KESHORAIPATAN SAHKARI SUGAR MILLS LTD. vs. PRINCIPAL COMMISSIONER OF INCOME TAX

ITAT, JAIPUR 'B' BENCH

Member(s) Sandeep Gosain, J.M. & Rathod Kamlesh Jayantbhai, A.M.

ITA No. 208/Jp/2022; Asst. yr. 2017-18

Date of Decision 20th March, 2023

Source (2023) 37 NYPTTJ 675 (Jaipur)

Statutes referred to :

Income-tax Act, 1961, s. 263

Case decided in favour of :

In favour of : Assessee

Revision—Erroneous and prejudicial order—Lack of proper enquiry—AO allowed deduction under s. 80P(2)(d) on the interest income received by the assessee from co-operative bank—He has examined the issue which is evident from the finding recorded in the assessment order—AO has taken a plausible view—There is no lack of enquiry on the part of the AO and he has applied his mind and allowed the claim to the assessee—Principal CIT did not place on record any apparent error on the part of the AO to substantiate that the order passed by the AO is prejudicial to the interest of Revenue—She has not pinpointed any enquiry which was required to be made but not made by the AO—When the AO has conducted the required enquiry, the order passed by the AO could not be said to be erroneous and prejudicial to the interests of the Revenue—So long as the action of the AO cannot be said to be lacking bona fides, his action in accepting the explanation of the assessee cannot be faulted merely because it could have been lawful to make more detailed inquiries or because he did not write specific reasons for accepting the explanation—Non-mentioning of these reasons did not render the assessment order "erroneous and prejudicial to the interest of the Revenue"—Hence, the impugned revision order is vacated

Held :

There is a specific finding and reference of the deduction claimed by the assessee in the assessment order. Thus, the AO has taken a plausible view which is based on decision relied upon by the Authorised Representative of the assessee and there is no lack of enquiry on the part of the AO and he has applied his mind and allowed the claim to the assessee. He has examined the issue which is evident from the finding recorded in the assessment order. As the case was for this limited purpose, the same has been examined and verified by the AO as it emerges from the findings of the AO. The Principal CIT did not place on record any apparent error on the part of the AO to substantiate that the order passed by the learned AO is prejudicial to the interest of Revenue. She only mentioned that the AO allowed deduction under s. 80P(2)(d) on the interest income received by the assessee from co-operative bank and thus, AO erred in allowing the deduction under s. 80P(2)(d) on such interest income. She has not pinpointed any enquiry which was required to be made but not made by the AO. There is no defect found from the enquiry that has been conducted by the AO. He collected the information based upon which he has allowed the claim of assessee and has verified the point raised in the limited scrutiny. The Principal CIT did not find any specific error or default of AO and thus there are no reasons in interfering with the view that has already been taken. Since the AO has clearly conducted the enquiry and Revenue did not pinpoint the error on the part of the AO, the order passed after due application of mind cannot be subjected to proceeding under s. 263. When the AO has conducted the required enquiry and not violated any of the conditions mentioned for revision of order as required by Expln. 2 of s. 263 the order passed by the AO could not be said to be erroneous and prejudicial to the interests of the Revenue. So long as the action of the AO cannot be said to be lacking bona fides, his action in accepting the

explanation of the assessee cannot be faulted merely because it could have been lawful to make more detailed inquiries or because he did not write specific reasons for accepting the explanation. Merely because the AO did not write specific reasons for accepting the explanation of the assessee, same cannot be reason enough to invoke powers under s. 263, and non-mentioning of these reasons did not render the assessment order "erroneous and prejudicial to the interest of the Revenue.—Mrs. Khatiza S. Oomerbhoy vs. ITO (2006) 101 TTJ (Mumbai) 1095 followed

(Paras 8 to 12)

Conclusion :

AO having allowed deduction under s. 80P(2)(d) in respect of interest income received by the assessee from a co-operative bank after examining the issue and applying his mind which is evident from the finding recorded in the assessment order, and the Principal CIT having not pointed out any enquiry which was required to be made but not made by the AO, the order passed by the AO could not be said to be erroneous and prejudicial to the interests of the Revenue; merely because the AO did not write specific reasons for accepting the explanation of the assessee, same cannot be reason enough to invoke powers under s. 263; impugned revision order is vacated.

Cases referred to

Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. vs. Asstt. CIT (2022) 327 CTR (Guj) 138 : (2022) 215 DTR (Guj) 125

Krishnarajapet Taluk Agri Pro Co-operative Marketing Society Ltd. vs. Principal CIT (2022) 137 taxmann.com 121 (Bang)(Trib)

Lands End Co-operative Housing Society Ltd. vs. ITO (ITA No. 3566/Mum/2014, dt. 15th Jan., 2016)

Principal CIT vs. Totagars Co-operative Sale Society (2017) 297 CTR (Kar) 158 : (2017) 154 DTR (Kar) 25

Totgars Co-operative Sale Society Ltd. vs. ITO (2010) 229 CTR (SC) 209 : (2010) 35 DTR (SC) 25 : (2010) 188 Taxman 282 (SC)

Counsel appeared :

Mahendra Gargieya & Devang Gargieya, for the Assessee : James Kurian, for the Revenue

ORDER

Rathod Kamlesh Jayantbhai, A.M. :

This appeal is filed by the assessee aggrieved from the order of the Principal CIT, Udaipur (herein after referred as learned Principal CIT) for the asst. yr. 2017-18 dt. 27th March, 2022 as per provision of s. 263 of the Act, which in turn arises from the order passed by the ITO, Ward, Bundi passed under s. 143(3) of the IT Act, 1961 (in short 'the Act') dt. 25th Nov., 2019.

2. Aggrieved from the order of the learned Principal CIT the assessee has marched this appeal on the following grounds;

"1. The learned Principal CIT, Udaipur erred in law as well as on the fact of the case in taking the action under s. 263, which is bad in law without jurisdiction and being *void ab initio*, the same may kindly be quashed.

2. The learned Principal CIT seriously erred in law as well as on the facts of the case in assuming jurisdiction under s. 263 of the Act without recording a specific and categorical finding that the subjected assessment order passed under s. 143(3) dt. 25th Nov., 2019 is erroneous and prejudicial to the interest of the Revenue, in absence of which

the entire proceedings under s. 263 is vitiated. Therefore, the impugned order dt. 27th March, 2022 under s. 263 of the Act kindly be quashed.

3. The learned Principal CIT seriously erred in law as well as on the facts of the case in assuming jurisdiction under s. 263 of the Act by wrongly and incorrectly holding that the AO failed to examine and verify the deduction claimed under s. 80P(2)(d) and seriously erred in cancelling/setting aside the subjected assessment order passed under s. 143(3) dt. 25th Nov., 2019, with a direction to the AO to examine the claimed deduction so by the assessee. The assumption of jurisdiction under s. 263 and the impugned direction, being contrary to the provisions of law and facts on record hence, the proceedings initiated under s. 263 of the Act and the impugned order dt. 27th March, 2022 deserves to be quashed.

4. The learned Principal CIT seriously erred in law as well as on the facts of the case in assuming jurisdiction under s. 263 of the Act by wrongly and incorrectly invoking Expln. 2 to s. 263 as if the same conferred unbridled power upon the CIT even though the facts and circumstances of the case did not justify the application of the said Explanation.

5. The learned Principal CIT erred in law as well as on the facts of the case in wrongly setting aside the assessment order dt. 25th Nov., 2019 despite there being complete application of mind by the AO on the subjected issues and it was nothing but a case of change of opinion and/or suspicion, based on which, assumption of jurisdiction under s. 263 is not permissible. The impugned order dt. 27th March, 2022 therefore, lacks valid jurisdiction under s. 263 of the Act and hence, the same kindly be quashed.

6. Rs. 3,02,09,525 : The learned CIT erred in law as well as on the facts of the case in denying the benefit of deduction claimed under s. 80P(2)(d) of Rs. 3,02,09,525 by considering the receipt of interest income from co-operative bank as not eligible. The denial to the deduction, being contrary to the provisions of the law and facts, the deduction as claimed may be allowed in full.

7. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."

3. Succinctly, the fact as culled out from the records is that the return of income declaring Rs. Nil income was E-filed on 4th Aug., 2017. The case of the assessee was selected for limited scrutiny through CASS to examine the issue "Deduction under chapter VIA". Consequently, notice under s. 143(2) was issued on 25th Nov., 2018 and served upon the assessee. Further notice under s. 142(1) along with questionnaire was also issued and duly served upon the assessee. In compliance to the statutory notices, the assessee filed written submission electronically. The assessment was completed as per provision of s. 143(3) on declared income on 25th Nov., 2019 where in the returned income was accepted.

4. On culmination of assessment proceeding the Principal CIT, Udaipur on examination of the assessment records observed that the assessee has claimed deduction of interest income of Rs. 3,02,09,525 under s. 80(P)(2)(d). This interest was received on deposits and Saving Bank account with the co-operative Banks. On examination of assessment order, it is seen that the assessee did not carry out any business activities since so many years including the year under consideration and the source of income is only interest income from investments in saving account and FDRs from various banks. The learned Principal CIT further observed that the assessee co-operative society received FDR interest income from the Kota Nagrik Sahakari Bank at Rs. 1,49,81,040 and from the Bundi Central Co-operative Bank Ltd. at Rs. 1,51,84,959 and saving bank interest of Rs. 43,526 from both the co-operative banks. The assessee claimed deduction under s. 80(P)(2)(d) on the interest income of Rs. 3,02,09,525 which was allowed by the AO. On this issue it is stated that deduction under s. 80(P)(2)(d) of the Act, is allowable on the interest income received from any other co-operative society and not on the interest income received from any other co-operative banks. As the said interest income was received from other than co-operative society hence provision of s. 80(P)(2)(d) are not applicable in this case. Consequently, deduction under s. 80(P)(2)(d) of the Act is not allowable to the assessee. The Principal CIT based on these observation stated that the deduction of Rs. 3,02,09,525 was required to be disallowed and added to the total income of the assessee and the learned Principal CIT further stated that AO has not examined the issue of deduction under s. 80P(2)(d) of the Act properly and completed the assessment without conducting enquiry on the issue of the said deduction. In view of these facts,

learned Principal CIT stated that the assessment order is erroneous and prejudicial to the interest of Revenue and accordingly a show-cause notice under s. 263 of the Act was issued on 21st Feb., 2022.

5. In response assessee filed a detailed reply in the proceeding under s. 263 of the Act which is discussed in the order of the learned Principal CIT and the same is not repeated to avoid duplication. After examination of the submission of the assessee the learned Principal CIT set aside the order of the learned AO. The relevant finding of the learned Principal CIT is reiterated herein below :

"4. I have considered the facts of the case and the submission of the assessee.

The assessee cited decision of the Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. vs. CIT (2000) 159 CTR (SC) 1 : (2000) 243 ITR 83 (SC)* stating that order cannot be revised by the Principal CIT under s. 263 of the IT Act, 1961.

The reply of the assessee is not acceptable because the Hon'ble Supreme Court has held that :

"An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall order passed without applying the principles of natural justice or without application of mind"

The order passed by the AO under s. 143(3) on 25th Nov., 2019 is erroneous and prejudicial to the interest of the Revenue in terms of the above judgement of the Hon'ble Supreme Court, as the AO has allowed interest under s. 80P(2)(d) on the incorrect assumption of facts and incorrect application of law and without application of mind also.

The assessee also furnished copy of registration of co-operative banks under the Rajasthan Co-operative Societies Act, IV of 1953 and RBI certificate of doing banking business.

The reply of the assessee is considered on this issue but not acceptable because on the RBI has given certificate/license to the co-operative banks for doing banking business and on the basis of the registration under Rajasthan co-operative societies Act, IV of 1953 these cooperative banks cannot be treated as co-operative society.

In its reply the assessee has furnished that Bundi Central Co-operative Bank is registered under s. 12, sub-s. (2), cl. (a)/(b) of the Rajasthan Co-operative Society Act IV of 1953.

As per part V of Banking Regulation Act 1949, Co-operative bank means a "State Co-operative Bank, a central Co-operative Bank and a primary Co-operative Bank and "Co-operative Society means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi-State co-operative societies, or any other Central or State law relating to co-operative societies for the time being in force."

As per part V of Banking Regulation Act, 1949 a Co-operative Bank is different from the Co-operative Society.

It is seen that during the year deduction of Rs. 3,02,09,525 under s. 80P was allowed to the assessee which was received by the assessee on interest on FDR maintained with the Co-operative Banks and other scheduled banks.

The assessee has claimed that deduction on interest on FDR maintained with co-operative bank is covered under s. 80P(2)(d).

The assessee relied upon the decision of the Tribunal, Jaipur in ITA Nos. 418 and 419/Jp/2017 in which reference to the judgement of Hon'ble Karnataka High Court in the case of *Principal CIT vs. Totagars Co-operative Sale Society (2017) 392 ITR 74 (Kar)*, wherein it held that Co-operative Bank would be included in the words "Co-operative society" has been made.

It is seen that the deduction under s. 80P(2)(d) has been claimed on "interest" received from co-operative banks. The question for consideration is whether a co-operative bank is a co-operative society, hence covered by s.

80P(2)(d) ?

With regard to the reliance on the Hon'ble Karnataka High Court judgement in the case of *Principal CIT vs. Totagars Co-operative Sale Society (2017) 392 ITR 74 (Kar)*, it is pertinent to mention here that the relied upon judgment has been reviewed by the Hon'ble Karnataka High Court in the very same case in Appeal No. 100066 of 2016 decided on 16th June, 2017 and its earlier finding on the issue has been reversed. In its subsequent judgment the High Court held that "the character or nature of income, namely interest on investments or deposits, did not change irrespective of the fact whether it was earned or received from a schedule bank or co-operative bank. Further, the amendment of s. 194A(3)(v) excluding the co-operative banks from the definition of co-operative Society by Finance Act, 2015 and requiring them to deduct income-tax at source under s. 194A also made the legislative intent clear that the co-operative banks were not that specie of genus co-operative society, which would be entitled to exemption or deduction under the special provisions of Chapter VIA in the form of s. 80P. The person or body corporate from which such interest income was received would not change its character, viz., interest income not arising from its business operations, which made it ineligible for deduction under s. 80P. The income by way of interest earned by the assessee co-operative society on the investments made in the co-operative bank were not eligible for deductions under s. 80P(2)(d)."

Thus, it is clear that for the purpose of s. 80P(2)(d), the investment in Co-operative bank is not different from an investment made in a scheduled Bank. As the Co-operative bank is not in the nature of Co-operative society for the purpose of s. 80P(2)(d), the interest received on FDRS maintained with the Co-operative Bank cannot be treated as eligible for deduction under s. 80P(2)(d).

It is further stated that the co-operative societies accepted deposits of their members only and the societies advanced loans to their members only. whereas the Co-operative Bank accepted deposits and advanced loans to the general public also. This is the main difference between the co-operative society and the Co-operative Bank.

As per sub-s. (4) of s. 80P of the IT Act, 1961, the provisions of s. 80P shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. As per sub-s. (4) of s. 80P, Co-operative Bank is not a co-operative society and provisions of s. of this section are not applied on it.

The AO allowed deduction under s. 80P(2)(d) on the interest income received from Co-operative Banks.

The AO has thus erred in allowing the deduction under s. 80P(2)(d) on such interest income.

Considering all the facts and circumstances of the case, the assessment order dt. 25th Nov., 2019 for asst. yr. 2017-18 passed by the AO, allowing the deduction under s. 80P(2)(d) on the interest received from the Co-operative bank, is held to be erroneous in so far as it is prejudicial to the interests of the Revenue for the purpose of s. 263 of the IT Act. The order of the AO is, therefore, liable to revision under the Expln. (2) cl. (b) and cl. (a) of s. 263 of the IT Act, 1961. Therefore, the assessment order on this issue is being set aside to be made afresh. Adequate opportunity of being heard should be allowed to the assessee before passing the fresh order.

The order of the AO is, accordingly, set aside on the issues as discussed above."

6. Feeling aggrieved from the order of the learned Principal CIT the assessee has marched this appeal on the grounds as raised here in above. The learned Authorised Representative appearing on behalf of the assessee has placed their written submission to support the grounds so raised, which is extracted in below;

"Facts : The assessee had filed its return of income for asst. yr. 2017-18 on 4th Aug., 2017 declaring total income of Rs. Nil (Agriculture Income of Rs 4,45,910). Thereafter, the case of the assessee was selected for scrutiny through CASS to examine the issue "deduction under Chapter VI-A". The AO completed the scrutiny assessment of the assessee under s. 143(3) of the IT Act, 1961 on 25th Nov., 2019 by accepting returned income.

Thereafter, assessment records for the asst. yr. 2017-18 was called for by the learned CIT, examined and noticed that :

"The assessee co-operative society received FDR interest income from the Kota Nagrik Sahkari Bank at Rs. 1,49,81,040 and from the Bundi Central Co-operative Bank Ltd. at Rs. 1,51,84,959 and saving bank interest of Rs. 43,526 from both the co-operative banks. The assessee claimed deduction under s. 80P(2)(d) on the interest income of Rs. 3,02,09,525 which was allowed by the AO. On this issue it is stated that deduction under s. 80P(2)(d) of the Act, is allowable on the interest income received from any other co-operative society and not on the interest received from the co-operative banks. As the said interest income was received from other than the co-operative society, hence provisions of s. 80P(2)(d) are not applicable in this case. Consequently, deduction under s. 80P(2)(d) of the IT Act of Rs. 3,02,09,525 is not allowable to the assessee. Hence the deduction of Rs. 3,02,09,525 was required to be disallowed and added to the total income of the assessee. However, such amount was not disallowed by the AO. In view of above discussion, it is clear that the AO has not examined the issue of deduction under s. 80P(2)(d) of the IT Act, 1961 properly and completed the assessment in this case without conducting proper enquiry on the issue of the said deduction."

Show-Cause Notice under s. 263 was issued on 21st Feb., 2022. (PB 49-51) and duly replied by the assessee vide written submissions dt. 26th Feb., 2022 (PB 52-55), partly reproduced in para 3 of the impugned order. The learned CIT however, not feeling satisfied, held the assessment order dt. 25th Nov., 2019 as erroneous and prejudicial to the interest of the Revenue stating that (relevant extracts only) :

The reply of the assessee is considered on this issue but not accepted because on the RBI has given certificate/license to the co-operative banks for doing banking business and on the basis of the registration under Rajasthan Co-operative Societies Act, IV of 1953 these co-operative banks cannot be treated as co-operative society.

....

As per part V of Banking Regulation Act, 1949 a co-operative bank is different from the co-operative society.

It is seen that the deduction under s. 80P(2)(d) has been claimed on "interest" received from co-operative banks. The question for consideration is whether a Co-operative bank is a co-operative society, hence covered by s. 80P (2)(d) ?

With regard to the reliance on the Hon'ble Karnataka High Court judgement in the case of *Totagar's Co-operative Sales Society (2017) 392 ITR 74 (Kar)*, it is pertinent to mention here that the relied upon judgment has been reviewed by the Hon'ble Karnataka High Court in the very same case in Appeal No. 100066 of 2016 decided on 16th June, 2017 and its earlier finding on the issue has been reversed.

....

Thus, it is clear that for the purpose of s. 80P(2)(d), the investment in co-operative bank is not different from an investment made in a scheduled bank. As the co-operative bank is not in the nature of Co-operative Society for the purpose of s. 80P(2)(d), the interest received on FDRs maintained with the Co-operative Bank cannot be treated as eligible for deduction under s. 80P(2)(d).

It is further stated that the co-operative societies accepted deposits of their members only and the societies advanced loans to their members only whereas the co-operative Bank accepted deposits and advanced loans to general public also. This is the main difference between the co-operative society and the co-operative Bank.

As per s. 4 of s. 80P of the IT Act 1961, the provision of s. 80P shall not apply in relation to any co-operative bank other than the primary agricultural credit society or a primary co-operative agricultural and rural development bank. As per sub-s. (4) of s. 80P, Co-operative Bank is not a co-operative society and the provisions of this section are not applied on it.

The AO allowed deduction under s. 80P(2)(d) on the interest income received from co-operative Banks. The AO has thus erred in allowing the deduction under s. 80P(2)(d) on such interest income."

The order of the AO is, accordingly, set aside on the issues as discussed above. Hence, this appeal.

Submissions :

1. Legal position on s. 263–Judicial guideline : Before proceeding, we may submit as regards the judicial guideline, in the light of which, the facts of this case are to be appreciated.

1.1 The prerequisites to the exercise of jurisdiction by the CIT under s. 263, is that the order of the AO is established to be erroneous insofar as it is prejudicial to the interest of the Revenue. The CIT has to be satisfied of 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.

If any one of them is absent i.e., if the assessment order is not erroneous but it is prejudicial to the Revenue, s. 263 cannot be invoked. This provision cannot be invoked to correct each and every type of mistake or error committed by the AO; it is only when an order is erroneous as also prejudicial to revenue's interest, that the provision will be attracted. An incorrect assumption of the fact or an incorrect application of law will satisfy the requirement of the order being erroneous. The phrase 'prejudicial to the interest of the Revenue' has to be read in conjunction with an erroneous order passed by the AO. Every loss of Revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. For example, if the AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO 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 AO is totally unsustainable in law. Kindly refer *Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC)*.

1.2 Also kindly refer *CIT vs. Max India Ltd. (2000) 159 CTR (SC) 1 : (2007) 295 ITR 282 (SC)* wherein it is held that :

"The phrase "prejudicial to the interests of the Revenue" in s. 263 of the IT Act, 1961, has to be read in conjunction with the expression "erroneous" order passed by the AO. 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 the AO adopts one of two courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the AO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the Revenue, unless the view taken by the AO is unsustainable in law."

1.3 In *CIT vs. Ganpat Ram Bishnoi (2005) 198 CTR (Raj) 546* held that from the record of the proceedings, in the present case, no presumption can be drawn that the AO had not applied its mind to the various aspects of the matter. In such circumstances, without even *prima facie* laying foundation for holding that assessment order is erroneous and prejudicial to interest in any matter merely on suspicious ground that the AO was required to make an enquiry, cannot be held to satisfy the test of existing necessary condition for invoking jurisdiction under s. 263. Jurisdiction under s. 263 cannot be invoked for making short enquiries or to go into the process of assessment again and again merely on the basis that more enquiry ought to have been conducted to find something.

1.4 In *CIT vs. Rajasthan Financial Corporation (1996) 134 CTR (Raj) 145* held that :

"Once AO has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the AO allowed the claim being satisfied with the explanation of assessee, the decision of the AO cannot be held to be erroneous simply because in his order not make an elaborate discussion in that regard."

1.5 *Abdul Hamid vs. ITO (2020) 207 TTJ (Gau) 1109 : (2020) 195 DTR (Gau)(Trib) 321 : (2020) 117 taxmann.com 986 (Gau)(Trib)* it was held that only probability and likelihood to find error in assessment order is not permitted under s. 263. Ratio of these cases fully apply on the facts of the present case, in principle.

2. Due application of mind :

2.1 In the present case jurisdiction under s. 263 of the Act is assumed on the ground that while completing assessment proceedings the AO did not verify/examine the deduction claimed under s. 80P(2)(d) properly and wrongly allowed the same. However, the Dy. CIT seriously erred in cancelling/setting aside the subjected assessment order passed under s. 143(3) dt. 25th Nov., 2019. The assumption of jurisdiction under s. 263 and the impugned direction, being contrary to the provisions of the law.

2.1.1 At the outset it is wrong to say that the AO completed the assessment without proper verification and examination of the issue and incorrect and incomplete appreciation of facts and law in as much as the AO had made a detailed enquiry and examination to the extent required of books of account, other records, the binding judicial guideline, etc.

2.1.2 The relevant paragraph of the assessment order dt. 25th Nov., 2019 (PB 6-7) showing that the AO has examined each any every documents submitted by assessee during scrutiny proceedings, is reproduced below :

"Return declaring Nil income (Agriculture income of Rs. 4,45,910) was filed online by the assessee samiti on 4th Aug., 2017 vide acknowledgement No. 132729291040817, which was processed under s. 143(1). The case was selected for scrutiny through CASS (Computer Aided Scrutiny Selection); to examine the issue "Deduction under chapter VI-A", hence notice under s. 143(2) was issued on 10th Aug., 2018 which was duly served upon the assessee by e-mail as well as served through regd. AD post. Due to change of incumbent, a notice under s. 142(1) along with query letter issued to the assessee on 2nd Nov., 2019 along with questionnaire requiring the assessee to furnish required details/documents on or before 11th Nov., 2019 online through e-assessment proceedings. No compliance was made by the assessee samiti. Thereafter again notice under s. 142(1) of the IT Act, 1961 was issued on 12th Nov., 2019 for compliance on or before 18th Nov., 2019. In compliance, the assessee samiti has furnished written submission online through e-assessment proceedings. In compliance to the said notice, assessee samiti has submitted written submission along with computation of total income, Bank Statements, interest certificates, statement of agriculture income etc. which were placed on record. Books of accounts, bank statements were examined on test-check basis.

2.2 Further, a perusal of assessment order under s. 143(3) dt. 25th Nov., 2019 it is revealed that the AO after considering the facts and submission of the assessee filed against notice under s. 142(1) issued on 12th Nov., 2019 w.r.t. Deduction under chapter VI-A accepted the return income declared by the assessee samiti. (PB 8-32). The relevant paragraph from the order dt. 25th Nov., 2019 is reproduced as under :

Brief facts of the case are that the assessee samiti derived interest income and agriculture income during the year under consideration. In return assessee samiti has declared gross total income of Rs. 3,02,18,447 and claimed deduction under chapter VI-A at Rs. 3,02,18,447 (deduction under s. 80P(2)(c) (ii) of Rs. 8,922 + deduction under s. 80P(2)(d) at Rs. 3,02,09,525) after that total income shown at Nil. Case of the assessee samiti was selected for scrutiny to examine the claim of deduction under chapter VI-A. The issue on which case was selected for scrutiny was examined. After considering the facts and submission of the assessee, return income declared by the assessee samiti is accepted."

2.3 Selection of the case under CASS : Moreover, the very fact of selection of the case under CASS on the ground of deduction claimed under s. 80P(2)(d) followed by the issuance of the notices under ss. 143(2) and 142(1) along with questionnaire to the assessee. The AO raised very specific and relevant queries/called for explanation and evidences asking various details w.r.t., to produce cash book, bank book, etc., goes to fully establish that the AO was fully alive to the issue in hand from all angles, whether it is factual or legal aspect involved. In the response of the notices, the assessee filed complete documents w.r.t. queries raised along with production of cash book, bank and account books, etc. which was required by the AO time to time through the Authorised Representative, and the same were duly verified and examined by the AO. Despite there being complete application of mind by the AO on the issues involved the learned Principal CIT had wrongly set aside the assessment order dt. 25th Nov., 2019. Therefore, it was nothing but a case of change of opinion and suspicion, hence, assumption of jurisdiction under s. 263 is not permissible.

3. Binding judicial guideline: It cannot be disputed that the AO was bound by the rule of precedence hence, he could not have ignored the binding decisions of the Tribunal and the High Court to which he was subordinate. Therefore, he committed no error.

3.1 The Hon'ble Tribunal in Jaipur 'A' Bench in assessee's own case for asst. yrs. 2013-14 and 2014-15 in ITA Nos. 418 and 419/Jp/2017 vide order dt. 31st Jan., 2018 (PB 33-48), held as under :

"As regards the claim under s. 80P(2)(d), we find that the only condition for availing the deduction under this provision is any income by way of interest or dividend derived by the co-operative society from its investment with any other co-operative society, the whole of such income is allowable for deduction under s. 80P(1). Therefore, there is no condition for the assessee society to engaged in the activity of provide credits to the members or banking business for availing the deduction under s. 80P(2)(d) r/w s. 80P (1) of the Act. As regards the co-operative bank shall be treated as co-operative societies for the purpose of the interest income on investment in such co-operative bank under s. 80P(2)(d) the Mumbai Bench of this Tribunal in case of *Lands' End Co-operative Housing Society Ltd. vs. ITO* (supra), after considering the decision of the Hon'ble Supreme Court in case of *Totagar's Co-operative Sale Society Ltd. vs. ITO* (supra) has considered and decided this issue in para 8.3 as under :

....

We further note that the Hon'ble jurisdictional High Court in the case of *CIT vs. Rajasthan Rajya Sahakari Kray Vikray Sangh Ltd.* (supra) by following the decision of Hon'ble Gujarat High Court in the case of *Surat Vankar Sahakari Sangh Ltd. vs. Asstt. CIT (2020) 72 taxmann.com 169 (Guj)* has held in as under :

....

Further the Hon'ble Karnataka High Court in case of *Principal CIT & Anr. vs. Totagars Co-operative Sale Society (2010) 392 ITR 74 (Kar)* as relied upon by the learned Authorised Representative of the assessee as held in paras 7 to 11 as under :

....

11. The learned counsel has relied on the case of *The Totgars Co-operative Sale Society Ltd. vs. ITO* (supra). However, the said case dealt with the interpretation, and the deduction, which would be applicable under s. 80P(2)(a)(i) of the IT Act. For, in the present case the interpretation that is required is of s. 80P(2)(d) of the IT Act and not s. 80P(2)(a)(i) of the IT Act. Therefore, the said judgment is inapplicable to the present case. Thus, neither of the two substantial questions of law canvassed by the learned counsel for the Revenue even arise in the present case."

....

Thus, the Hon'ble High Court has held that the Co-operative Bank is considered to a co-operative society for the purpose of s. 80P(2)(d). Accordingly, in view of the decisions as cited (supra), we do not find any error or illegality in the orders of the learned CIT(A) to the extent of the allowing the claim of the assessee under s. 80P(2)(d) in respect of interest income from deposits/FDRs with the Co-operative Banks."

In absence of further challenge, has attained finality.

3.2 Since the AO acted in accordance with the law as interpreted by the jurisdictional HC, Tribunal which prevailed on the date of the passing assessment order and continued even when s. 263 order was passed hence, no fault can be found in his action and in particular, proceeding under s. 263 cannot be invoked in such a case. Kindly refer *CIT vs. G.M. Mittal Stainless Steel (P) Ltd. (2003) 179 CTR (SC) 553 : (2003) 130 Taxman 67 : (2003) 263 ITR 255 (SC)* (DPB 53-56) wherein it was held :

"In the instant case, the CIT had not recorded any reason whatsoever for coming to the conclusion that the AO was

erroneous in deciding that the power subsidy was capital receipt. Given the fact that the decision of the jurisdictional High Court was operative at the material time, the AO could not be said to have erred in law. The fact that the instant Court had subsequently reversed the decision of the High Court would not justify the action of the CIT in treating the AO's decision as erroneous. The power of the CIT under s. 263 must be exercised on the basis of the material that was available to him when he exercised the power. At that time, there was no dispute that the issue whether the power subsidy should be treated as capital receipt had been concluded against the Revenue. The satisfaction of the CIT, therefore, was based on no material, either legal or factual, which would have given him the jurisdiction to take action under s. 263. (Para 5)"

Also relied *CIT vs. Canara Bank (2021) 123 taxmann.com 207 (Kar)*.

4. On Merits :

4.1 In fact, the issue whether a co-operative bank can be considered as a "co-operative society" is no longer *res integra*. The source of interest/dividend income has to be a "co-operative society" which, is a wider term and is genus. A "co-operative society" can be of different nature, involving in different activities viz. co-operative purchase society, co-operative sales society, or co-operative bank etc. The co-operative bank thus, is a mere species of the genus and hence, would necessarily be covered by the word co-operative society.

4.2 Further, in s. 2(19) of the Act, the term Co-operative Society has been defined as under :

"Co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies".

The Act has not recognized co-operative bank. The two banks are Co-operative Society registered under Rajasthan Co-operative Societies Act, 1953 and getting benefit under Act also as a Co-operative Society.

4.3 There apart, even s. 56(i)(ccv) of the Banking Regulations Act, 1949 defines a Primary co-operative Society Bank as a Co-operative Society. Therefore, a Co-operative Society Bank is impliedly included in the word 'Co-operative Society'. This view has been taken in the cases of :

4.4 Other supporting case laws on merit :

(i) The Tribunal Raipur Bench in *Gramin Sewa Sahakari Samiti Maryadit vs. ITO (2022) 217 TTJ (Raipur) 337 : (2022) 215 DTR (Raipur)(Trib) 193 : (2022) 138 taxmann.com 476 (Raipur)(Trib)* held that : "co-operative bank falls within realm of definition of 'Co-operative society' as contemplated in s. 2(19); therefore, dividend income received by assessee co-operative society from a co-operative bank, would be eligible for deduction under s. 80P(2)(d).

Whether CIT(A) had erred in confirming rejection of assessee's claim for deduction of dividend income under s. 80P(2)(d) ?

It is viewed that a co-operative bank falls within the realm of the definition of Co-operative Society' as contemplated in s. 2(19), therefore, the view taken by the lower authorities that dividend income received by the assessee from a Co-operative Bank, would not eligible for deduction under s. 80P(2)(d) cannot be sustained. Thus, the view taken by the lower authorities is not agreeable and the disallowance of the assessee's claim for deduction under s. 80P(2)(d) is vacated. Thus, this ground of appeal is allowed in terms of the aforesaid observations. (Para 22)

(ii) *Solitaire CHS Ltd. vs. Principal CIT* (IT Appeal No. 3155/Mum/2019, dt. 29th Nov., 2019) (ITAT "G" Bench, Mumbai);

(iii) *Kaliandas Udyog Bhavan Premises Co-operative Society Ltd. vs. ITO (2018) 94 taxmann.com 15 (Mumbai)*; and

(iv) *Majalgaon Sahakari Sakhar Karkhana Ltd. vs. Asstt. CIT (2019) 105 taxmann.com 100 (Pune)(Trib)*.

(v) *Dy. CIT vs. Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd.* (ITA Nos. 633 and 634/Jp/2019 for asst. yrs. 2011-12 and 2012-13)

4.5 There apart, the other facts which influenced the Hon'ble Karnataka High Court in *Principal CIT vs. Totagars Co-operative Sale Society (2017) 297 CTR (Kar) 158 : (2017) 154 DTR (Kar) 25 : (2017) 395 ITR 611 (Kar)* (in para 23), based on which decision against assessee was taken, were that the assessee in that case deposited its surplus funds in the co-operative banks, which is not a fact in this case nor it is so alleged by the learned Principal CIT (and rightly so because the assessee acted as investor only for whom the entire fund was to be put in the investment leaving no surplus or ideal fund at all). In the absence of a categorical finding on this factual aspect, which could be a jurisdictional fact, the ratio laid in the later decision of *Totagar* (supra) was wrongly held applicable by the learned Principal CIT in the impugned order.

4.6 In any case, the law is well settled that, in case of conflicting judgement, the view favourable to the assessee must be accepted as held in the case of *CIT vs. Vegetable Product Ltd. 1973 CTR (SC) 177 : (1973) 88 ITR 192 (SC)* and *K. Subramanian & Anr. vs. Siemen's India Ltd. & Anr. (1983) 36 CTR (Bom) 197 : (1985) 156 ITR 11 (Bom)*

4.7 Rule of consistency obliged the AO : There is no dispute that not only in the subjected assessment year but since last several years including asst. yrs. 2013-14 and 2014-15 when this controversy arose and was decided in favour of assessee, in the later year from asst. yr. 2015-16 onwards till asst. yr. 2017-18, the same facts and circumstances continued and the assessee had been making claim under s. 80P(2)(d) only on the subjected interest income yet however, the Department never took a departure. All those assessments stood competed under s. 143(1) and were not disturbed under s. 147 and/or under s. 263 and hence had attained finality. This was because all the earlier AO including the present one had been following the rule of consistency and therefore were correctly allowing the deduction so claimed, so also did the AO in the subjected year. Therefore, there was no scope of any error in such an action.

5.1 Substitution of opinion, not permissible–possible view taken by the AO : Thus, the AO certainly did form an opinion by taking a conscious possible decision in view of the facts available on record, investigated by him and the available juridical guideline particularly those binding upon him. It is only after considering all the relevant aspects, relevant facts and the binding decisions more particularly, the Tribunal order in assessee's own case for asst. yrs. 2013-14 and 2014-15, the AO allowed the deduction claimed under s. 80P(2)(d) of the Act.

However, in the impugned order, the learned Principal CIT imposed his opinion, which shows that it is a case of substitution of opinion. The later decision of Karnataka High Court was wrongly relied upon in the context of s. 263 when the AO was bound by the Rajasthan High Court decision in *Rajasthan Sahakari* (supra) and of *Tribunal Jaipur* (supra). Notably, both the decisions remained unchallenged hence attained finality. Moreover, the majority of the High Courts and Tribunals have taken a favourable view whereas, *Principal CIT vs. Totagars Co-operative Sale Society (2017) 297 CTR (Kar) 158 : (2017) 154 DTR (Kar) 25 : (2017) 395 ITR 611 (Kar)* later judgement appears to be single High Court decision.

Thus, the AO has taken a possible view and if a legally possible view has been taken by the AO, the CIT cannot invoke revisionary powers.

5.2 Supporting case laws on non-applicability of s. 263 in the context of s. 80P(2)(d) : There are various decisions holding that where the AO has taken a possible view taking in mind the decision of both sides, s. 263 cannot be invoked.

5.2.1 Held in the cases of *Bardoli Vibhag Gram Vikas Co. Op. Credit Society Ltd. vs. Principal CIT (2021) 127 taxmann.com 334 (Surat)(Trib),* dt. 21st May, 2021 (DPB 47-52)

5.2.2 Recently the Hon'ble Tribunal Pune Bench 'B' in *Rena Sahakari Sakhar Karkhana Ltd. vs. Principal CIT (2022) 138 taxmann.com 532 (Pune)(Trib),* 7th Jan., 2022 (DPB 42-46) has also quashed the order passed under s. 263 on similar controversy involved relating to allowability of deduction under s. 80P(2)(d) by holding that the AO while framing the assessment has taken a possible view and allowed assessee's claim by holding that : "Sec. 80P,

r/w s. 263, of the IT Act, 1961-Deductions—Income of co-operative societies (Interest income)—Asst. yr. 2013-14—Assessee was a co-operative society—During year, it claimed deduction under s. 80P(2)(d) in respect of an interest income earned on FDs kept by it with a co-operative bank—AO allowed same—However, Principal CIT invoked revision jurisdiction on ground that for claiming deduction under s. 80P(2)(d), interest income should be received from co-operative society and not from co-operative bank which was commercial in nature—Accordingly, he passed a revision order denying benefits of deduction to assessee—Whether since co-operative bank from which assessee received interest income was registered as co-operative society under Co-operative Societies Act, 1912, interest income received from it was eligible for deductions under s. 80P(2)(d)—Held, yes—Whether further, since AO while framing assessment had taken a possible view and allowed assessee's claim for deduction under s. 80P(2)(d) on interest income earned on its deposits with a co-operative bank, Principal CIT was in error in exercising his revisional jurisdiction under s. 263 for dislodging same—Held, yes (Paras 8 to 10) (In favour of assessee)"

5.2.3 Covered Matter: Pertinently, the very issue of invoking s. 263 in the context of the deduction allowed under s. 80P(2)(d) w.r.t interest received from co-operative Bank, has also been decided by this Hon'ble bench *Rajasthan Co-operative Dairy Federation Ltd. vs. Principal CIT* (ITA No. 23/Jp/2021 asst. yr. 2015-16 vide order dt. 9th Nov., 2021) (DPB 57-69) wherein also, the learned Principal CIT relying upon later *Principal CIT vs. Totagars Co-operative Sale Society (2017) 297 CTR (Kar) 158 : (2017) 154 DTR (Kar) 25 : (2017) 395 ITR 611 (Kar)* decision dt. 16th June, 2017 in, held the assessment order erroneous (para 10). The Hon'ble Tribunal however, in para 12 quashed the order under s. 263 relying upon Jaipur Zila Dugdh Utpadak and earlier *Principal CIT vs. Totagars Co-operative Sale Society (2017) 392 ITR 74 (Kar),* held that the AO has taken one of the possible views hence, his order is not erroneous.

6. Rule of Consistency to be maintained :

The rule of consistency mandatorily requires that in absence of any material change in the facts and circumstances, the earlier decision rendered by the Tribunal in the case of the same assessee must be followed. Kindly refer para-38 of *Godrej & Boyce Manufacturing Co. Ltd. vs. Dy. CIT & Anr. (2017) 295 CTR (SC) 121 : (2017) 151 DTR (SC) 89 : (2017) 394 ITR 449 (SC)* wherein held that :

"While it is true that the principle of *res judicata* would not apply to assessment proceedings under the Act, the need for consistency and certainty and existence of strong and compelling reasons for a departure from a settled position has to be spelt out which conspicuously is absent in the present case. In this regard we may remind ourselves of what has been observed by this Court in *Radhasoami Satsang vs. CIT*.

"We are aware of the fact that strictly speaking *res judicata* does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year."

The earlier decision in the case of *Radhswami Satsang vs. CIT (1991) 100 CTR (SC) 267 : (1992) 193 ITR 321 (SC)* at p. 329 has been relied upon.

In the instant case, apart from the decision in assessee's own case in earlier year, decisions in other cases involving similar controversies, and particularly RCDF in the context of s. 263 have been cited and there is no dispute that the facts and the controversy involved therein are identical with those cases hence, there is no reason why those decisions should not be applied in this case.

7. The cases cited by the Revenue based on peculiar facts, not available in the instant case and particular none of them is rendered in the context of s. 263 hence, not applicable.

In view of the above legal and factual position, the proposed action under s. 263 is completely beyond the s. 263 and therefore, the impugned order deserves to be quashed."

Relying on the above written submission and paper book so filed by the learned Authorised Representative of the assessee, he has submitted that the case of the assessee was selected for limited scrutiny. The learned AO on the very issue as raised by the learned Principal CIT has already taken a plausible view and the same is clearly portrayed in the assessment order. The relevant finding of the learned AO is reiterated herein below :

"Brief facts of the case are that the assessee samiti derived interest income and agriculture income during the year under consideration. In return assessee samiti has declared gross total income of Rs. 3,02,18,447 and claimed deduction under chapter VI-A at Rs. 3,02,18,447 (deduction under s. 80P(2)(c) (ii) of Rs. 8,922 + deduction under s. 80P(2)(d) at Rs. 3,02,09,525) after that total income shown at Nil. Case of the assessee samiti was selected for scrutiny to examine the claim of deduction under chapter VI-A. The issue on which case was selected for scrutiny was examined. After considering the facts and submission of the assessee, return income declared by the assessee samiti is accepted."

Based on the above arguments the learned Authorised Representative of the assessee submitted that the learned AO has already based on the submission of the assessee has taken a view which is plausible view the same is not subjected to proceeding under s. 263 and he has strongly opposed the action under s. 263 of the Act. The learned Authorised Representative of the assessee also serviced the decision of Tribunal in assessee's own case for asst. yr. 2013-14 wherein the deduction of 80(P)(2)(d) is considered as allowable. The learned Authorised Representative of the assessee further submitted that the section of the case was under CASS for verify specific issue of deduction under chapter VIA wherein the learned AO has called for the details, applied his mind and given categorical finding in the assessment order the order cannot be considered as subject to revision under s. 263 of the Act. To drive home to this contention the learned Authorised Representative of the assessee relied upon the various judgments as submitted in the written submission. Relying on that judicial precedent the learned Authorised Representative of the assessee submitted that the view taken by the learned AO is plausible view and the same cannot be a subject of proceeding under s. 263 of the Act.

7. *Per contra*, the learned Departmental Representative is heard who has relied on the findings of the Principal CIT and has submitted the compilation of case law vide his submission dt. 20th July, 2022 the same is reiterated here in below :

• Hon'ble High Court of *Karnataka Principal CIT vs. Totagars Co-operative Sale Society (2017) 297 CTR (Kar) 158 : (2017) 154 DTR (Kar) 25 : (2017) 83 taxmann.com 140 (Kar)*

• *Totgars Co-operative Sale Society Ltd. vs. ITO (2010) 229 CTR (SC) 209 : (2010) 35 DTR (SC) 25 : (2010) 188 Taxman 282 (SC)*

• *Lands End Co-operative Housing Society Ltd. vs. ITO* in ITA No. 3566/Mum/2014, dt. 15th Jan., 2016.

• *Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. vs. Asstt. CIT (2022) 327 CTR (Guj) 138 : (2022) 215 DTR (Guj) 125 : (2022) 140 taxmann.com 602 (Guj)*

• *Krishnarajapet Taluk Agri Pro Co-operative Marketing Society Ltd. vs. Principal CIT (2022) 137 taxmann.com 121 (Bang)(Trib)*

Based on the above recent development in the law and decision of the various High Courts the learned Departmental Representative submitted that the order of the learned AO is subject-matter of revision under s. 263 of the Act and has thus, justified the order of the learned Principal CIT.

8. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position and decisions relied upon. We find that the assessment was taken up for scrutiny under CASS to examine the deduction claimed under Chapter VI-A for limited purpose and on this issue, there is finding of the learned AO in the assessment order. Yet, learned Principal CIT has subjected the assessment order to revision proceedings on the short ground that the AO passed the assessment order is erroneous insofar as it is prejudicial to the interest of Revenue for the purpose of s. 263 of the Act and liable to revision under the Expln. 2 cl. (b) and cl. (a) of s. 263 of the Act as the learned AO allowed the deduction under s. 80P(2)(d) of the Act which is

not allowable to the assessee considering the facts placed on record. Thus, the main question centers on whether action of the AO in allowing the claim of the assessee under s. 80P(2)(d) is found faulted with, whether the assessee ought to have produced the appropriate evidence and whether non-recording of the reasons for accepting explanation will render the order erroneous and prejudicial to the interest of the Revenue. In fact, there is a specific finding and reference of the deduction claimed by the assessee founded place in the assessment order. Thus, we are of the considered view that he learned AO has taken a plausible view which is based on decision relied upon by the learned Authorised Representative of the assessee is one of the plausible views and we see that there is no lack of enquiry on the part of learned AO and we find that he has applied his mind and allowed the claim to the assessee.

9. Thus, learned AO has examined that issue as it is evident from the finding recorded in the assessment order. As the case was for this limited purpose, the same has been examined and verified by the learned AO as it emerges from the findings of the AO. The learned Principal CIT evidently did not place on record any apparent error on the part of the AO to substantiate that order passed by the learned AO is prejudicial to the interest of Revenue. She only mentioned that the AO allowed deduction under s. 80P(2)(d) on the interest income received from co-operative bank and thus, AO erred in allowing the deduction under s. 80P(2)(d) on such interest income. She has not pinpointed any of the enquiry which is required to be made is not made by the learned AO the fact from where the learned Principal CIT drawing inference is already on record and based on that information the learned AO drawn a plausible view on the matter. There is no defect found from the enquiry that has been conducted by the learned AO. He collected the information based upon which he has allowed the claim of assessee and has verified the point raised in the limited scrutiny.

The decision and contentions raised by learned Departmental Representative contradictory so as to allowability of deduction and thus based on the decision of Vegetable Products the view which is favourable to the assessee shall be taken and the learned AO has based on that set of facts taken a plausible view and completed the assessment. The learned Principal CIT did not find any specific error or default of AO and thus we see no reasons in interfering the view that has already been taken. Since, in this case learned AO has clearly conducted the enquiry and revenue did not pin point the error on the part of the AO the order passed after due application of mind cannot be subjected to proceeding under s. 263 of the Act. The Tribunal Mumbai bench in *Mrs. Khatiza S. Oomerbhoy vs. ITO* [reported at *(2006) 101 TTJ (Mumbai) 1095*—Ed.] addressed this issue elaborately after referring to number of cases on revisionary powers vested in the CIT under s. 263 of the Act and summed up the fundamental principles emerging from several cases as under—

(i) The CIT must record satisfaction that the order of the AO is erroneous and prejudicial to the interest of the Revenue. Both the conditions must be fulfilled.

(ii) Sec. 263 of the Act cannot be invoked to correct each and every type of mistake or error committed by the AO and it was only when an order is erroneous that the section will be attracted.

(iii) An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.

(iv) If the order is passed without application of mind such order will fall under the category of erroneous order.

(v) Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the AO has adopted one of the courses permissible under law or where two views are possible and the AO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order, unless the view taken by the AO is unsustainable under law

(vi) If while making the assessment, the AO examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income, the CIT of IT, while exercising his power under s. 263 of the Act is not permitted to substitute his estimate of income in place of the income estimated by the AO.

(vii) The AO exercises quasi-judicial power vested in him and if he exercises such power in accordance with law and arrives at a conclusion, such conclusion cannot be termed to be erroneous simply because the CIT does not feel satisfied with the conclusion.

(viii) The CIT, before exercising his jurisdiction under s. 263 of the Act must have material on record to arrive at a satisfaction, and

(ix) If the AO has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the AO allows the claim on being satisfied with the explanation of the assessee, the decision of the AO cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard.

10. Be that as it may, in our considered view, as the AO while framing the assessment had taken a plausible view of the matter of while allowing the claim of the assessee, and revenue did not demonstrate the error remain on the part of the learned AO. In fact, when the learned AO has conducted the required enquiry and not violated any of the conditions mentioned for revision of order as required by Expln. 2 of s. 263 of the Act, the order passed by the AO could not be deemed to be erroneous to be prejudicial to the interests of the Revenue. At this stage therefore, it is relevant to extract the Expln. 2 of s. 263 which the learned Departmental Representative has heavily relied upon :

Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the AO shall be deemed to be erroneous insofar as it is prejudicial to the interests of the Revenue, if, in the opinion of the Principal CIT or CIT,—

(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 s. 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.

11. Clearly, therefore, so long as the action of the AO cannot be said to be lacking *bona fides*, his action in accepting an explanation of the assessee cannot be faulted merely because it could have been lawful to make more detailed inquiries or because he did not write specific reasons of accepting the explanation. The fact remains that the specific issue mentioned has been examined and the contention of the assessee accepted by the AO. Merely because the AO did not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under s. 263, and non-mentioning of these reasons do not render the assessment order "erroneous and prejudicial to the interest of the Revenue".

12. In view of the above discussions, as also bearing in mind entirety of the case we vacate the impugned revision order. As we have given our finding pursuant to the revision order under s. 263 and we do not give any finding on

merits of the case as the same is not before us for adjudication and therefore, based on the facts, we have decided the matter so as to consider the applicability of s. 263 based on the facts argued before us.

In the result, appeal of the assessee is allowed.