the order of Commissioner Income Tax (A), remanding the matter to the Assessing Officer under Section 263 of Income Tax Act, 1961 after setting aside the assessment order dated 27.12.1995 for assessment year 1991-92 to 1994-95 and the order dated 31.7.1996 for the assessment year 1995-96.*
>
> *3. These appeals were admitted on the question of law, which we have corrected as follows:-*
>
> > *"Whether on the facts and in the circumstances of the case, the Tribunal was justified in interfering with the order of the Commissioner of Income Tax, Under Section 263 of the*

Income Tax Act 1961 for the assessment years 1991-92 to assessment years 1995-96?"

4. We have gone through the order of Assessing Officer, Commissioner Income Tax (A) and Income Tax Appellate Tribunal and find that the ITAT has considered the reasons given by the CIT(A), and has found that the assessee had sufficiently explained the surrender of the income which he has subsequently retracted.

5. After assessments were completed, a raid was carried out, at the Nursing Home of the respondent-assessee on 7.12.2004. Some incriminating documents of concealment of income, were discovered. The assessee was not present at the time of inspection. He appeared before the AO on 12.12.1994 and surrendered the proposed additions in the income for the relevant years. The respondent-assessee thereafter retracted his statement, by giving an explanation that he did not have access to his accounts books, when he had appeared on his own before the AO on 12.12.1994. On checking up the account books, he had found that the returns were accepted, on the accounts books prepared by him.

6. The Tribunal thereafter has observed as under:-

"5.1 The other relevant point to be noted is that CIT set aside the assessment order on the basis of incorrect reasons. As pointed out by the learned counsel, there was no material found during search about suppression of receipts for a.y. 1991-92 to 1994-95 nor the learned D.R. Was able to point out any such material which might have been ignored by the AO while framing the assessment and thus the

vary basis for passing the impugned order goes away. The CIT also failed to point out as to why the AO failed to work out the amount of concealed income correctly, rather the AO had made the additions on estimate basis for all the assessment years though there was no seized material indicating suppression of receipts for these assessment years and for a.y. 1995-96 the material found at the time of search had been analysed after necessary enquiries and assessment had been framed accordingly.

5.2 In the last it is also relevant fact that the AO was fully alive about the facts of the case and that is why he got necessary approval of Addl. Commissioner before completing the assessment orders for all the assessment years and once that is not disputed by the Revenue than the CIT would not be justified in interfering in the approval accorded by the Addl. CIT for framing the assessment order and thus there was no case for setting aside the assessment orders for the assessment years in question. On the basis of facts and circumstances of the case I am of the opinion that the impugned order is liable to be quashed accordingly.

6. In the result, appeals are allowed."

7. Sri R.K. Upadhyay had relied upon Malabar Industrial Co. Ltd. Vs. Commissioner of Income Tax, (2000) 243 ITR 83 and Commissioner of Income Tax Vs. Kwality Twxtile Associate Pvt. Ltd., (2005) 272 ITR 371. In these cases the Supreme Court and the Madras High Court have discussed the powers of CIT under Section 263 of the Act, to remand the matter. If the twin conditions namely that the order of AO sought to be revised is erroneous, and it also prejudicial to the interest of the revenue are satisfied the CIT can remand the matter to the file of A.O.

8. We find that the Tribunal has considered the relevant principles of law in interfering with the order of CIT. The Tribunal found that the assessee-respondent had sufficiently explained the retraction of his statement given on 12.12.1994. It also found that the CIT could not point out as to whether the AO had failed to work out the amount of concealed income correctly. The AO had made additions on estimate basis for all the assessment years. There was no material indicating suppression of receipts.

9. We find that the Tribunal has not committed any error of law in setting aside the order of CIT passed under Section 263 of Income Tax Act for the assessment year 1991-92 to 1995-96.

10. The question of law is decided against the revenue and in favour of assessee. The Income Tax Appeals are accordingly dismissed."

6.3 The decision of the Co-ordinate Bench in the case of Abha Bansal has dealt with this issue in para No. 7 of the order. There also the assessee had relied upon the decision of the Hon'ble Allahabad High Court in the case of CIT Vs. Dr. Ashok Kumar (supra). The Co-ordinate Bench has reproduced therein list of decisions of the Co-ordinate Bench, which have followed the decision of the Hon'ble Allahabad High Court and held that an assessment order, which has been approved by the Joint Commissioner of Income Tax under Section 153D of the Act cannot be revised by the ld. Pr. CIT under Section 263 of the Act.

6.4 We find that the Hon'ble Punjab & Haryana High Court had an occasion to consider the issue in Osho Forging Ltd. Vs. CIT , 410 ITA 198 (Punjab & Haryana). The following issue were therefore the Hon'ble Courts Consideration:-

> "(*i*) *Whether the Ld. Tribunal committed gross illegality in remanding the matter back to the CIT to decide it on merit though no mandatory prior approval/permission was obtained by the Assessing Officer under Section 153D?*
>
> (*ii*) *Whether in the absence of prior approval/permission the assessment order passed by Assessing Officer is null and void?*
>
> (*iii*) *Whether in fact and circumstances of the case, the action of the ld. Tribunal passing the impugned order dated 02.01.2017 Annexure-A7 is legally sustainable in the eyes of law?"*

6.5 In that case the Ld. CIT passed an order under Section 263 of the Act in the case of search assessment passed under Section 153A of the Income Tax Act (it is mandatory to pass any order under Section 153A/153C with the approval of the Joint Commissioner of Income Tax as provided u/s 153D of the Act). In para Nos. 8 -11 the Hon'ble High Court held as under:-

> *"8. Although the assessee claims that three substantial questions of law arise, in fact the issue involved in the present appeal is:—*
>
> *"Whether under Section 153D of the Act there is a requirement of fresh approval for complying with the*

remand directions under Section 263, in a case where the assessment under Section 153A of the Act was originally framed after compliance of Section 153D of the Act?"

9. We answer the question against the assessee.

Section 153D is as under:

"153D. No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of (sub- section (1) of) Section 153A or the assessment year referred to in clause (b) of sub-section (1) of Section 153B, except with the prior approval of the Joint Commissioner:)"

10. As per Section 153-D, no order of assessment under Sections 153A and 153B can be passed by the A.O. without prior approval of the Joint Commissioner.

***1**1. The assessment order dated 24.12.2010 was passed under Section 153A read with Section 143(3) of the Act after obtaining approval under Section 153D of the Act. The approval was vide letter dated 24.12.2010. Thereafter the said order was taken up in revision. The order was set aside and the matter was remitted to the A.O. to pass a fresh assessment order. The approval under Section 153D was not set aside. There was no question thereupon of the A.O. seeking fresh approval under Section 153D. The order dated 18.03.2014 passed by the A.O. was in compliance with the remand directions. It was not a case of the A.O. assuming jurisdiction under Section 153A of the Act. That stage was over when order dated 24.12.2010 was passed. The A.O. was complying with the directions of the revisional authority. Section 153D of the Act is only applicable for passing an assessment order or re-assessment*

order. There is no requirement under Section 153D for prior approval for complying the remand directions. The approval dated 24.12.2010 in fact was to the effect that assessment of assessee can be passed under Section 153A. Remand direction was that the assessment under Section 153A should be framed again. There was no occasion of fresh assumption of jurisdiction to frame assessment. Rather it was in continuation of earlier proceeding which was duly approved. Even otherwise there is no question of seeking an approval from the Joint Commissioner or the Additional Commissioner Officer lower in rank than Commissioner for complying with the directions given by the Commissioner."

6.6 Thus it emerges that :-

i. Assessment order dated 24th December, 2010 was passed under Section 153A read with Section 143(3) of the Act after obtaining approval under Section 153D of the Act. The approval was vide letter dated December 24, 2010. Thereafter the said order was taken up in revision;

ii. The approval under Section 153D was not set aside;

iii. Section 153D of the Act is only applicable for passing an assessment order or re-assessment order;

iv. Even otherwise there is no question of seeking an approval from the Joint Commissioner or the Addl. Commissioner, an officer lower in rank than the Commissioner for complying with the direction given by the Commissioner.

6.7 Thereafter, in para No. 14 it upheld the assessment order passed under Section 263 of the Act framed under Section 143(3) of the Act pursuant to the direction of the Commissioner without obtaining the approval of the Joint Commissioner once again under Section 153D of the Act.

6.8 So the principal that emerges is that when a higher authority is exercising jurisdiction i.e. Commissioner under Section 263 of the Act, the approval granted by the lower authority under Section 153D does not infringe upon powers of the higher authority.

6.9 It was further held that the approval of Section 153D is only for passing of the order.

6.10 Provisions of section 263 of teh act are as under :-

Revision of orders prejudicial to revenue.

[28a] 263. (1) The [28][28b][Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or] Commissioner may call for and examine[29] the record[29] of any proceeding under this Act, and if he considers that any order[30] passed therein by the [31][Assessing] Officer is erroneous[30] in so far as[30] it is [30]prejudicial to the interests of the revenue[30], 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, [30]pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment[30] and directing a fresh assessment.

[32][33][Explanation 1.]—For the removal of doubts[34], it is hereby declared that, for the purposes of this sub-section,—

(a) an order passed [35][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 [36][or Deputy Commissioner] or the Income-tax Officer on the basis of the directions issued by the [37][Joint] Commissioner under section 144A;

(ii) an order made by the [37][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 [38][Principal Chief Commissioner or] Chief Commissioner or [38][Principal Director General or] Director General or [38][Principal Commissioner or] Commissioner authorised by the Board in this behalf under section 120;

(b) [39]"record" [40][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 [38][Principal [40a][Chief Commissioner or Chief Commissioner or 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[41] of any appeal [42][filed on or before or after the 1st day of June, 1988[41]], the powers of the[43][Principal Commissioner or] Commissioner under this sub-section shall extend [42][and shall be deemed always to have extended] to such matters as had not been considered and decided in such appeal.]*

[44][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 [45][Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner,—

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

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

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

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

[46][(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, [47][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.

6.11 On a plain reading of the section, we do not find that there is any fetters on the powers of PCIT or CIT for revising ' any order passed by the AO "except as provided in explanation 1(c)" of the section.

6.12 However, here the argument of the assessee is that powers granted to the PCIT and CIT u/s 263 becomes otiose if the authority below the rank of PCIT/ CIT i.e Joint Commissioner of Income tax, has approved the order u/s 153D of the Act. The natural corollary of the argument is that if the lower authority, u/s 153D, has approved the order, the Higher Authority i.e., PCIT and CIT lose their power to revise such orders. . It is obvious and as glaring as the day light that Pr. Commissioner of Income Tax is way high above the Joint Commissioner of Income Tax. Reference to section 116 of the Income Tax Act, where the Income Tax authorities in their hierarchial order are listed, clears any doubt about it.

6.13 The Hon'ble Delhi High Court in NIIT Ltd. Vs. Union of India in WPC No. 172–179/2009 dated 11th December, 2009 in para No. 20 has categorically held that:-

> *"20. The legal position which cannot be disputed is that when a particular authority is vested with the power to discharge statutory function, like the Commissioner who is empowered to pass orders under Section 263 of the Act, it is that authority which is to apply its independent mind and arrive at its own conclusion without being influenced by any other authority, much less the higher authority. Unfettered discretion lies in the Commissioner of Income Tax to pass orders under Section 263 of the Act. He is supposed to examine the records produced before him to arrive at a conclusion whether the assessment order passed by the AO suffers from infirmities and needs to be revised under Section 263 of the Act. The parameters which are laid down in Section 263 of the Act need to be fulfilled in exercising such a discretion. It is the Commissioner who has to satisfy himself, on the basis of available records, that in a given case the conditions stipulated under Section 263 of the Act are satisfied. In arriving at this conclusion, he is not to be controlled even by a higher authority. Likewise, the higher authority is not to interfere with the independence of his unfettered discretion which is statutorily conferred upon the Commissioner."*

6.14 Thus, even the authority above PCIT and CIT cannot deprive the powers of the revision and thus there is no reason that lower authority exercising powers granted to it can prevent

the PCIT or the CIT to exercise revisionary powers. Therefore, it is apparent that none of the lower authorities or even a superior authority cannot put spokes in exercising the power of the Pr. Commissioner of Income Tax. Such is the mandate of the Hon'ble Delhi High Court.

