

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

ITA No.2528/Del/2024
(ASSESSMENT YEAR 2015-16)

ITA No.2529/Del/2024
(ASSESSMENT YEAR 2016-17)

Mahesh Kumar Verma 1245, IVTH Floor, Kucha Mahajani, Chandni Chowk, Delhi-110006 PAN:ACAPV8456B	Vs.	Pr. CIT, Central KNP, Meerut.
(Appellant)		(Respondent)

Assessee by	Shri Salil Aggarwal, Sr. Advocate Shri Shailesh Gupta, Advocate Shri Madhur Aggrawal, Advocate
Department by	Ms. Baljeet Kaur, CIT-DR

Date of Hearing	14/11/2024
Date of Pronouncement	07/02/2025

ORDER

PER MAHAVIR SINGH, VP:

These two appeals by Assessee are arising out two different orders of passed by Principal Commissioner of Income Tax, Kanpur u/s 263 of the Act (hereinafter referred to as 'the Act') vide of even

date 27/03/2024 for the Assessment Years 2015-16 and 2016-17. Assessments were framed by the ACIT, Central Circle-II, Noida for both the assessment years u/s 153C r.w.s 143(3) of the Act vide orders of even date 30/12/2021.

2. The issue involved in both the appeals and the facts and circumstances are exactly identical, and hence will take the facts and circumstances from lead year i.e., Assessment Year 2015-16. Similarly, the grounds raised in both the appeals are exactly identical except the quantum. Hence, we will adjudicate the appeal for Assessment Year 2015-16 first.

3. The only issue in this appeal of assessee as regards to revision order passed by PCIT u/s 263 of the Act on the aspect of lack of enquiry and consequently non-disallowance of unaccounted purchases made in cash of Rs.5,83,99,000/- by not invoking the provision of section 40A(3) of the Act. For this, assessee has raised the following ground No.1:-

“1. That having regard to the facts and circumstances of the case and in law, the assessment order passed by ld.AO u/s 153C is neither erroneous nor prejudicial to the interest of revenue and Ld. Pr. CIT (central) erred in invoking the provisions of section 263 of the Income Tax act and also erred in setting aside the assessment order passed by ld.AO u/s 153C/143(3) for fresh enquiry without properly appreciating the facts.

1.1 The Ld. Pr. CIT (Central) has erred both on facts and in law in ignoring the fact that the issue raised by him in notice u/s 263 was before the Id.

AO and as such the jurisdiction on this issue u/s 263 cannot be assumed by him.

1.2 The order passed Ld. by Pr. CIT(central) under section 263 of the Income Tax Act is unsustainable as power to revise can be invoked in the case of no/lack of enquiry and the proceeding under Section 263 cannot be used for substituting opinion of the Id A.O. by that of the Id. Pr. CIT(central).

1.3 The Id Pr. CIT(central) erred both on facts and in law in setting aside the issue with regard to disallowance u/s section 40A(3) and applicability of section 40A (3) in respect of alleged unaccounted purchase of Rs5,83,99,000/- to the file of the Ld. AO without properly appreciating the explanation of the assessee.”

4. Brief facts are that search u/s 132 of the Act was conducted by the Income Tax Department on assessee on 15/12/2016. Consequently, notice u/s 153C of the Act was issued and in lieu of that assessee filed return of income on 18/03/2021. The Assessing Officer completed the assessment u/s 153C r.w.s 143(3) of the Act dated 30/12/2021. The Assessing Officer assessed income at Rs.1,13,83,110/ after making addition of Rs.84,50,400/- as unexplained investment and also on account of unaccounted purchases made in cash by applying profit rate of 2% by adding the sum of Rs.11,67,980/-. The PCIT Central, Kanpur on perusal and verification of assessment record and assessment order passed u/s 153C r.w.s 143(3) of the Act noted that the assessee has made transaction of sale and purchase in cash carried with Jindal Bullion Ltd. (JBL). During the relevant Financial Year 2014-15 relevant to Assessment Year 2015-16 for an amount of

Rs.5,83,99,000/- purchases being made in cash by the assessee from JBL and the purchases were not recorded in the Books of Accounts by the assessee. Hence, the AO applied gross profit rate on account of unaccounted purchases made in cash at the rate of 2%. PCIT noted that there is violation of the provisions of section 40A(3) of the Act in making purchases in cash and, according to the show cause notice the provision of section 40A(3) of the Act is override section& it clearly provides that 100% disallowance be made in case of cash purchases. Accordingly, the PCIT was of the view that the assessment order passed by AO is erroneous and prejudicial to the interest of Revenue for the reason that the AO failed to make disallowance of cash purchases u/s 40A(3) of the Act. The PCIT issued show cause requiring the assessee to explain the same. The assessee replied through ITBA and contended that the assessee Sh. Mahesh Kumar Verma is proprietor of Somya Bullion and Jewellers and is engaged in the business of sale and purchase of gold and silver. It was contended that there are transaction related to 3rd parties which are mentioned and not related to assessee and gave instances for the same. The assessee contended that the assessee has filed complete details of its transactions in the ledger account seized during the search is not related to assessee and moreover the said ledger is not complete as there are missing transactions of various parties. It was also claimed before AO during the course of assessment proceedings by

assessee that cash transactions mentioned in the ledger account named as MT and 01 Chintu Capital do not pertain to assessee. According to the assessee, the Assessing Officer finalized the assessment by estimating the profit @ 2% on account of unaccounted purchases mentioned in the ledger and digital data found from JBL. The assessee before PCIT filed complete details of transaction and also argued that complete verification and enquiry was conducted by the Assessing Officer and after that he applied profit rate of 2% on unaccounted purchases. Hence, it was requested by assessee that the revision proceedings u/s 263 of the Act initiated against the assessee be dropped.

5. The PCIT noted in his revision order that the AO added the profit rate @ 2% on total unaccounted purchases but failed to invoke the provisions of section 40A(3) of the Act. For this, he recorded this fact in para 7.2 as under:

“7.2 Further, as per seized Hazir account of Shri Mahesh Kumar Verma with code name 'MT' and '01 Chintu capital' reflected frequent transactions like 'cash received' and 'cash paid in lieu of the gold with JBL. Further, as per the seized documents and available assessment records it is seen that the cash transactions mentioned in the ledger seized are regarding sale and purchase of gold carried out by the assessee with JBL and during A.Y. 2015-16, an amount of Rs.5,83,99,000/- was paid in cash by the assessee to JBL for cash purchases made and the said purchases were not recorded by the assessee in his books of accounts.

Further, the assessing officer in assessment order mentioned that the gross profit of the assessee is unaccounted and needs to be added back

to the assessee's income, hence, the AO has added gross profit @2% on total unaccounted purchase of Rs.5,83,99,000/-. However, as per section 40A(3) of IT Act, 1961 clearly provides that 100% of cash purchase are to be disallowed and added back to the income of assessee."

The PCIT finally stated that AO has not applied his mind for making necessary disallowance u/s 40A(3) of the Act and he observed in para 8 as under:-

"8. In light of discussion in para above it can be inferred that there is non-application of mind on the part of Assessing Officer in as much as the necessary disallowance u/s. 40A(3) of the I.T. Act, 1961 and verification of facts/enquiries which should have been made, have not been made, making the assessment order erroneous, prejudicial to the interest of revenue in terms of Clause (a) of Explanation 2 u/s 263 of the Income Tax Act, 1961."

And finally he set aside the assessment order passed by AO u/s 153C r.w.s 143(3) of the Act and directed the AO to make proper enquiries including third parties enquiry and investigation etc. and apply his mind for invocation of provisions of section 40A(3) of the Act. Aggrieved, assessee is in appeal before Tribunal.

6. Before us, Ld. Counsel for the assessee argued that the AO while framing assessment has actually gone into the seized material i.e., digital data maintained in the software called HazirJohri seized from the residence cum business premises of Sh. Kushagra Jindal promoter and Director of JBL. The AO noted in his assessment order in para 1 that the digital data found during search on JBL Group of gross purchases made by assessee Sh.

Mahesh Verma for financial year 2014-15 and 2015-16 and on this premises only assessment was framed u/s 153C r.w.s 143(3) of the Act. The Ld. Counsel for the assessee argued and drew our attention to the submissions filed before the AO during assessment proceedings wherein complete detail of unaccounted purchases/cash purchases was explained as under:-

“Without prejudice to above that ledger seized during search are not related to assessee and transactions in cash are not related to assessee it is hereby submitted that addition in respect of cash received and paid cannot be separately made in the hands of assessee in view of the following:-

1) Ledger named MT and Chintu capital found during search are with regard to sale and purchase of gold and silver and all the receipt and payment mentioned in the ledger are with regard to trading of gold and silver

ii) It is the accepted fact that assessee is engaged in the business of trading of gold and bullion and cash payment / receipt mentioned in seized ledger is trading receipt/payment carried during the course of business and as such only the gross profit on sale /purchase can be added to taxable income.

iii) In the satisfaction note total receipt by Jindal Bullion Ltd is Rs.20,54,09,564/- and total payment by Jindal Bullion Ltd is Rs.13,62,44,562/-. However as per our working total cash receipt is Rs.21,77,74,489/- and cash payment is Rs.15,95,19,106/- (our working in respect of cash receipt and payment as per ledger seized during search is enclosed). In this regard year wise gross profit on the unaccounted sale and purchase mentioned in satisfaction note is being worked out as under:-

Assessment Year 2015-16 2016-17 2017-18

Unaccounted sale 5,83,99,000/- 9,57,27,820/- 6,17,91,286/-

Unaccounted purchase 5,83,99,000/- 12,80,98,664/- 3,12,76,825/-

Gross profit rate (as per books) 0.09% 0.37% 0.32%

Unaccounted Gross profit on purchase or sale whichever is greater 52,5594,73,9651,97,732

As such addition cannot exceed unaccounted profit worked out above if the submission of the assessee that ledger seized during search is not related to assessee and cash transactions mentioned in the ledger are not related to assessee are not accepted.”

Learned Counsel for assessee drew our attention to para 9, 10 and 11 of the assessment order, wherein the AO after carrying out enquiry and was conscious of the fact that the purchase of Rs.5,83,99,9000/- is not recorded in the books of account, and hence he estimated the profit rate of the above purchases at the rate of 2%. The AO worked out the profit rate at 2% by discussing this issue in para 9,10,11 as under:-

“9. It has been submitted and has also been observed that Ledger named MT and Chintu capital found during search are with regard to sale and purchase of gold and silver and all the receipt and payment mentioned in the ledger are with regard to trading of gold. In the ledger named MT and Chintu the quantity of gold in gms is mentioned against cash received and cash paid. The nature of business of the assessee is also trading of gold and bullion.

10. It has also been found that banking transactions with JBL are with regard to sale and purchase of bullion. In the account seized during search from JBL, the quantity of gold is mentioned against each sale and purchase. As such keeping in view the documents placed on record and document seized, undersigned is of the opinion that cash transactions mentioned in ledger seized are with regard to sale and purchase of gold carried out by the assessee with JBL. However as the assessee has not recorded sales of Rs.20,00,000 and not recorded purchase of Rs.5,83,99,000 in its books of accounts, its gross profit is unaccounted and hence needs to be added back to the assessee's income.

11. The assessee in its submission has worked out the gross profit of Rs 52,559 for A.Y. 2015-16, which is calculated @ 0.09% on unaccounted purchase or sale whichever is higher. This percentage is not acceptable as it is very low keeping in view of the nature of business. As such gross

profit @ 2% is being applied on total of unaccounted sale/purchase whichever is larger. Hence Rs. 11,67,980 which is 2% of unaccounted purchase (Rs. 5,83,99,000) is added to return income as unexplained money w/s 69A of the I.T. Act. Penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 is being initiated.”

In view of the above, the Ld. Counsel for the assessee stated that once profit rate is estimated no disallowance is possible invoking the provisions of section 40A(3) of the Act. Hence, Ld. Counsel for the assessee assailed the revision order passed by the PCIT u/s 263 of the Act for the reason that the AO has carried out entire verification and completed the enquiry in regard to seized material for cash payments on account of purchases made by assessee. Secondly, no disallowance is possible invoking the provisions of section 40A(3) of the Act where assessment is made by applying gross profit rate.

7. On the other hand, the Ld. CIT-DR Ms. Baljeet Kaur relied on the revision order passed by PCIT and stated that the revision order is in term of Explanation-2 to section 263 of the Act where necessary enquiry verification is not carried out by the Assessing Officer while completing assessment and, hence, order has become erroneous in so far prejudicial to the interest of Revenue. Secondly, she argued that there is no bar in the Act for making addition on gross profit rate as well as for invoking the provisions of section 40A(3) of the Act. She stated that the jurisdiction to invoke the provisions of section 40A(3) is for cash payment as well

as she argued that the order of PCIT be upheld and AO be directed to conduct enquiry accordingly.

8. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the admitted facts are that the Assessing Officer while completing assessment u/s 153C r.w.s 143(3) has conducted enquiry in regard to digital data maintained in software called Hazir Johri seized from residential-cum-business premises of the JBL group cases. We also noted that the Assessing Officer has framed assessment after considering the seized material which depicts that cash sales made by assessee amounting to Rs.5,83,99,000/-, the Assessing Officer estimated the profit rate after considering the facts of the case that the ledger account named MT &01 Chintu Capital found during the search on JBL Group of cases mixed the transaction relating to various parties which include assessee. It means that the cash payment of different transactions mentioned in seized ledger are trading receipts which was carried during the course of business and as such only the gross profit on unaccounted sales/purchases can be added as taxable income of the assessee. The AO has rightly added the same and there is no further scope of disallowance by invoking the provisions of section 40A(3) of the Act. This view of ours is supported by the decision of Hon'ble Rajasthan High Court in the

case of PCIT vs. Jadau Jewellers and Manufactures (P) Ltd.

Wherein it is held as under:

"The counsel for the appellant has framed the following substantial questions of law:

"1. Whether on the facts and circumstances of the case and in law the decision of the Hon'ble Income-tax Appellate Tribunal was perverse in restricting trading addition to only Rs.1,52,599 out of the total trading addition of Rs.91,37,068 made by the Assessing Officer ignoring the facts brought out by a qualified chartered accountant in special audit report which is based on very reasonable analysis of the facts derived from the seized material and information provided by the assessee during special audit process ?

2. Whether on the facts and circumstances of the case and in law the Hon'ble Income-tax Appellate Tribunal was justified in confirming the order of the learned Commissioner of Income-tax (Appeals) deleting the disallowance of Rs. 2,71,50,538 made by the Assessing Officer under section 40A(3) of the Income-tax Act, 1961 ignoring the facts that addition under section 40A(3) is entirely different from trading results of the assessee and this allowance has been made out of the transaction in the seized duplicate/parallel books of account and not out of the regular books of account ?

3. Whether on the facts and circumstances of the case, the finding of the Tribunal is perverse, contrary to the record and untenable in the eye of law?"

3 The counsel for the appellant has taken us through the order of the Assessing Officer as well as the Commissioner of Income-tax (Appeals) and contended that the view taken by the Assessing Officer is required to be restored.

3.1 The first issue is now covered by the decision of this court and the Tribunal has followed the same.

3.2 In that view of the matter, the Tribunal has not committed any error in deciding question No. 1.

3.3 Regarding question No. 2, the issue is covered by the decision of the Punjab and Haryana High Court in *CIT v. Smt. Santosh Jain* [2008] 296 ITR 324 (P&H) wherein it has been held as under (page 325):

"We are of the view that when income of the assessee was computed by applying a gross profit rate, there was no need to look into the provisions of section 40A(3) of the Act, as applying the gross profit rate takes care of the expenditure otherwise than by way of crossed cheque also. We are in agreement with the view taken by the Allahabad High Court in Banwari Lal Banshidhars case [1998] 229 ITR 229 (All) to the following effect (page 232):

.....The question for consideration is when no deduction was sought and allowed under section 40A(3), was there any need to go into section 40A(3) and rule 6DD(j). We see force in the view taken by the Appellate Tribunal that when the income of the assessee was computed applying the gross profit rate and when no deduction was allowed in regard to the purchases of the assessee, there was no need to look into the provisions of section 40A(3) and rule 6DD(j). No dis-allowance could have been made in view of the provisions of section 40A(3), read with rule 6DD(j) as no deduction was allowed to and claimed by the assessee in respect of the purchases. When the gross profit rate is applied, that would take care of everything and there was no need for the Assessing Officer to make scrutiny of the amount incurred on the purchases by the assessee'."

3.4 Similar view was taken by the same High Court in *CIT v. Gobind Ram* [2015] 229 Taxman 491 (P&H).

3.5 The third issue regarding perversity does not arise as there is no perversity in the judgment of the Tribunal."

9. Secondly, the Hon'ble Allahabad High Court in the case of *CIT vs. Banwari Lal Banshidhar* held as under:

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that there was no question of any

disallowance in a case where the assessee's income is computed by application of gross profit rate on sales as shown?

.....

All the three questions, referred to this court, revolve round the same controversy. The question for consideration is when no deduction was sought and allowed under section 40A(3), was there any need to go into section 40A(3) and rule 6DD(j). We see force in the view taken by the Appellate Tribunal that when the income of the assessee was computed applying the gross profit rate and when no deduction was allowed in regard to the purchases of the assessee, there was no need to look into the provisions of section 40A(3) and rule 6DD(j). No disallowance could have been made in view of the provisions of section 40A(3) read with rule 6DD(j) as no deduction was allowed to and claimed by the assessee in respect of the purchases. When the gross profit rate is applied, that would take care of everything and there was no need for the Assessing Officer to make scrutiny of the amount incurred on the purchases by the assessee.

No law contrary to the view taken by the Tribunal has been shown by standing counsel.”

Even, the Hon'ble Madras High Court in the case of CIT vs. Amman Steel & Allied Industries 377 ITR 568 (Madras) has considered the same issue and ratio laid down on the Hon'ble Madras High Court that the addition made u/s 40A(3) of the act is faulted for the reason that the AO himself has estimated the income by estimating the gross profit. Hence, the Hon'ble Madras High Court has held that no disallowance by invoking the provisions of section 40A(3) of the Act can be made. The Hon'ble High Court held as under:

“13. On the issue relating to disallowance under Section 40A(3) of the act, the same was considered by the CIT (Appeals) by holding that income has been arrived at an estimate of turnover and computed applying the gross profit and, therefore, no expenditure shall be allowed, since the gross profit applied would take care of the amount incurred by purchases, etc. The CIT (Appeals), to justify the said stand, drew strength from the

decision of this Court in *S. Mohammad Dhurabudeen's case (supra)*, wherein this Court has held thus:-

"The question for consideration is when no deduction was sought and allowed under S. 40A (3), was there any need to go into S. 40A (3) and Rule 6DD (j). We see force in the view taken by the Tribunal that when the income of the assessee was computed applying the GP rate and when no deduction was allowed in regard to purchases of the assessee, there was no need to look into the provisions of Section 40A (3) and Rule 6DD (j). No disallowance could have been made in view of the provisions of S. 40A (3) read with Rule 6DD (j) as no deduction was allowed to and claimed by the assessee in respect of purchases. When the GP rate is applied, that would take care of everything and there was no need for the A.O. to make scrutiny of the amount incurred on the purchases by the assessee."

14. Following the ratio laid down by this Court in the above said decision, the CIT (Appeals) held that the additions made under Section 40A (3) of the Act are to be deleted since the basis of the additions had been faulted and are no more valid and since the income is estimated, no disallowance on this account can be made. Th15. This Court has already held in the former portion of the order, that the assessment order came to be passed only on the basis of the show cause notice issued by the Central Excise Department and no independent enquiry has been conducted by the Assessing Officer. Further, the ratio of the decision of the Supreme Court in *K.T.M.S. Mohammed's case (supra)*, clearly applies to the facts of the present case. Such being the case, in the absence of any independent enquiry by the Assessing Officer, the disallowance sought to be made under the Income Tax Act, by the Assessing Officer, on the basis of the show cause notice, issued under the Central Excise Act cannot be sustained. When the assessable income was arrived at by applying a percentage rate, as held by this Court in *S. Mohammad Dhurabudeen's case (supra)*, the said exercise would take care of everything and there is no need for the Assessing Officer to make scrutiny of the amount incurred on the purchases by the assessee for the purposes of disallowance. Therefore, this Court is of the considered view that the order of the Tribunal in concurring with the CIT (Appeals) on this issue is justified and this Court finds no reason to differ with the same."

10. In view of the above facts, we noted that the AO, while completing assessment has taken one of the view which is plausible one, as taken by various High Courts, as noted above, that once profit is estimated on purchases, no disallowance can be resorted to by invoking the provisions of Section 40A(3) of the Act. In our view, this is the only possible view. But, if we consider that there are two views possible, even then, the revision proceedings under Section 263 of the Act cannot be initiated. If two views were possible and when the AO has accepted one of the view which is a plausible one, it is not appropriate on the part of the PCIT to exercise his power under Section 263 of the Act solely on the ground that apart from estimating profit, the AO has to invoke provisions of Section 40A(3) of the Act. As held by Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. – (2000) 243 ITR 83, Max India Ltd. – (2007) 295 ITR 282 (SC) and CIT Vs. Vimgi Investment P. Ltd. – (2007) 290 ITR 505 (Delhi), once a plausible view is taken, it is not open to the PCIT to exercise the power under Section 263 of the Act.

11. As in the present case the AO, after considering the facts of unaccounted purchases made by the assessee in cash has estimated the profit rate, the PCIT wants revision of the same under Section 263 of the Act. Whether the PCIT is right in directing the AO to invoke the provisions of Section 40A(3) for

making disallowances of cash purchases. We noted that in almost similar circumstances, Hon'ble Delhi High Court in the case of CIT Vs. Honda Siel Power Products Ltd. – (2011) 333 ITR 547 (Delhi), has held as under :-

“25. In the facts of the present case, we find that there is no material to indicate that the Assessing Officer had not applied his mind to the provisions of section 80-IB(13) read with section 80-IA(9). The presumption that the assessment orders passed under section 143(3) passed by the Assessing Officer had been passed upon an application of mind, has not been rebutted by the Revenue. No additional facts were necessary before the Assessing Officer for the purpose of construing the provisions of section 80-IB(13) read with section 80-IA(9). It was only a legal consideration as to whether the deduction under section 80HHC was to be computed after reducing the amount of deduction under section 80-IB from the profits and gains. There is no doubt that the Assessing Officer had allowed the deduction under section 80HHC without reducing the amount of deduction allowed under section 80-IB from the profits and gains. He did not say so in so many words, but that was the end result of his assessment order. Since he was holding in favour of the assessee, as has been observed in Hari Iron Trading Co. [2003] 263 ITR 437 (P&H) and Eicher Ltd. [2007] 294 ITR 310 (Delhi), generally, the issues which are accepted by the Assessing Officer, do not find mention in the assessment order, it cannot be said that the Assessing Officer had not applied his mind. It cannot also be said that the Assessing Officer had failed to make any enquiry because no further enquiry was necessary and all the facts were before the Assessing Officer. Consequently, we are of the view that the decisions cited by the learned counsel for the Revenue, wherein assessment orders were found to be erroneous for want of an enquiry or proper enquiry, would have no application to the present appeals. It is also true that the validity of an order under section 263 has to be tested with regard to the position of law as it exists on the date on which such an order is made by the

Commissioner of Income-tax. From the narration of facts in the Tribunal's order, it is clear that on the date when the Commissioner of Income-tax passed his orders under section 263, the view taken by the Assessing Officer was in consonance with the views taken by several Benches of the Income-tax Appellate Tribunal. Therefore, the conclusion of the Tribunal that the Commissioner of Income-tax could not have invoked his jurisdiction under section 263 of the said Act was correct. As a result, we answer the question against the Revenue and in favour of the assessee by holding that the Income-tax Appellant Tribunal was correct in law in cancelling the order passed by the Commissioner of Income-tax under section 263 and in restoring the order of the Assessing Officer by holding that the Assessing Officer had taken a possible view at the relevant point of time. The appeals are accordingly dismissed. There shall be order as to costs."

12. In view of the above, we are of the view that the provisions of section 40A(3) of the Act cannot be invoked in the given facts and circumstances of the present case for the reason that the AO himself has estimated the profit rate on the cash purchases made by assessee. Once cash purchases are estimated by applying gross profit rate and income is taxed, no further disallowance u/s 40A(3) of the Act is possible. The reason for the same is that when income of the assessee is computed applying flat gross profit rate and when no deduction is allowed in regard to the purchases of the assessee, there is no need to invoke the provisions of section 40A(3) of the Act. We also noted above that it is clear from the facts of the case that on the date when PCIT passed revision order under Section 263 of the Act, the view taken by the AO while framing

assessment was in consonance with the view taken by various High Courts as noted above. There is no contrary decision of any other High Court pointed out by Ld. CIT DR. Hence, according to us this is settled position. In such circumstances, revision u/s 263 of the Act is bad in law and, hence, quashed.

13. As regards to Assessment Year 2016-17, the facts and circumstances as admitted by both sides i.e., assessee's counsel as well as Ld. CIT-DR, are same, and, hence, taking constant view we quash the revision order and allow this appeal of the assessee.

14. In the result, the appeals of the Assessee are allowed

Order pronounced on 07th February, 2025.

Sd/-

**(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER**

Sd/-

**(MAHAVIR SINGH)
VICE PRESIDENT**

Dated: 07/02/2025

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI