



2025:DHC:3641-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 13.05.2025*

+ **ITA 424/2022**

PR. COMMISSIONER OF INCOME TAX
(CENTRAL) - 2

.....Appellant

versus

M/S. DELHI GURGAON SUPER CONNECTIVITY
LTD.

.....Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Indruj Singh Rai, SSC with Mr. Sanjeev Menon and Mr. Rahul Singh, JSCs.

For the Respondent : Dr. Rakesh Gupta, Mr. Somil Agarwal and Mr. Dushyant Agarwal, Advocates

CORAM

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

J U D G M E N T

DR. SWARANA KANTA SHARMA, J.

1. The Revenue has preferred the present appeal under Section 260A of the Income Tax Act, 1961 [hereafter '***the Act***'] impugning an order dated 13.10.2020 [hereafter '***the impugned order***'] passed by the learned Income Tax Appellate Tribunal [hereafter '***the learned ITAT***'], in ITA No. 4712/Del/2019, in respect of the assessment year (AY) 2014-15, whereby the appeal of the respondent herein i.e. M/s Delhi Gurgaon Super Connectivity Limited [hereafter '***the assessee***'] was allowed.



FACTUAL BACKGROUND

2. The records of the case reveal that the assessee is a company engaged in the business of maintaining toll plaza and collecting toll. An agreement had been entered into between the assessee and the National Highways Authority of India (NHAI) on 18.04.2002 for conversion of Delhi Gurgaon Section of National Highway-08 into an access controlled 8/6 lane highway.

3. The case of assessee was selected for scrutiny by the Revenue for the AY 2014-15 and a notice under Section 143(2) of the Act was issued to the assessee on 23.09.2015 by the learned Assessing Officer i.e, Assistant Commissioner of Income Tax, Central Circle-14, New Delhi [hereafter '**the AO**']. In response, the assessee submitted a representation seeking adjournment. Thereafter, notices under Section 141(2) of the Act were issued to the assessee on 20.10.2015, 10.05.2016 and 04.07.2016.

4. However, since the assessee neither attended the hearings nor submitted any document in response to the aforesaid notices, and also did not file its return of income, a notice dated 10.08.2016 under Section 274 read with 271 of the Act was issued to the assessee to show cause as to why an order imposing a penalty on the assessee be not passed under Section 271 of the Act. Since the assessee failed to attend the proceedings before the AO on any occasion, an order under Section 271(1)(b) of the Act was passed on 01.09.2016, by way of which a penalty of ₹10,000/- was imposed on the assessee. Accordingly, a Notice of Demand of ₹10,000/-, under Section 156 of



the Act, was issued to the assessee. Thereafter, a notice dated 23.09.2016 under Section 276D of the Act was issued to the assessee to show cause as to why the prosecution proceedings under Section 276D of the Act be not initiated. In response to the same, a reply was submitted on behalf of the assessee, wherein it was stated that since all the details called for were under preparation, more time was sought to furnish the requisite details. Further, the Authorized Representative (**AR**) of the assessee attended the proceedings on 29.09.2016 and sought extension of time on the grounds of unavailability of document/records. Thereafter, two notices dated 16.11.2016 and 06.12.2016 were issued under Section 144 of the Act giving an opportunity to the assessee to comply with the assessment proceedings by 24.11.2016 and 12.12.2016 respectively, and it was clarified that failure to do so would lead to completion of proceedings *ex-parte* on the basis of material and facts available on record.

5. On 29.12.2016, the assessee filed its return of income for AY 2014-15, declaring income of ₹Nil, as well its replies to notices issued by the Revenue, including the list of sundry creditors above ₹1,00,000/-. On the same day, a notice was issued under Section 143(2) of the Act requesting the assessee to attend the proceedings on 30.12.2016 since some further information was required. On 30.12.2016, the assessee submitted certain information as to why the expenses incurred towards the operation and maintenance of the toll had increased.



Assessment Order

6. The assessment order under Section 143(3) of the Act was passed by the AO on 31.12.2016.

7. The AO, after examining the profit and loss account of the assessee, noted that during the relevant AY, the revenue of the assessee had declined, compared to the last AY, from ₹192.2 crores to ₹149.1 crores. It was also observed by the AO that there was an increase of various expenses as compared to last AY, under the heads of – project running expenses, electricity and fuel expenses, administration and office expenses, printing and stationery expenses, postage and stamps, vehicle running and maintenance expenses. The AO further noted that it was apparent that the expenditure claimed by the assessee was not only for business purposes, and further that the assessee had not substantiated the expenses on the basis of proper documents. Resultantly, the AO disallowed 20% of the expenses under each of the six heads, and made a total addition of ₹2,40,83,797/-. Accordingly, the assessment was framed by the AO, computing a total loss of ₹2,35,36,058/- against the loss of ₹4,76,19,855/- returned by the assessee. The relevant portion of the assessment order is set out below:

“... 2) During the course of Assessment Proceedings, it is observed from Profit & Loss Account and on perusal of details submitted, that during the year revenue from operation has declined compared to last year from Rs. 192.2 cr to Rs. 149.1 cr. From the perusal of P&L A/C of the assessee there is an increase of some expenses as compare to last year under the heads of project running expense, Electricity and Fuel Expense. Administration and office expense, printing and stationery expense, postage and stamp, vehicle running and maintenance



expense. The expenditure so claimed by the assessee doesn't appear to have claimed wholly for business purpose. Further, assessee has also not substantiated these expenses with proper documents. The detail is mentioned below:

S. No	Nature of expenditure	Expenditure claimed in F.Y 2012-13	Expenditure claimed in F.Y 2013-14	Disallowance
1.	Project running expense	32,994	1,77,88,767/-	35,57,753/-
2.	Electricity and Fuel Expense	11,00,988/-	4,17,12,062/-	83,42,412/-
3.	Administration and office expense	30,96,938/-	4,77,74,064/-	95,54,812/-
4.	Printing and stationery	7,32,611/-	75,78,527/-	15,15,705/-
5.	Postage and stamp	43,221/-	22,63,203/-	4,52,640/-
6.	Vehicle running and maintenance expense	12,92,447/-	33,02,375/-	6,60,475/-

Keeping in view the credentials of the business and continuity of business the 20% of the expenses are disallowed u/s 37 of the IT Act, 1961 as general expenditure. The additions are here as under.

Project running expense: **(addition of Rs. 35,57,753/-)**

Electricity and Fuel Expense: **(addition of Rs. 83,42,412/-)**

Administration and office expense **(addition of Rs. 95,54,812/-)**

Printing and stationery **(addition of Rs. 15,15,705/-)**

Postage and stamp **(addition of Rs. 4,52,640/-)**

Vehicle running and maintenance expense **(addition of Rs. 6,60,475/-)**

Total addition: Rs.2,40,83,797/-

* * *



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Accordingly, the income of the assessee is assessed at NIL. The order is passed u/s 143(3) of the Income Tax Act, 1961....”

Proposal for Action under Section 263 of the Act

8. The Deputy Commissioner of Income Tax, Central Circle-14, New Delhi [hereafter ‘**the DCIT**’] took cognizance of the assessment order dated 31.12.2016 passed by the AO, vide which the AO had framed the assessment at a loss of ₹2,35,36,058/-, and the assessee had claimed a refund of ₹44,69,200/-. The DCIT noted that as per balance sheet for the relevant AY, the assessee had shown an amount of ₹51,44,53,415/- as sundry creditors. Out of the 70 entries in this regard, the DCIT had verified one entry of ₹4,65,86,911/-, pertaining to one sundry creditor namely M/s. EGIS Infra Management India Pvt. Ltd. [hereafter ‘**EGIS Infra**’] as the financial records of the said company were available with the DCIT, and had found no such debit or asset entry in the balance sheet of the said company. Thus, it appeared that the said entry was bogus and the assessee had allegedly introduced unaccounted cash into its books of accounts by misrepresenting it as sundry creditors. The DCIT opined that the other sundry creditors shown by the assessee may also be bogus. Given the cash-intensive nature of the assessee’s toll collection business, it was suspected that unaccounted cash was being disguised as sundry creditors. Thus, it was opined that the order passed by the AO was erroneous, due to the assessee’s tactic of submitting documents just three days before the time-barring date, preventing proper verification, and prejudicial to the interests of Revenue. The DCIT also observed that similar discrepancies were observed in



previous year i.e. AY 2013-14, where sundry creditors listed in the balance sheet of the assessee did not match from the balance sheet of EGIS Infra. In view of the same, the DCIT sent a proposal dated 19.04.2018 for action under Section 263 of the Act to the Principal Commissioner of Income Tax, Central-2, New Delhi [hereafter '*the PCIT*'], for setting aside the order passed by the AO for AY 2014-15.

The Order of PCIT

9. The PCIT, on 28.01.2019, issued a notice to the assessee to show cause as to why action under Section 263 of the Act be not taken against it since from a perusal of records, it appeared that the AO's order was erroneous and prejudicial to the interests of Revenue. The ground on which the show cause notice was issued is set out below:

“...On perusal of the assessment record it is found that as per balance sheet the assessee has shown an amount of Rs. 51,44,53,415/- as the sundry creditors. Out of total 70 entities in list of sundry creditors, only one entry of Rs. 4,65,86,911/- was verified and which was found bogus, Such full verification was required of sundry creditors because assessee's business income was from collection of road toll which was cash generating business and there is generally no reason/scope for increase/accumulated of sundry creditors. However, the total amount of sundry creditors was not verified by the AO. Thus, this clearly indicate that the order passed by the AO was erroneous so as to cause prejudice to the Revenue's interest because requisite enquiries and investigation have not been carried out by the A.O...”

10. Before the PCIT, it was the assessee's case that during the assessment proceedings, it had furnished all the information called for by the AO, including the details of creditors, and the same were



duly verified by the AO and no further inquiries were raised; therefore, the order passed by the AO was neither erroneous nor prejudicial to the interests of Revenue. However, the PCIT, by way of order dated 29.03.2019 passed under Section 263 of the Act, held that the genuineness of the transactions pertaining to the sundry creditors was not verified by the AO. The assessment order was thus set aside by the PCIT, and the AO was directed to frame the assessment afresh, after making proper enquiries and verification of transactions amounting to ₹51,44,53,415/- on account of sundry creditors. The relevant extract from the said order are reproduced below:

“4. I have perused the assessment records and submissions made by the assessee in this case. The core issue in this revision proceedings u/s 263 of the income tax act, 1961 is that assessment on the issues raised in the show cause notice was made without proper examination/verification or all the relevant rules have not been properly applied. In this case, it is found that the assessee has shown an amount of Rs.514,453,415/- as sundry creditors in his balance-sheet. During the assessment proceedings the assessee submitted the list of creditors on 29.12.2016 to which the AO did not have sufficient time for requisite enquiry/ investigation of these transactions and whatever was claimed by the assessee, was allowed without verifying the genuineness of transactions. The assessee filed a list of creditors only during the revisional proceedings u/s 263. However confirmation of parties or copies of the Ledger account of the sundry creditors was not provided by the assessee. Therefore, the genuineness and creditworthiness of sundry creditors could not be verified even during the proceedings u/s 263 of the income tax act.

5. I, thus, hold that the assessment order passed in the case of assessee by the Assessing Officer, Central – 14, New Delhi on 31/12/2016 u/s 143(3) is erroneous and prejudicial to the interest of revenue. Hence, the AO is directed to examine the genuineness of transactions of amount to Rs. 514,453,415/-



on account of sundry creditors and also conduct proper enquiries and investigation to the above issue in this case.

6. Thus, the said assessment is set aside and the assessment proceedings are restored back to the file of the assessing officer on the aforesaid issues. The AO is directed to frame the assessment afresh as per the provisions of the income tax act as directed above, after affording the assessee reasonable opportunity of being heard and after making proper enquiries and verification...”

Fresh Assessment Order

11. Pursuant to the order of PCIT, fresh assessment was made and order dated 22.12.2019 under Section 144 read with Section 263 of the Act was passed by the AO. The AO noted that notices under Sections 143(2) and 142(1) of the Act were issued to the assessee, requesting it to furnish details such as the names, PAN particulars, and addresses of the creditors, along with the nature of transactions. However, despite repeated notices and reminders, including a show-cause notice under Section 142(1) of the Act cautioning the assessee about an *ex-parte* assessment, the assessee failed to provide any substantive response or documentation. The assessee had sought an adjournment citing technical issues on the income tax portal, which was granted, but yet it did not submit the required details. The AO observed that the assessee’s non-compliance and failure to furnish the information sought by him had rendered the verification of creditors impossible. This led the AO to conclude that the amount in question constituted unaccounted income introduced under the guise of sundry creditors.



12. Consequently, the AO treated the entire amount of ₹51,44,53,415/- as unaccounted money from undisclosed sources and finalized the assessment under Section 144 of the Act, by adding the said amount to the income of the assessee. The assessee's income was thus computed at ₹49,09,17,357/-.

The Impugned Order

13. The assessee preferred an appeal before the learned ITAT (ITA No. 4712/Del/2019), assailing the order of the PCIT. It was the assessee's case that the PCIT had issued the show cause notice on the incorrect premise that out of total creditors of ₹51,44,53,415/-, one entry of ₹4,65,86,911/- was verified and found to be bogus. It was contended that no such addition was made by the AO in the assessment order, nor is there any reference to a sundry creditor being found to be bogus.

14. The learned ITAT, in the impugned order dated 13.10.2020, observed that the PCIT's observations regarding one sundry creditor being found bogus was without any basis, inasmuch as no such finding was given by the AO in the assessment order and no evidence in this regard was shown by the PCIT in its own order passed under Section 263 of the Act. The learned ITAT, rather observed that the AO did not make any additions on account of any bogus creditor found during the course of assessment but he rather disallowed the 20% of the total expenditure under Section 37 of the Act, based on statistical analysis, and thus, the assessment order was neither erroneous nor prejudicial to the interests of the Revenue. It was also



observed that the AO could have used its powers to conduct further inquiries during the assessment, but he instead opted for proportionate disallowance of expenditure. The learned ITAT further expressed that invoking Section 263 of the Act and directing verification of the transactions amounted to extending time for completion of assessment, which would contravene statutory timelines under Section 153 of the Act. The learned ITAT, thus, quashed the order of the PCIT and allowed the assessee's appeal. The relevant portion of the impugned order reads as under:

“...We have carefully considered the rival contentions and perused the order of the learned assessing officer which was held to be erroneous and prejudicial to the interest of the revenue by the order of the learned CIT. Firstly coming to the reason for invoking the jurisdiction u/s 263 of the income tax act the learned CIT has stated that as per the balance-sheet the assessee has shown a sundry creditors of Rs. 514,453,415 comprising of total 70 entities and only one entity of Rs. 465,86,911/- was verified and which was found to be bogus and therefore for verification was required of sundry creditors. On careful reading of the assessment order we do not find that the learned assessing officer could find that one entity comprising of Rs. 4,65,86,911 was bogus. No evidence were also led by CIT in her order to show that. Ld. CIT DR also could not show us basis of holding so by the CIT. Thus, there is no material on record which shows that any such creditor is found bogus. Therefore, it is a wrong fact or a fact which is not borne out from the evidence was recorded by the learned CIT for invoking jurisdiction u/s 263 of the act.

9. In fact, as per the assessment order the learned assessing officer has not made any addition on account of any bogus creditor found during the course of assessment proceedings. In fact the learned assessing officer on verification of the details of the expenditure and on the basis of its statistical analysis found that assessee has incurred higher expenditure during the year therefore he disallowed 20% of the expenses u/s 37 of the act keeping in view the credentials of the business and continuation of the business. In fact the creditors



have arisen out of the expenditure booked by the assessee which remains unpaid. Therefore, two options were available with the assessing officer, (1) either to disallow the expenditure, (2) or to make an addition on account of unsubstantiated creditors. If the assessing officer would have made the addition of the creditors holding those unsubstantiated, it would result into a consequence that he allows the expenditure incurred by the assessee holding them to be wholly and exclusively incurred for the purposes of the business and the creditors being source of those unpaid expenditure would have been held to be unsubstantiated. In those circumstances the order of the assessing officer would have become unsustainable in law. This for the reason that the expenditure incurred by the assessee were allowed and subsequently creditors resulting out of booking of those expenditure are added to the total income of the assessee. Therefore, the assessing officer took the first recourse available of disallowing the proportionate expenditure, which is according to us the one of the two options available with the assessing officer. By disallowing the expenditure to the extent of 20%, in fact he has held that the sundry creditors to the extent of that 20% i.e. 24,083,797/- are not related to the business and are unsubstantiated. The order of Ld CIT thus, did not show how the order passed by the Id AO is erroneous.

10. Further, the learned CIT held that the order is erroneous and prejudicial to the interest of the revenue for the reason that the assessee submitted the list of creditors on 29/12/2016 due to which the AO did not have sufficient time for requisite enquiry. According to us, if the assessee is found lacking in provision of the details to the assessing officer, the learned assessing officer could have used vast powers bestowed upon him by the act to make the best judgment assessment. But the assessing officer took a view to disallow 20% of the expenditure. Thus merely non availability of time to the assessing officer to make adequate enquiry or proper enquiry cannot be rectified by invoking the jurisdiction u/s 263 of the income tax act and then granting further time to the assessing officer to make further enquiry and decide the issue afresh is not permissible according to the law. If this is held to be permissible then it would amount to extension of further time limit provided u/s 153 of the income tax act to complete the assessment. Thereby any assessment order passed by the learned assessing officer could further be tinkered with the provisions of Section 263 of the income tax act by the CIT



and then a further time is granted to the assessing officer to make further inquiries. That is not the mandate of the law. The mandate of the law is to rectify an order if it is found to be erroneous and prejudicial to the interest of the revenue u/s 263 of the act. But here an alternative bypass route is devised by revenue to give further time to the assessing officer to complete the assessment order by making further enquiry. In the original assessment proceedings, AO was not precluded to make addition of the whole of the creditors or disallow the whole of the expenditure, if the details were not forthcoming from the assessee. But when the details are filed by assessee, because of the lack of time available with the assessing officer, provisions of Section 263 cannot be invoked. For this reasons the order of CIT cannot be sustained.

11. Even otherwise in the order passed by the learned CIT there is no inclination or finding that how the creditors are unsubstantiated. Even one creditor of Rs.4,65,86,911/- allegedly held to be bogus by the learned CIT, we do not find any mention in the order of the assessing officer or in the order of the CIT. There is no basis for such a finding. Further when the complete expenditure has been allowed by the learned assessing officer to the extent of 80% of those expenditure as expenditure incurred wholly and exclusively for the purposes of the business there is no question to further examine the genuineness and creditworthiness of such creditors when such creditors emerge from these expenditure only. The creditors were not the loans received by the assessee but are part of unpaid expenditure. Thus the reason given for resuming jurisdiction u/s 263 of the act to verify the genuineness and creditworthiness of the sundry creditors is also not correct. There is no provision in the act that unpaid expenditure is also to be tested on the parameter of creditworthiness. Therefore even in the assessment order the ld AO did not commit any error of law.

12. While deciding this appeal we have considered and applied the ratio laid down by various judicial precedents cited before us.

13. In view of this, the order passed by the learned and CIT u/s 263 of the act is not sustainable. In the result order of the learned CIT passed u/s 263 of the act for the impugned assessment year is quashed.

14. Resultantly, Appeal of the assessee is allowed...”



15. Aggrieved by the order of the learned ITAT, the Revenue has preferred the present appeal.

QUESTIONS OF LAW

16. On 21.03.2024, the following questions of law were framed by this Court:

“A. Whether the ITAT has erred in law to hold that the assessment order passed by the AO was not erroneous and that the exercise of power under Section 263 of the Act by the CIT was not justified even though the AO passed the assessment order without making inquiries or verification which should have been made in the facts and circumstances of the present case?

B. Whether the ITAT has erred in law to hold that exercise of power under Section 263 of the Act cannot be extended to direct the AO to verify the genuineness of the transactions if in the opinion of the CIT the non-verification of the genuineness of the transaction is found to be erroneous and prejudicial to the interest of the revenue?”

SUBMISSIONS BEFORE THE COURT

Submissions on Behalf of the Revenue

17. The learned counsel appearing for the Revenue argued that the impugned order interferes with the revisionary powers under Section 263 of the Act conferred upon the PCIT for the purpose of revision of orders passed by the AO which are erroneous insofar as they are prejudicial to the interest of the Revenue. The emphasis was laid on the Explanation 2(a) and (b) of Section 263 of the Act and it was



argued that an order passed by the AO, as per these sections, shall be deemed to be erroneous insofar as it is prejudicial to the interest of the Revenue if in the opinion of the PCIT, the order is (a) passed without making an enquiry which should have been made, or (b) passed allowing any relief without enquiring into the claim.

18. It was argued on behalf of the Revenue that in the present case, it is an admitted fact that out of the total sundry creditors of ₹51,44,53,415/-, only one entry of ₹4,65,86,911/- was verified and the same was found to be bogus, which was a sufficient reason for the PCIT to exercise its powers under Section 263 of the Act. Further, the assessee had filed the list of sundry creditors on 29.12.2016 i.e. two days before the time barring date to complete the assessment i.e. 31.12.2019, and even this list did not contain the PAN number and addresses of the creditors. Therefore, the ingredients of Explanation 2(a) and (b) of Section 263 of the Act were clearly attracted.

19. It is contended that it is evident that there was no proper verification of the sundry creditors by the AO, and the learned ITAT erred in supplementing/substituting its own reasoning while examining the correctness of the order passed under Section 263 of the Act, particularly when the AO himself had not provided any reasoning in the original assessment order. It is a well-settled principle of law that the AO is obligated to conduct a thorough inquiry and place on record sufficient material to substantiate its findings. This material should be such that a rational and informed



individual, familiar with the nuances of tax laws, would find it convincing upon due consideration. It is contended that failure to do so amounts to a case of lack of inquiry, rather than merely an inadequate inquiry.

20. In support of its contentions, the learned counsel placed reliance on the following decisions: (i) ***Commissioner of Income Tax, Mumbai v. Amitabh Bachchan***: (2016) 11 SCC 748; and (ii) ***Pr. Commissioner of Income Tax-II v. Shri Braham Dev Gupta***: (2018) SCC OnLine Del 9946.

Submissions on Behalf of the Assessee

21. The learned counsel appearing for the assessee contended that the show-cause notice issued by the PCIT was premised on incorrect facts since the notice erroneously claimed that out of the total sundry creditors amounting to ₹51,44,53,415/-, a specific entry of ₹4,65,86,911/- had been verified and found to be bogus. However, this allegation neither finds any mention in the assessment order nor is it supported by any evidence. It was argued that the AO did not make any addition or observation to suggest that this creditor was bogus. Further, during the assessment proceedings, the assessee had provided comprehensive details regarding the expenses incurred by it during the relevant AY and the sundry creditors. These expenses were duly scrutinized by the AO, who, after comparing the increase in expenditure with the increase in revenue, had disallowed a certain percentage of the expenses.



22. It was argued that the assessee had submitted a detailed list of sundry creditors which exceeded ₹1,00,000/-, along with supporting documents such as agreements and financial records. Specific details, including an agreement with EGIS Infra for toll operations and maintenance, were also furnished to substantiate the creditors. Despite the AO being satisfied with these details, the PCIT initiated proceedings under Section 263 of the Act, without there being any material evidence to support the claim that one creditor was found to be bogus.

23. The learned counsel submitted that the PCIT's observations, that the AO lacked sufficient time to conduct a thorough inquiry, were flawed. It was argued that if the AO required more time, he could have resorted to wide powers available under the Act. However, the AO chose to disallow 20% of the expenditure, which was within his jurisdiction and based on reasoned judgment. It was contended that Section 263 of the Act cannot be invoked to extend statutory time limits or to re-examine matters already verified during assessment, or to direct the AO to verify the genuineness of transactions. Further, the PCIT failed to demonstrate any specific error in the AO's order, or establish how it was erroneous and prejudicial to the interests of the Revenue. Therefore, it was prayed that the present appeal be dismissed, and the questions of law be answered in the favour of assessee.



ANALYSIS & FINDINGS

24. The issue before us is whether the learned ITAT erred in holding that the PCIT in this case was not justified in invoking Section 263 of the Act and setting aside the order passed by the AO.

25. Section 263 of the Act, as it reads on date, including Explanation 2 inserted by virtue of Finance Act, 2015, is extracted hereunder:

“263. Revision of orders prejudicial to revenue.

(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,—

- (i) 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 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.”

(Emphasis added)

26. Section 263 of the Act empowers the PCIT to revise an order passed by the AO, if such order is both erroneous and prejudicial to the interests of the Revenue. These two conditions are cumulative, meaning thereby that the power under this provision can only be exercised when the assessment order suffers from both defects enlisted above. Further, Explanation 2(a) to Section 263 of the Act specifically clarifies that an assessment order shall be deemed erroneous and prejudicial to the interests of Revenue if it is passed without making necessary inquiries or verification that ought to have been conducted in the facts and circumstances of the case.

27. However, before proceeding further, we also deem it appropriate to clarify that even though the AY under consideration is 2014-15 and Explanation 2 was added in Section 263 of the Act with effect from 01.06.2015, neither any question of applicability of Explanation 2 of Section 263 of the Act, to the present case, was raised before this Court, nor we intend to delve into the said question.

28. Undisputedly, Section 263 of the Act, even prior to the said amendment, mandated that the order must be both ‘erroneous’ and ‘prejudicial to the interests of the Revenue’ for the jurisdiction to be



assumed. This clearly indicates that the twin conditions must be satisfied for invoking Section 263 of the Act, requiring the PCIT to form an opinion that the order passed by the AO is both ‘erroneous’ and ‘prejudicial to the interests of the Revenue.’

29. Further, even prior to the amendment, though it was not specifically explained in the Act as to how the PCIT will reach a conclusion that the AO had passed an ‘erroneous’ order which was also ‘prejudicial to interests of the Revenue’, the scope of these terms was clarified through various decisions by the Hon’ble Supreme Court and Coordinate Benches of this Court. It would be pertinent to refer to a few of these decisions.

30. The Hon’ble Supreme Court, in case of ***Malabar Industrial Co. Ltd v. CIT: (2000) 243 ITR 83*** held that an order passed by an assessing officer can be deemed erroneous if it is based on incorrect assumption of facts or an incorrect application of law, and also if it is passed without applying the principles of natural justice or without application of mind. In this case, a resolution passed by the board of the appellant-company was not placed before the assessing officer and it was held that there was no material to support the claim of the appellant therein, and the assessing officer had accepted the entry in the statement of the account filed by the appellant in the absence of any supporting material and without making any inquiry.

31. The Coordinate Bench of this Court, in ***Gee Vee Enterprise v. Additional Commissioner of Income Tax: (1975) 99 ITR 375***, held that the Commissioner can regard the order as erroneous on the



ground that in the circumstances of the case the officer should have made further inquiries before accepting the statements made by the assessee in the return. The relevant portion of the decision is reproduced hereunder:

“....These two decisions show that 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 accepted 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.** The meaning to be given to the word "erroneous" in section 263 emerges out of this context. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct.”

(Emphasis added)

32. In *Commissioner of Income-tax v. Toyota Motor Corporation*: (2008) 306 ITR 49, the assessing officer had passed an order dropping the penalty proceedings initiated in the assessee's



case. The Commissioner had exercised powers under Section 263 of the Act and concluded that the assessing officer had not verified several issues and facts as mentioned in the order passed by him, nor had he carried out necessary investigations to come to a conclusion that penalty was not leviable. Consequently, he had found that the order was erroneous and prejudicial to the interest of the revenue. However, on appeal, the Tribunal had held that the penalty proceedings were not dropped casually by the assessing officer but after verification of full facts disclosed by the assessee in the reply. The Coordinate Bench of this Court held that the order passed by the assessing officer was cryptic and non-reasoned. The relevant observations are extracted below:

“10. We are unable to appreciate this reasoning given by the Tribunal simply because that the Assessing Officer himself did not say any such thing in his order. There is no doubt that the proceedings before the Assessing Officer are quasi-judicial proceedings and a decision taken by the Assessing Officer in this regard must be supported by reasons. Otherwise every order such as the one passed by the Assessing Officer, could result in a theoretical possibility that it may be revised by the CIT under section 263 of the Act. Such a situation is clearly impermissible.

11. It is also necessary for the parties to know the reasons that have weighed with the Adjudicating Authority in coming to a conclusion. The order passed by the Assessing Officer should be a self-contained order giving the relevant facts and reasons for coming to the conclusion based on those facts and law.

12. We find that the order passed by the Assessing Officer is cryptic to say the least, and it cannot be sustained. The Tribunal cannot substitute its own reasoning to justify the order passed by the Assessing Officer when the Assessing Officer himself did not give any reason in the order passed by him.”



33. The aforesaid decision was affirmed by the Hon'ble Supreme Court in *Toyota Motor Corporation v. Commissioner of Income-tax: (2008) 306 ITR 52*.

34. A Coordinate Bench of this Court in *Commissioner of Income Tax v. Sunbeam Auto Ltd.: (2011) 332 ITR 167* had highlighted the necessity to bear in mind the distinction between “lack of inquiry” and “inadequate enquiry”. We consider it apposite to refer to the following passage from the said decision:

“17. ...Learned counsel for the assessee is right in his submission that **one has to keep in mind the distinction between “lack of inquiry” and “inadequate inquiry”**. If there was any inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter. It is only in cases of “lack of inquiry” that such a course of action would be open.....”

(Emphasis added)

35. Therefore, it is clear that the Hon'ble Supreme Court and the Coordinate Benches of this Court had also dealt with the scope of ‘erroneous orders’ for the purpose of Section 263 of the Act, even when Explanation 2 had not been inserted in the said provision, and had held that an erroneous order would include an order which is passed without conducting sufficient inquiries or without application of mind.

Re: Question No. 1 framed by this Court

“Whether the ITAT has erred in law to hold that the assessment order passed by the AO was not erroneous and that the exercise of power under Section 263 of the Act by the CIT was not justified even through the AO



passed the assessment order without making inquiries or verification which should have been made in the facts and circumstances of the present case?”

36. To adjudicate this question of law, it will be crucial to adjudicate, on the basis of law and judicial precedents, as to whether the AO's failure to verify the genuineness of the sundry creditors, while framing the assessment order, rendered it erroneous and prejudicial to the interests of Revenue.

37. The facts of the present case reveal a series of procedural lapses and omissions on the part of both the assessee and the AO, culminating in an assessment order which was held to be erroneous and prejudicial to the interests of Revenue by the PCIT. It is to be noted that the assessee's case was selected for scrutiny for AY 2014-15, and notices were duly issued under Sections 143(2) and 142(1) of the Act, first such notice having been issued on 23.09.2015. However, despite repeated opportunities, the assessee failed to attend the proceedings or submit the requisite documents. Even when the AO issued a penalty notice under Section 271 of the Act, the assessee remained non-compliant, and provided no valid cause for its failure to cooperate with the assessment proceedings. The pattern of non-compliance persisted throughout the proceedings, with the assessee submitting its return of income only on 29.12.2016, merely three days before the assessment proceedings would have become time barred. Even at this belated stage, the assessee's submissions were incomplete and inadequate. Notably, the list of sundry creditors amounting to ₹51,44,53,415/- was furnished by the assessee on



29.12.2016 i.e. three days prior to the expiry of limitation period, and this list only contained the names of the sundry creditors and the corresponding amount qua them. The list, however, did not contain the crucial details such as PAN number, or addresses of the creditors, or supporting documents to substantiate the transactions. Moreover, the information provided was not in the format specifically requested by the AO, which, in our view, made it further difficult for any meaningful verification to be conducted.

38. However, despite these glaring deficiencies, the AO failed to exercise the diligence expected under the Act. The record indicates that the AO neither undertook any inquiries nor conducted verification of the sundry creditors listed by the assessee, and he merely accepted the submissions of the assessee at face value, without raising any queries or seeking clarifications. In fact, the assessment order dated 31.12.2016 is completely silent on the aspect of sundry creditors. This failure on part of the AO is particularly troubling in light of the findings of the DCIT, who later verified the first entry of the list, of ₹4,65,86,911/-, pertaining to EGIS Infra and found it to be bogus, on the ground of there being absence of a corresponding debit or asset entry in the books of EGIS Infra, which led the DCIT to opine that other entries in the list of sundry creditors list might also be fictitious, and therefore, action under Section 263 of the Act was necessitated. It is also pertinent to note that the DCIT had observed that similar discrepancies were identified in the



assessee's accounts for the preceding AY, in respect of the same sundry creditor i.e. EGIS Infra.

39. The PCIT, in the order under Section 263 of the Act, also noted that though a list of sundry creditors was filed by the assessee, confirmation of parties or copy of ledger account of the sundry creditors was still not provided, and therefore, the genuineness and creditworthiness of the sundry creditors could not be verified even during the proceedings under Section 263 of the Act.

40. In the case at hand, it shall be apposite to take note of the decision of Coordinate Bench in *Pr. Commissioner of Income Tax-II v. Shri Braham Dev Gupta: 2018 SCC Online Del 1996*. The order of the assessing officer in this case had been set aside under Section 263 of the Act, but the learned ITAT had restored the order of the assessing officer. The Coordinate Bench, while setting aside the order of the learned ITAT had observed that the fact, that out of 80 debtors, the assessee therein had furnished particulars of only 22 and even PAN particulars of most of them were not provided, would lead to a conclusion that the AO had not conducted inquiries regarding the genuineness of the transactions. The relevant portion of the decision is reproduced as under:

“14. In this Court's opinion, such findings and reasoning are clearly indefensible; they amount to putting a gloss over the AO's glaring omissions. **Repeated decisions have emphasized that the AO should - at least as regards what appears from the record, and what are issues inquired into, during scrutiny assessment, indicate the briefest of reasons, accepting or rejecting any argument. In this case, the mere fact that out of 80 debtors, particulars of 22 were**



furnished and that PAN particulars of most of them were not provided (for AY, cannot lead to the conclusion that the doubting of genuineness of those transactions was unwarranted, under Section 263).

15. For AY 2012-13, the CIT, pertinently observed - with regard to expenditure claimed towards purchases, as follows:

“It was informed to the assessee that a number of parties have not responded to the notices. The assessee has admitted that only 37 parties out of 114 have responded to the notices. Other parties out of 114 have not even responded to the notices. Therefore the genuineness of these documents i.e. purchases could not be verified. At least the matter needed further examination.”

16. Again, the ITAT did not say how this observation was unwarranted. On the other hand, the AO's order made originally is silent about this aspect altogether.”

(Emphasis added)

41. The facts of the present case clearly demonstrate that the genuineness of transactions between the assessee and its 70 sundry creditors were neither examined nor verified by the AO, resulting in the passing of an assessment order without due diligence. While the AO's inability to verify the creditors was partly due to time constraints, it was also attributable to the assessee's failure to furnish complete details. This omission, however, does not absolve the AO of his statutory obligation to conduct necessary inquiries and verifications.

42. We also note that in the impugned order, the learned ITAT has observed, in detail, as to what options were available before the AO in the present case and as to why the AO would have exercised the first option – that is to disallow 20% of the expenditure claimed by the assessee – and not conduct verification of the sundry creditors. A



bare perusal of the assessment order dated 31.12.2016 would reveal that the AO assigned no reasons whatsoever for not conducting any inquiry in respect of the sundry creditors. In our opinion, the learned ITAT has substituted its own reasons and findings for the course adopted by the AO, whereas the assessment order is completely silent on the said aspect. In *Toyota Motor Corporation v. Commissioner of Income-tax* (*supra*), the Hon'ble Supreme Court held that where the order passed by the AO was cryptic, the Tribunal could not have substituted its own reasoning to justify the order passed by the AO when the AO himself did not give any reason in the order passed by him. Similarly, the Coordinate Bench of this Court in *Braham Dev Gupta* (*supra*), held as under:

“19. In the present case too, the ITAT’s findings amount to supplying reasons in respect of the AO’s order, on aspects, which are not expressly reflected in the assessment order. It is no doubt the duty of the CIT to record why revision is warranted; however, the ITAT’s jurisdiction is not to re-write the AO’s order and improve upon it, in a manner of speaking. Clearly, the orders of the ITAT cannot be sustained. They are set aside.”

(Emphasis added)

43. In the present case, the AO had passed an order without verification or enquiries; the DCIT had on verification of one of the entries had found the first entry out of the 70 entries of sundry creditors to be bogus and had therefore, sent the recommendation to PCIT. Therefore, the AO’s order would naturally not have referred to any bogus entry as the AO had not bothered to find out or verify as to whether the entries were bogus or not. That is precisely the premise



on which the DCIT had opined that the assessment order was erroneous and had proposed action under Section 263 of the Act. In such circumstances, for the learned ITAT to hold that the AO's order did not find mention of bogus entry, was clearly without application of mind, since that was exactly the ground that he had not verified the entries which laid the edifice of passing of order under Section 263 of the Act. Had the AO conducted enquiries or verified the sundry creditors, there may not have been an occasion to exercise jurisdiction under Section 263 of the Act.

44. Therefore, the observations of the learned ITAT in paragraph 8 of the impugned order, that the AO could not find one entry of ₹4,65,86,911/- as bogus and that there was no material before PCIT to observe so, are unmerited, since the finding regarding the bogus entry was to be found in the order of DCIT, which was the foundation of referring the matter to PCIT for exercising jurisdiction under Section 263 of the Act and on the basis of which show cause notice was issued by the PCIT.

45. In these circumstances, the PCIT, in our view, rightly held that the assessment order was erroneous since the same was passed without making any inquiries *qua*, and verification of, the transactions pertaining to the sundry creditors. The said observations of the PCIT were premised on the fact that when only one entry, out of the 70 entries in the list of sundry creditors had been checked and verified from the records available with the DCIT, the same was found to be bogus. Therefore, by setting aside the assessment order,



the PCIT acted within the scope of its revisional jurisdiction, ensuring that the deficiencies in the assessment process are rectified in accordance with the law.

46. The Question No. 1 is, thus, answered in favour of the Revenue and against the assessee.

Re: Question No. 2 framed by this Court

“Whether the ITAT has erred in law to hold that exercise of power under Section 263 of the Act cannot be extended to direct the AO to verify the genuineness of the transactions if in the opinion of the CIT the non-verification of the genuineness of the transaction is found to be erroneous and prejudicial to the interest of the revenue?”

47. The issue to be addressed is whether the PCIT could direct the AO, under Section 263 of the Act, to examine the genuineness of the transactions amounting to ₹51,44,53,415/- on account of sundry creditors and conduct proper enquiries and investigation in this regard.

48. The learned counsel for the Revenue contended that the learned ITAT committed an error by holding that while exercising power under Section 263 of the Act, the PCIT cannot direct the AO to verify the genuineness of the transactions, if in the opinion of PCIT, the non-verification of such transactions is found to be erroneous and prejudicial to the interests of the Revenue. However, the learned counsel for the assessee argued that the PCIT could not



have directed the AO to verify the genuineness of the transactions and thereby extend the time of verification and limitation, which had already expired on 31.12.2016 i.e. when the assessment order was passed by the AO.

49. We note that the learned ITAT in the impugned order expressed that mere scarcity of time with the AO to make adequate inquiries cannot be rectified by invoking powers under Section 263 of the Act and then granting further time to the AO to make enquiries and decide the issue afresh. It was further held that such a course would amount to extension of time limit provided under Section 153 of the Act to complete the assessment. The learned ITAT also observed that mandate of law was to rectify an order if it is found to be erroneous and prejudicial to the interest of Revenue, but the PCIT had adopted an alternative route, devised by the Revenue, to give further time to the AO to complete the assessment proceedings by making further enquiries.

50. We are unable to agree with the aforesaid observations of the learned ITAT.

51. Firstly, in the present case, it was the assessee who had delayed the proceedings before the AO and had submitted the list of sundry creditors on 29.12.2016, though the notice in this case was first issued under Section 143(2) of the Act on 23.09.2015, knowing fully well that the period of limitation for completing the assessment proceedings would expire on 31.12.2016. The assessee also would be in the knowledge that the list of sundry creditors ran into 70 entities,



and he was furnishing it without their PAN particulars, addresses and other particulars, which would definitely defeat the purpose of tendering such information only for the sake of completing the formalities before the AO to shirk his responsibility since the AO will not be able to verify the transactions within such a short period with incomplete details. Be that as it may, since the assessment order was passed within the period of limitation, and it is only after the challenge to the order, where it was found to be erroneous and prejudicial to the interest of the revenue, that the same was restored to the file of AO for framing assessment afresh.

52. Insofar as the issue of directing the AO to conduct verification of the genuineness of the transactions and proper enquiry is concerned, we are of the opinion that the language of Section 263 of the Act is clear and unambiguous, and an order under Section 263 of the Act can be passed by PCIT, if the the same is found (i) erroneous, and (ii) prejudicial to the interests of Revenue, by the PCIT. As already observed in preceding discussion, an order passed without conducting necessary inquiries and verification of the records, can be deemed erroneous. Section 263(1) of the Act also provides that in such circumstances, the PCIT can pass such order as the circumstances of the case may justify, including the following orders:

- I. an order enhancing the assessment;
- II. an order modifying the assessment;
- III. an order cancelling the assessment and directing a fresh assessment.



53. It is also not disputed that under the Act, it is the duty of the AO, and not the PCIT, to verify the genuineness of the transactions and conduct inquiries which are necessary in the given facts and circumstances. Therefore, in case, the arguments of the assessee or the findings of the learned ITAT are accepted, it would lead to a conclusion that in case an AO does not verify the genuineness of the transactions or does not conduct proper enquiry and passes an erroneous order which is prejudicial to the interest of the Revenue, the assessee will go scot free and the PCIT will have no power to set aside the assessment order and direct the AO to conduct fresh assessment after conducting proper inquiries. In fact, when Explanation 2(a) of Section 263 of the Act itself clarifies that an assessment order passed without conducting enquiries would be erroneous, there is no reason as to why the direction of PCIT to AO, to pass afresh order after conducting proper enquiries, would be without jurisdiction and outside the scope of Section 263 of the Act.

54. In our opinion, a statute is to be construed and interpreted in a manner which would further its intent, and not defeat the same. The only conclusion which can be driven from the language and intent of the provision of Section 263 of the Act is that the PCIT, in cases such as the present one, by virtue of exercising its powers under the said provision, is empowered to direct the AO to frame the assessment afresh after conducting enquiries into such transactions, in interest of the Revenue.



55. As far as the question of extending time limit for completion of assessment stipulated under Section 153 of the Act is concerned, we note that Section 153(6) *inter alia* provides as follows:

“153. Time limit for completion of assessment, reassessment and recomputation.

* * *

(6) Nothing contained in sub-sections (1) and (2) shall apply to the following classes of assessments, reassessments and recomputation which may, subject to the provisions of sub-sections (3) and (5), be completed—

(i) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, section 254, section 260, section 262, section 263, or section 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of twelve months from the end of the month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be; or...”

(Emphasis added)

56. Clearly, the aforesaid provision mandates that the time limit stipulated in sub-sections (1) and (2) of Section 153 of the Act do not apply to any assessment, reassessment or recomputation which is made, *inter alia*, to give effect to any finding or direction contained in an order passed under Section 263 of the Act – as in the present case.

57. The Question No. 2 is, thus, answered in favour of the Revenue and against the assessee.



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58. In view thereof, the appeal is allowed in favour of the Revenue. The impugned order dated 13.10.2020 passed by the learned ITAT is set aside.

59. The appeal is disposed of.

DR. SWARANA KANTA SHARMA, J

VIBHU BAKHRU, J

MAY 13, 2025/ns