आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल ,लेखासदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./**ITA No.631/Chny/2022**
(निर्धारणवर्ष / Assessment Year: 2017-18)

M/s. Rajkumar Impex Pvt. Limited 93/119, 4th floor, St. Mary's Road, Abhiramapuram,Chennai-600 018.	**बनाम**/ Vs.	**PCIT** Chennai-4.
स्थायीलेखासं./जीआइआरसं./**PAN/GIR No. AAACR-3577-J**		
(अपीलार्थी**/Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Assessee by**	:	Shri B. Ramakrishnan (FCA) & Shri Shrenik Chordia, (ACA)– Ld. ARs
प्रत्यर्थीकीओरसे/**Revenue by**	:	Shri R. Mohan Reddy (CIT) – Ld.DR

सुनवाईकीतारीख**/Date of Hearing**	:	25-04-2023
घोषणाकीतारीख /**Date of Pronouncement**	:	16-06-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 As per the provisions of Section 263 of Income Tax Act, 1961, the revenue authorities namely Pr. Commissioner of Income Tax / Commissioner of Income Tax is vested with the supervisory powers of suo-moto revision of any order passed by the Assessing Officer [AO]. For the said purpose, the appropriate authority may call for and examine the record of any proceedings under the Act and may proceed to revise the same provided two conditions are satisfied-(i) the order of the

assessing officer sought to be revised is erroneous; and (ii) it is prejudicial to the interest of the revenue. If one of the conditions is absent i.e., if the order of the Income-tax Officer is erroneous but is not prejudicial to the revenue or if it is not erroneous but it is prejudicial to the revenue - recourse cannot be had to Section 263 of the Act as held by Hon'ble Supreme Court in **Malabar Industrial Co. Ltd. V/s CIT [243 ITR 83 10/02/2000]** & noted by Hon'ble Delhi High Court in **CIT V/s Vikas Polymers [194 Taxman 57 16/08/2010].** The Hon'ble Supreme Court in **Malabar Industrial Co. Ltd. V/s CIT (supra)** has held that the phrase 'prejudicial to the interests of the revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law. The said principal has been reiterated by Hon'ble Court in its subsequent judgment titled as **CIT V/s Max India Ltd. (295 ITR 282).** Similar principal has been followed in **Grasim Industries Ltd. V/s CIT (321 ITR 92).**

1.2 The Hon'ble Delhi High Court in **CIT V/s Vikas Polymers (supra),** further observed that as regards the scope and ambit of the expression "erroneous", Hon'ble Bombay High Court in **CIT vs. Gabriel India Ltd. [1993 203 ITR 108 (Bombay)]**, held with reference to Black's Law

Dictionary that an "erroneous judgment" means "one rendered according to course and practice of Court, but contrary to law, upon mistaken view of law; or upon erroneous application of legal principles" and thus it is clear that an order cannot be termed as "erroneous" unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as "erroneous" by the Commissioner simply because, according to him, the order should have been written differently or more elaborately. The Section does not visualize the substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is not in accordance with law.

1.3 Further, any and every erroneous order cannot be the subject matter of revision because the second requirement also must be fulfilled. There must be material on record to show that tax which was lawfully leviable has not been imposed as held in **Gabriel India Ltd.(supra).** However, the expression "prejudicial to the interest of the revenue", as held by the Supreme Court in the **Malabar Industrial Co. Ltd.** case, is not an expression of art and is not defined in the Act and, therefore, must be understood in its ordinary meaning. It is of wide import and is not confined to the loss of tax as held in various judicial pronouncements. At the same time, the words "prejudicial to the interest of the revenue", as observed in Dawjee Dadabhoy and Co. vs. S.P. Jain, (1957) 311 ITR 872 (Calcutta), can only mean that "the orders of assessment challenged are such as are not in accordance with law, in consequence whereof the lawful revenue due to the State has not been realized or cannot be realized." Thus, the Commissioner's exercise of revisional jurisdiction under the provisions of Section 263 cannot be based on whims or

caprice. It is trite law that it is a quasi-judicial power hedged in with limitation and not an unbridled and unchartered arbitrary power. The exercise of the power is limited to cases where the Commissioner on examining the records comes to the conclusion that the earlier finding of the Income-tax Officer was erroneous and prejudicial to the interest of the revenue and that fresh determination of the case is warranted. There must be material to justify the Commissioner's finding that the order of the assessment was erroneous insofar as it was prejudicial to the interest of the revenue.

1.4 The Hon'ble Delhi Court, in the cited decision, further observed that there is a fine though subtle distinction between "lack of inquiry" and "inadequate inquiry". It is only in cases of "lack of inquiry" that the Commissioner is empowered to exercise his revisional powers by calling for and examining the records of any proceedings under the Act and passing orders thereon. In Gabriel India Ltd. (supra), it was expressly observed:-

> "The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity [Parashuram Pottery Works Co. Ltd. vs. ITO, (1977) 106 ITR 1 (SC)].

It was further observed as under:-

> "From the aforesaid definitions as it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualize a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualized where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the

> case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion.
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> There must be some prima facie material on record to show that 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 what was just has been imposed.

1.5 The Hon'ble Supreme Court in **CIT V/s Amitabh Bachchan (69 Taxmann.com 170 11/05/2016)** held that the power of appeal and revision is contained in Chapter XX of the Act which includes section 263 that confers *suo-motu* power of revision in the Commissioner. The different shades of power conferred on different authorities under the Act has to be exercised within the areas specifically delineated by the Act and the exercise of power under one provision cannot trench upon the powers available under another provision of the Act. In this regard, it must be specifically noticed that against an order of assessment, so far as the revenue is concerned, the power conferred under the Act is to reopen the concluded assessment under section 147 and/or to revise the assessment order under section 263. The scope of the power/jurisdiction under the different provisions of the Act would naturally be different. The power and jurisdiction of the revenue to deal with a concluded assessment, therefore, must be understood in the context of the provisions of the relevant sections. While doing so, it must also be borne in mind that the legislature had not vested in the revenue any specific power to question an order of assessment by means of an appeal.

Regarding applicability of Section 263, what has to be seen is that a satisfaction that an order passed by the Authority under the Act is erroneous and prejudicial to the interest of the revenue is the basic pre-condition for exercise of jurisdiction under section 263. Both are twin conditions that have to be conjointly present. Once such satisfaction is reached, jurisdiction to exercise the power would be available subject to observance of the principles of natural justice which is implicit in the requirement cast by the section to give the assessee an opportunity of being heard. Further, there could be no doubt that so long as the view taken by the Assessing Officer is a possible view, the same ought not to be interfered with by the Commissioner under Section 263 merely on the ground that there is another possible view of the matter. Permitting exercise of revisional power in a situation where two views are possible would really amount to conferring some kind of an appellate power in the revisional authority. This is a course of action that must be desisted from.

1.6 The Hon'ble Bombay High Court in **Moil Ltd. Vs. CIT [81 Taxmann.com 420]** observed that if a query is raised during the assessment proceedings which was responded to by the assessee, the mere fact that the query was not dealt with in the assessment order then it would not lead to a conclusion that no mind has been applied to it and the Assessing Officer is not expected to raise more queries, if he was satisfied about the admissibility of claim on the basis of the material and the details supplied.

1.7 An Explanation-2 has been inserted by Finance Act 2015 in Section 263 with effect from 01/06/2015 to declare that order shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if in the opinion of appropriate authority-(1) the order was

passed without making inquiries or verifications which should have been made; (ii) the order is passed allowing any relief without inquiring into the claim; (iii) the order is not in accordance with any direction or instructions etc. issued by the Board u/s 119; or (iv) the order was not in accordance with binding judicial precedent.

2.1 Keeping in mind aforesaid principle, we proceed to adjudicate the captioned appeal. In this appeal, the assessee has challenged the validity of revisional jurisdiction u/s 263 as exercised by Ld. Pr. Commissioner of Income Tax, Chennai-4 (Pr. CIT) for Assessment Year 2017-18 vide order dated 30.03.2022. The revision has been sought against an order passed by Ld. Assessing Officer (AO) u/s 143(3) on 28.12.2019. The assessee being resident corporate assessee is stated to be engaged in the business of real estate. The grounds raised by the assessee read as under: -

> 1. For that the order of the Learned Principal Commissioner of Income tax, Chennai u/s 263 of the Income Tax Act is opposed to law, facts and circumstances of the case.
> 2. For that the Learned Principal Commissioner of Income tax-4, Chennai is not justified in invoking the provisions of Section 263 of Act when the impugned assessment made under Section 143(3) of the Act is not erroneous and prejudicial to the interest of the revenue and thereby erred in setting aside the order passed by the Assessing Officer u/s 143(3) of the Act dated 28.12.2019.
> 3. For that the order of the Learned Principal Commissioner of Income tax-4, Chennai has erred in holding that the Assessing Officer has failed to make necessary enquiry to bring on record all facts without appreciating that specific query was raised during the assessment proceedings on issue under consideration of claim of bad debts u/s 36(1)(vii) of the Act and all relevant details in response thereof was filed by the appellant and accepted by the assessing officer.
> 4. For that the order of the Learned Principal Commissioner of Income tax, Chennai has set aside the assessment with a direction to examine the issue of claim of bad debts u/s 36(1)(vii) of the Act thereby the PCIT is not justified in invoking his jurisdiction u/s 263 of the Act.

As is evident, the assessee has contested the validity of revisional jurisdiction u/s 263 as exercised by Ld. Pr. CIT on the ground that there

was no error in the order and the conditions of Sec.263 were not fulfilled. During the course of original scrutiny assessment proceedings, Ld. AO raised a specific query on the issue of bad debts claimed by the assessee and all the relevant details were filed by the assessee in response to the same. Accordingly, the jurisdiction could not be said to be validly exercised.

2.2 The Registry has noted the delay of 59 days in the appeal, the condonation of which has been sought by the assessee on the strength of an affidavit. It has been submitted that one of the director was a non-resident and other director was a senior citizen and faced adverse medical conditions. The same led to a delay in filing the appeal. Though Ld. CIT-DR has opposed the admission of appeal, however, considering the length of delay, we accept the plea of Ld. AR and admit the appeal for adjudication on merits. The Ld. CIT-DR has filed written submissions and cited various case laws before us supporting the case of the revenue. The Ld. AR has similarly relied on various case laws supporting the case of the assessee. Reliance has particularly been placed on the decision of Hon'ble High Court of Delhi in **CIT vs. Sunbeam Auto Ltd. (183 Taxman 436)** wherein it was held that if the view taken by Ld. AO was one of possible views, the assessment order could not be held to be prejudicial to interest of revenue and therefore, Tribunal was quite justified in setting aside revisionary order. Having heard rival submissions and upon perusal of case records including documents placed in the paper book, our adjudication would be as given in succeeding paragraphs.

Assessment Proceedings

3.1 The material facts are that an assessment for the year under consideration was framed by Ld. AO u/s 143(3) of the Act on 28.12.2019. During the course of assessment proceedings, notices u/s 142(1) were issued to the assessee calling for requisite details. The assessee furnished the details called for through e-proceedings from time to time. Upon examination of details as furnished by the assessee, the returned income was accepted by Ld. AO.

3.2 In notice u/s 142(1) issued on 25.11.2019, the assessee was asked to furnish various details on various points numbering 18 in total. In point No.14, the assessee was asked to file complete details and workings with respect to sale of business undertaking with a note on specific compliance of the same. In point No.16, the assessee was directed to furnish the details of bad debts written-off along with a note on allowability of the same. The assessee furnished detailed note and working of bad-debts written-off as under: -

> **Write-off** of **Bad Debts amounting to Rs.201,30,97,206**
>
> The Appellant, during the subject Assessment Year, had written off Bad debts to the tune of Rs. 201,30,97,206/- relating to quality rejections on purchases made, the breakup of which is as enclosed as Annexure 1**.**
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> The Company had made purchases from various parties in earlier years, out of which certain materials were rejected due to quality issues and a debit note was issued in this regard and the same was debited to the P&L Account of the assessee in respective years. However, when there was a transfer of assessee's business in the current financial year, the said debt was not taken by the acquirer and left with the assessee.
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> Further, the said claim was not accepted by the supplier and hence the same was written off as irrecoverable as 'Bad Debts' in the P&L account of the company in the subject year.
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> In this regard, it is submitted that the CBDT vide circular No. 12/2016 dated 30-05-2016 amended the provisions of section 36(2) of the Income Tax Act, 1961 so as to eliminate the litigation on the issue of allowability of bad debts by removing the condition of establishing irrecoverability of the debt by the taxpayer with effect from 1st April 1989.
>
> Further, the Hon'ble Supreme Court in the case of TRF Ltd in CA Nos. 5292 and 5294 of2003 vide judgement dated 09.02.2010 has stated that the position of law is well settled. *"After01.04.1989, for allowing deduction for the amount of any bad debt or part thereof under section 36(1)(vii) of the Income Tax Act, it is not necessary for*

assessee to establish that the debt, in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the books of accounts of assessee."
In view of the above, claim for any debt or part thereof in any previous year, shall be admissible, if it is written off as irrecoverable in the books of accounts of the assessee for the previous year and it fulfills the conditions stipulated in section 36(2) of the Act.
Further, the Madras High Court in the case of First Leasing Company of India Ltd vs. Commissioner of Income Tax [2013] 33 taxmann.com 626 (Madras)has passed a similar decision following the decision passed by the Supreme Court in the case of TRF Ltd.
Hence the said debt is allowable as written off in the books of accounts.
Without prejudice to the above claim made by the assessee as 'bad debts', considering the nature of above loss, the same is allowable u/s 28 r.w.s 37 of the Act as business loss.
Further, it is submitted that when the assessee receives the amount claimed in respect of debit note from the supplier, the assessee submits that the same would be offered to tax u/s 41(1) of the Act.
Hence, we request your authority to kindly allow the said claim, for which act of justice we shall ever remain grateful."

From the above, it is clear that the assessee furnished complete break-up of the bad debts along factors leading to write-off the same. The assessee also relied on the binding judicial precedent of Hon'ble Supreme Court in the case of TRF Ltd. (CA Nos.5292 and 5294 of 2003) as followed by jurisdictional High Court in the case of First Leasing Company of India Ltd. vs. CIT (33 Taxmann.com 626). The party-wise details were also furnished along with the reply. The assessee also made alternative claim u/s 28 r.w.s. 37 of the Act. The copy of all these documents has been placed on page nos. 136 to 148 of the paper book.

3.3 Apparently, convinced with assessee's reply, Ld. AO chose not to raise any further query in this regard and accepted the claim so made by the assessee. In the background of above facts, it could be stated that a view was taken by Ld. AO in the matter and while taking that view, the ratio of binding judicial precedents was followed. Thus, it was a case where Ld. AO, making certain enquiries, accepted the claim of the

assessee with due application of mind and the said view could not be said to be contrary to any law or not sustainable under law.

Revisionary Proceedings

4.1 Subsequently, upon perusal of case records, Ld. Pr. CIT held that the assessment order was erroneous and prejudicial to the interest of the revenue and accordingly, the assessee was put to a show cause notice. The Ld. Pr. CIT observed that the claim made by the assessee was not in accordance with the provisions of Sec.36(1)(vii) since the claims includes items like TDS payable, advance premium deposit, unpaid wages, salary and wages payable, loan given to various parties, prepaid expenses, DEPB receivable, duty drawback receivable, electricity deposit, provision for bad and doubtful debts etc. These items were not revenue in nature and since the business was sold during the year, the said items could not be classified as revenue loss since it could be claimed only in case of a going concern. The claim made by the assessee u/s 36(1)(vii) was to be withdrawn since it was intended to avoid capital gains which arose on account of transfer of business on a slump sale basis u/s 2(42C). The Ld. AO did not verify this issue while making the assessment.

4.2 The assessee defended the assessment order on the ground that notice issue u/s 263 was without verification of facts. The said notice could not be issued on issues which were already on record and on which only one opinion was possible. Further, the said notice could not be issued when two views were possible. Reliance was placed on various judicial precedents to support the same. It was further submitted that the assessment was completed and deduction was allowed after due verification and after making necessary enquiries.

4.3 The assessee explained that there was transfer of assessee's business during the year. The debts written-off by the assessee were not taken over by the acquirer of the business. It was further stated that the assessee had made purchases from various parties in the earlier years out of which certain materials were rejected due to quality issues and debit notes were issued. However, the said claim was not accepted by the suppliers and accordingly, these were written-off as irrevocable as bad debts in the profit and loss account. The complete list of the same was enclosed with the reply.

4.4 The assessee also submitted that as per the provisions of Sec. 36(1)(vii), before claiming an amount as a bad debt, the same should have been a proper debt and the bad-debt would be admissible as deduction only if it is taken into account in computing the total income of the assessee of the previous year or in earlier years. Generally, when the goods are sold on credit, there arises a debt and the corresponding credit would be in the form of sales which will be credited to Profit & Loss account thereby it would be taken into account in computing the total income of the assessee. Thereafter, if the debt is partially or fully irrecoverable, the same could be claimed as bad debt by writing off in the books of accounts. The assessee also submitted that certain items would be allowable deduction u/s 28 r.w.s. 37 of the Act. With respect to the allegation that the bad debts was written-off to avoid capital gains on transfer of business on slum sale basis u/s 2(42C), it was submitted that the business was sold pursuant to Business Transfer Agreement dated 14.07.2016. In terms of Schedule-6, the receivables attributable to quality claims were specifically excluded from the agreement on account of them being non-recoverable. The decision to exclude these

receivables were taken as part of the due diligence exercise conducted by the transferee company under the agreement. Therefore, the said allegation was incorrect. Alternatively, the claim would be allowable as business loss u/s 37 r.w.s. 28 of the Act and therefore, the revenue was not prejudiced in any manner.

4.5 However, not convinced, Ld. Pr. CIT ordered for revision of the order with following observations: -

> 5. The submissions of the assessee company and the argument of the AR of the assessee company were carefully considered. The submissions of the assessee that "The company RCIPL incorporated on 10.6.2016 has been formed as a new company to take over RIPL's business including Assets and Liabilities" is to be considered. However, it is seen that the AO has not made detailed enquiries regarding the write off of all these bad debts. Therefore, the assessment order passed under section 143(3) dated 28.12.2019 for the assessment year 2017-18 by the Assessing Officer is considered erroneous as it is prejudicial to the interests of revenue, within the meaning of Sec. 263 of the I.T. Act, 1961, as the Assessing Officer has failed to clearly establish that the claim for 'bad debts' by the assessee has been substantiated while allowing the said claim of the assessee in the Assessment order and hence the said assessment is set aside with a direction to the Assessing Officer to make detailed enquiries regarding the bad debts, especially of the debts exceeding Rs.1 Crore and to pass an order afresh within the stipulated time, after providing adequate opportunities to the assessee and considering the submissions of the assessee."

Aggrieved as aforesaid, the assessee is in further appeal before us.

Our findings and Adjudication

5. In the background of above stated factual matrix, it could be seen that an assessment was framed by Ld. AO u/s 143(3). During the course of scrutiny assessment proceedings, notices u/s 142(1) were issued wherein the assessee was directed to file the requisite details. In notice dated 25.11.2019, the assessee was asked to file complete details and workings with respect to sale of business undertaking with a note on specific compliance of the same. The assessee was also directed to furnish the details of bad-debts written off along with a note on allowability of the same. The assessee furnished a detailed note along

with working of the same and party-wise balances thus written-off. The assessee also explained the factors leading to write-off the same. The assessee also made alternative claim u/s 28 r.w.s. 37 of the Act. Having satisfied with assessee's claim, Ld. AO chose not to raise any further query in this regard and accepted the claim so made by the assessee. The view taken by Ld. AO was in conformity with the binding judicial precedent of Hon'ble Supreme Court in TRF Ltd. (supra) and the same could be said to be one of the possible views in the light of explanation furnished by the assessee. It was also a case wherein specific query was raised by Ld. AO which was duly replied by the assessee to the satisfaction of Ld. AO. The claim was finally accepted with due application of mind. It could very well be said that the aforesaid view was not contrary to any law or not sustainable under law.

6. We find that Ld. Pr. CIT seek revision of the order by observing that some of the items claimed by the assessee was not in accordance with the provisions of Sec.36(1)(vii). These items were not revenue in nature and since the business was sold during the year, the said items could not be classified as revenue loss since it could be claimed only in case of a going concern. However, we find that the business of the assessee had not closed down and the assessee has merely sold an undertaking on slump sale basis which has been offered to capital gains tax as per the extant provisions. Therefore, the items not taken over by the acquirer were left with the assessee and the same belonged to the assessee only. Hence, it could not be said that the expenditure was not revenue in nature and any loss arising there from could not be claimed as business loss. Further, the sale of business undertaking is duly backed up by the business transfer agreement, which is not under doubt. The allegation

that the impugned claim was intended to avoid capital gains is not supported by any concrete material on record rather the same is merely an apprehensive in nature which could not lead to revision of the order. The twin conditions that the order was erroneous and prejudicial to the interest of the revenue could not be said to have been fulfilled. The cited case laws support the case of the assessee. The assessee had also filed a detailed reply before Ld. Pr. CIT, justifying its claim so made. In the impugned order, Ld. Pr. CIT has not controverted the same and reached a conclusion as to how the claim was not acceptable. Further, it is not a case of 'no enquiry' but it is a case where due enquiries were made by Ld. AO during the course of assessment proceedings and the claim was accepted with due application of mind. Simply because further queries were not raised or the fact that the issue was not dealt with in the assessment order, would not make the order erroneous since specific queries were raised which were duly responded to by the assessee.

7. The Ld. CIT-DR has referred to the decision of Third member in the case of **Tejinder S. Makkar vs. ACIT (61 ITD 57).** Upon study of the same we find that in that case the assessee advanced interest free loans to his wife though bank accounts. The Ld. AO did not conduct enquiry as to the source of advances by the assessee nor the assessee produce any evidence to support the same. Therefore, revision was held to be justified. The same is not the case here and this case law is distinguishable on facts.

8. In the written submissions, Ld. CIT-DR has averred that the assessee had not been forthcoming with the submissions of the details before Ld. AO regarding the bad debts till the time-barring date. The note on bad debts as well as the list containing the requisite details was

furnished only four days before time-barring date leaving no time for AO to enquire into the correctness or genuineness of the claim. The AO called out the details but did not carry out the requisite enquiries regarding the bad debts before accepting the claim of the assessee. Therefore, this was a case of no-enquiry / no-verification by Ld. AO. However, we are not inclined to accept this argument on the face of the assessment order. We find that a specific query was raised by Ld. AO during the course of assessment proceedings and the same was duly responded to by the assessee. The assessment order also takes note of the fact that the requisite details were furnished by the assessee and no comments have been made on the conduct of the assessee in the assessment order, in this regard. Therefore, the plea raised by Ld. CIT-DR could not be accepted.

9. Another line of argument is that certain items as pointed out in the revisional order could not be allowed u/s 36(1)(vii). It has been submitted that the assessee had explained that the debts arose as a result of debit note raised on purchase due to quality issues. The AO failed to carry out enquiries regarding the debit notes. The Ld. AO did not enquire when the assessee had sold the entire stock purchased and he did not enquire as to how the purchases were accounted for in the earlier years & how the stock was adjusted. This argument would stand negated by the fact that no discrepancy has been pointed out either by Ld. AO or by Ld. Pr. CIT in the purchases made by the assessee or stock maintained by the assessee. The only allegation in the revisionary order is that certain items claimed by the assessee could not be held to be revenue in nature since this would be allowed only when the assessee is a going concern. No other doubt, whatsoever, has been raised against the claim so made

by the assessee. The allegation that the amounts were written-off so as to avoid capital gains on slum sale is bereft of any concrete material on record. Therefore, this argument also could not be accepted.

10. The Ld. CIT-DR also referred to the recent decision of Hon'ble Supreme Court in the case of **Khyati Realtors Pvt. Ltd. vs. CIT (141 Taxmann.com 461)** for the submission that the item of expenditure falling u/s 30 to 36 will not be covered by Section 37. We find that the assessee had made a claim u/s 36(1)(vii) and considering the nature of certain items, made partial claim u/s 28 r.w.s. 37 of the Act which was accepted by Ld. AO. The subsequent decision of Hon'ble Supreme Court could have never been considered by Ld. AO while framing the assessment on 28.12.2019. In fact, no apprehension has been raised by Ld. AO against the claim so made by the assessee. It was a case of adoption of one of the possible views which is not contrary to any law.

11. Therefore, considering the entirety of facts and circumstances, we accept the various arguments of Ld. AR and hold that revision of the order was no sustainable in the eyes of law and hence, liable to be quashed. We order so.

12. The appeal stand allowed in terms of our above order.

Order pronounced on 16th June, 2023

Sd/-	**Sd/-**
(MAHAVIR SINGH)	**(MANOJ KUMAR AGGARWAL)**
उप□ध्यक्ष /VICE PRESIDENT	**लेख□सदस्य /ACCOUNTANT MEMBER**

चेन्नई/ Chennai; दिनांक/ Dated :16-06-2023
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :
1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त/CIT 4. विभागीयप्रतिनिधि/DR 5. गार्डफाईल/GF