

JYOTI
RAJESH
MANE

Digitally signed
by JYOTI RAJESH
MANE
Date: 2026.04.10
18:03:43 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 151 OF 2024

Pr Commissioner Of Income
Tax Central Pune

...Appellant

Versus

Platinum Properties Ay 2014-15
Ita 3555/Mum/2019

...Respondents

Mr. Ashokkumar N. Kotangale a/w. Prabhakar Ranshur, for Appellant.

Mr. Madhur Agrawal i/b. Mr. Sameer Dalal, for Respondent.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 27 MARCH 2026

Oral Judgment (Per : Aarti Sathe, J):-

1. This Appeal has been filed by the Appellant-Revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), challenging the order dated 21st March 2023 (hereinafter referred to as the 'impugned order'), passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'ITAT') allowing the Respondent-Assessee's appeal, filed against an order dated 27th March 2019, passed by the Principal Commissioner of Income-tax (Central), (PCIT) – 2, Thane, thereby holding that the order passed by PCIT-2, Thane under Section 263 of the Act was not sustainable. The Assessment Year (AY) in question is AY 2014-2015.

2. By the present, Appeal the Appellant-Revenue has raised the following substantial questions of law:

SUBSTANTIAL QUESTION OF LAW

A. “Whether on the facts and the circumstances of the case and in law, the Hon’ble ITAT is justified in quashing order u/s.263 of the Income Tax despite the fact that case is clearly covered under explanation 2 of Section 263 as AO failed to even seek any explanation in respect of taxability of on money of Rs.7.96Cr. despite evidence on record?”

B. “ Whether on the facts and in the circumstances of the case and in law, the Hon’ble ITAT is justified in quashing order u/s. 263 of the Income Tax Act, 1961 passed by the Pr. Commissioner of Income Tax by accepting the assessee’s stand that on-money received cannot be assessed during the year under consideration as Occupancy Certificate was received in subsequent assessment year ignoring the fact that the AO did neither ask any explanation about taxability of on money of Rs.7.96Cr. nor even asked for Occupancy certificate?

3. The brief facts are as follows:-

i) The Respondent-Assessee is engaged in the business of builders and developers. During the year under consideration, the Respondent-Assessee undertook the construction of two projects, namely “Spring” and “Taloja.” The Respondent-Assessee follows the “project completion” method for recognizing profits from construction activities.

ii) During the present AY i.e. 2014-2015, the project “Spring” was completed, whereas the project “Taloja” remained under construction. Accordingly, the Respondent-Assessee recognized sales in respect of the completed project and disclosed the closing work-in-progress for the ongoing project.

iii) The Respondent-Assessee reported a net profit of Rs. 45,25,572/- and closing work-in-progress of Rs. 1,59,11,745/-. After considering remuneration paid to partners and other allowable and disallowable items as per the provisions of the Act, the Respondent-Assessee declared a taxable income of Rs.1,14,800/-.The

Return of income (ROI) for AY 2014–15 was filed electronically on 30th September 2014.

iv) The ROI was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS) category and accordingly notices were issued under Section 143(2) and 142(1) of the Act in the course of scrutiny proceedings. In the scrutiny proceedings various other additions and dis-allowances were sought to be made, and an assessment order dated 26th December 2016 under Section 143(3) of the Act was passed assessing Appellants income at a figure of Rs. 1,23,09,324/- as opposed to the returned income of Rs. 1,14,800/-

v) Subsequent to the passing of the assessment order dated 26th December 2016 under Section 143(3) of the Act, PCIT–II, Thane initiated revisionary proceedings under Section 263 of the Act.

vi) The PCIT–II, Thane sought to revise the said assessment order on the basis of a survey action conducted under Section 133A of the Act on 16th October 2014. It was observed that on-money receipts aggregating to Rs. 60,82,34,643/- were found in respect of sale of flats in the “Spring-I” and “Spring-II” projects. Out of the said amount, Rs.52,85,95,577/- had already been offered to tax in AY 2013–14. However, according to the PCIT–II, Thane, the balance on-money amounting to Rs.7,96,39,066/-, pertaining to the “Spring-II” project and received during Financial Year 2013–14 (relevant to AY 2014–15), had not been brought to tax. It was further observed that the Assessing Officer, while passing the assessment order dated 26th December 2016 for the present AY, failed to examine the aforesaid issue and tax the said amount of Rs. 7,96,39,066/- pertaining to the “Spring-II” project.

vii) On the basis of the above findings, and after considering the submissions made on behalf of the Respondent-Assessee, the PCIT-II, Thane invoked the provisions of Section 263 of the Act and held that the unaccounted on-money of Rs. 7,96,39,066/- was liable to be taxed in the present AY. On the basis of the aforesaid findings the PCIT-II, Thane sought to bring to tax the balance amount of Rs.7,96,39,066/- pertaining to the present AY, and also recorded the finding that this on-money received was never brought/offered to tax in any of the subsequent years and that it has no co-relation with receipt of the occupancy certificate. The PCIT-II, Thane sought to invoke clause (a) of Explanation 2 to Section 263 of the Act, which provides that if an order is passed without making enquiries or verification which should have been made, the order passed by the Assessing Officer shall be deemed to be erroneous insofar as it is prejudicial to the interests of the Revenue. The PCIT-II, Thane passed order dated 27th March 2019 holding that the order of the Assessing Officer dated 26th December 2016 is erroneous and prejudicial to the interest of the Revenue, and therefore invoked the provisions of Section 263 of the Act and set aside the assessment order dated 26th December 2016 of the Assessing Officer passed under Section 143(3) of the Act, with a direction to re-do the assessment *de novo* after affording an adequate opportunity to the Respondent-Assessee.

viii) Being aggrieved by the order passed by the PCIT-II Thane, the Respondent-Assessee preferred an Appeal before the ITAT and contended that the PCIT-II Thane had erred in passing the order dated 27th March 2019 under Section 263 of the Act.

ix) The ITAT, by the impugned order dated 21st March 2023 allowed the Appeal filed by the Respondent-Assessee on the ground that the order passed by PCIT-II, Thane, was incorrect in as much as the same was not erroneous or prejudicial to the interests of the Revenue, and the finding rendered therein of taxing on-money of Rs.7,96,39,066/- in the present AY 2014-15 without referring to any material available on record. The ITAT accepted the contention urged by Respondent-Assessee that they were following the project completion method for offering its income and this fact was never disputed by the Appellant-Revenue. The ITAT also accepted that the occupancy certificate for the Spring - I Project was received in the year relevant in AY 2013-14 and hence the proportionate amount of on-money relating to the aforesaid project was offered in that year. The remaining amount of Rs.7,96,39,066/- pertained to the project Spring-II, and the occupancy certificate in respect thereof was not received during the financial year relevant to the present AY 2014-15, and hence the same was not offered to tax in the present AY. The ITAT also took note of the fact that the entire factual conspectus and the relevant information was given to the Assessing Officer during the course of the assessment proceeding, and the copy of the occupancy certificate granted for the Spring- II project was also furnished to the Assessing Officer ,which was received only after the present AY 2014-15 i.e. on 11th December 2014, and hence the Assessing Officer did not make an addition of Rs.7,96,39,066/- in the present AY 2014-15. The ITAT also noted that during the course of the assessment proceedings, the notice under Section 142(1) of the Act had specifically asked for details of the occupation certificate relating the Springs – II project, and

the same was duly verified by the Assessing Officer, and hence this was not a case where assessment order could be considered to be erroneous and prejudicial to the interest of the Revenue. The ITAT, while reaching its conclusion that the order passed by the Assessing Officer was not erroneous and prejudicial to the interest of the Revenue placed reliance on the decisions of this Court in **Grasim Industries Ltd. V. CIT**¹, wherein it has been held that the phrase “prejudicial to the interest of the Revenue” has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of Revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue, and therefore, considering the aforesaid ratio, and also ratio as laid down in **Malabar Industrial Co.Ltd. Vs. Commissioner of Income Tax**² the ITAT held that the learned PCIT-II, Thane could not invoke its powers of revision under Section 263 of the Act if the Assessing Officer has conducted enquiries and applied his mind, and had taken a possible view of the matter. Further, the ITAT also held that if there was any enquiry and a possible view was taken, it would not give occasion to the PCIT-II, Thane to pass orders under Section 263 of the Act, merely because he has a different opinion in the matter. The relevant paragraphs of the ITAT order are reproduced below:

“8. We heard rival contentions and perused the record. The scope of revision proceedings initiated under section 263 of the Act was examined by Hon'ble Bombay High Court, in the case of Grasim Industries Ltd. V CIT(321 ITR 92) by taking into account the law laid down by the Hon'ble Supreme Court. The relevant observations are extracted below:

Section 263 of the Income-tax Act, 1961 empowers the Commissioner to call for and examine the record of any proceedings under the Act and, if he considers that any order passed therein, by the Assessing Officer is erroneous

¹ (321 ITR 92)

² (2000) 243 ITR 83 (SC)

in so far as it is prejudicial to the interests of the Revenue, to pass an order upon hearing the assessee and after an enquiry as is necessary, enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. The key words that are used by section 263 are that the order must be considered by the Commissioner to be "erroneous in so far as it is prejudicial to the interests of the Revenue".

This provision has been interpreted by the Supreme Court in several judgments to which it is now necessary to turn. In *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 83, the Supreme Court held that the provision "cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer" and "it is only when an order is erroneous that the section will be attracted". The Supreme Court held that an incorrect assumption of fact or an incorrect application of law, will satisfy the requirement of the order being erroneous. An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in that category. The expression "prejudicial to the interests of the Revenue", the Supreme Court held, it is of wide import and is not confined to a loss of tax. What is prejudicial to the interest of the Revenue is explained in the judgment of the Supreme Court (headnote) :

"The phrase 'prejudicial to the interests of the Revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."

The principle which has been laid down in *Malabar Industrial Co. Ltd. 2000] 243 ITR 83 (SC)* has been followed and explained in a subsequent judgment of the Supreme Court in *CIT v. Max India Ltd.* [2007] 295 ITR 82."

The principles laid down by the courts are that the Learned CIT cannot invoke his powers of revision under section 263 if the Assessing Officer has conducted enquiries and applied his mind and has taken a possible view of the matter. If there was any enquiry and a possible view is taken, it would not give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter. The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of Revenue must be based on materials on record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to start fishing and roving enquiries in matters or orders which are already concluded.

9. In the case of *Nagesh Knitwears P Ltd* (2012)(345 ITR 135), the Hon'ble Delhi High Court has elucidated and explained the scope of the provisions of sec.

263 of the Act and the same has been extracted by the Delhi High court in the case of CIT Vs. Goetze (India) Ltd (361 ITR 505) as under:-

"Thus, in cases of wrong opinion or finding on merits, the Commissioner of Income tax has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under section 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order is not sustainable in law and the said finding must be recorded. The Commissioner of Income tax cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, again the Commissioner of Income tax must give and record a finding that the order/inquiry made is erroneous. this can happen if an enquiry and verification is conducted by the Commissioner of Income tax and he is able to establish and show the error or mistake made by the Assessing officer, making the order unsustainable in law.

In some cases possibly though rarely, the Commissioner of Income tax can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the Assessing officer had. erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the Assessing Officer to conduct further enquiries without a finding that the order is erroneous. Finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction under section 263 of the Act. In such matters, to remand the matter to the Assessing Officer would imply and mean the Commissioner of Income tax has not examined and decided whether or not the order is erroneous but has directed the Assessing Officer to decide the aspect / question...."

Similar view has been expressed by Hon'ble Madras High Court in the case of CIT Vs. Amalgamations Ltd (238 ITR 963). The law interpreted by the High Courts makes it clear that the Ld Pr. CIT before holding an order to be erroneous, should have conducted necessary enquiries or verification in order to show that the finding given by the assessing officer is erroneous, the Ld Pr. CIT should have shown that the view taken by the AO is unsustainable in law.

10. In the instant case, we noticed that the Ld PCIT has reached to the conclusion that the difference amount is taxable in AY 2014-15 without referring to any material available on record. It is well settled proposition that the conclusion reached by the Ld PCIT should be supported by the material available on record. Before us, the Ld DR submitted that the assessee has not offered the difference amount in AY 2015-16. However, the case before us is related to the revision order passed for AY 2014-15, wherein the Ld PCIT has come to the conclusion that the difference amount is taxable in this year, which is not supported by the material available on record. Hence the question whether it was offered to tax in the succeeding year or not is not relevant to resolve the dispute before us. The point here is that the difference amount is not taxable in AY 2014-15 accordance with the method of accounting followed by the assessee. It is not a case where the AO has not applied his mind. From the record we notice that the AO was very much aware that the Project Spring II has not been completed in this year. Accordingly, we agree with the submission of Ld A.R that the Ld PCIT has no material to come to the

conclusion that the difference amount is taxable in AY 2014-15. Accordingly, we are of the view that, in the facts and circumstances of the case, the impugned revision order cannot be sustained. Accordingly we quash the same.

11. In the result, the appeal filed by the assessee is allowed.

Pronounced in the open court on 21.3.2023.”

4. We have heard Mr. Kotangale, learned counsel on behalf of the Appellant-Revenue and Mr. Madhur Agrawal, learned counsel on behalf of the Respondent-Assessee.

5. Learned counsel appearing on behalf of the Appellant-Revenue, Mr. Ashokkumar Kotangale, contended that the order passed by the ITAT failed to properly appreciate the material available on record. It was submitted that during the course of the assessment proceedings for present AY 2014-15, the Assessing Officer did not raise or verify the issue of on-money received by the Respondent-Assessee amounting to Rs. 60,82,34,643/- crores in respect of its two projects, namely “Spring-I” and “Spring-II.” It was further contended that the Assessing Officer failed to consider that out of the total on-money of Rs. 60,82,34,643/-, a sum of Rs. 7,96,39,066/- pertained to present AY 2014-15 and had not been offered to tax by the Respondent-Assessee in the said year. Accordingly, the assessment order dated 26th December 2016 was erroneous and prejudicial to the interests of the Appellant-Revenue. The learned counsel also submitted that the ITAT failed to appreciate that although the occupancy certificate for the “Spring-II” project was received on 11th December 2014, the corresponding income was not offered to tax even in the subsequent AY, i.e., AY 2015-16. It was also urged that the timing of receipt of the occupancy certificate was immaterial, particularly

in view of the fact that the on-money receipts had already been admitted by the Respondent-Assessee during the survey conducted under Section 133A of the Act on 16th October 2014.

6. He, therefore, submitted that the PCIT-II, Thane had rightly invoked the provisions of Explanation 2(a) to Section 263 of the Act, as the assessment order dated 26th December 2016 had been passed without making the necessary inquiries or verification of relevant details, thereby rendering the order erroneous and prejudicial to the interests of the Appellant-Revenue.

7. *Per contra*, learned counsel on behalf of the Respondent-Assessee Mr. Madhur Agrawal, has contended that since Respondent-Assessee was following the project completion method, the profits were being recognized on the basis of the same and being offered to tax accordingly. He also contended that the Respondent-Assessee had offered an amount of Rs.52,85,95,577/- pertaining to AY 2013-14 which related to the Spring-I project, primarily on the ground that the occupancy certificate in respect thereof was received in the said year. He submitted that in so far as balance amount of Rs.7,96,39,066/- was concerned, the same was not offered to tax in the present AY 2014-15, inasmuch as the occupancy certificate in respect of the Spring-II project, to which the aforesaid amount pertained, was not received in the present AY 2014-15. He also submitted that all the facts have been verified at the time of passing the assessment order, and hence the order dated 26th December 2016 passed by the Assessing Officer was not an order which was erroneous and prejudicial to the interest of the Appellant-Revenue and therefore

the ITAT had rightly come to the conclusion that the revision order dated 27th March 2019 passed by PCIT- II, Thane could not be sustained.

8. We have heard learned counsel on behalf of the parties and also perused the orders passed by the Assessing Officer, the PCIT – II, Thane and the impugned order passed by the ITAT. We are of the view that the ITAT has correctly reached its findings that the order passed by the Assessing Officer dated 26th December 2016 is an order which is not erroneous and prejudicial to the interest of the Appellant-Revenue, inasmuch as the said order was passed on a complete verification of the details submitted before the Assessing Officer. We are also of the view that once the Department had accepted the project completion method, which primarily gives the option to the Respondent-Assessee to offer its profits to tax on a year-on-year basis on the basis of completion of the project, the same would not give a ground to the Appellant-Revenue to revise an assessment order passed after verification of the detailed records of the Respondent-Assessee. It is also settled principle of law that, if two plausible views are possible on a given addition, then revisionary powers under section 263 of the Act could not be invoked. We are also of the view that the ITAT has correctly placed reliance on the decisions of Grasim Industries (supra) following Malabar Industrial Company Limited (supra) to hold that the phrase “prejudicial to the interest of the Revenue” has to be read in conjunction with the requirement of erroneous order being passed by the Assessing Officer, and also that if two views are possible, and the Income-tax officer has taken a view with which the Commissioner does not agree,

it cannot be treated as erroneous order prejudicial to the interest of the Appellant-Revenue unless the view taken by the Income-tax officer is unsustainable in law.

9. It would be beneficial to refer to the decision of the Supreme Court in the case of **Commissioner of Income Tax, (CENTRAL) Ludhiana Vs. Max India Limited**³ wherein in respect of the interpretation of the word “Profits” as defined in the proviso to Section 80-HHC(3) it has been held that when two views were possible in respect of the interpretation of the word “profits”, then the Commissioner could not exercise the powers under Section 263 of the Act. Relevant paragraphs of the decision are reproduced below: -

1. In our view at the relevant time two views were possible on the word 'profits' in the proviso to section 80HHC(3). It is true that *vide* 2005 amendment the law has been clarified with retrospective effect by insertion of the word 'loss' in the new proviso. We express no opinion on the scope of the said amendment of 2005. Suffice it to state that in this particular case when the order of the Commissioner was passed under section 263 of the Income-tax Act two views on the said word 'profits' existed. In our view the matter is squarely covered by the judgment of this Court in the case of *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 83 as also by the judgment of the Calcutta High Court in the case of *Russell Properties (P.) Ltd. v. A. Chowdhury, Addl. CIT* [1977] 109 ITR 229 at 243.

2. At this stage we may clarify that under para 10 of the judgment in the case of *Malabar Industrial Co. Ltd. (supra)* this Court has taken the view that the phrase "prejudicial to the interest of the revenue" under section 263 has to be read in conjunction with the expression "erroneous" order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. For example, when the Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law. According to the learned Additional Solicitor General on interpretation of the provision of section 80HHC(3) as it then stood the view taken by the Assessing Officer was unsustainable in law and therefore the Commissioner was right in invoking section 263 of the Income-tax Act. In this connection he has further submitted that in fact 2005 amendment which is clarificatory and retrospective in nature itself indicates that the view taken by the Assessing Officer at the relevant time was unsustainable in law. We find no merit in the said contentions. Firstly, it is not in dispute when the Order of the Commissioner was passed there were two

³ (2007) 295 ITR 282

views on the word 'profit' in that section. The problem with section 80HHC is that it has been amended eleven times. Different views existed on the day when the Commissioner passed the above order. Moreover the mechanics of the section have become so complicated over the years that two views were inherently possible. Therefore, subsequent amendment in 2005 even though retrospective will not attract the provision of section 263 particularly when as stated above we have to take into account the position of law as it stood on the date when the Commissioner passed the order dated 5-3-1997 in purported exercise of his powers under section 263 of the Income-tax Act.

3. For above reasons civil appeals filed by the Department stand dismissed.

No order as to costs.

(emphasis supplied)

10. Further, this Court in the case of **Commissioner of Income Tax Vs. Gabriel India Ltd.**⁴ has held that the power of *suo moto* revision under Section 263(1) of the Act can be exercised only if the circumstances therein exist. For the powers of revision under Section 263 of the Act, two circumstances must exist to enable the Commissioner to exercise the revisionary jurisdiction, i.e., (i) the order is erroneous, (ii) by virtue of the order prejudice is caused to the Revenue. It is therefore to be considered firstly that the order is said to be erroneous, and further if an Income Tax Officer (ITO) has acted in law and has made a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because according to him the order should have been written more elaborately. If the ITO while making an assessment of the accounts has examined the accounts and made enquiries and applied his mind to the facts and circumstances of the case and determined the income either by accepting the account or by making the estimate itself, then the Commissioner cannot substitute the aforesaid order and reexamine the accounts by invoking Section 263 of the Act by

⁴ (1989) 176 ITR 349

terming the order erroneous or prejudicial to the Revenue. Relevant paragraphs of the decision are reproduced below: -

8. According to the Commissioner, the order of the ITO did not disclose any application of mind. He issued the notice as he felt that the expenditure in question might be a capital expenditure. But despite examining the matter at length and hearing the assessee, he could not come to any conclusion that the expenditure was not revenue expenditure but expenditure of capital nature. He referred the matter back to ITO to examine the same and to decide afresh. The Tribunal did not approve such action of the Commissioner. Therefore, the question that arises for consideration is whether the Commissioner without arriving at a finding that the order in question was erroneous can set aside the assessment in exercise of power under section 263. It may be expedient at this stage to set out section 263. Section 263, so far as relevant, runs as follows:

"263. *Revision of orders prejudicial to revenue* — (1)

The 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 Income-tax Officer is erroneous insofar as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

(2) No order shall be made under sub-section (1)—

(a) to revise an order of reassessment made under section 147, or

(b) after the expiry of two years from the date of the order sought to be revised."

From a reading of sub-section 1 of section 263, it is clear that the power of *suo motu* revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the ITO is 'erroneous insofar as it is prejudicial to the interests of the revenue'. It is not an arbitrary or unchartered power. It can be exercised only on fulfilment of the requirements laid down in sub-section (1). The consideration of the Commissioner as to whether an order is erroneous insofar as it is prejudicial to the interests of the revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity- [See *Parashuram Pottery Works Co. Ltd. v. ITO* [\[1977\] 106 ITR 1 \(SC\)](#), at page 10].

9. As observed in *Sirpur Paper Mills Ltd. v. ITO* [\[1978\] 114 ITR 404 \(AP\)](#) by Raghuvver, J. (as his Lordship then was), the Department cannot be permitted to begin fresh litigation because of new views they entertain on facts or new versions which they present as to what should be the inference or

proper inference either of the facts disclosed or the weight of the circumstances. If this is permitted, litigation would have no end, 'except when legal ingenuity is exhausted'. To do so, is '... to divide one argument into two and to multiply the litigation'.

10. The power of *suo motu* revision under sub-section (1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision under this sub-section, viz., (i) the order is erroneous; (ii) by virtue of the order being erroneous prejudice has been caused to the interests of the revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous. We find that the expressions 'erroneous', 'erroneous assessment' and 'erroneous judgment' have been defined in *Black's Law Dictionary*. According to the definition/erroneous', means 'involving error; deviating from the law'. 'Erroneous assessment' refers to an assessment that deviates from the law and is, therefore, invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, 'erroneous judgment' means 'one rendered according to course and practice of Court, but contrary to law upon mistaken view of law, or upon erroneous application of legal principles'.

11. From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an ITO acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the ITO, who passed the order, unless the decision is held to be erroneous. Cases may be visualised where the ITO while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner, he would have estimated the income at a figure higher than the one determined by the ITO. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the ITO has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. It may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interests of the revenue. But that by itself will not be enough to vest the Commissioner with the power of *suo motu* revision because the first requirement, viz., that the order is erroneous, is absent. Similarly, if an order is erroneous but not prejudicial to the interests of the revenue, then also the power of *suo motu* revision cannot be exercised. Any and every erroneous order cannot be the subject-matter of revision because the second requirement also must be fulfilled. There must be some *prima facie* material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.

12. As observed in *Dawjee Dadabhoy & Co. v. S.P. Jain* [1957] 31 ITR 872 (Cal.), at page 881, "the words 'prejudicial to the interests of the revenue' have not been defined, but it must mean that the orders of assessment challenged are such as are not in accordance with law, in consequence whereof the lawful

revenue due to the State has not been realised or cannot be realised. It can mean nothing else". The aforesaid observations were also applied by the Gujarat High Court in *Addl. CIT v. Mukur Corpn.* [1978] 111 ITR 312 . We are of the opinion that the aforesaid interpretation given by the Calcutta High Court to the expression 'prejudicial to the interests of the revenue' is the correct interpretation.

13. We, therefore, hold that in order to exercise power under sub-section (1) of section 263 there must be material before the Commissioner to consider that the order passed by the ITO was erroneous insofar as it is prejudicial to the interests of the revenue. We have already held what is erroneous. It must be an order which is not in accordance with the law or which has been passed by the ITO without making any enquiry in undue haste. We have also held as to what is prejudicial to the interests of the revenue. An order can be said to be prejudicial to the interests of the revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. There must be material available on the record called for by the Commissioner to satisfy him *prima facie* that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision. Exercise of power of *suo motu* revision under such circumstances will amount to arbitrary exercise of power. It is well-settled that when exercise of statutory power is dependent upon the existence of certain objective facts, the authority before exercising such power must have materials on record to satisfy it in that regard. If the action of the authority is challenged before the Court, it would be open to the Courts to examine whether the relevant objective factors were available from the records called for and examined by such authority. Our aforesaid conclusion gets full support from a decision of Sabyasachi Mukharji, J. (as his Lordship then was) in *Russell Properties (P.) Ltd. v. A. Chowdhury*, *Addl. CIT* [1977] 109 ITR 229 (Cal.). In our opinion, any other view in the matter will amount to giving unbridled and arbitrary power to the revising authority to initiate proceedings for revision in every case and start re-examination and fresh enquiries in matters which have already been concluded under the law. As already stated, it is a quasi-judicial power hedged in with limitation and has to be exercised subject to the same and within its scope and ambit. So far as calling for the records and examining the same is concerned, undoubtedly, it is an administrative act, but on examination 'to consider' or in other words, to form an opinion that the particular order is erroneous insofar as it is prejudicial to the interests of the revenue, is a quasi-judicial act because on this consideration or opinion the whole machinery of re-examination and reconsideration of an order of assessment, which has already been concluded and controversy which has been set at rest, is set again in motion. It is an important decision and the same cannot be based on the whims or caprice of the revising authority. There must be materials available from the records called for by the Commissioner.

(emphasis supplied)

11. In the facts of the present case, we are of the view that the assessment order was passed after proper verification of facts, and the Appellant-Revenue had never disputed the method of accounting followed by the Respondent-Assessee i.e. the project completion method to offer their profits for tax and hence the Assessing

Officer had come to the view that the amount of Rs.7,96,39,066/- which was not received by the Respondent Assessee in the present AY 2014-15 was not rightly offered to tax in the present AY 2014-2015. It is our view that the Tribunal has rightly set aside the order of the PCIT-II Thane seeking to revise the assessment order by holding that the PCIT-II, Thane has no material to come to conclusion that the amount of Rs.7,96,39,066/- was taxable in the present AY 2014-15.

12. It is therefore our view that the impugned order passed by the ITAT is a well-reasoned order which does not give rise to any substantial question of law which requires interference or consideration in the present Appeal. In view thereof Appellant-Revenue's appeal is accordingly dismissed, as no substantial question of law arises in this Appeal. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)