आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'C' BENCH, CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 951 to 953/Chny/2025**
निर्धारण वर्ष / Assessment Years: **2013-14, 2014-15 & 2015-16**

Subramaniam Mohan Sundaram, 395, Oppanakara Street Coimbatore – 641 001.	vs.	**PCIT (Central)-2,** Chennai.
[PAN: AERPM-3937-R] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./**ITA No.: 954 & 955/Chny/2025**
निर्धारण वर्ष / Assessment Years: **2017-18 & 2018-19**

Subramaniam Mohan Sundaram Legal heir of Late Smt. K.Lakshmi, 395, Oppanakara Street Coimbatore – 641 001.	vs.	**PCIT (Central)-2,** Chennai.
[PAN: AAZPL-6816-A] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./**ITA No.: 956 to 959/Chny/2025**
निर्धारण वर्ष / Assessment Years: **2015-16, 2016-17, 2018-19 & 2020-21**

Mohansundaram Jayasuja, 395, Oppanakara Street Coimbatore – 641 001.	vs.	**PCIT (Central)-2,** Chennai.
[PAN: AIYPJ-4331-M] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. S. Sundararaman, C.A (Erode) & Shri. S.Anatharaman, Advocate.
प्रत्यर्थी की ओर से/Respondent by : Shri. Bipin C.N, CIT.

सुनवाई की तारीख/Date of Hearing : 06.08.2025
घोषणा की तारीख/Date of Pronouncement : 11.08.2025

आदेश /O R D E R

PER BENCH:

The captioned appeals are filed by the assessees' against the order of the learned Principal Commissioner of Income Tax (Central), Chennai – 2, [In short "the Ld.PCIT"] for the following A.Ys. as detailed below:

a) Subramaniam Mohan Sundaram	ITA Nos.951 to 953/Chny/2025 A.Ys.2013-14, 2014-15 and 2015-16
b) Subramaniam Mohan Sundaram Legal heir of Smt.K.Lakshmi	ITA Nos.954 & 955/Chny/2025 A.Ys.2017-18 and 2018-19
c) Mohan Sundaram Jayasuja	ITA Nos.956 to 959/Chny/2025 A.Ys.2015-16, 2016-17, 2018-19 & 2020-21

2. At the outset, we find that there is a delay of 305 days in all the Nine (9) appeals filed by the different assessees', for which the assessees' have filed affidavits stating the medical reasons for delay. After considering the Affidavits filed by the assessees' and also hearing both the parties, we find that there is a reasonable cause for the assessees' in not filing the appeals on or before the due date prescribed under the law and thus, in the interests of justice, we condone delay in filing of appeals and admit the appeals filed by the assessees' for adjudication.

ITA Nos.951 to 953/Chny/2025:

3. The grounds raised by the assessee for A.Ys.2013-14, 2014-15 and 2015-16 are as follows:

> *1. The order passed by the Ld. Principal Chief Commissioner of Income Tax (hereinafter referred to as the "PCIT") is bad, erroneous and against the principles of natural justice.*
>
> *2. The order u/s 263 is perse wrong, since the original assessment 23/07/2021 u/s 147 dated itself is void ab initio, since the notice u/s 148 for the AY 2013-14 dated*

31/03/2021 was digitally signed and issued on 01/04/2021 and such assessment was completed without following the mandates as laid down under the Law.

3. Without prejudice to the above ground 1 and 2, the Ld. PCIT erred in issuing a direction to the assessing officer to modify the assessment with respect to few issues mentioned in the order u/s 263 without cancelling the assessment order already passed, which is outside the powers conferred u/s 263(1)(i), In other words, as per Sec. 263(1)(i), the PCIT has power either to: a) Enhance the assessment by himself/herself or b) Modify the assessment by himself/herself or c) Cancel the assessment and direct a fresh assessment
BUT NOT to direct the Assessing Officer to modify the assessment, which power can be exercised by the PCIT only and cannot be delegated.

4. Without prejudice to the above ground 1 and 2, the Ld. PCIT grossly erred in assuming jurisdiction u/s 263 of the Income Tax Act, 1961, without satisfying the twin conditions, for the order is neither Erroneous nor Prejudicial to the interest of the Revenue.

5. Without prejudice to the ground 1 and 2, the Ld. PCIT grossly erred in stating that the Assessing officer has not obtained necessary documents while completing the assessment without any basis. In-fact the Ld. PCIT failed to appreciate the fact that the Assessing Officer has taken a plausible view and completed the assessment, which view/opinion cannot be substituted by the Ld. PCIT by invoking Sec. 263.

6. Without prejudice to the ground 1 and 2, the Ld. PCIT grossly erred in assuming jurisdiction u/s 263 on the same reasons, for the notice u/s 148 was issued, wherein the explanations and details submitted by the appellant has been considered and assessment has been passed.

7. And for other reasons that may be adduced at the time of hearing, including production of additional evidences under the IT Rules, it is prayed that the appeal be admitted, considered and justice be rendered.

4. Brief facts of the case are that the assessee is an individual carrying business as a proprietor of M/s.Coimbatore Vandana Beds at Coimbatore, had not filed his return of income. Further the survey action u/s.133A was conducted in this case on 26.11.2019. The case was reopened by issuing of notice u/s.148 dated 31.03.2021. In response to the above notice the assessee filed his return of income on 30.04.2021 admitting an income of Rs.26,74,490/- along with agriculture income of Rs.3,69,010/- for the A.Y.2013-14. Later the notice u/s.143(2) of the Act was issued for scrutiny assessment and called for details and documents in support of the investments made and sources thereon. The assessee submitted the details as and when called for. On going through the source of income as explained by the assessee for the investments

made in immovable properties and fixed deposits at bank, the AO completed the assessment u/s.147 r.w.s. 143(3) of the Act by accepting the returned income by passing an order dated 23.07.2021.

5. Subsequently, the ld.PCIT on perusal of the assessment records found that the AO has failed to make necessary enquiries or verifications of investments and deposits made by the assessee, which was found during the survey proceedings. Therefore, the ld.PCIT passed an order u/s.263 of the Act dated 13.03.2024 by directing the AO to modify the assessment order by verifying the investments made in residential properties and fixed deposits.

Aggrieved by the order of the ld.PCIT, the assessee is in appeal before us.

6. The ld.AR for the assessee Mr.S.Sudararaman, CA, submitted that the ld.PCIT has invoked jurisdiction u/s.263 of the Act erroneously in contravention of the said provision. In the present case, the AO during the scrutiny assessment proceedings had called for the specific details in respect of the investment in FDs and immovable properties along with its source by issuing a notice. The assessee had duly submitted the details as called for and hence the AO had passed a speaking order incorporating the details submitted and thereby accepting the returned income in the order passed u/s.147 r.w.s. 143(3) of the Act dated 23.07.2021. Therefore, the ld.AR stated that the order is neither erroneous nor prejudicial to the interest of revenue. Further, the ld.AR drew our attention to the page 2 of the order of the AO passed u/s.147 of the Act, wherein the AO has recorded the details of the application of funds by the assessee on residential property and on fixed deposits and also the corresponding sources of income thereof. Therefore, the Ld. AR argued that there is no error in the order of the Assessing Officer, since the Assessing Officer has passed a speaking order, after making the enquiry of the impugned issues. Hence, the Ld. AR submitted that, there is

no reason to invoke Sec. 263 of Act by the Ld. PCIT & prayed for set aside the order of the Ld. PCIT. In support of his arguments the Ld.AR relied on the following judicial precedents:

- ITA No.05/Rpr/2025
- PCIT Vs.V-con Integrated Solutions Pvt. Ltd. – SLP (Civil) Diary No.13205/25
- PCIT Vs.Karan Polymers Pvt. Ltd. – Kolkata High Court
- CIT Vs.Vellore Institute of Technology – 175 taxmann.com 277 (Mds) Madras High Court

7. Per contra the ld.DR Mr.Bipin.C.N – CIT, submitted that while passing the assessment order u/s.147 of the Act the AO has not applied his mind and not verified the investments and its sources in question. Therefore, the action of the ld.PCIT for invoking section 263 of the Act is justified and hence prayed for confirming the order of the ld.PCIT.

8. We have heard the rival contentions perused the material available on record and gone through the orders of the authorities along with the paper book, chart and case laws relied upon. Admittedly the assessee had not filed the return of income under section 139(1) of the Act. Based on the survey action u/s.133A of the Act and pursuant to notice u/s.148 of the Act, the assessee filed his return of income declaring the income. During the assessment proceedings the assessee filed the complete details of the investments made in residential properties and fixed deposits and corresponding sources of income which were noticed during the survey action, pursuant to statutory notices issued u/s.143(2) and 142(1) of the Act. On perusal of the assessment order passed u/s.147 of the Act, we find that the details of investments as well as the corresponding sources of income for the same have been examined and verified by the AO and on satisfaction accepted the return of income filed by the assessee. It is settled law that there is a difference between “lack of enquiry” and “inadequate enquiry”. In the present case, it is certainly not a case of “lack of enquiry".

The moment the AO issued notice 142(1) / 143(2) of the Act by calling for information, it is the trigger of initiation of enquiry.

9. We find from the assessment order that ld.PCIT is wrong in holding that "records do not indicate that the AO had obtained the necessary documents before concluding the assessment or had not conducted the enquiry or not applied mind to the issues". Therefore, the action of the ld.PCIT in concluding the assessment has been completed is erroneous as well as prejudicial to the interest of the revenue is not justifiable. We find that in the following catena of cases the Hon'ble Supreme Court and Hon'ble High courts have settled the invocation of jurisdiction of the PCIT u/s.263 of the Act.

- PCIT Vs.V-con Integrated Solutions Pvt. Ltd. – SLP (Civil) Diary No.13205/25 dated 04.04.2025 [2025] 173 taxmann.com 774 (SC)

"O R D E R

1. *Delay condoned.*
2. *In our opinion, the order passed by the High Court, which upheld the decision of the Tribunal, is correct on facts and in law. This case does not involve a failure by the assessing officer to conduct an investigation. Instead, according to the Revenue, it is a case where the assessing officer having made inquiries erred by not making additions.*

3. *The assessee does not have control over the pen of the Assessing Officer. Once the Assessing Officer carries out the investigation but does not make any addition, it can be taken that he accepts the plea and stand of the assessee.*

4. *In such cases, it would be wrong to say that the Revenue is remediless. The power under Section 263 of the Income Tax Act, 1961, can be exercised by the Commissioner of Income Tax, but by going into the merits and making an addition, and not by way of a remand, recording that there was failure to investigate. There is a distinction between the failure or absence of investigation and a wrong decision/conclusion. A wrong decision/conclusion can be corrected by the Commissioner of Income Tax with a decision on merits and by making an addition or disallowance.*

5. *There may be cases where the Assessing Officer undertakes a superficial and random investigation that may justify a remit, albeit the Commissioner of Income Tax must record the abject failure and lapse on the part of the Assessing Officer to establish both the error and the prejudice caused to the Revenue.*

6. *Recording the aforesaid, the special leave petition is dismissed.*

Pending application(s), if any, shall stand disposed of."

- CIT Vs.Vellore Institute of Technology – 175 taxmann.com 277 (Mds) Madras High Court

"10. It is true that the assessment order dated 14.12.2011 does not discuss the queries raised or the answers given thereto. But the fact is, the Assessing Officer had issued a questionnaire dated 26.07.2011 under Section 142 (1) of the Act raising 34 questions on various issues and assessee had given an explanation and also submitted materials. In our view, once a notice is issued and assessee is called upon to show cause or give explanation or submit documents and assessee has complied, not giving a finding or discussing the same would mean that the Assessing Officer was satisfied with the explanation given by the assessee.

