

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'E': NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER**

**AND**

**SHRI AMITABH SHUKLA, ACCOUNTNAT MEMBER**

**ITA No.3532/DEL/2025  
[Assessment Year: 2021-22]**

Amazon Retail India Private Limited, Block E, 14 <sup>th</sup> Floor, Unit No.1401 to 1421 International Trade Tower, Nehru Place, South Delhi, New Delhi-110019	Vs	Principal Commissioner of Income Tax, Delhi-1, C.R. Building, ITO, I.P. Estate, New Delhi-110002
<b>PAN-AAPCA6346P</b>		
Assessee		Revenue

Assessee by	Shri Ajay Vohra, Sr. Advocate & Mrs. Deepashree Rao, Advocate, Ms. Ayushu Pragya, Advocate
Revenue by	Ms. Amish S Gupt, CIT-DR

<b>Date of Hearing</b>	<b>20.01.2026</b>
<b>Date of Pronouncement</b>	<b>17.04.2026</b>

**ORDER**

**PER AMITABH SHUKLA, AM,**

This appeal filed by the assessee is against order dated 28.03.2025 of the Learned Principal Commissioner of Income Tax, Delhi-1 [hereinafter referred to as 'ld. PCIT] arising out of assessment order dated 2012-2022 passed u/s 143(3) of the Income Tax Act, 1961 pertaining to Assessment Year 2021-22. The word 'Act' herein this order would mean Income Tax Act, 1961.

2. The assessee has raised following grounds of appeal:-

1. *That on the facts and circumstances of the case and in law, the order dated 28.03.2025, passed by the Principal Commissioner of Income Tax, Delhi ['PCIT'], under section 263 of the Income Tax Act, 1961 ('the Act) is without jurisdiction, illegal, bad in law, void ab initio and liable to be quashed.*

2. *That the PCIT erred in invoking revisionary jurisdiction under section 263 of the Act qua assessment completed by National Faceless Assessment Centre ('NFAC/assessing officer') under section 143(3) read with sections 144C(3) and 144B of the Act, which is a complete code in itself.*

3. *That on the facts and circumstances of the case, the impugned order having been passed by the PCIT in undue haste without: (a) considering the submissions filed, and (b) first disposing off the legal objections by passing a separate speaking order, and (c) providing a reasonable opportunity of being heard, is illegal, bad in law and liable to be quashed set aside.*

4. *That the PCIT erred on facts and in law in exercising revisionary powers under section 263 of the Act on various issues in the impugned order, without satisfying the twin jurisdictional conditions of the assessment order being: (a) erroneous; and (b) prejudicial to the interests of the Revenue and consequently, the impugned order is illegal, bad in law and liable to be quashed.*

5. *That the order passed by the PCIT under section 263 setting aside the assessment order and directing the assessing officer to make de-novo assessment qua certain issues [referred to in paras 5 to 7 of the order] after making fresh enquiries is, in the absence of any finding on merits demonstrating how and why the assessment order was erroneous, invalid and bad in law.*

6. *That the PCIT failed to appreciate that revisionary proceedings under section 263 of the Act could not be initiated merely to: (a) conduct vague/ roving enquiries; or (b) authorize the assessing officer to again conduct roving fishing enquiries, by merely setting aside the assessment.*

7. *That the PCIT erred in holding that the AO failed to make necessary enquiries, which could be subjected to revisionary jurisdiction in terms of Explanation 2 to section 263 of the Act.*

**Qua Disproportionate increase in certain expenses debited to profit and loss:**

8. That on the facts and circumstances of the case and in law, the exercise of revisionary jurisdiction by the PCIT under section 263 qua each of the following issues [collectively referred as "allowability of expenses"] is without jurisdiction and bad in law:

(i) the nature and genuineness of expenses falling under various heads viz. Outsourced professional fees, Platform selling fees, Miscellaneous expenses and Legal and professional fees,

(ii) disproportionate increase in aforesaid expenses vis-à-vis the increase in revenue as compared to the preceding year.

8.1. Without prejudice, that the PCIT erred in issuing vague/open ended directions to the assessing officer to examine the aforesaid issue of allowability of expenses' [refer ground No.8 supra].

8.2. That the PCIT failed to appreciate that expenses were duly examined and accepted in the original assessment order after due application of mind and after undertaking adequate inquiries/investigation, wherever and to the extent deemed fit and appropriate by the assessing officer.

**Qua huge payments made to persons specified under section 40A(2) of the Act**

9. That on the facts and circumstances of the case and in law, the exercise of revisionary jurisdiction by the PCIT under section 263 qua each of the following issues [collectively referred as "payment to related parties"] is without jurisdiction and bad in law:

(i) nature and details of expenses falling under various heads viz., Delivery charges, Facilities operation expenses, Interco commission expenses, reimbursement of expenses;

(ii) the business need behind such payments and applicability of provisions of section 40A(2) thereon.

9.1 Without prejudice, the PCIT erred in issuing vague/open ended directions to the assessing officer to examine the aforesaid issue of 'payment to related parties' [refer ground No.9 supra].

*That the PCIT failed to appreciate that expenses were duly examined and accepted in the original assessment order after due application of mind and after undertaking adequate inquiries/ investigation, wherever and to the extent deemed fit and appropriate by the assessing officer.*

**Qua disallowance under section 40(a)(ia) of the Act**

*10. That on the facts and circumstances of the case and in law, the exercise of revisionary jurisdiction by the PCIT under section 263 on the issue of disallowance of various expenses under section 40(a)(ia) of the Act, is without jurisdiction and bad in law.*

*10.1 Without prejudice, the PCIT erred in issuing vague/ open ended directions to the assessing officer to examine the aforesaid issue of disallowance under section 40(a)(ia) of the Act.*

*10.2 That the PCIT failed to appreciate that the aforesaid issue was duly examined and accepted in the original assessment order after due application of mind and after undertaking adequate inquiries/ investigation, wherever and to the extent deemed fit and appropriate by the assessing officer.*

*10.3 That the PCIT erred in alleging that tax has been deducted at less than specified rates in certain cases without appreciating that specified rates for deduction of tax were reduced by 25% in respect of payments to residents for the period 14th May, 2020 to 31st March, 2021 as per the relaxation provided by the CBDT during Covid period.*

3. The principal issue contested by the appellant assessee through the above grounds of appeal is regarding the invocation of revisionary proceedings under section 263 of the Act with respect to his order dated 28.03.2025 passed by the Id. AO in the case of the assessee for AY 2021-22 through order dated 28.03.2025. The Id. Counsel fiercely argued towards the non-maintainability of the impugned revisionary order u/s 263 dated 28.03.2025.

4. At this stage, we deem it necessary to briefly extract the factual matrix of the case. Return of Income declaring loss of Rs.6,39,73,78,980/- was filed by the

assessee are 25.02.2022. The assessee company is engaged in the business of retail trading of food products. The assessing officer passed order under section 143(3) on 20.12.2022 accepting the returned loss of Rs.6,39,73,78,980/-. For the purposes of clarity, the order of the ld. AO is reproduced hereunder:-

*“1. The case of the assessee was selected for Complete Scrutiny under the Faceless Assessment Scheme to verify following issue:-*

*Very Low PBDIT ratio in specific business code and turnover range where deficiency is reported in audit report.*

*2. The return of income for the assessment year 2021-22 was e-filed by the assessee vide Ack. No :257576250250222on 25.02.2022 declaring its total income at loss of Rs. 6,39,73,78,980/-. The return of income was processed u/s 143(1) of the Income Tax Act, 1961 [hereinafter referred to as ‘the Act’]. Subsequently, the case was selected for Complete Scrutiny through CASS and accordingly, statutory notice u/s.143(2) of the Act dated 28.06.2022 was issued and duly served upon the assessee within the stipulated time.*

*The assessee is engaged in the business of retail trading of food products.*

*3. Details of opportunities given:*

<i>Type notice/ communication</i>	<i>Date notice/ communication</i>	<i>Date of compliance given</i>	<i>Response of the assessee received/ not received</i>	<i>Date of response if received</i>	<i>Response</i>
<i>Notice U/s. 143(2) of the Act</i>	<i>28.06.2022</i>	<i>13.07.2022</i>	<i>Received</i>	<i>13.07.2022</i>	<i>Part</i>
<i>Notice u/s. 142(1) of the Act</i>	<i>08.08.2022</i>	<i>23.08.2022</i>	<i>Received</i>	<i>23.08.2022</i>	<i>Part</i>
<i>Notice u/s. 142(1) of the Act</i>	<i>19.10.2022</i>	<i>27.10.2022</i>	<i>Received</i>	<i>27.10.2022</i>	<i>Part</i>
<i>Notice u/s. 142(1) of the Act</i>	<i>05.12.2022</i>	<i>08.12.2022</i>	<i>Received</i>	<i>08.12.2022</i>	<i>Part</i>

<i>Notice u/s. 142(1) of the Act</i>	<i>09.12.2022</i>	<i>12.12.2022</i>	<i>Received</i>	<i>12.12.2022</i>	<i>Full</i>
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4. Thereafter, notices u/s 142(1) of the Act were issued on 08.08.2022, 19.10.2022, 05.12.2022 & 09.12.2022 alongwith questionnaire asking the assessee to file relevant details for verification. In response to the statutory notices, the assessee has filed details on various dates.

5. After considering all facts and material available on record, the assessment is completed on returned income and the income of the assessee is computed as under:-

<i>Sl No</i>	<i>Description</i>	<i>Amount (in INR)</i>
<i>1</i>	<i>Income as per Return of Income filed</i>	<i>(-)6,39,73,78,980/-</i>
<i>2</i>	<i>Income Computed u/s. 154 of the Act dated 20.10.2022</i>	<i>(-)6,39,78,38,901/-</i>
<i>3</i>	<i>Total loss determined</i>	<i>(-)6,39,78,38,901/-</i>

6. Assessment Order u/s 143(3) r.w.s. 144B of the Act is passed accordingly. The computation sheet and demand notice U/s 156 of the Act is issued accordingly which is part of this order. Charge interest u/s. 234A, 234B, 234C and 234D, if applicable as per the Act.”

5. Thereafter, the Id. PCIT -1 Delhi concluded through his order dated 28.03.2025 that the impugned order dated 20.12.2022 was, within the meanings of section 263 of the Act, erroneous in so far as it was prejudicial to the interest of Revenue. The Id. PCIT held that within the meanings of clause-(a) of Explanation-2 of section 263, the Id. AO did not conduct necessary enquiries before accepting the returned loss and hence the assessment order fell within the mischief of revisionary proceedings of the impugned section. Records indicate that the Id. PCIT concluded as under on pages 44 to 46 of his order:-

**“.....9. In view of above discussion, it is found that the assessment order passed by the A.O. u/s 143(3) read with section 144B of the Income tax Act dated 20.12.2022 is erroneous and prejudicial to the interest of the revenue ON THE ISSUES HIGHLIGHTED ABOVE IN PARA 5, 6 and 7. The AO is directed to deeply enquire into the issues highlighted in PARA 5, 6 and 7.**

**As regard issues highlighted in para 5:**

*AO is required to examine this issue, as already highlighted in para 5.3 above. The expenses claimed under the heads: Outsourced professional fees, Platform selling fees, Miscellaneous expenses and Legal and professional fees are required to be examined from the point of view of their Disproportionate increase during the A.Y. under consideration, as compared to preceding A.Y., as the corresponding increase in turnover has not been observed. The A.Y. under consideration, ie. A.Y. 2021-22 is the very first year in which assessee's case was picked up for scrutiny. Under these circumstances, it is required that AO ascertains the genuineness of all these expenses debited to P & L A/c. Also, whether the parties to whom these expenses/payments was made was genuine or not, and also examine these expenses from the point of views of u/s 40A(2) of the Income Tax Act, 1961.*

**As regard issues highlighted in para 6:**

*AO is required to examine this issue, as already highlighted in para 6.3 above. The expenses made under the heads, Delivery charges, Facilities operations expenses, Interco commission expenses, such expenses/payments have been made to persons specified in s.40A(2)(b) of the Act. All these expenses are required to be deeply examined and wherever it is observed that have been paid above the arms length, ie. excessive or unreasonable payment has been made to these related parties, necessary additions to the total income of the assessee is required to be made in accordance with the provisions of s.40A(2)(b) of the Act. For this purpose, the terms of contracts with these related parties and the business need of such transactions is required to be examined. The amount of expenses claimed in the preceding years, under these heads of expenses, is also required to be studied, whether there has been any Disproportionate increase during the A.Y. under consideration, as compared to preceding A.Y., in comparison to the turnover.*

*Reimbursement of amt paid by related parties : Rs. 463.63 Crores:*

*The genuineness of Payments made to the persons specified under section 40A(2)(b), that is Reimbursement of amounts paid by the related parties on behalf of the company to the tune of Rs. 463.64 Crores, is required to be deeply examined. If there is any abnormality is found, which indicates that the provisions of TDS has been violated under any circumstances, such as, if the same expenses would have been incurred by the assessee company directly, whether the TDS provisions would have been applicable in the hands of the company, which could not be applied since these expenses were in the nature or reimbursement, the AO has to make necessary additions in accordance with the provisions of s.40(i) or 40(a)(ia), as the case may be.*

***As regard issues highlighted in para 7:***

*This issue has been discussed above in para 7 and specifically para 7.6 above. Various paras from 7.1.and 7.5. provide specific instances for sample purposes, all extracted from the assessee's own submissions before AO during assessment proceedings, that in many cases, complete details were already available before AO, that the assessee has deducted TDS at less than the specified rate, without specifying any reasons as to why the TDS was deducted at less than the specified rate, however AO has not made any disallowances u/s 40a(ia) of the Act. Besides, the complete details were also available before AO that the in many cases, the assessee had deducted TDS at less than the specified rate, submitting the lower TDS deduction certificate was available, but the relevant evidences (lower deduction certificates) were not submitted by the assessee, still, without bringing necessary evidence on record, AO has allowed the claim of expenses and has not made any disallowances u/s 40a(ia) of the Act.*

*In light of the provisions of Section 263 of the I T Act, the said assessment order is set aside and the Assessing Officer is directed to pass a fresh assessment order de novo, after making all necessary enquiries as directed above. The assessee will be at liberty to adduce the relevant evidence/material before the Assessing Officer at the time of de novo assessment in consequence to this order and the Assessing Officer shall allow the assessee adequate opportunity of being heard and to make relevant submissions.*

*In this regard, it is noted that the written submissions and paper books filed by the assessee during the course of these proceedings u/s 263 are part of record. The AO, while conducting assessment proceedings in consequence to this order, is expected to take into consideration the various written submissions and paper books filed by the assessee during the course of these proceedings u/s 263, which are already available on record. Accordingly, AO may call the further details, as required, from the assessee, in accordance with the directions imparted to AO.”*

6. We have heard rival submissions in the light of material available on records. The statutory prescription contained in section 143(2),(3) and section 263 of the Act which is seminal to the controversy, read as under:-

**Provisions of section 143(2) and 143(3)**

“ .....

*143(2) where a return has been furnished under section 139, or in response to a notice under sub-section -1 of section 142, the assessing officer or the prescribed income tax authority as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the assessing officer or to produce or cause to be produced before the assessing officer any evidence on which the assessee may rely in support of the return.*

.....

.....

*(3) On the day specified in the notice under sub-section-(2) or as soon as afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing officer shall by an order in writing, make an assessment of the total income or loss of the assessee.....”.*

**Provisions of section 263**

*“....263. (1) The [Principal Chief Commissioner or Chief Commissioner or 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 [or the Transfer Pricing Officer, as the case may be,] 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,-*

*(1) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or*

*(ii) an order modifying the order under section 92CA; or*

*(iii) an order cancelling the order under section 92CA and directing a fresh*

*order under the said section].*

*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 [or the Transfer Pricing Officer, as the case may be,] 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 for the Transfer Pricing Officer, as the case may be,] 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;*

*[(iii) an order under section 92CA by the Transfer Pricing Officer;]*

*(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 Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner;*

(c) where any order referred to in this sub-section and passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] 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 [or the Transfer Pricing Officer, as the case may be,] 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 Chief Commissioner or Chief Commissioner or 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.

*Explanation 3.*-For the purposes of this section, "Transfer Pricing Officer" shall have the same meaning as assigned to it in the Explanation to section 92CA.]

(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, 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.....”*

7. The Id. Counsel for the assessee, Shri Ajay Vohra, Sr. Advocate, vehemently argued in favour of the order of the Id. Assessing Officer. while assailing invocation of revisionary proceedings by the Id. PCIT-1, Delhi, the Id. Counsel has filed a voluminous paper book. The principal argument taken by the Id. Counsel is that the presumption drawn by Id. PCIT of no enquiry having being done by the Id. AO and thus making the impugned assessment order erroneous in so far as it is prejudicial to the interest of the Revenue and consequent invocation of proceeding under section 263, is patently wrong. Citing references to its paper book, it was contended that the Id. AO had issued notices requiring the appellant assessee to furnish varied details and which were complied. It was submitted that the said requisition of details and submissions from the assessee and the consequent acceptance of returned income alludes towards the hypothesis of necessary enquiries done by the AO so as to preclude the assessment order from the clutches of clause (a) of Explanation-2 of section 263. In support of his submissions, Shri Vohra, has relied a catena of judicial pronouncements of this Tribunal, Hon'ble High Courts including jurisdictional High Courts and the Hon'ble Apex Court stated to be in his favour. It was contended that the assessment order does not meets the twin conditions of being both erroneous as well as prejudicial to the interest of the Revneue and hence the invocation of section 263 in its case is incorrect.

8. The Id. CIT-DR, Ms. Amish S Gupt, vociferously argued in favour of the order under section 263. Referring to the assessment order, she argued that the complete Scrutiny proceedings were initiated in this case with the specific purpose of verifying the low PBDIT ratio and turnover range deficiency reported in the tax audit report. She argued that the AO had this clear mandate which it failed to comply. In support of her contentions, she referred to the assessment order extracted hereinabove. It was stated that the sketchy and cryptic assessment order has been passed without any application of mind and thus reinforcing the presumption of an order passed without requisite and necessary verification and enquiries. It was thus argued that consequently the Id. PCIT-1, Delhi, was well within his statutory rights to have invoked his revisionary powers u/s 263 while concluding that the impugned assessment order is erroneous in so far as it is prejudicial to the interest of the Revenue.

9. The moot point in the present case is as to whether while passing the impugned assessment order, the Id. AO has failed to conduct necessary enquiries so as to make his order liable for being labelled as erroneous in so far as it is prejudicial to the interest of the Revenue. On the issue of the word inquiry and verification we note that as per Black's Law Dictionary (11th edition) the word inquiry means "a question someone asks to elicit information; query <several inquiries about the new regulation>. The act or process of posing questions to elicit information. Further, the word verification (verb) is stated to mean "To

prove to be true; to confirm or establish the truth or truthfulness of; to authenticate to confirm or substantiate by oath or affidavit; to swear to the truth of". This brings us as to whether the enquiries or verification of the above nature were conducted in this case so as to justify the act of Id. PCIT-1, New Delhi, that the order of AO is passed without making inquiries or verifications which should have been made or the order has been passed allowing any relief without inquiring into the claim. Needless to say, that the PCIT has to be judicious and fair while forming the opinion. The opinion must be based on the overall facts of the case, the foundation of which would be return of income filed, balance sheet, P&L A/c and the comments and observations of the auditors and the overall scheme of the Income Tax Act within which the provision of various sections including 142(1), 143(2), 143(3), 133(6) etc. need to be harmoniously understood.

10. We have considered the exchange of communication between the Id. Assessing Officer and the assessee made during the assessment proceedings, copies of which have been placed in the paper book of the appellant assessee. From the very perusal of the same, it transpires that the Id. AO is largely soliciting generalized information and which were complied. We have noted that the Id. AO initiated his enquiries between the period August, 2022 to December, 2022, in which he issued basically just three query letters. The fact of the matter however remains that there is nothing on records to suggest that the Id. AO had

conducted any enquiry or verification in the details provided by the assessee. It's a clear case of ld. AO primarily soliciting information from the taxpayer and placing the same on records without committing any enquiries with the assessee and or any third parties. Thus, the ld. AO has primarily accepted the information provided by the assessee on its face value qua its correction. The presumption raised by the ld. PCIT-1, Delhi of no enquiry been made by the ld. AO before passing the assessment order is thus found to be not unwarranted.

11. We have noted that Hon'ble jurisdictional High Court in the case of Clix Finance in ITA No.1428/Del/2018 have observed that inadequate enquiry by the AO in respect to claims made by the taxpayer would be a justify ground for invocation of revisionary powers under section 263 by the revenue authorities. The Hon'ble High Court of Himachal Pradesh in its decision in the case of Vir Bhadra Singh (HUF) 86 taxmann.com 113 while deciding the failure on the part of the AO to pursue a line of enquiry, which should have been done, has gone further to hold that 'any enquiry without application of mind is nonest'. The Hon'ble Bombay High Court in their decision in the case of Jeevan Investment & Finance 88 taxmann.com 552 has held that merely asking a question and without conducting any further enquiry constitutes a case of non-enquiry. Further, Hon'ble Bombay High court in the case of Vedanta Ltd[2021] 124 taxmann.com 435 has held that "Where assessment was completed without proper inquiries, Commissioner was competent to invoke revisional jurisdiction

and direct Assessing Officer for fresh assessment. We have further noted that Hon'ble Kolkata High Court in the case of Swati Bajaj 139 taxmann.com 352 has elaborately expounded the revisionary law under section 263. It was held that an enquiry which ought to have been made in a particular manner and was not conducted accordingly would constitute a case of non-enquiry.

12. We have noted the decision of Hon'ble Supreme court in the case of CIT VS Paville Projects (P.) Ltd [2023] 149 taxmann.com 115 wherein it is held as under:

*"7. In the present case, the Commissioner, in exercise of the powers under section 263 of the Income-tax Act and in exercise of the revisional jurisdiction, set aside the assessment order by specifically observing that the assessment order was erroneous as well as prejudicial to the interest of the Revenue. However, the High Court by the impugned judgment and order has set aside the order passed by the Commissioner by observing that the Commissioner wrongly invoked the powers under section 263 of the Act.*

*7.1 Learned counsel appearing on behalf of the assessee has heavily relied upon the decision of this Court in the case of Malabar Industrial Co. Ltd. (supra). It is true that in the said decision and on interpretation of Section 263 of the Income-tax Act, it is observed and held that in order to exercise the jurisdiction under section 263(1) of the Income-tax Act, the Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. It is further observed that if one of them is absent, recourse cannot be had to section 263(1) of the Act. "What can be said to be prejudicial to the interest of the Revenue" has been dealt with and considered in paragraphs 8 to 10 in the case of Malabar Industrial Co. Ltd. (supra), which are as under:—*

*"8. 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 High Court of Calcutta in DawjeeDadabhoy& Co. v. S.P. Jain [(1957) 31 ITR 872 (Cal)] , the High Court of Karnataka in CIT v. T. Narayana Pai [(1975) 98 ITR 422 (Kant)] , the High Court of Bombay in CIT v. Gabriel India Ltd. [(1993) 203 ITR 108 (Bom)] and the High Court of Gujarat in*

*CIT v. Minalben S. Parikh [(1995) 215 ITR 81 (Guj)] treated loss of tax as prejudicial to the interests of the Revenue.*

9. *Mr Abraham relied on the judgment of the Division Bench of the High Court of Madras in Venkatakrishna Rice Co. v. CIT [(1987) 163 ITR 129 (Mad)] interpreting "prejudicial to the interests of the Revenue". The High Court held:*

*"In this context, (it must) be regarded as involving a conception of acts or orders which are subversive of the administration of revenue. There must be some grievous error in the order passed by the Income-tax Officer, which might set a bad trend or pattern for similar assessments, which on a broad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue Administration."*

*In our view this interpretation is too narrow to merit acceptance. 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.*

10. *The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income- tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue. (See Rampyari Devi Saraogi v. CIT [(1968) 67 ITR 84 (SC)] and in Tara Devi Aggarwal v. CIT [ (1973) 3 SCC 482 : 1973 SCC (Tax) 318 : (1973) 88 ITR 323].)"*

7.2 *Thus, even as observed in paragraph 9 by this Court in the case of Malabar Industrial Co. Ltd. (supra) that 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. It is further observed that 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. However, only in a case where two views are possible and the Assessing Officer has adopted one view, such a decision,*

*which might be plausible and it has resulted in loss of Revenue, such an order is not revisable under section 263.*

*7.3 Applying the law laid down by this Court in the case of Malabar Industrial Co. Ltd. (supra) to the facts of the case on hand and even as observed by the Commissioner, the order passed by the Assessing Officer is erroneous as well as prejudicial to the interest of the Revenue. Having gone through the assessment order as well as the order passed by the Commissioner of Income Tax, we are also of the opinion that the assessment order was not only erroneous but prejudicial to the interest of the Revenue also. In the facts and circumstances of the case, it cannot be said that the Commissioner exercised the jurisdiction under section 263 not vested in it. The erroneous assessment order has resulted into loss of the Revenue in the form of tax. Under the Circumstances and in the facts and circumstances of the case narrated hereinabove, the High Court has committed a very serious error in setting aside the order passed by the Commissioner passed in exercise of powers under section 263 of the Income-tax Act.*

*8. In view of the above and for the reasons stated above, present appeal succeeds. The impugned judgment and order passed by the High Court is hereby quashed and set aside and that the order passed by the Commissioner passed in exercise of powers under section 263 of the Income-tax Act is hereby restored.*

*In result, present appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.”*

13. The ld. Counsel before us also took the argument that it had provided all the details to the ld. PCIT, qua questions raised by him and hence no case was made out for invoking action under section 263, we do not find strength in the arguments of the ld. AR considering the decision of Hon’ble Delhi High Court in the case of *Gee Vee Enterprises v. Addl. CIT [1975] 99 ITR 375* as follows:-

*"It is not necessary for the Commissioner to make further inquiries before cancelling the assessment order of the Income- tax Officer. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the case the Income-tax Officer should have made further inquiries before accepting the statements made by the assessee in his return. The reason is obvious. The position and function of the Income-tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of*

*evidence may be adopted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. 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. 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 enquiry. 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."*

14. As regards the argument that the appellant had provided all the details to the AO during assessment proceedings, we have noted the decision in the case of CIT v. Emery Stone Mfg. Co. [1995] 213 ITR 843/83 Taxman 643 (Raj.) delivered by the Hon'ble Rajasthan High Court that omission to hold necessary enquiry resulted in non-application of mind

*"From the assessment order framed under section 143(3) it is clear that the Inspecting Assistant Commissioner has not applied his mind at all and there is no finding in the assessment order regarding the application or non-application of Explanation 3 to section 43(1). The Inspecting Assistant Commissioner having not applied his mind at all and having allowed the depreciation at the enhanced value without considering Explanation 3, the order was prejudicial to the interest of the Revenue. Not only this, the commissioner of Income-tax found that the depreciation has been allowed on land, which is complete non-application of mind and in such a situation the power under Section 263 could be exercised by the Commissioner of Income-tax. On the point as to whether the main purpose of transfer of the assets was to reduce the tax liability or not, the matter could have been decided by the assessing authority after taking into consideration the oral and written evidence. The Commissioner of Income-tax also in such a situation should have set aside the assessment on this point and should have left it to the assessing authority to come to the conclusion whether the main purpose of transfer of the assets was to reduce the tax liability or not. He could have called for the copy of the*

*partnership deed and dissolution deed and could have taken other evidence into consideration. In the absence of any finding recorded by the assessing authority, though the Commissioner of Income-tax has power to record a finding after giving opportunity to the assessee, the proper course for the Commissioner of Income-tax was to set aside the assessment order on that point so that the assessing authority could record his finding whether the transfer of assets was for the purpose of reduction of tax liability by taking into consideration the earlier dissolution deed, new partnership deed, valuation report and other relevant facts including the oral evidence. The Income-tax Appellate Tribunal has come to the conclusion that the Commissioner of Income-tax was not justified in invoking Explanation 3 when the firm was reconstituted after a gap of more than three months with different partners. The gap of three months may or may not be relevant looking to the particular circumstances of a case. Simply because after the dissolution of the firm a new firm was reconstituted after three months, does not mean that the main purpose was not for transfer of assets to reduce the tax liability. The different partners are not outsiders, but family members of the same partner, who was a partner in the earlier firm. It is no doubt true that the burden is on the assessing authority to prove that the main purpose for transfer of the assets was to reduce the tax liability, but he can definitely take into consideration the relevant facts. If the view taken by the Tribunal is accepted as the correct view then the Explanation cannot be invoked in any case, and, therefore, in order to find out whether the Explanation is applicable or not, the entirety of the circumstances has to be taken into consideration and it could not be for one reason or the other. It was a case where the assessing authority has not applied his mind. That was the end of the matter for exercising power under section 263 and, therefore, the matter should have been sent back to the assessing authority for applying his mind to find as to whether the Explanation is applicable or not. The observation of the Tribunal that full facts were brought to the notice of the Inspecting Assistant Commissioner (Assessment) is also not correct inasmuch as after giving statement with regard to the actual cost of the assets and depreciation claimed thereon, the assessing authority was bound to consider the Explanation. Simply because the facts have been disclosed by the assessee, it does not give immunity from revisional jurisdiction which the Commissioner can exercise under section 263 and as such even in a case where the facts have been disclosed by the assessee to the assessing authority and the correct provisions of law have not been examined by the assessing authority, the power under section 263 can be invoked."*

15. We have also noted the decision of the ITAT, Cochin in the case of Shri Narayana Dharam Paripalana Yuvadhana Samiti vs. ITO, Exemption (2019) 111 taxman.com 416 holding that where the AO has taken a wrong decision without considering material available on record or he takes a decision without making inquiry into a matter, where such enquiry was prima facie warranted CIT is empowered to initiate proceedings u/s.263 of I.T. Act. Again, a Co-ordinate Bench of the ITAT, Hyderabad in the case of Smt. S. Umadevi vs. CIT (2015) 62.taxmann.com 64 has held that where AO had passed cryptic, non-speaking order, CIT was justified in invoking jurisdiction u/s. 263 of I.T. Act.

16. We have also considered the arguments qua plausible view vs possible view. True, Hon'ble Courts are unanimous in holding that where two views are possible on issue, the PCIT is not permitted to exercise revisionary powers merely because he holds a contrary view then the one taken by the ld AO. Facts of the present case do not allude towards any such controversy in this case. Here, the ld. AO has not taken any view on the issues available before him for enquiry and examination.

17. Accordingly, we are of the considered view that in the present case the ld. AO did not conduct any enquiry whatsoever to fulfil the mandate given to him while selecting the case of the assessee for complete scrutiny. The ld. AO did not examine or do any verification as to why was assessee incurring losses inspite of doubling its turnover the immediately preceding assessment year.

Justification of expenses which significantly contribute in determining profit ratio were not enquired even though many of them had increased many fold in relation to the immediately preceding assessment year. Thus, the fundamental infirmity in the order of Id. AO is overwhelmingly evidences, so as to bring the impugned assessment order in to the category of an order as being erroneous in so far as it is prejudicial to the interest of the Revenue. Accordingly, we are of the considered view that no case of any interference to the exercise of revisionary authority of PCIT-1, New Delhi, u/s 263 is made out at this stage. We therefore confirm the same and dismiss the appeal of the assessee.

18. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 17<sup>th</sup> April, 2026.

**Sd/-**  
**[SATBEER SINGH GODARA]**  
**JUDICIAL MEMBER**

**Dated:** 17.04.2026

*Shekhar*

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

**Sd/-**  
**[AMITABH SHUKLA]**  
**ACCOUNTANT MEMBER**

Asst. Registrar,  
ITAT, New Delhi,