6.15 Now we come to the decision of the Hon'ble Supreme Court in T.N. Civil Supplies Corpn. Ltd Vs Commissioner of Income-tax [2003] 260 ITR 82 (SC) wherein the Assessing Officer passed an order on the direction of the Inspecting Assistant Commissioner under Section 144B of the Act, which was subject to revision under Section 263 of the Act. The Hon'ble Supreme Court in that particular case has categorically held that the orders are to be revised are orders passed by the Income Tax Officer. Hon'ble Supreme Court further held that provisions of Section 263 did not exclude 'orders passed by the Assessing Officer on the direction of a superior authority either under Section 144A or Section 144B of the Act. The Hon'ble Supreme Court held that :-

"2. The power to revise orders of the Income-tax Officer under section 263 of the Income-tax Act, 1961 was sought to be limited by the appellant-assessee by contending that the phrase "order passed by the Income-tax Officer" in section 263 excluded those orders passed by the Income-tax Officer pursuant to the directions of the Inspecting Assistant Commissioner under section 144B which was then included in the Act.

3. The High Court in its decision has followed its earlier decision in which it had referred to and relied upon the reasoning of several other High Courts on the same issue to negative the contentions of the assessee.

Given the uniformity of interpretation by the several High Courts, it would not be appropriate to interfere with the decision of the High Court.

4. In any event we are of the view that having regard to the subsequent amendments to the Act issued from time to time there was no scope for limiting the phrase 'order passed by the Income-tax Officer' in section 263 to exclude orders passed by the Income-tax Officer on the directions of a superior authority either under section 144A or 144B."

6.16 Categorically here the orders are not passed even under the instructions of the superior authority or under the direction of the superior authority, but merely an approval was granted by the Joint Commissioner of Income Tax under Section 153D of the Act to pass the orders. Provisions of Section 153D speak about "prior approval for assessment in the case of

search". They also provide for obtaining the prior approval of the Joint Commissioner for merely passing an order. Therefore, the decision of the Hon'ble Supreme Court clearly lays down that 'any order passed by the Assessing Officer' can be revised under Section 263 of the Act irrespective of the fact that any authority has granted any direction to the Assessing Officer.

6.17 Therefore, natural corollary would be show that all orders of search and seizure passed under Section 153A or under Section 153C of the Act are required to be passed after prior approval of the Joint Commissioner except as provided under Section 154BA(12). Therefore, if the argument of the Ld. AR is to be accepted then in such cases where the assessment has been framed under Section 153A or Section 153C, the same will go out of the ambit of the provisions of Section 263 of the Act and such a view is directly contrary to the decision of the Hon'ble Supreme Court in T .N .Civil Corporation Vs. CIT 260 ITR 82, Hon'ble Punjab & Haryana High Court Osho Forging Ltd. Vs. CIT

(supra) and Hon'ble Delhi High Court in NIIT Ltd. Vs. Union of India (supra).

6.18 The power of the Commissioner under Section 263 of the Act is in the nature of supervisory jurisdiction. This power is granted to correct an error, which is prejudicial to the interest of the Revenue in the order of the Assessing Officer, even if it is approved by the Joint Commissioner, who is also falling below the rank of the Pr. Commissioner. If the argument of the ld. AR is accepted then the supervisory authority of the Pr. Commissioner granted under the Act is hampered.

6.19 Therefore, on provisions of Section 263 of the Act give un-fettered right to the Commissioner of Income Tax to revise any order passed by the Assessing Officer. Whatever was to be excluded by the law has already been provided under that Section and the only exception are the issues 'decided and considered' in the appellate orders. Therefore, the reasoning of the arguments advanced by the Ld. AR on this line also fails and we dismiss the same.

6.20 Therefore, in view of the above discussion, we hold that the impugned order passed u/s 263 of the Act is illegally sustainable and no interference is called for.

7.0 In the final result, the appeal of the assessee stands dismissed.

Order pronounced on 11th October, 2021.

Sd/-	Sd/-
(PRASHANT MAHARISHI)	**(SUDHANSHU SRIVASTAVA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 11/10/2021
PK/Ps
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI