

Binod Kumar Mahato.....Appellant
Malancha, Kanainatshal
DVC More
P.O. Sripalli
Burdwan - 713103
[PAN : AOHPM 2872 B]

Vs.

Pr. Commissioner of Income Tax, Burdwan,.....Respondent

Appearances by:

Shri Soumitro Choudhury, Advocate, appeared on behalf of the assessee.
Shri Tushar Dhwal Singh, CIT, D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : February 9th, 2021
Date of pronouncing the order : February 24th, 2021

ORDER

Per J. Sudhakar Reddy, AM :-

This appeal filed by the assessee is directed against the order of the Learned Principal Commissioner of Income Tax, Burdwan, (hereinafter the "ld. CIT(A)"), passed u/s. 263 of the Income Tax Act, 1961 (the 'Act'), dt. 24/08/2018, for the Assessment Year 2014-15.

2. The assessee is in the business of plying trucks and trading of rice. He filed his return of income on 25/11/2014 declaring total income of Rs.2,64,372/-. The case was selected for limited scrutiny through CASS. At para 3 of the assessment order, it is recorded as follows:-

"The reason for Scrutiny Selection through CASS is that "Cash deposits in savings bank account(s) is more than turnover"

The Assessing Officer, as per the mandate of the scope of limited scrutiny held that the assessee's cash deposits in his savings bank account in Punjab National Bank was Rs.1,76,93,489/- and cash deposits in his savings bank account at Union Bank of India was Rs.7,35,000/-, out of which, he has declared Rs.6,20,870/- as total turnover in statement income and the balance being Rs.1,14,130/-. Thus, he estimated the total cash deposits in both the savings bank account at Rs.1,78,07,619/-. The assessee had filed return of income u/s 44AD and 44AE of the Act. The Assessing Officer estimated 8% of the cash deposits in the savings bank account as undisclosed income of the assessee. He

initiated penalty proceedings u/s 271A of the Act. He further records in his order that the assessment was completed u/s 144 of the Act.

2.1. Aggrieved, the assessee carried the matter in appeal. The Id. CIT(A), Burdwan, vide his order dt. 28/04/2017, passed u/s 250 of the Act, after considering the submissions of the assessee held as follows:-

".....I find, at the same time, that I cannot completely agree-with the appellant's contention that all the deposits of Rs.1,76,93,489/- would have emanated from the plying of trucks because this would amount to receipts from the plying of these to more than Rs.4.9 lakh per month per truck which is on the steep side. The ends of justice would be met if the said undeclared deposits amounting to Rs.1,78,07,619/- (1,76,93,489/- + 1,14,130/-) are attribute to the two sources of income that the appellant admittedly has, in the same proportion as declared by him in his return. Therefore, it would meet the ends of justice to attribute Rs.1,78,07,619- X (amount of declared income from rice trade/Total declared income from the two businesses) as being attributable to deposits from rice trade and in the same manner Rs.1,78,07,619/- X (Amount of income declared from truck plying/Total declared business income from the two businesses) as being attributable to deposits from the business of plying of trucks. Once this attribution has been made, the provisions of section 44AD would apply to the deposits from rice trade and the provisions of section 44AE would apply to deposits attributable to the plying of trucks. This is of course subject to the other conditions prescribed in the said sections of the Act. Income is to be calculated accordingly.

4. **Conclusion:-** *In the result, the appeal is treated as Partly Allowed."*

2.1.1. The Id. Pr. CIT on 05/07/2018, issued a showcause notice u/s 263 of the Act, proposing to revise the assessment order passed by the Assessing Officer u/s 143(3) of the Act on 25/08/2016. The assessee replied to this showcause notice on 08/08/2018. The Id. Pr. CIT, rejected the explanation of the assessee and passed an order u/s 263 of the Act on 24/08/2018. At para 12 and 13, he ordered as follows:-

"12. The AO is directed

- (a) to verify, examine and determine the total undisclosed deposits made to both the bank accounts of the assessee in a/c No. 415402010008144 with Union Bank of India, Burdwan and a/c No. 3194000100070380 with Punjab National Bank, Burdwan during the F.Y. 2013-14.
- (b) to re-compute the total income of the assessee in accordance with the direction of the Commissioner of Income Tax (Appeal) order dated 28.04.2017 in Appeal No. 60/CIT(A)/ITO/W-2(1)/BWN/2016-17 for A.Y. 2014-15 in assessee's own case.

13. The AO should afford reasonable opportunity of being heard to the assessee before assessment is reframed by him."

3. Aggrieved the assessee is before us in appeal.

4. The Id. Counsel for the assessee, Shri Soumitra Choudhury, submitted that the Assessing Officer had no powers to travel beyond the reasons for selection of the case for limited scrutiny. He submitted that the reason was to examine the cash deposits in a savings bank account which are more than turnover. The Assessing Officer had considered this cash turnover and brought the same to tax.

4.1. For the proposition that the Id. Pr. CIT cannot invoke his powers u/s 263 of the Act to revise an assessment order passed u/s 143(3) of the Act, on issues which were not covered by the reasons for picking up a case for limited scrutiny and hence were not examined by the Assessing Officer for the reason that they were beyond the scope of limited scrutiny, he relied on a number of other decisions of the Tribunal. We would be referring to them in due course. The Id. Counsel for the assessee further submitted that the order of the Assessing Officer merged with the order of the Id. CIT(A) on this issue specified in the limited scrutiny and under those circumstances, the Id. Pr. CIT, could not invoke his powers u/s 263 of the Act.

5. The Id. D/R, on the other hand, submitted that it is true that the case was selected for limited scrutiny to examine the cash deposits in the savings bank account but, the Assessing Officer was wrong in not following the CBDT Instruction No. 7/2014, which mandates that the Assessing Officer shall seek the approval from the Id. Pr. CIT/CIT concerned to convert the case to 'complete scrutiny', when it comes to notice of the Assessing Officer that there is potential escapement of income exceeding Rs.5,00,000/- .and that such cases shall be monitored by the range head concerned. He argued that the Assessing Officer should have acted in accordance with para 4 of the CBDT Instruction No. 7/2014 and sought the approval of the Id. Pr. CIT for converting the case into a "complete scrutiny" and not doing so, empowers the Id. Pr. CIT to invoke his powers u/s 263 of the Act, as it falls within the parameters laid down in Explanations 2(a) and 2(c) of Section 263 of the Act. On the argument of the merger of the assessment order with the order of the Id. CIT(A), he submitted that, the Id. CIT(A) had not adjudicated on this matter and that mere preference of an appeal cannot be considered as determination of the matter by the Id. CIT(A). He submitted that the issue of examination of non-cash deposit in the bank a/c was not before the Id. CIT(A) and hence there is no whisper on this issue. He submitted that the Assessing Officer has not applied his mind and instead of

examining the source of total deposits in the bank account, has only examined the source of the cash deposits. He submitted that the order of the Id. Pr. CIT be upheld,

5.1. In reply, the Id. Counsel for the assessee reiterated his contention that the Assessing Officer's powers in limited scrutiny is confined to the reasons stated for scrutiny selection of the case and that the Assessing Officer has not power to travel beyond these reasons and consequently the Id. Pr. CIT has no power to invoke Section 263 of the Act, for reasons that were no scope for assessment and for assessing issues which are not covered by the reasons recorded for selection of the case for limited scrutiny.

6. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

7. The reasons for scrutiny selection through CASS, is to examine the cash deposits in savings bank account, as these are more than the turnover. The Assessing Officer stuck to these reasons and completed the assessment u/s 143(3) of the Act. Aggrieved with this order, the assessee carried the matter in appeal before the Id. First Appellate Authority. The Id. CIT(A) considered this order and granted part relief. On these facts, the question is whether the Id. Pr. CIT is empowered to invoke his powers u/s 263 of the Act for revising the order passed u/s 143(3) of the Act dt. 25/08/2016 and direct verification, examination and determination of income as per the order of the Id. CIT(A) on the issue which is admittedly not the reason scrutiny selection through CASS. The Id. D/R admits that the issue on which the Id. Pr. CIT has invoked his powers u/s 263 of the Act is beyond the scope of reason based on which the case was selected for limited scrutiny. The Assessing Officer could not have travelled beyond these reasons without obtaining the permission of the Id. Pr. CIT as per para 4 of the CBDT Instruction No. 7/2014. The question is whether it can be said that there is error in the order of the Assessing Officer passed u/s 143(3) of the Act, for the reason that the Assessing Officer did not seek the approval of the Id. Pr. CIT to convert the assessment from limited scrutiny to complete scrutiny.

8. In our view, if the Assessing Officer has not deemed it fit to apply to take approval from the Id. Pr. CIT/CIT, for the conversion of a limited scrutiny case into a complete scrutiny, does it result in the assessment order passed u/s 143(3) of the Act, being

erroneous insofar as it is prejudicial to the interest of the revenue. This is at best, an administrative lapse. When the Assessing Officer is prohibited from examining any other issue or matter than what was the reasons for selecting the case for limited scrutiny, then the Assessing Officer cannot be accused of non-application of mind or negligence.

8.1. The ITAT Mumbai 'G' Bench of the Tribunal in the case of *ITA No. 742/M/2019; Assessment Year 2015-16, order dt. 17/05/2019*, held as follows:-

"6. After hearing both the parties and perusing the materials before us, we observe from the notice issued under [section 143\(2\)](#) of the Act for limited scrutiny dated 19.09.2016 and find merits in the contentions of the assessee that the said limited scrutiny can not be expanded unless the AO converted it into complete scrutiny with the approval of Ld. Pr. CIT and if the AO after considering the submissions of the assessee does not come to the conclusion of potential escapement the Ld. Pr. CIT can not hold the order to be erroneous on the ground that AO ought to have reached to such conclusion. The case of the assessee is squarely covered by the decision of Kolkata Bench in the case of [Sanjeev Kr. Khemka vs. Pr. CIT](#) in ITA No.1361/Kol/2016 A.Y. 2011-12 dated 02.06.2017 wherein the co-ordinate bench of the Tribunal has held as under:

"4. We have heard the rival contentions of the parties and perused the materials on record. The primary issue in the case on hand revolves whether it is a case selected under CASS for limited scrutiny or regular scrutiny. It can be seen from the grounds of appeal that the assessee wants to contend that the very initiation of proceedings Mrs. Sonali Hemant Bhavsar u/s 143(3) of the Act on the basis of regular scrutiny under the Act was bad in law.

The proceedings under [section 143\(3\)](#) of the Act should have been limited to the extent of the information gathered through AIR. Accordingly the proceedings u/s 263 of the Act cannot be expanded beyond the issue raised in AIR. Thus the order u/s 143(3) of the Act beyond the points of AIR is invalid in law and so the same is with the order passed u/s 263 of the Act. It is the further contention of the assessee that in the items which are not subject matter of AIR cannot subject matter of scrutiny. Such matters include salary of the assessee, loans & interest on loans, payment of LIC, Commission & brokerage income etc. It is the case of the assessee that in the assessment order passed u/s 143(3) of the Act, the AO has travelled beyond the points of the AIR on the basis of which the case of scrutiny was selected under CASS module. It is the plea of the assessee that when no addition/disallowance can be made beyond the points mentioned in AIR in the assessment proceedings then same is the case with proceedings initiated u/s 263 of the Act.

*4.1 The first aspect which needs to be examined is as to whether the assessee is entitled to challenge the validity of initiation expanded in the proceedings u/s 143(3) of the Act in the present appeals in which he has challenged the validity of expanded order passed u/s 263 of the Act covering the points which are not part of the AIR. The Id. Counsel for the assessee submitted before us that it is open to an assessee in an appeal against the order u/s 263 of the Act which seeks to revise an order passed u/s 143(3) of the Act, to challenge the validity of the expansion of order passed u/s.143(3) of the Act covering the points which are not part of the AIR. In this regard we find that Lucknow Bench of Hon'ble ITAT in the case of [Inder Kumar Bachani \(HUF\) vs ITO](#) 99 ITD 621 (Luck) and ITAT Mumbai 'G' Bench in the case of *M/s. Westlife Development Ltd. Vs Principal C.I.T. in ITA NO.688/Mum/2016* have taken a view that when an Assessment order passed u/s 147 of the Act was illegal the Ld.CIT cannot invoke the*

jurisdiction u/s 263 of the Act against such void or non-est order. In the second decision cited the Hon'ble Mumbai bench of the Tribunal has specifically framed the following questions :-

"1. Whether the assessee can challenge the validity of an assessment order during the appellate proceedings pertaining to examination of validity of order passed u/s 263?

2. Whether the impugned assessment order passed u/s 143(3) dated 24-10- 2013 was valid in the eyes of law or a nullity as has been claimed by the assessee?

3. If the impugned assessment order passed u/s 143(3) was illegal or nullity in the eyes of law, then, whether the CIT had a valid jurisdiction to pass the impugned order u/s 263 to revise the non est assessment order?"

On question no. 1 and 3 which is relevant to the present case the Hon'ble Mumbai bench of the Tribunal has taken the view that when the original assessment proceedings are null and void in the eyes of law for want of proper assumption of jurisdiction then such validity can be challenged even in collateral proceedings. The Mumbai bench took the view that the proceedings u/s 147 of the Act are primary proceedings and proceedings u/s 263 of the Act are collateral proceedings and in such collateral proceedings, the validity of initiation of the original proceedings u/s Mrs. Sonali Hemant Bhavsar 147 of the Act can be challenged. The Mumbai bench of the Tribunal in this regard has placed reliance on several decisions, the principal decision being that of the Hon'ble Supreme Court in the case of [Kiran Singh & Ors. V. Chaman Paswan & Ors.](#) [1955] 1 SCR 117(SC) wherein the Hon'ble Supreme Court observed as follows :-

"It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties."

Now coming to the facts of the instant case, we find that the instant case was selected on the basis of AIR Information as evident from the order of AO under [section 143\(3\)](#) of the Act. There is also no whisper in the order of the AO for expanding the scope of limited scrutiny after obtaining the permission from the Administrative CIT. The Id. DR has also failed to bring anything contrary to the argument of the Id. AR. Therefore in our considered view the scrutiny should have been limited only to the information emanating from the AIR. Admittedly, the assessee has claimed to have filed an appeal before Ld. CIT(A) challenging the jurisdiction exceeded by the AO while framing the assessment order u/s 143(3) of the Act. We find that the impugned issue being legal in nature and goes to the root of the matter therefore we are inclined to proceed with this issue first by holding that, from the above submission and after examining of the records, we find that the Ld. CIT in his impugned order u/s 263 of the Act has exceeded his jurisdiction while holding the order of AO as erroneous in so far prejudicial to the interest of Revenue. In view of the above we hold that the Id. CIT has in his order u/s. 263 of the Act exceeded the jurisdiction by holding the order of AO as erroneous in so far as prejudicial to the interest of Revenue on those items which are not emanating from the AIR. Thus, we are inclined to adjudicate only those matters which are emanating from the AIR as discussed above.

4.2 The assessment was framed by AO for the A.Y. 2011-12 under [section 143\(3\)](#) of the Act vide order dated 29.03.2014 after making certain additions/ disallowances to the total income of assessee. Subsequently, Ld. CIT u/s 263 of the Act observed certain errors in the order of AO, therefore, he was of the view tht the order passed by the AO is erroneous in so far as prejudicial to the interest of Revenue on account of no proper-enquiry before completing assessment as discussed below:-

(i) The assessee has deposited in its bank account in HDFC bank Goa for ₹17.56 lakh and out of that there was a withdrawal only for ₹1.50 lakh but the AO has made the addition only to the extent of ₹4 lakh on account of unexplained cash credit. Therefore, certain unexplained cash credit of the assessee has been under assessed by the AO.

ii) There was another bank account of the assessee in HDFC bank in Goa where total deposits of Rs. ₹19,31,750/- was made by the assessee but the Mrs. Sonali Hemant Bhavsar AO found credited amount of Rs. ₹5,76,056/- only. Thus, total deposits made in the bank were not brought to tax;

(iii) There was transactions of ₹3 76,225/- through credit card which was not explained and thus the entire amount was liable to be added to the total income of assessee but the AO has added only a sum of ₹2,98,225/- to the total income of assessee. Thus, there was under assessment of income by ₹78,000/-;

(iv) The assessee during the year has sold property for ₹36 lakh and exemption of ₹19,74,763/- was claimed by assessee u/s. 10(38) of the Act. This fact was not verified by the AO at the time of assessment proceedings.

In view of above, the Ld. CIT found the order of AO is erroneous in so far as prejudicial to the interest of Revenue and therefore show-cause notice was issued u/s. 263 of the Act vide dated 13.10.2015 for the clarification of the above transactions.

In compliance thereto, the assessee submitted as under :

i) The deposit in HDFC bank account No. 03151930000609 was duly reflected in his IT return. Therefore, no cause has happened to the Revenue which is prejudicial to the interest of Revenue.

ii) The deposit of ₹19,73,750/- was duly reflected in the IT return and therefore there was no error which is prejudicial to the interest of Revenue.

iii) Regarding the credit card payment, the addition on account of undisclosed cash deposit has already been added by the AO and therefore there is no error causing prejudice to the interest of Revenue.

iv) There was no sale of the property and therefore no exemption u/s10(38) of the Act was claimed.

However the Ld. CIT after considering the submission of assessee has held the order of AO is error and prejudicial to the interest of Revenue by observing as under:-

"I have carefully considered the issues with specific reference to the relevant assessment records as well as written submission furnished by the A/R. The AO has not taken cognizance of the following issues, despite being apparent from record:-

(1) Addition of Rs. 4 lakhs only was made against total cash deposit of Rs.17,56,000/- without taking any explanation from the assessee. (2) The balance deposits in another account with HDFC, Porvorim, Goa was not considered in assessment.

(3) Interest income from all savings accounts and FDRs was not considered at the time of assessment.

(4) Submission of assessee regarding explanation of credit card payment of Rs.3,76,225/- was partly accepted in assessment without proper verification. (5) Although a salaried person, the assessee's bank account reflect huge transactions/transfer entries, which required further investigation. (6) Long term capital gain of Rs.19,74,763/- was not properly verified. (7) Loan transactions and Mrs. Sonali Hemant Bhavsar interest on loans required proper verification. (8) Salary was received in cash without TDS, which should have been viewed adversely. (9) LIC premium was paid for a minor but assessee's capital account did not reflect the same.

(10) Lastly, the assessee declared income from commission/brokerage in the previous two AYs but no such income was shown in this year.

"An incorrect assumption of facts or an incorrect application of law will always make the order passed by the Assessing Officer erroneous. The Assessing Officer has not made proper enquiry before completing assessment regarding above issues. By not checking the above issues and by not making adequate enquiry the Assessing Officer has not assessed the proper income and the order has become erroneous and prejudicial to the interest of the revenue. In view of the above, the order dated 29/03/2014 passed by ACIT, Circle-43, Kolkata is found to be erroneous and prejudicial to the interest of revenue and hence it is set aside with the direction to pass fresh assessment order after examining the evidences and documents in respect of the above issues raised after giving opportunity to the assessee and in accordance with law."

Being aggrieved by this order of Ld. CIT assessee is in appeal before us on the following grounds:-

"(1) For that the L'd Pr. Commissioner of Income Tax erred in exercising the power of revision for the purpose of directing the AO to hold another investigation when the order passed by the AO was neither erroneous nor prejudicial to the interest of revenue.

(2) For that the L'd Pr. CIT erred and exceeded jurisdiction by giving direction in respect of the matters which are subject matters of appeal before the CIT(A), therefore order passed by Pr. CIT-15 is unlawful, beyond provision of law and therefore liable to be quashed.

(3) For that the L'd Pr. CIT had alleged arbitrarily irrelevant matters, factual and untrue position in the show cause notice u/s. 263 and therefore order passed by Pr. CIT-15 Kolkata u/s. 263 is nullity and liable to be quashed. (4) For that L'd Pr. CIT has wrongly assumed the jurisdiction u/s. 263 by wrongly mentioning that deposits in HDFC Goa A/c & HDFC Porvorim Goa A/c were under-assessed by the AO despite these two a/cs were disclosed in the balance sheet and deposits were explained, therefore allegation so made is bad in law and void ab-initio.

(5) For that on the facts & in the circumstances of the case L'd Pr. CIT was not justified in initiating proceeding u/s. 263.

(6) For that your petitioner craves the right to put additional grounds and/or to alter/amend/modify the present grounds before or at the time of hearing."

The ld. AR before us filed two paper books which are running from pages 1 to 27 and 28 to 31. The ld. AR before us submitted that the necessary enquiries were made by the AO at the time of assessment. Thus the order of the AO cannot be held Mrs. Sonali Hemant Bhavsar erroneous and prejudicial to the interest of Revenue on account of non enquiry whereas the ld. DR vehemently supported the order of the ld. CIT.

5. We have heard the rival contentions & perused the materials available on record. From the foregoing discussion, we find that order of AO has been treated erroneous and prejudicial to the interest of revenue on the ground that proper enquiry was not made by the AO. Therefore, Ld. CIT held that the order of AO is erroneous and prejudicial to the interest of revenue. However, after examining the order of Authorities Below and other relevant records our observations are as follows:-

a) deposit of cash of ₹17.56 lakh in HDFC bank a/c No.03151930000609 From the order or AO, we find that the AO at the time of assessment proceedings has applied his mind while determining the undisclosed income from the said bank account for Rs. 4 lacs. Thus the AO after considering the bank statements of the assessee has consciously made the addition of ₹ 4 lakh as unexplained cash credit against which assessee claimed to have filed appeal before Ld. CIT(A). Therefore, in our considered view, the allegation of Ld. CIT that proper enquiry was not made by the AO is not true.

b) Deposit of cash ₹19,31,750/- in HDFC bank A/c 0315100006743 From the order of AO we find that AO has already made the addition of the entire amount as unexplained cash credit. Therefore, the allegation of the Id. CIT-A that the order of AO is erroneous and prejudicial to the interest of Revenue is not true.

c) Credit card payment of ₹3,76,225/-

From the order of AO, we find that the AO has made the addition of ₹2,78,225/- out of total credit card payment of ₹3,76,225/-. Therefore, it is clear that AO has applied his mind while framing the assessment proceedings u/s. 143(3) of the Act. Thus, the allegation of the AO in the impugned order or Ld. CIT u/s. 263 of the Act that there was no proper enquiry conducted by AO at the time of assessment proceedings is not true.

d) Sale of property for consideration of ₹ 36 lakh.

On perusal of AIR information which is placed on page 1 of the paper book, we find that no immovable property has been sold by assessee in the year under consideration. Besides the above, there is also no whisper in the assessment order for any addition on account of capital gains. Therefore, we find that the allegation of Ld. CIT that AO has not conducted sufficient enquiry in relation to sale of immovable property is not true.

5.1 In view of the above we find that Ld. CIT has passed impugned order u/s. 263 of the Act by holding the order of AO as erroneous in so far as prejudicial to the interest of revenue on account of inadequate enquiry made by AO while passing order u/s. 143(3) of the Act. However, we find that proper and sufficient enquiries were conducted by the AO at the time of assessment as evident from the order of AO. Therefore it cannot be concluded that no proper enquiry has been conducted Mrs. Sonali Hemant Bhavsar by the AO at the time of assessment proceedings. The AO has taken conscious view after considering the facts and circumstances of the case and giving proper opportunity to the assessee. Thus, the view expressed by AO in the form in his assessment order cannot be replaced with the view of Ld. CIT u/s 263 of the Act. In holding so, we find support and guidance from the judgment of Hon'ble jurisdictional High Court in the case of [CIT vs. M/s. J.L. Morrison \(India\) Ltd.](#) (ITA No 168 of 2011) in GA No 1541 of 2012 dated 15.05.2014, wherein it was held as under:-

"By sections 3 and 4, the [Indian Income-tax Act, 1922](#), imposes a general liability to tax upon all income. [But the Act](#) does not provide that whatever is received by a person must be regarded as income liable to tax. In all cases in which a receipt is sought to be taxed as income, the burden lies upon the department to prove that it is within the taxing provision."

We also rely on the judgment of the Hon'ble Supreme Court in the case of [CIT Vs. Max India Limited](#) reported in 295 ITR 282 wherein it was held as under :

"When the CIT passed the impugned order under [s. 263](#), two views were inherently possible on the word "profits" occurring in the proviso to [s.80HHC\(3\)](#) and therefore, subsequent amendment of [s. 80HHC](#) made in the ITA No.1361/Kol/2016 A.Y. 2011-12 [S.K. Khemka Vs. Pr. CIT-15 Kol.](#) Page 12 year 2005, though retrospective, did not render the order of the AO erroneous and prejudicial to the interest of the Revenue, and CIT could not exercise powers under [s. 263](#)."

In view of the above proposition, and respectfully following principle laid down by the Hon'ble courts and keeping in view all these discussion, as also bearing in mind entirety of the case, we deem it fit and proper to uphold the grievance of the assessee and quash the impugned revision order as devoid of jurisdiction. The assessee gets the relief, accordingly.

6. In the result, assessee's appeal stands allowed."

7. We have perused the letter dated 09.11.2016 addressed by the DDIT (Inv.), Mumbai to ITO-29(3)(4), Mumbai wherein the details of on money in the case of Runwal Green

(shops) were given and we find that on money was determined by taking the rate @ Rs.26,000/- per sq. ft. while agreements were for lower amounts. However, in the case of the assessee we observe that the agreement value was executed @ Rs.26,000/- per sq. ft. Thus we find merits in the contention of the assessee that there is no question of on money as the agreement value was even Mrs. Sonali Hemant Bhavsar higher than the maximum rate which was taken by the DDIT (Inv.), Mumbai to ascertain the amount of on money received by the builder. Moreover, the case of [M/s. Runwal Homes Pvt. Ltd. vs. DCIT](#) in ITA No.5621/M/2017 A.Y. 2015-16 the issue of on money has been decided in favour of the M/s. Runwal Homes Pvt. Ltd. by deleting the addition on account of on money. In view of the aforesaid facts, we are of the view that the revisionary order passed by the Ld. Pr. CIT(A) is without jurisdiction and has to be quashed on legal issue as well as on merit.

Accordingly, we quash the revisionary order passed under [section 263](#) of the Act by Ld. Pr. CIT.

8. In the result, the appeal of the assessee is allowed.”

8.2. The Chandigarh ‘A’ Bench of the Tribunal in the case of *M/s. Agarwal Promoters vs. Pr. CIT* in ITA No. 1708/Chd/2017; Assessment Year:- 2012-13, order dt. 16/04/2019, at para 9, has held as follows:-

“9. At the outset, Ld. Counsel for the assessee has invited our attention to the assessment order in question of the Assessing officer dated 30.12.2014 passed u/s 143(3) of the Act and has submitted that the return filed by the assessee was originally processed u/s 143(1) of the Act, however, the case was later selected for limited scrutiny under the CASS to verify the large increase in unsecured loans raised during the year. The enquiries of the Ld. Assessing officer were, therefore, limited to the aspect of the genuineness and verification of unsecured loans, the details and explanation regarding which were duly supplied to the Assessing officer and the Assessing officer being satisfied with the evidences given by the ITA Nos. 1464/Chd/2017-

M/s Bhandari Knit Exports, Ludhiana assessee competed the assessment at the returned loss of ₹ 10,21,815/- That neither the Assessing officer was authorised nor there was any occasion to the Assessing officer to scrutinize and make enquiries, about the other factors of the case as it was a limited scrutiny assessment case, hence, the enquiry, if any, was restricted to the limited issue of unsecured loans which was duly done by the Assessing officer and no fault has been found by the Ld. CIT(A) in that respect. Under the circumstances, the order passed by the Assessing officer cannot be said to be erroneous.”

9. The propositions of law laid down in these case-law is that, when the Assessing Officer completed assessment u/s 143(3) of the Act, after examining the issues for which the case has been selected for limited scrutiny, then it cannot be held that there is an error in the order of the Assessing Officer, for the reason that he has not sought permissions to examine other reasons. If the Assessing Officer has not examined any other aspect, than the reasons for which the assessment was selected for scrutiny, in our

view, no fault can be found with the Assessing Officer. Thus, in our view, non-seeking of permission for conversion of limited scrutiny to complete scrutiny in terms of para 4 of the CBDT Instruction No. 7/2014, does not *per se* render the assessment order u/s 143(3) of the Act, erroneous.

10. Even otherwise, the entire issue of limited scrutiny, reasons for selection, the Bank accounts in questions were before the Id. Pr. CIT. On this issue of turnover, the order of the Assessing Officer has merged with the order of the Id. CIT(A) dt. 28/04/2017. What the Assessing Officer missed, is also missed by the Id. CIT(A). The Id. Pr. CIT cannot order the Assessing Officer to follow the order/directions of the Id. CIT(A) on issues which were not part of the appellate order of the Id. CIT(A). Under these circumstances, the Id. Pr. CIT cannot exercise his powers u/s 263 of the Act, to revise the order that has merged with the order of the Id. CIT(A). For these reasons, we uphold the technical contention of the assessee and quash the order passed by the Id. Pr. CIT u/s 263 of the Act and allow the appeal of the assessee.

11. In the result, appeal of the assessee is allowed.

Kolkata, the 24th day of February, 2021.

Sd/-

[Aby T. Varkey]
Judicial Member

Dated : 24.02.2021
{SC SPS}

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Copy of the order forwarded to:

1. **Binod Kumar Mahato**
Malancha, Kanainatshal
DVC More
P.O. Sripalli
Burdwan - 713103

2. **Pr. Commissioner of Income Tax, Burdwan**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches