

**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA 'DB' BENCH AT KOLKATA**

[Virtual Court]

(Before Sri Manish Borad, Accountant Member & Sri Sonjoy Sarma, Judicial Member)

**I.T.A. Nos.: 44 & 45/Pat/2021
Assessment Years: 2011-12 & 2012-13**

M/s. Parwati Educational & Welfare Trust.....Appellant
[PAN: AHDPK 4688 G]

Vs.

PCIT (Central), Patna.....Respondent
Appearances by:

Sh. A.K. Rastogi, Sr. Adv. &

Sh. Rakesh Kumar, Adv., appeared on behalf of the Assessee.

Sh. Sanjay Mukherjee, CIT, ITAT, appeared on behalf of the Revenue.

Date of concluding the hearing : April 6th, 2022

Date of pronouncing the order : May 25th, 2022

ORDER

Per Manish Borad, Accountant Member:

The above captioned appeals filed by the assessee pertaining to the Assessment Years (in short "AY") 2011-12 & 2012-13 are directed against the common order of Id. Pr. Commissioner of Income-tax (Central), Patna [in short Id. "PCIT"] dated 23.05.2017 which is arising out of the assessment order framed u/s 153A r.w.s. 143(3) of the Income Tax Act, 1961 (in short the "Act") dated 28.12.2018.

2. Registry has informed that both the appeals are time barred by 25 days. Condonation application has been filed by the assessee. Perusal of the same shows that the delay was on account of COVID-19 restrictions. We, therefore, in view of the judgment of The Hon'ble Supreme Court vide *Miscellaneous Application No. 21 of 2022* find that the limitation period in filing appeal between 15.03.2020 till 28.02.2022 has been excluded for calculating the limitation period in filing appeal under this period. Since the period of limitation in the case of the assessee falls during this period, the same

deserves to be extended and we, therefore, condone the delay of 25 days and admit the appeal for adjudication.

3. The assessee is in appeal before the Tribunal raising the following grounds:

Assessment Year 2011-12:

- “1. That the Hon'ble PCIT, Patna erred in appreciating the facts properly.*
- 2. That the Hon'ble PCIT erred in treating the assessment order passed by the learned assessing officer under section 143(3) of the Income Tax Act,1961 as erroneous and prejudicial to the interest of revenue.*
- 3. That the Hon'ble PCIT erred in treating the order passed by the learned assessing officer as erroneous without pointing out any deviation of law in the assessment.*
- 4. That the Hon'ble PCIT(Appeals) erred in treating the order of the learned assessing officer as erroneous ignoring the fact that the learned assessing officer has passed order after considering all the facts.*
- 5. The appellant craves leave to add, amend, alter, vary and/or withdraw any or all the above grounds of appeal.”*

Assessment Year 2012-13:

- “1. That the Hon'ble PCIT, Patna erred in appreciating the facts properly.*
- 2. That the Hon'ble PCIT erred in treating the assessment order passed by the learned assessing officer under section 143(3) of the Income Tax Act,1961 as erroneous and prejudicial to the interest of revenue.*
- 3. That the Hon'ble PCIT erred in treating the order passed by the learned assessing officer as erroneous without pointing out any deviation of law in the assessment.*
- 4. That the Hon'ble PCIT(Appeals) erred in treating the order of the learned assessing officer as erroneous ignoring the fact that the learned assessing officer has passed order after considering all the facts.*
- 5. The appellant craves leave to add, amend, alter, vary and/or withdraw any or all the above grounds of appeal.”*

4. For adjudicating the common issue, we will take the facts of the case for AY 2011-12 in ITA No. 44/Pat/2021.

5. Brief facts of the case are that the assessee is a welfare Trust running various educational institutions. Search operation u/s 132 of the Act was carried out on 26.10.2016 at the place of Satyam Shivam Group of Trusts and the assessee being part of the same were also subjected to search. Income

was assessed u/s 153A r.w.s. 143(3) of the Act and the assessments were completed. Subsequently ld. PCIT on examination of the assessment records invoked the provision of Section 263 of the Act observing that a substantial cash was deposited in the bank account held by the assessee. The source of the cash deposits has not been examined by the ld. Assessing Officer (in short ld. "AO") and therefore, the assessment order passed is erroneous insofar as prejudicial to the interest of the Revenue and setting aside the assessment to be framed after doing the needful as observed in the impugned order.