11. In Aroni Commercials Limited v. Dy.CIT [2014] 44 taxmann.com 304 / 224 Taxman 13 (Mag.)/ 362 ITR 403 (Bom.), *a Division Bench of the Bombay High Court, while dealing with the provisions of Section 148 of the Act, held that once a query is raised during the assessment proceedings and assessee has replied to it, it follows that the query was subject matter of consideration of the Assessing Officer while completing the assessment and the same is deemed to have been accepted. The Court also held that it is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of each and every query raised. Therefore, as there is no discussion or finding on the 34 questions raised under Section 142(1) of the Act, vide the communication dated 26.07.2011, the Assessing Officer should be taken as having accepted assessee's explanation. Paragraph 14 of Aroni Commercials Limited (supra) reads as under:*

"14) We find that during the assessment proceedings the petitioner had by a letter dated 9 July 2010 pointed out that they were engaged in the business of financing trading and investment in shares and securities. Further, by a letter dated 8 September 2010 during the course of assessment proceedings on a specific query made by the Assessing Officer, the petitioner has disclosed in detail as to why its profit on sale of investments should not be taxed as business profits but charged to tax under the head capital gain. In support of its contention the petitioner had also relied upon CBDT Circular No.4/2007 dated 15 June 2007. (The reasons for reopening furnished by the Assessing Officer also places reliance upon CBDT Circular dated 15 June 2007). It would therefore, be noticed that the very ground on which the notice dated 28 March 2013 seeks to reopen the assessment for assessment year 2008-09 was considered by the Assessing Officer while originally passing assessment order dated 12 October 2010. This by itself demonstrates the fact that notice dated 28 March 2013 under Section 148 of the Act seeking to reopen assessment for A.Y. 2008-09 is based on mere change of opinion. However, according to Mr. Chhotaray, learned Counsel for the revenue the aforesaid issue now raised has not been considered earlier as the same is not referred to in the assessment order dated 12 October 2010 passed for A.Y. 200809. We are of the view that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its

satisfaction in respect o f the query raised. If an Assessing Officer has to record the consideration bestowed by him on all issues raised by him during the assessment proceeding even where he is satisfied then it would be impossible for the Assessing Officer to complete all the assessments which are required to be scrutinized by him under Section 143(3) o f the Act. Moreover, one must not forget that the manner in which an assessment order is to be drafted is the sole domain of the Assessing Officer and it is not open to an assessee to insist that the assessment order must record all the questions raised and the satisfaction in respect thereof of the Assessing Officer. The only requirement is that the Assessing Officer ought to have considered the objection now raised in the grounds for issuing notice under Section 148 of the Act, during the original assessment proceedings. There can be no doubt in the present facts as evidenced by a letter dated 8 September 2012 the very issue of taxability of sale of shares under the head capital gain or the head profits and gains from business was a subject matter of consideration by the Assessing Officer during the original assessment proceedings leading to an order dated 12 October 2010. It would therefore, follow that the reopening of the assessment by impugned notice dated 28 March 2013 is merely on the basis of change of opinion of the Assessing Officer from that held earlier during the course of assessment proceeding leading to the order dated 12 October 2010. This change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment.
(emphasis supplied)

12. Therefore, we agree with the Tribunal that the Commissioner has exercised his power under Section 263 of the Act in an arbitrary manner and hence, the impugned order requires to be quashed. The substantial questions of law framed are answered accordingly."

10. The jurisdiction u/s.263 of the Act can be exercised only when both the following conditions are satisfied:

(i) the order of the Assessing Officer should be erroneous and

(ii) it should be prejudicial to the interest of the revenue.

These conditions are conjunctive, in the instant case, there was nothing erroneous and prejudicial. An order of assessment passed by the AO should not be interfered with only because another view is possible. The said ratio has been upheld by the following decisions:

Hon'ble Delhi High Court in the case of CIT v. Sunbeam Auto Ltd. [2009 SCC OnLine Del 4237], wherein, it was held that if the AO has not provided detailed reasons with respect to each and every item of deduction etc. in the assessment order, that by itself would not reflect a non-application of mind by the AO. It was further held that merely inadequacy of enquiry would not confer the power of revision under Section 263 of the

Act on the Commissioner. The relevant paragraph of the said decision reads as under:-

> *"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 a different opinion in the matter. It is only in cases of "lack of inquiry" that such a course of action would be open. In Gabriel India Ltd. (1993) 203 ITR 108 (Bom), law on this aspect was discussed in the following manner (page 113)."*

A similar view was taken by Hon'ble Delhi High Court in the case of CIT v. Anil Kumar Sharma [2010 SCC OnLine Del 838], wherein, it was held that once it is inferred from the record of assessment that AO has applied his mind, the proceedings under Section 263 of the Act would fall in the category of Commissioner having a different opinion. Paragraph 8 of the said decision reads as under:

> *"8. In view of the above discussion, it is apparent that the Tribunal arrived at a conclusive finding that, though the assessment order does not patently indicate that the issue in question had been considered by the Assessing Officer, the record showed that the Assessing Officer had applied his mind. Once such application of mind is discernible from the record, the proceedings under section 263 would fall into the area of the Commissioner having a different opinion. We are of the view that the findings of facts arrived at by the Tribunal do not warrant interference of this court. That being the position, the present case would not be one of "lack of inquiry" and, even if the inquiry was termed inadequate, following the decision in Sunbeam Auto Ltd. (2011) 332 ITR 167 (Delhi) (page 180) : "that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter." No substantial question of law arises for our consideration."*

In Ashish Rajpal as well, Hon'ble Delhi High Court was of the view that the fact that a query was raised during the course of scrutiny which was satisfactorily answered by the assessee but did not get reflected in the assessment order, would not by itself lead to a conclusion that there was no enquiry with respect to transactions carried out by the assessee.

The decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd., enunciates the meaning and intent of the phrase 'prejudicial to the interests of the Revenue', in the following words:-

> *"8.The phrase 'prejudicial to the interests of the Revenue' is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The High Court of Calcutta in 'Dawjee Dadabhoy & Co.v.S.P. Jain[(1957) 31 ITR 872(Cal)], the High Court of Karnataka in CITv.T. Narayana Pai[(1975) 98 ITR 422(Kant)], the High Court of Bombay in CITv.Gabriel India Ltd.[(1993) 203 ITR 108(Bom)] and the High Court of Gujarat in CITv.Minalben S. Parikh[(1995) 215 ITR 81(Guj)] treated loss of tax as prejudicial to the interests of the Revenue. 9. Mr. Abraham relied on the judgment of the Division Bench of the High Court of Madras in Venkatakrishna Rice Co.v.CIT[(1987) 163 ITR 129(Mad)] interpreting 'prejudicial to the interests of the Revenue'. The High Court held: ' "In this context, (it must) be regarded as involving a conception of acts or orders which are subversive of the administration of revenue. There must be some grievous error in the order passed by the Income Tax Officer, which might set a bad trend or pattern for similar assessments, which on a broad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue Administration".*
>
> *In our view this interpretation is too narrow to merit acceptance. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue. 10. The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income Tax Officer is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue. (See 'Rampyari Devi Saraogiv CIT[(1968) 67 ITR 84(SC)] and in "Tara Devi Aggarwalv.CIT[(1973) 3 SCC 482:1973 SCC (Tax) 318:(1973) 88 ITR 323].) [Emphasis supplied]"*

The Hon'ble Supreme Court in the case of CIT v. Paville Projects (P) Ltd. [2023 SCC OnLine SC 371], while relying upon Malabar Industrial Co. Ltd., has discussed the sanctity of two-fold conditions for the purpose of invoking jurisdiction under Section 263 of the Act. The relevant paragraph of the said decision reads as under:-

> *"Learned counsel appearing on behalf of the assessee has heavily relied upon the decision of this Court in the case of Malabar Industrial Co. Ltd.(supra). It is true that in the said decision and on interpretation of Section 263of the Income Tax Act, it is observed and held that in order to exercise the jurisdiction under Section 263(1) of the Income tax Act, the Commissioner has to be satisfied of twin conditions, namely,*
>
> *(i) the order of the Assessing Officer sought to be revised is erroneous; and*
> *(ii) it is prejudicial to the interests of the Revenue. It is further observed that if one of them is absent, recourse cannot be had to Section 263(1) of the Act."*

11. In the present set of facts and circumstances and considering the aforesaid settled judicial pronouncements, it can be safely concluded that the ld.PCIT is wrong in invoking the powers u/s.263 of the Act. The Revenue in the instant case has not been able to make out a sufficient case that the ld.PCIT has exercised the power in accordance with law. Rather, in our considered opinion, the facts of the case do not indicate that the twin conditions contained in Section 263 of the Act are fulfilled in its letter and spirit. Hence the order u/s.263 of the Act passed by the ld.PCIT is set aside.

12. Since the facts and circumstances of the appeals of the assessee in ITA No.952 & 953/Chny/2025 for assessment years 2014-15 & 2015-16 are identical to the facts and circumstances of the appeal for assessment year 2013-14 in ITA No.951/Chny/2025, the reasoning and adjudication given is mutatis mutandis applicable to the appeals in ITA No.952 & 953/Chny/2025 for assessment years 2014-15 & 2015-16.

13. In the result, all the three appeals for A.Ys.2013-14, 2014-15 and 2015-16 filed by the assessee are allowed.

ITA No.956 to 959/Chny/2025 – A.Ys. 2015-16, 2016-17, 2018-19 & 2020-21:

14. The assessee Mr.Mohansundaram Jayasuja filed the captioned appeals against the orders of the ld.PCIT u/s.263 of the Act for the above mentioned assessment years. We find that the facts and circumstances of the appeals of the assessee in ITA No.956 to 959/Chny/2025 for assessment years 2015-16, 2016-17, 2018-19 and 2020-

21 are identical to the facts and circumstances of the appeal for assessment year 2013-14 in ITA No.951/Chny/2025 filed by the Subramaniam Mohan Sundaram discussed supra, and hence the reasoning and adjudication given by us in ITA No.951/Chny/2025 of Mr.Subramaniam Mohan Sundaram is mutatis mutandis applicable to the appeals in ITA No.956 to 959/Chny/2025 for A.Ys. 2015-16, 2016-17, 2018-19 and 2020-21.

15. In the result, all the four appeals for A.Ys. 2015-16, 2016-17, 2018-19 and 2020-21 filed by the assessee are allowed.

ITA No.954 & 955/Chny/2025 – A.Ys.2017-18 and 2018-19:

16. The assessee Mr.Subramaniam Mohan Sundaram, legal heir of the Smt.K.Lakshmi, filed the captioned appeals against the orders of the ld.PCIT u/s.263 of the Act for the above mentioned assessment years. In these cases, the assessee has expired on 27.08.2019 and the same has been brought to the notice by filing the details of legal heir in lieu of the deceased assessee on 04.01.2020 in the E filing portal of the income tax department by uploading the death certificate and legal heir certificate. (As per the screen shots of the website provided in the paper book in page No.11). Despite the fact, communication made by the legal heir to the department about the death of the assessee much before the assessment proceedings, the AO has passed an order u/s.147 of the Act dated 23.07.2021 on dead person. Further, the ld.PCIT also issued notice u/s.263 of the Act for revision proceedings on a dead person on 01.03.2024 and subsequently the order u/s.263 of the Act dated 13.03.2024 was passed again on dead person. Hence in the light of the above facts the ld.AR for the assessee submitted that the present proceedings u/s.263 of the Act is null and void-ab-initio and hence liable to be set aside.

17. Per contra the ld.DR submitted the assessee's legal heir had participated both in the assessment proceedings and revision proceedings u/s.263 of the Act. Hence, the impugned order is intact and needs to be confirmed.

18. We have heard the rival submissions perused the material available on record and gone through the orders of the authorities along with the paper books and case laws relied upon by both the parties. Admittedly the assessee Smt.K.Lakshmi died on

27.08.2019. Survey has been conducted on the premises of the deceased person on 26.11.2019. It was an admitted fact that the assessee had not filed her return of income u/s.139(1) of the Act for the both the A.Ys. 2017-18 and 2018-19. Further, the legal heirs of the assessee communicated the death of the assessee in the income tax portal on 04.01.2020 by registering the legal heir to represent the deceased by submitting the death certificate, which has been approved by the revenue on 12.01.2020.

On perusal of the records we find that the AO has issued a notice u/s.148 on 09.02.2021 in the name of the deceased, inspite of registering the legal heir of the deceased assessee. Further, the AO also passed the order u/s.148 of the Act dated 23.07.2021 in the name of deceased only.

19. It is also observed that, on examination of the order of the ld.PCIT, both the notice issued and the order passed u/s.263 of the Act have been made in the name of the deceased assessee only. Therefore, we are convinced with the arguments put forth by the ld.AR in respect of legal issue of orders passed being void ab initio since the same were passed on the dead person.

Our above view has been fortified by the following judicial precedents:

- [2018] 95 taxmann.com 155(Madras) – Alamelu Veerappan Vs. ITO, wherein the Hon'ble jurisdictional High Court held as below:

> ***18.*** *In such circumstances, the question would be as to whether Section 159 of the Act would get attracted. The answer to this question would be in the negative, as the proceedings under Section 159 of the Act can be invoked only if the proceedings have already been initiated when the assessee was alive and was permitted for the proceedings to be continued as against the legal heirs. The factual position in the instant case being otherwise, the provisions of Section 159 of the Act have no application.*
> ***19.*** *The Revenue seeks to bring their case under Section 292 of the Act to state that the defect is a curable defect and on that ground, the impugned notice cannot be declared as invalid.*
> ***20.*** *The language employed in Section 292 of the Act is categorical and clear. The notice has to be, in substance and effect, in conformity with or according to the intent and purpose of the Act. Undoubtedly, the issue relating to limitation is not a curable defect for the Revenue to invoke Section 292B of the Act.*
> ***21.*** *All the above reasons are fully supported by the decision in the case of Vipin Walia. (supra). In that case, the notice dated 27.3.2015 was issued under Section 148 of the Act to the assessee, who died on 14.3.2015. The validity of the said notice was put to challenge. The Income Tax Officer took a stand that since the intimation of death of the assessee on 14.3.2015 was not*

received by her, the notice was issued on a dead person. However, the fact regarding the death of the assessee could not be disputed by the Department. The Department continued the proceedings under Section 147/148 of the Act and at that stage, the son of the deceased approached the High Court of Delhi. The High Court of Delhi pointed out that what was sought to be done by the Income Tax Officer was to initiate proceedings under Section 147 of the Act against the deceased assessee for the assessment year 2008-09, for which, the limitation for issuance of notice under Section 147/148 of the Act was 31.3.2015 and on 02.7.2015 when the notice was issued, the assessee was already dead and if the Department intended to proceed under Section 147 of the Act, it could have done so prior to 31.3.2015 by issuing the notice to the legal heirs of the deceased and beyond that date, it could not have proceeded in the matter even by issuing notice to the legal representatives of the assessee. The decision in Vipin Walia (supra) fully supports the case of the petitioner herein.

22. *The decision in the case of Vipin Walia (supra) was followed in the decision of the High Court of Gujarat in the case of Rasid Lala, (supra) in which, the reassessment proceedings were initiated against the dead person, that too, after a long delay. The Court pointed out that even if the provisions of Section 159 of the Act are attracted, in that case also, the notice was required to be issued against and in the name of the heirs of the deceased assessee and under the said circumstances, Section 159 of the Act shall not be of any assistance to the Revenue.*

23. *In the decision of the Delhi High Court in the case of Spice Entertainment Ltd. (supra) one of the questions, which fell for consideration, is as to whether such framing of assessment against a non-existing entity or a dead person could be brought within the ambit of Section 292B of the Act and after referring to the decisions on the point including the decision of the Allahabad High Court in the case of Sri Nath Suresh Chand Ram Naresh v. CIT [2006] 280 ITR 396/145 Taxman 186 it has been held that the provisions of Section 292B of the Act are not applicable and that framing of assessment against a non-existing entity/person goes to the root of the matter, which is not a procedural irregularity, but a jurisdictional defect, as there cannot be any assessment against a dead person.*

24. *The learned Senior Standing Counsel for the Revenue has sought to distinguish the decision in the case of Spice Entertainment Ltd. (supra) by referring to Sky Light Hospitality LLP. Case (supra)*

25. *On a perusal of the factual position therein, the Court came to the conclusion that the defect was curable because it was held that the notice was not addressed to the correct name and that the PAN mentioned was also incorrect. The factual background was taken into consideration and the Court held that errors and mistakes cannot and should not nullify the proceedings, which are otherwise valid and that no prejudice had been caused, as this being the mandate of Section 292B of the Act. The decision in the case of Sky Light Hospitality LLP case (supra) is clearly distinguishable on facts and it does not support the case of the Revenue.*

26. *For all the above reasons, this court holds that the impugned notice is wholly without jurisdiction and cannot be enforced against the petitioner.*

- ITA No. 1419/Chny/2024 – Punamchand Parek Vs.DCIT dated 09.10.2024, wherein the coordinate bench of Tribunal held as under:

"4. We find from the record that Smt.Santhilabarek Lathabai who was sole proprietor of M/s New Jewel Palace expired on 27.07.2016. The factum of demise of assessee was already conveyed to the income tax department/revenue when survey u/s 133 was conducted on 17.11.2016 in the case of M/s New Jewel Palace. We also find that digital notice dated 18.02.2020 u/s 148 of the Act was issued on a dead assessee despite knowledge of fact to the revenue regarding death of assessee. We also note that the revenue did not take any step u/s 159 of the Act to bring on record the legal representatives of the deceased assessee.

5. The Hon'ble High Court judgment in the case of Smt. MadhubenKantilal Patel Vs UOI 452 ITR 17 (Guj) held that where the legal heirs of the assessee deceased had supplied information of death to the revenue and despite reopening notice issued subsequently u/s 148 in the name of deceased was illegal and thus liable to be set aside. Similarly, Hon'ble Delhi High Court in the case of Savita Kapila Vs ACIT (2020) 426 ITR 502:273 Taxman148: 118 Taxmann.com 46 (Del) has quashed the notice u/s 148 of the Act on a dead person.

6. We, respectfully following the judgment of the Hon'ble High Courts referred supra, set aside the notice dated 18.02.2020 issued under section 148 of the Act on 4 ITA No.1419 /Chny/2024 deceased assessee and declare the same as nullity. Hence all consequential order and proceedings are also set aside."

20. Therefore, in the present facts of the case and respectfully following judicial precedents discussed supra, we are of the considered view that both AO and ld.PCIT have erred in passing the orders in the name of the dead person and hence we set aside the impugned orders for both assessment years by allowing the appeals of the assessee.

21. In the result both the appeals of the assessee for the assessment years 2017-18 and 2018-19 are allowed.

Order pronounced in the court on 11th August, 2025 at Chennai.

Sd/-	*Sd/-*
(मनु कुमार गिरि)	**(एस. आर. रघुनाथा)**
(MANU KUMAR GIRI)	**(S.R.RAGHUNATHA)**
न्यायिक सदस्य/**JUDICIAL MEMBER**	लेखासदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated, the 11th August, 2025

RL

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3.आयकर आयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF