IN THE INCOME TAX APPELLATE TRIBUNAL, 'F' BENCH MUMBAI

BEFORE: SHRI MAHAVIR SINGH, VP
&
SHRI M.BALAGANESH, AM

ITA No.1159/Mum/2020
(Assessment Year :1992-93)

Ms. Jyoti Harshad Mehta-Legal Heir of Late Harshad S Mehta 32, Madhuli Dr. A. Besant Road Worli, Mumbai-400018	Vs.	Pr. Commissioner of Income Tax(C)-2 19th Floor, Air India Building Nariman Point Mumbai – 400 021
PAN/GIR No.ABAPM1848F		
(Appellant)	..	**(Respondent)**

Assessee by	Shri Vijay Mehta (C.A.) & Shri Ashwin Mehta (on behalf of assessee)
Revenue by	Dr. P. Daniel, Special Counsel for the Revenue
Date of Hearing	**02/02/2021**
Date of Pronouncement	**26/03/2021**

आदेश / O R D E R

***PER BENCH*:**

This appeal in ITA No.1159/Mum/2020 for A.Y.1992-93 preferred by the order against the revision order of the ld. Principal Commissioner of Income Tax-(C)-2, Mumbai u/s.263 of the Act dated 22/01/2020 for the A.Y.1992-93.

2. Assessee has raised the following grounds:-

"1. The learned Principal Commissioner of Income Tax Central - 2, Mumbai ['PCIT'] erred in passing the revisionary order in the name of a dead person. The order passed by PCIT is illegal and bad in law.

2. The learned PCIT erred in assuming jurisdiction under Section 263 of the Act and in setting aside an order dated 2nd May 2018 passed under Section 154 of the Act giving effect to the order of the learned CIT (A).

3. The learned PCIT erred in holding that the AO has not verified the details while passing the order dated 2nd May 2018.

4. The learned PCIT erred in holding that the order passed by the AO is erroneous and prejudicial to the interest of the revenue.

5. The learned PCIT erred in deciding the merits of the addition against the assessee. The action of the learned PCIT is also without giving proper opportunity of hearing.

The Appellant craves leave to add, delete, amend and/or alter all or any of the grounds of appeal herein."

2.1. The assessee has raised the following additional grounds of appeal on 14/01/2021.

*"1. **Additional ground No 1:***
On the peculiar facts and circumstances of the case and in law, the Ld. PCIT acted against the law in passing the order u/s 263 of IT Act, 1961 when the subject matter involved in the order Dt 02.05.2018 was duly considered and decided by the Income Tax Appellate Tribunal vide order Dt. 14.01.2019.

*2. **Additional ground No 2***
The Ld. PCIT illegally assumed jurisdiction u/s 263 of the IT Act, 1961 treating that order passed u/s 143(3) read with section 250 of the Act, giving effect to the order of the CIT(A) Dt 28.06.2017 as an independent order passed by the A.O. by directing the A.O. to recompute the income of the appellant at Rs.2237,55,11,503/- instead of Rs. 6,84,08,000/- determined in consequence of ITATs order dt 30.01.2015.
3. Additional ground No 3

On the facts and circumstances of the case and in law, the order is barred by limitation as the Ld. PCIT has also erred in assuming jurisdiction and passing the impugned order u/s 263 of the Act without properly appreciating the provisions of section 263 of the Act."

3. We have heard the rival submissions and perused the materials available on record. We find that Shri Ashwin Mehta, brother of Late Shri Harshad Mehta, was present at the time of hearing and had made both oral and written submissions thereon on merits with regard to the additional grounds raised supra. For the sake of convenience, we deem it fit to reproduce the said written submissions given by Shri Ashwin Mehta as under:-

ARGUMENTS IN BRIEF ON MERIT IN RESPECT OF ADDITIONAL GROUND NO. 1 TO 3

1. *With respect to additional ground no.1, on merit I draw your attention to the provision of Section 263(1) Income Tax Act, 1961 as well as cause (c) of explanation 1 of Section 263 of the Income Tax Act, 1961. No doubt this section refers to the any order passed by the assessing officer. Any order passed by the assessing officer has to be an order which is independently passed by the assessing officer. In the impugned case, the impugned order dated 02.05.2018 against which PCIT has invoked section 263 of the Income Tax Act, 1961 is an order in fact which was passed in consequence of giving the appeal affect of the order passed by CIT(A) dated 28.06.2019. Technically it cannot be called to be the order of the assessing officer. If PCIT is permitted to invoke jurisdiction u/s 263 of the Income Tax Act, 1961 in respect of the order passed for giving effect to the order of the CIT(A), then the provision of clause (c) of explanation 1 of Section 263 of the Income Tax Act, 1961 will become redundant. One cannot interpret the provision of section in this manner. This an undisputed fact that the order dated 02.05.2018 against which the jurisdiction under Section 263 of the Income Tax Act, 1961 has been invoked by PCIT has been passed to give effect to the order of the CIT(A) dated 28.06.2017. The provision of clause (c) of explanation 1 to Section 263 of the Income Tax Act, 1961 clearly debars the powers of PCIT for invoking jurisdiction in respect of the matters as had been considered and decided in such appeal. It is not denied that all the matters for which the PCIT invoked jurisdiction under section 263 of the Income Tax Act, 1961 had duly been considered in appellate proceedings not only by CIT(A) but also by this tribunal vide its order dated 14.01.2019. Your honours will appreciate that in case, an order is passed by your good selves, the consequential order giving effect to the order of this tribunal naturally is required to be passed*

by the assessing officer. If the action of the PCIT is legal or it is held that the PCIT had valid jurisdiction, PCIT can even revise the order which is being passed by ITAT in consequence of appeal before your honours, i.e. indirectly PCIT be superior to the Hon'ble Tribunal and PCIT can disturb any order which is passed by your good self and can modify the order passed by this Hon'ble Tribunal.

1.1 *The Hon'ble Tribunal is the second Appellate authority and is independent to the income tax department. The Income Tax Tribunal is similar to the court of Appeal and enjoy the same power under the suit procedure court which are enjoyed by any Appellate Court. This was so held by the Bombay High Court in the case of* ***New India Life Assurance Company Ltd. Vs CIT 31 ITR 844 (Mumbai)****. The status of Income Tax Appellate Tribunal has been discussed by the Supreme Court in the case of* ***Ajay Gandhi vs B. Singh 265 ITR 451****. In this regard the observation of the SC at page 182 of 235 ITR 175 (Supreme Court) in the case of* ***ITAT Vs Dr. V. K. Agarwal*** *(Ex Law Secretary, Ministry of law and Justice, GOI) are much relevant which are reproduced below:*

> *"Before examining the conduct of the first Respondent, we would like to deal with the technical objections which were raised before us on behalf of the first Respondent. The first Respondent had initially contended the Income Tax Appellate Tribunal was not a court and was also not court subordinate to the Supreme Court. Hence, the Supreme Court had no jurisdiction to issue a suo moto notice of contempt in respect of a matter pertaining to the Income Tax Appellate tribunal. However,* ***subsequently, learned senior counsel for the first Respondent conceded that the Income Tax Appellate tribunal did perform judicial functions*** *and was a court subordinate to the High Court. Hence there is no need to examine any further, the contention that the said Tribunal is not a court."*

1.2 *It is a case where PCIT has exercised the jurisdiction under section 263 of the Income Tax Act, 1961 illegally just to avoid issuing the refund for which the assessee was duly entitled not only in consequence of the order of the CIT (Appeal) but also of the order of this Hon'ble Tribunal and therefore ignored not only the provision of Section 263 of the Income Tax Act, 1961 but also judicial hierarchy and discipline but thing as if he is superior to the judicial forum. If the order passed under Section 263 of the Income Tax Act, 1961 invoking jurisdiction against an order passed in consequence of giving the appeal effect held to be valid jurisdiction, the principle of res judicata will get violated and there will not be any end to the litigation and PCIT will start invoking jurisdiction in respect of the order which has been passed by the assessing officer giving effect to the order of the Appellate Authorities/ Court may be this Tribunal, High Court or Supreme Court. Therefore, such restricted meaning cannot be given to clause (c) of*

explanation 1 to Sub-Section (1) of Section 263 of the Income Tax Act, 1961. Therefore, the only interpretation with respect to order of assessing officer under Section 263 of the Income Tax Act, 1961 have to be given only to an independent order passed by the assessing officer by applying his own mind nor to an order which has been passed by the assessing officer in consequence of the order of the Appellate Authority or on the direction of any other authority.

1.3 *In the impugned case at the cost of repetition I may again bring your honours' attention to the impugned order, show cause notice, order of the CIT (Appeal) dated 28.06.2017 and the tribunal order dated 14.01.2019 from which it is apparent that all the five issues in respect of which relief was given and duly considered by the CIT (Appeal) and confirmed by ITAT are the same in respect of which jurisdiction under Section 263 of the Income Tax Act, 1961 has been exercised by the PCIT and accordingly he directed, to the assessing officer, as is apparent from page 38 of the order passed by PCIT under section 263 of the Income Tax Act, 1961, to make addition in the income of the assesee in respect of all these five issues. Clause (c) of explanation (1) to Section 263 (1) of the Income Tax Act, 1961 has specifically been inserted with the purpose that judicial hierarchy must be maintained and the junior officer should not bust aside the decision of superior or the Appellate authority on the subject matter which had been duly considered and decided by the Appellate authority. The height of the case which must be appreciated is that initially the revenue filed an appeal before the Tribunal against the order of CIT (Appeal) and knowingly that even after passing the order of the Tribunal dated 14.01.2019, PCIT under section 263 Income Tax Act, 1961 passed impugned order dated 22.01.2020 directing the assessing officer to withdraw the relief given by the CIT (Appeal) and as confirmed by this Hon'ble Tribunal. This fact that Tribunal has duly considered and confirmed the relief given by the CIT (Appeal) was placed before the PCIT during the course of 263 proceeding which is apparent from page 34 to 38 of the order of the PCIT. PCIT burst aside the argument of the assessee made merely on the basis that the revenue has not accepted the order of the Tribunal dated 14.01.2019 and the same is being contested before Honble High Court. In this regard I may state that the decision of the tribunal is binding on revenue even on PCIT which passed an order under Section 263 Income Tax Act, 1961 untill and unless operation of the order of this tribunal is stayed by the Hon'ble High Court. The operation of the order of the Tribunal has not been stayed by the High Court even I understand the appeal filed by the revenue has not been admitted so far. Thus, this ground may kindly be allowed.*

2. *So far the additional ground no. 2 taken by the assessee, I may submit that this is a case of totally not following the judicial discipline. The PCIT by invoking the jurisdiction under Section 263 Income Tax Act, 1961 indirectly stopped the*

operation of the order of this bench dated 14.01.2019 and till today no appeal effect could be given by the assessing officer and illegal and unlawful demand has been raised against the assessee. The action of the PCIT is totally a contemptuous act for which exemplary cost be awarded in terms of Section 254 (2B) of the IT Act for forcing the assessee to file this Appeal and unnecessary wasting the precious man power and cost of the exchequer and provided mental torture and harassment to assessee.

2.1 *It is a settled law that the proceeding before the Income Tax Tribunal are the judicial proceedings. This fact has duly been recognised by Hon'ble Supreme Court in the case of ITAT Vs. V.K.Agarwal (235 ITR 175 (S.C), the respondent (Ex-Law Secretary, Ministry of Law and Justice, Government of India) In the said case, the Hon'ble Supreme Court held as under:*

> *"This court has consistently held that the Supreme Court has power under this article to punish, not merely for contempt of itself, but also for contempt of all courts and Tribunals subordinate to it. In the case of Delhi judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat, AIR 1991 Supreme Court 2176; (1991) 3 SCR 936, this court examined at length the power of this court under article 129 to punish for contempt. This court first examined the jurisdiction of the Supreme Court and held (at page 970 and page 2194 of AIR 1991 Supreme Court): "There is therefore no room for any doubt that this court has wide power to interfere and correct the judgment and orders passed by any court or Tribunal in the country. In addition to the appellate power, the court has special residuary power to entertain appeal against any order of any court in the country. The plenary jurisdiction of this court to grant leave and hear appeals against any order of a court and Tribunals confers power of judicial superintendence over all the courts and Tribunals in the territory of India including subordinate courts of Magistrate and District Judge. This court has, therefore, supervisory jurisdiction over all courts in India." Examining the powers of a court of record, it came to the conclusion that a court of record has inherent power to punish for contempt of all courts and Tribunals subordinate to it in order to protect these subordinate courts and Tribunals..... It was also submitted before us by learned senior counsel for the first respondent that although this court may have jurisdiction to punish for contempt, that jurisdiction should not be exercised in the present case. The appropriate authority to take action would be the High Court. We do not see much force in this submission. The Income tax Appellate Tribunal, although it may have Benches in different parts of the country, is a national Tribunal and its functioning affects the entire country and all its Benches. Appeals also lie ultimately to this court from the decisions and references made by the Tribunal. The mere fact that by this court taking suo motu cognizance of the contempt, the first respondent would not be able to appeal to any*

other court, cannot be a ground for not exercising the power to punish for contempt of a national Tribunal."

2.2 *The Hon'ble MP High Court in the case Agarwal Warehousing and Leasing Ltd. Vs. CIT (257 ITR 235) has held that the orders passed by the tribunal are binding on all the tax authorities functioning under the jurisdiction of the tribunal. While so holding, it followed the decision of the Hon'ble Supreme Court in the case of UoI Vs. Kamlakshi Finance Corporation Ltd (AIR 1992 Supreme Court 711, 712) 55 ELT 433 (S.C) which has ruled as under:*

"It cannot be too vehemently emphasized that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of appellate authorities. The order of the Appellate collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. ***The mere fact that the order of the appellate authority is not "acceptable" to the Department – in itself an objectionable phrase – and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to the assessees and chaos in administration of tax laws".*** *The Hon'ble M.P High Court further observed in clear terms as under: "**Obviously, the Commissioner of Income tax (Appeals) not only committed judicial impropriety but also erred in law in refusing to follow the order of the Appellate Tribunal. Even where he may have some reservations about the correctness of the decision of the Tribunal, he had to follow the order. He could and should have left it to the Department to take the matter in further appeal to the Tribunal and get the mistake, if any, rectified."***

2.3 *The Hon'ble M.P High Court in the case referred (Supra) has placed reliance on the decision of Hon'ble Supreme Court in the case of Kamalakshi Finance Corporation Ltd (Supra), the relevant observations made by Hon'ble Supreme Court in the said case, which is given in the book of Sampath Iyengar's "Law of Income tax" 10th edition (at page 212), for the purpose of obtaining clarity on the impugned issue are :*

"The learned Additional Solicitor General submits that the learned judges have erred in passing severe strictures (1990) 47 ELT 231 (Bom) against the two Assistant Collectors who had dealt with the matter. He submitted that these officers had given reasons for classifying the goods under heading 39.19 and not 85.46 and could do no more. He submitted that they acted bona fide in the interests of Revenue in not accepting a claim which, they felt, was not tenable. Sri Reddy is perhaps right in

saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual mala fides but with the fact that the officers, in reaching their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticized this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35E confers adequate powers on the department in this regard. ***In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under section 35E(1) or (2) to keep the interests of the department alive. If the officers' view is the correct one, it will no doubt be finally upheld and the revenue will get the duty, though after some delay which such procedure would entail.*** *It is clear that the observations of the High Court, seemingly vehement, and apparently unpalatable to the Revenue, are only intended to curb a tendency in revenue matters which, if allowed to become widespread, could result in considerable harassment to the assessee public without any benefit to the Revenue. We would like to say that the department should take these observations in the proper spirit. The observations of the High Court should be kept in mind in future and utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them."*

2.4 *I also rely to the decision of Khalid Automobiles Vs. UoI (1995) (4 SCC (Suppl.) 652), the Hon'ble Apex Court held that an order of Tribunal was binding on the Assessing officer and the first appellate authority and the failure to follow the same may constitute contempt of Tribunal's order. Similar views have been expressed in Sales tax matters in Rajendra Mills ltd*

Vs. Jt. CIT (1971) 28 STC 483 (mad), Senthil Raj Metals Vs. GTO (1990) 79 STC 38 (Mad).

2.5 *Hon'ble Andhra Pradesh High Court, in the case of State of Andhra Pradesh Vs. Commercial Tax officer and another (169 ITR 564) had an occasion to discuss about the binding nature of the decision of High Court. It held that the Tribunals functioning within the jurisdiction of a particular High Court in respect of whom the High Court has the power of superintendence under article 227 are bound to follow the decisions of the High Court unless, on an appeal to the Supreme Court, the operation of the judgment is suspended.* ***It further held that it is not permissible for the authorities and the Tribunals to ignore the decisions of the High Court or to refuse to follow the decisions of the High Court on the pretext that an appeal has been filed in the Supreme Court which is pending or that steps are being taken to file an appeal.***

2.6 *The High Court, at page 571, has made a reference to the decision of Hon'ble Bombay High Court in the case of* ***Subramanian, ITO Vs. Siemens India Ltd (1985) (156 ITR 11)*** *and the relevant observations are extracted below: "Reference may also be invited to the decision of the Bombay High Court in Subramanian, ITO Vs. Siemens India Ltd (1985)(156 ITR 11). The question that arose for consideration in this case is whether the Income tax officer is bound by the decision of a single judge or a Division bench of the court within whose jurisdiction he is operating even if an appeal has been preferred against such decision and is pending. The following observations of the Bombay High Court may be extracted (p 12): "****So far as the legal position is concerned, the Income tax officer would be bound by a decision of the Supreme Court as also by a decision of the High Court of the State within whose jurisdiction he is functioning, irrespective of the pendancy of any appeal or special leave application against that judgment. He would equally be bound by a decision of another High Court on the point, because not to follow that decision would be to cause grave prejudice to the assessee. Where there is a conflict between different High Courts, he must follow the decision of the High Court within whose jurisdiction he is functioning, but if the conflict is between decisions of other High Courts, he must take the view which is in favour of the assessee and not against him. Similarly, if the Income tax Appellate Tribunal has decided a point in favour of the assessee, he cannot ignore that decision and take a contrary view, because that would equally prejudice the assessee."***

There cannot be any dispute that the ratio of the decision of Jurisdictional High Court equally applies to the orders passed by the ITAT also vis-à-vis the authorities down below.

2.7 *A.P. High Court in the case of State Of Andhra Pradesh Vs. CTO, referred (Supra), as we also come across numerous instances of such kind of observations as noted by Hon'ble High Court. "In recent times, we are coming across innumerable cases where the authorities observe with impunity that they cannot follow the decisions of this court on a variety of grounds, such as:*

(a) that an appeal was actually filed in the Supreme Court against the judgment of this court and is pending in the Supreme Court.
(b) that a special leave petition is filed in the Supreme Court seeking leave to appeal against the judgment of this Court and the special leave petition is pending in the Supreme Court;
(c) that the Department has not accepted the decision of this Court and is taking steps to file an appeal before the Supreme Court.

We have noticed observations to the above effect in the orders passed by the Commercial Tax Authorities, including the Head of the Department, Commissioner of Commercial Taxes, ***Income-Tax Officers, including the Head of the Department, the Commissioner of Income-tax****, Central Excise and Customs Authorities, including the Collector of Central Excise and Customs and a host of other authorities. The question for consideration is whether the authorities below can refuse to follow the judgments of this court on the above grounds". ……*

"It is clear from the judicial pronouncements above referred to that the authorities and the tribunals functioning within the jurisdiction of this court in respect of whom this court has the power of superintendence under article 227 are bound to follow the decisions of this court unless, on an appeal, the operation of the judgment is suspended. It is not permissible for the authorities and the Tribunals to ignore the decision of this court or ***to refuse to follow the decisions of this court on the pretext that an appeal is filed in the Supreme Court which is pending or that steps are being taken to file an appeal. If any authority or the tribunal refuses to follow any decision of this court on the above grounds, it would be clearly guilty of committing contempt of this court and it liable to be proceeded against".***

2.8 *The Hon'ble Calcutta High Court considered the issue of hierarchical discipline in the case of Voest-Alpine Ind. GMBH vs. ITO & Others (246 ITR 745). In that case the Income Tax Officer while assessing the income of identical nature did not follow the decision rendered by Tribunal in an earlier year in which it was held that the income of the foreign company is not taxable in India. The Hon'ble High Court considered the action of the assessing officer as an act of "Hierarchical indiscipline". The relevant observations made by Hon'ble Calcutta High Court are extracted below: "I*

have gone through the impugned notices as well as the impugned order passed by the Income Tax Officer concerned. I have no manner of doubt that the Income-tax Officer concerned had assessed income-tax on the same income which was fetched from the consultancy services. I find the specific finding of the learned Tribunal that this income is not taxable and I also find from the finding of the learned Tribunal that the amount which was paid by way of advance tax is liable to be refunded. The learned Tribunal painstakingly considered all the points advanced before him on behalf of the Department. Since the reference has been refused by the court so also previously by the Tribunal, at the present moment the findings of the learned Tribunal have reached finality. In my view, the venture which has been undertaken by the Income tax Officer for making an assessment is absolutely an act of hierarchical indiscipline. This exercise is nothing short of setting the Tribunal's judgment at naught. It is a well settled principle of law that the junior incumbent is supposed to obey and carry out the order and/or observations made by the superior authority, be it a judicial forum or a quasi-judicial forum or even in any administrative field. Therefore, I hold that the impugned order passed by the Income-tax Officer is wholly without jurisdiction and the same is liable to be set aside and I hereby do so".

2.9 *The Hon'ble Bombay High Court in the case of Bank of Baroda Vs. H.C. Shrivatsava and Another (256 ITR 385) has also dealt with the impugned issue and the relevant observations are extracted below:*

"At this juncture, we cannot resist observing that the judgment delivered by the Income-tax Tribunal was very much binding on the Assessing Officer. The Assessing Officer was bound to follow the judgments in its true letter and spirit. It was necessary for judicial unit and discipline that all the authorities below the Tribunal must accept as binding the judgments of the Tribunal. The Assessing Officer being an inferior officer vis-à-vis the Tribunal, was bound by the judgment of the Tribunal and the Assessing Officer should not have tried to distinguish the same on untenable grounds. In this behalf, it will not be out of place to mention that "in the hierarchical system of courts" which exists in our country, "it is necessary for each lower tier" including the High Court, "to accept loyally the decisions of the higher tiers". "It is inevitable in a hierarchical system of courts that there are decisions of the supreme Appellate Tribunal which do not attract the unanimous approval of all members of the judiciary. But the judicial system only works if someone is allowed to have the last word, and that last word once spoken is loyally accepted". The better wisdom of the court below must yield to the higher wisdom of the court above as held by the Supreme Court in the matter of Asst. CCE v. Dunlop India Ltd (1985) 154 ITR 172".

2.10 *It appears to be the impression/misunderstanding of some of the tax officials that the orders of ITAT interpreting the law cannot be binding as it is a fact finding authority. However, from the foregoing discussions, one can understand that that the decision of the higher authority in the judicial hierarchy is binding on all the lower authorities below the line. Hence the learned PCIT and the assessing officer would be bound by the decision rendered by the jurisdictional Income tax Appellate Tribunal. Refusal to follow the order of the ITAT would render that authority guilty of committing contempt of Tribunal for which the concerned authority is liable to be proceeded against.*

2.11 *As held by Hon'ble M.P High Court in the case of in the case Agarwal Warehousing and Leasing Ltd, (Supra), the Learned CIT(A), in the instant case, has committed judicial impropriety and also erred in law in refusing to follow the order of the Appellate Tribunal by passing order under Section 263 Income Tax Act, 1961 and directing the assessing officer to withdraw the relief given by CIT(A) and as confirmed by tribunal. Being an authority in the higher hierarchy of the Income tax Department, that too holding administrative charge, PCIT should not have committed this kind of judicial impropriety.*

In view of aforesaid submission your honours will appreciate that this is the case where by passing an order under Section 263 Income Tax Act, 1961, the PCIT illegally withhold the refund which has arisen in consequence of the PCIT (Appeal) order as well as Income Tax Appellate Tribunal's Order. This is a clear cut case of judicial indiscipline for which I request your honours that the cost be awarded under Section 254 (2B) to the asseseee and revenue be directed by exercising your judicial power to give the appeal effect to your honours order dated 14.01.2019 immediately within the specified time so that in future none of the revenue officer dare to disregard the order passed by the Appellate authority including the order of this temple of justice on which public at large have faith and high regard. Thus, this ground may kindly be allowed.

3. With respect to ground no. 3, it is submitted that this ground is consequential to ground 1, therefore, if ground no. 1 is allowed, this ground is not pressed at present.

3.1. We find that Shri Ashwin Mehta also filed his written submission dated 14.1.2021 for consequential relief on additional grounds which was heavily relied upon by the ld AR.

3.2. Per Contra, the ld Special Counsel for the Revenue , vehemently objected to the admission of additional grounds per se and accordingly it was argued that all the aforesaid averments made by Shri Ashwin Mehta would be of no relevance.

3.3. We find that the issues raised in additional grounds are purely legal in nature and also go to the root of the matter not involving verification of any fresh facts and hence in view of the decision of the Hon'ble Apex Court in the case of NTPC Limited reported in reported in 229 ITR 383, we are inclined to admit these additional grounds and take up for adjudication. Let us take up adjudication of additional grounds and original grounds raised by the assessee.

3.4. We find that the ld. AR vehemently objected to the assumption of revisionary jurisdiction u/s.263 of the Act by the ld. PCIT vide additional ground Nos.1 to 2 and original grounds 2 to 5 in view of the fact that the entire issues that were sought to be revised in the proceedings u/s.263 of the Act were already the subject matter of the appeal before the ld. CIT(A) which had been considered and decided by the ld. CIT(A) in second round of proceedings. For this purpose, the following chronology of dates and events would be relevant for better understanding of the issue in dispute:-

Sr. No.	Order passed by	1st innings	2nd innings	3rd innings	Peripheral proceedings
1.	A.O.	27.03.1995		15.03.2016	02.05.2018 (Order u/s 154 of the Act giving effect to order of CIT(A) dated 28.06.2017)

2.	CIT(A)	28.02.2003	24.03.2010	28.06.2017 (In respect of few additions, CIT(A) directed the A.O. to grant relief after verification)	
3.	ITAT	11.07.2008 [Set aside to CIT(A)]	29.10.2014 (Set aside to A.O.)	14.01.2019 (Assessment order quashed)	(the order dated 02.05/2018 is subject matter of revision u/s.263 vide impugned order dated 22/01/2020)

3.5. We find from the aforesaid table that the ld. PCIT seeks to revise the order passed by the ld. AO on 02/05/2018 which is effectively the order giving effect to order of the ld. CIT(A) dated 28/06/2017, though the same has been termed as an order passed u/s.154 of the Act by the ld. AO. There is one more interim order which was passed by the ld. AO giving effect to the order of the ld. CIT(A). This interim order was passed by the ld. AO on 28/09/2017 terming it as "order giving effect to ld. CIT(A)'s order dated 28/06/2017". In this interim order, the ld. AO categorically admits that the issues mentioned in ground Nos. 6,8,10,13 & 17 requires verification by him in order to ascertain the correct amount of relief eligible to the assessee. Similarly, in respect of ground No.28, credit for TDS and advance tax would be given after due verification of the same. Similarly for ground Nos. 29 & 31, the revised interest shall be calculated as per directions of the ld. CIT(A) vide order dated 28/06/2017. In fact in this interim order dated 28/09/2017, though it was termed as order giving effect to the ld. CIT(A)'s order, the ld. AO did not disturb the total income already determined vide order dated 15/03/2016 in third round of proceedings as tabulated supra on the ground that the said income would get reduced after verification by him.

3.6. The ld. AO after due verification of all the issues and contentions raised by the assessee vide above mentioned grounds i.e. ground Nos. 6,8,10,13,17,28,29 & 31 raised before the ld. CIT(A) in the third round of proceedings as tabulated supra, passed an order dated 02/05/2018 actually giving effect to the order of the ld. CIT(A) dated 28/06/2017. In this giving effect order to the ld. CIT(A), the ld. AO determined the total income of the assessee at Rs.1143,38,34,160/- after giving relief for the following items:-

Particulars		**Amount (Rs.)**	**Amount (Rs.)**
Income computed as per **OGE dated 28.09.2017**			**2346,32,06,080**
LESS	(As per para 30.2 and 30.3 of CIT(A)'s order dated 28.06.2017) Addition on account of Profit on sale of shares in shortage - Credit in respect of 44 companies of letter dated 31.01.1995 (on proportionate basis)	**71,09,68,698**	
LESS	(As per para 30.2 and 30.3 of CIT(A)'s order dated 28.06.2017) Addition on account of Profit on sale of shares in shortage – Credit of 740,000 shares of Apollo Tyres Ltd seized by CBI (on proportionate basis)	**10,26,55,590**	
LESS	(As per para 30.2 and 30.3 of CIT(A)'s order dated 28.06.2017) Addition on account of Profit on sale of shares in shortage – Credit of 138,790 mutilated shares of Apollo Tyres Ltd (on proportionate basis)	**1,92,59,484**	
LESS	(As per 32.6 of CIT(A)'s order dated 28.06.2017) Addition on account of share market oversold position	**NIL**	
LESS	(As per 34.11 of CIT(A)'s	**25,48,16,855**	

	order dated 28.06.2017) Addition on account of Unexplained Income deleted		
LESS	(As per 24.22 of CIT(A)'s order dated 28.06.2017) Addition on account of money market oversold position – Relief due to decree transactions	**438,43,55,195**	
LESS	(As per para 24.16 of CIT(A)'s order dated 28.06.2017) Addition on account of money market oversold position – Relief due to inconsistencies in Annexure M-2	**418,81,76,323**	
LESS	(As per para 24.24 of CIT(A)'s order dated 28.06.2017) Additional lesson account of money market trading activities	**2,61,95,078**	
LESS	(As per para 24.24 of CIT(A)'s order dated 29.06.2017) Addition on account of money market unexplained stock –Relief due to order of Supreme Court dated 01.11.2002 and 03.12.2008	**224,37,25,245**	
LESS	(As per para 27.9 of CIT(A)'s order dated 28.06.2017) Addition on account of interest on money market	**10,42,27,500**	
TOTAL TAXABLE INCOME			**1143,38,34,164**
Rounded off to			**1143,38,34,160**

3.7. Out of the aforesaid sums which were granted relief by the ld. AO in the giving effect order after due verification of the issues together with the relevant supporting evidences, the issues that are subject matter of revision proceedings u/s.263 of the Act (i.e. the impugned order) are as follows:-

	Particulars	**Amount(Rs.)**
a.	Addition on account of money market oversold position – due to decree transactions	438,43,55,195/-
b.	Addition on account of money market	418,31,76,323/-

	oversold position – due to inconsistencies in Annexure M-2	
c.	Additional loss on account of money market trading activities	2,61,95,089/-
d.	Addition on account of money market unexplained stock – due to order of the Hon'ble Supreme Court dated 01/11/2002 and 03/12/2008	224,37,23,243/-
e.	Addition on account of interest on money market securities	10,42,27,500/-

3.7.1. We find that the aforesaid five items were also considered already by the ld CITA vide his order dated 28.6.2017 in page nos. 54 to 75 in para 24.22 for item (a) above, page nos. 43 to 48 in para 24.16 for item (b) above, page no. 76 para 24.24 for item (c) above, page no. 81 para 25.7 for item (d) above and page no. 90 para 27.9 for item (e) above. Similarly, this tribunal vide its order dated 14.1.2019 had also considered these items on merits in page nos. 33 to 78 in paras 9 to 9.49 for item (a) above, page nos. 33 to 78 in paras 9 to 9.49 for item (b) above, page no. 73 para 9.43 for item (c) above, page nos. 78 to 84 paras 10 to 10.6 for item (d) above and page nos. 89 to 96 paras 12 to 12.9 for item (e) above. Hence the assessment order dated 15.3.2016 and the first appellate order dated 28.6.2017 got merged with the tribunal order dated 14.1.2019 before passing the impugned order under appeal by PCIT U/s 263. Applying the theory of 'Doctrine of Merger', the ld PCIT ought not to have invoked revision jurisdiction u/s 263 of the Act by seeking to revise the giving effect order to ld CIT(A) order.

3.8. We find that the revision proposal u/s 263 of the Act has been trigerred based on the proposal given by the ld AO in that regard which fact is also admitted by the ld PCIT in para 3 page 3 of his order. The ld AR argued before us that this clearly tantamounts to borrowed

satisfaction on the part of ld PCIT for invoking revision jurisdiction u/s 263 of the Act, for which he along with Shri Ashwin Mehta, brother of the assessee made the following submissions which are reproduced hereunder:-

Note on proposal for initiation of revision must be initiated by Pr. CIT

In the case at present, the Pr. CIT invoked the proceedings u/s 263 of the Act on the request of the AO. The AO prayed for the revision of the assessment order as admitted in Paragraph 3 of the impugned order dated 22.01.2020.

Under section 263(1) clearly says, "The Commissioner may call for and examine the records of any proceedings under this Act, and if he considers ... ", which means that proposal for initiation of revision proceedings must be initiated by the CIT, because, it is the CIT who has to call for and examine the records.

In the case at present, the CIT did not initiate the proceedings himself but initiated the proceedings on the proposal received from the AO. Only on receipt of proposal from the AO, the Pr. CIT initiated revision proceedings. It is not the case where CIT called for the record and after examining the same, initiated the proceedings under section 263. This clearly proves that there is no application of mind on the part of CIT WHILE invoking jurisdiction u/s 263.

As mentioned above, that the proposal for initiation of revision proceedings must be initiated by the CIT, which is not the case at present, therefore, the initiation of proceeding u/s 263 at the instance of the assessing officer are invalid.

In this regard reliance is placed on the following legal authorities: -

(i)Ashok kumar Shivpuri v. CIT dated 07-11-2014, in ITA No.631 (M) of 2014

It has been observed by us that the assessment was framed subject to valuation by the DVO. This, by itself is a deficiency in the order under section 143(3). We further find that the proposal was received by the CIT from the AO, which clearly means that there has been no independent application of mind by the CIT, because section 263(1) clearly says, "The Commissioner may call for and examine the records of any proceedings under this Act, and if he considers ... ", which means that proposal for

initiation of revision proceedings must be initiated by the CIT, because, it is the CIT who has to call for and examine the records. But in the instant case the proposal came from the AO and on receipt of the proposal, the CIT initiated revision proceedings. Therefore, in our opinion, the proceeding gets flagged at the threshold. - We, therefore, hold that the proceedings were bad in law and thus subsequent proceedings are annulled.

(ii)Rupayan Udyog Vs. CIT ITA No. 1073/Kol/2012 dated 28.11.2018
The power vested in the CIT is that of revisional jurisdiction to interfere with the order of AO, if it is erroneous in so far as prejudicial to the revenue and therefore, the power to exercise the revisional jurisdiction is vested only with Pr. CIT/Commissioner if he considers the order of the AO to be erroneous in so far as prejudicial to the interest of the revenue. The power cannot be usurped by the AO to trigger the revisional jurisdiction vested with the CIT as per the scheme of the Act which gives various powers to various authorities to exercise and they have to exercise powers in their respective given sphere which is clearly ear-marked and spelled out by the statute. Here, we note that the AO who is empowered by the Act to assess a subject within a prescribed time period has first assessed the assessee and later after passing of time has taken up a proposal with the CIT to exercise his revisional jurisdiction cannot be countenanced for the simple reason that when in the first place the AO noticing that he failed to properly enquire before assessing the assessee within the time limit prescribed by the statute cannot be allowed to get fresh innings to reassess because it was his duty to enquire properly within the time limit prescribed by the statute.

(iii)Shanti Exim Ltd Vs CIT [20171 88 taxmann.com 361 (Ahd. Tribunal)
The Commissioner set aside assessment order in exercise of his power under section 263 on the ground that the Assessing Officer did not make any independent verification to establish the genuineness of the purchase transaction of the assessee-company with eight parties.

Held that the action under section 263 initiated on the basis of recommendation by the concerned Assessing Officer/Joint Commissioner. The said Assessing Officer has categorically held that the order of his predecessor is erroneous and prejudicial to the interest of the revenue. Thereafter the case record was called for by the Commissioner. ***If the recommendation would not have received from the successor the Assessing Officer, then the Commissioner would even not have initiated the proceedings under section 263. Therefore, it could not be termed that the Commissioner himself has called for the records. In this case, the record has been called for only after the recommendation received from the successor Assessing Officer.*** *In similar situation, the ITAT, Mumbai "A" Bench in the case of Ashok kumar Shivpuri v. CIT dated 07-11-2014, in ITA No.631 (M) of 2014, held that the*

revision proceedings simply on the basis of proposal from the Assessing Officer is not valid, because section 263(1) says that proposal for initiation of revision proceedings must be initiated by the Commissioner. ***It is the Commissioner who has to call for and examine the records; but in the instant case the proposal came from the Assessing Officer and on receipt of the proposal, the Commissioner initiated revision proceedings, which is not justified.***

(iv)Adishwar K. Jain Vs. CIT ITA No. 3389/Mum/2014 dated 12.03.2018
We may refer to a plea set-up by the assessee based on the decision of our co-ordinate Bench in the case of Ashok Kumar Shivpuri, ITA No. 631/Mum/2014 dated 07.11.2014. In this case, the Tribunal found that the Commissioner invoked Sec. 263 of the Act based on a proposal received from the Assessing Officer. ***The Tribunal found it inconsistent with the requirement of Sec. 263(1) of the Act and held that the initiation of proceedings u/s 263 of the Act was bad-in-law. The aforesaid proposition also supports the infirmity in the action of the Commissioner in as much as para 2 of the impugned order brings out that the initiation of proceedings u/s 263(1) of the Act is based on the proposal of the Assessing Officer dated 03.01.2013.***

(v)VinayPratap Thacker ITA No. 2939/Mum/2011 [27.02.2013]
As per Section 263(1), the CIT must himself come to a conclusion, after applying his own mind, because, the words used in the section are"..... and if he considers ....",here, application of his own mind becomes important. It is important to examine the similarity of the expression used under section 147(1) and 263(1). Under section 147(1), the expression used is "has reason to believe" and under section 263(1), the expression used is "if he considers". Though the expressions used are not verbatim parimateria, but the meaning which is to be drawn in both the expressions are parimateria, i.e., an independent, unpolluted and un-adopted application of mind by the officer, invoking the provision.

We have seen from the impugned order of the CIT, dated 11.02.2011, the CIT admits, "A proposal was received on 10.06.2010 from the AO under section 263 of the Income Tax Act, 1961, pointing out some discrepancies/short comings in the assessment order". This clearly shows that in so far as the CIT was concerned, he did not apply his own mind..... We are of the considered opinion that the CIT could not have invoked the jurisdiction under section 263 without his own independent application of mind.

(vi)Span Overseas Ltd. Vs. CIT, Pune ITA No. 1223/PN/2013 (21.12.2015]
The Commissioner of Income Tax has invoked the provisions of section 263 without applying his own independent judgment and merely at the

behest of proposal forwarded by the Dy. Commissioner of Income Tax is against the spirit of Act. Thus, the impugned order is liable to be set aside.

For revision of order of AO, the Pr. CIT had not made any inquiries on his own but had merely relied on the proposal made by the AO as is apparent from show cause notice as well as order u/s 263 to Pr. CIT that in the assessment order certain points were not verified although verification was duly made by assessing officer while allowing effect to the order of the CIT(A). Even the CIT did not point out what verification was left by Assessing officer. It is practically, revision asked by the AO himself and not by the Pr. CIT. He merely relied on the version of the AO who wanted to re-examine the issue which is not permitted under the law.

3.9. We find that the very same issues were indeed subject matter of appeal before the ld. CIT(A) in the third round of proceedings and the ld. CIT(A) had already considered and decided these issues in its appellate order. Further, the Revenue as well as the assessee had preferred an appeal before this Tribunal against the order of the ld. CIT(A) dated 28/06/2017 and this Tribunal vide its order dated 14/01/2019 had quashed the assessment order in ITA No.5702 & 6028/Mum/2017 on 15/03/2016 by observing as under:-

"6.8. After going through the order of this Tribunal dated 29.10.2014 in the present case, we noted that this Tribunal has not set aside assessment and has also not directed the AO to make a fresh assessment but as observed by the AO himself in his order giving effect to the order of the Tribunal dated 30.01.15 restored/set aside the issue to the file of AO and directed the AO to verify /examine each entry in the books of accounts and to decide the issue afresh after examining the books of accounts of the assessee. Consequently, we noted, that the AO, passed the order dated 30.01.2015 determining the income of the assessee at Rs.6,84,08,000/- as declared by the assessee against the income of Rs.2014,04,65,298/- determined vide assessment order passed u/s 144 dated 27.3.1995. The AO without resorting to the provisions of section 154 of the Act, passed another order giving effect to the order of the Tribunal dated 15.3.2016 purporting to be an order u/s 254 r.w.s 143(3) of the Act assessing the total income u/s 254 rws 143(3) of the Act which order is under challenge before us. Sh. Denial even though vehemently argued and tried to justify the action of the AO and the impugned order passed by the AO to be a valid order, he also contended that the facts involved in this case are different as to the facts involved in the case of Classic Share & Stock Broking Services

Ltd (Supra) but we do not agree with his contention. The AO while passing the first order giving effect to the order of this Tribunal dated 20.09.2014 clearly mentioned that ITAT restored/set aside the issue to the file of the AO to verify/examine each entry in the books of account and to decide the issue afresh after examining the books of account of the assessee and ultimately revised the assessed income accordingly, if there was a mistake in the order of the AO dated 30.01.2015, the only course of action available to the AO was to take an action u/s 154 of the Act but not to initiate the proceedings for passing a second order i.e. the impugned order. The AO having once passed an order giving effect to the order of ITAT, becomes functus officio. The AO does not have any jurisdiction to pass second order giving effect to the order of the Tribunal. We do not find any such provision under the Act and even Sh. Denial could not bring to our knowledge or attention any such provision. It is an undisputed fact that the AO has not taken any action u/s 154 of the Act in respect of the first order dated 30.01.2015 giving effect to the order of Tribunal dated 29.10.2014. Even no contrary decision was brought to our knowledge which has taken a view that the AO has the power to pass a second order giving effect to ITAT order. We are bound to follow the decision of the jurisdictional High Court as well of the co-ordinate Bench. We therefore quash and set aside the assessment order dated 15.03.2016 passed u/s 144 rws 253 of the Act as invalid. Thus the ground no. 1 & 2 taken by the assessee are allowed."

3.10. Apart from quashing the assessment order dated 15/03/2016, the Tribunal had further proceeded to adjudicate each of the issues involved on merits also and had indeed granted relief to the assessee. This fact is also mentioned by the ld. PCIT in his order passed u/s.263 of the Act in para 14 page 35 thereon.

3.11. In the aforesaid backdrop of the case, let us now examine the provisions of Section 263(1) Explanation 1 Clause (C) which is reproduced for the sake of convenience:-

"Revision of orders prejudicial to revenue.

263. *(1) The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the [Assessing] Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or*

causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

(a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include –

(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 144A;

(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 of Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorized 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 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.]"

3.12. No doubt this section refers to any order passed by the Assessing Officer. Any order passed by the Assessing Officer has to be an order which is independently passed by the Assessing Officer. In the impugned case, the impugned order dated 02.05.2018 against which ld. PCIT has invoked section 263 of the Income Tax Act, 1961 is an order in fact which was passed in consequence of giving the appeal affect of the order passed by ld.CIT(A) dated 28.06.2017 which is not included in the order

eligible for revision in the aforesaid Explanation u/s 263 of the Act. Technically it cannot be called to be the order of the Assessing Officer. If ld. PCIT is permitted to invoke jurisdiction u/s 263 of the Income Tax Act, 1961 in respect of the order passed for giving effect to the order of the ld.CIT(A), then the provisions of clause (c) of Explanation 1 of Section 263 of the Act will become redundant. One cannot interpret the provision of section in this manner. It is an undisputed fact that the order dated 02.05.2018 against which the jurisdiction under Section 263 of the Act has been invoked by ld. PCIT has been passed, to give effect to the order of the ld.CIT(A) dated 28.06.2017. The provisions of clause (c) of Explanation 1 to Section 263 of the Act clearly debars the powers of ld. PCIT for invoking jurisdiction in respect of the matters as had been considered and decided in such appeal. It is not denied that all the matters for which the ld. PCIT invoked jurisdiction under section 263 of the Act had duly been considered in appellate proceedings not only by ld.CIT(A) but also by this Tribunal vide its order dated 14.01.2019. Clause (c) of Explanation (1) to Section 263 (1) of the Act has specifically been inserted with the purpose that judicial hierarchy must be maintained and the junior officer should not brush aside the decision of superior or the Appellate authority on the subject matter which had been duly considered and decided by the Appellate authority. We are conscious of the fact that the order dated 2.5.2018 passed by the ld AO cannot be subject matter of appeal by the revenue as no appeal can be filed by the revenue. Even assessee has also not filed any appeal against the said order. But the facts of the above case clearly prove beyond any doubt that the issue in the said order was subject matter of appeal before the ld CITA as well as this tribunal in the appeals filed in the second round of proceedings filed by the revenue as well as by the assessee. The tribunal has considered and decided the subject matter of the issues before the ld AO vide its

order dated 14.1.2019 prior to the order passed u/s 263 of the Act by the ld PCIT. Therefore, having regard to the provisions of section 263 of the Act, the order dated 2.5.2018 giving appeal effect to the order of the ld CITA was subject matter of these appeals and was duly considered and decided by the tribunal vide order dated 14.1.2019. We are also aware of the fact that no appeal has been filed by the assessee against the order of the ld AO passed u/s 154 of the Act dated 2.5.2018, as this order in fact cannot be regarded to be an independent order passed by the ld AO, for which revision jurisdiction u/s 263 of the Act could be invoked by the ld PCIT. One more pertinent point which must be appreciated is that initially the revenue and the assessee filed an appeal before the Tribunal against the order of ld.CIT (Appeal) and knowingly that even after passing the order of the Tribunal dated 14.01.2019, ld. PCIT under section 263 of the Act passed impugned order dated 22.01.2020 directing the ld. AO to withdraw the relief given by the ld.CIT (Appeal) and as confirmed by this Tribunal. This fact that Tribunal has duly considered and confirmed the relief given by the ld.CIT (Appeal) was placed before the ld. PCIT during the course of 263 proceeding which is apparent from pages 34 to 38 of the order of the ld. PCIT. The ld. PCIT brushed aside the argument of the assessee made merely on the basis that the revenue has not accepted the order of the Tribunal dated 14.01.2019 and the same is being contested before Hon'ble High Court. Needless to mention that the decision of the tribunal is binding on revenue including the ld. PCIT which passed an order under Section 263 of the Act until and unless operation of the order of this tribunal is stayed by the Hon'ble High Court. The operation of the order of the Tribunal has not been stayed by the Hon'ble High Court. Hence, it could be safely concluded that the subject matter of issues in the revision proceedings u/s.263 were already duly considered and decided by the ld. CIT(A) and also by this Tribunal and

accordingly, the ld. PCIT could not have validly invoked his revision jurisdiction u/s.263 of the Act in terms of Clause (C) of Explanation 1 of Section 263(1) of the Act on the very same issues.

3.13. One more excruciating fact which needs to be addressed here is that this Tribunal vide its order dated 14/01/2019 had indeed quashed the entire assessment order framed on 15/03/2016 by the ld. AO in the third round of proceedings for detailed reasons given thereon. The said reasons for quashing have already been reproduced hereinabove. The order dated 02/05/2018 passed by the ld. AO was nothing but the order giving effect to the order of the ld. CIT(A) dated 28/06/2017, though termed as an independent order passed u/s.154 of the Act by the ld. AO. This fact we have already addressed elsewhere in our order, that is to say that the order dated 02/05/2018 is only effectively an order giving effect to the order of the ld. CIT(A) dated 28/06/2017. We find that the ld. PCIT has only sought to exercise revision jurisdiction u/s.263 of the Act for revising this order dated 02/05/2018 passed by the ld. AO. As could be evident from the table hereinabove representing the series of proceedings in three rounds, it is evident that against the assessment order framed by the ld. AO on 15/03/2016, in the third round of proceedings, the assessee had preferred an appeal before the ld. CIT(A) and which was further appealed by the Revenue as well as by the assessee before this Tribunal. We have already mentioned that this Tribunal vide its order dated 14/01/2019 had quashed the assessment order dated 15/03/2016. Hence, the entire proceedings in the third round stood quashed. While this is so, the order dated 02/05/2018 which is effectively an order giving effect to the order of the ld. CIT(A) dated 28/06/2017 also gets automatically quashed. Hence, any order which is not a legally sustainable order or an order not in existence pursuant to its quashing, cannot be subject matter

of any revision proceedings u/s.263 of the Act by the ld. PCIT. Even this fact was duly brought to the notice of the ld. PCIT which had been conveniently ignored by the ld. PCIT while exercising revision jurisdiction u/s.263 of the Act. We find that reliance in this regard has been rightly placed by the ld. AR on the decision of Hon'ble Karnataka High Court in the case of CIT vs. New Mangalore Port Trust reported in 382 ITR 434 wherein it was held that where on facts the assessment order was no longer in existence, any order passed by the Commissioner u/s.263 revising a non-existent order was to be declared *void ab initio.* Hence, even on this count, the entire revision order passed by the ld. PCIT u/s.263 of the Act deserves to be quashed and is hereby quashed.

3.14. We find that the ld. PCIT had in his revision order u/s.263 of the Act alleged that proper enquiries were not carried out by the ld. AO in the order dated 02/05/2018 while granting relief to the assessee. In this regard we find that in the first paragraph of the order dated 02/05/2018, the ld. AO categorically admits that he had concluded that the entire verification proceedings were carried out in accordance with various directions issued by the ld. CIT(A) on various issues thereon and accordingly had proceeded to give effect to the order of the ld. CIT(A) dated 28/06/2017. For the sake of convenience, the relevant operative portion of the order of the ld. AO dated 02/05/2018 which was sought to be revised by the ld. PCIT u/s.263 is reproduced hereunder:-

> *"An order giving effect to the order of the Ld, CIT(A) dated 28.6.2017 was passed by this office on 28.09.2017 computing the total income at Rs. 2346,32,06,080/- wherein no effect for the reliefs granted to the assessee was given as the verification pursuant to the directions of the Ld. CIT(A) was pending. However, as the verification proceedings have been concluded the effect to the various directions of the Ld.CIT(A) is being given now.*

In view of the above, the directions of the Ld. CIT(A) are now being complied with. Hence, the OGE dated 28.09.2017 to CIT(A)'s order dated 28.06.2017 is being rectified u/s. 154 of the Act to give necessary appeal effects".

3.15. In this order we find the ld.AO after due verification had granted relief for 10 items against which the ld. PCIT has exercised revision jurisdiction u/s.263 of the Act by holding that the order passed by the ld. AO is erroneous and prejudicial to the interest of the revenue only in respect of five items as tabulated supra.

3.16. We also find that the ld. PCIT in page 34 para 12 of his order states that no documents were ever submitted by the assessee before the ld. AO. We find that this statement of ld. PCIT to be factually incorrect as all the necessary details were already placed on record by the assessee before the lower authorities on more than one occasion. This fact is duly confirmed by the ld. CIT(A) while passing his order on 28/06/2017 in the third round of proceedings vide para 7 page 10 of his order. We find that the ld. CIT(A) categorically records that assessee had filed copies of paper book which was already filed before the ld. AO in para 7 of his order. In fact the assessee had brought to the notice of the ld. PCIT while giving reply to show-cause notice issued u/s.263 of the Act vide detailed written submissions dated 18/06/2019 wherein in para 13.5 thereon, it was specifically pointed out that detailed paper books were filed by the assessee before the ld. AO at the time of remand proceedings and also pursuant to order giving effect to ld. CIT(A) dated 28/06/2017. The list of paper books filed before the ld. AO are as under:-

Sr. No.	Paper book No.	Ground of Appeal	Page Nos.

1.	V	Money Market Oversold position Money Market Trading Loss	1-276
2.	VI		1-383
3.	XVI		1-78
4.	III	Money Market Unexplained Stock	1 -162
5.	IV		1-63
6.	XI	Interest on Money Market Securities	1 - 105

3.17. We find that in the proceedings before the Special Court (Trial of offences relating to transactions in securities) Act, 1992 at Bombay, the ld. Senior Counsel representing Income Tax department on instructions of the ld. AO i.e. Shri Manpreet Singh Duggal has stated that all orders giving effect to are pending before the ld. AO and accordingly, sought time from the Special Court. Further before the Special Court on 08/12/2017, the ld. Sr. Counsel representing the Income Tax department had categorically admitted in para 3 that certain grounds were allowed by the ld. CIT(A) thereby granting reliefs, verification has not been entirely carried out before arriving at the amounts referred to in the computation and therefore, the notice of demand does not reflect the correct amount. Before the Special Court, the ld. Sr. Counsel representing the Income Tax department sought time to obtain further instructions on the aspect of actual amount of relief to be granted in accordance with the order of the ld. CIT(A) dated 28/06/2017. We find that the ld. Sr. Counsel representing the Income Tax department before the Special Court had in para 3 of the interim proceedings dated 08/12/2017 had categorically admitted that the verification process as directed by the ld. CIT(A) is being carried out by the ld. DCIT and the same shall be disclosed in the form of an affidavit from the ld. AO and accordingly, sought time from

Special Court. Subsequently in the proceedings before the Special Court dated 18/01/2018, an affidavit from the ld. AO dated 04/01/2018 was filed by the ld. Senior Counsel representing Income Tax department before Special Court duly affirming that the process of verification is still under way and that certain reliefs have already been conditionally granted to the assessee. We find that ld. Senior Counsel representing the Income Tax department had sought time before the Special Court from time to time by stating that the ld. AO is in the process of verification of various documents in order to give effect to the order of the ld. CIT(A) dated 28/06/2017 and accordingly, the matter sought was finally adjourned to 07/06/2018. Further vide order dated 26/04/2018, the Special Court categorically records that the ld. Senior Counsel representing the Income Tax department on instructions had stated that the final order giving effect to order of the ld. CIT(A) will be passed within one week from today i.e. 26/04/2018 and that all necessary ground work prior to passing of the orders giving effect has been completed as of yesterday i.e. 25/04/2018. Finally the giving effect order to ld. CIT(A) order dated 28/06/2017 has been passed by the ld. AO on 02/05/2018 within the time granted by the Special Court. We have also gone through all these documents of Special Court which are enclosed in paper book-2 filed by the assessee vide pages 292 to 314 thereon. We have also gone through the affidavit filed before the Special Court by the ld. AO, Shri Manpreet Singh Duggal, which are enclosed in pages 282-286 of the paper book-2 filed before us. In the said affidavit, the ld. AO had categorically affirmed before the Special Court that the order giving effect to the ld. CIT(A) order dated 28/06/2017 could not be passed immediately after the receipt of order of the ld. CIT(A) in view of the fact that efforts were carried out to trace the original assessment folder which was traced finally at later point in time and due verification process as directed by the ld. CIT(A)

was indeed carried out. The ld. AO also categorically affirmed before the Special Court in his affidavit by stating that letter to BSE (Bombay Stock Exchange) has been issued for verification purposes in respect of certain issues before granting relief to the assessee pursuant to order of the ld. CIT(A). We also find that the ld. AO in his affidavit in para 9 thereof had categorically admitted that necessary opportunity was given to the assessee and wherever verification from third party is required, the required notices were also issued. The order giving effect to the ld. CIT(A) order will be passed after receipt of replies from those third parties without any further delay. So, all these points categorically drives home the point that the ld. AO had indeed carried out extensive verification of the issues before giving effect to the order of ld. CIT(A) dated 28/06/2017. While this is so, it would be totally unfair on the part of the ld. PCIT to say that no verification was carried out by the ld. AO in the order dated 02/05/2018. We find that the ld. AO in his affidavit filed before the Special Court had also affirmed that he had even resorted to third party verification for examining the documents filed by the assessee. No better action could be expected more than this from the side of the ld. AO. Hence, it could be safely concluded that the ld. AO had indeed carried out extensive verification of all the documents and had made requisite enquiries thereon while giving effect to the order of the ld. CIT(A) dated 28/06/2017. Hence, the ld. PCIT could not exercise revision jurisdiction u/s.263 of the Act on the same by holding the said order to be erroneous and prejudicial to the interest of the Revenue on the ground that no enquiries were made or proper enquiries were not made by the ld. AO.

3.18. We find that the ld. PCIT had placed reliance on Explanation-2 to Section 263 of the Act which has been inserted by the Finance Act 2015 w.e.f. 01/06/2015 by stating that where the order is passed by the ld. AO

without making enquiries or verification which should have been made by him then the ld. PCIT could validly exercise revision jurisdiction thereon. We have already stated that requisite enquiries have been indeed already carried out by the ld. AO in the order dated 02/05/2018 which is the order giving effect to the order of the ld. CIT(A) dated 28/06/2017. With regard to reliance placed on Explanation-2 to Section 263 of the Act, we find that the Co-ordinate Bench of Jabalpur Tribunal in the case of Jashn Beneficiary Trust vs. Assistant Commissioner of Income Tax in I.T. Appeal No.100 (JAB) of 2016 dated 15/03/2017 had held as under:-

> *"11. No doubt, clause (a) of Explanation 2 to section 263 deems the order to be erroneous and prejudicial to the interests 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 the Commissioner. In our opinion, for the applicability of clause (a) of the Explanation, it is necessary that the Principal Commissioner must mention in the order what inquiries or verification the Principal Commissioner desires to have been carried out by the Assessing Officer. The Principal Commissioner in this case even though stated that the Assessing Officer failed to examine during the course of the assessment proceedings but did not point out what type of inquiry or verification should have been carried out in this regard by the Assessing Officer. How non-examination of this aspect has resulted in under assessment. The power entrusted on the Commissioner of Income-tax under this Explanation cannot be to be vague and he may mention the irrelevant enquiries to be made by the Assessing Officer even though the law does not require in respect of the issue involved such enquiry to be made by the Assessing Officer. The Explanation cannot override the provisions of the section. It can extend the scope but that has to be within the purview of the main provision. The order passed by the Assessing Officer, in our opinion, shall be deemed to be erroneous in so far as prejudicial to the interests of the Revenue if the Principal Commissioner would have specifically pointed out which of the inquiries or verification should have been carried out by the Assessing Officer in this regard and how examination of those were necessary by the Assessing Officer while making the assessment and dealing with the issue. Since the Principal Commissioner has not suggested the basis of the inquiry or verification to be carried out by the Assessing Officer and its relevancy with the setting off of the short-term capital gain against the short-term loss, the order passed by the Assessing Officer cannot be deemed to be erroneous in so far as it is prejudicial to the interests of the Revenue."*

3.19. In the instant case also, the ld. PCIT does not in any manner suggest as to what enquiries the ld. AO should have conducted. In fact, the ld. PCIT does not bring out any basis for arriving at the conclusion as to how the order of the ld. AO dated 02/05/2018 in granting reliefs to the assessee is erroneous. We find that the ld. PCIT had merely directed the ld. AO to directly withdraw the reliefs given by him in the order dated 02/05/2018 in respect of five issues as tabulated supra. We find that this action of the ld. PCIT is grossly unsustainable in the eyes of law in view of the fact that the impugned grievance of the ld. PCIT is that the ld. AO had not carried out proper enquiries on the aforesaid 5 issues as tabulated supra. While it is so, how and on what basis the ld. PCIT comes to a conclusion that those five issues deserve to be decided against the assessee by way of withdrawal of relief. At best, the ld. PCIT could have only directed the ld. AO to conduct enquiries even if he is of the opinion that enquiries were not carried out properly by the ld. AO. The entire action of the ld. PCIT goes to prove that the entire issue has been addressed with a pre-conceived notion in order to reach a pre-conceived destination by forgetting the legal tenets, factual verifications, verification of documents carried out by the ld. AO, improperly applying provisions of Explanation-2 to Section 263, not respecting the judicial hierarchy by ignoring the order of this Tribunal dated 14/01/2019 wherein the Tribunal had already quashed the assessment order dated 15/03/2016 but also granting relief to the assessee on merits on each of the five issues that were subject matter of revision proceedings, thereby proving his highhandedness. Hence, it could be safely concluded that proper and requisite enquiries were indeed carried out by the ld. AO while passing the order dated 02/05/2018 giving effect to the order of the ld. CIT(A) dated 28/06/2017 and hence, the ld. PCIT grossly erred

in invoking revisionary jurisdiction u/s.263 of the Act on the ground that the order of the ld. AO is erroneous and prejudicial to the interest of the revenue because proper enquiries were not carried out by the ld. AO.

3.20. In view of the aforesaid detailed observations, we have no hesitation in quashing the revision order passed by the ld. PCIT u/s.263 of the Act for more than one reason as detailed supra. Accordingly, the additional grounds 1 to 2 and original grounds 2 to 5 raised by the assessee are allowed.

4. The Original Ground No. 1 raised by the assessee was stated to be not pressed by the ld AR at the time of hearing. The same is reckoned as a statement made from the Bar and accordingly dismissed as not pressed. Similarly in view of our aforesaid decision on additional grounds 1 and 2, the additional ground no. 3 raised by the assessee is dismissed as being academic in nature.

5. In the result, appeal of the assessee is partly allowed.

Order pronounced on 26/03/2021 by way of proper mentioning in the notice board.

Sd/-	**Sd/-**
(MAHAVIR SINGH)	**(M.BALAGANESH)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Mumbai; Dated 26/03/2021
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai