

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, “बी “ चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, “B”, CHANDIGARH**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
& SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No.149/CHD/2021

निर्धारणवर्ष / Assessment Year : 2016-17

Sh. Rajeev Goyal M/s R.K. Associates, B.G. Complex Near Ganesh Dharam Kanta, Sirsa -125055, Haryana	बनाम	Pr. Commissioner of Income Tax, Rohtak
स्थायीलेखासं./PAN NO: AIBPG7289A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकरअपीलसं./ITA No. 150/CHD/2021

निर्धारणवर्ष / Assessment Year : 2016-17

M/s Pardeep Ispat (P) Ltd., Shop No. 75, Pardeep Ispat (P) Ltd CC-III, Opp. HDFC Bank,. Janta Bhawan Road, Sirsa -125055	बनाम	Pr. Commissioner of Income Tax, Rohtak
स्थायीलेखासं./PAN NO: AAGCP7177A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकरअपीलसं./ITA No. 151/CHD/2021

निर्धारणवर्ष / Assessment Year : 2016-17

Priya Goyal, OO C/o Rajiv Goyal, Janta Bhawan Road, Sirsa -125055	बनाम	Pr. Commissioner of Income Tax, Rohtak
स्थायीलेखासं./PAN NO: BCHPG5358R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकरअपीलसं./ITA No. 152/CHD/2021

निर्धारणवर्ष / Assessment Year : 2016-17

Priyanka, M/s Manik Industries, Opp. Gate No. 4 of Addl. Mandi Janta Bhawan Road, Sirsa -125055	बनाम	Pr. Commissioner of Income Tax, Rohtak
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स्थायीलेखासं./PAN NO: BDPPP4644E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकरअपीलसं./ITA No. 154/CHD/2021

निर्धारणवर्ष / Assessment Year : 2016-17

Parshotam Goyal, 35CC IInd, Additional Mandi O, Prop. M/s Prime Steel 35CC Additional Mandi, Sirsa -125055	बनाम	Pr. Commissioner of Income Tax, Rohtak
स्थायीलेखासं./PAN NO: AAZPG9191P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकरअपीलसं./ITA No. 157/CHD/2021

निर्धारणवर्ष / Assessment Year : 2016-17

Tarsem Goyal, Prop. M.s Gupta Traders, SCF-35, CC-II, Additional Mandi, Sirsa -125055	बनाम	Pr. Commissioner of Income Tax, Rohtak
स्थायीलेखासं./PAN NO: AIDPG8047Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing though video Conferencing

निर्धारितकीओरसे/Assessee by : Shri Gautam Jain, Advocate and
Shri Lalit Mohan, CA

राजस्वकीओरसे/ Revenue by : Sh. Sarabjeet Singh, CIT

सुनवाईकीतारीख/Date of Hearing : 07.12.2021

उदघोषणाकीतारीख/Date of Pronouncement : 19.01.2022

आदेश/Order

Per Sudhanshu Srivastava, Judicial Member:

The captioned six appeals, preferred by the respective assesses, are directed against the separate orders dated

30.3.2021 passed u/s 263 of the Income Tax Act, 1961 (hereinafter called 'the Act') by the Ld. Pr. Commissioner of Income Tax (Pr. CIT) for Assessment Year (AY) 2016-17. Since common issues have been raised in all these appeals, therefore, they were heard together and are being disposed of by this common order.

2.0 The grounds raised in the appeals are as under:

1. ITA No. 149/Chd/2021:

1. *That order dated 30.3.2021 u/s 263 of the Act by learned Principal Commissioner of Income Tax, Rohtak has been made without satisfying the statutory preconditions contained in the Act and is therefore without jurisdiction and thus, deserves to be quashed as such.*
 2. *That the conclusion of learned Principal Commissioner of Income Tax that "the AO has passed the order dated 29.12.2018 in a very casual manner without due diligence and without conducting any worthwhile enquiries. Therefore, it is very clear that assessment proceedings completed u/s 143(3) of the Act are erroneous so far as prejudicial to the interest of the revenue in terms of provisions of section 263 of the Act including Explanation 2 inserted by the Finance Act, 2015 w.e.f. 01.06.2015" is based on fundamental misconception of facts and provisions of law and thus not in accordance with law and, therefore untenable.*
- 2.1 *That the finding of learned Principal Commissioner of Income Tax that order of the learned Assessing Officer is erroneous and prejudicial to the interest of revenue on the following basis is factually incorrect, legally misconceived, contrary to evidence on record; and in any case is vague, based on surmiseful considerations; and therefore unsustainable:*

a) That since during the assessment proceedings the AO had issued letter to creditors and debtors and they were either returned back unserved or were not replied to which led to the conclusion by the AO himself that assessee had bogus creditors and debtors and therefore addition on this account was required to be made however no such addition was made by the AO;

b) That since the assessee has shown bogus creditors the purchases remained unverified. The AO was required to disallow the purchases however no such addition was made by the AO;

c) That assessee had shown addition of Rs. 3,63,458/- in his capital account on account of compensation received however no details have been filed by the assessee during assessment proceedings as well as during current proceedings and AO has not enquired into the nature of these receipts and its taxability;

d) That assessee has shown an addition of Rs. 2,55,800/- in property at Meerpur and AO has made no enquiry in respect of this property such sources investment in purchase of property has not been quantified;

e) That the AO conducted no enquiry regarding creditors and debtors shown by the assessee;

f) That there is clear lack of inquiry regarding additions made in the capital account and addition made in property;

2.2 That the learned Pr. Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the fac:s on record and after making all possible enquiries had made additions by rejecting the books of accounts u/s 145 of the Act and estimating the profits and further also made disallowance of expenses and therefore computed thj net profit which estimation and computation have neither been rejected nor raised, in such circumstances the order of revision is perse misconceived, misplaced and untenable, more

particularly when income surrendered in the course of survey on account of excess cash, unexplained investment, unexplained expenditure and unsecured loans have been separately brought to tax then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the interest of revenue merely because the learned Pr. Commissioner of Income Tax had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible or unsustainable view.

2.3 That the learned Principal Commissioner of Income Tax has erred in holding that it is a case of "lack of enquiry" and, further failing to appreciate that alleged inadequate enquiry in the manner suggested without any independent evidence and, without any further enquiries by him cannot be a basis for assumption of jurisdiction u/s 263 of the Act.

2.4 That the learned Pr. Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the facts on record and after making all possible enquiries had accepted claim of the appellant then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the interest of revenue merely because the learned Pr. Commissioner of Income Tax had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible view.

2.5 That the learned Pr. Commissioner of Income Tax has also failed to appreciate that, u/s 263 of the Act, an order of assessment cannot be set-aside to simply to make further enquiries and thereafter pass fresh order of assessment and as such, impugned order is contrary to law and hence, unsustainable

2.6 That the learned Principal Commissioner of Income Tax has failed to appreciate that surmises, conjecture and suspicion could not be a basis much less a valid basis to invoke section 263 of the Act.

2.7 That while passing the order u/s 263 of the Act the learned Principal Commission of Income Tax

cannot travel beyond the show cause notice and therefore findings and observation and also the material relied upon not referred in the show cause notice but made part of the order could neither in law and nor on fact be made a basis to assume jurisdiction u/s 263 of the Act; and thus order on this ground alone deserve to be quashed t s such.

2.8 That various other adverse findings recorded in the notice u/s 263 of the Act and, also in impugned order are factually incorrect, vague, legally misconceived and untenable.

3. That the learned Principal Commissioner of Income Tax has framed the impugned order without granting sufficient opportunity to the appellant and therefore the order made is illegal, invalid and, vitiated order

Prayer - It is therefore prayed that, impugned order dated 30.3.2021 under section 263 of the Act be held to be without jurisdiction and, therefore be quashed and appeal of the appellant be allowed.

2. ITA No. 150/Chd/2021:

- 1. That order dated 30.3.2021 u/s 263 of the Act by the learned Principal Commissioner of Income Tax, Rohtak has been made without satisfying the statutory preconditions contained in the Act and is therefore without jurisdiction and thus, deserves to be quashed as such.*
- 2. That the learned Principal Commissioner of Income Tax has framed the impugned order without granting sufficient opportunity to the appellant and therefore the order made is illegal, invalid and, vitiated order*
- 3. That while passing the order u/s 263 of the Act the learned Principal Commission of Income Tax cannot travel beyond the show cause notice and therefore findings and observation and also the material relied upon not referred in the show cause notice but made part of the order could neither in law and nor on fact be made a basis to assume jurisdiction u/s 263 of the*

Act; and thus order on this ground alone deserve to be quashed as such.

4. *That finding and conclusion of the learned Principal Commissioner of Income Tax. that order of the learned Assessing Officer is erroneous and prejudicial to the interest of revenue on the following basis is based on fundamental misconception of facts and provisions of law and hence untenable.*
 - a) *That since during the assessment proceedings the AO had issued letters to creditors and they were either returned back unserved or were not replied to which led to the conclusion by the AO himself that assessee had bogus creditors and therefore addition on this account was required to be made however no such addition was made by the AO;*
 - b) *That since the assessee has shown bogus creditors the purchases remained unverified. The AO was required to disallow the purchases however no such addition was made by the AO;*
 - c) *That the AO conducted no enquiry in respect of unsecured loans from Sh. Mohit Mehta and Smt. Satya Dev; and*
 - d) *That there is clear lack of inquiry regarding purchase of fixed assets*
5. *That the learned Pr. Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the facts on record and after making all possible enquiries had made additions by rejecting the books of accounts u/s 145 of the Act and estimating the profits and further also made disallowance of expenses and therefore computed the net profit which estimation and computation have neither been rejected nor raised, in such circumstances the order of revision is perse misconceived, misplaced and untenable, more particularly when income surrendered in the course of survey on account of excess cash, unexplained cash and unsecured loans have been separately brought to tax then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the*

interest of revenue merely because the learned Commissioner of Income Tax had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible or unsustainable view.

6. *That the learned Principal Commissioner of Income Tax has failed to appreciate that action u/s 263 of the Act is otherwise too inapplicable on the factual matrix of the facts of the instant case since admittedly, undisputedly and undeniably not a case of "lack of enquiry" or "lack of investigation" and therefore the invocation u/s 263 of the Act is not in accordance with law.*
7. *That the learned Pr. Commissioner of Income Tax has also failed to appreciate that, u/s 263 of the Act, an order of assessment cannot be set-aside to simply to make further enquiries and thereafter pass fresh order of assessment and as such, impugned order is contrary to law and hence, unsustainable.*
8. *That the learned Principal Commissioner of Income Tax has failed to appreciate that surmises, conjecture and suspicion could not be a basis much less a valid basis to invoke section 263 of the Act.*
9. *That various other adverse findings recorded in the notice u/s 263 of the Act and, also in impugned order are factually incorrect, vague, legally misconceived and untenable.*

Prayer It is therefore prayed that, impugned order dated 30.3.2021 under section 263 of the Act be held to be without jurisdiction and, therefore be quashed and appeal of the appellant be allowed.

3. ITA No. 151/Chd/2021:

1. *That order dated 30.3.2021 u/s 263 of the Act by learned Principal Commissioner of Income Tax, Rohtak has been made without satisfying the statutory preconditions contained in the Act and is therefore without jurisdiction and thus, deserves to be quashed as such.*

2. That the conclusion of learned Principal Commissioner of Income Tax that "the AO has passed the order dated 29.12.2018 in a very casual manner without due diligence and without conducting any worthwhile enquiries. Therefore, it is very clear that assessment proceedings completed u/s 143(3) of the Act are erroneous so far as prejudicial to the interest of the revenue in terms of provisions of section 263 of the Act including Explanation 2 inserted by the Finance Act, 2015 w.e.f. 01.06.2015" is based on fundamental misconception of facts and provisions of law and thus not in accordance with law and, therefore untenable.

2.1 That the finding of learned Principal Commissioner of Income Tax that order of the learned Assessing Officer is erroneous and prejudicial to the interest of revenue on the following basis is factually incorrect, legally misconceived, contrary to evidence on record; and in any case is vague, based on surmised considerations; and therefore unsustainable:

a) That since during the assessment proceedings the AO had issued letter to creditors and debtors and they were either returned back unserved or were not replied to which led to the conclusion by the AO himself that assessee had bogus creditors and debtors and therefore addition on this account was required to be made however no such addition was made by the AO;

b) That since the assessee has shown bogus creditors the purchases remained unverified. The AO was required to disallow the purchases however no such addition was made by the AO;

c) That Assessing officer conducted no enquiry in respect of investment made for construction of house and did not arrive at the actual investment made by the assessee;

d) That Assessing officer has made no enquiry in respect of property and the source of investment in purchase of property has not been quantified.

e) *That the Assessing officer conducted no enquiry regarding the purchases and sales made by the assessee ;*

f) *That there is clear lack of inquiry regarding purchase of fixed assets.*

2.2 *That the learned Pr. Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the facts on record and after making all possible enquiries had made additions by rejecting the books of accounts u/s 145 of the Act and estimating the profits and further also made disallowance of expenses and therefore computed the net profit which estimation and computation have neither been rejected nor raised, in such circumstances the order of revision is perse misconceived, misplaced and untenable, more particularly when income surrendered in the course of survey on account of excess cash, unexplained investment, unexplained expenditure and unsecured loans have been separately brought to tax then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the interest of revenue merely because the learned Pr. Commissioner of Income Tax had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible or unsustainable view.*

2.3 *That the learned Principal Commissioner of Income Tax has erred in holding that it is a case of "lack of enquiry" and, further failing to appreciate that alleged inadequate enquiry in the manner suggested without any independent evidence and, without any further enquiries by him cannot be a basis for assumption of jurisdiction u/s 263 of the Act.*

2.4 *That the learned Pr. Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the facts on record and after making all possible enquiries had accepted claim of the appellant then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the interest of revenue merely because the learned Pr. Commissioner of Income Tax*

had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible view.

2.5 That the learned Pr. Commissioner of Income Tax has also failed to appreciate that, u/s 263 of the Act, an order of assessment cannot be set-aside to simply to make further enquiries and thereafter pass fresh order of assessment and as such, impugned order is contrary to law and hence, unsustainable.

2.6 That the learned Principal Commissioner of Income Tax has failed to appreciate that surmises, conjecture and suspicion could not be a basis much less a valid basis to invoke section 263 of the Act.

2.7 That while passing the order u/s 263 of the Act the learned Principal Commission of Income Tax cannot travel beyond the show cause notice and therefore findings and observation and also the material relied upon not referred in the show cause notice but made part of the order could neither in law and nor on fact be made a basis to assume jurisdiction u/s 263 of the Act; and thus order on this ground alone deserve to be quashed as such.

2.8 That various other adverse findings recorded in the notice u/s 263 of the Act and, also in impugned order are factually incorrect, vague, legally misconceived and untenable.

3. That the learned Principal Commissioner of Income Tax has framed the impugned order without granting sufficient opportunity to the appellant and therefore the order made is illegal, invalid and, vitiated order

Prayer - It is therefore prayed that, impugned order dated 30.3.2021 under section 263 of the Act be held to be without jurisdiction and, therefore be quashed and appeal of the appellant be allowed.

4. ITA No. 152/Chd/2021:

1. *That order dated 30.3.2021 u/s 263 of the Act by learned Principal Commissioner of Income Tax, Rohtak has been made without satisfying the statutory preconditions contained in the Act and is therefore without jurisdiction and thus, deserves to be quashed as such.*
2. *That the conclusion of learned Principal Commissioner of Income Tax that "the AO has passed the order dated 29.12.2018 in a very casual manner without due diligence and without conducting any worthwhile enquiries. Therefore, it is very clear that assessment proceedings completed u/s 143(3) of the Act are erroneous so far as prejudicial to the interest of the revenue in terms of provisions of section 263 of the Act including Explanation 2 inserted by the Finance Act, 2015 w.e.f. 01.06.2015" is based on fundamental misconception of facts and provisions of law and thus not in accordance with law and, therefore untenable.*

2.1 *That the finding of learned Principal Commissioner of Income Tax that order of the learned Assessing Officer is erroneous and prejudicial to the interest of revenue on the following basis is factually incorrect, legally misconceived, contrary to evidence on record; and in any case is vague, based on surmised considerations; and therefore unsustainable:*

a) *That since during the assessment proceedings the AO had issued letter to creditors and debtors and they were either returned back unserved or were not replied to which led to the conclusion by the AO himself that assessee had bogus creditors and debtors and therefore addition on this account was required to be made however no such addition was made by the AO;*

b) *That since the assessee has shown bogus creditors the purchases remained unverified. The AO was required to disallow the purchases however no such addition was made by the AO;*

c) *That the Assessing officer conducted no enquiry regarding the purchases and sales made by the assessee;*

d) That there is clear lack of inquiry regarding purchase of fixed assets.

2.2 That the learned Pr. Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the facts on record and after making all possible enquiries had made additions by rejecting the books of accounts u/s 145 of the Act and estimating the profits and further also made disallowance of expenses and therefore computed the net profit which estimation and computation have neither been rejected nor raised, in such circumstances the order of revision is perse misconceived, misplaced and untenable, more particularly when income surrendered in the course of survey on account of excess cash, unexplained investment, unexplained expenditure and unsecured loans have been separately brought to tax then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the interest of revenue merely because the learned Pr. Commissioner of Income Tax had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible or unsustainable view.

2.3 That the learned Principal Commissioner of Income Tax has erred in holding that it is a case of "lack of enquiry" and, further failing to appreciate that alleged inadequate enquiry in the manner suggested without any independent evidence and, without any further enquiries by him cannot be a basis for assumption of jurisdiction u/s 263 of the Act.

2.4 That the learned Pr. Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the facts on record and after making all possible enquiries had accepted claim of the appellant then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the interest of revenue merely because the learned Pr. Commissioner of Income Tax had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible view.

2.5 That the learned Pr. Commissioner of Income Tax has also failed to appreciate that, u/s 263 of the Act, an order of assessment cannot be set-aside to simply to make further enquiries and thereafter pass fresh order of assessment and as such, impugned order is contrary to law and hence, unsustainable

2.6 That the learned Principal Commissioner of Income Tax has failed to appreciate that surmises, conjecture and suspicion could not be a basis much less a valid basis to invoke section 263 of the Act.

2.7 That while passing the order u/s 263 of the Act the learned Principal Commission of Income Tax cannot travel beyond the show cause notice and therefore findings and observation and also the material relied upon not referred in the show cause notice but made part of the order could neither in law and nor on fact be made a basis to assume jurisdiction u/s 263 of the Act; and thus order on this ground alone deserve to be quashed as such.

2.8 That various other adverse findings recorded in the notice u/s 263 of the Act and, also in impugned order are factually incorrect, vague, legally misconceived and untenable.

3. That the learned Principal Commissioner of Income Tax has framed the impugned order without granting sufficient opportunity to the appellant and therefore the order made is illegal, invalid and, vitiated order

Prayer - It is therefore prayed that, impugned order dated 30.3.2021 under section 263 of the Act be held to be without jurisdiction and, therefore be quashed and appeal of the appellant be allowed.

5. ITA No. 154/Chd/2021:

1. That order dated 30.3.2021 u/s 263 of the Act by learned Principal Commissioner of Income Tax, Rohtak has been made without satisfying the statutory preconditions contained in the Act and is therefore without jurisdiction and thus, deserves to be quashed as such.

2. That the conclusion of learned Principal Commissioner of Income Tax that "the AO has passed the order dated 29.12.2018 in a very casual manner without due diligence and without conducting any worthwhile enquiries. Therefore, it is very clear that assessment proceedings completed u/s 143(3) of the Act are erroneous so far as prejudicial to the interest of the revenue in terms of provisions of section 263 of the Act including Explanation 2 inserted by the Finance Act, 2015 w.e.f. 01.06.2015" is based on fundamental misconception of facts and provisions of law and thus not in accordance with law and, therefore untenable.

2.1 That the finding of learned Principal Commissioner of Income Tax that order of the learned Assessing Officer is erroneous and prejudicial to the interest of revenue on the following basis is factually incorrect, legally misconceived, contrary to evidence on record; and in any case is vague, based on surmiseful considerations; and therefore unsustainable:

a) That since during the assessment proceedings the AO had issued letter to creditors and debtors and they were either returned back unserved or were not replied to which led to the conclusion by the AO himself that assessee had bogus creditors and debtors and therefore addition on this account was required to be made however no such addition was made by the AO;

b) That during the assessment proceedings itself it was established that the assessee has shown fake mode of transportation of goods, therefore the loss claimed by the assessee on sale was bogus one and was required to be disallowed and the AO was required to disallow the losses on bogus sale however no such disallowance made by the AO on this account;

c) That since the assessee had shown debtors amounting to Rs. 12.78 crore however no inquiry was made to verify the same particularly when

there were glaring evidences of fake transport mode available with the A.O; and

d) That the AO conducted no enquiry regarding that the assessee had shown fake transportation receipt therefore the purchases remained unverified;

e) That the Assessing officer conducted no enquiry regarding the assessee has shown penalty of Rs. 3408016/- appearing in the Balance Sheet.

2.2 That the learned Pr. Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the facts on record and after making all possible enquiries had made additions by rejecting the books of accounts u/s 145 of the Act and estimating the profits and further also made disallowance of expenses and therefore computed the net profit which estimation and computation have neither been rejected nor raised, in such circumstances the order of revision is per se misconceived, misplaced and untenable, more particularly when income surrendered in the course of survey on account of excess cash, unexplained investment, unexplained expenditure and unsecured loans have been separately brought to tax then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the interest of revenue merely because the learned Pr. Commissioner of Income Tax had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible or unsustainable view.

2.3 That the learned Principal Commissioner of Income Tax has erred in holding that it is a case of "lack of enquiry" and, further failing to appreciate that alleged inadequate enquiry in the manner suggested without any independent evidence and, without any further enquiries by him cannot be a basis for assumption of jurisdiction u/s 263 of the Act.

2.4 That the learned Pr. Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the facts on record and after making all possible enquiries had accepted

claim of the appellant then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the interest of revenue merely because the learned Pr. Commissioner of Income Tax had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible view.

2.5 That the learned Pr. Commissioner of Income Tax has also failed to appreciate that, u/s 263 of the Act, an order of assessment cannot be set-aside to simply to make further enquiries and thereafter pass fresh order of assessment and as such, impugned order is contrary to law and hence, unsustainable

2.6 That the learned Principal Commissioner of Income Tax has failed to appreciate that surmises, conjecture and suspicion could not be a basis much less a valid basis to invoke section 263 of the Act.

2.7 That while passing the order u/s 263 of the Act the learned Principal Commission of Income Tax cannot travel beyond the show cause notice and therefore findings and observation and also the material relied upon not referred in the show cause notice but made part of the order could neither in law and nor on fact be made a basis to assume jurisdiction u/s 263 of the Act; and thus order on this ground alone deserve to be quashed t s such.

2.8 That various other adverse findings recorded in the notice u/s 263 of the Act and, also in impugned order are factually incorrect, vague, legally misconceived and untenable.

3. That the learned Principal Commissioner of Income Tax has framed the impugned order without granting sufficient opportunity to the appellant and therefore the order made is illegal, invalid and, vitiated order

Prayer - It is therefore prayed that, impugned order dated 30.3.2021 under section 263 of the Act be held to be without jurisdiction and, therefore be quashed and appeal of the appellant be allowed.

6. ITA No. 157/Chd/2021:

1. *That order dated 30.3.2021 u/s 263 of the Act by learned Principal Commissioner of Income Tax, Rohtak has been made without satisfying the statutory preconditions contained in the Act and is therefore without jurisdiction and thus, deserves to be quashed as such.*
2. *That the conclusion of learned Principal Commissioner of Income Tax that "the AO has passed the order dated 29.12.2018 in a very casual manner without due diligence and without conducting any worthwhile enquiries. Therefore, it is very clear that assessment proceedings completed u/s 143(3) of the Act are erroneous so far as prejudicial to the interest of the revenue in terms of provisions of section 263 of the Act including Explanation 2 inserted by the Finance Act, 2015 w.e.f. 01.06.2015" is based on fundamental misconception of facts and provisions of law and thus not in accordance with law and, therefore untenable.*

2.1 *That the finding of learned Principal Commissioner of Income Tax that order of the learned Assessing Officer is erroneous and prejudicial to the interest of revenue on the following basis is factually incorrect, legally misconceived, contrary to evidence on record; and in any case is vague, based on surmiseful considerations; and therefore unsustainable:*

a) *That since during the assessment proceedings the AO had issued letter to creditors and debtors and they were either returned back unserved or were not replied to which led to the conclusion by the AO himself that assessee had bogus creditors and debtors and therefore addition on this account was required to be made however no such addition was made by the AO;*

b) *That during the assessment proceedings itself it was established that the assessee has shown fake mode of transportation of goods, therefore the loss claimed by the assessee on sale was bogus one and was required to be disallowed and the AO was required to disallow the losses on bogus sale however no such disallowance made by the AO on this account;*

c) That since the assessee had shown debtors amounting to Rs. 21.84 crores however no inquiry was made to verify the same particularly when the glaring evidences of fake transport mode were available with the A.O; and

d) That the AO conducted no enquiry regarding that the assessee had shown fake transportation receipt therefore the purchases remained unverified;

e) That the AO should enquire into the amount invested by the assessee in construction of building and if it is required to do so, refer the matter to valuation officer for valuation of property;

f) That investment and sources should be inquired into by examining documentary evidences

2.2 That the learned Pr. Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the facts on record and after making all possible enquiries had made additions by rejecting the books of accounts u/s 145 of the Act and estimating the profits and further also made disallowance of expenses and therefore computed the net profit which estimation and computation have neither been rejected nor raised, in such circumstances the order of revision is *per se* misconceived, misplaced and untenable, more particularly when income surrendered in the course of survey on account of excess cash, unexplained investment, unexplained expenditure and unsecured loans have been separately brought to tax then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the interest of revenue merely because the learned Pr. Commissioner of Income Tax had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible or unsustainable view.

2.3 That the learned Principal Commissioner of Income Tax has erred in holding that it is a case of "lack of enquiry" and, further failing to appreciate that alleged inadequate enquiry in the manner suggested

without any independent evidence and, without any further enquiries by him cannot be a basis for assumption of jurisdiction u/s 263 of the Act.

2.4 That the learned Pr. Commissioner of Income Tax has failed to appreciate that once the learned Assessing Officer on examination of the facts on record and after making all possible enquiries had accepted claim of the appellant then such an order of assessment could not be regarded as erroneous in as much as prejudicial to the interest of revenue merely because the learned Pr. Commissioner of Income Tax had a different opinion and that too, without having established in any manner that, view adopted by the learned Assessing Officer was an impossible view.

2.5 That the learned Pr. Commissioner of Income Tax has also failed to appreciate that, u/s 263 of the Act, an order of assessment cannot be set-aside to simply to make further enquiries and thereafter pass fresh order of assessment and as such, impugned order is contrary to law and hence, unsustainable

2.6 That the learned Principal Commissioner of Income Tax has failed to appreciate that surmises, conjecture and suspicion could not be a basis much less a valid basis to invoke section 263 of the Act.

2.7 That while passing the order u/s 263 of the Act the learned Principal Commission of Income Tax cannot travel beyond the show cause notice and therefore findings and observation and also the material relied upon not referred in the show cause notice but made part of the order could neither in law and nor on fact be made a basis to assume jurisdiction u/s 263 of the Act; and thus order on this ground alone deserve to be quashed as such.

2.8 That various other adverse findings recorded in the notice u/s 263 of the Act and, also in impugned order are factually incorrect, vague, legally misconceived and untenable.

3. That the learned Principal Commissioner of Income Tax has framed the impugned order without granting sufficient opportunity to the appellant and

therefore the order made is illegal, invalid and, vitiated order

Prayer - It is therefore prayed that, impugned order dated 30.3.2021 under section 263 of the Act be held to be without jurisdiction and, therefore be quashed and appeal of the appellant be allowed.

3.0 ITA No. 150/Chd/2021 for A.Y. 2016-17 in the case of M/s Pardeep Ispat (P) Ltd. is taken as the lead case. The Ld. Pr. CIT in passing order u/s 263 of the Act has held that the assessment proceedings completed u/s 143(3) of the Act on 30.12.2018 were erroneous in so far as prejudicial to the interest of the revenue and, accordingly the assessment order made was set aside with the direction to pass an order afresh in accordance with law.

4.0 The brief facts of the case are that the assessee deals in trading business of iron and cement in the name and style of M/s Pardeep Ispat (P) Ltd., Sirsa. Return declaring an income of Rs. 89,620/- was e-filed by the assessee on 12.10.2016 which was processed as such u/s 143(1) of the Act. Subsequently, the case was selected for compulsory scrutiny and notice was issued u/s 143(2) of the Act. A survey operation u/s 133A of the Act was carried out at the business premises on 10.9.2015. During the course of survey, some excess cash, unaccounted loans and

advances to various parties, unexplained investment in furniture and fixtures were found. The assessee voluntarily offered surrender of additional income of Rs. 31,00,000/- (Rupees Thirty-one lakh) over and above the normal business income for the assessment year 2016-17. From a perusal of the Income Tax return and audit report for the year under consideration, it was noticed by the Assessing Officer (AO) that the assessee had shown its business turnover at Rs. 2,30,72,738/- and shown gross loss of Rs. 23,44,693/- which was (-) 0.16% of the total turnover. In order to verify the genuineness of the assessee's return of income, the assessee was required by the AO to provide complete addresses and furnish confirmed copies of accounts of all the sundry creditors. The assessee furnished unconfirmed copies of accounts in respect of sundry creditors/debtors. In some of the cases, addresses of the creditors were not provided. In cases, where addresses had been provided, information was called in 17 cases u/s 133(6) of the Act and the sundry debtors and creditors were asked to provide confirmed copies of account of the assessee from their books of account and the resultant situation of these notices has been summarized in the order of assessment as under:

Sr.	Status	No. of cases
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No.		
1	Received back undelivered	-
2	Neither notice received back nor information has been received	16
3	Information received	1

4.1 In these circumstances, the sundry creditors were held by the Assessing Officer to be not verifiable and, thus, the purchases shown from such sundry creditors were also held to be doubtful. The AO observed that the assessee had shown bogus debtors and creditors to book bogus loss. Moreover, since the assessee had also failed to produce the books of accounts, it was concluded that the assessee had declared huge loss just to adjust the income surrendered at the time of survey. The book results declared by the assessee were, thus, held to be not correct and the same were rejected by invoking provisions of section 145 of the Act. Income tax returns and audit reports of the assessee for assessment years 2017-18 and 2018-19 were also perused wherein the assessee had shown gross profit as under:

AY	Gross profit
2017-18	1.73%
2018-19	0.56%
Average GP	1.145%

4.2 Therefore, in the absence of purchase/sale bills and other relevant information, the AO applied average gross profit rate at 1.145% on the turnover of Rs. 2,30,72,738/- which

worked out to Rs. 2,64,182/-. Further, the assessee had claimed revenue expenses in the Profit & Loss account at Rs. 7,57,238/-. Out of these expenses an amount of Rs. 1,20,000/-, claimed on account of depreciation on furniture and fixtures, were held to be not allowable to the assessee in view of section 115BBE(2) of the Act. In respect of the remaining expenses claimed by the assessee at Rs. 6,37,238/- (7,57,238-1,20,000), in absence of any bills/vouchers in respect of these expenses, the same were held to be not verifiable and a lump sum disallowance @ 80% of the total expenses claimed was made which worked out at Rs. 5,09,790/-. Thus, total disallowance out of expenses claimed by the assessee was made at Rs. 6,29,790/- (Rs. 5,09,790/- + 1,20,000). The net income from business was, thus, computed at (2,64,182-7,57,238+6,29,790) Rs. 1,36,734/-. The additional income surrendered by the assessee on account of unaccounted loans and advances at Rs. 11,00,000/-, unexplained investment in furniture and fixture at Rs. 12,00,000/- was assessed u/s 69 of the Act and Rs. 8,00,000/- on account of unexplained cash was assessed u/s 69A of the Act. The assessment was completed under section 143(3) of the Act vide order dated 30.12.2018 at an income of Rs. 32,36,730/-.

4.3 Subsequently, a notice was issued u/s 263 of the Act on 18.3.2021 by the Ld. Pr. CIT mentioning instances of failure on the part of the AO and the assessee was required to show cause as to why the assessment proceedings for A.Y. 2016-17, vide order dated 30.12.2018 u/s 143(3) should not be cancelled by invoking the provisions of section 263 of the Act. For the sake of ready reference, the relevant portion of the notice mentioning instances of failure is being reproduced as under:

“2 The assessment record for the period under consideration was called upon and examined.

a) On such examination, it has been noticed that letters were issued by the AO to the creditors and the same were neither replied to nor returned back. You have not given full details of all creditors during the assessment proceedings. Also, on perusal of assessment order it is seen that the assessee has shown bogus creditors. Therefore, it is clear that the creditors remained unverified.

b) During the assessment proceedings the AO had observed that the assessee had shown bogus creditors, therefore the purchases remained unverified for the year under consideration.

c) You have received unsecured loans from Mohit Mehta and Smt. Sata Devi. However neither you have submitted confirmation of accounts nor the AO has called for. The AO has also failed to make independent enquiry to verify the genuineness of the said loans.

Failure on the part of the AO to examine the above issues by conducting any enquiries renders the assessment order erroneous in so far as it is prejudicial to the interest of revenue.”

4.4 The director of the company submitted the reply vide letter dated 23.3.2021 and also sought adjournment to file further details. Since this was a time-barring matter, proceedings were finalized on the basis of the reply filed by the assessee on 23.3.2021. The Ld. Pr. CIT held that there was a clear cut lack of enquiry and the order of the AO was held to be erroneous and prejudicial to the interest of revenue in view of the reasons detailed below:

“1 During the assessment proceedings the AO had issued letters to creditors and they were entire returned back unserved or were not relied to. This led to the conclusion by the A.O. himself that assessee had bogus creditors and therefore addition on this account was required to be made however no such addition was made by the A.O. on this account, therefore the order of the A.O. was clearly erroneous and prejudicial to the interest of Revenue.

2 Since the assessee has shown bogus creditors the purchases remained unverified. The AO was required to disallow the purchases however o such addition was made by the A.O. on this account, therefore the order of the AO was erroneous and prejudicial to the interest of Revenue.

3 During the year the assessee had shown unsecured loans from Sh. Mohit Mehta and Smt. Satya Devi. Neither the assessee had filed copy of accounts and confirmation of the lender nor the AO had called for the same. Therefore the genuineness of transaction and creditworthiness of the lender could not be established. Since the AO conducted no enquiry on the issue the order of the A.O. was erroneous and prejudicial to the interest of Revenue. The AO is directed to conduct detailed enquiries regarding the purchases and sales made by the assessee by conducting third party verifications. The creditors should also be examined since the SO has

himself stated in the assessment order that the inquiry letters sent to the creditors either remained unserved or were returned back. This indicates that the creditors are bogus. After inquiries necessary action should be taken as per law and necessary additions should be made. There is a clear lack of inquiry regarding purchase of fixed assets. The AO should examine this issue by way of inquiry supported by documentary evidences. Purchase vouchers should be examined. Regarding the issue of investment made in construction of house the AO should conduct inquiries made therein. The A.O. should also conduct enquiry by issuing letters to the persons who have given unsecured loans to verify genuineness of transaction and creditworthiness of the lenders. If required statements should be recorded.”

4.5 Aggrieved with the order passed by the Ld. Pr. CIT, the assessee is now before this Tribunal (ITAT) and has challenged the proceedings u/s 263 of the Act. The grounds raised by the assessee have already been reproduced in Para 2 above.

5.0 Before us, the Ld. Authorised Representative (AR) submitted that the impugned order was passed without satisfying the statutory provisions in the Act. It was submitted that it is not a case of lack of enquiry and also that it is not a case of inadequate enquiry whereby an unsustainable view has been formed by the Assessing officer. It was submitted that that if the books are rejected, then the profit declared by assessee in the past or subsequent years should be adopted for estimation of

profit for instant year. Reliance was placed on the following judgments:

- i) 288 ITR 10 (SC) Kachwala Gems v. JCIT
- ii) 374 ITR 545 (P&H) CIT v. RajinderParashad Jain
- iii) 45 ITR (T) 33 (Chd) DCIT v. Smart Value Product & Services Ltd.

5.1 It was further submitted that once the learned Pr. CIT has not disputed the action of the Assessing Officer vis-a-vis the rejection of books of accounts, the revenue could not rely on the rejected books of account for making the additions on account of trade creditors. It was submitted that since the income of the assessee has been estimated and gross profit rate has been applied, no separate addition was called for either of the amounts incurred on the purchase or sundry creditors arising from those purchases by relying on the books of accounts that have been rejected u/s 145 of the Act. Reliance was placed on following judicial pronouncements:

- i) 302 ITR 246 (P&H) CIT v. Aggarwal Engg. Co.
- ii) 296 ITR 324 (P&H) CIT v. Santosh Jain
- iii) 223 Taxman 24 (P&H) CIT v. Dulla Ram Labur Contractor
- iv) ITA No. 418/Chd/2015 and 446/Chd/2015 dated 12.8.2015 CIT v. Hind Agro Industries

5.2 On the issue of allegation by the Ld. Pr. CIT that the AO had conducted no enquiry in respect of unsecured loans from Shri Mohit Mehta and Smt. Satya Devi, it was submitted by the Ld. AR that the books of accounts have been rejected by the Assessing Officer and profit has been computed on the basis of estimation and as such the same books of accounts could not be relied upon for making a further addition to income by invoking provisions of section 68 of the Act. It was submitted that once the AO has made the addition of Rs. 31,00,000/- on account of income surrendered at the time of survey by observing that *“it has not been clarified that from where this income has been earned”*, then the alleged suppressed profits have already been factored in such surrender and that the alleged unexplained cash credits and one have to be telescoped into the other resulting only in one addition.

5.3 The Ld. AR also submitted that, admittedly, there is no material available with learned Pr. CIT that unsecured loans were unexplained cash credits u/s 68 of the Act. It was also submitted that the bank account does not constitute “books of account” of the assessee, as has been held in following cases:

- i) 113 TTJ 178 (Del) Mayawati vs. DCIT Affirmed by Hon’ble High Court of Delhi in the case of CIT vs. Mayawati reported in 338 ITR 563

- ii) 171 ITR 532 (P&H) Shanta Devi vs. CIT
- iii) 291 ITR 232 (Mad) CIT vs. Taj Borewells
- iv) 298 ITR 1 (SC) K.C.C. Software Ltd. vs. DIT (Inv.)
- v) 141 ITR 67 (Bom) CIT vs. Bhaichand H. Gandhi

5.4 It was also submitted that where two views are possible and the AO has taken a view with which the Ld. Pr. CIT does not agree, the said order cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the AO is unsustainable in law. Reliance was placed on following judicial pronouncements:

- i) 350 ITR 555 (Del) CIT v. DLF Ltd.
- ii) 303 ITR 23 (P&H) CIT v. Munjal Casting

5.5 It was further submitted that an order u/s 263 of the Act based on highly vague and cryptic observations does not satisfy the statutory pre-conditions contained in section 263 of the Act. Reliance was placed on the following judicial pronouncements:

- i) 112 taxmann.com 321 (Del) ETT Ltd. v. CIT
- ii) 120 taxmann.com 187 (Mad) CIT v. Padmavathi
- iii) 275 Taxman 394 (Mad) CIT v. Vijay Kumar Kogani

iv) 117 taxmann.com 986 (Gau) Abdul Hamid v. ITO

5.6 The Ld. AR also submitted that the AO had passed the assessment order after making all possible enquiries and that it was not a case of “lack of enquiry” or “lack of investigation” wherein the Ld. Commissioner was empowered to exercise his revisional powers by calling for and examining the records of any proceedings under the Act and thereafter passing orders thereon. It was also submitted that a perusal of the impugned order read with the show-cause notice would show that the Ld. Pr. CIT has proceeded on a fundamental factual misconception. It was submitted that the Assessing Officer had issued questionnaires/notices dated 18.12.2018 and 22.12.2018 wherein it was apparent that the issues, as raised by the Ld. Pr. CIT, have been duly considered by the AO. It was submitted that, admittedly, and as also not disputed by Ld. Pr. CIT in the show cause notice and the order of assessment u/s 263 of the Act, that the AO had, on proper analysis of facts and material on record, come to a certain conclusion and had rejected the books of account u/s 145(3) of the Act and computed the income of assessee by applying the Gross Profit ratio and had, thus, considered the facts of the case in a proper perspective and had

taken a plausible view while passing the assessment order.

Reliance was placed on the following judicial pronouncements:

- i) 341 ITR 537 (Del) CIT v. Vikas Polymers
- ii) 332 ITR 16 (Del) CIT v. Sunbeam Auto Ltd.
- iii) 343 ITR 329 (Del) ITO v. D.G. Housing Projects Ltd.

5.7 It was submitted that section 263 does not permit revision of an order on the basis of suspicion, conjectures and surmises. Reliance was placed on the following judicial pronouncements:

- i) 296 IR 238 (P&H) CIT v. Sohana Woolen Mills
- ii) ITA No. 690/Chd/2010 A.Y. 2005-06 dated 9.3.2012 Sh. Jaswinder Singh v. CIT
- iii) ITA NO. 367/Chd/2012 AY 2007-08 dated 7.3.2013 Aarti International v. CIT

5.8 It was submitted by the Ld. AR that section 263 of the Act cannot be invoked to make a deeper enquiry. Reliance was placed on the judgment in the case of CIT v. Leisure Wear Exports Ltd. reported in 341 ITR 166. It was also submitted that for holding that the assessment order passed by the AO is not only prejudicial to the interest of revenue but is also erroneous, the action of the Ld. Pr. CIT has to be preceded by some minimal enquiry. It was submitted that mere issuance of a show cause notice dated 18.3.2021 and, thereafter, mechanical passing of the

order does not qualify as “minimal enquiry” u/s 263 of the Act. It was submitted that the burden is on the learned Commissioner of Income Tax to establish that there is an ‘error’ in the order of assessment and that in absence of an ‘error’, invocation of section 263 of the Act was not in accordance with law. Reliance was placed on the judgment of Hon’ble Delhi High Court in the case of PCIT vs. Delhi Airport Metro Express (P) Ltd. reported in 398 ITR 8.

5.9 It was further submitted by the Ld. AR that Explanation 2 to section 263 of the Act does not authorise or give unfettered powers to the Ld. Commissioner to revise each and every order and, is not a substitute to the precondition u/s 263(1) of the Act. Reliance was placed on the following judgments:

- i) 70 taxmann.com 227 (Mum) Narayan Tatu Rane v. ITO
- ii) ITA No. 3391/Del/2018 Arun Kumar Garg HUF v. PCIT

5.10 It was, therefore, prayed that order made u/s 263 of the Act dated 30.3.2021 be quashed.

6.0 The Ld. AR submitted that the other five appeals were identical and that the facts as well as the impugned orders were similar, a fact which was not disputed by the Ld. CIT DR also.

7.0 On the other hand, the Ld. CIT DR supported the action of the Ld. Pr. CIT and vehemently argued that on facts, the impugned action u/s 263 of the Act was in accordance with law.

8.0 We have considered the rival submissions and have also perused the material on record. From the records produced before us, it is very much evident that the Assessing Officer had made detailed inquiries regarding the assessee's claim of purchases, sales, sundry debtors, sundry creditors and trading results declared by the assessee in the return of income. However, since on detailed enquiry, the AO rejected the trading results, he estimated the business profit of the assessee by applying the net profit rate declared in subsequent years. The Ld. Pr. CIT has neither disputed the rejection of books of accounts by the AO by invoking section 145 of the Act and nor has disputed the application of net profit rate declared in subsequent years. He has, however, held that based on the enquiries made, addition ought to have been made on account of creditors and disallowance of purchases claimed by the assessee. He has also directed the AO to conduct detailed inquiries regarding the purchases and sales made by the assessee by conducting third party verifications, examination of the creditors,

etc. and after inquiries necessary additions to be made as per law. The order of the Ld. Pr. CIT on this count is, thus, cryptic, vague and contradictory. No effort has been made to spell out as to in what manner there was lack of enquiry by the AO in the order of assessment vis-a-vis the trading results declared by the assessee. The Assessing Officer had made adequate inquiries as is evident from the order of assessment as well as from the replies furnished (which have been placed in the Paper Book filed by the assessee before us). Thus, in view of the documentary evidences, as called for and examined by the Assessing Officer, it is very much evident that the Assessing Officer had duly applied his mind to the issue of trading results and it was only thereafter that he had estimated income of the assessee. As far as the issue of investment in construction of house is concerned, the same is apparently misconceived, as it is not arising from assessment records. As far addition on account of fixed assets is concerned, the same stands separately added as part of the income declared during the course of survey by the assessee. Therefore, we can safely conclude that proper inquiries had been made by the Assessing Officer while accepting the claim of the assessee and, therefore, the contention of the Ld. Pr. CIT that no inquiry was made by the Assessing Officer vis-a-vis trading results or addition

in fixed assets is factually incorrect. It is not the case where no inquiry has been made by the Assessing Officer. Merely because the Ld. Pr. CIT felt that further inquiry should have been made, it does not make the order of the Assessing Officer erroneous and prejudicial to the interest of the revenue.

8.1 We also note that the Ld. Pr. CIT has merely remitted the matter back to the Assessing Officer without making any inquiry himself. It is apparent that no independent inquiries have been made by the Ld. Pr. CIT although it was incumbent upon him to make such inquiry so as to reach the impugned conclusion that the order of the Assessing Officer was erroneous and prejudicial to the interest of the revenue.

8.2 Moreover, on facts, rejection of trading results and application of net profit rate by the Assessing Officer is a possible view and, not an unsustainable view and, therefore, even otherwise, invocation of section 263 is not in accordance with law. In the case of CIT vs. DLF Ltd. reported in 350 ITR 555, the Hon'ble Delhi High Court, applying the mandate of the Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd. vs. CIT (reported in 243 ITR 83) and CIT vs. Max India Ltd. (reported in 295 ITR 282) has held that it is not a mere prejudicial to revenue act or a mere erroneous view that can be revised but there must

be an element of un-sustainability which clothes the Commissioner with the jurisdiction u/s 263 of the Act. Also in the case of ITO vs. D.G. Housing Project Ltd reported in 343 ITR 329, it was held by the Hon'ble Delhi High Court that in case of inadequate enquiry it is incumbent for the Commissioner to conduct enquiry and not merely remit the matter to the Assessing Officer without conducting any verification/enquiry. In the case of PCIT vs. Delhi Airport Metro Express (P) Ltd. reported in 398 ITR 8 (Del) it has been held as under:

“9. It is seen, in the order dated March 30, 2016, the Principal Commissioner of Income-tax has proceeded by setting out the contents of the show-cause notice and the contents of the reply given by the assessee. It appears that no inquiry, as such, was undertaken by the Principal Commissioner of Income-tax to come to the conclusion that the original assessment order was erroneous and prejudicial to the interests of the Revenue.

10. For the purposes of exercising jurisdiction under section 263 of the Act, the conclusion that the order of the Assessing Officer is erroneous and prejudicial to the interests of the Revenue has to be preceded by some minimal inquiry. In fact, if the Principal Commissioner of Income-tax is of the view that the Assessing Officer did not undertake any inquiry, it becomes incumbent on the Principal Commissioner of Income-tax to conduct such inquiry. All that the Principal Commissioner of Income-tax has done in the impugned order is to refer to the circular of the Central Board of Direct Taxes and conclude that "in the case of the assessee-company, the Assessing Officer was duty-bound to calculate and allow depreciation on the BOT in conformity of the Central Board of Direct Taxes Circular No. 9 of 2014 but

the Assessing Officer failed to do so. Therefore, the order of the Assessing Officer is erroneous insofar as prejudicial to the interests of the Revenue".

11. In the considered view of the court, this can hardly constitute the reasons required to be given by the Principal Commissioner of Income-tax to justify the exercise of jurisdiction under section 263 of the Act. In the context of the present case if, as urged by the Revenue, the assessee has wrongly claimed depreciation on assets like land and building, it was incumbent upon the Principal Commissioner of Income tax to undertake an inquiry as regards which of the assets were purchased and installed by the assessee out of its own funds during the assessment year in question and, which were those assets that were handedover to it by the DMRC. That basic exercise of determining to what extent the depreciation was claimed in excess has not been undertaken by the Principal Commissioner of Income-tax.

12. Mr. Asheesh Jain then volunteered that the Principal Commissioner of Income-tax had exercised the second option available to him under section 263(1) of the Act by sending the entire matter back to the Assessing Officer for a fresh assessment. That option, in the considered view of the court, can be exercised only after the Principal Commissioner of Income-tax undertakes an inquiry himself in the manner indicated hereinbefore. That is missing in the present case.

13. Therefore, the court is of the view that the Income tax Appellate Tribunal was not in error in setting aside the impugned order of the Principal Commissioner of Income-tax under section 263 of the Act. No substantial question of law arises."

8.3 In the case of M/s Arun Kumar Garg HUF v. Pr. CIT in ITA NO. 3391/Del/2018 for Assessment year 2014-15 dated 8.1.2019 it has been held by the Delhi Bench of the ITAT as under:

“5.4 In the present case, it is apparent that the Ld. Pr. CIT, unmindful of the inquiries conducted by the Assessing Officer during the course of assessment proceedings and the submissions made by the assessee in response to notice u/s 263 of the Act, has merely observed that the assessment order was passed without making proper inquiries and it is a matter of record that the Ld. Pr.CIT has himself not undertaken any inquiry to reach a conclusion that the order is erroneous and prejudicial to the interest of the revenue.

5.5 We may further add that there is a difference between lack of inquiry and inadequate inquiry and it is for the Assessing Officer to decide the extent of inquiry to be made and it is his satisfaction which is required under the law. The Hon’ble Delhi High Court in the case of Commissioner of Income Tax vs. Sunbeam Auto Ltd reported in (2010) reported in 332 ITR 167(Delhi) has held that if there was any inquiry, even inadequate, that would by itself not give occasion to the Commissioner to pass order u/s 263 of the Act merely because the Commissioner had a different opinion in the matter. It is a settled law that the Ld. Pr.CIT cannot pass the order u/s 263 on the ground that thorough inquiry should have been made by the Assessing Officer.

5.6 Although, there has been an amendment in the provisions of section 263 of the Act by which Explanation 2 has been inserted w.e.f. 1.6.2015 but the same does not give unfettered powers to the Commissioner to assume jurisdiction under section 263 to revise every order of the Assessing Officer to re-examine the issues already examined during the course of assessment proceedings. The Mumbai ITAT Bench has dealt with Explanation 2 as inserted by Finance Act, 2015 in the case of Narayan Tatu Rane vs. ITO reported in (2016) 70 taxman.com 227 to hold that the said Explanation cannot be said to have overridden the liability as interpreted by Hon’ble Delhi High Court, according to which the Commissioner has to conduct the inquiry and verification to establish and show that the assessment order was unsustainable in law. The ITAT Mumbai Bench has further held that the intention of the

legislature could not have been to enable the CIT to find fault with each and every assessment order without conducting any inquiry or verification in order to establish that the assessment order is not sustainable in law, since such an interpretation will lead to unending litigation and there would not be any point of finality in the legal proceedings. The ITAT Mumbai Bench of the Tribunal went on to hold that the opinion of the Commissioner referred to in section 263 of the Act has to be understood as legal and judicious opinion and not arbitrary opinion.

5.7 We also note that it has been held by the ITAT Mumbai Bench in the case of M/s Indus Best Hospitality & Realtors Pvt. Ltd. in ITA No. 3125/Mum/2017 vide order dated 19.01.2018 that Explanation 2 to Section 263 of the Act introduced by Finance Act, 2015 is retrospective in nature. Since the year under consideration is AY 2014-15, we are afraid that Explanation 2 to section 263 will not come to the aid of the department in this case. Similar view has been taken by the various Coordinate Benches of the ITAT in the following cases:

(a) AV Industries v. ACIT [ITA No. 3469/Mum/2010] dated 06.11.2015

(b) Metacaps Engineering and Mahendra Constructions Co. (JV) v. CIT [ITA No. 2895/Mum/2014] dated 11.09.2017

(c) Reliance Money Infrastructure Ltd. v. PCIT [ITA No. 3259/Mum/2017] dated 06.10.2017.

(d) Shantikrupa Estate Pvt. Ltd. [ITA No. 1252/Ahd/2015] dated 09.09.2016

(e) Amira Pure Foods Pvt. Ltd. v. PCIT [ITA No. 451/Del/2017] dated 29.11.2017.

5.8 Accordingly, respectfully following the ratio of the various judgments as referred to in the preceding paragraphs, we have no hesitation in holding that the

Ld. Pr.CIT had wrongly invoked the revisionary powers u/s 263 of the Act and we have no option but to quash the same. It is so ordered accordingly.”

8.4 Accordingly, respectfully following the ratio of the various judgments as referred to in the preceding paragraphs, we have no hesitation in holding that the Ld. Pr. CIT has wrongly invoked the revisionary powers u/s 263 of the Act vis-a-vis the trading results declared by assessee and we have no option but to hold the same as being bad in law.

8.5 However, in so far as loans raised from Shri Mohit Mehta and Smt. Satya Devi are concerned, we are in complete agreement with the conclusion of Ld. Pr. CIT that the Assessing officer had conducted no enquiry on this issue and the order was, thus, erroneous and prejudicial to interest of revenue. Thus, we concur with the stand of the Ld. Pr. CIT on the issue of unsecured loans and, therefore, uphold the 263 proceedings in respect of loans raised from Shri Mohit Mehta and Smt. Satya Devi and direct the AO to pass an order afresh on the said issue in accordance with law after affording reasonable opportunity of being heard to the assessee. Accordingly, the impugned order in ITA No. 150/Chd/2021 for A.Y. 2016-17 in the case of M/s Pardeep Ispat (P) Ltd. stands modified in terms of our

observations above and the 263 proceedings are partly upheld and partly quashed. It is so ordered accordingly. Grounds 1 to 9, thus, stand partly allowed.

9.0 In the remaining five appeals viz. ITA Nos. 149/Chd/2021 A.Y. 2016-17, 151/Chd/2021 AY 2016-17, 152/Chd/2021 AY 2016-17, 154/Chd/2017 and 157/Chd/2021 AY 2016-17, we note that identical grounds have been raised by the respective assesseees in all these appeals challenging the impugned orders u/s 263 of the Act wherein it has been held that the assessment orders passed u/s 143(3) of the Act were erroneous in so far as being prejudicial to the interest of the Revenue and were set aside. We note that the grounds raised by the assesseees are identical to the grounds raised in the case of Pardeep Ispat (P) Ltd. in ITA No. 150/Chd/2021 A.Y. 2016-17 with only one distinction that the issue of unsecured loans was not a subject-matter of proceedings u/s 263 of the Act in these remaining five appeals. However, in the remaining five appeals, the other issues that have been pointed out by the Ld. Pr. CIT in the impugned orders are being dealt with as under:

9.1 In ITA 149/Chd/2021, in the case of Shri Rajiv Goyal, it has been alleged by the Ld. Pr. CIT that the issue of addition to

capital account amounting to Rs. 3,63,458/- on account of compensation received and another issue of an amount of Rs. 2,55,800/- pertaining to property in Meerpur has apparently not been enquired into by the AO. A perusal of the record shows that this allegation of the Ld. Pr. CIT is correct in so far as no query has been raised by the AO on these two issues and neither has the assessee made any submissions either before the AO or even before the Ld. PR. CIT on these two issues even when the said issues were duly mentioned in the show cause notice issued u/s 263 of the Act. Accordingly, we have no option but to uphold the impugned order u/s 263 of the Act on these two issues. However, the remaining other issue in the impugned order is the non-acceptance of the trading results by the Ld. Pr. CIT. The same is not upheld in view of our detailed observations and findings in ITA No. 150/Chd/2021 for A.Y. 2016-17 in the case of M/s Pardeep Ispat (P) Ltd which has identical facts. Therefore, the proceedings u/s 263 of the Act are partly upheld and the impugned 263 order stands modified in ITA No. 149/Chd/2021 in the case of Shri Rajeev Goyal and the appeal of the assessee is partly allowed.

9.2 In ITA 151/Chd/2021, in the case of Ms. Priya Goyal, it has been alleged by the Ld. Pr. CIT that apparently no

enquiries were conducted by the AO in respect of the issue of investment in construction of house to the tune of Rs. 35,75,000/- and in respect of addition to fixed assets in construction of shop to the tune of Rs. 20,58,525/-. It is seen that the amount of Rs. 35,75,000/- pertaining to the construction of house had already been surrendered by the assessee during the course of survey proceedings as the survey team had noticed some discrepancies. Therefore, it cannot be said that the order of the AO was erroneous and/or prejudicial to the interest of revenue in so far as this issue is concerned. However, as far as the issue of investment in fixed assets in construction of shop to the tune of Rs. 20,58,525/- is concerned, a perusal of the record shows that this allegation of the Ld. Pr. CIT is correct in so far as no query has been raised by the AO on this issue and neither has the assessee made any submissions either before the AO or even before the Ld. PR. CIT on this issue even when the said issue was duly mentioned in the show cause notice issued u/s 263 of the Act. Accordingly, we have no option but to uphold the impugned order u/s 263 of the Act on the issue. The remaining other issue in the impugned order is the non-acceptance of the trading results by the Ld. Pr. CIT. The same is not upheld in view of our detailed observations and

findings in ITA No. 150/Chd/2021 for A.Y. 2016-17 in the case of M/s Pardeep Ispat (P) Ltd which has identical facts. Therefore, the proceedings u/s 263 of the Act are partly upheld and the impugned 263 order stands modified in ITA No. 151/Chd/2021 in the case of Ms. Priya Goyal and the appeal of the assessee is partly allowed.

9.3 In ITA 152/Chd/2021, in the case of Ms. Priyanka, the issues are identical to ITA 151/Chd/2021 in the case of Ms. Priya Goyal. It has been alleged by the Ld. Pr. CIT that apparently no enquiries were conducted by the AO in respect of the issue of investment in construction of house to the tune of Rs. 35,75,000/- and in respect of addition to fixed assets in construction of shop to the tune of Rs. 20,58,525/-. It is seen that the amount of Rs. 35,75,000/- pertaining to the construction of house had already been surrendered by the assessee during the course of survey proceedings as the survey team had noticed some discrepancies. Therefore, it cannot be said that the order of the AO was erroneous and/or prejudicial to the interest of revenue in so far as this issue is concerned. However, as far as the issue of investment in fixed assets in construction of shop to the tune of Rs. 20,58,525/- is concerned, a perusal of the record shows that this allegation of the Ld. Pr.

CIT is correct in so far as no query has been raised by the AO on this issue and neither has the assessee made any submissions either before the AO or even before the Ld. PR. CIT on this issue even when the said issue was duly mentioned in the show cause notice issued u/s 263 of the Act. Accordingly, we have no option but to uphold the impugned order u/s 263 of the Act on the issue. The remaining other issue in the impugned order is the non-acceptance of the trading results by the Ld. Pr. CIT. The same is not upheld in view of our detailed observations and findings in ITA No. 150/Chd/2021 for A.Y. 2016-17 in the case of M/s Pardeep Ispat (P) Ltd which has identical facts. Therefore, the proceedings u/s 263 of the Act are partly upheld and the impugned 263 order stands modified in ITA No. 152/Chd/2021 in the case of Ms. Priyanka and the appeal of the assessee is partly allowed.

9.4 In ITA 154/Chd/2021, in the case of Shri Parshotam Goyal, it is the allegation of the Ld. Pr. CIT that the issue of VAT penalty to the tune of Rs. 34,08,016/- has apparently not been enquired into by the AO. It has been mentioned by the Ld. Pr. CIT in the impugned order itself that the said amount has been shown under the "Assets" side of the Balance Sheet. It has not been pointed out by the Ld. Pr. CIT as to how the said payment of

penalty, which has not been claimed as expenditure, has harmed the interest of the Revenue being erroneous and prejudicial to the interest of Revenue. Therefore, we are not inclined to uphold the proceedings u/s 263 on this issue. Further, the other issue is the non-acceptance of the trading results by the Ld. Pr. CIT and the same is also not upheld in view of our detailed observations and findings in ITA No. 150/Chd/2021 for A.Y. 2016-17 in the case of M/s Pardeep Ispat (P) Ltd which has identical facts. Therefore, the proceedings u/s 263 of the Act are quashed in ITA No. 154/Chd/2021 in the case of Shri Parshotam Goyal and the appeal of the assessee is allowed.

9.5 In ITA 157/Chd/2021 in the case of Shri Tarsem Goyal, the only issue raised by the Ld. Pr. CIT is the issue of trading results and this issue stands squarely covered in favour of the assessee in view of our detailed observations and findings in ITA No. 150/Chd/2021 for A.Y. 2016-17 in the case of M/s Pardeep Ispat (P) Ltd which has identical facts. Therefore, the proceedings u/s 263 of the Act are quashed in ITA No. 157/Chd/2021 in the case of Shri Tarsem Goyal and the appeal of the assessee is allowed.

10.0 In the final result, ITA No. 150/Chd/2021 in the case of M/s Pardeep Ispat (P) Ltd. stands partly allowed. ITA No.

149/Chd/2021 in the case of Shri Rajeev Goyal stands partly allowed. ITA No. 151/Chd/2021 in the case of Ms. Priya Goyal stands partly allowed. ITA No. 152/Chd/2021 in the case of Ms. Priyanka is partly allowed. ITA No. 154/Chd/2021 in the case of Shri Parshotam Goyal is allowed. ITA No. 157/Chd/2021 in the case of Shri Tarsem Goyal is allowed.

Order pronounced on 19th January, 2022.

Sd/-

Sd/-

(VIKRAM SINGH YADAV)
Accountant Member

(SUDHANSHU SRIVASTAVA)
Judicial Member

Dated : 19.01.2022

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar