IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 397 OF 2018

The Pr. Commissioner of Income Tax-14, Mumbai
Room No. 469, 4th Floor, Aayakar Bhavan,
M. K. Road, Mumbai 400 020. … Appellant

Versus

Shivshahi Punarvasan Prakalp Ltd.
5th Floor, Griha Nirman Bhavan,
Bandra (E), Mumbai
PAN : AAACS1590C … Respondent

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Mr. Suresh Kumar for the Appellant.
Mr. Nishant Thakkar a/w Ms. Jasmin Amalsadvala i/by Mint & Confreres for the Respondent.

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CORAM: DHIRAJ SINGH THAKUR AND ABHAY AHUJA, JJ.
DATE : 5th AUGUST, 2022

ORAL JUDGMENT (Per Abhay Ahuja, J.) :-

. This is an appeal filed under Section 260-A of the Income Tax Act, 1961 ('the Act') by the Appellant-revenue impugning the order dated 16th January, 2017 passed by the Income Tax Appellate Tribunal ('ITAT/Tribunal') in Appeal No.3314/Mum/2011 for the assessment year 2006-07 thereby allowing the appeal filed by the Respondent-assessee. The Tribunal set aside the order dated 31st March, 2011 of the jurisdictional Commissioner of Income Tax exercising powers under Section 263 of the Act holding the assessment order dated 16th

December, 2008 as erroneous and prejudicial to the interest of the revenue, as it allowed the claim for deduction made by the assessee in respect of the following :-

(i) Deduction under Section 36(1)(vii) of the Act with respect to write off of interest receivable of Rs.6,01,84,862/- forgone under the One Time Settlement ('OTS') entered into by the assessee with its borrowers and

(ii) Deduction under Section 36(1)(iii) of the Act with respect to Interest expenditure of Rs.2,49,53,390/- incurred with respect to borrowings made for the slum rehabilitation project at Dindoshi.

2. Earlier, the assessee had filed its return of income for the previous year relevant to assessment year 2006-07 on 11th November, 2006. The case was selected for scrutiny and assessment order dated 28th December, 2011 came to be passed under Section 143(3) of the Act. On 18th March, 2011, the Department issued a notice under Section 263 calling upon the assessee to show cause as to why the order under Section 143(3) dated 16th December, 2008 should not be treated as erroneous and prejudicial to the interest of revenue. The assessee responded by a detailed reply, in nuce, stating that the

Assessing Officer had during the original assessment proceeding enquired into various issues including the aforesaid two issues and formed an opinion as to the correctness of the claim made by the assessee. The Commissioner by his order dated 31st March, 2011 rejected the submissions of the assessee. The relevant portion of the order of the Commissioner is quoted as under :-

> *"4. I have carefully considered the submissions made by the assessee and have also gone through the case records for the assessment year 2006-2007. On examination of the records. It is seen that the assessee was never called upon to explain the loss under OTS of Rs. 6.01,84,862/- debited to the profit and loss account under the head 'Administration & Other expenses'. The records do not contain the copy of the One Time Settlement Scheme under which the assessee is stated to have given concession to private developers only in respect of the outstanding interest. Vide letter dated 15.09.2008, the authorized representative has furnished certain details in support of the return of income and at Sr. No. 26 of the said letter. It is mentioned that details of the amount of interest receivable & written off under One Time Settlement Scheme are enclosed. However the said details are not found enclosed in the record. The Assessing Officer has also not verified as to how the interest written off has been offered as income in the earlier years. The Assessing Officer has also not examined as to whether the interest expenses of Rs. 2,49,53,390/- on Dindoshi project was allowable as deduction u/s 36(1)(iii) or was required to be capitalized to the WIP of the said project."*

3. Being aggrieved, the assessee carried the matter to the Tribunal. The Tribunal vide its order dated 16th January, 2017 allowed the appeal of the assessee and set aside the order of the Commissioner under Section 263 of the Act. Paragraphs 8, 8.1 and 8.2 of the said order are

relevant and are usefully quoted as under :-

> *"8. The first issue in respect of which the Commissioner of Income Tax has exercised the jurisdiction u/s 263 of the Act relates to the loss under OTS amounting to Rs.6,01,84,862/-. We noted from pages 1 to 3 of the paper book that the assessee has duly filed the details regarding the OTS. The Assessing Officer has issued the notice to the assessee u/s 142(1). In the said notice at Item No. 34, the Assessing Officer has specially raised the following query:*
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> *"34. Details of bad debts as to when the income on such transaction was offered to tax, evidences regarding efforts made by the assessee company to recover the debts and evidences of write off of the same in the books of account."*
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> *8.1 In reply thereto, the assessee vide his letter dated 12/12/2008 submitted the details of write off and also how the income on such transaction was offered to tax. This fact is apparent from page Nos. 11, 16, 17 and 21 to 24 of the paper book. Similarly, in respect of second issue i.e. claim of interest expenditure, we noted that the Assessing Officer made the following query:*
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> *"26. In case, interest expenditure is claimed, details thereof must include name of the person to whom paid, rate of interest, amount of interest, period for which paid and copy of account of such person in your books."*
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> *8.2 In reply thereto, the assessee vide his letter dated 15th September, 2008 gave the details in respect of the interest as well as drawn the addition of the Assessing Officer to Schedule-O, interest on Dinoshi Site as appearing at pages 19 & 20 of the paper book. This proves that the Assessing Officer was duly informed by the assessee during the course or hearing in respect of the loss on OTS as well as claim of interest in respect of Dindoshi Site. This is not a case where the Assessing Officer has not made the inquiry and completed the assessment just accepting the return filed by the assessee. In our opinion, the CIT cannot enter into the shows of the Assessing Officer if the Assessing Officer has taken one of the possible views. Until and unless the view taken by the Assessing Officer is unsustainable in law, the CIT cannot take action u/s 263 of the Act holding that the order passed by the Assessing Officer to be erroneous. Prior to insertion of the Explanation 2 with effect from 01/06/2015, it is the prerogative of*

the Assessing Officer to determine what inquiries he wants to make while completing the assessment. If the Assessing Officer has made the inquiry and duly considered the evidence as submitted and on the basis of such inquiry he has taken the view in favour of the assessee, that does not empower the CIT to invoke the jurisdiction u/s 263 of the Act unless the view taken by the Assessing Officer is unsustainable in law. If the Assessing Officer has not carried out any inquiry in respect of these points, it cannot be said that the order passed is erroneous as due process of law have not been followed. From the show cause notice of the CIT, it is apparent that the CIT(A) has treated the order to erroneous as well as prejudicial to the interest of the Revenue as the Assessing Officer has allowed the excessive relief by allowing the loss under OTS amounting to Rs.6,01,84,862/- and interest on Dindoshi Site amounting to Rs.2,49,53,390/- as revenue expenditure while they relate to the projects under work-in- progress and hence, required to be capitalized. Learned counsel for the assessee relied in this regard on certain decisions also and submitted that inadequacy of the inquiry according to whims and caprice did not give jurisdiction to the CIT to invoke the provisions of section 263 and set aside the assessment. The impugned case is not lack of inquiry."

4. Aggrieved by the aforementioned order of the Tribunal, the revenue is in appeal before us proposing the following questions as substantial questions of law :-

"A. Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that the CIT was not correct in law in exercising the jurisdiction u/s. 263 without appreciating the fact that the Assessing Officer passed the order without proper enquiry, resulting in an incorrect assumption of fact and an incorrect application of law thereby making the order of AO erroneous and also prejudicial to the interest of the revenue?

B. Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that lack of enquiry pursuant to notice u/s 142(1) amounts to inadequacy of inquiry by the A.O.?"

5. Mr. Suresh Kumar, learned counsel for the Appellant-revenue

relies upon the order of the Revisional Commissioner. He draws the attention of this Court to paragraph 4 of the said order (quoted above) to submit that from the records it was observed that the assessee was never called upon to explain the loss under OTS debited to the profit and loss account under the head 'Administration & other expenses'. That the records did not contain a copy of OTS scheme under which the assessee is stated to have given concession to private developers only in respect of outstanding interest, nor any details with respect to the amount of interest receivable and written off under the OTS were found on record. He submits that the Assessing Officer in the original assessment under Section 143(3) has also not verified as to how the interest written off has been offered as income in the earlier years nor has the Assessing Officer examined as to whether the interest expenses of Rs.2,49,53,390/- on the Dindoshi project was allowable as deduction under Section 36(1)(iii) or was required to be capitalised to the Work-in-Progress of the said project.

6. Mr. Suresh Kumar relies upon the order of the Revisional Commissioner to submit that the order dated 16th December, 2008 under Section 143(3) is both erroneous and prejudicial to the interest of revenue and urges that the order of cancellation of the assessment order

by the learned Commissioner and direction for a fresh assessment be restored by this Court.

