

Shri Amritpal Singh (Prop), Jalandhar vs Principal Commissioner Of Income Tax- ... on 13 September, 2023

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.

BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A. No. 425/Asr/2019
Assessment Year: 2014-15

Sh. Amritpal Singh Prop. H. S. Vs. PCIT-Central,
Oil Furnace C/o Sh. Sameer Jalandhar.
Bhatia, Adv. 158/2, Guru Teg
Bahadur Nagar, Opposite Mata
Gujri Park Jalandhar. (Respondent)
[PAN:-ABTPS9774K]
(Appellant)

Appellant by	Sh. Sameer Bhatia, Adv.
Respondent by	Sh. Hitendra Bhauraoji Ninawe, CIT DR.

Date of Hearing	30.08.2023
Date of Pronouncement	13.09.2023

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the ld.

Principal Commissioner of Income-1, Jalandhar, (in brevity 'the PCIT') order passed u/s 263 of the Income-tax Act, 1961 (in brevity the Act) for assessment year 2014-15. The impugned order was emanated from the order of ld. ITO Ward-II(1), Jalandhar.

I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15

2. The appeal was filed with delay of 14 days. The assessee filed a condonation petition and explained that the reasonable cause for filing the appeal in delay due to riveting and compelling reasons. The ld. AR further relied on the order of the same bench of the ITAT, Amritsar in case of Sh. Satish Kumar vs. ITO in ITA 105/Asr/2017 date of pronouncement 15.01.2019 for condonation

of delay. In this order, the bench condoned the delay for 80 days.

The ld. DR had not made any strong objection against the condonation of delay.

Accordingly, the delay for 14 days is condoned.

3. The assessee has taken the following grounds:

"1. That in the facts and circumstances of the case and in law, the order passed by worthy PCIT -1 is arbitrary, whimsical, bad in law and deserves to be quashed.

2. That in the facts and circumstances of the case and in law, the order passed by worthy PCIT deserves to be annulled as initiation of Revision Proceedings under section 263 on the basis of proposal received from AO is not valid and void initio.

3. That in the . facts and circumstances of the case & in law, the order passed by learned PCIT deserves to be quashed as the notice issued under section 263 is hyper technical& mechanical in form & substance and there cannot be any lawful basis for the PCIT to step in and I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 take recourse to the provisions of section 263 of the Income Tax Act, 1961.

4. That in the facts and circumstances of the case & in law, the order passed by worthy PCIT is without any meritorious consideration as it is discernible from the order of the learned AO, that the assessee was particularly queried vide order sheet entry dated 23rd November, 2016 to justify its claim of deduction under section 54D of the Act.

5. That in the facts and circumstances of the case & in law, the order passed by worthy PCIT deserves to be quashed as assessee's claim has been rejected without any lawful basis on the strength that only photocopies of the agreements to sell were filed as the original agreements/documents were never requisitioned during the course of section 263 proceedings.

6. That in the facts and circumstances of the case & in law, the order passed by learned PCIT deserves to be annulled as assessee's submission & consequent reliance on Section 110 of the Indian Evidence Act, 1872 and other incidental facts were outrightly rejected without affording any further opportunity of being heard.

7. That in the facts and circumstances of the case, the order passed under section 263 deserves to be quashed as the assessee was provided a time of about less than 24 I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 hours to respond to the SCN issued with specific reference to the events dating back to 19th March, 2019 thereby breaching principles of natural justice.

8. That in the facts and circumstances of the case & in law, the order passed is bad in law as the assessee has lead substantial evidence on record vide its reply dated 25th November, 2016 during the course of assessment proceedings to prove its claim of deduction under section 54D of the Act

9. That in the facts and circumstances of the case & in law, the order passed by worthy PCIT deserves to be quashed as despite insertion of Explanation 2 appended to section 263, the PCIT cannot exercise powers as the explanation cannot override the law interpreted by various courts without conducting an enquiry and recording a finding thereby.

10. That in the facts & circumstances of the case & in law, the order passed by the worthy PCIT deserves to be quashed as the order passed u/s 263 failed to take note of judicial precedents rendered and relied upon by assessee after amendment to the provisions of section 263 of the Act.

11. That in the facts & circumstances of the case & in law, the order passed by the worthy PCIT deserves to be quashed as enquiry even though inadequate by itself does I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 not arm/assist the PCIT to invoke powers under section 263 and set aside the matter back to the file of AO.

12. That in the facts & circumstances of the case & in law, the order passed by the worthy PCIT deserves to be annulled as while exercising powers under section 263, the PCIT cannot act as an authority empowered to substitute the will of AO nor can he sit in appeal over the lawful assessment framed by the AO in the matter concerned just because he conceives a different view in the matter.

13. That in the facts & circumstances of the case & in law, the order passed by the worthy PCIT deserves to be quashed as Generally, the issues which are accepted do not find mention in the assessment order and only such points are taken note of on which the assessee's explanations are rejected and additions /disallowances are made as held by the jurisdictional high court.

14. That the assessee reserves his right to add, amend, waive, give-up, substitute, press any other additional ground of appeal emanating from the facts & circumstances of the case.

15. Any other relief as the Bench may feel appropriate in the facts & circumstances of the case and in law."

4. Brief facts as culled out from the records are that the assessment was completed U/s 143(3). The assessee claimed deduction U/s 54D amount to Rs.

I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 2,41,52,972/- and the ld. AO only disallowed the deduction u/s 54D of the Act amount to Rs.5,00,000/-. The ld. PCIT by invoking section 263 called the assessment order, erroneous and prejudicial to the interest of revenue for non-

verification of the right of the property/ agreement for sales. In favour of the claim of deduction U/s 54D the assessee claimed that the right of possession of properties were established from agreement for sales dated 26/12/2013 and dated 09/09/2014. But the said documents were never filed during assessment proceeding. The deduction was allowed by the ld. AO without verification. The assessee submitted all the necessary documents including the agreement for sales in photocopies in the proceeding u/s 263. But, finally by invoking of section 263, the ld. PCIT setting aside the assessment order for erroneous and prejudicial to the interest of revenue. Being aggrieved assessee filed an appeal before us. The assessee has challenged both the legal ground and ground of merit.

5. The ld. AR of the assessee filed written submissions which are kept in the record. The ld. AR vehemently argued and filed a ground-wise submission which are reproduced as below:

"GROUNDS OF APPEAL I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 GOA:-1 & 2. Vide grounds of appeal No.1 & 2, the assessee strongly objects to the assumption of power by the learned Principal Commissioner of Income -1, Jalandhar on the footing that order passed is whimsical, arbitrary and is conceived on the basis of proposal received from Assessing Officer for taking recourse to remedial action under section 263 of the Income Tax Act, 1961. It is pertinent to submit here that section 263 of the Income Tax Act, 1961 does not envision such a situation wherein the worthy Commissioner can exercise his jurisdiction on the basis of a proposal received from the assessing officer. In the instant case and on due reference to Page No.1 (APB), vide order sheet entry dated 14th February, 2019, it is evident that PUC was a proposal arising out of a letter dated 08th February, 2019 of the JCIT, Range - II, forwarding therein a proposal under section 263 for the assessment year 2014-15. The true extracts of the order sheet entry is cited below for due reference: -

14/02/2019 PUC is a letter dated 8/2/19 of the JCIT, Range - II, Jalandhar forwarding there under a proposal u/s 263 in the above mentioned assessee for the AY 2014-15. In his detailed report, the AO has stated that the case of the above assessee is fit for taking remedial action by way of initiation of proceedings u/s 263 of the IT Act 1961. The JCIT has also seconded the comments of the AO. Submitted for your kind perusal/further direction Madam.

ITO (HQ)(Tech-I) The assessee objects to the action of learned Commissioner of Income Tax in invoking his jurisdiction on the basis of a proposal received from assessing officer which duly stands seconded by the Joint Commissioner of Income Tax, Range -II, Jalandhar. The assessee relies upon the pronouncements per contents of the judgement set separately filed along with present written submission which can be perused in this regard i.e. a) Principal Commissioner of Income Tax - 9, I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 Kolkatta vs. Reeta Lakhmani, (Hon'ble

Calcutta High Court) - (Page No.86-90 of Judgement set)b)KBB Nuts Private Limited vs. Principal Commissioner of Income Tax (ITAT Amritsar Bench)- (Page No.91-126 of Judgement Set)

c)Shantai Exim Limited vs. CIT (ITAT Ahmedabad Bench)(Page No.127-140 of Judgement set) d)Rajesh Chandrakant Shah (HUF) vs. Principal Commissioner of Income Tax (ITAT Pune Bench)(Page No.141-146 of Judgement set), e)Alfa Laval Lund AB, Pune vs. CIT (ITAT Pune Bench)(Page No.147-153 of Judgement set),f)AdishwarK.Jain vs. Commissioner of Income Tax (ITAT Mumbai Bench)(Page No.154-170 of Judgement set)g)Ashok Kumar Shivpuri vs. Commissioner of Income Tax (ITAT Mumbai Bench)(Page No.171-175 of Judgement set). Resultantly, the assessee prays that the order passed by the worthy PCIT-1, Jalandhar be quashed in the resultant facts of the case under reference.

GOA:-3:- Vide ground of appeal No.3, the assessee challenges the action of the worthy PCIT-1, Jalandhar in taking recourse to the provisions of section 263 of the Income Tax Act, 1961 on the pretext that the show cause notice issued is hyper- technical in form and substance, therefore deserves to be quashed in light of the Supreme Court mandate in ORYX Fisheries Private Limited vs. Union of India, Special Leave Petition bearing No.(C) 27615 of 2008 dated 29th October, 2010. The assessee reiterates contents of his submission filed before the PCIT-1, Jalandhar dated 20th March, 2019 to contend before the Hon'ble Bench that proceedings under section 263 cannot be taken recourse to under the garb of a hyper-technical show cause notice issued. Page No.4 & 5 of APB may kindly be perused in this regard.Resultantly, the assessee prays that the order passed by I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 the worthy PCIT-1, Jalandhar be quashed in the resultant facts of the case under reference.

GOA:- 4:-Vide ground of appeal No.4, the assessee objects to the assumption of power under section 263 of the Income Tax Act, 1961 on the footing that assessee was specifically questioned besides queried in respect of his claim attributable to deduction under section 54D of the Income Tax Act, 1961. Reference can be drawn to Page No.(s) 20, 23 to 28, 35 & 36 of APBwherein assessee's claim has been dealt with by the concerned assessing officer exhaustively and detailed order was passed after consideration of the documentary evidence filed in this regard. The assessee relies upon the pronouncements per contents of the judgement set separately filed along with present written submission which can be perused in this regard Commissioner of Income Tax Vs. Sunbeam Auto Limited (Delhi High Court)(Page No.210-216 of Judgement set) b)Mandeep Singh Dhillon vs. Principal Commissioner of Income Tax (ITAT Amritsar Bench)(Page No.217- 223 of Judgement set). Consequently, the assessee prays that the order passed by the worthy PCIT-1, Jalandhar be quashed in the resultant facts of the case under reference.

GOA:- 5:-Vide ground of appeal No.5, the assessee objects to the assumption of power by the worthy PCIT-1, Jalandhar on the pretext that as only photocopies of agreement to sell were filed. It is pertinently submitted here that the documents in original were never requisitioned by the PCIT while conducting enquiry in the matter concerned in proceedings under section 263 of the Income Tax Act, 1961.

I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 However reliance is placed upon the pronouncement of the Hon'ble Supreme Court of India in Mohinder Singh vs. JaswantKaur (Dead) through legal heirs, Civil Appeal No.6706/2013 dated 11th September, 2019 wherein categorically it was observed in the following terms:-

This appeal is directed against the judgement dated 15.01.2009 passed by the Punjab & Haryana High Court dismissing the appeal holding that there is no substantial question of law involved. The High Court held that a carbon copy of a document which carbon copy is signed by both the parties cannot be termed as an original document under section 62 of the Evidence Act. This finding of the High Court is absolutely incorrect and against the provision of section 62 of the Evidence Act. This carbon copy was prepared in the same process as the original document and once it is signed by both the parties, it assumes the character of original document.

Further reliance is placed upon another landmark pronouncement of the Hon'ble Supreme Court in Pirthi Chand vs. State of Himachal Pradesh (1989) 1 SCC 432 to submit that where carbon copy was made by one uniform process the same was primary evidence within the meaning of explanation 2 to section 62 of the Indian Evidence Act, 1872. Resultantly, the assessee prays that the order passed by the worthy PCIT-1, Jalandhar be quashed in the resultant facts of the case under reference.

GOA:-6:-Vide ground of appeal No.6, the assessee objects to the assumption of jurisdiction by the PCIT-1, Jalandhar on the score that assessee was not in possession of the premises qua ownership, therefore claim of deduction is not permissible. Reference can be drawn to Page No.(s) 6, 7, 20, 23 to 28, 35 & 36 I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 of APB which lend suitable weightage to the case of assessee under reference wherein amount of investment in construction of new factory building stood examined by the assessing officer. Documents, bill/vouchers of building material purchased were thoughtfully examined by the assessing officer vide excerpts of the order passed (Refer Page No.36 of APB). It was only after verification of assessee's claim of deduction under section 54D of the Income Tax Act, 1961, order confirming addition of Rs.5,00,000/- was made to the returned income on account of unvouched and unverifiable bills of expenses of building material appropriated towards claim of deduction under section 54D. The PCIT in exercise of powers under section 263 cannot sit in supervisory capacity to investigate the claim of assessee specifically when it has been examined in detail by the assessing officer. Resultantly, the assessee prays that the order passed by the worthy PCIT-1, Jalandhar be quashed in the resultant facts of the case under reference.

GOA:-7:-Vide ground of appeal No.7, the assessee objects to the assumption of jurisdiction by the PCIT-1, Jalandhar on the score that as per order sheet entry dated 18th March, 2019 (Page No.1 of APB), the assessee was asked to file response to show cause notice issued in less than twenty four hours thereby depriving a strong contest to be put up against assumption of jurisdiction. The said action purposely ostracized the right of assessee to have a fair hearing in the matter concerned which ultimately scuttled principles of natural justice, equity and fair play. Resultantly, the assessee

prays that the order passed by the worthy PCIT- 1, Jalandhar be quashed in the resultant facts of the case under reference.

I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 GOA:-8:-Vide ground of appeal No.8, the assessee objects to the assumption of jurisdiction by the PCIT-1, Jalandhar under section 263 of the score that assessee's claim of deduction was analyzed, examined and verified on the strength of documentary evidence on record as per contents of reply filed in response to notice issued under section 142(1) of the Income Tax Act, 1961 dated 07th November, 2016 (Refer Page No.(s)23, 27 & 28 of APB).It was after examination of assessee's claim that the assessing officer proceeded to pass an order under section 143(3) dated 20th December, 2016(Refer Page No.(s)32 to 36 of APB). Resultantly, the assessee prays that the order passed by the worthy PCIT-1, Jalandhar be quashed in the resultant facts of the case under reference.

GOA:- 9:-Vide ground of appeal No.9, the assessee objects to the assumption of jurisdiction by the PCIT-1, Jalandhar under section 263 of the score that Explanation 2 which has been inserted in the statute with effect from 01st June, 2015 is not applicable to the previous year ended 31st March, 2014 relevant to the assessment year 2014-15. The assessee relies upon the pronouncements per contents of the judgement set separately filed along with present written submission which can be perused in this regard i.e.a)Karimtharuvi Tea Estate Limited vs. State of Kerala (Supreme Court)(Page No.1-5 of Judgement set)b)SthapathyaBuildcon Private Limited, Ahmedabad vs. DCIT (ITAT Ahmedabad `C' Bench(Page No.6-18 of Judgement set) c)Arun Kumar Garg HUF vs. Principal Commissioner of Income Tax, New Delhi (ITAT Delhi `A' Bench(Page No.19-30 of Judgement set) d)Shri Narayan TatuRane vs. ITO Ward 27(1)(1), Mumbai(ITAT Mumbai `B'Bench)(Page No.31-51 of Judgement set)e)M/s Amira Pure Foods Private Limited vs. Principal Commissioner of I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 Income Tax (ITAT Mumbai `B' Bench)(Page No.52-65 of Judgement set) f) Sh.Satish Kumar s/o Hans Raj, Hoshiarpur vs. Principal Commissioner of Income Tax -1, Jalandhar (ITAT Amritsar Bench, Amritsar)(Page No.66-85 of Judgement set).Consequently, the assessee prays that the order passed by the worthy PCIT-1, Jalandhar be quashed in the resultant facts of the case under reference.

GOA:- 10:-Vide ground of appeal No.10, the assessee objects to the assumption of jurisdiction by the PCIT-1, Jalandhar under section 263 of the footing that judicial precedents relied upon the assessee were not taken into consideration while passing impugned order under section 263. Due reference can be made to Page No.(s)4 to 12 of APB.Consequently, the assessee prays that the order passed by the worthy PCIT-1, Jalandhar be quashed in the resultant facts of the case under reference.

GOA:- 11:-Vide ground of appeal No.11, the assessee objects to the assumption of jurisdiction by the PCIT-1, Jalandhar under section 263 of the footing that enquiry even though inadequate by itself does not empower the department to step into section 263 revision. Though the proceedings before the assessing officer cannot be construed as a case of either lack of enquiry or inadequate enquiry, but for the subjective satisfaction of the Hon'ble Bench, it is prayed that reference can be drawn to Page No.(s) 20, 23 to 28, 35 & 36 of APB.The assessee's claim was considered by the assessing officer meticulously, intensely and comprehensively and after that a sum of Rs.5,00,000/- was

disallowed as per I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 terms of order passed under section 143(3) dated 20nd December, 2016 (Refer page No.32-36 of APB).The assesseealso relies upon the pronouncements per contents of the judgement set separately filed along with present written submission which can be perused in this regard i.e.a)Commissioner of Income Tax Vs. Sunbeam Auto Limited (Delhi High Court) b) Mandeep Singh Dhillon vs. Principal Commissioner of Income Tax (ITAT Amritsar Bench).Consequently, the assessee prays that the order passed by the worthy PCIT-1, be annulled in the resultant facts of the case under reference.

GOA:- 12:-Vide ground of appeal No.12, the assessee objects to the assumption of jurisdiction by the PCIT-1, Jalandhar under section 263 of the footing that PCIT cannot sit in supervisory jurisdiction to re-examine what has already been examined by the assessing officer.Assessee places reliance upon the pronouncement of the Hon'ble Supreme Court of India inCommissioner of Income Tax vs. Greenworld Corporation reported in (2009) 314 ITR 81 : (2009) 224 CTR 113 : 181 Taxman 111 : 23 DTR 185,wherein it has been observed that `It cannot be said that assessing authority exercising quasi-judicial function keeping in view scheme contained in act, would lose its independence to pass an independent order of assessment and even merits of decision in assessment proceedings shall be discussed and shall be rendered at instance of higher authority.Consequently, the assessee prays that the order passed by the worthy PCIT-1, be annulled in the resultant facts of the case under reference.

I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 GOA:- 13:-Vide ground of appeal No.13, the assessee objects to the assumption of jurisdiction by the PCIT-1, Jalandhar under section 263 of the footing that assessing officer validly accepted explanation(s), documents, vouchers tendered during the course of assessment proceedings by the assessee in support of his contentions. Pagination reference No.(s) 24 to 28of APB can be referred to in this regard to substantiate the claim that it was only after consideration of assessee's response, deduction under section 54D was allowed. The assessee places reliance upon the pronouncement of the jurisdictional High Court of Punjab & Haryana at Chandigarh in Hari Iron Trading Co vs. Commissioner of Income Tax (2003) 263 ITR 437 wherein it was observed as under:-

`The assessee has no control over the way an assessment order is drafted. The assessee on its part had produced enough material on record to show that the matter had been discussed in detail by the AO. The least that the Tribunal could have done was to refer to the assessment record to verify the contentions of the assessee. Instead of doing that, the Tribunal has merely been swayed by the fact that the AO has not mentioned anything in the assessment order. During the course of assessment proceedings, the AO examines numerous issues. Generally, the issues which are accepted do not find mention in the assessment order and only such points are taken note of on which the assessee's'explanations' are rejected and additions/disallowances are made. As already observed, we have examined the records of the case and find that the AO had made full inquiries before accepting the claim of the AO (sac- assessee) qua the amount of Rs. 10 lacs on account of discrepancy in stock. Not only this, he has even gone a step further and appended an office note with the assessment order to explain why the addition for allegation

discrepancy in stock was not being made. In the absence of any suggestion by the CIT as to how the inquiry was not proper, we are unable to uphold the action taken by him under Section 263 of the Act.' Furthermore, on a bare perusal of pagination reference No(s) 19, 20, 24 - 28 of the APB, it is discernible that assessee was in particular questioned about I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 his claim of deduction preferred under section 54D and this perhaps was one of the reason as to why the case was taken up for assessment. The assessing officer vide order sheet entry (Pagination Reference No.36 of APB) dated 23rd November, 2016 specifically enquired into the claim of assessee by examining bills/vouchers of building material purchased. The claim of deduction to the extent of Rs.2,17,58,677/- was examined on the strength of documentary evidence tendered in the course of proceedings over which the learned PCIT-1 apparently intended to exercise supervisory jurisdiction within the meaning of section 263 which is absolutely unknown to law. The learned PCIT -1 has also failed to point out the reason as to why the assessment order passed in original round of proceedings is erroneous and prejudicial to the interest of revenue. It is also pertinently submitted here that twin conditions of the order being erroneous and prejudicial to the interest of revenue need to be satisfied before any action under section 263 can be contemplated and taken recourse to. Reliance is placed upon the landmark judgement of the Hon'ble Supreme Court in *Malabar Industrial Company Ltd vs. CIT* 243 ITR 83 wherein it was settled as below:-

"A bare reading of this provision makes it clear that the prerequisite to exercise of jurisdiction by the CIT suo motu under it, is that the order of the ITO is erroneous insofar as it is prejudicial to the interests of the Revenue. The CIT has to be satisfied of twin conditions, namely, (i) the order of the AO sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent - if the order of the ITO is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue recourse cannot be had to s. 263(1) of the Act. There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the AO; it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind." emphasis supplied) The assessee further relies upon the pronouncement of the Hon'ble Delhi High Court in *Commissioner of Income Tax vs. Anil Kumar Sharma* reported in 335 ITR 83 wherein it was settled in the following terms:-

7. In view of the above discussion, it is apparent that the Tribunal arrived at a conclusive finding that, though the assessment order does not patently indicate that the issue in question had been considered by the Assessing Officer, the record showed that the Assessing Officer had applied his mind. Once such application of mind is discernable from the record, the proceedings under Section 263 would fall

into the area of the Commissioner having a different opinion. We are of the view that the findings of facts arrived at by the Tribunal do not warrant interference of this Court. That being the position, the present case would not be one of lack of inquiry and, even if the inquiry was termed as inadequate, following the decision in M/s Sunbeam Auto Ltd (2011) 332 ITR 167 :189 Taxman 436, "that would not by itself give occasion to the Commissioner to pass orders under Section 263 of the said Act, merely because he has a different opinion in the matter." No substantial question of law arises for our consideration. Consequently, the appeal is dismissed.

Reliance is also placed upon the recent verdict of the Hon'ble ITAT Chennai Bench in V.M. & Co., vs. Deputy Commissioner of Income Tax (2023) 199 ITD 142/146 taxmann.com 518 (Chennai-Trib) wherein it was observed as below:-

12. The Ld. CIT-DR has relied on Explanation-2 to sec. 263 to support the argument that the order was passed without making inquiries or verification which should have been made. However, we find that it is not a case wherein no inquiries were made by Ld. AO. Rather the case was selected for limited scrutiny to examine and verify three I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 aspects which were duly examined and verified by Ld. AO. Secondly, this explanation is subjected to satisfaction of primary conditions of sec.263 i.e., the order should be erroneous as well as prejudicial to the interest of the revenue. Upon perusal of assessment order, we do not find any error in the same and unable to accept this plea of Ld. CIT-DR.

The learned PCIT in the governing facts of the case has not been able to lead with sterling evidence to suggest as how the order passed is erroneous and prejudicial to the interest of revenue. The assessee also places on record copy of Registration Certificate dated 03rd November, 2014, letter addressed to the Assistant Commissioner of Central Excise Division, Jalandhar dated 11th December, 2014, copy of Form No.VAT-4 i.e. Registration Certificate under Punjab VAT Act, 2005, copy of bill generated by Punjab State Power Corporation Limited establishing the fact that the electric connection in the new factory building was installed on 09th September, 2014 before the due date of filing the return for the year under reference, copy of VAT invoice issued by the supplier i.e. Shiv Shakti sales, Jalandhar bearing Invoice No.197 dated 11th September, 2014 in respect of material purchased at the address of the new premises i.e. 23, Back Side Baba Rulia Shah, Industrial Areato substantiate his contention that he was in due possession and occupation of land in respect of which deduction under section 54D was claimed.

In light of the brief written submission besides judgement set (Pagination Reference No.1 - 223) filed with the Hon'ble Bench, it is humbly prayed that the action of the worthy PCIT -1, Jalandhar in taking recourse to section 263 be quashed, annulled and cancelled in the interest of justice, equity and fair-play.

GOA:- 14:- Vide ground of appeal No.14, it is humbly prayed that in the event of any adversity arising out of the brief written submission besides judgement set, I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 assessee may kindly be afforded an effective opportunity of being heard in the matter concerned.

GOA:-15:-Vide ground of appeal No.15, it is humbly prayed that in light of the brief written submission(s) filed besides duly indexed judgement set running in more than 223 pages, any relief not specifically claimed by the assessee but emanating out of the facts of case under reference, the same may very kindly be extended in favour of assessee as the Hon'ble Bench may so please."

5.1 The ld. AR further argued and placed that the ld. AO has discussed this issue in the assessment order and the relevant paragraph is duly extracted as below:

"Proposed addition on account of deductions claimed u/s 54D.

In the return of income, you have shown the long term capital gain for Rs 15,37,298 but you have not filed the computation of long term capital gain and deduction claimed u/s 54D along with documents. Please explain as to why the deduction claimed u/s 54D may not be disallowed and added to your income. Please furnish your reply with evidence.

Keeping in view the above facts, your case is fixed for hearing on 18.11.2016 and you are requested to attend my office with your complete reply failing which it will be presumed that you have nothing to say to the above mentioned proposed additions and the assessment will be completed u/s 144 of the I.T Act 1961 to the best I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 of my judgment and merits of the case. This is the last opportunity is being provided to you to explain, to this show-cause notice for natural justice. Notice u/s 142(1) of the I.T Act 1961 is enclosed herewith for compliance.

On the fixed date of hearing i.e. 18.11.2016, an application for adjournment* was received and the case was adjourned to 23.11.2016. On 23.11.2016, Sh. J.P. Bhatia A.R. of the assessee attended the office and furnished copy of a/c of Punjab & Sind Bank with detail of interest paid against loan raised, alongwith partly reply. The case was partly discussed with the A.R. of the assessee and he was asked vide order sheet entry dated 23.11.2016 to furnish the following information.

(i) Please furnish the detail of exemption claimed u/s 54D for Rs.2,17,58,677/-along with documentary evidence.

(ii) Please furnish the documentary evidence for additions in Buildings for Rs. 3,96,750/- as mentioned in the depreciation chart during F.Y; 2013-14.

(iii) Please produce the original bills for purchase of building material for construction of building for verification of exemption claimed u/s 54D for investment in new factory Building.

In response to query raised, the counsel of the assessee attended the office on 25.11.2016 and furnished the proof of transfer deed executed by the assessee in favour Punjab Government through its local body department on a/c of the compulsory acquisition of the I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 undertaking for a total consideration of Rs.2,41,52,972/-. He also filed the copy of capital a/c with explanation of addition in capital a/c alongwith other partly information.

From the perusal of computation of income, the assessee has received sale consideration for land amounting to Rs.2,25,63,841/- and for building amounting to Rs.15,89,131/- totalling to Rs.2,41,52,972/- from the Municipal Corporation of Jalandhar for acquisition of the undertaking (Land + Building}. Further the assessee has claimed the exemption for Rs. 2,17,58,677/- for investment in construction of new factory building.

Vide order sheet entry dated 23.11.2016, the assessee was asked to produce the original bills of Building material purchased for verification of deduction claimed for Rs. 2,17,58,677/- u/s 54D of IT Act 1961 on account of investment made in construction of new factory building. In response, the counsel of the assessee filed some documents and produced bills/vouchers of building material purchased. After examination of bills/vouchers produced, it is found that some vouchers/bills were unvouched and unverifiable. The matter was discussed with the counsel of the assessee for claiming deduction u/s 54D for Rs.2,17,58,677/-. After discussion, an addition of Rs.5,00,000/-(Five Lacs) is made to the returned income on account of unvouched and unverifiable bills/vouchers of expenses of building material purchased. Accordingly, deduction u/s 54D for Rs.5,00,000/- (Five lacs) is disallowed."

I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15

6. The ld. DR vehemently argued and fully relied on the order of the ld.

PCIT u/s 263. The relevant paragraph 3 of the said order is reproduced as below:

"3. I have carefully considered written submissions and documents filed by the counsel of the assessee during the proceeding u/s 263 of the Act. The assessee has challenged the assumption of jurisdiction by the undersigned u/s 263 of the Act and objected to the maintainability of the notice u/s 263. In this regard, it would be suffice to say that the presumptions of the assessee are not based upon any empirical observations. The view taken by the undersigned is based upon an independent perception of the assessment record.

The other objection, with regard to the difference of opinion between the Assessing Officer and the Commissioner of Income Tax, the position of law stands substantially

altered with the insertion of Explanation 2 in section 263, by the Finance Act, 2015. As the deeming provision in that section has been specifically invoked, the decisions relied upon by the assessee, pertaining to the pre-amended provisions of section 263, would no longer hold good.

4. The submissions filed by the counsel of the assessee in respect of the issue pointed out in the show cause notice dated 05.03.2019 has also been examined in view of the documents submitted by the assessee and the assessment records. In respect of the observation that how the construction was done I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 on the new land purchase prior to the date of filing return i.e. 30.11.2014 while as per conveyance deed, the new land was acquired on 30.12.2014, the assessee has contended that the assessee was already in possession of the new land prior to the date of registration deed. In support of his contention, the assessee furnished two photocopies of agreement to sell dated 26.12.2013 and 09.09.2014 detailed above in para 2.1. The perusal of the agreements shows that advance money of Rs.25,00,000/- and Rs.2,30,000/- were paid on 26.12.2013 and 09.09.2014 respectively as advance money to the sellers and possession of the land was given to the assessee.

The assessee has filed only photocopies of the agreements to sell and no corroborative evidence or confirmation from the sellers has been filed. In the course of assessment proceedings, no such documents were filed by the assessee for Assessing Officer to examine and verify. The AO also failed to examine this issue while framing assessment.

In view of the above, it is apparent that the Assessing Officer has passed the order u/s 143(3) of the Act, without making required enquiries and verification in respect of the above issues, which should have been made before passing the order u/s 143(3) of the Act. Therefore, the order passed by the Assessing Officer is held to be erroneous and prejudicial to the interest of the revenue. The case is, therefore, set aside to the file of the A.O. for fresh assessment on the above mentioned issue.

I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15

5. in view of the above facts and discussions, I am satisfied that the assessment order passed by the Assessing Officer on 20.12.2016 is erroneous in so far as it is prejudicial to the interests of the revenue. Therefore, the said order passed on 20.12.2016 is set aside to this extent to the file of the assessing officer to pass fresh order after making necessary enquiries/investigations in the light of the discussions made above and after giving due opportunity to the assessee of being heard."

7. The ld. AR also argued and placed that the ld. PCIT had not initiated the proceeding. The proceeding was initiated by the ld. AO so, the imposition of section 263 is contravention of the Act. The ld.AR invited our attention in the order sheet. The copy of the order sheet is duly annexed.

I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15

8. We heard the rival submission and considered the documents available in the record. The ld. AR taken 15 (fifteen) grounds before the Bench to challenge the impugned order.

The ground is taken for assumption of jurisdiction of the ld. PCIT as the proceeding U/s 263 was initiated on basis of proposal received from the ld. AO.

The ld. AR relied on the order sheet which is annexed in point 7 above. But the document cannot be supported the assessee's contention. The order is signed by the Income Tax Officer Head qtrs. There is no other evidence in support of the assessee's submission.

I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 The ld. AR further argued that the ld. PCIT allowed less than 24 hours to respond to the SCN. The ld. AR invited our attention in order sheet entry, APB page 1 where the assessee was asked to comply on dated 19/03/2019 related to hearing dated 18/03/2019. On perusal of the order sheet it is revealed that there is no protest for short time from the end of the assessee. In perusal of the impugned order, we found that the ld. PCIT had considered the written submission of assessee on dated 22/03/2019, revisional order page 8, paragraph-

2.1. From factual aspect the reasonable opportunity was not denied in revisional proceeding.

The ld. DR argued that in respect of the observation that how the construction was done on the new land purchase prior to the date of filing return i.e. 30.11.2014 while as per conveyance deed, the new land was acquired on 30.12.2014, the assessee has contended that the assessee was already in possession of the new land prior to the date of registration deed. In support of his contention, the assessee furnished two photocopies of agreement to sale on dated 26.12.2013 and 09.09.2014. But the agreements for sales were not the part of assessment record. Even the photocopies are placed during the revisional proceeding not the original one.

The issue was never examined by the ld. AO in assessment order. The agreement of sales is not verified during assessment proceeding. There is clear I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 absence of verification in the assessment order. The exemption U/s 54D for amount of Rs. 2,17,58,677/- was claimed by the assessee. The entire exemption was allowed by the ld. AO except amount of Rs. 5,00,000/- which was added back with the total income of the assessee. But the issue related to the existence of land/ assets and the agreement for sales was remained unverified in assessment proceeding. Due to absence of investigation in assessment, the order is called erroneous. Also order of assessment is prejudicial to the interest of revenue. The ld. PCIT had correctly considered the issues in the order passed u/s.263 of the Act. Hence, we are inclined to the observations made by the ld. PCIT in revisional order. Therefore, under these circumstances, we do not find any valid reason to interfere with the order passed by learned PCIT. Accordingly, the impugned order passed u/s.263 of the Act is upheld.

9. The ld A.R has raised many contentions before us. In our view, all those contentions are not required to be addressed in the instant appeal, since the facts of the present case is squarely covered by clause (b) of Explanation 2 to sec.

263 of the Act. In this view of the matter, we are of the view that various case laws relied upon by the assessee are either not applicable at this stage or distinguishable.

9.1 In view of the foregoing discussions, we are of the view that there is no infirmity or illegality in the impugned revision order passed by ld.PCIT.

I.T.A. No. 425/Asr/2019 Assessment Year: 2014-15 Accordingly, we do not find any merit in the present appeal filed by the assessee.

10. In the result, appeal of the assessee ITA No. 425/ASR/2019 is dismissed.

Order pronounced in the open court on 13.09.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

AKV

Sd/-

(ANIKESH BANERJEE)
Judicial Member

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