6. Aggrieved, the assessee preferred appeal before this Tribunal. At the outset, ld. Counsel for the assessee submitted that all the details of cash deposits in the bank accounts were placed before the ld. AO. Even the audited books of accounts for the year under appeal were impounded during the course of search. The cash deposits in the bank account is part of the total fees received by the educational institution during the year. Ld. AO has examined the details and after finding that the total of such cash deposits is much less than the fees disclosed in the audited balance sheet, no addition was called for. It was also stated that in some of the other assessment years which were subjected to scrutiny after conducting of search, ld. AO made additions. Brief submissions filed by the assessee for AYs 2011-12 & 2012-13 are reproduced below:

"Assessment Year 2011-12:

Regarding deposits in various bank account:

The appellant is a trust and engaged in imparting education since inception. The appellant is running two schools and was duly affiliated with CBSE. The search and seizure operation took place in Satyam Shivam group on 26/10/2016 and the appellant was in no way associated with this group. The assessment order u/s 143(3) r.w.s 153A in the case of the appellant was passed on 28/12/2018. The learned PCIT issued notice under section 263 of The Income Tax Act, 1961 on 12/03/2021 by which the appellant was directed to show-cause by 18/03/2021 as to why the order under section 263 should not be passed. The appellant filed its reply but the learned PCIT dismissed the plea of the appellant and cancelled the assessment order and passed order for fresh assessment.

The appellant during course of assessment proceedings explained all details of the investments and all replies regarding entries in the bank accounts etc. The appellant has submitted during the course of hearing and at all other proper time that a massive fire and hooliganism occurred in the premises of the assessee which

resulted into destruction of major portion of books of account and the police report in this regard has already been placed on record and once again the same is annexed herewith.

The learned PCIT observed as under in the order under section 263 of The Income Tax Act, 1961 vide which it was directed to the Assessing Officer to make a fresh' assessment for the assessment year 2011-12 On perusal of the facts of the case, it is evident that the A.O. failed to mention other bank accounts information of which was found during the course of search/survey operation, as described in the show cause notice u/s 263 issued by the undersigned.

Secondly, even the submission of the assessee and mention of one bank account of Canara Bank was not analyzed/verified/examined by the A.O., as is evident from the assessment records or the assessment order itself. The contention of the assessee was also not cross examined from the information on records which was in possession of the A.O. Mere submission of reply on the issue by assessee docs not infer that the A.O. has analyzed/verified/examined the issue. Further verification on the issue under consideration was required to be done by the A.O. and the A.O. failed to exercise the same.

The reliance on the judicial pronouncements by the assessee in his submission will not come to the rescue of the contention that the assessment was not erroneous in so far as it is prejudicial to the interest of revenue in the spirit of the judicial pronouncements relied upon by the assessee in view of the discussion in the preceding paras.

Sir, the appellant was running a school and most of the various fees received from the students were in cash only. Some hostel fees and some donations for building were received through account payee instruments. The appellant had following 4 bank accounts during the accounting year relevant to the assessment year 2011-12:

Name of Bank	Account Number	Nature of account
Central Bank Of India	1680543411	Non-operative
Union Bank Of India	572501010050016	Non-operative
United Bank Of India	0599301649417	Term Loan
State Bank Of India	30886451962	Current

The details of the deposits made in the above bank accounts during the accounting year relevant to the assessment year 2012-13 was as under:

Particulars	Central Bank	Union Bank [RS]	United Bank [RS]	SBI [RS]	TOTAL [RS]
Deposit	0	295/-	10,30,000/-	93,670/-	11,23,965/-

Out of this the cash deposit was of RS 11,10,000/-. The Assessing Officer asked regarding the source of deposit of vide question number 16 of the questionnaire issued by the Assessing Officer under section 142(1) of The Income Tax Act, 1961. The appellant appeared and explained the source. The appellant explained that the deposits made in the bank accounts are duly covered from the gross receipts as appearing in the impounded documents.

The detail of various fees received by the appellant during the accounting year relevant to the assessment year 2011-12 is as under:

S.N	Particulars	Amount
1	Tuition fees	61,57,447/-
2	Admission, annual collection and miscellaneous	3,25,000/-
3	Donation for building	8,90,550/-
T O T A L		73,72,997/-

Sir, the gross receipt is less than the limit prescribed under section 10(23C) (vi) of The Income Tax Act, 1961. Sir, the total receipt declared by the appellant for the accounting year relevant to the assessment year was of RS 73,72,997/- and the total deposit in the various bank accounts are RS 11,23,965/- only. The appellant submitted that the cash deposit are duly covered from the cash received by the appellant in the normal educational activity carried on by the appellant. The appellant has deposited cash of RS 11,10,000/-into the loan account maintained with United Bank Of India. The rest accounts were more or less in-operative which is apparent from the bank statements enclosed herewith.

The information mentioned by the learned PCIT in the order was existing at the time of assessment too and the learned Assessing Officer after applying his mind framed the assessment order and after accepting the explanation furnished by the appellant.

It is apparent from the bank account annexed herewith that there were approximately NIL transactions in other bank account.

Hence the contention of the learned PCIT that the A.O. failed to mention other bank accounts information of which was found during the course of search/ survey operation and mere also failed to verify/examine the submission of the assessee during the course of assessment proceeding is factually not correct. Therefore the Ld. PCIT erred in interfering with the order of the AO dated 28/12/2018 on the ground of lack of enquiry when it can be seen that A.O. had in fact enquired about it. Therefore, the action of the Ld. PCIT to exercise revisional jurisdiction is without jurisdiction and so it need not be quashed.

JUDICIAL PRECEDENCES

1. The guidance of judicial precedence laid down by the Hon'ble Apex Court in *Malabar Industries Ltd. vs. CIT* [2000] 243 ITR 83 (SC) wherein their Lordship have held that twin conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii) Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the AO has not investigated the issue before him; [because AO has to discharge dual role of an investigator as well as that of an adjudicator] then in aforesaid any event the order passed by the Assessing Officer can be termed as erroneous order. Coming next to the second limb, which is required to be examined as to whether the actions of the AO can be

termed as prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (supra) held that this phrase i.e. "prejudicial to the interest of the revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue "unless the view taken by the Assessing Officer is unsustainable in law".

2. In the case of CIT Vs Gabriel India Ltd (1993) 203ITR 108 (BOM) Bombay High court held that, where the ITO had made enquiries in regard to the nature of the expenditure incurred by the assessee who had given detailed explanation in that regard by a letter in writing and all these are part of the record of the case and the claim was allowed by the ITO on being satisfied with the explanation of the assessee. The ITO has exercised his Quasi -Judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed as erroneous simply because the CIT does not feel satisfied with the conclusion. It was further stated that ITO while making assessment examines the accounts, makes enquiries applies his mind to the fact and circumstances of the case and determines the income either by accepting the accounts or by making estimate himself, the CIT on the 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 CIT he would have estimated the income at a figure higher than the one determined by the ITO. This would not vest CIT with the power to revisit and re-examine the accounts and determine the income himself at a higher figure. Because this section did not give power to substitute the judgment of the CIT for that of the ITO, unless the decision of the assessing officer is held to be erroneous.

In this case Hon'ble Court held that "it may be said that in such cases in the opinion of the CIT order in question is prejudicial to the interest of the revenue, but they by itself will not be enough to vest the CIT with the power of suo moto revision because the first requirement, that the order is erroneous is missing."

"Assessment Year 2012-13:

Regarding deposits in various bank account:

The appellant is a trust and engaged in imparting education since inception. The appellant is running two schools and was duly affiliated with CBSE. The search and seizure operation took place in Satyam Shivam group on 26/10/2016 and the appellant was in no way associated with this group. The assessment order u/s 143(3) r.w.s. 153A in the case of the appellant was passed on 28/12/2018. The learned PCIT issued notice under section 263 of The Income Tax Act, 1961 on 12/03/2021 by which the appellant was directed to show-cause by 18/03/2021 as to why the order under section 263 should not be passed. The appellant filed its reply but the learned PCIT dismissed the plea of the appellant and cancelled the assessment order and passed order for fresh assessment.

The appellant during course of assessment proceedings explained all details of the investments and all replies regarding entries in the bank accounts etc. The appellant has submitted during the course of hearing and at all other proper time that a massive fire and hooliganism occurred in the premises of the assessee which resulted into destruction of major portion of books of account and the police report in this regard has already been placed on record and once again the same is annexed herewith.

The learned PCIT observed as under in the order under section 263 of The Income Tax Act, 1961 vide which it was directed to the Assessing Officer to make a fresh assessment for the assessment year 2012-13:

On perusal of the facts of the case, it is evident that the A.O. failed to mention other bank accounts information of which was found during the course of search/survey operation, as described in the show cause notice u/s 263 issued by the undersigned.

Secondly, even the submission of the assessee and mention of one bank account of Canara Bank was not analyzed/verified/examined by the A.O., as is evident from the assessment records or the assessment order itself. The contention of the assessee was also not cross examined from the information on records which was in possession of the A.O. Mere submission of reply on the issue by assessee does not infer that the A.O. has analyzed/verified/examined the issue. Further verification on the issue under consideration was required to be done by the AO. and the A.O. failed to exercise the same.

The reliance on the judicial, pronouncements by the assessee in his submission will not come to the rescue of the contention that the assessment was not erroneous in so far as it is prejudicial to the interest of revenue in the spirit of the judicial pronouncements relied upon by the assessee in view of the discussion in the preceding paras.

Sir, the appellant was running a school and most of the various fees received from the students were in cash only. Some hostel fees and some donations for building were received through account payee instruments. The appellant had following 5 bank accounts during the accounting year relevant to the assessment year 2012-13:

S.N	Name of Bank	Account Number	Nature of account
1	Canara Bank	3052101002413	Saving
2	Central Bank Of India	1680543411	Non-operative
3	Union Bank Of India	572501010050016	Non-operative
4	United Bank Of India	0599301649417	Term Loan
5	State Bank Of India	30886451962	Current

The details of the deposits made in the above bank accounts during the accounting year relevant to the assessment year 2012-13 was as under:

Particulars	Canara Bank	Central Bank	Union Bank	United Bank	SBI	TOTAL
Deposit	3,06,500/-	0	0	9,90,000/-	5,96,160/-	18,92,660/-

Out of this the cash deposit was of RS 10,79,000/-. The Assessing Officer asked regarding the source of deposit of vide question number 16 of the questionnaire issued by the Assessing Officer under section 142(1) of The Income Tax Act, 1961. The appellant appeared and explained the source. The appellant explained that the deposits made in the bank accounts are duly covered from the gross receipts as appearing in the impounded documents.

The detail of various fees received by the appellant during the accounting year relevant to the assessment year 2012-13 is as under:

S.N	Particulars	Amount
1	Tuition fees	77,67,073/-
2	Admission, annual collection and miscellaneous	3,45,210 /-
3	Donation for building	10,30,000/-
TOTAL		91,39,583/-

Sir, the gross receipt is less than the limit prescribed under section 10(23C) (vi) of The Income Tax Act, 1961. Sir, the total receipt declared by the appellant for the accounting year relevant to the assessment year was of RS 91,39,583/- and the total deposit in the various bank accounts are RS 18,92,660/- only. The appellant submitted that the cash deposit are duly covered from the cash received by the appellant in the normal educational activity carried on by the appellant. The appellant explained that main account remained was maintained with Canara Bank. The appellant has deposited cash of RS9,90,000/-into the loan account maintained with United Bank Of India. The rest accounts were more or less in-operative which is apparent from the bank statements enclosed herewith.

The information mentioned by the learned PCIT in the order was existing at the time of assessment too and the learned Assessing Officer after applying his mind framed the assessment order and after accepting the explanation furnished by the appellant.

It is apparent from the bank account annexed herewith that there were approximately NIL transactions in other bank account.

Hence the contention of the learned PCIT that the A.O. failed to mention other bank accounts information of which was found during the course of search/ survey operation and mere also failed to verify/examine the submission of the assessee during the course of assessment proceeding is factually not correct. Therefore the Ld. PCIT erred in interfering with the order of the AO dated 28/12/2018 on the ground of lack of enquiry when it can be seen that A.O had in fact enquired about it. Therefore, the action of the Ld. PCIT to exercise revisional jurisdiction is without jurisdiction and so it need not be quashed.

JUDICIAL PRECEDENCES

1. The guidance of judicial precedence laid down by the Hon'ble Apex Court in *Malabar Industries Ltd. vs. CIT* [2000] 243 ITR 83 (SC) wherein their Lordship have held that twin conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be

erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii) Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the AO has not investigated the issue before him; [because AO has to discharge dual role of an investigator as well as that of an adjudicator] then in aforesaid any event the order passed by the Assessing Officer can be termed as erroneous order. Coming next to the second limb, which is required to be examined as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (supra) held that this phrase i.e. "prejudicial to the interest of the revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue "unless the view taken by the Assessing Officer is unsustainable in law".

2. In the case of CIT Vs Gabriel India Ltd (1993) 203 ITR 108 (BOM) Bombay High court held that, where the ITO had made enquiries in regard to the nature of the expenditure incurred by the assessee who had given detailed explanation in that regard by a letter in writing and all these are part of the record of the case and the claim was allowed by the ITO on being satisfied with the explanation of the assessee. The ITO has exercised his Quasi -Judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed as erroneous simply because the CIT does not feel satisfied with the conclusion. It was further stated that ITO while making assessment examines the accounts, makes enquiries applies his mind to the fact and circumstances of the case and determines the income either by accepting the accounts or by making estimate himself, the CIT on the 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 CIT he would have estimated the income at a figure higher than the one determined by the ITO. This would not vest CIT with the power to revisit and re-examine the accounts and determine the income himself at a higher figure. Because this section did not give power to substitute the judgment of the CIT for that of the ITO, unless the decision of the assessing officer is held to be erroneous.

In this case Hon'ble Court held that "it may be said that in such cases in the opinion of the CIT order in question is prejudicial to the interest of the revenue, but they by itself will not be enough to vest the CIT with the power of suo moto revision because the first requirement, that the order is erroneous is missing."

7. Further, ld. Counsel for the assessee submitted that the assessee's case is squarely covered by the decision of coordinate Bench of this Tribunal in the assessee's own case of M/s. Satyam Educational Health and Charitable Trust in ITA Nos. 36-39/Pat/2021 order dated 09.03.2022 and that of coordinate

Bench of Patna in the case of *Shri Akash Kumar* in ITA No. 143/Pat/2019 order dated 22.12.2021.

8. Per contra ld. D/R vehemently argued supporting the order of the ld. PCIT.

9. We have heard rival contentions and perused the records placed before us. Through these instant appeals the assessee has challenged the legality of assuming jurisdiction u/s 263 of the Act for AY 2011-12 and AY 2012-13 holding that the order of the ld. AO is erroneous and prejudicial to the interests of the Revenue.

10. We find that search was conducted in the case of Satyam Shivam Group of Trusts on 28.10.2016. The assessee Trust being part of the same group was also subjected to search. Copies of audited accounts were found during the course of search for the period under appeal and these audited accounts reflected the financial activities of the assessee Trust, balance sheet, profit & loss account and income expenditure account. We, further, find that all these seized materials were available for examination of the ld. AO in the course of assessment proceedings. Various bank accounts are held by the assessee Trust. Details of these bank accounts were filed before the ld. AO. Further, in the years where the cash deposits and other credits towards fees did not exceed the fees shown in the financial statements, ld. AO did not make any addition and in the year where the same exceeded, additions have been made.

10.1. We are satisfied with the fact that ld. AO has examined this issue of deposit in bank account held by the assessee. Since this issue has been examined, whether the order of the ld. AO is erroneous and prejudicial to the interests of the Revenue as observed by the ld. PCIT needs to be examined. For invoking the provision of Section 263 of the Act ld. PCIT should find after conducting the necessary enquiry that the order of the ld. AO is erroneous insofar as prejudicial to the interests of the Revenue. Since the details of fees received during the year in the educational institution were available on record before the ld. AO, the bank accounts were also available, details of cash deposits and other credits were filed and the same has been examined also, it

cannot be said that the order of the ld. AO is erroneous. Similarly, the ld. AO has made additions in the year where the cash deposits and other bank credits exceeded the school fees but no additions were made during the year where school fees did not exceed. It, thus, shows that the order of the ld. AO is not prejudicial to the interests of the Revenue.

10.2. We, further find that in the group case of the assessee i.e. M/s. Satyam Educational Health and Charitable Trust wherein the facts are almost similar, this Tribunal after considering the judicial precedence, quashed the revisionary proceedings u/s 263 of the Act observing as follows:

“5. We have heard rival contentions and perused the facts on record carefully including the revisionary orders passed u/s 263 of the Act and various decisions cited before us. We note that a search action 132(1) of the Act was conducted on the assessee on 26.10.2016 and notices u/s 153A of the Act from AY 2013-14 to 2016-17 were issued which were complied with by the assessee by filing the returns of income for all the four assessment years. During the assessment proceedings, notices 142(1) of the Act along with questionnaires were issued calling for various details and explanation from the assessee on various issues which were replied by the assessee pointwise with evidences and finally assessments were framed by the AO u/s 143(3) read with Section 153A of the Act for all the above four years. Thereafter the Ld. PCIT invoked the jurisdiction u/s 263 of the Act on the ground that the AO has not examined/enquired some issues as narrated above during the assessment proceedings and accordingly came to the conclusion that the assessments so framed in all the above 4 years from AY 2013-14 to 2016-17 were erroneous in so far as prejudicial to the interest of the revenue and revised all the above 4 assessment years by directing the AO to pass fresh assessment orders after examining all the issues and re-computing the assessee’s income by making proper enquiries/verification in respect of all the issues as stated in revisionary order by affording reasonable opportunity of hearing to the assessee. We have perused the notices issued by the AO u/s 142(1) dated 14.09.2018 and replies/written submissions filed before the AO in response thereto in all four assessment years and observe that all issues as proposed by the ld PCIT in the orders passed u/s 263 of the Act were examined and enquired and only then the assessments were framed. All these notices issued u/s 142(1) of the Act, questionnaires and replies with evidences are part of the assessment records and were also filed before the tribunal in the paper books as discussed above. We note that the assessee has produced the books of accounts before the AO and duly explained as to how the issues raised by the ld PCIT were dealt with in the books of accounts or if not accounted for then the same is not warranted to be added to the income of the assessee in view of the explanation given by the assessee. In our considered view, since the AO has examined all the issues raised by the PCIT in the revisionary orders during assessment proceedings and only thereafter framed the assessments u/s 143(3) r.w.s. 153A of the Act, the jurisdiction u/s 263 of the Act is not maintainable as the AO has taken a possible view or taken one of the two possible views to which the PCIT does not agree or is of the opinion that the AO has taken one view whereas according to PCIT the second view should have been taken

by the AO. We also observe from the perusal of the revisionary orders passed u/s 263 of the Act that PCIT has nowhere given a concrete finding as to how the assessments framed by the AO in all the above four years were erroneous in so far as prejudicial to the interest of the revenue. It is settled law that in order to invoke the jurisdiction u/s 263 of the Act by the PCIT, the twin conditions i.e. the order has to be erroneous and prejudicial to the interest of the revenue, have to be satisfied. In case one of the condition is satisfied out of the two, even then the PCIT cannot invoke the jurisdiction u/s 263 of the Act to revise the assessment. It is also a settled law that the jurisdiction is not available to PCIT u/s 263 of the Act to revise the assessment on the issues merely because no reference or discussion has been made in the assessment order especially when the AO has called for details/explanations from the assessee on all the issues as proposed by PCIT in the order passed u/s 263 and assessee has responded the same by filing written submissions with details/evidences which are part of the assessment records. In other words, the revisionary jurisdiction is not available to the PCIT merely on the ground that AO sought reply from the assessee during assessment proceedings which furnished by the assessee with evidences and are available in the assessment records however it did not find an elaborate discussion or reference in the assessment order. Similarly the powers of revision u/s 263 of the Act cannot be exercised arbitrarily in order to make roving enquiries and initiate fresh enquiries. In our considered view, the jurisdiction u/s 263 can be exercised to revise the assessments where no enquiry at all has been conducted by the AO which is a case of lack of enquiry but not in a case where the AO has conducted an enquiry which in the opinion of PCIT is inadequate /insufficient without showing as to how the order framed by the AO after appreciating the evidences filed by the assessee is contrary to facts or not in accordance with law. The case of the assessee finds supports on all these propositions from several decisions by the Apex Courts and other juridical forums as cited before us during the course of hearing and are being discussed hereunder:

- In the case of *Malabar Industrial Co. (supra)* the Hon'ble Apex Court has held that the prerequisite to exercise of jurisdiction u/s 263 of the Act by Commissioner is that the order of the AO is erroneous insofar as prejudicial to the interest of the revenue. The Hon'ble Court has held that the Ld. PCIT has to satisfy the twin conditions namely i) the order of the AO sought to be revised is erroneous and ii) it is prejudicial to the interests of the revenue and if one of them is absent, i.e. if the order of the AO is erroneous but is not prejudicial to the revenue or vice versa, recourse cannot be had to Section 263 of the Act. In the present case before us also the PCIT has failed to point out as to how the order passed by the AO is erroneous in so far as prejudicial to the interest of revenue. The Ld. PCIT simply discussed various issues which according to him have not been verified/examined by the AO during the assessment proceedings and has not pointed out as to how the assessments are erroneous in so far as prejudicial to the interest of the revenue and therefore the jurisdiction exercised under Section 263 cannot be sustained.

- In the case of *CIT vs. Max India Ltd. (supra)* the Hon'ble Supreme Court has held that where two views are possible and the AO has taken one of the plausible views, the assessment so framed by the AO cannot be termed as erroneous insofar as prejudicial to the interest of the revenue. The Hon'ble Apex Court has considered the earlier decision passed by the Co-ordinate Bench in the case of *Malabar Industrials Co. (supra)*. In the case of the assessee since the AO has taken one of the two possible view on all the issues after examining them during assessment

proceedings to which the PCIT does not agree and therefore the revisionary proceedings cannot be justified and sustained.

- In the case of *CIT vs. Gabriel India Ltd.* (supra) the Hon'ble Bombay High Court has held that in order to invoke the jurisdiction u/s 263(1) of the Act there must be material before the Commissioner to consider that the order passed by the ITO was erroneous insofar as prejudicial to the interest of the revenue. The Hon'ble court has held that an erroneous order must be an order which is not in accordance with the law or which has been passed by the AO in undue haste without making any enquiry. The Hon'ble Court has further held that the order is said to be prejudicial to the interest of revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realized or cannot be realized. The Hon'ble Court held that such a decision of Income Tax Officer cannot be held to be erroneous simply because he has not made elaborate discussion in that regard in the assessment order.

- The same ratio has been laid down by the Hon'ble Bombay High Court in the case of *CIT vs. M/s Design & Automation Engineers (Bombay) Pvt. Ltd.* in ITA No. 147 of 2002 after following the earlier orders passed by the Co-ordinate Bench in the case of *CIT vs. Gabriel India Ltd.* by holding that the order of the AO cannot be said to be erroneous or is passed without application of mind because in his order he has not made any elaborate discussion in that regard. The Hon'ble Court has held that the PCIT has set aside the order of the AO only on the ground that the PCIT did not agree the view taken and take a different view by the AO.

- In the case of *CIT vs. Leisure Wear Exports Ltd.* reported in 46 DTR 97, the Hon'ble Delhi High Court has held that the revisionary power is not meant to be exercised for the purpose of directing the AO to hold another investigation without describing as to how the order of the AO is erroneous. The Hon'ble Court observed that where assessment order has been passed by the AO after taking into account the assessee's submission and documents furnished by him no material whatsoever has been brought on record by the CIT which showed any discrepancy or falsity in evidences by the assessee the order of the AO cannot be set aside for making deep enquiry only on the presumption and assumption that something new may come out. For making a valid order u/s 263 it is essential that the CIT has to record an express finding to the effect that order passed by the AO is erroneous which has caused loss to the revenue. Furthermore, where acting in accordance with law the AO framed certain assessment order, same cannot be branded as erroneous simply because according to the CIT, the order should be written more elaborately.

- In the case of *Boddhisatva Chattoapadhyay vs. CIT* (supra) the Hon'ble Co-ordinate Bench has drawn a distinction between 'lack of enquiry' and 'inadequate enquiry' if there is an enquiry even if inadequate that would not by itself give occasion to the CIT to exercise the revisionary jurisdiction merely it because is of the opinion that some more enquiry should have been conducted in the matter. The Co-ordinate Bench has also discussed the explanation 2 to Section 263 inserted w.e.f 01.06.2015 to which brought to the said section "the opinion of the Ld. PCIT" as a parameter for holding an order to be erroneous if the assessment order passed by the AO is without enquiry or verification which should have been made which is the one of the conditions provided out of four condition stated under that explanation 2 the Co-ordinate Bench has gone into the issue whether to exercise the revisionary jurisdiction the opinion of the PCIT that the order was erroneous would be sufficient

to initiate the proceedings u/s 263. The Co-ordinate Bench has held that expression "in the opinion of PCIT" cannot be read as information and explanation cannot override substantive provision of law which explanation only tries to explain and clarify unless the Ld. PCIT records a finding that the AO has failed to conduct an enquiry or investigation which has caused loss of revenue to the exchequer the assessment order framed could be treated as erroneous insofar as prejudicial to the interest of the revenue and not otherwise.

6. Considering the facts of the case in the light of the various judicial precedents laid down by the Apex Court and various other judicial forms on the various propositions as discussed hereinabove, we hold that the revisionary jurisdiction has not been validly exercised by the ld PCIT. Accordingly we quash the revisionary proceedings initiated u/s 263 of the Act and the consequent orders passed u/s 263 of the Act. The appeal of the assessee is allowed."

11. We, therefore, following the judicial precedence and considering the fact that necessary enquiry has been conducted by ld. AO in the assessment proceedings on the issues raised in the show cause notice issued u/s 263 of the Act, the assessment order is neither erroneous nor prejudicial to the interests of the Revenue and, thus, quash the impugned revisionary proceedings u/s 263 of the Act and restore the order passed u/s 153A r.w.s. 143(3) of the Act dated 28.12.2018 for AY 2011-12.

12. Since the issues raised and facts of the case for AY 2012-13 are same, taking a consistent view, we quash the impugned order u/s 263 of the Act and restore the assessment order dated 28.12.2018.

13. In the result, both the appeals filed by the assessee are allowed.

Kolkata, the 25th May, 2022.

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated: 25.05.2022

Bidhan (P.S.)

Sd/-
[Manish Borad]
Accountant Member

Copy of the order forwarded to:

1. **M/s. Parwati Educational & Welfare Trust, Manoj Bhawan,
Punaichak, Shastri Nagar, Patna.**
2. **PCIT (Central), Patna.**
3. CIT(A)
4. CIT-
5. CIT(DR), Patna Bench, Patna.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata