

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR.**

**BEFORE: DR. S. SEETHALAKSHMI, JJUDICIAL MEMBER &  
SHRI RATHOD KAMLESH JAYANTBHAI, ACCOUNTANT MEMBER**

**I.T.A. No. 40/Jodh/2021  
Assessment Year: 2011-12**

Sh. Gaurav Purohit 5-E-133, JNV Colony Bikaner, Rajasthan [PAN:AOVPP 3482 Q] <b>(Appellant)</b>	Vs.	PCIT, Jodhpur-1, Jodhpur  <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. Rajendra Jain, Adv.
<b>Respondent by</b>	Sh. Shailendra Sharma, CIT DR

<b>Date of Hearing</b>	22.01.2024
<b>Date of Pronouncement</b>	02.02.2024

**ORDER**

**PER: RATHOD KAMLESH JAYANTBHAI, AM**

This appeal filed by assessee is arising out of the order of the Pr. Commissioner of Income Tax, Jodhpur-1 dated 16/03/2021 [here in after Id. PCIT ] for assessment year 2011-12 which in turn arise from the order dated 14.12.2017 passed under section 147/143(3) of the Income Tax Act, by ITO, Ward-2(2), Bikaner.

2. In this appeal, the assessee has raised following grounds: -

*“1. That the order passed by the PCIT Jodhpur is against the law in view of order of this Hon’ble Tribunal in case of Balar Fabric Ltd. vs. The Commissioner of Income Tax Jodhpur because the PCIT fails to conduct any enquiry at his own level therefore the order is illegal and squarely covered by the order of this Hon’ble Bench.*

*2. That the order passed by the Principal Commissioner of Income Tax, Bikaner is illegal and against the law.*

*3. That the order passed by the PCIT is against the judicial decorum and discipline because the order of the Hon’ble Tribunal/Hon’ble High Court is binding upon the PCIT was not followed, referred during the course of hearing, as such, the order passed is illegal.*

*4. The Principal Commissioner of Income Tax should have considered the judgment of Jurisdictional High Court delivered in the case of Shri Ganpatram Bishnoi wherein after reviewing the case of M/s. Malabar Industries Limited, the Jurisdictional High Court delivered the judgment.*

*5. That the action of the PCIT in respect of the setting aside is illegal and against the law because the assessment was completed in accordance with law and is neither erroneous nor prejudicial to the interest of revenue and there was no lack of inquiry*

*6. That none of the condition of 263 of Income Tax Act is applicable in the case of the assessee. The Assessing Authority completed the assessment after conducting thorough enquiry, application of mind and took legal possible view.*

*7. That observation in respect of the issues, mention in show cause notice is not correct that there was any lack of inquiry.”*

3. At the outset of the hearing the bench noted that the filed by the assessee is delayed by 5 days as noted by the registry. In support of the delay the Id. AR of the assessee submitted that he has preferred a separation petition with a prayer to condone the delay along with the affidavit. The content of the affidavit reads as under :

“1, Gaurav Purohit S/o Shri Bhanu Prakash Purohit of Age 34 Years R/o Bikaner do solemnly declared on oath as under:

1. That i have filed an Appeal against the order of Commissioner of Income Tax-I Jodhpur before The Income Tax Appellate tribunal Jodhpur Bench Jodhpur for assessment year 2011-2012.

2. That I could not file the Appeal within time because my mother Smt. Jayshree was suffering from Covid-19 and as per the guideline we cannot come out of the house.

3. That the delay so occurred is because of this fact. The Appeal fee was deposited within time and form were also verify within time. But on account of the fact that I cannot come out therefore the appeal became late.

What has been stated above is correct to be best of my knowledge and belief, nothing has been concealed. God may help me.”

3.1 During the course of hearing, the Id. DR objected to assessee's application for condonation of delay but at the same time left to the bench to decide the condonation of appeal which is based on the health issue of his mother in the interest of justice as delay is of five days only.

3.2 We have heard the contention of the parties and perused the materials available on record. The prayer by the assessee for condonation of delay of five days has merit and we concur with the submission of the assessee. Thus, the delay of five days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the

assessee is prevented by sufficient cause on account of health of his mother.

Now admitting the appeal of the assessee we deal with the merits of the case.

4. Succinctly, the fact as culled out from the records is that the return of income for the assessment year under consideration was filed by the assessee on 29.09.2011 declaring total income of Rs. 58,780/-. Thereafter, the case was reopened u/s 147/148 and notice u/s 148 was issued on 09.11.2016 and the assessment under section 147/143(3) of the Income Tax Act, 1961 was completed by the Assessing Officer, on 14.12.2017 on declared income of the assessee.

5. On culmination of assessment proceeding, Id. PCIT on examination of records noted that the assessment order dated 14.12.2017 having been found to be erroneous in so far as it is prejudicial to the interests of the revenue so, a show cause notice u/s 263 of the IT Act, 1961 was issued to the assessee on 10.10.2019 by the Id. PCIT and served on the assessee. In compliance to the show cause notice u/s 263 of the IT. Act, no reply was filed by the assessee.

Another notice fixing the date of hearing was issued on 14.11.2019. Further opportunities to file submissions were provided vide notice dated 06.01.2020 and 31.01.2020. On 11.02.2020 & 05.03.2020 assessee filed a written reply. The reply filed by the assessee and information/details available on the records have been considered carefully and there on the Id. PCIT observed that ;

**Issue/Point 1:-**

The assessee Shri Gaurav Purohit filed his ITR for the AY 2011-12 on 29.01.2011 declaring income of Rs.58,780/-. In the return, the assessee has disclosed total turnover/sales/gross receipts of Rs. 1,25,28,01,832/-in Part A-P&L of the return. Later on, in response to notice u/s 148, the assessee filed an ITR on 04.12.2017 declaring total income of Rs.58,780/-. In the return filed in response to notice u/s 148, the assessee has declared 'Nil' turnover/sales/gross receipts in Para A-P&L of the ITR. As per the information uploaded by the I&CI, Jaipur, the assessee has carried out transactions of Rs. 78,22,85,722/-through National/Multi Commodity Exchange. Besides this, information has also been received from the Investigation Wing that the assessee has traded in penny stock namely -CCL INTER (Scrip Code 531900). The total trade of the assessee as per the details submitted by the Investigation Wing in the year under reference was Rs.19,21,39,822/-. The AO has

not verified each and every transaction carried out by the assessee in penny stock viz-a-viz contract notes, bank statements, ledger account in the books of broker and transaction related details received from the Investigation Wing. The AO did not question about the transactions of Rs. 78,22,85,722/- as reported by the I&CI, Jaipur in ITS details relevant to FY 2010-11. The AO accepted the version of the assessee without properly examining and verifying the ITS details with transactions in the ledger account maintained by the broker and from the bank statements.

The AO is directed to examine each, and every purchase and sale transactions related to penny scrip with the ledger account of the assessee in the books of broker, contract notes, bank statements and from NSE/BSE. The AO is also directed to examine transactions as reported by the I&CI, Jaipur in ITS details with the ledger account of the assessee in the books of broker, contract notes, bank statements and from NSE/BSE.

**Issue/Point 2:**

In the original return, assessee has disclosed total turnover/sales/gross receipts of Rs. 1,25,28,01,832/- in Part A-P&L. However, in the return filed in compliance of notice u/s 148, he has shown Nil turnover/receipts claiming the earlier sales transactions to be

carried out by other parties/persons utilizing his PAN. The AO without verifying the share transactions claimed to be carried out by M/s. Global Capital Market and other persons/companies through PAN of the assessee, accepted the submission of the assessee. The AO should have verified each and every such transaction claimed to be carried out by other parties/companies/persons on PAN of the assessee with the broker of the assessee and from the BSE/NSE.

The AO is directed to verify the sales from the ledger account in the books of broker and from the BSE/NSE. As regards claim of the assessee in respect of transactions carried out by other parties by utilizing the PAN of the assessee, the AO is directed to carry out necessary verifications from such other parties and from BSE/NSE.

Based on the above observation on the above issue PCIT opined that the order of the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue and considering the Explanation 2 to section 263(1) w.e.f 01.06.2015 and relying on the finding in the case of M/s Gee Vee Enterprises 99 ITR 375 (Delhi High Court)[1995]

It was held that the Assessing officer (AO) is not only an adjudicator but also an investigator, and failure of the AO to conduct the required inquiring

and accepting the statement of the assessee without due verification renders the order erroneous in so far as it is prejudicial to the interests of the revenue.

The Id. PCIT also relied on the decision of the Apex Court in Malabar Industrial Co. Ltd. v. CIT [2000] 243ITR 83 (SC) where four-way test for orders being erroneous in- so-far as they are prejudicial to the interest of the revenue, liable for revision, viz. incorrect application of law; wrong assumption of facts; non-observance of the principles of natural justice; and lack of inquiry.

Considering the various decision on the Id. PCIT held that the order u/s 147 read with Section 143(3) dated 14.12.2017 for the AY 2011-12 passed by the Assessing Officer is found to be erroneous in so far as it is prejudicial to the interests of revenue and therefore, the order passed u/s 147 read with section 143(3) dated 14.12.2017 for the AY 2011-12 of the Act is set aside under section 263 of the Act with the direction that the AO should properly examine all the issues raised in the foregoing paragraphs and pass the speaking assessment order afresh after making proper enquiries and after affording adequate opportunity to being heard to the assessee.

6. Aggrieved from the said order of the Id. PCIT, the assessee has preferred present appeal on the grounds as stated hereinabove. To



support, contentions so raised the Id. AR of the assessee relied upon the written submission made before the PCIT and the same is reproduced herein below :

Please refer to your Notice dated 10.10.2019 u/s. 263 of I.T. Act. In this connection, it is stated that my submission is as under.

First of all, I want to draw your kind attention towards the fact that the case of the assessee is not covered u/s. 263 of I.T. Act. The Assessing Authority at the time of finalizing the assessment applied his mind and made the assessment. At the time of finalizing the assessment the assessing officer peruse all document submitted by the assessee as well as the document available with the department.

The copy of assessment order is being enclosed marked as Annexure-A, the income tax officer observed as under:

" तत्पश्चात् आयकर अधिनियम की धारा 142 (1) के अंतर्गत नोटिस दिनांक 24.04.2017 को जारी किया गया। करदाता द्वारा अपनी आयकर विवरणी दिनांक 04.12.2017 को रूपये 58,780 की आय दर्शाते हुए प्रस्तुत की गयी। मामले में आयकर अधिनियम की धारा 143(2) एवं 142 (1) के अंतर्गत मय प्रशानावली नोटिस दिनांक 05.12.2017 को जारी किया गया जिनकी अनुपालना में एंव तत्पश्चात् वांछित दिनांकों पर करदाता के अधिकृत प्रतिनिधि श्रीवाई. पी. मदान, अधिवक्ता उपस्थित हुए तथा मामले से संबंधित वांछित दस्तावेज / सूचनाएं प्रस्तुत की जिनकी संदिग्धता प्रणाली के आधार पर आवश्यक जांच की गयी।"

From the perusal of the above you will observe that the assessment in question was finalized after considering the record, reply and considering the argument.

IT WILL BE WORTHWHILE TO SUBMIT THAT THE ACTION WAS TAKEN BY MENTIONING THAT THE ASSESSEE MADE TRAYED TO THE TUNE OF RS. 192148329/-. THIS AMOUNT IS TOTAL OF PURCHASE AND SALE. THE TOTAL PURCHASES WAS 96378284/- AND SALES IS 95770045/-, TOTAL COMES TO 192148329/-, THE AMOUNT MENTION IN THE REASON. IF WE ARE ARRIVING AT

THE PROFIT OR LOSS THE TOTAL PURCHASES IS 96378284/- AND SALES IS 95770045 IF CALCULATING THE GAIN SAME COMES TO NEGATIVE. IN THE OTHER WORDS THERE IS A LOSS OF RS. 608239/-, THIS FACT WAS ALSO MENTION IN THE REPLY.

THE ASSEE ALSO EXPLAINED IN RESPECT OF INTRA DAY TRANSACTION AS SUCH CAPITAL GAIN IS NOT CALCULATED.

It will be worthwhile to draw your attention towards the provision of 263 of IT Act, All is being reproduce here under:

E-Revision by the Principal Commissioner or Commissioner Revision of orders prejudicial to revenue.

263. (1) The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Explanation 1. For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,-

(a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include

(1) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;

(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;

(b) record shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner;

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal Explanation 2 For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,

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

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

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

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

(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.

Explanation. In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

From the perusal of above you will observe that for acquiring jurisdiction u/s 263 of the IT Act there must be fulfillment of twin conditions. Order must be erroneous as well as should be prejudicial to interest of revenue. Further in case of the assessee there is no lack of inquiry also, the assessing officer also verified the entire fact required to be verified for the purpose of finalizing the assessment.

In case of the assessee none of condition is appearing so as to acquire jurisdiction u/s 263 of Income Tax Act. You are therefore requested that the proceedings initiated may kindly be dropped.

It will be worthwhile to submit that the return of income of assessee was originally submitted by the authorized representative wherein the then authorized representative submitted the ITR and committed some mistake while mentioning the gross receipt and other figures. As and when the notice u/s 148 of was received the return was submitted in response there to the notice issued u/s 148 of IT Act. At the time of filing the return u/s 148 of IT Act the mistake committed by the previous advocate /authorized representative was rectified and true income was declared in the return of

income.

The assessing officer in course of the assessment proceeding also issued questioner on the bases of reason recorded for reopening of the assessment. The turnover shown in the reasons recorded was not in fact belongs to him and was related to Globber Capital Market and other companies. The assessee in course of assessment proceeding also cum forward with all fact and circumstances. The assessing officer also verified the sabemission submitted in course of hearing from the bank statement and other document available with the assessee and available in file and after verification accepted that the commission income declared by the assessee was only income, which was also disclosed in the original return. I will also submit that if the transaction in question ware considers and income is calculated which comes to negative income. I have also calculated the result of transaction considering the all transaction total loss comes to This loss was not claimed because the transaction in question were not belongs 5, 608239 assessing officer after due verification accepted the contention of mine. It will be worthwhile to submit that this fact was also stated in the reply filed by the assessee.

THE NOTICE DATED 5.12.2017 IS ATTACH ALONG WITH ANNAXURE THEREOF. THE ASSESSING OFFICER RAISED THE QUERIES ON THE BASES OF ISSUING NOTICE OF 147 OF IT ACT. THE ASSESSEE REPLIED ALL QUERIES. THE ASSESSING OFFICER AFTER APPLICATION OF MIND ACCEPTED THE EXPLANATION OF THE ASSESSEE. THE ACT OF THE ASSESSING OFFICER IS IN ACCORDANCE WITH THE LAW AND THAT TOO IS AFTER VERIFICATION OF FACT.

The copy of notice issued by the income tax officer is marked as Annexure-B and reply of said notice is enclosed as marked-C.

In these circumstances the assessment is nighters erroneus or prejudicial to interest of revenue. It is therefore humbly prayed that the proceeding initiated may kindly be drop.

As regards the notice issued by your good self dated 10.10.2019. It is submitted as under parawise.

As regard para 1 of your Notice mentioned in respect of the fact that the survey was conducted and in the course of survey, Shri Jai Kishan Poddar in the statement recorded u/s. 131 of I.T. Act, admitted that the Companies are bogus companies and the entries in question are accommodating entries. The DDI investigated and pointed out the list of the bogus companies as per the record. During the year under consideration, the Assessing Officer received theintimation regarding bogus transaction amounting to Rs. 9.57,83,040/- as sale and received Rs. 9,63,56,782/- as bogus purchase.

In this connection, it is submitted that it is in between the party alleged to be bogus party and between the departments. The assessee in course of assessment proceeding denied the transaction and admitted that only commission was received and the return was submitted by showing the income from commission.

The assessing officer after due verification and application of mind accepted the contention of the assessee that is one possible view which could be taken.

As regard para 2 of the Notice, I want to submit that your good self stated in the same letter that without furnishing the I.T. Return and on the basis of letter dated 4.12.2017, the Assessing Officer provided the copy of reason whereas no Return was submitted and it was also not accepted to accept the previous Return submitted by the assessee whereas out of two conditions, one is essential. I want to submit that the providing of reason for reopening of assessment is mandatory.

