

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad**

Before Shri Rama Kanta Panda, Accountant Member

AND

Shri Laliet Kumar, Judicial Member

ITA No.122/Hyd/2022		
Assessment Year: 2016-17		
Mylan Pharmaceuticals Private Limited Plot No.564/A/22, Road No.92 Jubilee Hills, Hyderabad Telangana-500 096 PAN : AABCM9323J	Vs.	ITO, Ward-16(3) I.T.Towers, AC Guards Masab Tank Hyderabad-500 004
(Appellant)		(Respondent)
Assessee by:		Shri P.V.S.S.Prasad, CA
Revenue by:		Shri Jeevan Lal Lavidiya, CIT-DR
Date of hearing:		20.12.2022
Date of pronouncement:		26.12.2022

ORDER

Per Shri Rama Kanta Panda, A.M.

This appeal filed by the assessee is directed against the order dated 17.02.2022 passed by the Learned Principal Commissioner of Income Tax-8, Mumbai relating to AY 2016-17.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of trading of pharmaceutical products and sells its products both in domestic and export markets. It provides business support services and renders research and development activities to group company. It filed its return of income on 30.11.2017 declaring total loss at Rs.56,78,76,827/-. The case was selected for complete scrutiny and statutory notices u/s. 143(2) and 142(1) were issued along with detailed questionnaire. The AR of the assessee in response to the same notices furnished the details on ITBA portal. The AO completed the assessment u/s. 143(3) on 24.12.2019 determining

the total loss at Rs.55,67,59,009/- wherein he made addition of Rs.17,10,283/- by making disallowance of certain expenses which were paid in violation of provisions of section 37(1) and disallowed an amount of Rs.94,07,535/- out of other business expenses of Rs.4,70,37,679/- by disallowing 20% of the expenses on adhoc basis on the ground that this amount is for launching for new products of the company and the expenses is capital in nature.

3. Subsequently, the Id.PCIT examined the record and noted that the AO vide show cause notice dated 15.12.2019 had specifically asked for the details related to sales promotion expenses of Rs.15,37,40,000/-. The assessee in response to the same had submitted the following details.

Sr. No	Particulars	Amt (Rs.)
1	630760000 Sponsorship/ Marketing programs	7,49,87,461
2	630800000 Promotions expense	4,70,37,679
3	652000000 Meeting expense-Local/ In-House	1,89,94,398
4	630100000 Educational grants-external	52,31,477
5	631000000 Product samples	17,10,283
6	Other advertisement and sales promotion expenses	57,75,196
	Total	15,37,36,494

4. He noted that the assessee company in its submissions has given detailed breakup of the expenses mentioned at serial no. 1 to 5. However, no details with regard to the expenditure claimed under the head other advertisement and sales promotion expenses mentioned at serial no.6 were provided. He observed that the AO during the course of assessment proceedings failed to ask for the details of expenses mentioned at serial no.6 above in his subsequent notices. Since the above amount remained to be verified by the AO and he failed to carry out enquiries as

warranted by the facts and circumstances of the case and completed the assessment without examining all the aspects, which were required to be looked into for arriving at the total income of the assessee company, he issued a show cause notice asking the assessee to explain as to why the provisions of section 263 should not be invoked. The relevant para of the said show cause notice reads as under:-

"You have not provided the details of other advertisement and sales promotion expenses of Rs.57,75,196/- ad which has not been considered during the course of assessment proceedings. The mistake had resulted in under assessment of the business loss by Rs. 57,75,196/-, with potential tax effect of Rs.17,32,559/-.

The aforesaid aspect which prima facie warranted inquiry on the facts and circumstances of the case, have not been inquired into while completing the assessment. On the facts and circumstances of the case, it is clear that in respect of the aforesaid aspects, the order of the AO suffers from error and within the meaning of Section 263 of the I T Act, 1961. This error has resulted in prejudice to the revenue within the meaning of Section 263 in as much as the claim of the assessee is allowed in excess and / or income of the assessee has been under assessed. Accordingly in respect of the aforesaid aspect enumerated in foregoing paragraphs as above, provisions of Section 263 of the Income Tax Act, 1961 are clearly attracted to the facts of the Case.

In view of the above, it is to suitably revise the assessment order passed by the AO u/s 263 of the I. T. Act,

5. The assessee in its response to the same filed written submissions. It was claimed that the advertisement and sales promotion expenses of Rs.57,75,196/- is allowable u/s. 37(1) of the I.T.Act since the same is wholly and exclusively incurred for the purpose of business. Relying on various decisions, it was submitted that the Ld.PCIT is not justified in invoking the revisionary provision u/s. 263 of the I.T.Act.

6. However, the Ld.PCIT was not satisfied with the arguments advanced by the assessee. He observed that the assessee company has not made any submission to substantiate that it had submitted complete details pertaining to the expenses

charged to the P&L account under the head “other advertisement and sales promotion expenses” of Rs.57,75,196/-. Since according to the Id.PCIT, the AO had failed to examine the issue of other advertisement and sales promotion expenses of Rs.57,75,196/- and passed the order, therefore, such order has become erroneous and prejudicial to the interest of the revenue. Rejecting the various explanations given by the assessee and relying on various decisions the Id.PCIT set aside the order passed by the AO with a direction to him to redo the assessment by allowing an opportunity of being heard to the assessee and pass the order in accordance with law after due verification.

7. Aggrieved with such order of the Id.PCIT, the assessee is in appeal before the Tribunal by raising the following grounds

1.1 On the facts and in the circumstances of the case and in law, the learned Principal Commissioner of Income Tax _ 8, Mumbai ('Ld. PCIT') has erred in invoking the provisions under section 263 of the Income-tax Act, 1961 ('Act'), without considering the fact that the Assistant Commissioner of Income Tax, Circle 7(2)(2), Mumbai ('Ld. AO') had passed the assessment order after making due enquiries and verification of records and the said order is not erroneous and/or prejudicial to the interest of the revenue .

1.2. On the facts and in the circumstances of the case and in law, the Ld. PCIT has erred in invoking the provisions under section 263 of the Act without looking into all the records of the assessment proceedings wherein the Appellant has furnished the relevant documents/ explanation as and when sought by the Ld. AO.

1.3. On the facts and in the circumstances of the case and in law, the Ld. PCIT has erred in setting aside the assessment order passed by the Ld. AO with a direction to redo the assessment without appreciating the fact that the assessment order of Ld. AO is not erroneous and/or prejudicial to the interest of the revenue.

1.4 Without prejudice to the above, on the facts and circumstances of the case and in law, the Ld. PCIT erred in disallowing an expenditure of INR 57,75,196 under the head other advertisement and sales promotion without appreciating that the said expenditure is allowable business expenditure under section 37(1) of the Act and the same was incurred wholly and exclusively for the purpose of the Appellant's business.

The Appellant prays that directions be given to grant all such relief arising from the Grounds of Appeal mentioned supra and all consequential efforts relief thereto.

8. The ld.counsel for the assessee, at the outset, referring to page no.361 of the paper book drew the attention of the Bench to the letter dated 18.12.2019 addressed to the AO wherein the details of advertisement and sales promotion expenses of Rs.15,37,40,000/- was given. He submitted that in the said submission, the assessee has given the statement giving the brief nature of this expenditure. The ld.counsel for the assessee drew the attention of the Bench to page no.364 of the paper book where the annexure-A is given and drew the attention of the Bench to the note on advertisement and sales promotion expenditure, which is as under:-

Sr. No	Particulars	Amt (Rs.)
1	630760000 Sponsorship/ Marketing programs	7,49,87,461
2	630800000 Promotions expense	4,70,37,679
3	652000000 Meeting expense-Local/ In-House	1,89,94,398
4	630100000 Educational grants-external	52,31,477
5	631000000 Product samples	17,10,283
6	Other advertisement and sales promotion expenses	57,75,196
	Total	15,37,36,494

9. Referring to page no.476 of the paper book, the ld.counsel for the assessee drew the attention of the Bench to para 6.2 of the assessment order, which reads as under:-

“ 6.2 In response to the notice, the assessee submitted that an amount of Rs.15,37,40,000/- towards sales promotional and advertisement expenses was incurred under various heads of expenses. Free samples of Rs.17,10,283/- were distributed as a part of promotional activities whereby new drugs/medicine were given as free samples to create awareness, promote the new product and get feedback from medical practitioners. The expenses incurred are part of the sales expenses.”

10. He submitted that the AO after detailed examination of all the details filed had passed the assessment order and therefore, it is not a case of lack of enquiry or no enquiry, but it is a case of detailed enquiry. Merely, because the AO in the instant case has not passed the order as per the wish of the Ld.PCIT the order cannot be held as erroneous and prejudicial to the interest of the revenue.

11. Referring to the decision of Hon'ble Delhi High Court in the case of CIT vs. Sunbeam Auto Ltd. reported in 189 taxmann 436, he submitted that Hon'ble High Court in said decision has held that there is a distinction between lack of enquiry and inadequate enquiry. If there was any enquiry, even inadequate, that would not by itself give occasion to the Ld.PCIT to pass order u/s. 263 merely because he has different opinion in the matter. It is only in case of lack of enquiry that such a course of action would be open. He submitted that when the assessee had provided the breakup and details of the expenses under the head advertisement and sales promotion and when the AO after perusing the details filed by the assessee disallowed the expenses of product samples of Rs.17,10,283/- by referring to CBDT circular No.5/2012, dated 01.08.2012 and also disallowed other business promotion expenses @20% on adhoc basis, therefore, it establishes that the AO was satisfied in relation to the information submitted. Referring to various decisions he submitted that the Ld.PCIT was not justified in invoking jurisdiction u/s. 263 of the I.T.Act. He also relied on following decisions.

i.MOIL Ltd. vs. CIT reported in [2017] 81 taxmann.com 420 (Bomb.HC)

ii.Rajshanti Metals Pvt.Ltd. vs.PCIT reported in [2022] 176/RJT/2016 (Rajkot.Trib)

iii.CIT vs. Gabriel India Ltd. reported in [1993] 203 ITR 108(Bob.HC)

12. The ld.DR on the other hand heavily relied on the order of the ld.PCIT. He submitted that when the AO has admittedly not called for the details of other advertisement and sales promotion expenses of Rs.57,75,196/-, therefore, the order has become erroneous as well as prejudicial to the interest of the revenue. Therefore, the PCIT was fully justified in invoking jurisdiction u/s. 263 of the I.T.Act. He also relied on the following decisions

- i. Smt.Taradevi Aggarwal vs. CIT reported in 88 ITR 323(SC)*
- ii. Smt.Rampyari Devi Sargoi vs Cit reported in 67 ITR 84 (SC)*
- iii. Gee Vee Enterpises Ltd. vs ACIT reported in 99 ITR 375 (Delhi.HC)*
- iv. Radiant Life Care Mumbai Pvt.Ltd vs. PCIT in ITA No.895 &896/Mum/2021, dated 31.02.2022(Mum.Trib)*

13. We have heard the rival arguments made by both the sides, perused the orders of the AO and ld.PCIT and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case completed the assessment u/s. 143(3) on 24.12.2019 determining the total loss at Rs.55,67,59,009/- as against the returned loss of Rs.56,78,76,827/- wherein he disallowed an amount of Rs.17,10,283/- being payments in violation of provisions of section 37(1) and disallowed other business promotion expenses of Rs.94,07,535/- on adhoc basis being 20% of such expenses claimed at Rs.4,70,37,679/- on the ground that such expenses are incurred for launching of new products. We find the Ld.PCIT invoked jurisdiction u/s.263 of the I.T.Act on the ground that out of the total sales promotion expenses of Rs.15,37,40,000/-, the AO had not examined the other advertisement and sales promotion expenses of Rs.57,75,196/- by calling for details from the assessee and passed the order without verification of the same and therefore, the order has become erroneous as well as prejudicial to the interest of the revenue. He, therefore, set aside the assessment order to the file of the AO with a direction to pass

the order in accordance with law after due verification of the same. It is the submission of the ld.counsel for the assessee that the AO during the course of assessment proceedings has asked for the details of Rs.15,37,36,494/- incurred by the assessee towards advertisement and sales promotion expenses and the AO after being satisfied with the details furnished by the assessee has disallowed the free sample expenses of Rs.17,10,283/- being paid in violation of provisions of section 37(1) and an amount of Rs.94,07,535/- on adhoc basis being 20% of the amount spent on sales promotion expenses which according to him was for launching of new products. It is the submission of the ld.counsel for the assessee that since the AO after due verification of the details filed by the assessee has passed the order, therefore, merely because the ld.PCIT does not agree with the stand taken by the AO by not calling for further details of advertisement and sales promotion expenses and by not disallowing any expenditure out of the said advertisement and sales promotion expenses, he could not have invoked the jurisdiction u/s. 263 of the I.T.Act.

14. We find merit in the above argument of the ld.counsel for the assessee. A perusal of the assessment order clearly shows that the AO during the course of assessment proceedings had called for the details of advertisement and sales promotion expenses of Rs.15,37,40,000/- and the relevant observation of the AO at para 6.2 of the order reads as under:-

“ 6.2 In response to the notice, the assessee submitted that an amount of Rs.15,37,40,000/- towards sales promotional and advertisement expenses was incurred under various heads of expenses. Free samples of Rs.17,10,283/- were distributed as a part of promotional activities whereby new drugs/medicine were given as free samples to create awareness, promote the new product and get feedback from medical practitioners. The expenses incurred are part of the sales expenses.”

15. We find the assessee in response to the query raised by the AO has given the following details of Rs.15,37,40,000/- copy of which is available at page no.361 to 365 of the paper book.

18th December, 2019

To

The Assistant Commissioner of Income-tax - 7(2)(2),
Aayakar Bhawan,
Mumbai - 400 020.

Dear Sir,

Sub: Mylan Pharmaceuticals Private Limited ('Company' or
'Assessee' or 'Tax payer')-PAN: AABCM9323J

Assessment Year (AY): 2016-17

Ref: 1) Notice dated 28 August 2017 under section 143(2) of Income Tax Act, 1961 ('the Act')

2) Our letter dated 24.08.2018

3) Notice under section 142(1) of the Income tax Act, 1961 dated 28.08.2018

4) Our letter dated 17.09.2018

5) Notice under section 142(1) of the Income tax Act, 1961 dated 30.08.2019

6) Our letter dated 20.09.2019

7) Our letter dated 12.12.2019

8) Show-cause Notice dated 15.12.2019

We refer to the captioned show-cause notice issued by your goodself requesting the Company to show cause with respect to certain allowances claimed by the Company in its Tax Return.

1. Advertisement and sales promotion expenses - Rs. 15,37,40,000

1.1. During the assessment year under consideration, the company has incurred an amount of Rs. 15,37,40,000 towards advertisement and sales promotion expenses. Statement giving the brief , nature of this expenditure is given in **Annexure 'A'**.

At the outset, the Company submits that as per the provisions of section 37(1) of the Act, any expenditure other than capital and personal expenditure, which is laid wholly and exclusively for the purposes of the business, is an allowable expenditure. The Explanation 1 to section 37 of the Act states that any expense incurred for any purpose which is an offence, or which is prohibited by law shall not be deemed to have been incurred for the purpose of business and accordingly, no deduction or allowance shall be made in respect of such expenditure.

The Assessee has incurred the aforesaid expenses to stay in business, sustain market share and increase sales which is wholly and exclusively for the purpose of its own business. Further, considering the nature of market and industry in which it operates, it is imperative for the Company to spend on marketing the products to ensure that the

Company can operate in a competitive environment. Accordingly, the above expenditure, being incurred by the Company wholly and exclusively for the purpose of its business should be allowable to the Company.

In support of the above, the Company wishes to submit the following documentary evidences:

- Details of advertisement and sales promotion expenditure incurred during the year and the copies of invoices on sample basis are enclosed as 'Annexure E' to 'Annexure I'

- Statement showing the details of products launched during the year under consideration is

enclosed as 'Annexure J'

1.2 The Company submits that all the afore-mentioned advertisement and sales promotion expenditure are incurred in the ordinary course of the business of the Company and for the benefit of the business carried on by the Company. Further, the Company has not incurred any sales promotion expenses which are in the nature of freebies (i.e. gifts, travel facilities, hospitality etc.) to the doctors / medical practitioners and accordingly, Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 ('the IMC Regulations') and CBDT Circular NO.S/2012 dated August 1, 2012 ('CBDT Circular') does not apply.

As can be seen from the below table that spent on Advertisement and sales promotion expenses resulted in generating higher product sales.

Particulars	FY20 11-12	FY20 12-13	FY20 13-14	FY20 14-15	FY20 15-16	FY20 16-17	FY20 17-18	FY20 18-19
Advertisement & Sales Promotional Expenses	6.24	37.59	78.36	142.15	153.74	208.15	460.56	619.53
Products Sales	17.63	44.83	229.03	656.66	157.69	2736.86	3232.19	3712.04
%of Advertisement & Sales promotion Expenses to Product sales	35.39%	83.85%	34.21%	21.65%	9.77%	7.61%	14.25%	16.69%

2. Foreign travelling expenses-Rs.10,39,25,523

The Company submits that foreign travelling expenses are incurred on the employees travelling abroad in the ordinary course of the business of the Company.

- Details of the foreign travelling expenses incurred during the year is enclosed as 'Annexure K'
- Sample copies of the invoices are enclosed as 'Annexure L'

Accordingly, the expenditure on foreign travel being incurred by the Company wholly and exclusively for the purpose of its business should be allowable to the Company.

Further, the Company submits that the medical practitioners are not given any free travel facilities, hotel accommodation facilities etc. and accordingly, IMC Regulations and CBDT Circular does not apply.

We would further like to bring to your notice that out of Rs. 10,39,25,523, an amount of Rs.2,72,48,961 pertains to Trading segment and balance amount of Rs. 7,66,76,561 was incurred under Business support services segment which gets recharged to Group company with a mark up of 20% on cost.

3. Analytical charges - Rs. 4,07,53,618

The expenses incurred are primarily towards conducting analytical studies as required for obtaining Market authorization for specific geographies from respective Regulatory authorities to commercialize the MPPL products.

The Company submits the following documents in relation to the above:

- Details of analytical charges incurred during the year as 'Annexure M'
- Sample copies of the invoices as 'Annexure N'

We request your goodself to kindly take the above details on record.

In case your goodself is not satisfied with the above details / documents given till date including the current submission, we request your goodself to provide an opportunity to the Company to make further submissions / clarifications.

Note on advertisement & sales promotion expenditure

Below table summarizes the list of expenses which are forming part of advertising and sales promotions amounting to Rs.15,37,36,494/-.

Sr. No	Particulars	Amt (Rs.)
1	630760000 Sponsorship/ Marketing programs	7,49,87,461
2	630800000 Promotions expense	4,70,37,679
3	652000000 Meeting expense-Local/ In-House	1,89,94,398
4	630100000 Educational grants-external	52,31,477
5	631000000 Product samples	17,10,283
6	Other advertisement and sales promotion expenses	57,75,196
	Total	15,37,36,494

Below is a brief about the nature of expenses being recorded in each of the above GL codes:

1. 630760000 Sponsorships - marketing programs:

This represents expenses relating to contribution/sponsorship fee incurred towards Medical events/conferences on critical illness diseases (i.e., HIV, Cancer, Liver, etc.). Further, this also includes expense toward space bookings/stalls for showcasing the Company's product offerings.

- Details are enclosed as Annexure B.
- Copies of invoices on sample basis are enclosed as Annexure C.

The Company submits that afore-mentioned expenditure are incurred in the ordinary course of the business of the Company and for the benefit of the business carried on by the Company. As an illustration, reference is drawn to the Annexure -1 of the agreement between the Company and Sorento Healthcare Communications Private Limited enclosed as a part of Annexure C above wherein it may be observed that the benefits from the sponsorship expenses incurred arises to the Company.

2. 630800000 Promotions expense:

In this we record the following nature of expenses:

- a) Promotional material - Product related brochures; leaflets; other printing materials
- b) Diagnostic services
- c) Miscellaneous expenses for conducting and participating in the promotional events

- Details of the above expenses are enclosed as Annexure D.
- Copies of invoices on sample basis are enclosed as Annexure E.

3. 652000000 Meeting expense-local/in-house:

This represents the following nature of expenses:

- a) Regular Sales meeting expenses

- b) *Product workshop programmes*
 - c) *Training programmes for new product launches for sales staff.*
 - d) *Hotel expenses for conducting various training programmes. •Details of the above expenses are enclosed as Annexure F.*
 - *on sample basis are enclosed as Annexure G.*
- 4. 63010000 Educational grants-external:**

This represents expenses in relation to Continuous Medical Education (CME) programmes which are being conducted across India for creating awareness about various medical diseases (Critical & Non Critical diseases). It also includes the Honorarium paid to Doctors for visiting and educating on the disease awareness programmes.

- *Details of the above expenses are enclosed as Annexure H.*
- *Copies of invoices on sample basis are enclosed as Annexure I.*

5. 63100000 Product samples:

This represents expenses incurred on distribution of free samples undertaken as a part of promotional activities whereby new drugs /medicines are given as free samples to create awareness, promote the new product and get feedback from medical practitioners. The expenses incurred for samples are nothing but the sales promotion expenses incurred in the ordinary course of business for creating awareness of the products which shall be then be prescribed by them to the customers.

The Company submits that all the afore-mentioned advertisement and sales promotion expenditure are incurred in the ordinary course of the business of the Company and for the benefit of the business carried on by the Company. Further, the Company has not incurred any sales promotion expenses which are in the nature of freebies (i.e. gifts, travel facilities, hospitality etc.) to the doctors I medical practitioners and accordingly, Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (the IMC Regulations') and CBDT Circular NO.5/2012 dated August 1, 2012 (CBDT Circular') does not apply.

16. Since the assessee as per the paper book has filed the details of the entire advertisement and sales promotion expenses of Rs.15,37,36,494/- before the AO, therefore, under these circumstances, we have to see as to whether the order passed by the AO has become erroneous as well as prejudicial to the interest of the revenue.

17. We find the Hon'ble A.P High Court in the case of Spectra Shares & Script (P) Ltd vs. CIT, reported in 354 ITR 35 (A.P) while deciding an identical issue has observed as under:

“If there was an inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders u/s 263 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. An assessment order made by the Income Tax Officer cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. There must be some prima facie material on record to show that the tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation, a lesser tax than was just, has been imposed. The power of the Commissioner u/s power of the 263(1) is not limited only to the material which was available before the AO and in order to protect the interests of the Revenue, the Commissioner is entitled to examine any other records which are available at the time of examination by him and to take into consideration even those events which arose subsequent to the order of the assessment”.

18. We find the Hon'ble Supreme Court in the case of Malabar Industrial Company Ltd., Vs. CIT [243 ITR 83] (SC) held that the phrase 'prejudicial to the interest of Revenue' has to be read in conjunction with an erroneous order passed by AO. Every loss of Revenue as a sequence of order of the AO cannot be treated as prejudicial to the interest of Revenue. For example, when an AO adopted one of the courses permissible in law, and it has resulted in loss of Revenue, or where two views were possible and the Assessing Officer has taken one view which the CIT did not agree, it could not be treated as erroneous order prejudicial to the interest of Revenue, unless the view taken by the AO was un-sustainable in law.

19. Similarly, the Hon'ble A.P High Court in the case of CIT vs. Anand Food Products (39 Taxmann.com 187) (A.P -H.C) has held that where the Assessing Officer had made inquiries on issues under consideration and assessee had given detailed explanation by furnishing data, the decision of the Assessing Officer cannot be prejudicial to the interest of Revenue, simply because he did not make detailed

discussion. Various other decisions relied on by the learned Counsel for the assessee also support the proposition that when the Assessing Officer has made detailed inquiries by raising query on which the case was selected for scrutiny and the assessee has filed requisite details, the order cannot be held to be erroneous so as to invoke jurisdiction u/s 263 of the I.T. Act since the twin conditions are not fulfilled.

20. We further find, the Explanation (2) to proviso to section 263, which was introduced by the Finance Act, 2015 w.e.f. 1.6.2015 clearly states that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the Revenue, if in the opinion of the PCIT or CIT the order is passed without making inquiries or verification which should have been made. However, in the instant case, the Assessing Officer has made adequate inquiries by calling for details and the assessee has furnished its reply and the Assessing Officer after going through the same has accepted the explanation of the assessee. Therefore, the order of the Assessing Officer, in our opinion, cannot be said to be erroneous.

21. It has been held in various decisions that for invoking jurisdiction u/s 263 of the I.T. Act, the twin conditions namely, (a) the order is erroneous and (b) the order is prejudicial to the interest of the Revenue must be satisfied. However, in the instant case, the order may be prejudicial to the interest of the Revenue, but it cannot be said to be erroneous since the Assessing Officer, after conducting necessary inquiries by calling for information and having gone through the details furnished by the assessee has taken a possible view. Merely because the learned PCIT does not agree with the view taken by the

Assessing Officer, the order cannot be said to be erroneous or not a possible one. Under these circumstances, since one of the twin conditions i.e. the order is not erroneous is not satisfied, therefore, we hold that the learned PCIT is not justified in invoking jurisdiction u/s 263 of the I.T. Act. Accordingly, the order of the PCIT passed u/s 263 of the I.T. Act is set aside and the grounds raised by the assessee are allowed.

22. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 26th December, 2022.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 26th December, 2022.

Thirumalesh/sps

Copy to:

S.No	Addresses
1	Mylan Pharmaceuticals Private Limited Plot No.564/A/22, Road No.92 Jubilee Hills, Hyderabad Telangana-500 096
2	ITO,Ward-16(3) I.T.Towers, AC Guards Masab Tank Hyderabad-500 004
3	PCIT-8, Mumbai
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order