आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, ''B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 239/JP/2023
निर्धारण वर्ष/Assessment Year : 2018-19

M/s. Manglam Arts Govind Nagar (East) Amber Palace Road, Jaipur	बनाम Vs.	The Pr. CIT Jaipur-2
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABFM 9591 K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal
राजस्व की ओर से/ Revenue by: Shri Ajay Malik, CIT-DR

सुनवाई की तारीख/ Date of Hearing : 05/07/2023
उदघोषणा की तारीख/Date of Pronouncement: 30 /08/2023

आदेश/ ORDER

PER: SANDEEP GOSAIN, JM

This appeal of the assessee is directed against the order of the ld. PCIT, Jaipur-2 dated 29-03-2023 for the assessment year 2018-19 in the matter of Section 263 of the Act wherein the assessee has raised the following grounds of appeal.

1. The order passed by Ld. PCIT u/s 263 of the Act holding that assessment order passed u/s 143(3) dt. 12.02.2021 is erroneous and prejudicial to the interest of revenue is illegal & bad in law.

2. The Ld. PCIT has erred on facts and in law in computing the disallowance u/s 14A read with Rule 8D(2) of the Act at Rs.96,38,869/- ignoring that assessee has not incurred any expenditure in relation to exempt income and at the same time directing the AO to verify, examine and finalize the assessment in accordance with the prevailing law.

3. The Ld. PCIT has erred on facts and in law in holding that amount of Rs.46,666/- debited to P&L A/c under the head penalty & fine is not allowable even when such amount is not in the nature of penalty & fine and at the same time directing the AO to verify, examine and finalize the assessment in accordance with prevailing law.

4. The Ld. PCIT has erred on facts and in law in holding that interest on delayed payment of TDS of Rs.1,86,701/- should be added to the total income of the assessee ignoring that there are contrary decisions on this issue and at the same time directing the AO to verify, examine and finalize the assessment in accordance with the prevailing law.

5. The Ld. PCIT has erred on facts and in law in holding that Rs.13,520/- is disallowable (being 30% of alleged interest paid of Rs.45,069/-) u/s 40(a)(ia) of the Act ignoring that assessee has neither paid such interest nor any other amount liable for TDS and at the same time directing the AO to verify, examine and finalize the assessment in accordance with the prevailing law.

6. The Ld. PCIT has erred on facts and in law in holding that prior period expenses of Rs.23,41,675/- is not eligible for deduction against the profit of current year as nothing is brought on record to justify that such expenses crystallized during the year under consideration ignoring that this issue has already been considered by AO in the original assessment proceedings and in earlier year it was allowed by CIT(A).

2.1 Apropos ground No.1 of the assessee, brief facts of the case are that the assessee is engaged in the business of manufacturing and export of wooden handicrafts, durries, rugs, textile items, etc. It filed the return declaring total income of Rs.31,43,91,380/-. The return was selected for complete scrutiny proceedings by issue of notice under section 143(2) of the Act dated 22 September 2019. Thereafter, a detailed questionnaire dated 2 December 2020 was issued under section 142(1) of the Act, *inter-alia*, requiring the assessee to *furnish details of deductions, exemptions and rebate claimed during the year along with supporting documents*. The assessee furnished detailed replies vide submission dated 7 October 2019, 16 December 2020, 11 January 2021, 27 January 2021 and 10 February 2021. The AO considering the same assessed the total income vide order u/s 143(3) dt. 12.02.2021 at Rs.34,36,45,410/- making addition on account of following items:

a. Litigation expense on property of Rs 2,37,00,000
b. Employee's contribution to Provident Fund of Rs 27,71,013

2.2 The Ld. PCIT issued notice u/s 263 dt. 15.02.2023 **(PB 1-3)** on the ground that faceless assessing officer (FAO) has not made addition on seven issues as is evident from the audited accounts/ tax audit report. The assessee filed detailed explanation vide letter dt. 24.02.2023 **(PB 4-40)** and 08.03.2023 **(PB 41-51)**

explaining each of the issues and highlighting that how the same is considered in original assessment proceedings. The Ld. PCIT after considering the same, at Para **5.5, Pg 7-11** of the order accepted the explanation on two issues but directed the AO to make addition on the following issues as summarized at Para 12 of the order:-

Disallowance u/s 14A	Rs.66,30,268/-
Disallowance of penalty & fine	Rs.46,666/-
Disallowance of interest on delayed payment of TDS	Rs.1,86,701/-
Disallowance u/s 40(a)(ia)	Rs.13,520/-
Disallowance of prior period expenses	Rs.23,41,675/-

However, in spite of specific direction for making the above disallowance, at Para 14 of the order it is held that AO passed the order in a routine and perfunctory manner without verifying the above disallowance which has made his order liable for revision under Explanation 2, clause (b) & clause (a) of section 263 and thus directed the AO to finalize the assessment in accordance with the prevailing law, thereby setting aside the assessment order on the above issues.

2.3 During the course of hearing, the ld. AR of the assessee prayed that the order passed by the ld. PCIT u/s 263 of the Act holding that assessment order passed u/s 143(3) dated 12-02-2021 is erroneous and prejudicial to the interest of revenue is illegal and bad in law for which the ld. AR of the put forth the following submissions

Submission:-

1. In the submitted that the case of the Assessee was selected for **Complete Scrutiny** under the E-assessment Scheme 2019 and a notice under section 143(2) of the Act was issued. Chronology of events of the assessment proceedings are as under:

Issue of notice	**Submission of the Assessee dated**	**Information filed by the Assessee, *inter-alia***
Complete scrutiny notice dated 22 September 2019 u/s 143(2) identifying following issues: a. Refund claim b. Duty drawback	• 7 October 2019	• Detailed explanation on the issues identified was provided

Notice dated 2 December 2020 issued u/s 142(1) of the Act asking as many as 17 questions	• 16 December 2020
	• 11 January 2021
	• 27 January 2021
		In submission dated 16 December 2020 (**PB 52-65**)
		• Computation of income
		• Audited financial statements and tax audit report in Form 3CB – CD along with all the schedules
		  • *Penalty and fine of Rs 2,66,946 is reported on the face of the profit and loss account. Out of the said amount, Rs 2,20,280 has been reported as disallowed in Form 3CB-CD by the tax auditor which has been disallowed in the COI*
		  • *Interest of late deposit of TDS of Rs 1,86,701 has been reported in the Form 3CB-CD by the tax auditor. Further, computation of income was also furnished in which no disallowance was taken due to favourable judicial precedents on this issue*
		  • *Commission expense of Rs 37,37,470 has been reported on the face of profit and loss account. Further, in Form 3CB-CD, commission expense liable to TDS of Rs 32,60,974 has been reported*
		• Details of deductions, exemptions and rebates providing that interest on tax free bonds of Rs 7,58,08,002 was earned during the year along with statement of holding and copy of tax free bonds
		• Comparative statement of sales, GP ratio and NP ratio
		In submission dated 11 January 2021 (**PB 66-69**)
		• Detailed explanation on alleged prior period expense of Rs 23,41,675. The amount is also appearing on the face of the profit and loss account

Show cause notice dated 5 February 2021	• 10 February 2021	• Detailed explanation on the additions proposed in the show cause notice

2. Detailed questionnaire was issued by the AO during the assessment proceedings which was duly replied by the assessee and considered by the AO. This is also evident from the para 1 of the assessment order dated 12 February 2021 wherein it has been, *inter-alia*, mentioned as under:

> *"1. The case was selected for Complete Scrutiny assessment under the E-assessment Scheme, 2019 on the following issues:-*
> *……*
> ***Subsequently, notice u/s 142(1) of the Income-tax Act dated 02.12.2020 along with questionnaire was issued for compliance on 17.12.2020. The assessee furnished the details and replies vide its letters on 17.12.2020 & 19.01.2021. The details furnished were examined/ verified**."*
>
> The assessing officer only after considering the said information, passed the assessment order for the subject year and therefore it cannot be said that the assessment order is erroneous so far as prejudicial to the interest of revenue.

3. Section 263 of the Act has been reproduced as under:

> **"*Revision of orders prejudicial to revenue.***
>
> *263. (1) The [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] **is erroneous in so far as it is prejudicial to the interests of the revenue**, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, [including,—*
>
> *(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 1.—…..*
>
> *Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—*
>
> *(a) the order is passed without making inquiries or verification which should have been made;*
>
> *(b) the order is passed allowing any relief without inquiring into the claim;*
>
> *(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*

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

Explanation 3.—…

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

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

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

(emphasis supplied)

4. As evident above, in order to invoke section 263 of the Act the following conditions are required to be satisfied cumulatively:

a. The order should be erroneous; and
b. The order should be prejudicial to the interest of revenue

5. The scope of the aforesaid provision has been well explained by the Supreme Court in the case of **Malabar Industrial Co. Ltd. vs. CIT reported in 243 ITR 83 [2000] (SC)** [**Case law compilation PB 1-6**] where in it has been held at page 87 as under:

"The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent-if the order of the Income Tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue-recourse cannot be had to section 263(1) of the Act."

It has further been held in the same judgment at page 88 as under:

"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".

(emphasis supplied)

6. Similarly, the Jodhpur Bench of the Income Tax Appellate Tribunal ("ITAT") in the case of **Satya Narayan Dhoot vs PCIT I.T.A. No. 49/Jodh/2022 order dated 17 January 2023** [**Case law compilation PB 7-12**] has explained the scope of section 263 of the Act as under:

> *"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 of the Act, merely because he has got a different opinion in the matter.*** *263 The consideration of the Commissioner as to whether an order is erroneous in so far 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."*
>
> Similar view has been taken by the Jodhpur Bench of the ITAT in the case of **M/s O S Motors Pvt Ltd vs PCIT ITA No. 54/Jodh/2022 order dated 16 January 2023 [Case law compilation PB 13-16]**.

7. It is reiterated that the law is well settled that the PCIT can exercise revisionary powers under section 263 of the Act on existence of twin conditions, viz., (a) order of the assessing officer sought to be revised is erroneous and (b) such order is prejudicial to the interest of Revenue and the said principle has been held in the following decisions as well:

- CIT vs. Max India Limited: 295 ITR 282 (SC)
- CIT vs. Gabriel India Ltd: 203 ITR 108 (Bom)
- CIT vs. Smt. Meenalben S. Parikh: 215 ITR 81 (Guj.)
- CIT vs. Arvind Jewellers: 259 ITR 502 (Guj)
- CIT vs. Mehsana Dist. Co-op. Milk Producers Union Ltd.: 263 ITR 645 (Guj.)

8. Further, the scope and purport of section 263 read with explanation thereto has been explained by **ITAT, Mumbai bench in case of Sir Dorabji Tata Trust Vs. DCIT(E) (2020) 188 ITD 38**. The relevant findings at Para 19-22 is as under:-

> *"19. The question that we also need to address is as to what is the nature of scope of the provisions of Expln. 2(a) to s. 263 to the effect that an order is deemed to be "erroneous and prejudicial to the interests of the Revenue" when CIT is of the view that "the order is passed without making inquiries or verification which should have been made".*
>
> *20. Undoubtedly, the expression used in Expln. 2 to s. 263 is "when CIT is of the view," but that does not mean that the view so formed by the CIT is not subject to any judicial scrutiny or that such a view being formed is at the unfettered discretion of the CIT. The formation of his view has to be in a reasonable manner, it must stand the test of judicial scrutiny, and it must have, at its foundation, the inquiries, and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant-that an AO is expected to be. If we are to proceed on the basis, as is being urged by the learned Departmental Representative and as is canvassed in the impugned order, that once CIT records his view that the order is passed*

*without making inquiries or verifications which should have been made, we cannot question such a view and we must uphold the validity of revision order, for the recording of that view alone, it would result in a situation that the CIT can de facto exercise unfettered powers to subject any order to revision proceedings. To exercise such a revision power, if that proposition is to be upheld, will mean that virtually any order can be subjected to revision proceedings; all that will be necessary is the recording of the CIT's view that "the order is passed without making inquiries or verification which should have been made". Such an approach will be clearly incongruous. The legal position is fairly well settled that when a public authority has the power to do something in aid of enforcement of a right of a citizen, it is imperative upon him to exercise such powers when circumstances so justify or warrant. Even if the words used in the statute are prima facie enabling, the Courts will readily infer a duty to exercise a power which is invested in aid of enforcement of a right—public or private—of a citizen. [L Hirday Naran vs. ITO (1970) 78 ITR 26 (SC)]. As a corollary to this legal position, when a public authority has the powers to do something against any person, such an authority cannot exercise that power unless it is demonstrated that the circumstances so justify or warrant. In a democratic welfare state, all the powers vested in the public authorities are for the good of society. A fortiorari, neither can a public authority decline to exercise the powers, to help anyone, when circumstances so justify or warrant, nor can a public authority exercise the powers, to the detriment of anyone, unless circumstances so justify or warrant. What essentially follows is that unless the AO does not conduct, at the stage of passing the order which is subjected to revision proceedings, inquiries and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant–that an AO is expected to be, CIT cannot legitimately form the view that "the order is passed without making inquiries or verification which should have been made". **The true test for finding out whether Expln. 2(a) has been rightly invoked or not is, therefore, not simply existence of the view, as professed by the CIT, about the lack of necessary inquiries and verifications, but an objective finding that the AO has not conducted, at the stage of passing the order which is subjected to revision proceedings, inquiries and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant that the AO is expected to be.***

*21. That brings us to our next question, and that is what a prudent, judicious, and responsible AO is to do in the course of his assessment proceedings. **Is he to doubt or test every proposition put forward by the assessee and investigate all the claims made in the IT return as deep as he can? The answer has to be emphatically in negative because, if he is to do so, the line of demarcation between scrutiny and investigation will get blurred, and, on a more practical note, it will be practically impossible to complete all the assessments allotted to him within no matter how liberal a time-limit is framed. In scrutiny assessment proceedings, all that is required to be done is to examine the IT return and claims made therein as to whether these are prima facie in accordance with the law and where one has any reasons to doubt the correctness of a claim made in the IT return, probe into the matter deeper in detail. He need not look at everything with suspicion and investigate each and every claim made in the IT return; a reasonable prima facie scrutiny of all the claims will be in order, and then take a call, in the light of his expert knowledge and experience, which areas, if at all any, required to be critically examined by a thorough probe.** While it is true that an AO is not only an adjudicator but also an investigator and he cannot remain passive in the face of a return which is apparently in order but calls for further inquiry but, as observed by Hon'ble Delhi High Court in the case of Gee Vee Enterprises vs. Addl. CIT & Ors. 1975 CTR (Del) 61 : (1995) 99 ITR 375 (Del) , "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. (Emphasis, by underlining, italicised in print, supplied by us). It is, therefore, obvious that when the circumstances are not such as to provoke an inquiry, he need not put every proposition to the test and probe everything stated in the IT return. In a way, his role in the scrutiny assessment proceedings is somewhat akin to a conventional statutory auditor in real-life situations. What Justice Lopes said, in the case of Re Kingston Cotton Mills (1896) 2 Ch.D 279, 288), in respect of the role of an auditor, would equally apply in respect of the role of the AO as well. His lordship had said that an auditor (read*

*AO in the present context)" is not bound to be a detective, or, as was said, to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watch-dog, but not a bloodhound". Of course, an AO cannot remain passive on the facts which, in his fair opinion, need to be probed further, but then an AO, unless he has specific reasons to do so after a look at the details, is not required to prove to the hilt everything coming to his notice in the course of the assessment proceedings. When the facts as emerging out of the scrutiny are apparently in order, and no further inquiry is warranted in his bona fide opinion, he need not conduct further inquiries just because it is lawful to make further inquiries in the matter. A degree of reasonable faith in the assessee and not doubting everything coming to the AO's notice in the assessment proceedings cannot be said to be lacking bona fide, and as long as the path adopted by the AO is taken bona fide and he has adopted a course permissible in law, he cannot be faulted-which is a sine qua non for invoking the powers under s. 263. In the case of Malabar Industrial Co. Ltd. vs. CIT (2000) 159 CTR (SC) 1 : (2000) 243 ITR 83 (SC) , Hon'ble Supreme Court has held that "Every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interests of the Revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the ITO is unsustainable in law." **The test for what is the least expected of a prudent, judicious and responsible AO in the normal course of his assessment work, or what constitutes a permissible course of action for the AO, is not what he should have done in the ideal circumstances, but what an AO, in the course of his performance of his duties as an AO should, as a prudent, judicious or reasonable public servant, reasonably do bona fide in a real-life situation. It is also important to bear in mind the fact that lack of bona fides or unreasonableness in conduct cannot be inferred on mere suspicion; there have to be some strong indicators in direction, or there has to be a specific failure in doing what a prudent, judicious and responsible officer would have done in the normal course of his work in the similar circumstances**. On a similar note, a Co-ordinate Bench of the Tribunal, in the case of Narayan T. Rane vs. ITO (2016) 70 taxmann.com 227 (Mumbai) has observed as follows:*

> ***20. Clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by learned Principal CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-a-vis its reasonableness in the facts and circumstances of the case.*** *Hence, in our considered view, what is relevant for cl. (a) of Expln. 2 to s. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have claimed out or not. It does not authorise or give unfettered powers to the learned Principal CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made.*

22. Having said that, we may also add that while in a situation in which the necessary inquiries are not conducted or necessary verifications are not done, Commissioner may indeed have the powers to invoke his powers under section 263 but that it does not necessarily follow that in all such cases the matters can be remitted back to the assessment stage for such inquiries and verifications. ***There can be three mutually exclusive situations with regard to exercise of powers under section 263, read with Explanation 2(a) thereto, with respect to lack of proper inquiries and verifications. The first situation could be this. Even if necessary inquiries and verifications are not made, the Commissioner can, based on the material before him, in certain cases straight away come to a conclusion that an addition to income, or disallowance from expenditure or some other adverse inference, is warranted.***

In such a situation, there will be no point in sending the matter back to the Assessing Officer for fresh inquiries or verification because an adverse inference against the assessee can be legitimately drawn, based on material on record, by the Commissioner. In exercise of his powers under section 263, the Commissioner may as well direct the Assessing Officer that related addition to income or disallowance from expenditure be made, or remedial measures are taken. *The second category of cases could be when the Commissioner finds that necessary inquiries are not made or verifications not done, but, based on material on record and in his considered view, even if the necessary inquiries were made or necessary verifications were done, no addition to income or disallowance of expenditure or any other adverse action would have been warranted. Clearly, in such cases, no prejudice is caused to the legitimate interests of the revenue. No interference will be, as such, justified in such a situation. That leaves us with the third possibility, and that is when the Commissioner is satisfied that the necessary inquiries are not made and necessary verifications are not done, and that, in the absence of this exercise by the Assessing Officer, a conclusive finding is not possible one way or the other. That is perhaps the situation in which, in our humble understanding, the Commissioner, in the exercise of his powers under section 263, can set aside an order, for lack of proper inquiry or verification, and ask the Assessing Officer to conduct such inquiries or verifications afresh."*

9. In the instant case, on the issues on which the PCIT has held the order to be erroneous in so far as prejudicial to the interest of the revenue, either a due enquiry was made by the AO during the assessment proceedings and a possible view was taken after considering the reply filed by the assessee, or details were furnished during assessment proceedings by way of audited financial statements and Form 3CB-CD which clearly evidences the position taken by the assessee and was accepted by the AO as no disallowance/ addition was made by him. Thus, the assessment order passed by the AO is after consideration of the information filed during assessment proceedings (as mentioned by the AO himself in the assessment order) and therefore the order cannot be said to be erroneous and prejudicial to the interest of the revenue even by virtue of explanation 2(a) and 2(b) to section 263 of the Act and therefore is illegal and bad in law and be kindly quashed.

2.4 On the other hand, the ld. DR supported the order of the ld. PCIT.

2.5 We have heard both the parties and perused the materials available on record. From the order of the ld. PCIT, it is noticed that the Ld. PCIT issued notice u/s 263 dt. 15.02.2023 on the ground that faceless assessing officer (FAO) has not made addition on seven issues as is evident from the audited accounts/ tax audit report. The assessee filed detailed explanation vide letter dt. 24.02.2023 **(PB 4-40)** and 08.03.2023 explaining each of the issues and highlighting that how the same is considered in original assessment proceedings. The Ld. PCIT after considering

the same, at Para **5.5, Pg 7-11** of the order accepted the explanation on two issues but directed the AO to make addition on the following issues as summarized at Para 12 of the order:-

Disallowance u/s 14A	Rs.66,30,268/-
Disallowance of penalty & fine	Rs.46,666/-
Disallowance of interest on delayed payment of TDS	Rs.1,86,701/-
Disallowance u/s 40(a)(ia)	Rs.13,520/-
Disallowance of prior period expenses	Rs.23,41,675/-

However, in spite of specific direction for making the above disallowance, at Para 14 of the order it is held that AO passed the order in a routine and perfunctory manner without verifying the above disallowance which has made his order liable for revision under Explanation 2, clause (b) & clause (a) of section 263 and thus directed the AO to finalize the assessment in accordance with the prevailing law, thereby setting aside the assessment order on the above issues. The para No.14 of ld.CIT(A) in verbatim is reproduced as under:-

> ‘’14. Accordingly, by virtue of powers conferred on the undersigned under the provisions of Section 263 of the Income Tax Act, 1961, I hold that the order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 dated 12-02-2021 for A.Y. 2018-19 is erroneous in so far as it is prejudicial to the interest of revenue as the said order has been passed by the Assessing Officer in a routine and perfunctory manner without verify the amount of disallowance u/s 14A of the I.T. Act, disallowances on account of penalty and fine of Rs.46,666/-, interest on delayed payment of TDS of Rs.1,86,701, disallowances u/s 40(a)(ia) lof Rs.13,520/- and disallowance of pre-paid expenses of Rs.23,41,675/-.

> The order of the Assessing Officer is, therefore, liable to revision under the Explanation -2 clause (b) of Section 263 of the Income Tax Act, 1961. Hence the assessment order is set aside on the issue as above to be redone afresh in the light of the observations made in this order and with direction to the Assessing Officer to verify, examine and finalize the assessment in accordance with the prevailing law; quantity the corrective income of the assessee liable to tax for A.Y. 2018-19 after recording reasonable opportunity of the assessee.''

The Bench has taken into consideration all the facts circumstances for the case and noted that in this case as to the issues on which the ld. PCIT has held the order to be erroneous insofar as prejudicial to the interest of the Revenue either a due enquiry was made by the AO during the assessment proceedings or a possible view was taken after considering the reply filed by the assessee, or details were furnished during assessment proceedings by way of audited financial statements and Form 3CB-CD which clearly evidences the position taken by the assessee and was accepted by the AO as no disallowance/ addition was made by him. Thus, the assessment order passed by the AO is after consideration of the information filed during assessment proceedings which is as mentioned by the AO himself in the assessment order and therefore the order cannot be said to be erroneous and prejudicial to the interest of the revenue even by virtue of explanation 2(a) and 2(b) to section 263 of the Act and in such a situation we find that the order of the ld. PCIT is bad in law and the Bench does not concur with the findings of the ld. PCIT on the issue considering the decisions taken in Ground No. 2 to 6 hereinafter.

3.1 Apropos Ground No. 2 of the assesee, it is noted that during the course of proceedings the following was submitted by the assessee in relation to exempt income.

- Profit and loss account of the subject year evidencing interest on tax free bonds of Rs 7,58,08,002
- Computation of income of the subject AY evidencing exempt income of the said amount
- Return of income of the subject AY wherein the said amount has been disclosed in the exempt income schedule and is also coming on the face of the acknowledgement of the return of income
- Submission dated 16 December 2020 in response to notice issued under section 142(1) dated 2 December 2020 wherein the assessee submitted that the amount of Rs 7,58,08,002 has been earned as exempt income which is on account of tax-free bonds. Also, statement of holding of tax-free bonds and copy of bonds certificates were submitted.

It is noted that the PCIT at para 5.4 of the assessment order has mentioned that the AO had not made by inquiries on the issue of disallowance under section 14A of the Act and therefore the AO had no occasion to apply his mind on the issue regarding disallowance under section 14A of the Act. Basis this, the PCIT computed disallowance of Rs 96,38,869 being 1% of average value of investments in tax free bonds of Rs 96,38,86,900 made by the Assessee.

3.2 During the course of hearing, the ld. AR of the assessee submitted that the issue was examined by the AO in the course of original assessment proceedings and further submitted that in earlier years no such disallowance was made. The ld. AR of the assessee further submitted that the AO has adopted one view and his

order cannot be termed as erroneous and thus the disallowance proposed by the ld. PCIT is not as per law for which the ld. AR of the assessee submitted following detailed written submission.

''3. It is submitted that the assessee in its reply dt. 16.12.2020 to the AO at Para 3 **(PB 57)** in respect of the query as to claim of deduction or exemption or rebate has specifically explained that it has claimed exemption of Rs.7,58,08,002/- in respect of interest from tax free bonds for which detailed statement of holding of tax free bonds and copies thereof was filed. The AO considering the same has not made any disallowance u/s 14A. In proceedings u/s 263 the assessee vide letter dt. 24.02.2023 **(PB 5-7)** has further explained that all investment of Rs.96,28,86,937/- in tax free bonds was made between 13.01.2014 to 16.11.2016 and there is no fresh investment during the year under consideration. The investment is made out of own funds and no expenditure is incurred to earn interest from tax free bonds in as much as the interest is directly credited on the due dates in the bank account of assessee. The assessee also relied on the various case laws. The Ld. PCIT, however, incorrectly observed that investment decisions are complex and need day to day management/ monitoring and thereby relying on CBDT Circular No.5/2014 dt. 11.02.2014 and the amendment made in the statute vide Finance Act, 2022 worked out disallowance of Rs.96,38,869/, being 1% of average value of investment.

4. From the above it can be noted that the issue was examined by the AO in course of original assessment proceedings. Further, in earlier years no such disallowance was made. Disallowance was only made in AY 2020-21 which was deleted by Ld. CIT(A) vide order dt. 27.04.2023 **(PB 72-108)** as per discussion at Para 4.3 to 4.3.5. The relevant part of the order of CIT(A) is reproduced as under:-

4.3 During the year under consideration the assessee has earned "exempt income" of Rs.7, 23,66,354/- under the head of "Interest on Tax free bonds" from the interest on GOVERMRNT OF INDIA NOTIFIED TAX FREE BONDS and the assessing officer has disallowed a sum of Rs.96,28,869/- by applying section 14A r.w.r. 8D. Appellant had not disallowed any amount u/s 14A su-moto while filling the ROI. The disallowance made by AO is one percent of average investments and there is no disallowance related to interest part if any.

In this connection, provisions of Section 14A states:-

……

From bare reading of above provisions it is clear that before AO makes any disallowance u/s 14A;
(a) AO has to go through accounts of the assessee in respect of expenses related to income which is claimed as exempt.
(b) AO has established nexus of such expenses with exempt income.
(c) AO should record cogent reasons why she does not agree with claim of assessee.

4.3.1 Further various Honourable SC and HC decisions have laid down following ratios in respect of disallowance u/s 14A.

1. AO needs to record the cogent reasons.
2. AO has to do verification of books.
3. Actual expenditure in relation to exempt income must be incurred.
4. Expenditure must be In relation to/pertains to the exempt income.
5. Proximate relationship/connection of expenditure with the exempt income has to be there
6. Dissatisfaction recorded by AO must be on objective basis.
7. Must be direct NEXUS of actual expenditure with the exempted income.
8. NO deemed or assumed or imaginated disallowance should be made by AO.
9. Disallowance u/s 14A is not automatic provision and AO cannot proceed in mechanical manner without application of mind.
10. A.O. is bound to record of cogent reasons/observation/finding for not satisfying on objective basis is a mandate of section 14 A is a prerequisite.
11. Finding given by AO must be specific and supported by evidence relating to expenditure specific.

4.3.2 From the explanation given by assessee during scrutiny proceedings for no disallowance it is seen that all the investments of Rs. 96,28,86,937/- in "Tax free Bonds" were made in between 13.01.2014 to 16.11.2016 and thereafter no fresh investments were made in such securities during the year under consideration and since 2010 and assessee had submitted details of bonds purchased to the AO. That to earn this "Interest on Tax free bonds" there was not any expense incurred by the assessee during the year under consideration. That no any new investments were made by the assesse in such bonds during the year under consideration. Tax free Interest on these tax free bonds are being directly credited in bank account of the assessee on due dates without any efforts and expenditure. There is no middleman or agency or agents are there in this matter. Copy of ledger accounts was provided to AO.

4.3.3 All the strategic decisions of such Investments are being taken care and handled by CEO cum Managing partner Sh. Rajendra Kumar Rawat, to whom no remuneration or salary or any kind of considerations are being ever paid. All these bonds have duration of 8- 10 years and once invested in the same in earlier years ; every year subsequently interest is credited to bank account of assessee automatically without any further decisions in the regard .

4.3.4 As against this explanation given by assessee and as against legal requirements; AO has proceeded with the disallowance on a very shaky ground. As can be seen from para 5.2, 5.3 and 5.4 of AO's order; AO has directly asked to assessee why disallowance u/s 14A read with rule 8D should not be done. (para 5.2 of AO order). Further AO has mentioned that he does not agree with reply of assessee. However for that AO has not given any cogent reasons and has simply presumed that "It is un-imaginary that certain expenditure is bound to be incurred." AO has not verified accounts of assessee to find out expenses having nexus with exempt income. AO has made disallowance without recording cogent reasons on presumption without verifying expenses of assessee to find out any nexus if any with exempt income.

4.3.5 In view of this factual matrix and legal provisions and ratios laid down by Honourable SC and HC; I am of considered view that disallowance made by AO u/s 14A is unwarranted and not sustainable. Hence AO is directed to delete the disallowance and this ground of appellant is upheld.

5. It is submitted that no disallowance under section 14A of the Act can be made due to the following reasons:

- All the investments made in tax free bonds were made between 13.01.2014 to 16.11.2016 and therefore no investment has been made during the year under consideration. No expenditure has been incurred to earn exempt income.

- No interest-bearing funds have been ever used to acquire or purchase the tax-free bonds. Owned funds of the assessee are far more than borrowed funds. Table of owned funds and borrowed funds of the assessee on specified dates are as under:

Particulars	**As on 1 April 2017**	**As on 31 March 2018**	**Remarks**
Capital account of partners	Rs 347.14 crores	Rs 371.64 crores	Owned funds are more than borrowed funds and therefore no disallowance can be made under section 14A of the Act
Overdraft from SBI (used for business purpose)	Rs 0.6 crores	-	
Investment in tax free bonds	Rs 96.28 crores	Rs 96.28 crores	

- Tax free interest on these bonds is directly credited on the due dates in bank account of the assessee without any efforts and expenditure. There is no middlemen or agency involved to attract any expenditure. **Hon'ble ITAT, Mumbai Bench in case of Daga Global Chemicals Pvt. Ltd. Vs. DCIT (2016) 46 ITR(Trib.) 70 [Case law compilation PB 17-20]** has held that where dividend was directly credited in bank account of assessee and no expenditure was claimed, there was no question of disallowance u/s 14A.

- The decisions related to investments are made by managing partner Sh Rajendra Kumar Rawat to whom no remuneration or salary has been paid.

6. Further, reliance is placed on the following decisions:

- **Torrent Power Sec Ltd. Vs. ACIT (2014) 363 ITR 474 (Guj) [Case law compilation PB 21-29]:** The Hon'ble Gujarat High Court held as under:

  "With regard to disallowance of 1% of administrative expenses averred to have incurred on account of the earning of interest, there is nothing on record to indicate that there has been in fact any actual expenditure incurred by the assessee for earning tax free income of Rs.14 crores. ***In absence of any finding as to how the administrative expenses have been incurred to earn the exempt income, disallowance made by the Assessing Officer was not sustainable.*** *It clearly emerges from the material on record that no expenditure was incurred for earning exempted income and that being the question of fact, Court hold that disallowance of 1% of interest expenditure artificially or on the basis of assumption rightly has not been sustained by the Tribunal."*

- **CIT vs. Hero Cycles Limited (2010) 323 ITR 518 (P&H) [Case law compilation PB 30-33]:** The Hon'ble Punjab and Haryana High Court held as under:

Whether, in a given situation, any expenditure was incurred which was to be disallowed, is a question of fact. ***The contention of the Revenue that directly or indirectly some expenditure is always incurred which must be disallowed under s. 14A and the impact of expenditure so incurred cannot be allowed to be set off against the business income which may nullify the mandate of s. 14A, cannot be accepted. Disallowance under s. 14A requires finding of incurring of expenditure; where it is found that for earning exempted income no expenditure has been incurred, disallowance under s. 14A cannot stand.*** *In the present case finding on this aspect, against the Revenue, is not shown to be perverse. Consequently, disallowance is not permissible.*

- **CIT vs M/s Syndicate Bank [2020] 422 ITR 298 (Kar)**: The Hon'ble Karnataka High Court has held as under:

"9. From perusal of Section 14A of the Act, it is evident that for the purposes of computing the total income under this chapter, no deduction shall be allowed in respect of the expenditure incurred by the assessee in relation of the income which does not form part of his total income under the Act. The expenditure, the return of investment and cost of requisition are distinct concepts. Therefore the word 'incurred' in Section 14A of the Act have to be read in the context of the scheme of the Act and if so read, it is clear that it disallows certain expenditures incurred to earn exempt income from being deducted from other incomes which is includable in the total income for the purposes of chargeability to the tax. It is equally well settled that expenditure is a pay out. In order to attract applicability of section 14A of the Act, there has to be a pay out and return of investment or a pay back is not such a debit item. [See: WALFORT SHARE AND STOCK BROKERS (P) LTD SUPRA as well as MAXOP INVESTMENTS LTD SUPRA]. In the instant case, the assessee has admittedly not incurred any expenditure. This case pertains to income on dividend, which by no stretch of imagination can be treated to be an expenditure to attract the provisions of Section 14A of the Act. In view of aforesaid enunciation of law by the Supreme Court, the first substantial question of law framed by this court is answered in favour of the assessee and against the revenue."

- **CIT vs Chemsworth Pvt Ltd [2020] 275 taxman135 Kar:** The Hon'ble Karnatak High Court held as under:

"8. In the backdrop of aforesaid well settled legal principles, we may examine the facts of the case in hand. In 'CIT VS. SUNBEAM AUTO LTD.', 332 ITR 16 7, it has been held by Delhi High Court ***that Assessing Officer in the order of assessment is not required to give detailed reasoning in respect of each and every item of deduction and therefore, the question whether there has been an application of mind before allowing expenditure has to be examined from the record of the case. The question of lack of enquiry/inadequate enquiry is also required to be kept in mind and mere inadequacy of the enquiry would not confer jurisdiction on the Commissioner of Income Tax under Section 263 of the Act.*** *In the instant case, the Commissioner of Income Tax has held that the enquiry conducted by the Assessing Officer is inadequate and has assumed the revisional jurisdiction. The assessee has filed all the details before the Assessing Officer and Assessing Officer has accepted the contention of the assessee that no expenditure is attributable to the exempt income during the relevant Assessment Year.* ***Thus, while recording the aforesaid finding, the Assessing Officer has taken one of the plausible views in allowing the claim of the assessee and therefore, the Commissioner of Income Tax could not have set aside the order of assessment merely on the ground of inadequacy of enquiry, the order passed by the Commissioner of Income Tax is not sustainable in law and the same has rightly been set aside by the Tribunal."***

- **Satya Narayan Dhoot vs PCIT I.T.A. No. 49/Jodh/2022 order dated 17 January 202 [Case law compilation PB 34-37]:** Relevant extracts of the decision are as under:

> *"11. With regard to the interest expenses, the Ld A.R submitted that the own funds available with the assessee is far more than the value of investments and hence no portion of interest expenses is liable to be disallowed. A perusal of the Balance sheet would show that the assessee is having capital balance of Rs.229.34 crores, as against the investments of around Rs.130 crores. Hence no part of interest expenses is liable to be disallowed in terms of the decision rendered by Hon'ble Bombay High Court in the case of HDFC Bank Ltd (366 ITR 505) (Bom).*
>
> ***12. The foregoing discussions would show that the AO has made enquiries during the course of assessment proceedings with regard to the disallowance to be made u/s 14A of the Act. Further, since the assessee is having enough own funds, no disallowance out of interest expenses is also called for. On these reasoning, the order passed by Ld PCIT on this issue is also liable to be quashed."***
>
> 6. Thus, when on this issue there are number of judicial pronouncements in favour of the assessee and the AO has adopted one view, his order cannot be termed as erroneous and therefore the disallowance proposed by Ld. PCIT is not as per law.

3.3 On the other hand, the ld. DR supported the order of the ld. PCIT.

3.4 We have heard both the parties and perused the materials available on record. In this case, it is noted that said issue was examined by the AO in the course of original assessment proceedings and in earlier years no such disallowance was made and the disallowance was made in Assessment Year 2020-21 which was deleted by the ld. CIT(A). We found from the submission of the assessee that no disallowance under section 14A of the Act can be made because of the reasons that all the investments made in tax free bonds were made between 13.01.2014 to 16.11.2016 and therefore no investment has been made during the year under consideration. No expenditure has been incurred to earn exempt

income. It is also noteable that no interest-bearing funds have been ever used to acquire or purchase the tax-free bonds. Further owned funds of the assessee are far more than borrowed funds for which table of owned funds and borrowed funds of the assessee on specified dates are as under:

Particulars	**As on 1 April 2017**	**As on 31 March 2018**	**Remarks**
Capital account of partners	Rs 347.14 crores	Rs 371.64 crores	Owned funds are more than borrowed funds and therefore no disallowance can be made under section 14A of the Act
Overdraft from SBI (used for business purpose)	Rs 0.6 crores	-	
Investment in tax free bonds	Rs 96.28 crores	Rs 96.28 crores	

It is also noteworthy to mention that Tax free interest on these bonds is directly credited on the due dates in bank account of the assessee without any efforts and expenditure. There are no middlemen or agency involved to attract any expenditure. Reliance is placed on the decision of **ITAT, Mumbai Bench in case of Daga Global Chemicals Pvt. Ltd. Vs. DCIT (2016) 46 ITR(Trib.) 70 [Case law compilation PB 17-20]** wherein it was held that where dividend was directly credited in bank account of assessee and no expenditure was claimed, there was no question of disallowance u/s 14A. Further, the decisions related to investments are made by managing partner Sh Rajendra Kumar Rawat to whom no remuneration or

salary has been paid. Hence, in this view of the matter, we do not concur with the findings of the ld. PCIT as regards grounds No. 2 of the assessee which is allowed.

4.1 Apropos Ground No.3 of the assessee, brief facts of the case are that the Ld. PCIT proposed disallowance on account of fine & penalty of Rs.46,666/-.

4.2 During the course of hearing, the ld. AR of the assessee argued that the assessee had submitted audited financial statements, tax audit report and computation of income during the course of the assessment proceedings. On the face of profit and loss account, the assessee has shown an amount of Rs.2,66,946/- under the head 'fine & penalty'. The tax auditor in Form 3CD has reported disallowance of Rs.2,22,280/- which was added while computing the taxable income of the assessee. Thus, all required information and documents were placed on record before the AO during the assessment proceedings and the AO accepted the disallowance made by the assessee. He further submitted that ,however, during the course of 263 proceedings [reply dt. 24.02.2023 **(PB 32)**], the Assessee submitted that for remaining difference of Rs.46,666/-, the said amount comprises of Rs.3,167/- towards late fees of TCS return, Rs.4,690/- for late fees of GST return and Rs.38,809/- for interest on late deposit of provident fund/contribution **(PB 40)**. Further the ld. AR of the assessee relied upon the decision of **Hon'ble Karnataka High Court in case of Mysore Electrical Industries Ltd. 196 ITR**

884 wherein it was held that interest paid on delayed payment of contribution under Employees Provident Fund Act is not penalty and therefore is allowable as deduction. Thus the amount of Rs.46,666/- is not on account of penalty. However, the Ld. PCIT however wrongly observed that it is disallowable u/s 37, being expenditure incurred for a purpose which is an offence or which is prohibited by law in spite of the fact that late fees paid or interest paid on late deposit is not an expenditure incurred which is an offence or which is prohibited by law. Hence the disallowance proposed by PCIT is against law.

4.3 On the other hand, the ld. DR supported the order of the ld. PCIT.

4.4 After hearing both the parties and perusing the materials available on record, it is noted that the ld. PCIT proposed disallowance on account of fine & penalty of Rs.46,666/-.However, we find that out of it Rs.38,809/- paid towards interest on late deposit of PF is covered in favour of the assessee in view of the decision of Hon'ble Karnataka High Court in the case of CIT vs Mysore Electrical Industries Ltd. 196 ITR 884 wherein relevant observation of the Hon'ble Karnataka High Court is as under:-

> ''The assessee failed to pay the contribution under the provisions of the Employee's Provident Funds Act to the concerned trust. Consequently, the company had to pay interest thereon u/s 7-Q of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. This interest was claimed by the assessee u/s 37 of the Income Tax Act, 1961. The Income Tax Officer rejected the claim but the Tribunal allowed it. On a reference:-

> Held, that the interest was compensatory in nature and not a penalty. Hence, it was deductible
>
> Mahalakshmi Sugar Mills Co. vs CIT [1990] 123 ITR 429 (SC) applied .
>
> CIT vs Mandya National Paper Mills Ltd. [1984] 150 ITR 26 (Kar).
>
> ..Consequently, we are of the view that the questions referred to us are to be answered in the affirmative and against the Revenue. Reference is answered accordingly.''

Further, it is noted that payments towards late fees for filing TCS/ GST Return is not an offence prohibited by law. For the above reasons, the ground no. 3 of the assessee is allowed.

5.1 Apropos Ground No. 4 of the assessee, it is noted that the ld. PCIT proposed disallowance on account of interest on delayed payment of TDS of Rs.1,86,701/-.

5.2 During the course of hearing, the ld. AR of the assessee prayed for deletion of disallowance on account of interest on delayed payment of TDS of Rs.1,86,701 and on this issue relied in case of **DCIT Vs. Narayani Ispat Pvt. Ltd. (2018) 61 ITR (Trib) 371 (Kol) (Trib), DCIT Vs. M/s Rungta Mines Ltd. ITA No.1531/Kol/2017 order dt.05.10.2018 (Kol) (Trib), Mukand Ltd. Vs. ITO (2019) 174 ITD 605/ 176 DTR 156 (Mum) (Trib) and Resolve Salvage & Fire India (P) Ltd. Vs. DCIT (2022) 195 ITD 266 (Mum) (Trib) where** it has been held that interest paid on delayed payment of TDS is allowable u/s 37(1). Further,

it was submitted that **Hon'ble PCIT in case of Shriram General Insurance Company Ltd. in order u/s 263 dt. 30.03.2023** at Para 8 has held that interest paid on TDS is compensatory in nature and is a business expenditure allowable u/s 37(1) of the Act as held by **Hon'ble Karnataka High Court in case of Oriental Insurance Co. 315 ITR 102 [Case law compilation PB 34-37]**. Thus, when the same PCIT has not drawn any adverse inference in the said case, the addition proposed in the present case u/s 263 is against law in as much as where there is one possible view then on that issue section 263 cannot be invoked.

5.3 On the other hand, the ld. DR supported the order of the ld. PCIT.

5.4 We have heard both the parties and perused the materials available on record. It is noted that the ld. PCIT held that interest on delayed payment of TDS of Rs.1,86,701/- should be added to the total income of the assessee. We also noted that on this issues the ITAT Benches (supra) has already held that interest paid on delayed payment of TDS is allowable u/s 37 (1) of the Act. We also draw strength from the order of same PCIT, Jaipur-2 in the case of Shri Ram General Insurance Company Ltd. (A.Y. 2018-19 dated 30-03-2023) wherein it was held by her as under:-

> ''8. With regard to the issue of interest on TDS, the interest paid on TDS is compensatory in nature and it is also a business expenditure allowable u/s 37(1) of the Act as held by Hon'ble Karnataka High Court in the case of Oriental Insurance

Company [315 ITR 102], hence no adverse inference is drawn on this issue.''

It is also noteable that when the same ld. PCIT has not drawn any inference in the said case then the addition proposed in the present case u/s 263 is not justifiable and we do not concur with the findings of the ld. PCIT and in this view of the matter, the Ground No. 4 of the assessee is allowed.

6.1 Apropos Ground No. 5 of the assessee, brief facts of the case are that Ld. PCIT proposed disallowance of Rs.13,520/- (30% of Rs.45,069/-) u/s 40(a)(ia) on account of non-deduction of tax at source on commission paid of Rs.45,069/- for which it is submitted by the ld. AR of the assessee that Ld. PCIT has not properly appreciated the fact. In fact, in the show cause notice u/s 263 it is stated that commission expenses as per P&L A/c is Rs.37,35,470/- but in clause 34(a) of the tax audit report it is reported at Rs.32,60,974/- and thus it is proposed to disallow Rs.1,42,969/- (30% of 4,76,496) u/s 40(a)(ia). The assessee in its reply dt. 24.02.2023 **(PB 34)** filed the reconciliation in which it submitted the details of commission debited to P&L A/c except for the small amount of Rs.45,069/-. The PCIT has proposed disallowance of 30% of such amount ignoring that there is no material with her to say that this amount is liable for TDS. Thus, the addition proposed is only on presumption and therefore the order of AO is not erroneous.

6.2 On the other hand, the ld. DR supported the order of the ld. PCIT.

6.3 After hearing both the parties and perusing the materials available on record, it is noted from the submission of the assessee wherein the assessee in its reply dated 24-02-2023 (PB 34) filed the reconciliation in which he submitted the details of commission debited to P&L except for the small amount of Rs.45,069/-. We find from the order of the ld. PCIT that she proposed disallowance of 30% of such amount but there is no material with her to say that this amount is liable for TDS. Hence, we do not concur with the findings of the ld. PCIT on this issue and thus Ground No. 5 of the assessee is allowed.

7.1 Apropos Ground No. 6 of the assessee, brief facts of the case are that the Ld. PCIT proposed disallowance of prior period expenses of Rs.23,41,675/-.

7.2 During the course of hearing, the ld. AR of the assessee submitted that in the original assessment proceedings the assessee vide reply dt. 11.01.2021 at Para 5 **(PB 68-69)** has explained in detail as to how the prior period expenditure is allowable deduction. The AO considering the same allowed the deduction. Thus, when AO has taken a view on allowability of prior period expenditure and such view is also taken by ld. CIT(A) in AY 2010-11, the disallowance proposed in order u/s 263 is bad in law.

7.3 On the other hand, the ld. DR supported the order of the ld. PCIT.

7.4 After hearing both the parties and perusing the materials available on record, it is noted from the written submission (Paper Book page 69) of the assessee

wherein such issue had already been looked up by the ld. CIT(A)-2, Jaipur in the appeal for the earlier assessment year 2010-11 and the same has already been allowed (at ground No. 10) vide his order dated 14-05-2013 in assessee's own case. Thus when the AO has taken a view on allowability of prior period expenditure and such view is also taken by the ld. CIT(A), thus the disallowance proposed by the ld. PCIT u/s 263 is not justifiable. In this view of the matter, the ground No. 6 of the assessee is allowed.

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

Order pronounced in the open Court on 30 -08-2023.

Sd/-	Sd/-
(राठोड कमलेश **जयन्तभाई**)	(संदीप गोसाई)
(Rathod Kamlesh Jayantbhai)	(Sandeep Gosain)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 30 /08/2023
*Mishra
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:
1. The Appellant- M/s. Manglam Arts, Jaipur
2. प्रत्यर्थी / The Respondent- Pr. CIT, Jaipur-2
3. आयकर आयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 239/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar