IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH `A' NEW DELHI

BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

I.T.A.No.2438/Del/2012
Assessment Year : 2007-08

A2Z Maintenance and Engineering Services Ltd., O-116, DLIF Shopping Mall, Arjun Nagar, DLF Phase-I, Gurgaon. (PAN: AAECA1203A)	vs	CIT Delhi-I, New Delhi.
(Appellant)		(Respondent)

Appellant by: Shri R.M. Mehta, Advocate
Respondent by : Shri Ravi Jain, CIT DR
Date of hearing: 3.9.2015
Date of pronouncement: 21.10.2015

O R D E R

PER C.M. GARG, J.M.

This appeal by the assessee has been directed against the order of CIT, Delhi-I, New Delhi dated 27.3.12 for AY 2007-08 passed u/s 263 of the Income Tax Act, 1961 (for short the Act).

2. Briefly stated the facts giving rise to this appeal are that the Assessing Officer completed the assessment by passing assessment order u/s 143(3) of the Act on 15.12.2009. The Assessing Officer noticed that the assessee company was engaged in the business of providing maintenance services such as house

keeping security services and the Assessing Officer accepted the returned income of the assessee without making any disallowance or addition in the computation of income furnished by the assessee. Subsequently, on 12.3.12, the CIT issued a show cause notice to the assessee company alleging that the perusal of the balance sheet as on 31.3.2007 shows that the assessee has shown an amount of Rs. 11,98,08,876 as deferred revenue income by changing its method of accounting said to be as per Accounting Standard-7 which has resulted in lowering of profits by the same amount. The CIT also observed that the Assessing Officer has accepted the assessee's claim in this regard without making any inquiry or verification as to whether the method was bonafide and was consistently followed in future, and whether it was permitted under the provisions of the Act. The CIT also alleged that Assessing Officer has not examined as to whether any expenditure corresponding to the deferred revenue income was debited/claimed by the assessee and whether these were allowable in view of the fact that corresponding income is not taken into account and thus to that extent the impugned assessment order is prima facie prejudicial to the interest of revenue. With said observations, the CIT proceeded to invoke revisionsal powers available to him u/s 263 of the Act. The CIT finally passed impugned order dated 27.3.12 by holding that the order of the Assessing Officer is erroneous and prejudicial to the interest of revenue and he set aside assessment order only to this extent and directed the Assessing Officer to make a fresh assessment order on this aspect after making inquiries/verification and

after giving reasonable opportunity of hearing to the assessee. Now, the aggrieved assessee is before the Tribunal with the following grounds:-

"1. The order passed by the CIT u/s 263 of the Income-tax Act, 1961 (the Act) is bad in law, sans jurisdiction in as much as the order of the AO which has been revised is neither erroneous and nor is it prejudicial to the interests of revenue.

2. *The order passed by the AO u/s 143(3) of the Act accepting a method of accounting which the assessee was required to adopt as per the mandate of section 145 of the Act read with section 211 (3A) of the Companies Act could not be termed as "erroneous" within the meaning of section 263.*

3. *The CIT erred both on facts and in law in further treating the order passed by the AO as prejudicial to the interests of revenue without appreciating that the sum of Rs. 119,808,876/- which had been deferred in the assessment year 2007-08 had been offered to tax in assessment year 2008-09 there being no loss to the revenue.*

4. *The CIT further erred in ignoring the record of the revenue itself and which showed that the switch over from AS-9 to AS-7 was beneficial to the department bringing in excess revenues in subsequent assessment years viz. 2008-09 to 2011-12 in which the changed method was continued.*

5. *Without prejudice to the aforesaid grounds the order passed by the CIT u/s 263 of the Act is in clear violation of the principles of natural justice since the proceedings were initiated at the fag end of the limitation period and there being a hurry to pass the order within time the hearing was a mere formality since the written submissions were received without any effective oral interaction.*

6. *Without prejudice to the earlier grounds the order passed by the CIT is bad in law there being a complete absence in the order impugned to deal with the detailed written submissions supported by case law.*

7. *The appellant reserves to itself, the right to add, alter, amend, substitute, withdraw and/or any Ground(s) of Appeal on or before the date of hearing."*

3. We have heard the rival submissions and carefully perused the relevant material placed on record. At the outset, learned counsel of the assessee summarized the brief facts of the case and reiterated assessee's submissions/arguments dated 24.8.2015 which read as under: -

*"**(A)** <u>The order of Assessment</u>*

The assessment was framed u/s 143(3) by the learned Additional CIT (the 'AO') after issuing statutory notices u/s 143(2) & 142(1) and obtaining requisite details and written submissions from time to time. The following is extracted from the assessment order.

"In response to the notices, Sri Vijay Bansal who is the authorized representative of the assessee appeared on various dates and filed the necessary details. The case was discussed with him. Written submissions filed along with supporting documents were perused and placed on record."

B) *<u>Disclosure in the audited Accounts</u>*

(1) *(b)Changes in Accounting Policies disclosing the switch over from AS-9 to AS-7 with an income impact of Rs. 119,808,876/- (page 24 of the PB)*

(2) *Basis of Revenue Recognition at (e) (page 25 of the PB)*

(3) *Schedule 13: Current Liabilities reflecting deferred revenues to the extent of Rs. 119,808,876/- (page 22 of the PB).*

C) *<u>Examination by the AO</u>*

The AO enquired into the switch over from AS-9 to AS-7 vis- a-vis the preceding assessment year. The same was explained by the assessee vide letters dated 20.10.2009 and 30.10.2009 (pages 1 to 5 of the PB). In fact the annexures to the letter dated 30.10.2009 contained a detailed contract wise working explaining the difference between AS-9 and AS-7. The order of assessment was passed on 15.12.2009.

The aforesaid documents when considered in the context of the observations in the assessment order (reproduced earlier) leaves no

doubt about the due application of mind on the part of the AO to the point at issue. In other words it is a case of 'enquiry' and not a case of 'no enquiry' as is the view of the learned CIT.

Order of the CIT passed u/s 263

The order has been passed in an inordinate hurry on 27.03.2012 after a solitary hearing on 26.03.2012. There is no reference to the detailed written submissions as also the judgements cited by the assessee. In other words the order u/s 263 is passed in a mechanical manner without application of mind.

Judgements

1. CIT vs Ashish Rajpal 320 ITR 674 (Delhi)

(Para 16 at Page 41 of the PB of Judgements to be read along with Para 15 at Page 40 of the PB)

" 16. The fact that a query was raised during the course £f>Scrutiny which was satisfactorily answered by the assessee but did not get reflected in the assessment order, would not by itself lead to a conclusion that there was no enquiry with respect to transactions carried out by the assessee. The fact that there was an enquiry can also be demonstrated with the help of the material available on record with the Assessing Officer. The material, to which a reference has been made in the impugned judgment, would show that there was no "undue haste? in examining the material prior to the passing of the assessment order dated 24.03.2005. At least four letters dated 27.04.2004, 22.02.2005, 28.02.2005, and 18.03.2005 were addressed by the assessee to the Assessing Officer giving details, documents and information pertaining to various queries raised by the Assessing Officer. These have been examined by the Tribunal. We have no reason to believe that examination was less than exacting. Therefore, the conclusion of the Commissioner that there was "lack of proper" verification is un sustainable".

2. *CIT vs Vodafone Essar South Ltd. 212 Taxman 184 (Delhi)*

Paras 10 & 11 at Pages 44 & 45 of the PB)

10. This Court is conscious that an earlier bench of Court in CIT vs. Sunbeam Auto Ltd., (2011) 332 ITR 167, had held that if there is some enquiry by the A.O. in the original proceedings even if inadequate that cannot clothe the Commissioner with jurisdiction under Section 263 merely because he can form another opinion. It was emphasized here that the notice and questionnaire given to the assessee which were duly replied, were evidence of full and due enquiry about this expenditure. After satisfying himself that they were in fact revenue expenditure, the assessee's claim was upheld under Section 37. The Court in Sunbeam Auto (supra) held as follows:

" Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and inadequate inquiry". If there was any inquiry, even inadequate that would not by itself give occasion to the Commissioner to orders under Section 263 of the Act, merely because has a different opinion in the matter. It is only in of "lack of inquiry ".

11. In the present case, the records reveal that the assessee was specifically queried regarding the nature and character of the one-time regulatory fee paid by it as well as the bank and stamp duty charges. A detailed explanation in the form of statements and other documents required of by the Assessing Officer were produced at the stage of original assessment. Clearly this was not a case of "No Enquiry". The lack of any discussion on this cannot lead to the assumption that the Assessing Officer did not apply his mind."

3. *DIT vs Jyoti Foundation 357 ITR 388 (Delhi)*

(Para 5 at Page 49 to be read alongwith Para 15 at Page 48 and Paras 16 & 17 at Page 49 of the PB)

" 5. In the present case, inquiries were certainly conducted by the Assessing Officer. It is not a case of no inquiry. The order under Section 263 itself records that the Director felt that the inquiries were not sufficient and further inquiries or details should have been called. However, in such cases, as observed in the case of DG Housing Projects Limited (supra), the inquiry should have been conducted by the Commissioner or Director himself to record the finding that the assessment order was erroneous. He should not have set aside the order and directed the Assessing Officer to conduct the said inquiry."

4. *CIT vs Mahendra Kumar Bansal 297 ITR 99 (ALL)*

(Pages 3 & 4 of the Judgement)

" So far as the assessment for the assessment year 1983-84 is concerned, we find that the assessment has been made under section 143(3)/148 of the Act. The date fixed by the assessing authority was 18th July, 1986 and on that very date the assessee's counsel had filed certain details and evidences and after discussion the assessment was framed. Even though in the assessment order there is no mention that the detailed enquiry has been made nor any evidence has been discussed yet we find that the returned income was accepted. The necessity for making assessment under section 143(3)/148 of the Act was on account of the return having been filed beyond the prescribed period.

In the case of Goyal Private Family Specific Trust [1988] 171 ITR 698, this court has held that the order of the Income-tax Officer may be brief and cryptic, but that by itself is not sufficient reason to brand the assessment order as erroneous and prejudicial to the interests of the Revenue and it was for the Commissioner to point out as to what error was committed by the Income-tax Officer in having reached to his conclusion and in the absence of which proceedings under section 263 of the Act is not warranted."

"As held by this court in the case of Goyal Private Family Specific Trust [1988] 171 ITR 698, we are of the considered opinion that merely because the Income-tax Officer had not written lengthy order it would not establish that the assessment order passed under section 143(3)/148 of the Act is erroneous and prejudicial to the interests of the Revenue without bringing on record specific instances, which in the present case, the Commissioner of Income-tax has failed to do."

5. *CIT vs Development Credit Bank Ltd. 323 ITR 206 (Bombay)*
(Page 34 of the PB)

"We have indicated this only as and by way of an illustration in aid of our finding that there was no basis or justification for the Commissioner of Income Tax to invoke the provisions of Section 263. In the order of assessment, the Assessing Officer had after making an enquiry and eliciting a response from the assessee come to the conclusion that the assessee was entitled to depreciation to the extent of Rs.622.39 lakhs on the value of securities held on the trading account. In the absence of any tangible material to the contrary, the Commissioner of Income Tax could not have treated

this finding to be erroneous or to be prejudicial to the interest of the Revenue. The observation of the Commissioner of Income Tax that the Assessing Officer had arrived at his finding without conducting an enquiry was erroneous, since an enquiry was specifically held with reference to which a disclosure of details was called for by the Assessing Officer and made by the assessee."

6. *CIT vs Honda Siel Power Products Ltd. (2010) 194 Taxman 175 (Delhi)*

(Para 18 of the Judgement to be read alongwith Paras 14 to 17)

"18. From the aforesaid discussion, it is apparent that the expression prejudicial to the interest of revenue appearing in Section 263 has to be read in conjunction with the expression "erroneous" and that every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. In cases where the Assessing Officer adopts one of the courses permissible in law or where two views are possible and the Income-tax Officer has taken one view, the Commissioner of Income-tax cannot exercise his powers under Section 263 to differ with the view of the Assessing Officer even if there has been a loss of revenue, of course, if the Assessing Officer takes a view which is patently unsustainable in law, the Commissioner of Income-tax can exercise his powers under Section 263 where a loss of revenue results as a consequence of the view adopted by the Assessing Officer. It is also clear that while passing an order under Section 263, the Commissioner of Income-tax has to examine not only the assessment order, but the entire record of the profits. Since the assessee has no control over the way an assessment order is drafted and since, generally, the issues which are accepted by the Assessing Officer do not find mention in the assessment order and only those points are taken note of on which the assessee's explanations are rejected and additions/disallowances are made, the mere absence of the discussion of the provisions of Section 80IB(13) read with Section 80IA(9) would not mean that the Assessing Officer had not applied his mind to the said provisions. As pointed out in Kelvinator of India (supra), when a regular assessment is made under Section 143(3), a presumption can be raised that the order has been passed upon an application of mind. No doubt, this presumption is rebuttable, but there must be some material to indicate that the Assessing Officer had not applied his mind."

F) Summary of the Submissions

Restricting the submissions to the question of application of mind and due verification on the part of the AO the following legal propositions emerge from the judgements relied upon.

(1) *A matter considered after due enquiry on the part of the AO cannot be the subject matter of proceedings u/s 263 unless the view expressed is unsustainable in law.*

(2) *When a regular assessment is made u/s 143(3) a presumption can be raised that the order has been passed upon an application of mind. No doubt this presumption is rebuttable, but there must be some material to indicate that the AO had not applied his mind.*

(3) *Where details and evidence had been filed by the assessee and assessment framed thereafter u/s 143(3) the fact that in the assessment order there is no mention of any enquiry or a reference to any evidence or the order is brief and cryptic that by itself would not arm the CIT to brand the order as erroneous and prejudicial to the interest of revenue.*

(4) *If during the assessment, the AO raised queries and replies filed by the assessee were considered, the mere fact that the assessment order was silent on these the same could not be held to be erroneous on account of 'absence of inquiry. '*

(5) *If there is some enquiry by the AO in the original proceedings even if inadequate that cannot clothe the CIT with the jurisdiction under section 263, merely because he can form another opinion.*

(6) *One has to keep in mind the distinction between 'lack of inquiry' and 'inadequate inquiry'. If there was any inquiry even inadequate that by itself would give no occasion to the CIT to pass orders u/s 263 of the Act, merely because he has a different opinion in the matter.*

(7) *In the case of 'inadequate inquiry' the CIT must himself conduct requisite enquiry before passing the order u/s 263 and the matter cannot be remitted to the AO to conduct such further enquiries."*

Ld. Counsel of the assessee further elaborated his submissions dated 26.3.12 filed before the CIT in response to the show cause notice issued u/s 263 of the

Act and submitted that the ld. CIT proposed to revise the assessment order on the ground that the same is erroneous and prejudicial to the interest of revenue. Ld. Counsel further pointed out that as per allegations in the notice u/s 263 of the Act, the assessee has shown lower profits by changing its method of accounting on the basis of AS-7 and the AO has accepted the assessee's claim without making any inquiry/verification. Ld. Counsel further submitted that the CIT also alleged that the AO has not observed whether the change in the method of accounting was bona fide and the same was consistently followed in the future and the AO has not considered whether the change in the method of accounting was permitted under the provisions of the Act. Ld. Counsel contended that the last allegation of the CIT is that the AO has not examined the allowability of expenditure relatable to the income nor booked vis-à-vis the changed method of accounting. Ld. Counsel further pointed out that to follow accounting standard (AS) is mandatory in nature as per directions of the Institute of Chartered Accountants of India (ICAI) and as per section 211(3)(a) of the Companies Act, it has been mandated that every company has to prepare its balance sheet and profit and loss account in accordance with the Accounting Standard framed by the ICAI. Furthermore, ld. Counsel of the assessee also pointed out that as per section 145(4) of the Income Tax Act, it has been radically recast w.e.f. 1.4.1997 so as to promote only cash or mercantile system of accounting as also to enforce adherence to the Accounting Standard notified by the central government.

4. Elaborating the facts and circumstances of the present case, the learned counsel of the assessee submitted that as per Schedule XIII to the statement of accounts of the assessee, an amount of Rs.11.98 crore was shown under the head of current liability under deferred revenues (PB page no. 22) and in the notes to financial statements Item II(b), it is clear that the reason for the changeover from item AS-9 to AS-7 and item 2(e) deals with revenue recognition (pages 24 & 25 of the assessee's paper book). Learned counsel of the assessee vehemently contended that the Assessing Officer inquired into the changed method of accounting vis-à-vis preceding Assessment Year and the issue was properly explained by the assessee vide letter dated 20.10.2009 and 30.10.2009 submitted before the Assessing Officer during assessment proceedings on record. Learned counsel of the assessee vehemently contended that the assessee had, in fact, filed contract wise working in support of the changed method of revenue recognition and all expenditure pertaining to deferred revenue was taken into account while recognizing the revenue in the financial statement of the assessee. On the issue of consistency, the learned counsel of the assessee pointed out that the assessee has followed the same method of revenue recognition i.e. adoption of Accounting Standard 7 in all the subsequent Assessment Years which is evident from the audited accounts filed before the CIT and before the Tribunal for the financial years ending on 31.3.08, 31.3.09, 31.3.10 and 31.3.2011. Ld. Counsel also submitted that Accounting Standard per assessment orders for Assessment Year 2008-09 and

2009-10 passed u/s 143(3) of the Act, the Assessing Officer has accepted the returned income wherein the revenue has been recognized in accordance with the changed method of accounting vide Accounting Standard-7 which has regularly and consistently been followed by the assessee during all subsequent Assessment Years subsequent to the year under consideration i.e. Assessment Year 2007-08.

5. Learned counsel of the assessee also submitted that the position of law is settled with a regular method adopted by the assessee and cannot be rejected merely because it gives benefit to assessee in certain years, more particularly, in the year of change as the choice of method can be changed unilaterally without any prior approval of the Assessing Officer and the assessee has to show that the method employed is regularly followed in the subsequent Assessment Years and the assessee has demonstrated this fact by way of assessment orders passed for subsequent Assessment Years. Learned counsel of the assessee also pointed out that the assessee was statutorily bound to prepare its accounts and to recognize its revenue as per Accounting Standard framed by ICAI and the Assessing Officer accepted the changed method of accounting after due examination and deliberations with the assessee's representative. Learned counsel of the assessee also pointed out that the method of accounting approved by ICAI having been accepted by the Assessing Officer after due verification and examination cannot be rejected at the threshold in the revisionary

proceedings u/s 263 of the Act. Learned counsel of the assessee has also drawn our attention towards assessee's Paper Book page no. 11 wherein a chart showing taxable income and tax effect due to change of accounting policy and standards from Assessment Year 2008-09 to 2011-12 has been tabulated and submitted that adjustment of income due to Accounting Standard-7 was beneficial to the assessee in the first year of change but in the subsequent Assessment Year the assessee has to pay higher amount of tax surcharge and EC by adopting Accounting Standard-7 instead of Accounting Standard-9, therefore, the order of the Assessing Officer cannot be held as erroneous and prejudicial to the interest of revenue.

6. Learned counsel of the assessee further elaborated that it is for the Commissioner to exercise jurisdiction u/s 263 of the Act to show that the order sought to be revised is erroneous and prejudicial to the interest of revenue and both the conditions must exist to enable the Commissioner to act and in absence of any one of the conditions would be a rider for invoking revisional powers u/s 263 of the Act. Learned counsel of the assessee also pointed out that the order passed by the Assessing Officer after due verification and examination of the issue on deferred revenue cannot be held as erroneous and prejudicial to the interest of revenue inasmuch as he has accepted the change of Accounting Standard adopted by the assessee by proper application of mind and after considering all relevant facts disclosed by the assessee for recognition of

revenue as per relevant provisions of the Act and company law. Learned counsel of the assessee further pointed out that in the proceedings u/s 263 of the Act, the Assessing Officer cannot be faulted for accepting the method of accounting approved by the ICAI and mandated by the statute which otherwise is beneficial to the Revenue Accounting Standard compared to the method of accounting followed till 31.3.2006 i.e. Accounting Standard-9. Learned counsel of the assessee contended that neither of the conditions required and stipulated u/s 263 of the Act are specified in this case viz. the order of the Assessing Officer is neither erroneous nor prejudicial to the interest of revenue and therefore, the CIT had no valid jurisdiction to invoke revisionary powers of section 263 of the Act. Learned counsel of the assessee lastly pointed out that the order of the Assessing Officer cannot be held as unsustainable or not in accordance with the provisions of the Act, therefore, the notice u/s 263 of the Act as well as impugned order may kindly be quashed.

7. Last but not the least, learned counsel of the assessee submitted that as per order sheets of the assessment proceedings dated 20.10.09, it is amply clear that the Assessing Officer specifically asked the assessee to explain the deferred revenue items and to give submissions as to how they are taken to the next year fixing the case for 26.10.09 and the assessee submitted its written submissions from same date i.e. 20.10.09 and also filed another return dated 30.10.09 along with detailed contract wise working detail and show cause for adopting

Accounting Standard-7 from 1.4.06, therefore, it cannot be held that the Assessing Officer did not make any inquiry in this regard and thus the action of the CIT invoking revisionary powers u/s 263 of the Act is not legal and correct which is not only bad in law but void ab initio and therefore, the impugned order may kindly be quashed.

8. Ld. DR supported the action of the CIT and pointed out that the Assessing Officer did not apply his mind to the radical change of Accounting Standard by the assessee and the Assessing Officer did not examine and verify the issue of deferred revenue income adopted by the assessee by way of adopting Accounting Standard-7 from 1.4.06. Ld. DR vehemently contended that the Assessing Officer has accepted the assessee's claim in this regard without making any inquiry as to whether change was bonafide and was also consistently followed for the future Assessment Years.

9. Ld. DR also pointed out that the Assessing Officer has also not examined as to whether any expenditure corresponding to the deferred revenue income was debited and claimed by the assessee and whether these were allowable in view of the fact that corresponding income is not taken into account. Ld. DR lastly submitted that the Assessing Officer has not verified that whether the change in Accounting Standard from AS-9 to AS-7 was permitted under the provisions of the Act and up to that extent, the assessment order was rightly held as erroneous and prejudicial to the interest of revenue.

10. Ld. DR finally submitted that assessee would be given an opportunity of being heard during the assessment proceedings in pursuance to the impugned order and therefore no prejudice would be caused to the assessee if the issue is again verified and examined by the Assessing Officer after allowing opportunity of being heard to the assessee .

11. On careful consideration of above submissions of both the sides and careful perusal of relevant material placed on record inter alia Paper Book of the assessee spread over 211 pages, impugned order passed u/s 263 of the Act and brief synopsis of submissions by the assessee , we note that the CIT issued a show cause notice u/s 263 of the Act dated 12.3.12 to the assessee which reads as under:-

> *"The Perusal balance sheet as on 31.03.2007 shows that the assessee has shown an amount of Rs.11,98,08,876/- as deferred revenue income by changing its method of accounting, said to be as per AS-7. This has resulted in lowering of profits by Rs.11,98,08,876/-. The AO has accepted the assessee's claim in this regard without making any inquiry/verifications, as to whether the change was bonafide & was consistently followed in future, and whether it was permitted under the I.T. Act, The AO has also not examined as to whether any expenditure corresponding to the deferred revenue income was debited/claimed by the assessee and whether these were allowable in view of the fact that corresponding income is not taken into a/c. Hence to that extent the assessment order is prime facie prejudicial to-the interest of the Revenue."*

12. The crux of the allegations mentioned therein are mainly on two counts viz. i) the change in the Accounting Standard by the assessee from AS-9 to AS-

7 has resulted into lowering of profits and the Assessing Officer has accepted the assessee's claim without making any inquiry/verification so as to whether the change was bona fide and was consistently followed in the subsequent Assessment Years; ii) the Assessing Officer has not also examined as to whether any expenditure related to the deferred revenue income was debited/claimed by the assessee and whether these were allowable in view of the fact that corresponding income has not been taken into account.

13. When we analyse the facts and circumstances of the first allegation, we note that as per order sheet entry dated 20.10.09, the Assessing Officer asked the assessee to explain the deferred revenue items and to give submissions as to how they are taken into the next year. The assessee filed two replies in this regard; first on 20.10.09 available at page 1 of assessee's Paper Book and second on 30.10.09 which is also available at pages 2 to 5 of assessee's Paper Book wherein the assessee has also submitted detailed contract wise working pertaining to the deferred revenue. However, from a careful reading of the impugned assessment order, we note that there is no detailed deliberation on this issue and there is a bare mention of presence of assessee's representative on various dates and it has been also noted that the AR filed necessary details and after discussion with him, written submissions filed along with supporting documents were perused and placed on record and the Assessing Officer accepted the returned income of the assessee.

14. In this situation, it is clear that the Assessing Officer made inquiries on the issue of deferred revenue which were replied by the assessee by submitting its stand along with contract wise detailed working. At this juncture, we respectfully take cognizance of order of **Hon'ble Jurisdictional High Court of Delhi in the case of CIT vs Vodafone Essar South Ltd. reported in (2012) 212 Taxman 184 (Delhi),** as relied by learned counsel of the assessee, wherein it was held that when the AO specifically queried regarding the nature and character of one time fee paid by it as well as the bank and stamp duty charges and the detailed explanation in the form of submissions and other documents required by the Assessing Officer were produced at the stage of original assessment, then clearly this was not a case of no inquiry and the lack of any discussion of the assessment order cannot lead to the assumption that the Assessing Officer did not apply his mind. In this judgement, Hon'ble Jurisdictional High Court has also referred dicta laid down by it in the case of **CIT vs Sunbeam Auto Ltd. (2011) 332 ITR 167 (Delhi)** wherein it was held that one has to keep in mind the distinction between lack of inquiry, even inadequate inquiry and if there was any inquiry, if inadequate, that would not by itself give occasion to the Commissioner to pass order u/s 263 of the Act merely because he has a different opinion in the matter. The present case is squarely covered in favour of the assessee by the dicta of Hon'ble Jurisdictional High Court of Delhi in the case of CIT vs Sunbeam Auto Ltd. (supra).

15. The next issue for our consideration is that whether the assessee consistently followed the same Accounting Standard (AS-7) through subsequent Assessment Years. When we analyse written submissions of the assessee placed before the CIT dated 26.3.12 available at pages 207 to 211 of the assessee's Paper Book, it is clear that in column 'E' page 3, it has been explicitly mentioned that the audited accounts filed for the financial year ending on 31.3.08, 31.3.09, 3103.10 & 31.3.11, it is clear that the assessee has followed the same system of revenue recognition i.e. AS-7 in all the subsequent Assessment Years. It was also submitted on behalf of the assessee that as per Assessment orders passed u/s 143(3) of the Act on 29.10.10 for Assessment Year 2008-09 and on 13.5.2011 for 2009-10, the Assessing Officer has accepted the returned income of the assessee wherein the Revenue has been booked in accordance with the changed method of accounting i.e. AS-7. In view of these submissions, the ld. DR could not show us that the assessee did not follow AS-7 in the subsequent Assessment Years and in view of the documents submitted by the assessee pertaining to subsequent Assessment Years i.e. annual accounts and assessment orders for Assessment Year 2008-09, 2009-10, it is amply clear that the assessee consistently followed AS-7 for recognition of revenue which was changed w.e.f. 1.4.2006.

16. It is relevant to mention that the assessment proceedings were completed u/s 143(3) of the Act on 15.12.09 and the CIT issued impugned notice u/s 263

of the Act on 12.3.12 and impugned order was passed on 27.3.12 and entire proceedings of issuance of notice and passing order were completed within 15 days time. We further observe that in response to the show cause notice u/s 263 of the Act, the assessee filed detailed written submissions spread over 5 pages on 26.3.12 along with a Paper Book and the CIT has only considered arguments of the learned counsel of the assessee in regard to assessee's letters dated 20.10.09 and 30.10.09 and after reproducing the contents of these letters, the CIT jumped to record his conclusion without any deliberation on the detailed written submissions and Paper Book of the assessee. The relevant operative para 3 of the impugned order of the CIT reads as under:-

> *"3. It can be seen that the assessee company has merely filed some details regarding the amount of excess billing and the change in assessee's revenue recognition policy. This does not show that the AO has made relevant enquiry/verification as to whether the change was bonafide and was consistently followed in future.*
>
> *The Ld. Counsel was not able to point out that the AO has made any enquiry/verification into these aspects. There is nothing on record to show that the AO has made Investigations to satisfy himself about the bonafides of the change in the policy. There is also nothing on the record to show that the AO verified that the changed policy was consistently followed in future. There is also nothing on record to show that the AO had made any examination to find out whether any expenditure corresponding to the deferred revenue income was debited/claimed by the assessee and whether these were allowable in view of the fact that corresponding income is not taken into account. Since the AO has accepted the change in the revenue recognition policy i.e. method of accounting without any inquiry/verification which has resulted in lowering of profits by Rs. 11,98,08,876/-, the assessment order dated 15/12/2009 passed u/s 143(3) of the I.T. Act, 1961 is erroneous and prejudicial to the interest of the Revenue. The assessment order to this extent is set aside and AO is directed to make a fresh assessment order on this aspect after making inquiries/verifications as above and after*

giving reasonable opportunity to the assessee company of being heard."

It is also relevant to mention that the CIT has not given any findings on the issue of consistency in following the AS-7 in the subsequent Assessment Years and when he is issuing notice on 12.3.12 and passing orders on 23.12.12, it is obvious that the copies of the annual accounts for the year ending on 31.3.07, 31.3.08, 31.3.09, 31.3.10 and also copies of the assessment orders for Assessment Year 2008-09 and 2009-10 (supra) were part of assessment records and if the same were taken into consideration in the light of submissions and contentions of the assessee in response to notice u/s 263 of the Act, then the CIT could have noticed that the assessee is following AS-7 not only in the Assessment Year under consideration viz. 2007-08, but the same was consistently followed in the subsequent Assessment Years for recognising revenue from Engineering Business Segment wherein the assessee company has followed percentage completion method as prescribed under AS-7 issued by ICAI for the accounting of contractors. At the cost of repetition, we may also point out that the assessee furnished letters dated 20.10.09 and 30.10.09 showing the cause of change of method of recognition of deferred revenue as per AS-7 instead of AS-9 along with detailed contract wise working which was considered by the Assessing Officer while passing the impugned assessment order. It is also pertinent to mention that there was a specific query from the Assessing Officer during assessment proceedings vide order sheet entry dated

20.10.09 and the same was replied by the assessee by filing two letters viz. first on 20.10.09 and 30.10.09 along with relevant details.