7. Mr. Nishant Thakkar, learned counsel for the assessee would submit that the appeal does not raise any substantial question of law in as much as the Tribunal has returned a finding of fact that the Assessing Officer duly enquired into the claim of loss on OTS as well as on the claim of interest in respect of Dindoshi site. He refers to paragraph 8.2 of the impugned order. He submits that this finding of fact has not been challenged by the revenue. Learned counsel submits that once an enquiry had been made during the assessment proceeding into the claim, insufficient or inadequate enquiry or improper enquiry, would not be a ground to invoke powers under Section 263 of the Act. Learned counsel submits that this is not a case of no enquiry. He relies upon the following decisions in support of his contention :-

(i) ***Commissioner of Income-Tax v/s. Sunbeam Auto Ltd., (2011) 332 ITR 167 (Delhi).***

(ii) ***Commissioner of Income-Tax v/s. Chandan Magraj Parmar, 285 Taxman 565 (Bombay).***

(iii) ***Commissioner of Income-Tax v/s. M/s. Shreepati Holdings & Finance Pvt. Ltd., (ITXA No.1879 of 2013)(Bom.)***.

(iv) ***Commissioner of Income-Tax v/s. Future Corporate Resources Ltd., 284 Taxman 122 (Bombay).***

8. Mr. Thakkar further submits that the view taken by the Assessing

Officer in allowing deduction with respect to the loss of / write off of interest receivables under the OTS as well as in respect of the interest attributable to the Dindoshi site was a possible view and therefore once an officer has taken a possible view, the powers under Section 263 of the Act cannot be exercised in as much as a possible view cannot be an erroneous view prejudicial to the interest of the revenue. Learned counsel relies upon the following decisions in support of his contention:-

(i) ***Commissioner of Income-Tax (Central), Ludhiana v/s. Max India Ltd., 295 ITR 282 (SC).***

(ii) ***Commissioner of Income-Tax v/s. M/s. Shreepati Holdings & Finance Pvt. Ltd.*** (supra)

9. Learned counsel for the assessee would therefore submit that the appeal deserves to be dismissed as it does not raise any substantial question of law.

10. We have heard Mr. Suresh Kumar, learned counsel for the Appellant-revenue and Mr. Nishant Thakkar, learned counsel for the assessee and with their able assistance, we have perused the papers and proceedings in the matter.

11. The Respondent assessee is engaged in the business of developers in slum rehabilitation schemes. As noted above, the

Assessing Officer had pursuant to the assessment proceedings under Section 143(3) of the Act had allowed assessee's claim for deduction made by assessee, in respect of the interest of receivables of Rs.6,01,84,862/- under Section 36(1)(vii) of the Act which was forgone under the OTS entered into by the assessee with its borrowers and written off, and the deduction in respect of the interest expenditure of Rs.2,49,53,390/- incurred with respect to the borrowings made for the slum project at Dindoshi under Section 36(1)(iii) of the Act. The Commissioner had thereafter issued a notice dated 18th March, 2011 under Section 263 stating that the said expenses were required to be capitalised to the respective projects; that the omission by the Assessing Officer to capitalise the said expenses resulted in under assessment of income by Rs.8,51,38,252/-. Therefore asking the assessee to show cause as to why the said order under Section 143(3) dated 16th December, 2008 passed by the Assessing Officer should not be treated as erroneous and prejudicial to the interest of the revenue and be set aside for fresh assessment. We observe that the assessee filed detailed response by saying that both these issues had already been dealt with by the Assessing Officer who had formed an opinion as to the correctness of the claim made by the assessee and therefore to

hold that the same was erroneous, was untenable.

12. Before proceeding further, it would be apposite to set out the provisions of Section 263 prior to insertion of Explanation 2 as applicable to Assessment Year 2006-07 as under :-

> ***"263. Revision of orders prejudicial to revenue**.—(1) The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interest 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.*
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> *Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—*
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> *(a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include—*
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> *(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income Tax Officer on the basis of the directions issued by the Joint Commissioner under Section 144-A;*
>
> *(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Commissioner authorised by the Board in this behalf under Section 120;*
>
> *(b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner;*

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject-matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal."

13. Explanation 2 to Section 263 which was inserted by the Finance Act, 2015 with effect from 1st June, 2015 is quoted as under :-

"Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, -

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

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

(emphasis supplied)

14. This explanation empowers the CIT with effect from 1st June, 2015 to invoke Section 263, if in the opinion of the Principal CIT/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 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.

15. Prior to insertion of the Explanation 2 with effect from 1st June, 2015, it was the prerogative of the Assessing Officer to determine what inquiries he wanted to make while completing the assessment. If the Assessing Officer had made the inquiry and duly considered the evidence as submitted and on the basis of such inquiry if he had taken a view in favour of the assessee, then the CIT could not invoke jurisdiction under Section 263 of the Act unless the view taken by the Assessing Officer was unsustainable in law. If the Assessing Officer had carried out any inquiry in respect of the points, it could not be said that the order passed was erroneous as due process of law had not been followed. From the show cause notice of the CIT, it is apparent that the CIT(A) has treated the order to be erroneous as well as prejudicial to the interest of the Revenue as in his view the Assessing Officer has allowed excessive relief by allowing the loss of interest under OTS of Rs.6,01,84,862/- and interest on Dindoshi Site of Rs.2,49,53,390/- as

revenue expenditure whereas according to him they relate to the projects under work-in- progress and were required to be capitalized. Learned counsel for the assessee has relied in this regard on certain decisions submitting that inadequacy of the inquiry according to whims and caprice does not give jurisdiction to the CIT to invoke the provisions of section 263 to set aside the assessment and that the order impugned was not a case of lack of inquiry.

16. No doubt clause (a) of Explanation 2 to Section 263 deems an order to be erroneous and prejudicial to the interest of the revenue in case the order is passed without making enquiries or verification which should have been made in the opinion of the Principal Commissioner or Commissioner. As noted, this Explanation is prospective and is applicable with effect from 1st June, 2015. In the case of the assessee, we note that show cause notice was issued on 18th March, 2011 invoking the jurisdiction u/s 263 i.e. prior to the insertion of Explanation 2. When the show cause notice was issued, neither clause (a) nor the Explanation 2 were on the statute book. Insertion of Explanation 2 with effect from 1st June, 2015 makes it clear that the order will not be erroneous and prejudicial to the interest of the Revenue if the order is passed without making inquiry or verification

which should have been made in the opinion of the CIT. This is not a case of lack of inquiry, though it may be a case of inadequacy of inquiry. In our opinion, inadequacy of the inquiry does not give jurisdiction to the CIT to invoke the provisions of section 263 prior to the insertion of Explanation 2.

17. The Tribunal has with respect to the two claims recorded its findings in paragraphs 8 and 8.1.

18. From the Tribunal order, we note that the Respondent company had financed private developers in the financial year 1998-1999 who had undertaken slum redevelopment projects. It lent money at the rate of 17.5% interest per annum which was charged on an accrual basis and offered as income. The developer faulted in the repayment of loan and in the payment of interest. The rate of interest started falling and the company announced the OTS Scheme under which concession was given to the developers only in respect of outstanding interest provided they promise to clear the outstanding principal. It is under this scheme that the outstanding interest was forgone under the OTS scheme and written off as bad debts in accordance with the decision of the Supreme Court in case of ***T.R.F. Ltd. v/s. CIT, 323 ITR 397***. We note that the OTS was announced and the interest receivable which arose from

financing activity was written off as remission of interest.

19. From a perusal of paragraph 8 with respect to the issue relating to loss under OTS, we observe that Tribunal has recorded a finding that the assessee has duly filed the details regarding OTS (in support the Tribunal refers to pages 1 to 3 of the paper book); that the Assessing Officer had issued notice to the assessee under Section 142(1), where at Item No. 34, the Assessing Officer had raised the following query :-

> *"34. Details of bad debts as to when the income on such transaction was offered to tax, evidences regarding efforts made by the assessee company to recover the debts and evidences of write off of the same in the books of account."*

20. It is recorded that, in reply, the assessee had vide letter dated 12th December, 2008 submitted the details of write off and how such transaction was offered to tax. The Tribunal records that these facts are apparent from page nos.11, 16, 17 and 21 to 24 of the paper book. In other words, the Assessing Officer in the 143(3) proceedings, had called for particulars of interest and considered the allowability of the amount.

21. With respect to the issue regarding claim of interest expenditure pertaining to the Dindoshi site, we observe from paragraph 8.1 of the Tribunal order that the Assessing Officer made the following query :-

> *"26. In case, interest expenditure is claimed, details thereof must include name of the person to whom paid, rate of interest, amount of interest, period for which paid and copy of account of such person in your books."*

22. The assessee in reply dated 15th September, 2008 statedly gave details of interest on Dindoshi site recorded by the Tribunal as appearing at pages 19 and 20 of the paper book. That the Dindoshi project was substantially complete at a total cost of Rs.84,11,46,207/- out of which the cost of Rs.80.09.14.261/- had already been incurred and since the project had achieved substantial progress, borrowing costs, capitalization of interest ceased as per AS-16. It is contended that it is not the case of the revenue that the borrowings were not made for the purposes of business but that the interest should be capitalized. Learned counsel for the Respondent has drawn our attention to Section 36(1)(iii) of the Act to submit that the only condition for allowance in respect of interest is that the capital should have been borrowed for the purpose of business. It is submitted that the concept of capitalization of interest under Section 36(1)(iii) is applied only in case where an asset is acquired for extension of an existing business and the borrowings were used for creation of stock in trade and that therefore, interest was allowable on merits as well.

23. These are findings of fact by the Tribunal which is the highest

fact finding authority. No material has been brought to our notice controverting the same nor do we find any perversity in the said findings. We observe that the Assessing Officer had called for particulars of interest. The Tribunal clearly records in paragraph 8.2 that this is not a case where the Assessing Officer has not made inquiry and blindly accept the return filed by the assessee. The Assessing Officer has called for particulars at the time of the scrutiny of assessment proceedings, received the reply and following the principles of natural justice, passed an assessment order expressing his opinion in the matter. Once this is done, then the Commissioner cannot impose/ substitute his opinion on the view taken by the Assessing Officer to say that the said assessment order is erroneous and prejudicial to the interest of the revenue. The Revisional CIT cannot substitute his view upon the view of the Assessing Officer if the Assessing Officer has taken one of the possible/plausible views, unless Assessing Officer's view is unsustainable in law.

24. We are supported by the view of the Apex Court in the case of ***Commissioner of Income-Tax (Central), Ludhiana v/s. Max India Ltd.*** (supra) where it has been observed that 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 order erroneous and prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law. Paragraph 2 of the said decision is apt and is quoted as under :-

> *"2. At this stage we may clarify that under para 10 of the judgment in the case of Malabar Industrial Co. Ltd. (supra) this Court has taken the view that the phrase "prejudicial to the interest of the revenue" under section 263 has to be read in conjunction with the expression "erroneous" order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. For example, when the Income-tar 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. ..."*
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> (emphasis supplied)

25. This Court in case of ***Commissioner of Income-Tax v/s. M/s. Shreepati Holdings & Finance Pvt. Ltd.*** (supra) while striking down an order under Section 263 has observed in paragraph 6 as under :-

> *"6. We find that that there is no prescribed formula under Section 88E of the Act to determine the quantum of the rebate thereunder. Therefore the same has to be computed on a reasonable and scientific manner by the Assessing Officer. Further the impugned order has placed reliance upon the decision of this Court in CIT Vs. Gabriel India Ltd. wherein this Court held that the order cannot be held to be erroneous merely because according to the CIT, the order should have been written more elaborately or for substituting the view of the Assessing Officer with that of the CIT. The Court held that merely because the CIT*

had a different view from that reached by the Assessing Officer would not by itself make the view of the Assessing Officer erroneous. To be an erroneous order it must be in breach of law. It is axiomatic that jurisdiction under Section 263 of the Act can only be exercised on cumulative satisfaction of the twin conditions viz. Of the order being erroneous in law and the order being prejudicial to the interest of the revenue. Thus in this case, one of the two conditions precedent to exercise jurisdiction under Section 263 of the Act viz. Order being erroneous in law is not satisfied."

(emphasis supplied)

26. In the case of ***Commissioner of Income-Tax v/s. Chandan Magraj Parmar*** (supra) this Court has observed as under :-

"7. When it is not disputed that the land concerned would not fall under the definition of capital asset, the question of any capital gains arising also will not arise. Moreover, we also find that the ITAT has come to a factual finding that the AO has raised queries with regard to the claim of capital gain on transfer of land, Respondent vide its reply dated 31/01/2014 furnished the details in respect of distance of agricultural land from municipal limits, record of population as per last census and the AO after considering the reply of Respondent, accepted the claim of Respondent. The ITAT has given a finding that the claim of capital gain was accepted by AO after necessary inquiry and the order under Section 143(3) of the Act was passed. It is true that the AO has not passed any written detailed order while accepting the explanation of capital gains of Respondent but the fact is AO had raised queries and Respondent has given detailed reply means the AO has passed this order after making necessary inquiries. We agree with the view of the ITAT that the order of the AO cannot be branded as erroneous merely because the order does not contain the details which Principal Commissioner feels should have been included. The Principal Commissioner cannot decide how elaborate an order of the AO should be. Where the AO, during the scrutiny assessment proceedings, has raised a query which was answered by the

> *Assessee to the satisfaction of the AO but the same was not reflected in the AO by him, the Commissioner cannot conclude that no proper inquiry with respect to the issue was made by the AO and enable him to assume jurisdiction under Section 263 of the Act. ...”*
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> *(emphasis supplied)*

27. Paragraph 7 of the decision in the case of ***Commissioner of Income-Tax v/s. M/s. Shreepati Holdings & Finance Pvt. Ltd.*** (supra) is also usefully quoted as under :-

> *“7. Moreover the CIT in exercise of powers under Section 263 of the Act directed the Assessing Officer to redetermine the rebate allowable under Section 88E of the Act after holding that the same needs more careful examination on the part of the Assessing Officer. This itself indication of the fact that this is not the case of lack of enquiry, but at the highest it can be a case of inadequate enquiry. It is settled position in law that inadequate enquiry by itself would not justify invoking the jurisdiction under Section 263 of the Act unless the order is erroneous. In the present facts, the CIT has not exercised jurisdiction under Section 263 of the Act on the ground that the order is erroneous. We find that the impugned order has correctly applied the principles laid down by this Court in Gabriel(I) Ltd. (supra). Accordingly, the question as formulated does not give rise to any substantial question of law. Thus not entertained.”*
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> *(emphasis supplied)*

28. In ***Commissioner of Income-Tax v/s. Future Corporate Resources Ltd.***(supra), this Court observed that revision can only be exercised where no enquiry as required under law is carried out and in the case of inadequate enquiry by the Assessing Officer his order cannot be reviewed. Paragraph 6 of the said order is quoted as under :-

> *"6. Mr. Tejveer Singh in fairness agreed that the law is very clear and inasmuch as if there are two possible views and the Assessing Officer has chosen one of the possible views then there is no reason to exercise power of revision and revisional powers cannot be exercised for directing a full inquiry to find out if that view taken after an inquiry is erroneous. Moreover, the power of revision can only be exercised where no inquiry as required under the law is carried out and even in case of inadequate inquiry by the Assessing Officer, the order of the Assessing Officer could not be reviewed."*
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> *(emphasis supplied)*

29. The Delhi High Court in case of ***Commissioner of Income-Tax v/s. Sunbeam Auto Ltd.*** (supra) struck down the order under Section 263 observing in paragraph 12 as follows :-

> *"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....”

(emphasis supplied)

30. Therefore, once the Assessing Officer has raised queries which the assessee may not have answered fully then to say that this is a case of no enquiry cannot be permitted. What Section 263 covered prior to insertion of Explanation 2 was a case of no enquiry but not a case of inadequate enquiry.

31. However, as noted above, with the introduction of Explanation 2 with effect from 1st June, 2015 even cases of inadequate or improper enquiry may be covered albeit not for the assessment year in question.

32. In this appeal, we are concerned with the assessment year 2006-07. Prior to the insertion of Explanation 2, it was the prerogative of the Assessing Officer to determine what enquiry he wants to make while completing the assessment. We have already observed that an enquiry was made by the Assessing Officer and the assessment order passed. Therefore, the CIT could not invoke jurisdiction under Section 263 as the view taken by the Assessing Officer was a possible/plausible view. It was only if the Assessing Officer had not made any enquiry then it could be said that the order passed was erroneous. This is not a case of lack of enquiry though it may be a case of inadequate enquiry.

Inadequacy of enquiry as elucidated above does not give jurisdiction to the CIT to invoke provisions of Section 263 prior to the insertion of Explanation 2. In our view, the Explanation 2 does not help the revenue in as much as the same is prospective and applicable with effect from 1st June, 2015.

33. In our opinion, therefore, the order of the Tribunal cannot be faulted with. There is no error apparent nor any perversity in the findings of the Tribunal. The appeal does not raise any substantial question of law and is dismissed. No costs.

[ABHAY AHUJA, J.] **[DHIRAJ SINGH THAKUR, J.]**