आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 26/JP/2021
Assessment Year: 2011-12

JR Industries, H-36-37-38, RIICO Industrial Area, Dausa, (Rajasthan)	बनाम Vs.	P.C.I.T-1 Jaipur.
PAN No.: AAEFJ 4186 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 27/JP/2021
Assessment Year: 2011-12

OM Industries, E-6A, Dausa, RIICO Industrial Area, Agra Road, Dausa, (Rajasthan)	बनाम Vs.	P.C.I.T-1 Jaipur.
PAN No.: AAAFO 7026 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 28/JP/2021
Assessment Year: 2011-12

Vikas Oil Product, H-71-72-73, RIICO Industrial Area, Agra Road, Dausa, (Rajasthan)	बनाम Vs.	P.C.I.T-1 Jaipur.
PAN No.: AAAFV 7709 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajiv Sogani (CA)
राजस्व की ओर से / Revenue by : Shri B.K. Gupta (Pr.CIT-DR)

सुनवाई की तारीख / Date of Hearing : 20/10/2021
उदघोषणा की तारीख / Date of Pronouncement : 23 /11/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

These are the appeals filed by the three different assessees against the separate orders of the ld. Pr.CIT-1, Jaipur all dated 04/03/2021 passed U/s 263 of the Income Tax Act, 1961 (in short, the Act) for the A.Y. 2011-12.

2. The hearing of the appeals was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. Common issues have been involved in all these appeals, therefore, all are clubbed and heard together and for the sake of convenience and brevity, a common order is being passed.

4. For deciding the appeals, we take ITA No. 28/JP/2021 for the A.Y. 2011-12 as a lead case, wherein the assessee has raised following grounds of appeal:

> *"1. In the facts and circumstances of the case and in law, ld. PCIT has erred in exercising the revisionary powers by passing order u/s 263 of I.T. Act, 1961 setting aside the order passed u/s 147/143(3) dated 27/12/2018. The action of the ld. PCIT is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the order passed u/s 263.*
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> *2. In the facts and circumstances of the case and in law, ld. CIT has erred in holding the order passed u/s 147/143(3) dated 27/12/2018 as erroneous and prejudicial to the interest of the revenue. The order passed u/s 263 is bad in law and therefore,*

the action of the ld. CIT is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the order passed u/s 263 and holding the order passed u/s 147/143(3) dated 27/12/2018 as not erroneous and prejudicial to the interest of the revenue.

3. The assessee craves its right to add, amend or alter any of the grounds on or before the hearing."

5. The brief facts of the case are that the assessee is engaged in business of trading of groundnut and mustard seeds and oil. Assessee's case was reopened for the A.Y. 2011-12. In response to notice u/s 148 assessee filed its return of income on 27.04.2018 declaring total income of Rs.57,190/-. Re-assessment proceedings were completed at a total income of Rs.3,52,190 *vide* order dated 27.12.2018 leading to addition of Rs.2,95,000/-.

6. Thereafter, the case of the assessee was taken up for revisionary proceedings u/s 263 of the Act by Ld. PCIT. During the pendency of the appeal before the ld. PCIT, the ld. PCIT noticed that the assessment in the present case was re-opened on the basis of information received from Investigation Wing, Jaipur about the transaction of Rs.11,80,000/- as bogus sales made through accommodation entries. The ld. PCIT was of the view that the A.O. erred in appreciating only 25% of the bogus sales i.e. Rs. 2,95,000/- to tax without any basis whereas according to the ld. PCIT, the whole amount of the bogus sales need to be

examined considering the nature of the transactions being of accommodation entry taken. The ld. PCIT was also of the view that the A.O. has not given any reason or basis of his decision of bringing only Rs. 2,95,000/- to tax as against bogus sales of Rs. 11.80 lacs. Therefore, the ld. PCIT reached to the conclusion that since the order passed by the A.O. was without any verification/enquiry, therefore, the said order was erroneous and prejudicial to the interests of the revenue, thus, initiated proceedings U/s 263 of the Act by issuing notice dated 10/02/2020. After providing opportunity of hearing to the assessee, order dated 04/03/2021 was passed thereby holding the order passed by the A.O. as 'erroneous and prejudicial' to the interests of the revenue and thus directed the A.O. to decide the matter afresh in the light of the observations set out by the ld. PCIT.

7. Against the order passed by the ld. PCIT, the assessee has preferred the present appeal before us on the grounds mentioned above.

8. Both the grounds of appeal raised by the assessee are interrelated and interconnected and relates to challenging the order of the ld. PCIT in exercising the revisionary passers by passing order

U/s 263 of the Act. Therefore, we thought it fit to dispose off these grounds by this consolidated order.

9. The ld. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the ld. PCIT and also submitted that the assumption of jurisdiction u/s 263 of the Act by the ld. PCIT is illegal as the appeal of the assessee was pending before CIT(A). In this regard, the ld AR has drawn our attention towards Explanation 1(c) to Section 263(1) of the Act, which is reproduced below:

> *"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."*

It was further argued by the ld. AR that once the appeal is filed by the assessee against the order of A.O. then in that eventuality, he surrenders himself to the jurisdiction of ld. CIT(A). Thus, this surrender is unconditional and the assessee in that eventuality, has no right to withdraw the appeal or to take U-turn. It was further submitted by the ld AR that power of enhancement to CIT(A) are akin to powers of revision to PCIT conferred u/s 263 of the Act. Thus, in this regard, the ld. AR also placed reliance on the following judicial pronouncements in support of his contentions:

(1) CIT vs. Rai Bahadur Hardutroy Motilal Chamaria (1967) 66 ITR 0443

(2) CIT vs. McMillan & Co. (1958) 33 ITR 0182.

(3) ITAT Delhi Bench 'F' in the case of ACIT vs. Pawan Kumar Singhal (2019) 183 DTR 0161 (Del.)(Trib.)

Further the ld. AR has also relied upon the gist of submissions as follows:

"1. Section 251 of the 1961 Act corresponds to section 31(3) of the 1922 Act. The power of enhancement as contained in section 251(1)(a) were similarly there in section 31(3)(a). The relevant sections are enclosed, copied from Income Tax Commentary of Mr. Sampath Iyengar's, Volume 9, and Page 14047 (12th Edition) (Compilation Page 1&3)

2. Similarly, present powers of revision contained in section 263 of the 1961 Act correspond to section 33B of the 1922 Act. The relevant sections are enclosed, copied from Income Tax Commentary of Mr. Sampath Iyengar's, Volume 9, and Page 14570 (12th Edition) (Compilation Page 5 -9)

3. Once an appeal is filed by the assesse against the order of AO, he surrenders himself to the jurisdiction of CIT(A). This surrender is unconditional and the assesse has no right to withdraw the appeal or to take the U-turn. Needless to submit that power of enhancement to CIT(A) are akin to powers of revision to CIT conferred u/s 263. Reliance is placed on the following judicial pronouncements:

a. Hon'ble Supreme Court of India in the case of CIT vs. Rai Bahadur Hardutroy Motilal Chamaria (1967) 66 ITR 0443 (Compilation Page 14) Relevant portion of the order is reproduced below:

"It is also well-established that an assessee having once filed an appeal cannot withdraw it. In other words, the assessee having filed an appeal and brought the machinery of the Act into working cannot prevent the AAC from ascertaining and settling the real sum to be assessed, by intimation of his withdrawal of the appeal. Even if the assessee refuses to appear at the hearing, the AAC can proceed with the enquiry and if he finds that there has been an under- assessment, he can enhance the assessment [see CIT vs. Nawab Shah Nawaz Khan (1938) 6 lTR 370 (SC) : TC7R.233]. In this context reference may be made to the decision of the Court of Appeal in King vs. Income-tax Special Commissioners (1936) 1 KB 487 in which the taxpayer sought to withdraw a notice of appeal which had been given on his behalf against an additional assessment under Schedule D. The Commissioners of Inland Revenue were not satisfied that the assessment was adequate. The Special Commissioners then proposed to proceed with the hearing of the appeal in the ordinary way. At that stage the taxpayer sought a writ of prohibition to prohibit the Special Commissioners from hearing the appeal. It was held by the Court of Appeal that notice of appeal having once been given, the Commissioners were bound to proceed in accordance with the IT Acts and determine the true amount of the assessment. At page 493 of the report, Lord Wright observed as follows:

"...in making the assessment and in dealing with the appeals, the Commissioners are exercising statutory authority and a statutory duty which they are bound to carry out. They are not in the position of judges deciding an issue between two particular parties. Their obligation is wider than that. It is to exercise their judgment on such material as comes before them and to obtain any material which they think is necessary and which they ought to have, and on that material to make the assessment or the estimate which the law requires them to make. They are not deciding a case inter parties; they are assessing or estimating the amount on which, in the interests of the country at large, the taxpayer ought to be taxed."

b. Hon'ble Supreme Court of India in the case of CIT vs. McMillan & Co. (1958) 33 ITR 0182 (Compilation Page 23) Relevant portion of the order is reproduced below:

"Lastly, it seems to us clear that the answer to the question is provided by the language of s. 31. As observed by Chagla, C.J., in Narrondas Manordass vs. CIT (1957) 31 lTR 909 (Bom) the language is wide enough to enable the AAC to "correct the ITO not only with regard to a matter which has been raised by the assessee but also with regard to a matter which has been considered by the ITO and determined in the course of the assessment." We are unable to accept the argument that the proviso to s. 13 imposes a limitation on the powers of the AAC under s. 31. No doubt, the two sections must be read harmoniously; but s. 13 and its proviso contain no words of limitation or qualification upon the power of the AAC in enhancing the assessment or setting aside the assessment and directing a fresh assessment to be made by the ITO. Dealing with the powers of the AAC, Chagla, C.J., in Narrondas's case (supra) said :

"It is clear that the AAC has been constituted a revising authority against the decision of the ITO ; a revising authority not in the narrow sense of revising what is the subject-matter of the appeal, not in the sense of revising those matters about which the assessee makes a grievance, but a revising authority in the sense that once the appeal is before him he can revise not only the ultimate computation arrived at by the ITO but he can revise every process which led to the ultimate computation or assessment. In other words, what he can revise is not merely the ultimate amount which is liable to tax, but he is entitled to revise the various decisions given by the ITO in the course of the assessment and also the various incomes or deductions which came in for consideration of the ITO."

We are in agreement with these observations."

c. *Hon'ble ITAT Delhi Bench 'F' in the case of ACIT vs. Pawan Kumar Singhal (2019) 183 DTR 0161 (Del.)(Trib.) (Compilation Page 46&47). Relevant portion of the order is reproduced below:*

"On cumulative consideration the provisions U/s 250(6) read with sections 250(4), 250(5), 251(1)(a), 251(1)(b) and Explanation of Section 251(2) of I.T. Act, we come to the conclusion that the Ld. CIT(A) is not empowered to dismiss the appeal for non-prosecution

of appeal and is obliged to dispose of the appeal on merits. Once the Assessee files an appeal U/s 246A of I. T. Act, the Assessee sets in motion the machinery designed for disposal of the appeal under Sections 250 and 251 of 1.T. Act. If the appeal filed by the assessee fulfils the requirements of maintainability and admissibility prescribed under Sections 246, 246A, 248 and 249 of I.T. Act; neither the Assessee can stop the further working of that machinery as a matter of right by withdrawing the appeal, or by not pressing the appeal, or by non-prosecution of the appeal; nor the first appellate authority, CIT(A) in this case, can halt this machinery by ignoring either the procedure in appeal prescribed U/s 250 ofl. T. Act or powers of Commissioner (Appeals) prescribed U/s 251 of I. T Act. CIT(A), the first appellate authority, cannot dismiss assessee's appeal in limine for non- prosecution without deciding the appeal on merits through an order in writing, stating the points of determination in the appeal, the decision thereon and the reason for the decision. It is well-settled that powers of Ld. CIT(A) are co-terminus with powers of the Assessing Officer. Useful reference may be made to order of Apex Court decision in CIT vs. Kanpur Coal Syndicate 53 ITR 225 (SC) in which it was held that AAC has plenary powers in disposing off an appeal; that the scope of his power is co-terminus with that of the ITO, that he can do what the ITO can do and also direct him to do what he failed to do. In this context, useful reference may also be made to Apex Court's decisions in the cases of CIT vs. Rai Bahadur Hardutroy Motilal Chamaria 66 1TR 443 and CIT vs. B.N. Bhattachargee 118 ITR 461 (SC) for the proposition that an assessee having once filed an appeal, cannot withdraw it and even if the assessee refuses to appear at the hearing, the first appellate authority can proceed with the enquiry and if he finds that there has been an under-assessment, he can enhance the assessment. Just as, once the assessment proceedings are set in motion, it is not open to the Assessing Officer to not complete the Assessment Proceedings by allowing the Assessee to withdraw Return of Income; it is similarly, by analogy, not open for Ld. CIT(A) to not pass order on merits on account of non-prosecution of appeal by the Assessee or if the Assessee seeks to withdraw the appeal or if the assessee does not press the appeal."

