TaxGuru® Complete tax solution

आयकर अपीलीय अधिकरण, कटक न्यायपीठ,कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

श्री जार्ज माथन, न्यायिक सदस्य **एवं** श्री अरुण खोड़पिया लेखा सदस्य के समक्ष ।

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

ITA No.34/CTK/2021

(**निर्धारण वर्ष /** Assessment Year :2014-2015)

Ravi Metallics Limited,
I/10, Civil Township,
Rourkela-769004
PAN No.ADQPS 4031 G

………………Assessee

Versus

Pr.CIT, Sambalpur

………………..Revenue

Shri P.R.Mohanty, AR for the assessee
Shri M.K.Gautam, CIT-DR for the Revenue

Date of Hearing : 30/05/2022

Date of Pronouncement : 30/05/2022

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the ld. Pr.CIT, Sambalpur, passed u/s.263 of the Act in case No.PCIT/SBP/263/26/2018-19, dated 29.03.2019 for the assessment year 2014-2015.

Heard on the question of condonation of delay

2. On perusal of the record, we found that the appeal of the assessee is barred by 686 days. In this regard, ld. AR filed an application along with affidavit for condonation of delay, wherein it has been submitted that the delay occurred in filing the present appeal is neither intentional nor deliberate but due to unfortunate and unavoidable circumstances beyond

the control of the assessee as the forced shutdown & lockdown along with travel restrictions in continuance of havoc of Covid-19 pandemic, it was not possible to have consultation and preparation of appeal to be filed with the entrusted authorised legal consultant resulting in the delay which may kindly be condoned as we neither acted deliberately nor in defiance of law or was guilty of conduct, contumacious or dishonest, or acted in conscious disregard of our obligation. Ld. AR of the assessee has also relied on the decision of the Hon'ble Supreme Court in Suo Moto Writ (Civil) No.3 of 2020, wherein the Hon'ble Apex Court has held that in continuation of the order dated 8th March 2021, the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings, whether condonable or not, shall stand extended till further orders. Ld. AR also drew our attention to Section 253 (5) of the Act and submitted that the Tribunal can condone the delay if it is satisfied with sufficient cause for delay. In view of the above, ld. AR submitted that the delay in filing the present appeal may kindly be condoned and appeal may kindly be admitted for hearing.

3. *Per Contra*, ld. CIT-DR vehemently opposed to condone the delay in filing the present appeal. In this regard, ld. CIT-DR has filed his written submission wherein in para 1, he has stated as under :-

> *1. There is a delay of 315 days in filing of present appeal. The revision order u/s.263 was received by the appellant on 05.04.2019 and as such the appeal was required to be filed on 04.06.2019. The appeal was filed on 20th April, 2021 resulting in a delay of 315 days. In the application for condonation of delay, it has been alleged that delay was due to lapses on the part of AR of the appellant. It is alleged that appeal was filed*

> *belatedly due to Covid-19 but it started in March, 2021 in India and prior to that month, there were few cases in India. The appellant should have furnished necessary evidence in this regard by filing an affidavit from his AR (whose whereabouts are not known). In the absence of same, the appeal should not be condoned.*
>
> *In the case of UOI vs. Tata Yodogawa Ltd. 1988 (38) Excise Law Times 739 (SC), the Hon'ble Supreme Court took the view that the Government being impersonal takes longer time in filing the Appeals/Petitions than the private bodies or the individuals. Even giving that latitude, there must be some way or attempt to explain the cause of such delay and as there was no whisper to explain what legal problems occurred in filing the special leave petition, the application for condonation of delay was dismissed by t he Supreme Court. In another case of Collector of Central Excise, Madras v. A .. M.D. Bilal & Co. 1999 (108) Excise Law Times 331 (SC), the Hon'ble Supreme Court declined to condone the delay of 502 days in filing the appeal ~lille observing that the application disclosed no satisfactory or reasonable explanation. In the case of Ornate Traders (P.) Ltd. vs. ITO (312 ITR 193), the Hon'ble Bombay High Court held that the application for condonation is without any content, reasonable or satisfactory explanation. It was obligatory upon the part of the applicant-UOI to reasonably explain the delay, may be, by not giving explanation for each day of delay but to explain the delay in a composite manner. It was further observed that when it is filed after an year, it is incomplete in all respects for which action there is not even a whisper much less an explanation as to why the appeal was kept back for another one year and even the court fee for the appeal was purchased after the lapse of two years from the date of the judgment. This conduct of the applicant is nothing but a negligent attitude and they are taking it to be for granted that the UOI is entitled to claim condonation of delay de hors its averments in the application. For these reasons, the Hon'ble Supreme Court found no merits in the applications and declined to condone the delay and dismissed both the applications.*

4. Apart from the above, ld. CIT-DR also submitted that the assessee in his letter for condonation of delay has mentioned that the delay was on account of failure on the part of authorised representative. It was the submission that the affidavit of the authorised representative has not been brought out. Ld. CIT-DR was then informed that the assessee has filed an additional letter dated 05.10.2021 wherein it has been mentioned that

there is a delay of 686 days and the delay was neither international nor deliberate but to due unfortunate and unavoidable circumstances beyond the control as the forced shutdown & lockdown along with travel restrictions in continuance of havoc of Covid-19 pandemic. It was the submission that a reasonable cause has not been explained and, therefore, the delay is not liable to be condoned. He relied upon the decision of Hon'ble Tata Yodogawa Ltd. 1988 (38) Excise Law Times 739 (SC). He also placed reliance upon the decision of the Hon'ble Punjab & Haryana High Court in the case of Indian Roadlines Vs. CIT [2010] 323 ITR 362 (Punjab & Haryana), wherein the Hon'ble High Court has held in respect of provisions of Section 260A of the Act that where no such provisions as condonation of delay in filing appeal under section 260A has been made, then no application under section 5 of the Limitation Act could be filed. It was also the submission that there is no provision in the Act for condonation of delay and consequently cannot be condoned on this ground also.

5. Having heard to the parties, we found that the assessee in its application has given the reason for delay. It is also well-known fact that if the technicality is pitted against substantial justice, the technicality must step back and substantial justice should prevail, though we do feel that the reasons given should have been more elaborate but considering the fact that the substantial problems were going on during Covid-19 period, we feel that the delay in filing of the appeal by the assessee is liable to be condoned and we do so.

6. Coming to the powers of the ITAT in respect of condonation of delay, a perusal of the provisions of Section 253(5) of the Act, there is a specific provision that the Tribunal can admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period. As mentioned earlier, we are of the view that the assessee was prevented by substantial cause in not filing the appeal within the prescribed time. Consequently, the delay in filing the appeal stands condoned and the appeal is admitted for hearing.

<u>Heard on the merits of the appeal</u>

7. Now, we shall proceed to decide the appeal of the assessee challenging the order passed u/s.263 of the Act.

8. It was submitted by the ld. AR that the Pr.CIT has invoked his powers u/s.263 of the Act in respect of the assessment order passed u/s.143(3) of the Act by the ITO Ward, Rourkela on 05.04.2016. It was the submission that the return filed by the assessee had been accepted in the scrutiny assessment u/s.143(3) of the Act. The Pr.CIT had issued a show cause notice u/s.263 of the Act on 01.03.2019. It was the submission that the assessee had filed his reply to the said show cause notice vide a written submission on 26.03.2019. It was also the submission that the ld. Pr.CIT had issued show cause notice in respect of multiple issues, which read as under :-

(a) *As per the statement of "Creditors for Expenses & Others" furnished by the assessee, RS.2,60,21 ,286/- was payable to Indian Overseas Bank, Kolkata account, in respect of cheques issued. Further balance with banks as at 31.03.2014 was on Rs.1,23,486/-. When bank account balance was reduced by issue of cheques, the amount payable to Indian Overseas Bank, Kolkata was required to be reduced to the same extent. Though cheques were issued from Indian Overseas Bank, Kolkata account against amounts payable to sundry creditors, the amount was still shown as payable to Indian Overseas Bank, Kolkata account This implies that the liability in Balance Sheet was overstated to the extent of RS.2,60,21 ,286/- and consequently, the assets in the Balance Sheet were also overstated to the same -extent. But the AO had failed to examine this issue.*

(b) *According to Note-28 to Balance Sheet and P&L account on "Additional Notes on Account', the Auditor had stated that statement from Bank of Baroda, Kolkata was not received during the year. Hence, balances of parties were subject to confirmation & reconciliation and consequential adjustment, if any. But the, Assessing Officer had failed to examine the issue and make appropriate disallowance.*

(c) *The AO had failed to examine issue of low net profit rate of 0.17% (Rs. 7,62,404/-) against total receipts of Rs.43,38,39,099/- disclosed by the assessee during the year and surprisingly he had not raised any query on this issue.*

(d) *The assessee had debited a huge expenditure of Rs.2,26,06,601/- under the head 'Transporting and Discounting Charges paid' booked under broad head "Administrative and Other expenses". No expenditure under this head had" been booked in the preceding A.Y.2013-14. However, the AO had failed to examine the genuineness of the expenses claimed by the assessee.*

(e) *The AO had failed to examine the contradiction between the Auditor's note that "no depreciation is charged in shopping Mall (Shanti Towers) since it was not put to use during the year" and the assessee's submission on 11.01.2016 before the AO that the company has already commenced operations of its Shopping Mall on 31.10.2013 and the capital expenditure on the said Mall has been transferred from capital work-in-progress to respective fixed assets.*

9. It was the submission that the submission of the assessee had not been considered and the ld. Pr.CIT had set aside the assessment order dated 05.04.2016 for the limited purpose of conducting enquiry/

verification in respect of the five issues and thereafter frame a fresh and reasoned assessment order in accordance with law. When the assessee was asked as to what happened to the consequential order, it was submitted by the ld. AR that in respect of the first issue representing the creditors for expenses & others furnished by the assessee to the extent of Rs.2,60,21,286/- no addition specifically has been made in respect of said amount but in fact the said amount has been accepted by the AO and though the payment was made to Maa Trading Company and not to Veeline Media Ltd.. The AO further proceeded to make adjustments in respect of purchases and made addition under the head of "bogus purchases" to an extent of Rs.4,90,66,446/-.

10. In respect of the second issue regarding the statement of Bank of Baroda, Kolkata during the year no addition had been made.

11. In respect of issue of the low net profit, it was the submission that no addition had been made in respect of debit of a huge expenditure of Rs.2,26,06,601/- under the head "transporting and discounting charges paid". Though the AO had been directed to examine the genuineness of the expenses claimed by the assessee, however, the AO estimated the income from transportation business @5% of the total transportation receipt on account of failure for verification of all the vouchers and bills.

12. In respect of the last issue representing the depreciation in respect of the shopping mall, no addition had been made. It was, thus, submission that though all the issues had been brought to the attention of the ld. Pr.CIT, the Pr.CIT had not done any verification but had passed on the

issue of verification back to the AO. It was the submission that the order of the Pr.CIT is liable to quashed.

13. In reply, ld. CIT-DR vehemently supported the order of Pr.CIT on merits and filed his written submission wherein he has stated in para 2 onwards as under :-

> *2. The Pr. CIT has held in the revision order dated 29.03.2019 U/s.263 of the Act that there were five issues in respect of which the A.O. had failed to conduct the requisite inquiries:*
>
> *a) An amount of Rs.2.91 crores had been shown as creditors for expenses & others as on 31.03.2014. As per details, Rs.2,60,21,286/- was payable to Indian Overseas Bank, Kolkata in respect of cheques issued to the creditors. The balances with banks were shown at Rs.1,23,486/- as on 31.03.2014. These cheques had not been encashed and to that extent, the liability for expenses had not been rightly shown and bank balances were required to be modified. The A.O. had failed to examine this issue.*
> *b) As per note-28 to the balance sheet, it was mentioned that statement from Bank of Baroda was not received during the year. Hence balances of parties were subject to confirmation and reconciliation. The A.O. had failed to examine this issue.*
>
> *c) The appellant company had shown low profit of Rs.7,62,404/- on gross receipts of Rs.43.38 crores which worked out to 0.17%. The A.O. had failed to examine this issue. No query was raised on this issue.*
>
> *d) The appellant company had claimed transport & discounting charges of Rs.2.26 crores in the year under reference. In spite of fact that no such expenses were claimed in the earlier year, the A.O. failed to call for necessary details and make the necessary disallowances indicating non-application of mind on his part.*
>
> *e) As per note-28 of the balance sheet, no depreciation was charged in respect of Shanti Mall, Rourkela since it was not put to use. On the other hand, vide letter dated 11.01.2016, it was alleged that the appellant company had transferred the capital expenditure of Rs.13,57,62,768/- to fixed assets. Interest of Rs.37,95,622/- was also allocated to various fixed assets.*
>
> *As regards the first issue, the ld. AR of the appellant company vide letter dated 26.03.2019 informed the Pr. CIT, Sambalpur that an amount of Rs.2,60,21,286/- was paid to Veeline Media Ltd. It was further submitted that purchase bills pertaining to FY 2012-13 were not available. In course of scrutiny proceedings in pursuance of 263 order, the A.O. issued letter u/s.133(6) to Veeline Media Limited*

and State Bank of India, SME Branch, Rourkela. In response, Veeline Media Ltd. vide reply dated 22.05.2019 submitted that it had not entered into any transaction with the appellant company during FY 2012-13, FY 2013-14 and FY 2014-15. On the other hand, the appellant company had shown purchases of Rs.7,50,87,734/- in FY 2013-14. Further as per ledger account, payment of Rs.1,64,88,875/- and Rs.95,32,411/- had been made vide cheques dated 28.03.2014 and 31.03.2014 through Overseas Bank, Kolkata. On the other hand, State Bank of India, SME Branch, Rourkela informed the A.O. that payments of Rs.2,60,21,286/- had been made to a concern "Maa Trading Company" and not to Veeline Media Ltd. Hence claim of liability of Rs.2,60,21,286/- made by the appellant company was found to be bogus (paras 4.1 to 4.6 of assessment order dated 30.12.2019 u/s.143(3) r.w.s. 263 of the Act. It was also found that Veeline Media Ltd. was engaged in the business of records, audio & video tapes and computer tapes and it could not have sold iron & steel to the appellant company. thus by booking bogus purchases of Rs.4,90,66,446/-, the appellant company had reduced its GP and NP. These aspects had been overlooked by the A.O. while completing the original assessment on 05.04.2016.

*On the first and fifth issues, **reliance is placed on the judgement of Hon'ble Mumbai High Court in the case of Jeevan Investment & Finance Ltd. (88 taxmann.com 552).** In this case, the A.O. had raised a query regarding method of valuation of stock. In response, it was submitted that the shares were valued at cost but the method of valuation was not submitted. The A.O. allowed the loss in the shares without conducting further inquiries. It was held by the Hon'ble Mumbai High Court in para-10 that it was a case of no enquiry. The observations of the Hon'ble High Court in para-10 are reproduced as under:*

> *"10. We have examined the rival submissions made before us. We find that during the course of assessment proceedings, the Assessing Officer had by a letter dated 12th January, 2000 for the subject Assessment Year sought various details along with documentary evidence, if any, to enable the Assessing Officer to complete the Assessment. One enquiry in the letter dated 12th January, 2000 mentioned at Serial No.8 thereof was the method of valuation in case of unquoted shares (i.e.listed shares) namely M/s. Mayo India Ltd. The Appellant responded to the above letter dated 12th January, 2000 by its letter dated 31st January, 2000. However, the letter dated 31st January, 2000 did not address the enquiry at Sr. No.8 in the letter dated 12th January, 2000 namely method of valuation of unlisted shares. The Appellant's response was only that the unquoted shares are valued at costs. This is begging the question. No method of valuation of the shares was submitted to the Assessing Officer during the proceedings, leading to the Assessment Order dated 24th February, 2000. It is, therefore, to be noted that the Assessing Officer after having*

asked a pertinent question of the method of valuing unlisted shares in his letter dated 12th January, 2000 did not pursue that line of enquiry. The required information was not furnished by the Appellant nor any explanation offered for not furnishing the same. It is also not a case where the Assessing Officer was satisfied with regard to his query by some other explanation offered by the Appellant. In fact, 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 present facts, the question raised has not been responded to by some explanation which would render the enquiry commenced, futile. In fact, the CIT in his order dated 20th March, 2002 specifically exercised powers under Section 263 of the Act on the basis that the necessary information was not furnished by the Appellant in support of its claim nor the Assessing Officer enquired into the same. Thus, this is a case of non-enquiry and not inadequate enquiry. Therefore, the order of the Assessing Officer is certainly erroneous. There is no dispute that the order of the Assessing Officer is prejudicial to the Revenue".

In the case of Renu Gupta vs. CIT (301 ITR 45), *the submissions of the assessee were placed on record by the A.O. without causing any inquiry. The Hon'ble Rajasthan high Court held that the assessment order was passed by the A.O. in a routine manner without applying his mind.*

In the case of CIT vs. Deepak Kumar Garg (299 ITR 435), *it was held by the Hon'ble Madhya Pradesh High Court in para-4 that issuing a questionnaire and placing submissions on record by the A.O. is a case of no enquiry. If the AR of the assessee still emphasizes that the A.O. had made an enquiry for the sake of an argument, then it is only a semblance of enquiry and that too in a very slipshod manner and the A.O. has agreed to the version of the assessee without proper enquiry.*

In the case of Virbhadra Singh (HUF) vs. Pr. CIT (86 taxmann.com 113), *the assessee had initially filed return of income showing agricultural income of Rs.15 lakhs. During the course of scrutiny proceedings, the assessee filed revised return of income wherein the claim of agricultural income was enhanced to Rs.2.81crores (which was 1872% higher). The A.O. did not apply his mind to this aspect. The Hon'ble Himachal Pradesh High Court held in para-119 & 120 held that any enquiry by the A.O. without application of mind is non-est. The view taken by the A.O. was not plausible in law. It was further held that the A.O. in the given facts, should have done complete and proper enquiry.*

The Hon'ble Delhi High Court in the case of Gee Vee Enterprises (99 ITR 375) held as under:

"The reason is that it is not the Income-tax Officer but a superior officer like the Commissioner who is exercising a revisional jurisdiction suo motu there under. The superior officer could be trusted with a larger power. The only requirement for the exercise of this power is that the Commissioner should consider that the order passed by the Income-tax Officer is " erroneous in so far as it is prejudicial to the interests of the revenue ". What is the meaning of " erroneous " in this context ? It was argued for the assessees by Shri G. C. Sharma that the word " erroneous " means that the order must appear to be wrong on the face of it. In other words, he equated the " error " with " error of law apparent on the face of record " which is a well-known ground for the review of a quasi-judicial order by this court under article 226. We are unable to agree with this interpretation. The intention of the legislature was to give a wide power to the Commissioner. He may consider the order of the Income-tax Officer as erroneous not only because it contains some apparent error of reasoning or of law or of fact on the face of it but also because it is a stereo-typed order which simply accepts what the assessee has stated in his return and fails to make inquiries which are called for in the circumstances of the case.

The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word " erroneous " in section 263 emerges out of this context. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct".

3. The ld. AR of the appellant has failed to demonstrate as to what kind of inquiries were conducted by the A.O. on these five issues. ***In the case of NIIT vs. Commissioner of Income-tax (Central-II) (60 taxmann.com 313),*** *the Hon'ble Delhi ITAT analyzed plethora of judgments on the issue and through order dated 27.03.2015, gave a ratio that the AO is required to conduct the inquiry in a manner whereby he places on record the material enough to reach the satisfaction, which a rational person, being informed of the nuances of tax laws would reach after due appreciation of such material. If this component is missing, it will always be a case of lack of inquiry and not inadequate inquiry. The relevant portion of the order of Hon'ble ITAT is reproduced below:—*

"28.1 Ld. Special counsel has rightly pointed out that the expression, 'inquiry1, 'lack of inquiry' and 'inadequate inquiry', have not been defined and, therefore, when the action of the AO would be suggestive of lack of inquiry or inadequate inquiry, will depend upon the facts obtaining in a particular case. What emerges as a broad principle from the various decisions is that where the AO has reached a rational conclusion, based on his inquiries and material on record, the Commissioner should not start the matter afresh in a way as to question the manner of his conducting inquiries. It is not the province of the Commissioner to enter into the merits of evidence; it has only to see whether the requirements of essential inquires and of law have been duly and properly complied with by AO or not.

28.2 It is well settled that before the Commissioner can invoke his powers u/s 263, he has to arrive at a conclusion that the assessment order is erroneous in so far as it was prejudicial to the interests of the revenue. Then only the powers u/s 263 can be invoked. Therefore, if AO accepts or rejects any claim of the assessee without due application of mind and if such failure causes prejudice to revenue, the Commissioner would be well within his powers u/s 263 to intervene in the matter. An inquiry which is just farce or mere pretence of inquiry, cannot be said to be an inquiry at all, much less an inquiry needed to reach the level of satisfaction of the AO on the given issue. The level of satisfaction would obviously mean that he has conducted the inquiry in a manner whereby he places on record the material enough to reach the satisfaction, which a rational person, being informed of the nuances of tax laws would reach after due appreciation of such material. If this component is missing, it will always be a case of lack of inquiry and not inadequate inquiry."

The Hon'ble Calcutta High Court held in case of CIT vs. Maithan International (56 taxmann.com 283) *that enquiry made by the AO in respect of unsecured loan would be in the category of 'no enquiry' where he while accepting genuineness of loan taken by assessee from various creditors, did not take into consideration creditworthiness of lenders, mere examination of their bank statements or letter of confirmation was not enough and therefore, impugned revisional order passed by Commissioner setting aside assessment was upheld.* ***In para-12, it was held by the Hon'ble Kolkata High Court that*** *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. In para-16, it was held by the Hon'ble Kolkata High court that The power under section 263 can be exercised where the order of the Assessing Officer is erroneous and prejudicial to the interest of the revenue. When an order is erroneous, then the order is also deficient and in order to remedy the situation, power under section 263 has been given. Therefore, the view that the power could not have been exercised to allow the Assessing Officer to make up the deficiency is altogether an incorrect impression of the law. In para-19, the Hon'ble Kolkata High Court held that 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.

Reliance is placed on the decision of Hon’ble Delhi High Court in the case of CIT vs. Nagesh Knitwers P. Ltd & others (345 ITR 135) *wherein it was held that when the A.O. has allowed claim of the assessee in a slipshod manner without conducting any inquiry, then in the case of no inquiry, the assessment order is not only erroneous but also prejudicial to the interest of revenue. The order of assessment has to be a speaking order and when the fact of others’ view has not been mentioned and the claim pressed by the assessee has been allowed without making any inquiry, then the order must be held as erroneous and prejudicial to the interest of revenue.*

4. In the written submissions dated 25.03.2022 filed by the ld. AR of the appellant company, reliance has been placed on various judgements. However facts & circumstances of these decisions are at variance with that of the present case. In the present case, it can't be said that the A.O. had taken one of the two courses permissible in law or one view out of two possible views to which the Pr. CIT did not agree. ***Therefore the decision of Hon'ble Supreme Court in the case of CIT vs. Greenworld Corporation (181 Taxman 111) is not applicable in the present case.*** *In the cited case, the Income Tax Officer had made necessary enquiries in regard to the claim u/s.80IA/80IB. Evidently, the claim was allowed by the Income Tax Officer on being satisfied with the explanation of the assessee. In para-24, the Hon'ble Supreme Court held that an order of assessment passed by an Income-tax Officer, therefore, should not be interfered with only because another view is possible. In para-35, the Hon'ble Supreme Court held that order of assessment passed by the A.O. on the dictates of the higher authorities (CIT, Simla) being wholly without jurisdiction, was a nullity which is not the case here.* ***Similarly in the case of CIT vs. Vodafone Essar South Ltd. (28 taxmann.com 273),*** *the*

Hon'ble Delhi High Court held that CIT couldn't follow section 263 route to treat an expense as capital (expenses incurred for obtaining loan such as license fee, loan charges, stamp duty etc.), if AO chose to allow same as revenue expenses after due analysis which is not the case here. ***In the case of CIT vs. Anil Kumar Sharma (194 Taxman 504),*** *the Hon'ble Delhi High Court held in para-5 that the A.O. had asked the assessee to submit the Purchase Deed in respect of the purchase of land at village Tughlakabad and that the assessee in response thereto had supplied requisite details and submitted a copy of the High Court's decision in relation to the award of compensation etc. The Tribunal, therefore, came to the conclusion that the complete details were filed before the Assessing Officer and that he applied his mind to the relevant material and facts, although such application of mind is not discernible from the assessment order. The Tribunal held that, the Commissioner in proceedings under section 263 also had all these details and material available before it, but had not been able to point out defects conclusively in the said material, for arriving at a conclusion that particular income had escaped assessment on account of non-application of mind by the Assessing Officer. In the present case, the A.O. had not raised any question as regards second, third and fourth issue. In respect of first and fifth issue, the A.O. failed to apply his mind.* ***Similarly in the case of Braham Dev Gupta vs. PCIT (88 taxmann.com 831),*** *the AO had carried out necessary inquiries in respect of loan creditors and value of perquisite u/s.28(iv) of the Act. It was held by the Hon'ble Delhi Tribunal in para-35 that at the most, this was a case of inadequate enquiry on the part of the AO and not a case of lack of enquiry by any stretch of imagination.* ***In the case of CIT vs. Nirav Modi (71 taxmann.com 272),*** *during the assessment proceedings, the Assessing Officer issued a query memos to the assessee, calling upon him to justify the genuineness of the gifts. The assessee responded to the same by giving evidence of the communications received from his father and his sister i.e. the donors of the gifts along with the statement of their bank accounts. On perusal, the Assessing Officer was satisfied about the identities of the donors, the source from where these funds have come and also the creditworthiness/ capacity of the donor. Once the Assessing Officer was satisfied with regard to the same, there was no further requirement on the part of the Assessing Officer to disclose his satisfaction in the assessment order passed thereon. It was thus held by the Hon'ble Bombay High Court that where there are two possible views and the A.O. has taken one of the possible views, no occasion to exercise powers of revision, can arise. Nor can revisional power be exercised for directing a fuller inquiry to find out if the view taken is erroneous, when a view has already been taken after inquiry. The power of revision can be exercised only where no inquiry as required under the law is done. It is not open to enquiry in cases of inadequate inquiry".* ***In the case of Surana Diamond Jewellers Pvt. Ltd. ITA no.666 to 669/Kol/2018 dated 28.11.2018,*** *the A.O. had issued letters u/s.133(6) to the sellers at*

given addresses. All the suppliers had confirmed having made sales to said company. The quantitative details were also verified by the A.O. He doubted the mode of receipt/delivery of the alleged purchases. In these circumstances, he disallowed only 3% of such purchases. This issue was covered in the favour of assessee company by the judgement of Hon'ble Gujarat High Court in the case of Tejua Rohitkumar Kapadia (supra). There was no proof of any cash being received from suppliers. Further on the issue of disallowance of 3% of purchases, appeal was pending before the CIT(A)-3, Kolkata. In these facts, it was held that the Pr. CIT had no jurisdiction to revise the order u/s.263 of the Act. This is not the case here.

*5. **The decision of Hon'ble Supreme Court in the case of Malabar Industries Ltd. vs. CIT (243 ITR 83) is in the favour of the Deptt.** It was held therein that an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or **without application of mind**. The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income-tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue.*

*6. The ld. AR of the appellant company has argued that it was incumbent upon the Pr. CIT to conduct some inquiry before passing the revisional order u/s.263 of the Act. In this regard, kindly refer to show-cause notice u/s.263 issued by the Pr. CIT, Sambalpur wherein he had raised as many as 11 questions. A plain reading of section 263 of the Act reveals that the CIT can make inquiry on his own if he feels so and can also direct the A.O. to conduct inquiries. **This very question was answered by the Hon'ble Delhi High Court in the case of Gee Vee enterprises (99 ITR 375) as under:***

" The question would naturally arise whether the firm was formed merely for the purpose of getting a tax advantage. Shri Sharma argued that there is nothing wrong if a legitimate advantage is sought by these means. But it was precisely for that reason that the Income-tax Officer had to be satisfied that the firm had existed in the previous year genuinely. It cannot be said that the Commissioner could not be reasonably of the opinion that the order of the Income-tax Officer was erroneous because previous inquiries were not made by the Income- tax Officer. Nor can it be said that it was necessary for the Commissioner himself to make such inquiry before cancelling the order of assessment. In

view of the decisions of the Supreme Court in Rampyari Devi and Tara Devi Aggarwal, the challenge of the petitioners to the jurisdiction of the Commissioner exercised under section 263 fails and the writ petitions do not qualify for admission on the ground of the impugned orders being without jurisdiction".

*

The above findings of Hon'ble Delhi High Court were noted in the case of D. G. Housing Project (343 ITR 329) and it was held as under in para-14

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

The Hon'ble Delhi High Court in the case of CIT vs. Sunbeam Auto Ltd. (332 ITR 167) while considering the aspect, when there is no proper or full verification, held as under:-

> *"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. (203 ITR 108) (Bombay High Court) law on this aspect was discussed in the following manner (page 113):*

The decision of the Delhi High Court in the case of ITO vs. D. G. Housing Project Ltd. (343 ITR 329) is applicable where some enquiry has been made by the A.O. but not in a case, where no enquiry was made by him. It was held in para-16 as under:

> *"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".*

7. Reliance is also placed on the decision of Hon'ble Gauhati High Court in the case of CIT vs. Jawahar Bhattacharjee (20 taxmann.com 652), Hon'ble Madhya Pradesh High Court in the case of Nagal Garments Industries (P.) Ltd. vs. CIT (113 taxmann.com 4), Hon'ble Cochin ITAT in the case of G. Sunilkumar vs. DCIT (40 taxmann.com 159) and Hon'ble Mumbai High Court in the case of Sesa Starlite Ltd. vs. CIT (123 taxmann.com 217).
In view of above facts, the appeal filed by the appellant company is required to be dismissed.

14. It was also submitted that the Id. Pr.CIT was very much in his right and he had the powers to invoke the provisions of Section 263 of the Act, insofar as there was no verification/non-examination by the AO when completing the original assessment order u/s.143(3) of the Act. It was further submitted that even when the show cause notice was issued to the assessee, the assessee replied during the last minute being on 26.03.2019 thereby precluding the Id. CIT(A) from doing any further verification. It was also submitted that in fact the issue of creditors for expenses & others, representing Rs.2,60,21,286/- when examined brought out the addition of Rs.4,90,66,446/-. It was further submitted that the addition itself leads to increase in the net profit rates. It was also

submitted that the estimation of income from transportation business @5% of the total transportation receipt done by the AO showed that there was doubt on the genuineness of the expenses claimed by the assessee in respect of transporting and discounting charges. It was the submission that the AO having not done the enquiry that he was supposed to do, the ld. Pr.CIT was right in directing proper enquiry to be done. Accordingly, ld. CIT-DR submitted that the order passed u/s.263 of the Act by the Pr.CIT is sustainable and should be upheld.

15. We have considered rival submissions.

16. A perusal of the order of the ld. Pr.CIT shows that the show cause notice issued u/s.263 of the Act has been issues only on 1st March, 2019. Admittedly, the assessee has responded to the show cause notice though on 26.03.2019. In the said reply, the assessee has stated that he would submit the details of the bills on 29.03.2019, which is evident from the extract as made by the Pr.CIT. What happened to that bills is not coming out of the order of the Pr.CIT. The reply filed by the assessee has also admittedly not been looked into nor considered by the ld. Pr.CIT. A perusal of para 12 of the order of the Pr.CIT, shows that he has practically in verbatim extracted the issues from the show cause notice and reproduced it in para 12. Then in para 13, he says that the AO has not examined and verified many of the relevant issues either factually or from the angle of relevant provisions of the Act before allowing such claims and due to paucity of time, it is not possible to probe further at this stage. After this a substantial number of decision have been raised in regard to the

power of the Pr.CIT u/s.263 of the Act. A question arises before us now as to whether the issues raised by the Pr.CIT were in fact issues which could have given rise to an order u/s.263 of the Act. A perusal of the consequential order clearly shows that the additions which have been proposed by the Pr.CIT, more so the issues that have been raised by the Pr.CIT have not resulted into any of the addition in the assessment. Obviously, if the Pr.CIT had done cursory verification of the details that has been produced by the assessee in the course of proceedings u/s.263 of the Act, maybe, the Pr.CIT himself would have dropped the proceedings. However, having invoking the powers u/s.263 of the Act, no addition on the said issues has been made. The additions have been made on other issues; clearly shows that the issues raised in the proceedings u/s.263 of the Act are unsustainable and liable to be quashed. We are not going into merits of the additions made in the consequential order. Only on the ground that no specific addition has been made in respect of specific issues which have been raised in the proceedings u/s.263 of the Act, therefore, the order passed u/s.263 of the Act is hereby quashed.

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

Order dictated and pronounced in the open court on 30/05/2022.

Sd/-	**Sd/-**
(अरुण खोड़पिया**)**	**(**जार्ज माथन)
(ARUN KHODPIA)	**(GEORGE MATHAN)**
लेखा सदस्य/ **ACCOUNTANT MEMBER**	**न्यायिक सदस्य / JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 30/05/2022

Prakash Kumar Mishra, Sr.P.S.

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant-
   Ravi Metallics Limited,
   I/10, Civil Township,
   Rourkela-769004
2. प्रत्यर्थी / The Respondent-
   Pr.CIT, Sambalpur
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(**Assistant Registrar**)
आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack