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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement reserved on: 11.10.2023

% Judgement pronounced on :29.11.2023

\+ **ITA 125/2021**

PRINCIPAL COMMISSIONER OF INCOME TAX-4 ..... Appellant

Through: Mr Shlok Chandra, Sr. Standing Counsel with Ms Priya Sarkar and Ms Madhavi Shukla, Advocates.

versus

KLAXON TRADING PVT LTD ..... Respondent

Through: Mr Somil Agarwal and Mr Prateek Bhati, Advs.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE GIRISH KATHPALIA

RAJIV SHAKDHER, J.:

Prefatory facts:

1. This appeal concerns Assessment Year (AY) 2013-14. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 27.01.2020 passed by the Income Tax Appellate Tribunal [hereafter referred to as the "Tribunal"].

1.1 The moot question which arises for consideration is whether the Principal Commissioner of Income Tax (PCIT), in passing the order dated

11.10.2017 under Section 263 of the Income Tax Act, 1961 [hereafter referred to as "the Act"], had correctly exercised his revisionary power?

1.2 The PCIT, *via* the order dated 11.10.2017, "cancelled" the assessment order to the extent the Assessing Officer (AO) had failed, according to him, to enquire about the "unexplained cash deposit" found credited in the respondent's/assessee's bank account.

1.3 The Tribunal, though, has recorded a finding of fact that the AO had conducted an enquiry, and it was only thereafter that the original assessment order dated 30.12.2016 was passed, which was cancelled by the PCIT, as indicated above, *via* the order dated 11.10.2017.

Backdrop:

2. Thus, to adjudicate the instant appeal, the following broad facts are required to be noticed.

2.1 The respondent/assessee was incorporated in 1992, and since then, it has been trading in metal, including gold. In the AY in issue, the respondent/assessee filed its Return of Income (RoI) on 28.09.2013. The income declared in the RoI by the respondent/assessee was Rs. 59,99,560/-. The income declared comprised earnings from business amounting to Rs. 12,88,981/-.The remaining amount, i.e., Rs.47,10,582/-, was disclosed as income from other sources.

3. On 25.04.2014, a search and seizure action was conducted against the "Dua Group". The respondent/assessee, concededly, belongs to the Dua Group. The search and seizure action also brought the respondent/assessee within its sway.

4. The record shows that a centralisation order under Section 127 of the

Act was passed on 04.03.2015.The centralisation order was followed by the respondent/assessee being issued a notice dated 16.05.2016 under Section 153A of the Act.

5. With this, the AO commenced his inquisition by issuing notices under Section 142(1) of the Act. These notices are dated 01.06.2016 and 25.07.2016. Significantly, a questionnaire accompanied the notice dated 01.06.2016.

5.1 In the interregnum, the respondent/assessee filed its RoI as per the directions contained in the 153A notice *via* the e-filing system on 03.06.2016. The RoI filed in response to this notice was the same as the original RoI filed on 28.09.2013. The respondent/assessee in the fresh RoI once again declared its income as Rs.59,99,560/-.

6. The record discloses that in response to the Section 142(1) notice dated 01.06.2016, the respondent/assessee had filed a reply dated 27.07.2016, which was received by the AO on 08.08.2016.

7. Evidently, upon receiving the aforementioned reply, the AO issued a notice dated 19.12.2016**,** under Sections 143(2) and 142(1); this notice was also accompanied by a questionnaire. Importantly, the questionnaire sought an explanation concerning the cash deposits in the bank accounts maintained by the respondent/assessee in Axis Bank and Kotak Mahindra Bank. As per the questionnaire, the cash deposited in Axis Bank was Rs.1.94 crores, whereas the amount deposited in Kotak Mahindra Bank was Rs.1.30 crores. The respondent/assessee was thus asked to submit corroborative evidence and justify why the said amount should not be treated as unexplained income, since neither the books of accounts were found at its registered office during the search, nor were they produced in the post-search

proceedings.

8. The record shows that the respondent/assessee filed a response dated 23.12.2016, to the questionnaire seeking an explanation concerning the unexplained cash deposit. In the reply, the respondent/assessee, among other things, adverted to the fact that it maintained proper books of accounts, which had been audited under the provisions of the prevailing statutes. Furthermore, it was brought to the notice of the AO that the audited financial accounts, the auditor's report and the relevant bank statements had been submitted to his office. Besides this, reference was also made to the fact that a stock summary of all items, including gold items, had been appended to the reply. More significantly, the respondent/assessee alluded to the fact that it had regularly filed its sales tax return with the concerned department and paid requisite tax under the Delhi Value Added Tax Act, 2004. The details concerning the same were appended to the reply.

8.1 Regarding cash deposits, the respondent/assessee averred that they were cash sales proceeds made during the period in issue. It was also emphasised that the cash sales had been declared revenue from operations. In this context, reference was made to Note 18, incorporated in the profit and loss account. In support of this plea, a copy of the cashbook reflecting the cash sales transaction and cash deposited against the same was also enclosed with the reply.

9. It is against this backdrop that the AO passed the original assessment order dated 30.12.2016 under Section 153A read with 143(3) of the Act. It is important to note that the AO accepted the returned income, as disclosed by the respondent/assessee.

10. The record shows that on 05.09.2017, the PCIT issued a show cause

notice proposing the exercise of revisionary power under Section 263 of the Act. Although the appellant/revenue has failed to file a copy of the show cause notice, it is common ground that it adverted to the proposed addition concerning unexplained cash deposits.

11. *Via* the said show cause notice, the respondent/assessee was called upon to file its objection, if any, on or before 14.09.2017. A reply *qua* the same was filed by the respondent/assessee on 14.09.2017. The PCIT discussed the case with the Chartered Accountant (CA) appointed by the respondent/assessee as its authorised representative and director, Mr Rajesh Dua. The discussion with the CA was held on 14.09.2017, while the director appeared before the PCIT on 20.09.2017.

12. The PCIT was, however, not persuaded by the submissions advanced on behalf of the respondent/assessee, and hence proceeded to pass the order dated 11.10.2017 in the exercise of his powers under Section 263 of the Act.

13. This order was carried in appeal by the respondent/assessee to the Tribunal. For the reasons given in the order dated 27.01.2020, the Tribunal set aside the PCIT's order dated 11.10.2017.

14. While the appeal was pending consideration, it appears that the AO had issued a fresh notice under Section 143(2) and 142 of the Act, to which a reply dated 15.03.2018 was filed by the respondent/assessee, along with supporting evidence. The aforesaid notice was followed by another notice dated 13.11.2018 issued under Section 143(2) of the Act. Since the AO was still not persuaded by the point of view of the respondent/assessee, he proceeded to pass a fresh assessment order dated 19.11.2018.

15. The appellant/revenue, being dissatisfied with the order dated 27.01.2020 passed by the Tribunal, instituted the instant appeal, which

came up before the Court for the first time on 16.04.2021. On that date, the counsel for the respondent/assessee was directed to place on record the order passed by the AO, the questionnaire served on the respondent/assessee, and the reply filed thereto. The Court issued this direction given what was noted right at the beginning of the narration of events, which is that the AO, before passing the original assessment order dated 30.12.2016, had enquired into the matter concerning cash deposits in the two bank accounts maintained by the respondent/assessee.

16. Given the direction issued by the Court, the order sheets of the AO, the questionnaire dated 19.12.2016 and the reply dated 23.12.2016, were placed on the Court record by the appellant/revenue. These are the documents to which we had referred hereinabove.

Submissions of Counsels:

17. Thus, we heard arguments in the matter against the backdrop of the facts and circumstances noted hereinabove. Submissions on behalf of the appellant/revenue were advanced by Mr Shlok Chandra, learned senior standing counsel, while the respondent's/assessee's stand was put forth by Mr Somil Agarwal.

18. The arguments advanced by Mr Chandra can broadly be paraphrased as follows:

18.1 The PCIT had set aside the order, as according to him, the original assessment order dated 30.12.2016 was both erroneous and prejudicial to the interest of the appellant/revenue. [See ***Malabar Industrial Company Ltd. v. CIT,*** (2000) 243 ITR 83 (SC)] In support of this submission, reliance was placed on the order dated 11.10.2017 passed by the PCIT. It was

emphasised that the PCIT had exercised his powers under Section 263 of the Act as the respondent/ assessee had furnished "inadequate evidence to justify the nature and source of cash deposited" in the concerned bank accounts.

18.2 It was also sought to be highlighted that the respondent/assessee had failed to produce its books of accounts both during the search as well as in the post-search proceedings. The cashbook submitted during the assessment proceedings was nothing but computer-generated papers.

19. Furthermore, the following discrepancies noticed by the PCIT were emphasised by Mr Chandra to support the conclusion that no enquiry was made with regard to the unexplained cash deposits:

(i) Since several invoices bearing the same amount were issued on a single day, it was improbable that gold was sold to different parties as claimed by the respondent/assessee.

(ii) Cash amounting to Rs.5 lakhs was deposited either every day or every alternate day.

(iii) Cash in hand amounting to Rs. 40-60 lakhs was retained for a long period without any apparent reason. The fact that the respondent/assessee did not claim any cash expenses made it look improbable that substantial amounts would be kept as cash in hand for a long duration without any purpose.

(iv) The respondent/assessee had deliberately assisted the purchasers in buying gold for a value of less than Rs.2 lakhs, so it was not obliged to collect their details, including the Permanent Account Number (PAN). The modality used gave rise to the possibility that either the respondent/assessee was concealing the identity of the purchasers or had introduced its own

unaccounted money by showing cash sales.

(v) The submission of VAT returns filed by the respondent/assessee did not establish the genuineness of the cash sales transactions.

(vi) The manner in which invoices have been generated for the same amount in a single day would point in the direction that the cash sales are not genuine.

(vii) The erroneous assessment order dated 30.12.2016 passed by the AO resulted in a loss being suffered by the respondent/revenue in the form of tax. The Tribunal has committed a serious error in setting aside the order passed by the PCIT under Section 263 of the Act.

(viii) The PCIT can exercise power under Section 263 of the Act, *albeit* after examining the record and after making or causing an enquiry to be made, if he concludes that the assessment order passed in a matter is erroneous and prejudicial to the interest of the revenue. [See: ***CIT, Bangalore v. Shree Manjunatheaware Packing Products***, (1998) 1 SCC 598]

20. In rebuttal, Mr Somil Agarwal broadly made the following submissions:

(i) The total revenue the respondent/assessee registered in his books of accounts and offered to tax in the AY in issue was Rs.35,06,28,560/-. This amount included cash sales against which cash deposits had been made in the subject bank accounts.

(ii) In the original assessment proceedings, *inter alia,* a query had been raised by the AO about cash deposits. After duly verifying the books of accounts, stock summary statements invoices, VAT returns, and bank statements, the AO concluded that no additions were required to be made to

the income declared by the respondent/assessee. In this context, *inter alia*, reliance was placed on the questionnaire dated 19.12.2016 and the reply dated 23.12.2016 filed by the respondent/assessee.

(iii) The fact that an enquiry was made is also demonstrable from a perusal of the order sheets of the AO placed before the Court. Therefore, the observation made by the PCIT in paragraph 6 of the order dated 11.10.2017 that "no enquiry or investigation" was made by the AO concerning cash deposits was incorrect.

(iv) Although the PCIT has laid great emphasis on the fact that the respondent/assessee has not produced his books of accounts during the search carried out at its registered office or thereafter in the post-search proceedings, what was lost sight of was that the AO issued the show cause notice for precisely this reason.

(v) Inadequacy of the enquiry conducted by an AO as against no enquiry cannot form a basis for setting aside an assessment order. In such cases, the PCIT should conduct an enquiry and after that return unambiguous findings in the matter. In the instant case, the PCIT, without conducting an enquiry, has remanded the matter for passing a fresh assessment order, disregarding the fact that an enquiry had been conducted by the AO while passing the original assessment order dated 30.12.2016. Therefore, the order dated 11.10.2017 cannot be sustained in law. [See ***ITO v. DG Housing Projects Ltd.***, [2012] 343 ITR 329 (Delhi); ***Director of Income Tax v. Jyoti Foundation***, [2013] 357 ITR 388 (Delhi); ***Commissioner of Income Tax - XIII v. Ashish Rajpal***, [2010] 320 ITR 674 (Delhi) and ***Commissioner of Income Tax v. Hero Auto Ltd.***, 343 ITR 342 (Delhi)]

(vi) The PCIT, in passing the order dated 11.10.2017, has failed to

appreciate that all the transactions were entered into by the respondent/assessee with its customers in the ordinary course of business. Since the respondent/assessee had sold gold items, the weight of such items was also more or less similar, and therefore, not much variation could be found in the invoices. The conclusion arrived at by the PCIT that something was amiss was not founded on any material or evidence. The PCIT, without basis, overlooked the explanation given and the material/evidence tendered before the AO in support of the respondent's/assessee's explanation concerning cash sales.

(vii) Merely because the original assessment order does not advert to the queries raised by the AO and the responses given by the respondent/assessee, it would not lead to the conclusion that no enquiry was conducted by the AO while passing the assessment order. [See ***Commissioner of Income Tax -XIII v. Ashish Rajpal***; ***Commissioner of Income Tax v. Gabriel India Ltd.***, [1993] 203 ITR 108 (Bom.);***Commissioner of Income Tax v. Kelvinator of India Ltd.***, [2002] 256 ITR 1 (Del.) {affirmed in [2010] 320 ITR 561 (SC)} and ***Oracle Systems Corporation v. Assistant Director of Income Tax, Circle 2(1), International Taxation, New Delhi***, [2016] 380 ITR 232 (Delhi)]

(viii) Without prejudice to the aforesaid submissions, the AO took a possible view in the matter, and hence, the PCIT could not have exercised the powers conferred upon him under Section 263 of the Act, only for the reason that he had a different view or perspective in the matter. [See ***Malabar Industrial Co. Ltd. case*** and ***CIT v. Max India Ltd.***, (2007) 295 ITR 282 (SC)]

Reasons and Analysis:

21. Having heard the learned counsel for the parties and perused the record, the issue at hand boils down to whether or not the AO, before passing the original assessment order dated 30.12.2016, had made inquiries concerning the cash deposits made by the respondent/assessee in the subject bank accounts maintained with Axis Bank and Kotak Mahindra Bank. The sum deposited in Axis Bank was Rs. 2.03 crores, while in Kotak Mahindra Bank Ltd., cash amounting to Rs. 1.30 crores was deposited.

21.1 The clue to this issue is contained in the order sheets, the questionnaire dated 19.12.2016, and the response dated 23.12.2016submitted by the respondent/assessee, *qua* the said questionnaire.

21.2 For convenience, the orders passed by the AO during the assessment proceedings are set forth hereafter, as they provide a pen picture of how the assessment proceedings were conducted.

> *"01.06.2016 Notice u/s 142(1) alongwith questionnaire issued and fixed the case for hearing on 09.06.2016.*
> *09.06.2016 The assessee vide letter dated 09.06.2016 furnish Power of Attorney and requested for adjournment.*
> *25.07.2016 Notice u/s 142(1) of the Income Tax Act, 1961 issued and fixed the case for hearing on 08.08.2016.*
> *08.08.2016 The assessee vide letter dated 27.07.2016, received in this office on 08.08.2016 furnish part details, placed on record.*
> *01.09.2016 Notice u/s 143(2) and 142(1) alongwith questionnaire issued and fixed the case for hearing on 16.09.2016.*
> *07.10.2016 Show-cause notice u/s 271(1)(b) of the Act issued for non-compliance of notice u/s 142(1) of the Act.*
> *02.12.2016 Suraj Garg, CA & AR of the assessee company attended & submit the details/reply as per questionnaire dated 01.06.2016. The details have been examined & discussed with him. He is asked to submit details as per questionnaire dated 01.09.2016.*
> *09.12.2016 Suraj Garg, CA of the assessee attended & submit*

that details as per this [illegible] questionnaire dated 01.09.2016. The details have been examined & discussed with him.
13.12.2016/14.12.2016 Notice u/s 133(6) of the IT Act issued to debtor and creditor of the assessee.
16.12.2016 Reply in respect of notice u/s 133(6) received [illegible] parties.
19.12.2016 Suraj Garg, CA attended & submit details in response to questionnaire dated 01.09.2016 of this office. The details have been examined & placed on record.
19.12.2016 Notice u/s 142(1) of the Act alongwith letter dated 19.12.2016 wherein assessee was asked to give reply in respect of cash deposits in Axis Bank of Rs.1.94 Cr. & Kotak Mahindra Bank of Rs.1.30 Cr. by 23.12.2016.
23.12.2016 Suraj Garg, CA attended & submit the details in response to cash deposit Rs.1.94 Cr. in Axis Bank & Rs.1.30 Cr. in Kotak Mahindra Bank.
30.12.2016 Order passed u/s 153A r.w.s. 143(3) of the IT Act. "

21.3 Likewise, the relevant part of the questionnaire and the response dated 19.12.2016 and 23.12.2016, respectively are extracted hereafter:

Extract from the questionnaire dated 19.12.2016

"In connection with the above mentioned assessment proceedings you are required to furnish the following details in addition to the details/information already called for :-

On perusal of the bank statement for the financial year 2012-13 relevant to the above mentioned assessment year, it is noticed that heavy cash deposits amounting to Rs 3.24 crore have been made in the bank accounts maintained with Axis Bank and Kotak Mahindra Bank as mentioned below:-

Bank Name	*Bank Account No.*	*Amount of Cash Deposit (Rs.)*
AXIS BANK	*910020034501397*	*1.94 crore*
Kotak Mahindra Bank	*1922010000134*	*1.30 crore*

In this regard, you are required to explain the source of these cash deposits with corroborative evidence and justify as to why the same should not be treated as unexplained specifically in view of the fact that

neither any books of account were found at the registered address of the company during search nor the same were produced thereafter during the course of post search proceedings.

You are requested to attend the assessment proceedings either in person or through your authorised representative duly authorised in this behalf or make written submissions on queries and details called for as above on 23.12.2016 at 3.30 pm positively. A formal notice u/s 142(1) is enclosed herewith."

The relevant extract of the response dated 23.12.2016

"With reference to above and in continuation to my earlier submissions we are hereby further submit, in response to the notice no.2513 dated 19.12.2016 regarding cash deposit of Rs.1.94 Crore in Axis Bank and Rs.1.30 Crore in Kotak Mahindra Bank, we hereby explain the source of the cash deposit. The Financial Accounts along with books has already been produced and submitted before your office. All the cash deposit is out of the Cash sales proceeds, we further explain as under:

1. *That Assessee company deals in metals including gold and registered with the Delhi sales tax department vide registration no.07480375501 with ward 30, New Delhi. Proper books are maintained and audited under the companies act and under Income Tax Act u/s 44AB. The Audited Financial accounts with Auditors Report in both of the Act mention above have been submitted in your office. The stock summary of all the items dealt by the company including the gold item is enclosed herewith (Annexure-1)*
2. *That assessee submitted regular sales tax returns to sales tax department of the[illegible]during the each month and paid the taxes regularly as per DVAT Act and [illegible](Annexure-2)*
3. *That Bank Statement of the banks mentioned in the notice has already [illegible]office with the Financials accounts.*
4. *That whatever cash was deposited from time to time in the current bank accounts the source of the cash is sale proceeds of the gold purchases during the year Sales has been recorded in revenue from operations as Note no. 18 in the Profit & Loss account of the assessment year has been Audited and assessed in regular assessment.*
5. *That the copy of the Total cash book reflecting all the cash sales transactions and cash deposited into bank is enclosed (Annexure-3)*

Hope the above documents are suffice for the pending assessment

however,if any further information/documents are required please give us chance to explain the same."

22. A perusal of the stock summary statement for Financial Year (FY) 2012-13 (AY 2013-14) would show that the respondent/assessee deals in several metals, such as aluminium scrap, brass scrap, copper scrap, nickel cathodes, zinc and tin ingots and gold. The total turnover of the respondent/assessee in the period in issue was more than Rs. 35 crores; a fact which was not disputed by the appellant/revenue. On the other hand, the cash deposits against gold amount to less than 10% of the total revenue. The AO enquired into the cash deposits, as is evident both from the order sheets and the questionnaire issued to the respondent/assessee under Section 142(1) of the Act. The respondent/assessee filed a response giving its explanation concerning the cash deposits made in the subject bank accounts. The response dated 23.12.2016, as noticed above, carried with it the relevant material and evidence which, according to the respondent/assessee, would establish that the source of the money was the cash sale transactions entered into between the respondent/assessee and its customers. In the reply, the respondent/assessee had categorically stated that if further information /documents were required, it should be given an opportunity in that behalf. Given this position, the observation made in paragraph 6 of the order dated 11.10.2017 passed by the PCIT is clearly contrary to the record. For convenience, the contents of the said paragraph are referred to hereafter:

"6. Further, there has been no inquiry or investigation made by the Assessing Officer on account of unexplained cash deposits, the assessment order passed by the Assessing Officer is held to be erroneous and prejudicial to the interest of revenue and, accordingly, the assessment order is hereby cancelled to the extent of unexplained cash deposit in the bank a/c. The AO is directed to decide the issue afresh and pass speaking order as per law after giving proper opportunity of being

heard to the assessee"

22.1 As a matter of fact, there is an internal contradiction in the conclusion reached by the PCIT, as recorded in paragraph 6 and in the earlier part of his order, which reads as follows:

> *"Nature and source of this cash deposit was not duly verified during the course of assessment proceedings. Details furnished to explain the source of cash deposit are not sufficient. The assessee furnished inadequate evidence to justify the nature and source of the cash deposited. Further as per record you are having some more bank accounts. Details of transaction through these accounts have not been disclosed during the course of assessment proceedings. These transactions remained unverified. Hence, the order of the AO is erroneous and prejudicial to the interest of revenue. Income which should have been brought to tax has not been brought to tax*"
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> (Emphasis is ours)

23. Evidently, when the aforementioned extract from the earlier part of the order passed by the PCIT is read along with paragraph 6, his concern was that the issue concerning cash deposits had not been duly verified. The conclusion reached by him in paragraph 6 that "no enquiry or investigation" had been made by the AO concerning unexplained cash deposits was erroneous. As a matter of fact, the question proposed for examination in the instant appeal also proceeds on the basis that the original assessment order dated 30.12.2016 was passed "without any enquiries or verification" before accepting the explanation concerning cash deposits.

24. This brings us to the question as to whether, in such a situation, the PCIT was right in exercising his jurisdiction under Section 263 of the Act. Section 263 of the Act invests upon the concerned officer the power to call for and examine the record of any proceeding under the Act, and if, after such an examination, he concludes that the order passed by the AO is

erroneous, insofar as it is prejudicial to the interest of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing such an enquiry as he deems necessary, pass such order as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling and directing a fresh assessment.

25. The PCIT, in the instant case, while concluding that the cash sale transactions, according to him, had not been duly verified, chose not to carry out any enquiry on his own before cancelling the original assessment order dated 30.12.2016 and directing a fresh assessment to be made in the matter. The PCIT, in our view, wrongly equated a case of "no enquiry" with what he construed as "inadequate enquiry". The respondent/assessee had offered an explanation with regard to cash deposits. In the course of the assessment proceedings, the AO had accepted the explanation given by the respondent/assessee that the source of the cash deposits was cash sales. The respondent/assessee had also explained why several invoices were issued on the same date bearing the same amount. It was the respondent/assessee's submission that since it was in the business of selling gold, the quantity sold often did not vary, and therefore, the amounts shown in the invoice were also similar. This was a plausible explanation which found favour with the AO. The respondent/assessee, in support of the plea that the cash sales were the source of the deposits found credited in the subject bank account, had concededly submitted relevant material, which the AO examined in the course of the assessment proceedings. The AO, having been satisfied with the explanation given, chose not to make any addition with regard to the cash deposit. The PCIT on the other hand, without making any enquiry at his end, chose to cancel the assessment order with a direction to pass a fresh

assessment order. In our opinion, the PCIT had to reach a conclusion in the fact situation obtaining in the instant case, that the assessment order was erroneous by conducting an enquiry before passing an order under Section 263 of the Act. The following observations made by the coordinate bench in ***ITO v. DG Housing Projects Ltd.*** being apposite are extracted hereafter:

> *"15. In the case of Commissioner of Income Tax vs. 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 (page 113):*
>
> *". . . 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 sub-section (1). 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. ITO [1977] 106 ITR 1 (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 be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to 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 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 CIT 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 though 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 a fresh decision to the Assessing Officer to conduct further enquiries without a finding that the order is erroneous. Finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction under Section 263 of the Act. In such matters, to remand the matter/issue to the Assessing Officer would imply and mean the CIT has not examined and decided whether or not the order is erroneous but has directed the Assessing Officer to decide the aspect/question."

The PCIT, in our opinion, took the easy route by cancelling the impugned order and remanding the matter for a fresh assessment to the AO.

26. The other argument advanced on behalf of the appellant/revenue is that because the original assessment order dated 30.12.2016 does not refer to the queries raised, it is unsustainable in law. In our opinion, this submission is completely misconceived. In our view, as noticed above, while exercising powers under Section 263 of the Act, the concerned officer is entitled to examine the entire record, which includes not only the assessment order but

also the notices issued, queries raised, responses received, and the material/evidence placed on record by the assessee. In a nutshell, the record should disclose whether the AO had applied his mind to various facets that cropped up during the assessment proceedings. In other words, furnishing reasons in the assessment order is not the *sine qua non* of a sustainable assessment order. Courts have repeatedly stated that the AO is not required to give detailed reasons for accepting or not accepting a particular transaction. As observed above, the record should reflect whether the AO applied his mind to the transaction in issue [See ***CIT v. Ashish Rajpal*** (2009) 1 AT taxmann. 623 Delhi and ***CIT v. Sunbeam Auto Ltd.*** (2011) 332 ITR 167].

27. This brings us to the judgments cited by Mr Chandra on behalf of the appellant/revenue in the course of the hearing.

27.1 The principle of law enunciated by the Supreme Court in ***Malabar Industrial Co. Ltd.*** has set up a standard concerning the width and amplitude of power vested for exercising revisionary jurisdiction under Section 263 of the Act. While exercising power under the said provision, the concerned officer has to be satisfied that the twin conditions provided therein stand fulfilled, i.e., the order passed by the AO, which is sought to be revised, is erroneous and is also prejudicial to the interest of the revenue. In other words, if one of the two conditions is not satisfied, the revisionary power under the said provision cannot be invoked. One cannot quibble with the principle of law in the said case. However, on facts, the Court sustained the exercise of power by the Commissioner under Section 263 of the Act, as the AO had made no inquiry with regard to the additional sum received by the assessee on the sale of agricultural land on account of delay in paying

the original consideration. The assessee had portrayed before the AO that the extra sum was received as compensation/damages for loss of agricultural income and other liabilities. The Commissioner had revised the order as the assessee had placed no material that the amount received by it represented compensation for the loss of agricultural income. The entry in the statement of account had been accepted ***"in the absence of supporting material and without making any inquiry."*** This case on facts is distinguishable as in the instant case, the AO made an enquiry.

28. The judgment of ***CIT, Bangalore v. Shree Manjunatheaware Packing Products*** (1998) 1 SCC 598, dealt with the issue as to what would be the scope of the expression "record" found in Section 263 of the Act, i.e., whether it would include the material placed before the AO or the material that was filed before the authority exercising the revisionary power as well. The Commissioner in this case had exercised the revisionary power after taking into account the valuation report which, though ordered to be submitted by the AO, could not be placed before him due to paucity of time. The AO was constrained to pass the assessment order as the prescribed limitation period was ending. Since the valuation report was made available to the Commissioner, he took the same into account while exercising the revisionary power. In this context, the Court was called upon to rule whether the expression "record" would include the material not made available to the AO. The Supreme Court ruled that the valuation report placed before the Commissioner could be considered by him while exercising powers under Section 263 of the Act and thus rejected the narrow interpretation placed on the expression "record" on behalf of the assessee. Again, in our opinion, this case has no application to the issue arising for consideration in the instant

matter.

29. A careful perusal of facts recorded in ***CIT Circle II v. Ankit Garments Manufacturing Co.***, 2014 SCC Online DEL 1496 would show that although the assessee was called upon to produce the copies of accounts or confirmation of creditors' accounts in excess of Rs.1 lakh, the same had not been filed by the assessee. It is in this context the Court ruled that the exercise of revisionary power by the Commissioner ought not to have been interfered with by the Tribunal. In the instant matter, it is no one's case that the respondent/assessee had kept back any information or material sought by the AO. In our opinion, the decision in ***Ankit's*** case turned on the facts obtaining in that case.

30. Before we conclude, it is essential for us to note that what we were called upon to test was the legal tenability of the impugned order dated 27.01.2020 passed by the Tribunal, which examined the viability of the decision dated 11.10.2017 rendered by the PCIT concerning the original assessment order dated 30.12.2016. Although Mr Chandra had feebly attempted to draw the Court into examining the contents of the fresh assessment order dated 19.11.2018 which, as noticed above, was passed during the pendency of the appeal before the Tribunal, he eschewed that path having realised that the scope of the appeal was restricted to what was before the Tribunal, which did not include fresh assessment order dated 19.11.2018.

Conclusion:

31. Thus, for the foregoing reasons, we are not inclined to interfere with the impugned order dated 27.01.2020 passed by the Tribunal.

32. In our view, no substantial question of law arises for our consideration.

33. The appeal is accordingly dismissed.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

November 29, 2023 / tr