4. Explanation 1(c) to section 263(1) does not, in any case, explain that even if appeal is pending before CIT(A), revisional jurisdiction u/s 263 can be assumed. The Explanation 1(c) only explains the extent of merger of the order of AO with that of CIT(A) and explains that issues which have not so merged can be subjected to revisional jurisdiction u/s 263. This explanation had to be introduced to clarify the confusion which were prevailing about the section 263 jurisdiction when appellate order was passed. One view was that entire order of AO merges with CIT(A) and, therefore, revisional jurisdiction u/s 263 against such entire order cannot be assumed even if the specific issues were not decided in the appeal.

5. Under the scheme of the Act and otherwise also, no assessee can be subjected to multiple jurisdiction for the same aspect.

10. On the other hand, the ld. CIT-DR has relied on the order passed by the ld. Pr.CIT and also relied upon the notes on Clauses Finance Bill, 1988, which is at page No. 1-2 of the department's paper book, memorandum of Finance Bill, 1988, which is page No. 3 of the department's paper book, Section 31 of the Income Tax Act, 1922 which is at page No. 4-5 of the department's paper book, Section 31A of the Income Tax Act, 1922, which is at page No. 6 of the department's paper book and the ld. CIT-DR has also relied on the decision of the Coordinate bench of this Tribunal in ITA No. 255/JP/2020 dated 25/03/2021. The ld. CIT-DR has further relied on the following judicial pronouncements:

(i) CIT Vs Shri Arbuda Mills Ltd. (1998) 98 Taxman 457 (SC)

(ii) CIT Vs Ratilal Bacharilal & Sons (2006) 153 Taxman 86 (Bom)

(iii) CIT Vs South India Shipping Corporation Ltd. (2000) 111 Taxman 58 (Mad).

(iv) CIT Vs Carborandum Universal Ltd. (1999) 240 ITR 99 (Mad.)

(v) CIT Vs Shree Durga Agencies Ltd. (1999) 239 484 (Calcutta)

(vi) Aditi Technologies (P) Ltd. Vs ITO, Ward 4(1), Banglore (2014) 47 taxmann.com 166 (Bang-Trib)

(vii) CIT, Patiala Vs Ganesh Steel Industries (2009) 184 Taxman 220 (P&H).

(viii) CIT Vs Indo Persian Rugs (2007) 160 Taxman 127 (Allahabad)

(ix) CIT Vs Soble & Miglani (2005) 145 Taxman 353 (All.)

11. We have heard the rival contentions of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. From the facts of all these cases, we noticed that the main contention of the ld. AR that if an appeal against the assessment order passed by the AO is filed by the assesssee and is pending before CIT(A), then the PCIT has no jurisdiction u/s 263 of the Act as the C1T(A) can enhance income u/s 251 of the Act. In this context, it would be appropriate to reproduce clause (c) of Explanation 1 of section 263 of the Act, as amended from time to time, as under:

"263(1) (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 afier 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.] "

It would be appropriate to reproduce hereunder the relevant clauses of Notes on Clauses and Memorandum to Finance Bill 1988 relating to the amendments in section 263 of the Act by the Finance Act, 1988 through which the above Explanation was introduced as under:

Notes on Clauses to Finance Bill 1988

"Clause (c) of the Explanation clarifies that where any order passed by the Assessing Officer has merger with the order of Commissioner(Appeals) or the Appellate Tribunal, the Commissioner and revise that part of the order which has not been considered and pronounced upon by the appellate authority."

Memorandum to Finance Bill 1988

48(b) Regarding the circumstances under which order of an Assessing Officer merges with that of an appellate authority: Here again, there have been conflicting decisions on the question as to whether the entire order of assessment passed by an Assessing Officer merges with the order of the first appellate authority or the merger is only with respect to that part of the order of the Assessing Officer which relates to the matters considered and decided by the appellate authority. Some High Courts have held that there is complete merger once an appeal is decided against an order even on one or two points alone, while a number of High Courts have held that there is only partial merger and not the merger of the whole order in case where only one or some particular aspects have been contested. To eliminate litigation and to clarify the legislative intent in respect of the provisions in the three Direct Tax Acts, it is proposed to clarify the legal position in this regard in the Explanation to the relevant sections. The proposed amendments are intended to make it clear that "record" would include all records relating to any proceedings under the concerned direct tax laws available at the time of examination by the Commissioner. Further, as

held by several High Courts, the Commissioner will be competent to revise an order of assessment passed by an Assessing Officer on all matter except those that have been considered and decided in appeal."

12. It is evident from the above, that the power of PCIT u/s 263 extends to such matters which had not been considered and decided in such appeal. The use of the word "considered and decided" leaves no room for doubt that if some issue is decided by CIT(A) in an appeal against the assessment order passed by the AO. Then, that issue cannot be subject matter of proceedings u/s 263 of the Act. Thus, it is evident from the above that the Explanation 1(c) is based on the Doctrine of Merger, according to which there cannot he more than one decree or an operative order governing the same subject-matter at a given point of time. The Doctrine of Merger can be better understood from the following observations of the Supreme Court in a landmark decision in the case Kunhayammed v. State of Kerala [1].

1. *Where an appeal or revision is provided before a superior forum against an order passed by a Court, Tribunal or any other authority and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges with the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.*

2. *The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge.*

Thus, we are of the view that where an issue in the assessment order has neither been agitated before the Commissioner (Appeals) nor considered by him, in such a scenario that portion of the assessment order will not merge with the order of the Commissioner (Appeals) and therefore, the Commissioner will have the jurisdiction under Section 263 to revise the assessment order with respect to that particular issue. To make it clear, let us assume that in a particular case, the AO had made addition on account of three issues A, B and C, against which the assessee filed appeal to CIT(A) on two issues i.e. B and C and the CIT(A) has also passed an appellate order. Thus, in view of the Explanation as reproduced above, the PCIT cannot assume jurisdiction in respect of issue 13 and C u/s 263 of the Act, however, the PCIT can assume jurisdiction in respect of issue A which has not been agitated before CIT(A) as the assessment order merge's with the order of CIT(A) in respect of issue B and C only but not in respect of the issue. If the contention of the ld. AR is accepted then during the pendency of the PCIT has no jurisdiction to cancel the assessment order even in respect of issue A also as the CIT(A) can enhance the income u/s 251 of the Act on issue A but after passing of the appellate order by the CIT(A), now the PCIT can assume jurisdiction u/s 263 of the Act as the Ld. CIT(A) has not considered and decided such issue A in the appellate order. This cannot be the

intention of the legislature as time limit is there for passing order u/s 263 of the Act, whereas there is no such limit for the CIT(A) for adjudicating an appeal and this interpretation makes the provisions of section 263 of the Act practically redundant during the pendency of appeal before CIT(A).

13. In another circumstances, if an appeal, against the assessment order passed by the AO, has been filed with the CIT(A) but has not been decided and is pending before CIT(A), then the Doctrine of Merger will even otherwise not apply as there is no order of CIT(A) with which the assessment order could merge and thus, the PCIT will surely have jurisdiction u/s 263 of the Act in respect of all the issues whether contested before CIT(A) or not. Although, it was argued by ld. AR that once an appeal is filed by the assessee against the order of AO, then he surrenders himself to the jurisdiction of CIT(A). Thus, this surrender is unconditional and the assessee has no right to withdraw the appeal or to take a U-turn. The power of enhancement to CIT(A) are akin to powers of revision to PCIT conferred u/s 263 of the Act. In this regard, ld. AR has placed reliance on the following judicial pronouncements in support of these contentions:

* CIT Vs. Rai Bahadur Hardutory Motilal Chamaria [1967] 66 ITR 443 (SC)

* CIT Vs. McMillan & Co. [1958] 33 ITR 182 (SC)

* ACIT Vs. Pawan Kumar Singhal [2019] 183 DTR 161 (Del.)(Trib.)

After analyzing the above decisions, we found that in these judgments, it has been held that the CIT(A) has power of enhancement and the assessee cannot withdraw appeal and the CIT(A) has to decide the appeal on merit and cannot dismiss the appeal in limine. We may point out that the two judgements of Hon'ble Apex Court as relied upon by the ld. AR are related to provisions of old Income Tax Act of 1922. It is important to mention that section 31 of 1922 Act corresponds to section 251 of 1961 Act and under section 31 of 1922 Ac as well as under section 251 of the Act, the CIT(A) can enhance the income. Similarly section 33A of 1922 Act corresponds to section 263 and 264 of 1961 Act and the provisions of section 33A of 1922 Act are not identical with the provisions of section 263 of the 1961 Act. Therefore, it would be appropriate to reproduce the relevant provisions of section 33A of 1922 Act which corresponds to section 263 of 1961 Act as under:

"33A. Power of revision by Commissioner.

(1) The Commissioner may of his own motion call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit:

Provided that the Commissioner shall not revise any order under this sub-section if—

(a) *where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal, the time within which such appeal may be made has not expired, or*

(b) the order is pending on an appeal before the Appellate Assistant Commissioner or has been made the subject of an appeal to the Appellate Tribunal, or

(c) the order has been made more than one year previously."

14. Thus, it is evident from the above that in view of the proviso to section 33A of 1922 Act. the PCIT cannot exercise jurisdiction u/s 33A of the Act, (a) if the appeal against the order lies to CIT(A)/ITAT and the time to file such appeal has not expired or (b) the order is pending on an appeal before the CIT(A) or has been made the subject of an appeal to the ITAT or (c) the order has been made more than one year previously. It may be mentioned that the above proviso to section 33A of 1922 Act is conspicuous by its absence in section 263 of the Act of 1961. Thus, these judicial pronouncements of Hon'ble Apex Court as relied upon by the ld. AR are of no help to the assessee. In the case of **CIT v. Shri Arbuda Mills Ltd. [1998] 98 Taxman 457 (SC),** the assessment of the assessee-company was completed under section 143(3) read with section 144B wherein the ITO made certain additions and disallowances and also accepted certain claims relating to three items. The assessee-company filed an appeal and the three items in respect of which the decision was

in its favour were not the subject-matter of the appeals. In respect of these three items, the Commissioner exercised his power U/s 263. The assessee contended that the order of the ITO regarding the said three items in respect of which the assessee had no occasion to prefer an appeal had merged in that of the Commissioner (Appeals) so as to exclude the jurisdiction of the Commissioner under section263. The Hon'ble Apex Court after considering the Explanation 1(c) to section 263 of the Act has held as under:

> *"The consequence of the said amendment made with retrospective effect is that the powers under section 263 of the Commissioner shall extend and shall he deemed always to have extended to such matters as had not been considered and decided in an appeal. Accordingly, even in respect of the aforesaid three items, the powers of the Commissioner under section263 shall extend and shall be deemed always to have extended to them because the same had not been considered and decided in the appeal filed by the assessee. This is sufficient to answer the question which has been referred.*
>
> *6. The question referred is, therefore, answered in the negative, in favour of the revenue and against the assessee."*

In the case of **CIT v. Ratilal Bacharilal & SonsI2006] 153 TAXMAN 86 (BOM.),** it has been held by the Hon'ble High Court that:

> *"21. Having said so, turning to the facts of this case, so far as allowance under section 35B to the extent it was allowed by the ITO is concerned, the powers of the Commissioner under section 263 shall extend and shall be deemed always to have extended to such matter because the same had not been considered and decided in the appeal filed by the assessee. At the instance of the assessee, the allowance on the sum of Rs. 5,63,350 could not have been the subject-matter of appeal before the CIT(A) as the assessee was never aggrieved with that*

part of the order. In other words, solar as weighted deduction under section 35B in the sum of Rs. 5,63,350 is concerned, the same was 7201 a subject-matter of the appeal before the CIT(A). Factually in this case, the doctrine of merger could not, have been applied by the Tribunal to that part of the order, which was not a subject- matter of appeal as indicated, so as to exclude revisional jurisdiction of the Commissioner of Income-tax under section 263 of the Act.

In the case of **CIT v. South India Shipping Corporation Ltd. (2000) 111 TAXMAN 58 (MAD.),** it has been held by the Hon'ble High Court that:

"19. In so far as the second question of law is concerned, it relates to the question of merger. In our view, the order of the ITO which was the subject-matter of revision before the Commissioner under section 263 did not merge with the order of the first appellate authority as the subject-matter of appeal before the first appellate authority was different. Therefore, on the basis of the decisions of the Supreme Court in the case of CIT v. Shri Arhuda Mills Ltd. [1998] 231 ITR 50/98 Taxman 457 and Shree Manjunathesware Packing Products & Camphor Works case (supra), the Tribunal was not correct in holding that there was a merger of the order of the ITO with the order of Commissioner (Appeals) precluding the Commissioner from exercising his revisional powers. Our answer to the second question of law also is in the negative and in favour of the revenue."

15. We noticed from perusal of the record that vide its letter dated 15.09.2021, the ld. AR has relied upon the following judicial pronouncements:

* CIT Vs. Vain Resorts & Hotels P Ltd [2019] 418 ITR 723 (All)
* Renuka Philip Vs. ITO [2018] 409 ITR 567 (Madras)
* ACC Limited Vs. CIT(LTU) in ITA No. 3576/Mum/2019.

In this regard, we noticed that the judicial pronouncements as relied upon by the ld. AR, the important words *"considered and decided in such appeal" appears* to have skipped the attention of their lordships. In fact, it appears that in these judgements, the Notes on Clauses and Memorandum to Finance Bill, 1988 as reproduced earlier, were not placed before the Hon'ble Courts and consequently were not considered by the Hon'ble High Court. It is trite law that while interpreting provisions of a statute, no word should be added or omitted. We also noticed that the judgement of Hon'ble Apex Court in the case of **CIT v. Shri Arbuda Mills Ltd. (Supra**) was not considered in these judgements. In our view, the legislative history of section 263 of the Act, viz-a-viz section 33A of the IT Act, 1922 as referred earlier was not placed before the Hon'ble Courts and consequently, was not considered in these judgements. We also reiterated that there is no proviso in section 263 of 1961 Act corresponding to proviso of section 33A of the old Act of 1922. It clearly reflects the intention of the legislature in the 1961 Act that even during the pendency of appeal before CIT(A), the PCIT can assume jurisdiction u/s 263 of the Act. Further, in view of the Explanation (c) to section 263(1) of the Act, the PCIT can assume jurisdiction Lifts 263 of the Act in respect of the issues which have not been considered and decided by CIT(A). The coordinate Bench with the same combination in the case of

Virendra Singh Bhadauriya v. PCIT in ITA No. **255/JP/2020 wherein the** similar ground was raised in appeal, vide order dated 25/03/2021 had decided the issue in favour of the revenue. It would be appropriate to reproduce the relevant ground of appeal in the said case as under:

> *"Ground No. 4:-Assessee humbly prays that the order dt. 16.3.2020 passed by Ld. Pr. CIT--3, Jaipur u/s 263 of Income Tax Act, 1961 and its operation may he stayed as assessee has already preferred IT appeal against order dt. 26.12.2017 passed by ld. A0 u/s 143(3) and such appeal (IT No. 568/17-18) is being listed and pending hearing before ld. CIT(A)-3, Jaipur. It is further prayed that necessary order may be issued to ld. Pr. CIT-3, Jaipur and Dy. CIT, Circle -7, Jaipur."*

On page 19/20 of the above referred order, it has been held by the Coordinate Bench of the Tribunal that:

> *"We had considered the said objection raised by the assessee before us. We are conscious of the fact that in respect of arguments of the assessee to the effect that he has already filed income tux appeal before the ld. CIT(A) against the order of the assessment dated 26/12/2017 and the entire issue was at large now before the Appellate Commissioner and that the ld. CIT(A) while hearing the assessee 's appeal has power to enhance the assessment. If he was of the opinion that not only limited additions made by the A.O. hut much larger additions were justified., then in that eventuality, he could have certainly exercised such powers by putting the assessee to notice. For ready reference, we reproduce clause (c) of Explanation 1 of section 263 of the Act as under:*
>
> *"263(1) (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 he deemed always to have extended] to such matters as had not been considered and decided in such appeal.] "

From the above proposition of law, we noticed that the power of ld. Pr.CIT or the ld. CIT under the provisions of Section 263 shall extend to such matters as had not been considered and decided in such appeal. Admittedly, the appeal filed by the assessee against the order of the assessment passed u/s 143(3) dated 26/12/2017 has so far not been considered or decided by the ld. CIT(A), therefore, the objection of the assessee that no proceeding Ws 263 of the Act can he initiated or taken when the appeal is pending before the ld CIT(A), is not sustainable and is thus, rejected."

Thus, considering the entirety of facts and circumstances of the case and the discussions made above by us (supra), we are of the view that the ld. PCIT was well within his rights to invoke provisions of Section 263 of the Act under the facts of the present case. Thus, this ground of appeal raised by the assessee stands dismissed.

16. The ld. AR has further submitted that the AO, in his assessment order, has not accepted the explanation of the assessee and has held the sales to be bogus. The ld. PCIT, in the order u/s 263, has held that proper enquires have not been made by the AO. It is submitted that the issue of lack of enquiry or invoking Explanation 2(a) would arise only when the explanation offered by the assessee is accepted and relief granted to assessee. When finding of ld. PCIT is in consonance with the finding of the AO (i.e. sales are bogus) there is no question of error in

the order of AO. Now the issue remains of estimation of income imbibed in the bogus sales or earnings on account of providing accommodation entry. The AO estimated the income @ 25% whereas Id. CIT has proposed the same to be 100%. The Hon'ble Jurisdiction ITAT in the case of Anil Kumar Varshney vs ITO ITA No. 187/JP/12 has estimated the income @ 15% in case of bogus purchases. Number of judicial precedents have upheld the estimation in such circumstances @ 15% to 25%.

17. The ld. AR has further submitted that if the AO had adopted a plausible view with which ld. CIT is not in agreement, even then the same cannot be said to be erroneous or prejudicial to the interest of the revenue. This is because the Assessing 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 considered erroneous simply because the Commissioner does not feel satisfied with the conclusion. Reliance is placed on the judgement of Hon'ble Supreme Court in the case of Commissioner of Income Tax vs. Kwality Steel Suppliers (2017) 395 ITR 001, wherein the Hon'ble Court held thus :

> *"At the same time, this Court has also laid down that this provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer. While interpreting the expression 'prejudicial to the interests of the Revenue', it is also held that order of the Assessing Officer cannot be termed*

as prejudicial simply because Assessing Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Assessing Officer has taken one view with which the Commissioner did not agree.(See CIT v. Arvind Jewellers ((2003) 259 1TR 502)),It is clear from the above that where two view are possible and the Assessing Officer has taken one view and the CIT again revised the said order on the ground that he does not agree with the view taken by the Assessing Officer, in such circumstances the assessment order cannot be treated as an order erroneous or prejudicial to the Interest of the Revenue. Reason is simple. While exercising the revisionary jurisdiction, the CIT is not sitting in appeal. This has been so eloquently explained in the case of 'Malabar Industrial Co. Ltd. v. Commissioner of Income Tax' [(2000) 243 ITR 83]."

When ld. PCIT has given a finding that assessee firm has taken accommodation entry then definitely the suppression of income on account of taking accommodation entry has to be estimated which in no case can be equivalent to 100% of the bogus sales entry. The PCIT is expected to give a categorical finding about why 25% estimation is erroneous and why 100% estimation is correct. Lack of categorical finding in this regard leads to improper assumption of jurisdiction u/s 263. Without prejudice to above it is submitted that re-opening was done for this specific reason of accommodation entry. Complete enquiry was made by the AO. All the evidences were furnished by assessee (PB Pages 119). Ld. CIT has also not found any defect in these evidences. Under these circumstances the order of the Id. AO cannot said to be erroneous.

18. Whereas on the contrary, the ld. CIT-DR has submitted that the A.O. is not expected to put blinkers on his eyes and mechanically accept what the assessee claims before him. It was the duty of the A.O. to ascertain the truth of the facts stated and the genuineness of the claim made in the return. As per the ld. DR, the order passed by the A.O. become erroneous because no enquiry has been made before accepting the claim of the assessee which resulted in loss of the Revenue. In support of his contentions, the ld. CIT-DR has relied upon the decisions in the case of Gee Vee Enterprises v. Addl. CIT [1975] 99 ITR 375 (Delhi), Malabar Industrial Co case [2000] 243 ITR 83 (SC), Kirtidevi. S. Tejwani v. PCIT [2020] 116 taxmann.com 965 (Mumbai- Trib.), CIT Vs Ballarpur Industries Ltd. [2017] 85 taxmann.com 10 (Bombay), Jeevan Investment & Finance (P.) Ltd. Vs CIT [2017] 88 taxmann.com 552 (Bombay), Hunumesh Realtors (P.) Ltd. Vs PCIT [2017] 88 taxmann.com 185 (Mumbai - Trib.) and CIT Vs Maithan International [2015] 56 taxmann.com 283 (Calcutta).

19. We have considered the rival contentions and carefully perused the material placed on record. From perusal of the record, we noticed that in these cases, the A.O. the AO has issued notice u/s 148 of the Act on the basis of the investigation made by the Investigation wing of the department that the assessee has provided accommodation

entries in the garb of business transactions. In fact, as per the assessment order, there was specific information that the assessee has provided bogus sale bills to Shri Ram Trading Corporation amounting to Rs. 34.20 Lakh. Thus, that was the starting point of the assessment proceedings. However, while completing the assessment, the AO has made addition of Rs. 8.55 lakh being 25% of 34.20 Lakh. The assessment order was cancelled by the Id PCIT as the same has been completed without making any enquiry and without application of mind by the AO for the following reasons:

* The AO has not considered at all investigation done by the department in respect of accommodation entries.

* The AO has not made any enquiry about the quantum of sales to M/s Shri Ram Trading Co. He has just focussed on sale of Rs. 34.20 Lakh as intimated by the investigation wing.

* The AO has treated the sale of Rs. 34.20 Lakh as bogus but has made addition of only Rs. 8.55 lakh only without any reasoning and application of mind.

* The AO has not examined the complete bank account of the assessee even though opening balance as on 01.04.2010 and closing balance as on 31.03.2021 remains the same.

* The AO has not examined the stock register of the assessee to examine whether the stock was available with the assessee on the date of alleged sale to M/s Shri Ram Trading Co.

We observed that the AO has restricted the assessment only to bogus sale made by assessee to Shri Ram Trading Co. and he has presumed and assumed that bogus sale was only made to that party and not to any other party. In fact, he has not made any enquiries to find out the genuineness of other sales made by the assessee, which he was supposed to make, when the initiation of assessment proceedings itself was on account of bogus business transactions only. Thus, it is case of incorrect assumption of facts without any enquiries or verification. It was also argued by the ld. DR that the AO has treated the sale of Rs. 34.20 lakh as bogus but he has ignored the provisions of section 68/69 of the Act according to which if the assessee has failed to explain any credit/deposit entry in the books of accounts/bank statement to the satisfaction of the AO, the same is deemed to be the income of the assessee u/s 68/69 as the case may be. It appears that the AO has presumed that these sections are not applicable to the facts of the instant case and thus, it is nothing but a case of incorrect assumption of law.

20. After having considered the entire facts and circumstances of the case, we are of the view that the A.O. is not expected to put blinkers on his eyes and mechanically accept what the assessee claims before him. It is his duty to ascertain the truth of the facts

stated and the genuineness of the claims made in the return. The order passed by the Assessing Officer becomes erroneous when an enquiry has not been made before accepting the genuineness of the claim which resulted in loss of revenue. In the case of **Gee Vee Enterprises v. Addl. CIT [1975] 99 ITR 375 (Delhi**), it has been held by the Hon'ble Court that "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". In the case of **Malabar Industrial Co case [2000] 243 ITR (SC)**, it has been held by the Hon'ble Apex Court that "there was no material to support the claim of the appellant that the said amount represented compensation for loss of agricultural income. The AO accepted the entry in the statement of the account filed by the appellant in the absence of any supporting material and without making any inquiry, in these facts the conclusion that the order of the Income-tax Officer was erroneous is irresistible."

In the case of **Kirtidevi. S. Tejwani v. POT [7070] 116 taxmann.com 965 (Mumbai - Trib.),** it has been held that "it is well settled in law that when an Assessing Officer remains passive

on the facts which call for further inquiry, such an inertia on the part of the Assessing Officer also renders the order erroneous and prejudicial to the interests of the revenue as held in the case of Gee Vee Enterprises v. Addl. CIT [1975] 99 ITR 375 (Delhi)". In the case of **CIT Vs Baliarpur Industries Ltd. [2017] 85 taxmann.com 10 (Bombay),** it has been held by the Hon'ble High Court that:

> *"It is now settled that non-enquiry before allowing the claim would make the order of the Assessing Officer amenable to jurisdiction under section 263. The non-enquiry by the Assessing Officer gives jurisdiction under section 263. Merely because the issue was debatable, it did not absolve the Assessing Officer from examining the issue and taking a view on the claim after examination. Similarly because the two views are possible and or that there are contrary view of higher forums, does not permit non-examination of the claim and taking one of the possible view by giving reasons. In this case no examination of the claim under section 80HHC was done by the Assessing Officer, therefore, the exercise of jurisdiction by the Commissioner under section 263 was valid. [Para 13]*
>
> *Mere taking of a view by the Assessing Officer without having subjected the claim to examination would not make it a view of the Assessing Officer. A view has necessarily to be preceded by examination of the claim and opting to choose one of the Possible results. In the absence of view being taken, merely because the issue itself was debatable, would not absolve the Assessing Officer of applying his mind to the claim made by the assessee and allowing the claim only on satisfaction after verification/enquiry on his part. A view in the absence of examination is no view but only a chance result. [Para 14]*
>
> *Therefore, the Assessing Officer cannot abdicate his responsibility of examining the claim for deduction before allowing it. Absence of examination of the claim made by the assessee while passing an assessment order and allowing the claim made, would render the order of the Assessing Officer erroneous and coupled with the fact that in this case*

it is admitting prejudicial to the interest of the revenue, exercise of the revisional jurisdiction under section 263 by the Commissioner proper and valid. [Para 16]

In the case of **Jeevan Investment & Finance (P.) Ltd. Vs CIT [2017] 88 taxmann.com 552 (Bombay),** it has been held by the Hon'ble High Court that:

" ..... merely asking a question which goes to the root of the matter and not carrying it further is a case of non-enquiry, if the query is not otherwise satisfied while responding to another query. In the instant case, the Assessing Officer raised query regarding valuation of shares in question to which response was only that the unquoted shares were valued at costs. No method of valuation of the shares was submitted to the Assessing Officer during the proceedings, leading to the assessment order. It, therefore, appeared that the Assessing Officer after having asked a pertinent question of the method of valuing unlisted shares did not pursue that line of enquiry. Thus, this was a case of non-enquiry and not inadequate enquiry. Therefore, the order of the Assessing Officer was certainly erroneous and prejudicial to the revenue."

In the case of **Hunumesh Realtors (P.) Ltd. Vs PCIT [2017] 88 taxmann.com 185 (Mumbai - Trib.),** it has been held by the Coordinate Bench that:

"....The view which was adopted by the Assessing Officer based on material available on record could not have been adopted by the Assessing Officer as material was not sufficient to come to such conclusion as no proper enquiry/verifications were conducted by the Assessing Officer making assessment order erroneous so far as prejudicial to the interest of Revenue amenable to exercise of revisionary powers by the Pr. Commissioner under section 263....

The Assessing Officer even did not have course content with him before arriving at the conclusion that these are business expenses. Thus, there was complete lack of application of mind by the Assessing Officer before

allowing these education expenses as business expenses of the assessee under section 37(1)."

In the case of **CIT Vs Maithan International [2015] 56 taxmann.com 283 (Calcutta),** it has been held by the Hon'ble High Court that:

" It is well established that credits allegedly based on loan from parties, who are not possessed of sufficient means cannot be accepted as genuine. The Assessing Officer was required to make proper investigation to determine whether the money was really lent by the third party or it has come out of the resources of the assessee himself. Thus the Assessing Officer has failed to apply his mind to all aspects of the case is self-evident. Such non-application of mind constituted passing of an erroneous order which is also prejudicial to the interest of revenue. [Para 11]"

In the case of **Daniel Merchants P Ltd and others (SLP No. 23976/2017 dated 29.11.2017),** it has been held by the Hon'ble Apex Court that:

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

In the case of **Nagal Garment Industries (P.) Ltd. v. CIT [2020] 113 taxmann.com 4 Madhya Pradesh),** the Hon'ble High Court has upheld the findings of the Tribunal:

"8. The Income Tax Appellate Tribunal, by relying on the decision of the Supreme Court rendered in the case of Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83/109 Taxman 66, the order passed by the Supreme Court in the case of Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 and CIT v. Amitabh Bachchan [2016] 69 taxmann.com 170/240 Taxman 221/384 ITR 200 (SC) relevant extracts of which have been quoted by the Income Tax Appellate Tribunal in paragraphs 4.2 and 4.3 of its order, has arrived at a conclusion that as the Assessing Officer has passed the order of assessment without making a proper enquiry and without applying his mind to the return and the documents filed by the assessee, as such the order is erroneous as well as prejudicial to the interest of revenue. The Tribunal has also recorded a finding of fact, on the basis of the record available, that in the instant case, though the Assessee has submitted records before the Assessing Officer, he has simply accepted the claim of the assessee without examining the same and therefore, the present case is one where the impugned order of assessment is erroneous as well as prejudicial to the interest of revenue on account of lack of enquiry and application of mind to the facts of the case by the Assessing Officer.

9. On a careful perusal of the record, it is apparent that the Commissioner of Income Tax as well as the Income Tax Appellate Tribunal both have recorded a finding to the effect that though the records were filed before the Assessing Officer and a detailed questionnaire was also issued to the appellant by the Assessing Officer to which a reply was filed by the appellant in that regard, the Assessing Officer did not apply his mind nor did he conduct an enquiry into the matter although he has recorded in the note-sheet that the reply filed by the appellant was not satisfactory and did not explain all the facts."

In the case of **Kerala State Electricity Board Ltd. v. DCIT [2019] 111 taxmann.com 353 (Cochin - Trib.),** it has been held that "Section 263 of the Income-tax Act empowers the Commissioner to initiate suo moto proceedings either where the Assessing Officer takes a wrong decision without considering the materials available on record or he takes a decision without making an enquiry into the matters,

where such inquiry was prima facie warranted. The Commissioner is well within his powers to treat an order as erroneous on the ground that the Assessing Officer should have made further inquiries before accepting the wrong claims made by the assessee. The Assessing Officer cannot remain passive in the face of a claim, which calls for further enquiry to know the genuineness of it." It has been further held as under:

- In the instant case, the Commissioner had reasons to hold that creditworthiness of the alleged lenders was not enquired into. Mere examination of the bank pass book, profit and loss account and balance sheet of the creditors is not enough. When the requisite enquiry was not made, the order is bound to be erroneous and prejudicial to the interest of the revenue. The Tribunal proceeded on the theory that it was not a case of no enquiry; that no doubt is true, but that is not enough. If the relevant enquiry was not made, it may in appropriate cases amount to no enquiry and may also be a case of non-application of mind. [Para 12]

- It is not the law that the Assessing Officer occupying the position of an investigator and adjudicator can discharge his function by perfunctory or inadequate investigation. Such a course is bound to result in erroneous and prejudicial orders. Where the relevant enquiry was not undertaken, as in this case, the order is erroneous and prejudicial too and therefore revisable.

> Investigation should always be faithful and fruitful. Unless all fruitful areas of enquiry are pursued the enquiry cannot be said to have been faithfully conducted. [Para 19]"

In the case of **Lally Motors India (P.) Ltd. v. PCIT [2018] 93 taxmann.com 39 (Amritsar - Trib.).** The impugned order being after the date of amendment (by way of Explanation 2) to section 263, i.e., 1-6-2015, the same is an equally valid ground for the exercise of revisionary power under section 263 that is, the law, with effect from 1-6-2015, deems an order as so, where any of the circumstances specified is, in the opinion of the competent authority, satisfied. It has nothing to do with the date of the passing of the order deemed erroneous, or the year to which it pertains. Being a part of the procedural law, the provision shall have effect from 01-6-2015.

21. Having considered the entirety of facts and circumstances of the present case, we further found that here the question is not filing the documents by the assessee with the A.O. during the assessment proceedings, however, here the question is with respect to carrying out necessary verifications on the information of the department and that of the documents submitted by the asseessee. Unfortunately, we have not been able to lay our hands of any sort of verification carried out by the A.O. In our view, the A.O. has proceeded only on the basis that

"modus operandi of providing bogus sales cannot be relied upon in the light of the concrete information available on the record." Thus, in this way, only on this basis, the A.O. treated the sales as bogus and charged 25% as income derived out in lieu of accommodation entries without any basis, enquiry or verification. Even, throughout the assessment proceedings, there is not even any whisper from the side of the A.O. that he had carried out any sort of investigation or verification or recorded his satisfaction. Thus, we are in consonance with the findings of the ld. PCIT and upheld the order passed by the PCIT wherein he has pointed out the discrepancies in the order of A.O. to the effect as under:

"5.1 A.O. has not considered the investigation done by the department in respect of accommodation entry given by M/s Shri Ram Trading Company to the assessee firm, nor any verification from M/s Shri Ram trading Company has been carried out.

5.2 In the order, the A.O. has made disallowance of 25% on sales of Rs. 11.80 lacs without carrying out due verification.

5.3 The assessee's contention that sales were actual as is supported by documentary evidence in form of C-form and invoiced etc. was refuted by the AO, stating that the modus operandi of providing bogus sales also involve completing the due process of submitting prescribed form to the Commercial Taxes Department. The AO did not rely upon the evidences submitted before him and treated the sales of Rs. 11,80,000/- as bogus sales. However, the A.O. has not given

any justification on record as why only 25% of the bogus sales are brought to tax.

5.4 The A.O. has failed to examine the complete bank statement of the assessee as only partial bank-account statement is available on record which pertained to period 11-06-2010 to 17-06-2010 to support a receipt of Rs. 6,00,000/- on 12/06/2010 and Rs. 5,80,000/- on 17/06/2010.

5.5 AO has also not carried out any stock verification around the dates of these sales and also of the purchases made around this period.

6. In view of the above, it is evident that, AO has failed to examine the issue in hand while passing the assessment order and assessment order suffers from non-application of mind on the part of the AO."

Thus, considering the entirety of facts and circumstances as discussed above by us (supra) and also taking into consideration the judgments relied upon by the respective parties, we dismiss this ground of appeal raised by the assessee and uphold the order passed by the ld. PCIT u/s 263 of the Act.

22. In the result, this appeal of the assessee stands dismissed.

23. Now we take assessee's appeals No. 26/JP/2021 and 27/JP/2021 for the A.Y. 2011-12.

In both these appeals, since the grounds, facts and submissions are identical to the grounds, facts and submissions of ITA No. 28/JP/2021,

therefore, our findings given in ITA No. 28/JP/2021 for the A.Y. 2011-12 shall apply mutatis mutandis in these appeals also.

24. Finally, in the result, all these three appeals of the assesses are dismissed.

Order pronounced in the open court on 23rd November, 2021

Sd/-	Sd/-
(विक्रम सिंह यादव)	(संदीप गोसाईं)
(VIKRAM SINGH YADAV)	(SANDEEP GOSAIN)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 23/11/2021
*Ranjan
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- (i) JR Industries, Dausa.
   (ii) OM Industries, Dausa.
   (iii) Vikas Oil Product, Dausa.
2. प्रत्यर्थी / The Respondent- The P.C.I.T-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 26 to 28/JP/2021)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar