IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND
Ms. PADMAVATHY S, ACCOUNTANT MEMBER

ITA No.29/Bang/2023
Assessment year : 2017-18

Shree Hanuman Credit Souhard Sahakari Limited, 1, Shah Complex, K.C. Road, Near Bus Stand, Chikkodi – 591 201. **PAN: AACAS 1191D**	Vs.	The Principal Commissioner of Income Tax, Hubli.
APPELLANT		RESPONDENT

Appellant by	:	Shri S.V. Ravishankar, Advocate
Respondent by	:	Shri D.K. Mishra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	15.03.2023
Date of Pronouncement	:	17.03.2023

O R D E R

Per Padmavathy S., Accountant Member

This appeal is against the order of The Principal Commissioner of Income Tax [PCIT], Hubli passed u/s. 263 of the act dated 30.3.2022 for the assessment year 2017-18.

2. The assessee raised the following grounds:

"The order passed by the learned Principal Commissioner of Income Tax, Huballi, passed under section 263 of the Act is so far as it is

against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.

2. Grounds on Legal Issues:

a. The notice issued for initiation of proceedings under section 263 of the Act is bad in law.

b. The notice issued for initiation of 263 proceeding does not bear Document Identification Number ("DIN"), thus, the revision proceedings deserves to be quashed under the facts and circumstance of the case.

3. The learned PCIT is not justified in law in invoking the jurisdiction under section 263 of the Act and setting aside the order of the learned assessing officer as being "erroneous and prejudicial to the interest of the revenue".

4. The learned PCIT is not justified in law in holding that the order passed by the assessing officer is bad in law, without appreciating that there was no error in the orders passed, much less prejudicial to the interest of revenue, on the facts and circumstances of the case.

5. The learned PCIT failed to appreciate that the provisions of section 263 of the Act shall be attracted only when the order is both erroneous and prejudicial to the interest of revenue and since the order passed under section 143(3) of the Act was not erroneous, much less prejudicial, the invoking of section 263 was not warranted on the facts and circumstances of the case.

6. Grounds on Merits of the Case: The learned PCIT was not justified in appreciating that the assessing officer has made proper enquiry on all the aspects on which the revision is sought to be made, on the facts and circumstances of the case.

7. The appellant craves to add, alter, amend, substitute, change and delete any of the grounds of appeal.

8. For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered."

3. The assessee is a credit co-operative society registered under the Karnataka Souharda Sahakari Act, 1997. The assessee filed the return of income for AY 2017-18 on 27.10.2017 declaring Nil income after claiming deduction of Rs.15,42,961 under section 80P of the Act. The case was selected for scrutiny under CASS for verification of high value or receipt of cash shown from third parties in response data, undisclosed income after online verification of cash deposits during demonetisation and low income in comparison to high loan/advances/ investments appearing in the balance sheet and other issues.

4. The assessment was completed u/s. 143(3) where the AO after verifying the various details submitted by the asse concluded the assessment by making a disallowance of deduction claimed u/s. 80P. The PCIT on verification of assessment records noticed that the assessee has deposited a sum of Rs.1,10,75,500 in Specified Bank Notes [SBN] during demonetisation period. The PCIT was of the view that the AO has accepted the explanation of cash deposits without proper verification and that the assessee has failed to furnish a satisfactory explanation regarding the source of cash deposited in bank. Accordingly, the PCIT invoked the provisions of section 263 and set aside the order of the AO to make fresh assessment in accordance with law. Aggrieved, the assessee is in appeal before the Tribunal.

5. There is a delay of 234 days in filing the present appeal before the Tribunal. The assessee filed an application for condonation of delay stating that:-

i. The order of assessment was selected for revision and submissions were made and an order under section 263 came to be passed on 30.03.2022 by the PCIT, Huballi holding that the order passed under section 143(3) of the act was erroneous and prejudicial to the interest of revenue insofar as no addition has been made on cash deposits during demonetization period.

ii. The appellant submits that it received the 263 order by post on 0404.2022 which was acknowledged by its employee and placed it in the file along with correspondences, without bringing it to the knowledge of the managing committee on the premise that there was no demand raised or discernible from the order and that the same would be cross verified by the Chartered accountant during the audit for the year.

iii. The appellant was issued a letter dt:05.12.2022 informing that the assessment would be completed in accordance with the provision of section 144B of the Act. The appellant was under the belief that the proceedings for the assessment year 2017-18 has already been concluded as they have preferred an appeal against the order passed under section 143(3) dt 28.12.2019 of the Act.

iv. The appellant approached its Chartered Accountant for clarification, who informed that he was preoccupied with filing of GST annual returns which was time barring on 31.12.2022 and will be available only in second week of January 2023.

v. The appellant thereafter received a notice under section 142(1) of the Act on 29.12.2022 wherein it was mentioned "In connection with the on-going proceedings of scrutiny assessment in your case for A.Y.2017-18, you are required to furnish/upload the following details."which left the appellant in confused state of mind as there was already an assessment order under section 143(3) dt: 28.12.2019 against which an appeal was filed before the CIT(A), Belagavi. The appellant could not approach its Chartered Accountant as he was preoccupied with time barring assignments and submitted its response on 11.01.2023 seeking time to approach and consult its Chartered Accountant.

vi. The Chartered Accountant was approached on 12.01.2023 and he called for correspondence records pertaining to the assessment and revision proceedingsand it was ascertained that an order was passed as early as

30/03/2022 and served upon the appellant on 04.04.2022. The Chartered Accountant of the appellant has consulted another Chartered Accountant in Bangalore on the possible course of action, considering the delay. The Chartered accountant has referred the matter to the present counsel for advice on whether to prefer an appeal against the revision order dt: 30/03/2022.

vii. The appellant approached the presents counsel immediately thereafter on 16.01.2023, submitted all the requisite documents and also stated the circumstances under which the appeal could not be preferred on time. The present counsel has advised the appellant that it has a good case on the merits of the matter and advised that an appeal be preferred and to make a prayer for the condonation of delay before this Honourable Tribunal. In view of the above the appeal could not be preferred on time and the appeal came to be filed on 18.01.2023, though the due date for filing appeal was 29.05.2022,considering the date of order as date of receipt, thereby resulting in delay of 234 days.

viii. The appellant prays and submits that the delay in filing this appeal was due to an inadvertent error and due to circumstances beyond the control of the appellant."

6. We heard the rival submissions and perused the materials on record. We notice that the Hon'ble Supreme Court, in the case of *Collector, Land Acquisition Vs. MST.Katiji & Ors., (167 ITR 471) (SC)*, has explained the principles that need to be kept in mind while considering an application for condonation of delay. The Hon'ble Apex Court has emphasized that substantial justice should prevail over technical considerations. The Court has also explained that a litigant does not stand to benefit by lodging the appeal late. The Court has also explained that every day's delay must be explained does not mean that a pedantic approach should be taken. The doctrine must be applied in a

rational common sense and pragmatic manner. In the case of *Shakuntala Hegde, L/R of R.K. Hegde v. ACIT*, ITA No.2785/Bang/2004 for the A.Y. 1993-94, the Tribunal condoned the delay of about 1331 days in filing the appeal wherein the plea of delay in filing appeal due to advice given by a new counsel was accepted as sufficient. The Hon'ble Karnataka High Court in the case of *CIT v. ISRO Satellite Centre, ITA No. 532/2008 dated 28.10.2011* has condoned the delay of five years in filing appeal before them which was explained due to delay in getting legal advice from its legal advisors and getting approval from Department of Science and PMO. In the aforesaid decision, the Hon'ble Court found that the very liability of the assessee was non-existent and therefore condoned the delay in filing appeal. In condoning the delay in filing the appeals, the expression 'sufficient cause' should receive liberal construction and advancement of substantial justice is of prime importance. Discretion of condoning the delay has to be exercised on the facts of each case.

7. Keeping in mind the aforesaid principles, we find that the explanation of the assessee for delay in filing the appeals put forth before us are bonafide and genuine reasons which constitute 'sufficient cause' for the delay. The number of days of delay cannot be looked in isolation and the reasons or explanation of the assessee for the delay have to be considered in the light of the test of bonafide reasons constituting sufficient cause for the delay in a pragmatic manner. We

therefore condone the delay in filing the appeals before us and consider the appeal for adjudication.

8. Though the assessee has raised grounds both on legal issue and merits, during the course of hearing, the ld. AR presented arguments with regard to the merits of the case wherein it is contended that the AO has conducted proper enquiry before concluding the assessment with regard to the cash deposited during the demonetization period. The ld AR drew our attention to the various notices issued by the AO (pg. 8, 10, 96, 97, 98 to 101 of PB) where the AO has raised queries specifically with regard to the cash deposits made during the demonetization period. The ld. AR submitted that the AO in the said notices have called for furnishing the details pertaining to cash deposits in the specific format as has been prescribed as per the CBDT Circular. The ld AR also drew our attention to the various details submitted by the assessee in response to these notices wherein the assessee has furnished the details of bank statement, cash book, etc. The ld AR also submitted that the assessee has furnished an affidavit before the AO where it is stated that all information regarding the cash deposited into various bank accounts were furnished before the AO. The ld AR submitted that the very basis on which the PCIT has invoked the revision proceedings u/s. 263 i.e. the assessee has not furnished the cash book and necessary documents and that the AO has not verified the said details, is not factually correct since the assessee has furnished all the details which the AO has duly verified. The ld AR in this regard

drew our attention to the relevant observations of the AO in the assessment order from which according to the ld AR it is clear that the AO has verified all the details submitted and applied his mind before concluding the assessment u/s.263. The ld AR accordingly submitted that the PCIT is not correct in setting aside the order of the AO by stating that the AO has not verified the details and that to this extent the order is erroneous.

9. The ld. DR relied on the order of the PCIT.

10. We heard the parties and perused the material on record. We will first look at the relevant observations as extracted below of the PCIT in the order u/s. 263 wherein the reasons for revision are stated:-

> "2. The assessee has deposited cash of Rs. 1,10,75,500/- in Specified Bank Notes (SBNs) during demonetisation period in its bank accounts and claimed this to be out of closing cash balance as on 08.11.2016 of Rs.1,12,08,975/-. The Assessing Officer has accepted the explanation of cash deposits without verification of the cash book. It is seen that deposits during the month from April 2016 to October 2016 never exceeded Rs. 89,80,041/- for any of the months, however, the society has that the cash in hand position of the society in any of the month end between April to September 2016 stood at maximum of Rs. 4,40,071/- whereas the closing cash in hand as on 8.11.16 is shown at Rs_ 1,12,08,975/- which is very high. (Ile cash book for the prior period and necessary documents/ evidence were not filed. The Assessing Officer has not examined the cash book of the assessee for verification of its claim. When the source of the cash deposit is claimed to be out of closing cash balance on 8.11.16, it was necessary for the assessee to file, and for the AO to examine, the cashbook and relevant documents for the prior period also to examine the genuineness of the cash balance claimed at the time of demonetisation. The AO did not make necessary inquiries about the genuineness of the cash balance which is claimed to be the source for cash deposited during the demonetization period. He

has not obtained the required details and did not carry out the necessary analysis. If cash was deposited in bank accounts out of either unexplained cash, or SBNs received after the notified date in violation of law, when they had ceased to be legal tender, then this deposit was liable to be treated as unexplained and added to income u/s 69A read with section 115BBE.

3. When the case was selected for scrutiny specifically for examining high value receipt of cash shown from third parties in response data and cash deposited during the demonetization period, apart from other issues, it was necessary for the Assessing Officer to examine the source of cash and SBNs deposited and carry out necessary investigation in accordance with law and CBDT guidelines. The AO should have analysed the bank account and trend of cash receipts and ascertained the cash in hand as on 8.11.2016 after examination of books, specially by obtaining the cash book. The Assessing Officer has not done so. The Assessing Officer has not conducted necessary inquiries and has not made the additions required as per law. The assessee failed to furnish a satisfactory explanation regarding the source of cash deposited in the bank accounts alongwith the necessary evidence and this amount remained unexplained, but no such addition has been made in the assessment order.

4. As discussed above, the assessee society has deposited cash of Rs. 1 10,75 500/- during the demonetisation period in its bank accounts, in SBNs. In such cases. it was for the assessee to establish that the SBNs (Specified Bank Notes) deposited in the bank accounts were out of receipts prior to demonetisation. As the assessee has not established this, an adverse inference is naturally drawn that these SBNs were received after demonetisation. The SBNs were not legal tender after demonetisation. The Government guidelines allowed certain bodies like hospitals etc. to receive SBNs even after demonetisation, subject to certain conditions. The assessee was not one of the persons permitted to receive SBNs. When the SBNs were no longer legal tender after demonetisation, receipt of SBNs by the assessee was contrary to public policy and a violation of law."

11. The PCIT has accordingly held the order of the AO to be erroneous and prejudicial to the interests of the revenue. The main contention of the ld AR is that the assessee has submitted all the details called for with regard to the impugned transaction. In this regard we notice that the AO through various notices issued on 25.7.2019, 27.7.2019, 3.10.2019 had called for various details including details with regard to cash deposits deposited during the demonetization period. We further notice that vide notice dated 9.12.2019 and 12.12.2019, the AO had called for details of cash deposited into the bank account in specified formats which includes the details with regard to earlier financial years. The assessee vide its reply dated 14.10.2019 has filed reply details with regard to the bank details along with the bank statements. We also notice that the assessee has vide letter dated 16.12.2019 has furnished details of cash deposited into the bank along with cash book for two months from 1.11.2016 to 31.12.2016 as has been called for by the AO. We further notice that the assessee has furnished an affidavit before the AO wherein he had declared that –

"*Affidavit*

Before the Income Tax officer Ward-1, Nipani

I Manohar Krishnaji Pardhe, Secretary of Shri Hanuman Credit Souharda Sahakari Ltd, having its head office at Chikodi and 01 Branch at Karadga do hereby solemnly affirm and state on oath as under.

1. That, the assessment proceedings for assessment year 2017-18 in the case of above said society is in progress before the ITO Ward-1, Nipani.

2. That, during the course of assessment proceedings the ITO Ward-1, Nipani has desired information regarding cash deposits during various periods in various banks and in particular cash deposits in banks during the demonetarization period i.e.08.11.2016 to 31.12.2016.

3. That, we have provided all the information regarding cash deposits into various banks relating to various periods in a particular format desired by the ITO Ward-1, Nipani which is separately provided.

4. That, we have closing cash balance of Rs.O1,12,08,975/- as on 08.11.2016 at our head office excluding branch at karadga which is opened only on 25.11.2016 and operating from 25.11.2016 only. In this closing cash balance we were having SBN notes of 500 and 1000 totaling Rs.01,10, 75, 500/-. These SBN notes we have deposited into banks on following dates.

Sr No.	Date	Bank name	500 /1000	Amount
1	10.11.2016	Axis bank	1000*2500 500*7000	60,00,000
2	11.11.2016	Axis bank	1000*1900 500*4600	42,00,000
3	12.11.2016	Vijaya Bank	1000*53 500*1645	08,75,500
			Total	**01,10,75,500**

5 I hereby categorically submit that after 08.11.2016 our society has not accepted any SBN notes in our Head office and of our branches. Therefore, SBN notes deposited into bank a:tount are only out of balance as on 08.11.2016.

6. That, the details of cash deposits during the demonetarization period separately provided.

7. That, the SBN notes were available only in our closing cash balance as on 08.11.2016 and thereafter we have not accepted any SBN notes. Therefore non SBN notes cash deposits after

08.11.2016 are out of our daily recovery from the loan account and deposits from members as well as interest recovery from the borrowers and our liquid cash capital.

8. That, therefore your honor may observe that, our society is having legal sources of cash which is received during the course of our business of accepting deposits and lending money.

9. That, to support of our above submission, we have also provided Xerox copies of the cash denomination book from the period 08.11.2016 to 31.12.20.16 maintained by the cashier of the society, which has also been provided. The Xerox copies of cash book from 01.11.2016 to 31.12.2016 relating to our head office have also been provided.

10. That, there is full source for the cash deposits into banks and there is no any cash deposits of SBN notes other than out of closing cash balance as on 08.11.2016, we request your honor not to make any additions on the ground of no source for cash deposits.

11. That, therefore your honor may further observe that, there is no any unexplained cash credit in our books of accounts.

12. That, whatever stated above is true and correct."

12. From the perusal of the above details it is clear that the observations of the PCIT with regard to the details called for by the AO and the replies filed by the assessee are factually incorrect. In our considered view, the assessee has filed all the relevant details pertaining to the impugned transactions and hence it cannot be said that the details furnished were inadequate or irrelevant.

13. Before proceeding further, it is apposite to take note of the relevant extract of section 263 and the Explanation (2) to section 263 of the Act which is invoked in the present case, which read as under :-

"Revision of orders prejudicial to revenue.
263. (1) The [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer 89[or the Transfer Pricing Officer, as the case may be,] is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, 90[including,—
****
Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer 94[or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal 95[Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner,—
(a) the order is passed without making inquiries or verification which should have been made;
(b) the order is passed allowing any relief without inquiring into the claim;
(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."

14. Thus, from close scrutiny of the provisions of section 263, it is evident that twin conditions are required to be satisfied for exercise of revisional jurisdiction under section 263 of the Act i.e., firstly, the order of the Assessing Officer is erroneous; and secondly, it is prejudicial to the interests of the revenue on account of error in the order of assessment. The Bombay High Court in the case of Gabriel India Ltd. (1993) 203 ITR 108 has explained as to when an order can be termed as erroneous as follows:-

> "From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an income tax officer acting in accordance with the law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order, unless the decision is held to be erroneous. Cases may be visualised where the Income tax officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income tax officer. That would not vest the Commissioner with power to examine the accounts and determine the income himself at a higher figure. It is because the Income tax officer has exercised the quasi judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion …….. There must be some prima facie material on record to show that the tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed."

15. In the light of the above judicial pronouncement we will now consider the next contention of the ld AR with regard to whether the AO has perused the various details submitted and has used his mind before accepting the submissions of the assessee while concluding the assessment and that there is no error prejudicial to the interests of the revenue. In this regard our attention was drawn to the cash book furnished before the AO wherein it is noticed that on various dates the

break-up of closing balance is given with cash denomination to substantiate that the SBN deposited into the bank account during demonetisation period is supported by meticulous method of maintaining the cash book by the assessee which was duly verified by the AO who has applied his mind before accepting the submissions of the assessee. The contention of the ld AR is supported by the findings given by the AO in the order of assessment which is extracted below:-

> "8. Unexplained cash deposits made during demonetisation period
>
> The data analysis of bank statement of the Assessee with AXIS Bank, reveals Cash deposits made during the F Y 2016-17, during demonetisation period in specified bank notes. The assessee has failed to comply with the terms of notices issued by this Office. The Assessee was specifically required to submit the source of cash deposits made during the demonetization period i.e. 09.11.2016 to 30.12.2016 for which the assessee only submitted that it has deposited old currency notes at the time of demonetization in its bank accounts out of deposits received from members from day to day transactions.
>
> The closing cash balance of assessee as on 08.11.2016 was at Rs.1,12,08,975/- (excluding branch at Karadga which is opened on 25.11.2016 and operating from 25.11.2016,) as per affidavit filed during hearing, which is placed on record. Out of which SBN notes of Rs.500 and Rs.1000 amounting to Rs.1,10,75,500/- have been deposited into bank on following dates by the assessee.
>
> Cash deposits position in bank during F.Y.2015-16 and from 01.04.2016 to 31.12.2016 are as under:

SNo.	Particulars of information sought	Response from assessee
1	(a)Total Cash Deposit in Bank Accounts in FY 2015-16	3,59,16,650
	(b)Total Cash Deposit in Bank from 1.4.2015 to 8.11.2015	1,73,00,000

	(c)Total Cash Deposit in Bank from 9.11.2015 to 31.12.2015	65,00,000
2	(a)Total Cash Deposit in Bank in FY 2016-17	2,36,85,500
	(b)Total Cash Deposit in Bank from 1.4.2016 to 08.11.2016	11,40,000
	(c)Total Cash Deposit in Bank from 9.11.2016 to 31.12.2016	1,10,85,500

2(i)Analysis of month wise cash receipts and cash deposits from 1.4.2016 to 8.11.2016 is as under:

Monthwise	Op Cash in hand	Cash receipts	Cash deposited in bank	Cash withdrawal from bank	Closing cash on hand
April, 2016	6,48,378	80,23,484	23,00,000	30,00,000	4,14,380
May, 2016	4,14,380	76,47,148	14 00,000	15,65,580	22,125
June, 2016	22,125	82,77,769	31,00,000	17,50.000	2,53,058
July, 2016	2,53,058	77,79,507	25,00,000	23,00,000	1,47,357
Aug, 2016	1,47,357	52,36,037	12,00,000	9,00,000	89,229
Sept. 2016	89,229	89,80,041	16,00,000	33,89 500	4 40 071
Oct. 2016	4,40,071	85,31,727	11,00,000	15,00,000	37,01,724
November till 8.11.16	37,01,724	81,92,268	0	0	1 12,08,975

(4)Explain the sources of cash deposit into above bank accounts and also furnish details of SBNs deposited during 09.11.2016 to 31.12.2016 giving bifurcation of old currency in the format:

No. of Name of Bank	**No.of 1000**	**No. of 500**	**No. of 100**	**No. of 50**	**No. of new 2000**	**No. of new 500**	**No. of new 200**
Axis Bank Br Chikodi	4400	11600	0	0	0	0	0
Vijaya Bank Br Chikodi	53	1645	0	0	0	0	0

CASH DEPOSITS MADE DURING DEMONETISATION PERIOD
(09-11-2016 TO 30.12.2016)
(Table:3)

S No	Name & address of bank No.	Bank Account	Date of Deposit	SBN Notes	Cash deposit
1	AXIS Bank	9100010022807901	10.11.2016 11.11.2016	500x7000 =6000000 1000x2500 =4200000	Rs.1,02,00,000
2	Vijaya Bank	134600300000168	12.11.2016	1000x53 = 53000 500x1645 =822500	Rs.8,75,500
		TOTAL			**Rs.1,10,75,500**

Thus the assessee has satisfied of the following three conditions. They are :

a) Assessee has maintained books of accounts.

b) There is credit of amounts in the books of accounts of assessee;

c) The Assessee offered explanation about the nature and source such credit found in the books of accounts which has been found satisfactory."

16. There is no dispute that u/s. 263 of the Act, the PCIT does have the power to set aside the assessment order and send the matter for a fresh assessment if he is satisfied that further enquiry is necessary and the assessment order is prejudicial to the interests of the Revenue. However, in doing so, the PCIT must have some material which would enable to form a prima facie opinion that the order passed by the AO is erroneous, insofar as it is prejudicial to the interests of the Revenue. In the given case from the perusal of the order of the AO and details furnished by the assessee it is clear that the AO has done a proper

verification of the details of cash deposited and has given a clear finding with respect to the same. The PCIT in his order has stated that the AO ought to have conducted further enquiry to check whether the deposits satisfy the test of section 68. This view of the ld. PCIT, in our opinion, is not the right reason for exercising revisionary powers u/s. 263 of Act, as the error envisaged by Section 263 of the Act is not one that depends on possibility as a guess work, but it should be actually an error either of fact or of law

17. In view of the facts as discussed above and relying on the decision of Bombay High Court in the case of *Gabriel India Ltd (supra)*, we are of the considered view that the PCIT is not justified in setting aside the order of the AO and accordingly we hold that the order of the PCIT u/s. 263 is without jurisdiction and liable to be quashed.

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

Pronounced in the open court on this 17th day of March, 2023.

Sd/-	Sd/-
(BEENA PILLAI)	(PADMAVATHY S.)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Bangalore,
Dated, the 17th March, 2023.
/*Desai S Murthy* /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.