DISCRETION GIVEN TO CIT/ PCIT IN EXPLANATION 2 TO SECTION 263

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The only power of review given under the Income Tax Act is contained under section 263 of the Income Tax Act, whereby the Commissioner/ Principal Commissioner is given the power to review an Assessment Order, in case he finds the order to contain some error, which causes prejudice to the revenue. There was a judicial view that the Commissioner could not just impose his view on the assessing Officer, if Assessing Officer had taken a view acceptable under the law. Finance Act, 2015, however amended the section by inserting Explanation 2, by providing certain situations where the order has to be deemed to be erroneous.

SECTION 263:

The provision, as on date, reads as under:

*"**263.** (1) The Principal Commissioner 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 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 an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."*

***Explanation 2**.-For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer 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.”

The above Explanation 2 was Inserted vide The Finance Act, 2015, w.e.f. 1st day of June, 2015. The memorandum explaining the amendment reads as under:

“Revision of order that is erroneous in so far as it is prejudicial to the interests of revenue

The existing provisions contained in sub-section (1) of section 263 of the Income-tax Act provides that if the Principal Commissioner or Commissioner considers that any order passed by the assessing officer 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 an enquiry pass an order modifying the assessment made by the assessing officer or cancelling the assessment and directing fresh assessment.

The interpretation of expression “erroneous in so far as it is prejudicial to the interests of the revenue” has been a contentious one.

In order to provide clarity on the issue it is proposed to provide that an order passed by the Assessing Officer 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 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, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

This amendment will take effect from 1st day of June, 2015."

The discussion in this write up is confined to Clause (a) of the Explanation, as all other clauses are self explanatory.

Clause (a) talks about the inquiry or investigation having not been made by the A.O., which '*should have been made'*. The clause can be split into two parts for understanding purposes. First is the absence of inquiry/investigation and the second phraseology provides an adjective to the first one, being '*which should have been made*'. In fact the pre amended section itself did not provide for this terminology, however as per the judge made law, as of now it was settled that this first limb of the Explanation was already built in the pre amended section also. Therefore it can be said that the second part of the Explanation is the only new addition. However as said earlier that since it provides an adjective to the first part, actually the provision takes a totally new colour with this addition.

PRE AMENDED SITUATION:

Difference between no enquiry and inadequate enquiry

In order to invoke provisions of section 263 of the Act, the two conditions of the order being erroneous as well as prejudicial to the interest of the Revenue are to be satisfied simultaneously. There is no change as such in assumption of jurisdiction under section 263 of the Act. However in the absence of Explanation 2, it was being consistently held by various courts that an order can be said to be erroneous if the Assessing Officer has not made inquiry on a relevant issue. An inquiry made by the Assessing Officer, considered inadequate by the Commissioner of Income Tax, cannot make the order of the Assessing Officer erroneous. Yes, the order can be erroneous if the Assessing Officer fails to apply the law rightly on the facts of the case. As far as adequacy of inquiry is considered, there is no law which provides the extent of inquiries to be made by the Assessing Officer. It is Assessing Officer's prerogative to make inquiry to the extent he feels proper. The Commissioner of Income Tax by invoking revisionary powers under section 263 of the Act cannot impose his own understanding

of the extent of inquiry. There were a number of judgments by various High Courts in this regard.

Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd. v. CIT (2000) 243 ITR 83 (SC), wherein it was held as under:

> *"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 interest of the Revenue unless the view taken by the Income Tax Officer is unsustainable in law."*

The said view has also been held in a judgment of the Hon'ble Punjab & Haryana High Court in the case of CIT v. Indo German Fabs IT Appeal No. 248 of 2012, dated 24-12-2014, in the following words:

> *"Section 263 of the Act confers power to examine an assessment order so as to ascertain whether it is erroneous and prejudicial to the interest of the revenue but does not confer jurisdiction upon the CIT to substitute his opinion for the opinion of the Assessing Officer. The words prejudicial and erroneous have to be read in conjunction and therefore, it is not each and every error in an assessment that invites exercise of powers under Section 263 of the Act, but only orders that are erroneous and prejudicial to the interest of the revenue."*

Most remarkable judgement on this issue was rendered by Delhi High Court in the case of CIT Vs. Sunbeam Auto 332 ITR 167 (Del.), wherein, while considering the distinction between lack of inquiry and inadequate inquiry, the Hon'ble court held that where the AO has made inquiry prior to the completion of assessment, the same cannot be set aside u/s 263 on the ground of inadequate inquiry

> *“12. We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income-tax under section 263 of the Income-tax Act. As noted above, the submission*

of learned counsel for the revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry", that such a course of action would be open. ---------

From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the

income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.

15. Thus, even the Commissioner conceded the position that the Assessing Officer made the inquiries, elicited replies and thereafter passed the assessment order. The grievance of the Commissioner was that the Assessing Officer should have made further inquires rather than accepting the explanation. Therefore, it cannot be said that it is a case of 'lack of inquiry'."

There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing a claim. One has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter. It is only in cases of "lack of inquiry" that such a course of action would be open. In Gabriel India Ltd. [1993] 203 ITR 108 (Bom), law on this aspect was discussed in the following manner (page 113) *"From a rending of sub-section (1) of section 263, it is clear that the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the Income-tax Officer is 'erroneous in so far as it is prejudicial to the interests of the Revenue'. It is not an arbitrary or unchartered power, it can be exercised only on fulfilment of the requirements laid down in sub-section (1). The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner*

could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. (See Parashuram Pottery Works Co. Ltd. v. ITO [1977] 106 ITR 1 (SC) at page 10) ."

There are other plethora of case laws from various High Courts and various benches of the Tribunal for the same effect.

<u>Commissioner's obligation to further Enquire</u>

There was another angle to these cases when the Commissioner of Income Tax held the order of the Assessing Officer to be erroneous and at the conclusion of his order directs the Assessing Officer to make assessment de-novo. This approach of the Commissioner of Income Tax was held to be not correct in law. The revisionary powers under section 263 of the Act are given to the Commissioner of Income Tax when he finds the order of the Assessing Officer to be erroneous as well as prejudicial to the interest of the Revenue. In case the Commissioner of Income Tax finds the error in the order of the Assessing Officer, still prefers to direct him to make assessment de-novo, these two things contradict each other. If the Commissioner of Income Tax directs the Assessing Officer to make assessment after further enquiry, this act of the Commissioner of Income Tax would show that he is not sure whether the original order was erroneous or not, as on conclusion of further enquiry, the Assessing Officer may not make the proposed addition or disallowance. There will emerge a very weird situation in such a case. Therefore, if the Commissioner of Income Tax holds that there is any error in the order of the Assessing Officer, he should give a categorical finding in this regard and for this purpose, he himself has to make enquiries and investigations, whatever he deems fit in the circumstances.

It may also be found that the Hon'ble Delhi High Court in the case of PCIT Vs. Delhi Airport Metro Express Private Limited vide ITA No.705/2017 order dated 05.09.2017 has held that for the purpose of exercising jurisdiction u./s. 263 of the Act, the

conclusion that the order of the AO is erroneous and prejudicial to the interest of the revenue has to be preceded by some minimal inquiry. If the PCIT is of the view that the AO did not undertake any inquiry, it becomes incumbent on the PCIT to conduct such inquiry. If he does not conduct such basic exercise then the CIT is not justified in setting aside the order u/s. 263 of the IT Act.

This view got strengthened by the judgment of the Hon'ble Delhi High Court in the case of ITO Vs. D.G. Housing Projects Ltd. (2012) 343 ITR 329 (Del), whereby the Hon'ble High Court held as under :

> *"16. Thus, in cases of wrong opinion or finding on merits, the CIT has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under section 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order passed is not sustainable in law and the said finding must be recorded. CIT cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, again the CIT must give and record a finding that the order/inquiry made is erroneous. This can happen if an enquiry and verification is conducted by the CIT and he is able to establish and show the error or mistake made by the Assessing Officer, making the order unsustainable in Law. In some cases possibly though rarely, the CIT can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the Assessing Officer had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the Assessing Officer to conduct further enquiries without a finding that the order is erroneous. Finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction under section 263 of the Act. In such matters, to remand the matter/issue to the Assessing Officer would imply and mean the CIT has not examined and decided whether or not the order is erroneous but has directed the Assessing Officer to decide the aspect/question."*

Hon’ble Delhi High Court in the case of Jyoti Foundation has also held that where revisionary authority opined that further enquiry was required, such enquiry should have been conducted by revisionary authority himself to record finding that assessment order passed by the AO was erroneous and pre judicial to the interest of the revenue. This principle is also based on Hon’ble Delhi High court in the case of Sunbeam Auto Limited (supra) whereby it was held that if the AO, while making an assessment, has made inadequate enquiry that would not by itself give occasion to the CIT to pass order u/s.263 merely because he has different opinion of the matter. Only in the case of “lack of enquiry” that such a course of action would be open. It has further been held in the said decision that where the view taken by AO was one of the possible views, therefore, the assessment order passed by the AO cannot be held to be prejudicial to the interest of the revenue.

Now if both the above propositions are put together, the conclusion would be that the CIT, in his revisionary jurisdiction, cannot said the order with some enquiry done by the A.O. to be erroneous, he can hold the non inquiry cases to be erroneous. However he himself has to bring on record the error and prejudice through independent verification and enquiry.

SITUATION POST AMENDMENT:

The phrase ‘*should have been done*’ as provided in the newly inserted Expanation means the verification/ enquiry which ought to have been done. Now, it is to be remembered that the Income Tax Act nowhere provides the exact modalities to be followed to verify a specific claim made by the assessee. It is the prerogative of the Assessing Officer to decide the extent of verification. Now the Act gives a specific power to the Commissioner to revise the orders made without the inquiry to the extent he thinks fit. One should not be oblivious of the fact that the fiscal statute are to be read literally and no equity or logic has to be found in these. Therefore, if the parliament in its wisdom has given power to the decide the extent of enquiry, let it be. One must appreciate the fact that, the view, what ought to have been done in a specific situation, will always differ from person to person. What the A.O. found sufficient; the Commissioner may not find. What one Commissioner finds adequate may not be adequate for any other officer sitting in his place. In this manner a discretion has been provided to the Commissioner in this context.

Exercise of discretion

It is a trite law that exercise of discretion requires the exercise of good judgement. Decision makers must use discretionary powers in good faith and for a proper, intended and authorised purpose. Decision makers must not act outside of their powers. No decision maker has an unfettered discretionary decision making power.
It is not sufficient to exercise discretion and do some act simply because it seems the right thing to do. When exercising discretion, decision makers need to act reasonably and impartially. They must not handle matters in which they have an actual or reasonably perceived conflict of interest. It is important to apply the values that the legislation promotes, professional values and the values of the agency, not personal values.

The risk of arbitrariness in such discretion has been weighed by the Supreme Court of United States in Harold Withrow v. Duane Larkin (43 L. Ed. 2d 712).

"The contention that the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication has a much more difficult burden of persuasion to carry. It must over come a presumption of honesty and integrity in those serving as adjudicators; and it must convince that, under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individual poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented."

In exercising discretionary powers, decision makers should have regard to any specific requirements as well as satisfy general administration, it was held in the case of Golam Momen vs. DCIT (2002) 256 ITR 754 (Cal), while discussing the discretionary powers, Calcutta High Court observed as under:

"Discretion means according to the rules of reason and justice, not according to private opinion, but according to law and not humour. It is not to be arbitrary, vague and fanciful, but legal and regular to be exercised, not capriciously but on judicial grounds and for substantial reasons. If an authority cast with a public duty of exercising discretion takes into account matters which the court considers to be improper for

guidance of the discretion, then in the eye of law, it is an improper exercise of the discretion.

We may find support for the above proposition in Maxwell on Interpretation of Statutes, tenth edition, page 123, and Saurashtra Cement and Chemical Industries Ltd. v. CIT [1978] 115 ITR 27 (Guj). Every discretionary power vested, even in the executive, is to be exercised in a just, reasonable and fair manner. This is the essence, the rule of law, as was held in Aeltemesh Rein v. Union of India [1988] AIR 1988 SC 1768, 1771. Such discretion is to be exercised judiciously and not arbitrarily depending upon the facts and circumstances of each case (Jagdish Singh v. Lieutenant Governor, Delhi [1997] AIR 1997 SC 2239, 2243). The discretion is to be exercised with circumspection, consistent with justice, equity and good conscience, keeping always in view the given facts and circumstances of the case Hindalco Industries Ltd. v. Union of India (1994) 2 SCC 594, 599.

When a statute confers a power, it pre-supposes that it was conferred to achieve some object. Such power, therefore, is to be exercised for achieving the object. Such authority while exercising such power is to be guided by a consideration as to whether such exercise would advance the object sought to be achieved by the enactment. As soon as such power is vested in an authority, it is implicit therein that such power is to be exercised reasonably and in a reasonable manner for the purpose for which it was conferred Wood Polymer Ltd., In re and Bengal Hotels Private Limited, In re [1977] 109 ITR 177, 184-185 (Guj). The Legislature never intended to grant an absolute uncontrolled and arbitrary discretion, but to impose upon the authority the duty of considering the facts and circumstances of a particular case and then to come to an honest judgment as to whether the case calls for exercise of the power (Vetcha Sreeramamurthy's case [1956] 30 ITR 252 (AP)). It implies necessarily that all these circumstances are to be taken into account and an appropriate order is to be passed having regard to the facts of the case. Exercise of such power cannot be summarily rejected on the basis that the power is with the officer, but he is not bound to exercise it (M.L.M. Mahalingam Chettiar v. Third ITO [1967] 66 ITR 287 (Mad) and K.M. Rahmath Bibi's case [1969] 72 ITR 73 (Mad)).”

In the case of Hindalco Industries Ltd. vs. Union of India (1994) 2 SCC 594, the Apex Court observed:

"The discretion must be exercised reasonably. A person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter he has to consider. If he does not obey those rules, he may truly be said to be acting unreasonably.

8. There lies a distinction between the administrative authorities exercising discretionary jurisdiction and the court or the quasi-judicial tribunal deciding the list. In the latter case discretion has been given to the court or the Tribunal to mould the ancillary relief. The discretion is to be exercised with circumspection consistent with justice, equity and good-conscience, keeping always the given fact and circumstances of the case."

From the above analysis, it becomes too evident that even if the terms of Explanation 2 to section 263 smells of some degree of discretion given to the Commissioner for exercise of his revisionary powers, the same are not to be used arbitrarily and irrational manner.

Further, the judgements referred to as above, where it has been held that the Commissioner has to himself make enquiry in order to bring the error as well as the prejudice to revenue on record, also strengthens the view that the Commissioner will be required to do the same exercise even the Explanation 2 be there in the statute.

JUDICIAL PRECEDENTS:

Even if the Explanation 2 is rather new to the statute, there are a few decisions of the ITAT which can be read to understand the fact that in the cases of inadequate enquiry, the Commissioner must bring the fact how the order was erroneous, by himself making the required verification and investigation.

Sh. Narayan Tatu Rane Vs. ITO, I.T.A. No. 2690/2691/Mum/2016, dt. 06.05.2016

"20. Further 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 provison 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

Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-à-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. 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. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquries or verification that would have been carried out by a prudent officer. Hence, in our view, the question as to whether the amendment brought in by way of Explanation 2(a) shall have retrospective or prospective application shall not be relevant."

M/S Arun Kumar Garg HUF vs. PCIT, ITA No. 3391/Del/2018, dt. 08.01.2019

"5.6 Although, there has been an amendment in the provisions of section 263 of the Act by which Explanation 2 has been inserted w.e.f. 1.6.2015 but the same does not give unfettered powers to the Commissioner to assume jurisdiction under section 263 to revise every order of the Assessing Officer to re-examine the issues already examined during the course of assessment proceedings. The Mumbai ITAT Bench has dealt with Explanation 2 as inserted by Finance Act, 2015 in the case of Narayan Tatu Rane vs. ITO reported in (2016) 70 taxman.com 227 to hold that the said Explanation cannot be said to have overridden the liability as interpreted by Hon'ble Delhi High Court, according to which the Commissioner has to conduct the inquiry and verification to establish and show that the assessment order was unsustainable in law. The ITAT Mumbai Bench has further held that the intention of the legislature could not have been to enable the CIT to find fault with each and every assessment order without conducting any inquiry or verification in order to establish that the assessment order is not sustainable in law, since such an interpretation will lead to unending litigation and there would not be any point of finality in the legal proceedings. The ITAT Mumbai Bench of the Tribunal went on to hold that the opinion of the Commissioner referred to in section 263 of the Act has to be understood as legal and judicious opinion and not arbitrary opinion."

Rajgul Credit Invest P. Ltd. Vs. PCIT, I.T.A. No. 2519/DEL/2019, dt. 19.09.2019

"We further note that Explanation to section 263 of the Act does not change the scope of section 263 of the Act, the Mumbai Tribunal in the case of Narayan Tatu Rane vs. ITO reported in 70 taxmann.com 227 has also held that in a case where learned Pr. CIT has not brought any material on record by making enquiries or verifications to substantiate his inference, the learned PCIT is not justified in holding that the impugned assessment order was erroneous. The relevant portion of the decision is as under:-

> *"21. In the instant case, as noticed earlier, the AO has accepted the explanations of the assessee, since there is no fool proof evidence to link the assessee with the document and MIs RNS Infrastructure Ltd, from whose hands it was seized, also did not implicate the assessee.*
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> *Thus, the assessee has been expected to prove a negative fact, which is humanely not possible. No other corroborative material was available with the department to show that the explanations given by the assessee were wrong or incorrect. Under these set of facts, the AO appears to have been satisfied with the explanations given by the assessee and did not make any addition. We have noticed that the Hon'ble Supreme Court has held in the case of Central Bureau of Investigation (supra) that the entries in the books of account by themselves are not sufficient to charge any person with liability. Hence, in our view, it cannot be held that the assessing officer did not carry out enquiry or verification which should have been done, since the facts and circumstances of the case and the incriminating document was not considered to be strong by the AO to implicate the assessee. Thus, we are of the view that the assessing officer has taken a plausible view in the facts and circumstances of the case. Even though the Ld Pr. CIT has drawn certain adverse inferences from the document, yet it can seen that they are debatable in nature. Further, as noticed earlier, the Ld Pr. CIT has not brought any material on record by making enquiries or verifications to substantiate his inferences.*
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> *He has also not shown that the view taken by him is not sustainable in law. Thus, we are of the view that the Ld Pro CIT has passed the impugned revision*

orders only to carry out fishing and roving enquiries with the objective of substituting his views with that of the AO. Hence we are of the view that the Ld Pr. CIT was not justified was not correct in law in holding that the impugned assessment orders were erroneous."

5.4.1 In view of above, we note that notice u/s. 263 of the Act issued by the Pr. CIT is vague and only for making deeper enquiry and re-considering the evidences already on record duly considered during assessment proceedings based on purported proposal that fresh facts have been emerged subsequent to the order of assessment which is factually incorrect and untenable and the conditions or the factors enabling the Ld. Pr. CIT to invoke his jurisdiction uls 263 have not been satisfied."

CONCLUSION:

Though it can be said that the Explanation provides for an extra discretionary power to the Commissioner in his revisionary powers under section 263 of the Act. However this discretion cannot be assumed arbitrarily by the Commissioner. At least something he should bring on record to show the error and the prejudice to revenue caused by that error while assuming jurisdiction under section 263 of the Act. This can be done to the least by him by making independent inquiry/ investigation to conclusively bring on record such error and also the prejudice.