17. As we have already noted that the assessee filed tabulation chart showing taxable income and tax effect due to change of accounting policy and standard (assessee's Paper Book page no. 11) wherein it is amply clear that tax surcharge and EC as per AS-7 was calculated at Rs.8,34,63,477 and tax surcharge and EC payable as per AS-9 was Rs.12,37,91,145 and in the very first year, the assessee changed its method of accounting from AS-9 to AS-7, there was an amount of refund of Rs.4,03,27,668. At the same time, from the said tabulation chart we further observe that in subsequent Assessment Year from 2008-09 to 2011-12 the assessee was under obligation to pay higher amount of tax, surcharge and EC by following AS-7 instead of AS-9, therefore, in the totality of the facts and circumstances, it cannot be held that the assessee changed its method of accounting from AS-7 to AS-9 with an intention to avoid tax liability and therefore this resulted into lowering of profits. However, as we have already pointed out that in the very first year of changing of accounting standard, there was a lesser tax liability on the assessee but in the subsequent four years, the tax liability was much higher when the assessee adopted AS-7 as against AS-9.

18. Learned counsel of the assessee has placed reliance on the judgment of Allahabad High Court in the case of **CIT vs Mahendra Kumar 282 ITR 503 (All)** wherein it was held that when the Assessing Officer had passed the

assessment order after obtaining certain details and after discussion with the assessee, then the mere fact that the Assessing Officer did not mention the fact of detailed inquiry in the assessment order would not make the order erroneous and the CIT(A)'s order setting aside Assessing Officer's order was not held to be valid. In the present case, the Assessing Officer has not expressly mentioned about the consideration of change in Accounting Standard by the assessee from AS-9 to AS-7 but from the order sheet entries and written submissions of the assessee filed during the assessment proceedings, it is clear that the assessee considered the issue and applied his mind towards change in Accounting Standard and the issue of deferred revenue and merely because the Assessing Officer did not mention the deliberations regarding inquiry would not make the order erroneous. Per contra, as we have already noted that the assessment order was passed after due consideration of the issue of deferred revenue after considering the submissions and contract wise detailed submission by the assessee. At this juncture, it is relevant to mention that the CIT has passed impugned order in a hasty manner without any deliberation on the written submissions submitted by Paper Book of the assessee filed in response to the show cause notice u/s 263 of the Act and he jumped to the conclusion without any adjudication on the submission and explanation of the assessee, therefore, we are inclined to hold that the impugned order has been passed by the CIT without following the well-accepted principles of adjudication and without application of mind. Our view also finds support from the judgment of Hon'ble

High Court in the case of CIT vs Development Credit Bank Ltd. (supra).

19. Lastly, we also observe that the CIT has directed the Assessing Officer to make a fresh assessment order on the aspect of deferred revenue by holding the assessment order as erroneous and prejudicial to the interest of revenue on this aspect but the CIT has not drawn any conclusion that the assessment order passed by the Assessing Officer is not in accordance with the provisions of the Act and thus, the same is unsustainable in law. The CIT has not made any inquiry in regard to the allegations raised by him in the show cause notice issued by him u/s 263 of the Act and in the light of written submissions and Paper Book of the assessee filed in response to the said notice. In this situation, the impugned order falls within the ambit of dicta laid by Hon'ble Jurisdictional High Court of Delhi in the case of DIT vs Jyoti Foundation (supra) wherein, after considering the ratio of its own decision in the case of CIT vs DG Housing Project Ltd. , the Hon'ble Jurisdictional High Court held that where the order u/s 263 of the Act records that the inquiries were not sufficient and further inquiries or details should have been called for by the Assessing Officer, then in such cases, the inquiry should have been conducted by the Commissioner himself to record the finding that the assessment order was erroneous. Their lordships explicitly held that the CIT should not have set aside the order and directed the Assessing Officer to conduct the said inquiry. The present case of the assessee squarely falls within the ratio of the judgment of Hon'ble High Court in the case

of Jyoti Foundation (supra) and hence we reach to a conclusion that the notice u/s 263 of the Act dated 12.3.12 and impugned order of the CIT was not passed under valid assumption of revisional jurisdiction available to the CIT(A) u/s 263 of the Act and thus, the same are not sustainable being bad in law and void ab initio. Accordingly, the appeal of the assessee is allowed and the impugned notice and order u/s 263 of the Act are hereby quashed.

20. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 21.10.2015.

Sd/-	**Sd/-**
(N.K.SAINI)	**(C.M. GARG)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 21st October, 2015
'GS'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT 4.CIT(A)
5. DR

Asst. Registrar