As far as your allegation that the Assessing Officer have not enquired, in this respect, it will be worthwhile to submit that it is not necessary for the assessing officer so as to incorporate each and every step of verification and account in the Assessment Order or in the Note sheet for is the wisdom of the Assessing Officer and no other authority is supposed to interfere in conducting of assessment proceeding. In these facts and circumstances, the allegation is not correct.

I also want to draw your kind attention towards the fact that the Assessing Officer is under obligation so as to provide the reason for reopening of the assessment along with the Notice to be issued u/s.147/148 of I. T. Act. Therefore, the Assessing Officer rightly provided the reason following the legal position. Since law requires that along with the notice, the reasons must be communicated. If the reasons are communicated belatedly, then also the actions become null and void. Thus, the impugned notice under Section 148 of the Act is hit by the law of limitation. It will be worthwhile to submit here that there are so many judicial pronouncements also that reason must be supplied along with notice. Therefore the assessing officer not committed any mistake in law in respect of providing the reason.

It will be worthwhile to submit that the assessee revised the reason and the Assessing Officer not investigated the source of investment. In this respect, it is also submitted here that the assessee appeared before the Assessing Officer and came forward with suitable explanation in this regard. Therefore, the fact mentioned at para 2 is not relevant or cannot be a basis for taking the action u/s. 263 of I.T. Act. The procedure adopted by the assessing officer is in accordance with the law as well as per the judicial pronouncement.

As regard para 3 of your Notice, it is submitted that your good self has alleged that the assessee in part 'A' of Profit & Loss Account, receipt of Rs. 1,25,28,01,832/- represent the transaction not related to himself but the other share transactions were not related to him. This explanation was accepted without any investigation. Your good self observed that 'बिना किसी अनुसंधान के कर निर्धारण अधिकारी द्वारा स्वीकार कर लिया गया है जबकि उसके द्वारा उ सके बैंक खातों से उक्त कंपनी का ही भुगतान दिया गया है।

THIS IS THE OPINION OF YOUR GOOD SELF AND BASES OF TAKING THE ACTION U/S 263 OF IT ACT. In this connection I want to draw your attention that in the reply submitted by the assessee dated nil in response to reply of notice 142(1) of IT Act dated 05.12.2017 reply of query no 5 it has been categorically express and explain that this amount was mention by the then authorize representative which was not in my knowledge. At the time of submitting the original return the turnover was mention which was in fact not my transaction and this fact was clarified to the assessing officer in course of assessment proceeding. The assessing officer accepted the income from commission which was shown even in the original return.

In this connection, I want to submit that the file of reply also clarifies the entire fact and also calculated the profit or loss. The assessee submitted the submission in the reply of Query No. 5 of the Assessing Officer.

As alleged by you, the Assessing Officer accepted the reply submitted by the assessee without any investigation whereas the amount was paid to them. In spite of these facts, the Assessing Officer accepted the contention of the assessee and no enquiry was conducted. Your good self also stated करदाता द्वारा प्रस्तुत जवाब को आँख बन्द करके स्वीकार करना विधिविरुद्ध जाना उ से धारा 147 में दर्ज को विधि स्थापित मापदण्डों के बिना उनकी अनुपालना को उपलब्ध करवाना यह एक जानबुझकर रदुर्भावना व शकीर्ण कार्यवाही है जिससे राजस्व की हानी हुई है। The observation is having two folds. First is that the Assessing Officer accepted the reply by keeping his eyes close and second is that the reason recorded was provided without following the legal position and there is a loss of revenue.

In this connection, I may submit that as regard your first observation of accepting the reply of the assessee by keeping eyes close, it seems that your good self has mentioned the observation without even going through the reply submitted by the assessee. In this respect, I want to draw your kind attention towards the fact that the Assessing Officer issued questionnaires from time to time and the replies thereof were submitted along with documentary evidence and also produced respective information in support of the justification of the income of Return so submitted.

It is also worth to draw your kind attention towards the fact that the Assessing Officer in the Assessment Order, has categorically given his finding after considering the evidence adduced before him in accordance

with the assessment proceeding. Therefore in these facts and circumstances, the word used by you आँखबन्दकरकेस्वीकारकरना.. is not justified. The Assessing Officer is quasi judicial Officer and having powers so provided in the Act. He is an Assessing Officer empowered to accept or reject the explanation as per his wisdom. Therefore, it will be worthwhile to submit that supervisory authority is not supposed to commit or act in such a manner. The Assessing Officer took one view out of possible two views. I will submit the legal pronouncement(s) subsequently in the submission. It is, therefore submitted that the Assessing Officer rightly and in accordance with law, accepted the explanation of the assessee.

As far as the second observation is concerned, I want to submit that your good self have observed providing reason of the assessee as जानबुझकरदुर्भावनावशकीर्गईकार्यवाहीहै is not justified and seems to be prejudiced against the Assessing Officer for the reason best known to you. It was the duty of the then Assessing Officer who took action u/s. 147 of the I.T. Act and served upon the Notice to the assessee attaching the reason recorded for reopening of the assessment and that too was not provided his fault is in legal language, non compliance of the provisions. Therefore, providing copies of the assessee is not at all an illegality or action which can be termed as जानबुझकरदुर्भावनावशकीर्गईकार्यवाहीहै. It is apparent that the Assessing Officer was conversant with the judicial pronouncement(s) and providing the justice. All the notices assessee.

The Assessing Officer has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation be a letter in writing and the Assessing Officer accepted on the issue on being satisfied with the explanation of the assessee, the decision of the Assessing Officer cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard.

As regards the observation of loss of revenue I want to submit that as per the order of ITAT, Jodhpur bench, Jodhpur delivered in case of Ganesh Builders Vs CIT 87 DTR 182 (Jodh) every loss of revenue cannot be treated as prejudicial to the interest of revenue.

As regard para 1" of Page 3 of the Notice, I want to submit that in course of the assessment proceeding, the Income Tax Officer raised the query after considering the reasons recorded for reopening of the assessment. It is also worth to submit that the reasons were provided and the reasons so recorded were verified from the record of the assessee and only after considering the explanation, the Assessing Officer accepted the explanation of the assessee. As far as the observation is concern same seems to be hypothetically.

In this respect it will be worthwhile to mention here that I have already made it clear in my earlier submission Para that if two views are possible and

out of two views, one view has been taken by the Income-tax Officer, in that case the order cannot be called as erroneous and prejudicial to the revenue.

In this respect your kind attention is invited towards the following in case of Commissioner of Income Tax Vs. DLF Power Ltd. (Del) Reported in 229 CTR Page No. 27 the relevant portion is being reproduced here under: 229 CTR Page No. 27

"If two views are possible and the view taken by the AO was plausible one that would not provide sufficient ground for the CIT to assume jurisdiction under section 263 merely because, he had a different view."

Further I want to invite your kind attention in case of Grasim Industries Ltd. Vs. Commissioner of Income Tax (Bombay) reported in 321 ITR Page No. 92 the relevant portion is being reproduced here under:

321 ITR Page No. 92.

"Assessing Officer cannot be treated as prejudicial to the interest of the Revenue, for example when an DCIT adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the DCIT has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the Revenue"

The section 263 of the Income-tax Act does not empower to invoke or go to process of assessment again and again. In this respect your kind attention is invited towards in case of Commissioner of Income Tax Vs. Ganpat Ram Bishnoi reported in 152 Taxman Page No. 242 (Rajasthan). If you are not satisfied with the order of the Income-tax Act cannot provide power to your good self so as to pass the order under section 263 of the Income-tax Act. In this respect your kind attention is invited towards 275 ITR Page No. 101 (Tribunal). The relevant portion is being reproduced here under:

275 ITR 101 (ITAT CUTTAK)  
T. K. International Ltd.

Assistant Commissioner of Income-Tax.

"It was further observed that an ITO adopting one of the course permissible in law and it has resulted in loss of revenue or where two views are possible and the ITO has taken one view with which the CIT does not agree it cannot be treated as an erroneous order prejudicial to the interest of the revenue unless the view taken by the ITO is unsustainable in law."

As far as the application of provisions of section 263 of the Income-tax Act I want to draw your kind attention that in case of the assessee the



Income-tax Officer already applied his mind properly and passed the order and allowed the deduction and assessed the income.

In above mentioned facts and circumstances you will observe that the order of the Income-tax officer is a valid order and neither erroneous nor prejudicial to the interest of revenue, therefore, it is prayed that the proceedings initiated under section 263 of the Income-tax Act may kindly be dropped.

The Hon'ble Tribunal in case of Commissioner of Income Tax, Bikaner v/s Ganpat Razm Bishnoi in Appeal No. 43199 reported in 198 CTR 546 has expressed that if matter has been examined and gone through then sec. 263 cannot be made applicable. The department went in the Appeal before the Hon'ble Rajasthan High Court and Hon'ble Rajasthan High Court confirmed the order of the ITAT. For your ready reference your kind attention is invited towards the order of the Hon'ble High Court. Relevant portion is being reproduced here under: -

"when enquiry in fact has been conducted and the Assessing Officer has reached a particular conclusion, though reference to such enquiries has not been made in the order of the assessment, but the same is apparent from the record of the proceedings, in the present case, without anything to say how and why the enquiry conducted by the Assessing Officer was not in accordance with law, the invocation of jurisdiction by the CIT was unsustainable. As the exercise of jurisdiction by the CIT is founded on no material, it was liable to be set aside. Jurisdiction under section 263 cannot be invoked for making short enquiries or to go into the process of assessment again and again merely on the basis that more enquiry ought to have been conducted to find something."

The judgment of Hon'ble Rajasthan High Court is based on the basis judgment given by the Hon'ble Supreme Court in case of Malabar Industries reported in 243 ITR 83.

The Assessing Officer took the possible view out of two. In this connection, I want to draw your kind attention towards judgment of Hon'ble Rajasthan High Court delivered in the case of Principal CIT vs. Om Rudra Priya Holiday Resort (P) Limited-311 CTR page 935.

It is also stated that the order passed by the Income-tax Officer is in accordance with the law. Neither the order is erroneous or prejudicial with the interest of revenue. In this respect your kind attention is invited towards the following:-

Please refer to 259 ITR page 502 Commissioner of Income Tax V/s Arvind Jewellers. In this case the Hon'ble High Court in last but one Para observed which is being reproduced as under :-

"it is the finding of fact given by the Tribunal that the assessee has produced relevant material and offered explanations in pursuance of the notices issued under section 142(1) as well as section 143(2) of the Act and after considering the materials and explanation, the Income-tax Officer has come to a definite conclusion. The Commissioner of Income-tax did not agree with the conclusion reached by the Income-tax Officer. Section 263 of the Act does not empower him to take action on these facts to arrive at the conclusion that the order passed by the Income-tax Officer is erroneous and prejudicial to the interests of the Revenue. Since the material was there on record and the said material was considered by the Income Tax Officer and a particular view was taken, the mere fact that a different view can be taken, should not be the basis for an action under section 263 of the Act and it cannot be held to be justified."

The Assessing Officer made proper enquiry hence not covered under u/s 263 of the I.T. Act. This fact is subject to verification from the assessment record.

I also want to draw your kind attention toward the fact that if the two views are there and out of that the view has been taken by the Income-tax Officer in that case revision is not permissible. Your kind attention is invited towards 243 ITR Page 83 and 105 ITR Page 212,253 ITR Page 645. Your kind attention is also invited towards the case of Ram Dayal Kalla Vis I.T.O. reported in 32 Tax Word, 18. The Hon'ble Jodhpur Tribunal held that matter cannot be reexamined U/S 263. For your ready reference the head line of the Journal is being reproduced bereunder:-

"1. Whether the section 263 can be invoked, for re- examination in the matter? - Held No Whether the provisions of section 263 can be invoked and Tribunal corrective or has reviewed the subordinate's order in exercise of supervisory powers? - Held No."

The case decided by the Hon'ble Tribunal having almost identical facts, therefore, the judgment of the Jurisdictional Tribunal is binding too also. You will therefore, observed that the order passed by the Income Tax Officer is not prejudicial in the interest of revenue. Your Kind attention is further invited towards the judgment of the jurisdictional High Court reported in 198 CTR pages 546 Commissioner of Income Tax Vis Ganpat Ram Bishnoi. In this case the Hon'ble Jurisdictional High Court observed which are being reproduced as under:-

"A.O. had not applied hi mind to the various aspect of the matter Once enquiry in fact has been conducted and the A.D. has reached a particular conclusion, Though the reference to such enquiry has not been made in the order of assessment, the invocation of jurisdiction by the CIT is not sustainable Same liable to be set aside."

The ratio of the judgment is applicable in toto. You are therefore requested that proceeding initiated may kindly be dropped

Your Kind attention is further invited towards the judgment of the jurisdictional High Court reported in 233 ITR page 649- Commissioner of Income Tax Vis Shiv Hari Madhu Sudan. In this case the Hon'ble Jurisdictional High Court observed which are being reproduced as under:-

"To sum-up, I am of the opinion that assessment as made by the Income Tax Officer is in this way has been made by him after conducting the proper enquiry and the Commissioner of income Tax was not justified in setting aside the assessment on the grounds of same, being erroneous, prejudicial of the interest of Revenue."

Your kind attention is further invited towards the case of commissioner of Income Tax V/s Girdhari Lal reported in 258 ITR Page 331 in which the Hon'ble Jurisdictional High Court held that the Assessing officer, after going through the material on record and after considering the fact the case cannot be reviewed.

I further want to draw your attention towards the two orders of the Hon.ble Tribunal delivered in the case of Mr. Dileep Kumar, Suratgarh, and in the case of Mr. Shivalal Choudhary. In these cases also, the Hon'ble Jodhpur Tribunal held that if one view has been taken after raising query and considering the rely, the order of the Assessing Authority cannot be reviewed under the provisions of Section 263 of Income Tax Act.

THE COPY OF NOTICE AND REPLY THEREOF ARE BEING ALSO ENCLOSED, FROM WHOM THE FACT CAN BE VERIFIED THAT RATIO OF ABOVE ORDERS ARE APPLICABLE.

In case of the assessee the Assessing Officer exercise quash judicial power vested in him and if he exercise such power in accordance with law and arrives as a conclusion, such conclusion cannot be termed to be erroneous simply because you are not feel satisfied with the conclusion of the assessing officer.

Without prejudice I want to submit that the notice issued by your good self is nothing but a change of opinion and on account of change of opinion no action u/s 263 of the IT Act is permissible. The A.O. rightly took one view which is out of two view. In these fact and circumstance with due respect the action taken by you is not in accordance with the law. I want to rely upon the following judgment.

Laxmi Narayan v. CIT (2018) 402 ITR 117/(2019) 306 CTR 361 (Raj) (HC) Shraavan lal Meena L/H of Late Bhagwanta Meena v. ITO (2018) 402 ITR 117 /(2019) 306 CTR 361 (Raj) Mahadev Balaji v. ITO (2018) 402 ITR 117/(2019) 306 CTR 361 (Raj) (HC) (HC)

In view of above mentioned facts and circumstances you will observe

that the order passed by the Income-tax Officer is neither erroneous nor prejudicial to the interest of revenue. The order passed is perfectly in order which has been passed by the Assessing Officer by taking his own correct legal view.

With due respect the condition as laid down in the provisions as well as judicial pronouncement is very clear that the case of the assessee is not covered under U/S 263 of LT.Act as alleged. It is therefore requested that the proceeding initiated may kindly be drop.

It will be worthwhile to submit here that the above judgment referred in support of contention is having the nature of binding judgment/order. You are therefore humbly requested that following the binding nature judgment proceeding may kindly be drop.

Lastly I want to draw your attention towards the observation of your good self in the notice" इस प्रकार उपरोक्त विवेचना के अनुसार निर्धारण अधिकारी द्वारा अन्वेषण रिपोर्ट के तथ्यों पर न तो कोई जांच की गई और न ही उस पर किसी प्रकार का ध्यान दिया गया जो कि निर्धारण अधिकारी से ऐसा करना अपेक्षित है।", I want to submit that same is even without verifying from the assessment record. The assessing officer completed the assessment after considering all reason, fact as well as reply and document available in the record. Hence with due respect same is not correct.

It is therefore humbly prayed that proceedings initiated may kindly be dropped.

It is also submitted that this submission may kindly be consider as reply as written submission of your notice.

Hope you will consider the request and drop the proceedings.

Thanking you"

6.1 To support the various contentions so raised in the written submission and in support of the oral arguments, a paper book filed containing following documents/ records:

S. No.	Particulars	Page No.
1	Copy of show cause notice issued u/s 263 of the Act	1-3
2	Copy of reply in response to show cause notice	4-19
3	Copy of ITR	20
4	Copy of query letter issued u/s 142(1) of the Act	21
5	Copy of reply with supporting documents were furnished to Id. AO in response to notice issued u/s 142(1)	22-23

6.2 The Id. AR of the assessee argued that the action of the Id. PCIT is incorrect, once the case of the assessee was re-opened on the issue

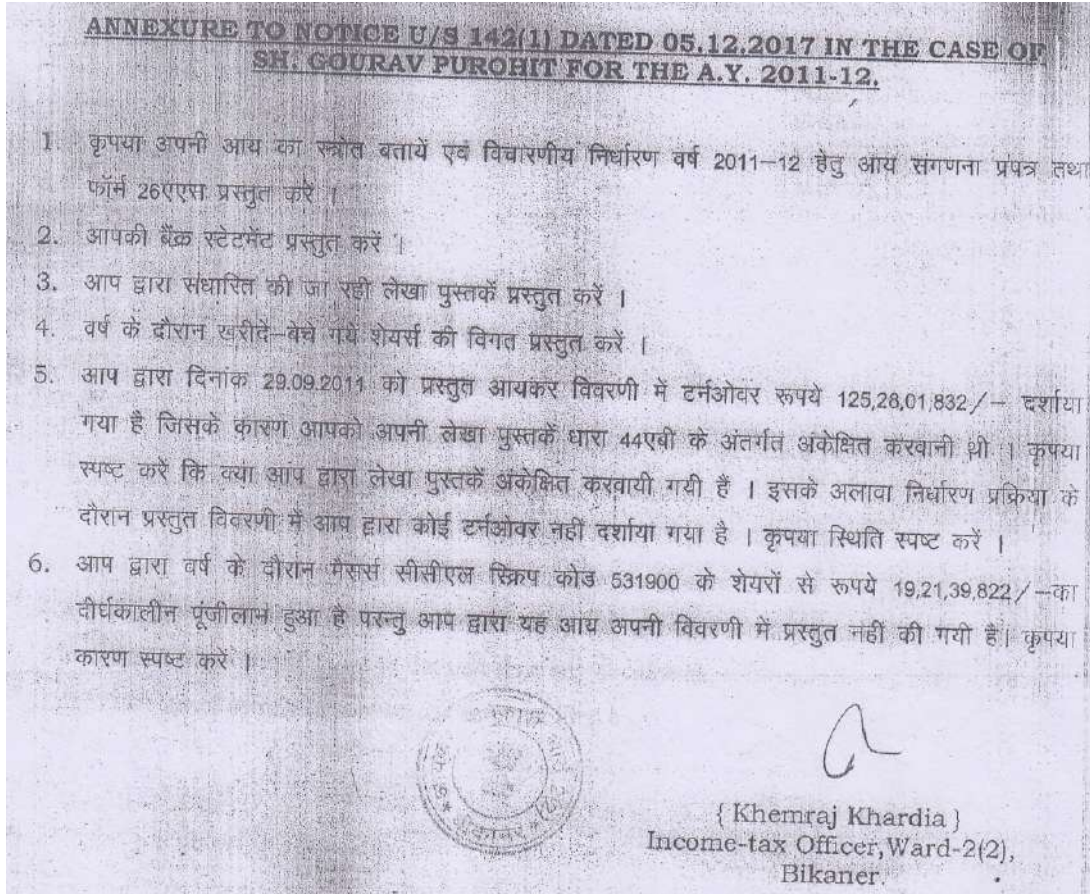
which of third party information and the Id. AO has completed the assessment after recording the reasons and again on the same very issue the invoking of the provision of 263 is not correct and the order of the 263 is thus on the is not in accordance with the law and is required to be quashed as it is nothing but a change of opinion and the Id. PCIT intend to conduct the inquiry again as per his way. Such observation of the Id. PCIT is incorrect and thus the twin condition as per the provision of section 263 is not met with. To drive home to this contention the Id. AR of the assessee relied upon the judgment of coordinate bench in the case of Aishwarya Rai Bachchan vs. Pr. CIT, Mumbai in ITA No. 754/Mum/2021 dated 25/02/2022.

7. Per contra, the Id. DR relied upon the detailed finding recorded in the order of the Id. PCIT and vehemently argued that considering the explanation (2) of section 263 of the Act and considering the decisions relied upon by the Id. PCIT the order of the PCIT well-reasoned order and same should sustained.

8. We have heard the rival contentions and perused the material placed on record and also gone through the decision relied upon both the parties. The bench noted that the case of the assessee was re-opened considering the provisions of section 147 of the Act as there

were 3<sup>rd</sup> party information in the case of the assessee and to verify those transactions undertaken in the PAN number of the assessee.

8.1 Pursuant to that re-opened assessment proceedings, the assessee participated. The bench noted that the Id. AO has vide his notice dated 05.12.2017 raised question no. 5 & 6 to the assessee. The contention of the questions raised reads as under:



8.2 The assessee vide his reply to the said notice explained on the issue and also explained as to why the audit is also not required to be

carried out. He has supported his contention by submitting the details which the Id. AO has verified and passed assessment order on 14.12.2017 considering the explanation of the assessee wherein the Id. AO has recorded his satisfaction and the same is reiterated herein below:

विचारणीयवर्षमेंकरदाताकीआयकास्त्रोतशेयरट्रेडिंगव्यवसायसेप्राप्तकमीशनसेहै।निर्धारणप्रक्रियाकेदौरानजारीप्रश्नावलीकीअनुपालनामेंकरदाताकेअधिकृतप्रतिनिधिद्वाराबतायागयाकिवास्तवमेंकरदाताद्वारादूसरेव्यक्तियोंकेबिहाफपरअपनेखातेमेंशेयरट्रेडिंगकीगयीहैजिससेउसेकमीशनकीप्राप्तिहुईहै।करदाताद्वाराअपनीआयकेसमर्थनमेंआवश्यकप्रमाणप्रस्तुतकरदियेहैं,  
अतःमामलेकेतथ्योंकेआलोकमेंअधिकृतप्रतिनिधिसेविचार-विमर्शकेउपरान्तविवरणीमेंप्रदर्शितआयस्वीकारकीजातीहै।

The fact that the assessee has on being asked clearly explained the nature and details of the transaction by submitting the necessary evidence and the content of the reply is also filed in the assessee's paper book page 22-23 and the revenue did not contradict the figure which the assessee has replied, and the figures referred in the notice of the PCIT. Thus, it is clear that the Id. AO raised the issue, asked for the details and applied his mind while passing the assessment order. Even in the proceeding u/s. 263 the Id. PCIT did not bring anything on record that how the order of the Id. AO is erroneous and prejudicial to the interest of the revenue what material he relied?, He relied on the same material on which the Id. AO has already applied his mind. In the proceeding before the Id. PCIT the assessee in his reply submitted the

profit / loss derived by the assessee and the figures reported in the PCIT notice is same in the assessment order and in the reply to the assessee. On issue no. 1 the Id. PCIT noted that “ *The AO accepted the version of the assessee without properly examining and verifying the ITS details with transactions in the ledger account maintained by the broker and from the bank statement.*”, and on issue no. 2 he observed that “ *The AO is directed to verify the sales from the ledger account in the books of broker and from the BSE/NSE. As regards claim of the assessee in respect of transactions carried out by other parties by utilizing the PAN of the assessee, the AO is directed to carry out necessary verifications from such other parties and from BSE/NSE.* Thus, the bench noted that on both the issue the Id. PCIT has not pointed that how the order is erroneous and prejudicial to the interest of the revenue. He merely aims to make inquiry as per his will and wishes which could have been done at the time of assessment proceeding as per the supervisor power vested and for that again and again same exercise cannot be done on the assessee. The law does not permit for change of opinion, when the Id. AO on both the issues raised the questions and considered the explanation of the assessee and assessment was completed. The assessee has relied upon a query letter issued by the Id. AO at page 21 wherein the contention so raised by the Id. PCIT has been examined



vide annexure to the notice dated 05.12.2017. The assessee has vide his reply given at page 22 of the paper book submitted the details and it is clear that the issue raised by the Id. PCIT has been examined by the Id. AO in the reassessment proceeding. Therefore, we find force in the arguments of the assessee that on the same observation and issue the Id. PCIT cannot direct to make the enquiry what he deem fit. To drive home to this contention the Id. AR of the assessee relied upon the observation of ITAT, Mumbai Bench in the case of Aishwarya Rai Bachchan vs. PCIT, Mumbai dated 25/02/2022 as under:-

“4.1. One more excruciating fact that needs to be addressed in the instant case is that the Id. PCIT herein is only seeking to revise the order passed by the Id. AO u/s.143(3) r.w.s. 147 of the Act dated 12/12/2018. In the said re-assessment proceedings, the Id. AO had not even made any addition despite the fact that he had reason to believe that income of Rs.11,55,330/- had escaped assessment in the hands of the assessee which was sought to be taxed u/s.56 of the Act as per the reasons recorded. Hence, when the very basis of reasons recorded by the Id. AO was ultimately not added by the Id. AO in the re-assessment proceedings, then the primary reason to believe that income of the assessee had escaped assessment fails and such re-assessment cannot be treated as a valid order in the eyes of law. The same is to be declared as void ab initio. Reliance in this regard was rightly placed on the decision of the Hon'ble Jurisdictional High Court in the case of Jet Airways reported in 331 ITR 236. When an assessment framed by the Id. AO is unsustainable in the eyes of law, the said invalid and illegal order cannot be subject matter of section 263 proceedings. On this count also, the revision order passed by the Id. PCIT u/s.263 of the Act deserves to be quashed.

4.2. In view of the aforesaid observations, we have no hesitation in quashing the revision order passed by the Id. PCIT u/s.263 of the Act for more than one reason as detailed supra. Accordingly, the grounds raised by the assessee are allowed.”

Considering the above discussion so recorded on facts and respectfully following above findings of the Co-ordinate Bench we considered the grounds raised by the assessee and we quash the order of the Id. PCIT as the same is not in accordance with the provision of section 263 of the Act.

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

Order pronounced in the open court on 02.01.2024

Sd/-

(Dr. S. Seethalakshmi)  
Judicial Member

Sd/-

(Rathod Kamlesh Jayantbhai)  
Accountant Member

Ganesh Kumar, PS  
(On Tour)

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By order

		Date	Initial	
1.	Draft dictated on			Sr.PS/PS
2.	Draft placed before author			Sr.PS/PS
3.	Draft proposed & placed before the Second Member			JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr. P.S./P.S.			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8.	Date on which file goes to the Head Clerk			
9.	Date on which file goes to the AR			
10.	Date of dispatch of Order			