IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं/.I.T.A No.836/Del/2022
निर्धारणवर्ष/Assessment Year:2017-18

V.L. Jewellers, **2775, 1st Floor, Gali No. 20-21,** **Beadon Pura, Karol Bagh,** **New Delhi.**	**बनाम** **Vs.**	**Pr. Commissioner of Income Tax,** **Circle 49(1),** **Room No. 1202,** **12, Civic Centre,** **Minto Road, New Delhi.**
PAN No. AADFV7989A		
अपीलार्थी Appellant		**प्रत्यर्थी/Respondent**

निर्धारितीकीओरसे **/Assessee by**	**S/Shri K. Sampath &** **V. Raja Kumar, Adv.**
राजस्वकीओरसे **/Revenue by**	**Shri Sanjay Kumar, Sr. DR**

सुनवाईकीतारीख/ Date of hearing:	10.02.2023
उद्घोषणाकीतारीख/Pronouncement on	24.03.2023

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the order of the Ld. Pr. Commissioner of Income Tax, Delhi dated 09.03.2022 passed u/s 263 of the Act for the AY 2017-18.

2. Assessee challenged the order of the Ld. Pr.CIT in holding that the assessment order passed by the ACIT, Circle 51(1), Delhi is erroneous and

prejudicial to the interest of Revenue and directing the AO to make a fresh assessment *denovo*.

3. Briefly stated the facts are that the assessee a partnership firm filed its return of income for the AY 2017-18 on 29.10.2017 declaring income of Rs. 67,49,420/-. The return was processed u/s 143(1) of the Act and final assessment was made u/s 143(3) of the Act on 12.12.2019 accepting the income returned. Subsequently, notice dated 22.07.2021 was issued u/s 263 of the Act by the Pr. CIT observing that month-wise cash sales during FY 2016-17 especially in the month of November, 2016 till 8th November and in the month of December, 2016 which was reported at 32,59,351/- and Rs.8,200/- were abnormal, keeping in view the nature of the business carried out by the assessee, assessee has not given justification for increase in cash sales and the AO failed to verify the source of cash deposits. It was also observed that the AO failed to make any meaningful logical enquiry in respect of the capital introduced in the form by the partners and, therefore, in the show-cause notice assessee was requested to show as to why the assessment order passed u/s 143(3) of the Act cannot be set aside as being erroneous and prejudicial to the interest of the Revenue. As there was change in incumbent of office of the Pr.CIT notices dated 09.11.2011 and 10.02.2022 were issued once again to the assessee to furnish explanation. The assessee furnished its reply dated 07.03.2022 on the points raised by the Pr. CIT. However, not convinced with the replies furnished by the

Assessee the Pr. CIT passed order dated 09.03.2022 u/s 263 of the Act setting aside the assessment order passed by the Assessing Officer with a direction to make a fresh assessment after making through enquiries and investigation into the cash deposits of Rs.65,92,000/- and also the amounts introduced in the form of capital into the partnership firm.

4. The Ld. Counsel Shri K. Sampath appearing for the assessee submits that the Ld. Pr.CIT grossly erred in holding that the assessment order passed u/s 143(3) of the Act is erroneous and prejudicial to the interest of the Revenue. The Ld. Counsel referring to pages 1 to 16 of the Paper Book which is the reply to notice u/s 263 of the Act furnished before Ld. Pr.CIT submits that the Ld. Pr.CIT in his order considered only the replies furnished by the assessee appearing from pages 1 to 6 as was extracted in her 263 order. The Ld. Counsel submits that the Ld. Pr.CIT completely ignored the remaining 10 pages of the submissions of the assessee which has explained the anomalies as pointed out by the Pr.CIT in the show cause notice and she has failed to bring on record the entire submissions and also failed to consider the explanations of the assessee on the abnormalities pointed out by the Ld. Pr.CIT.

5. The Ld. Counsel for the assessee submits that in the course of assessment proceedings u/s 143(3) of the Act the Assessing Officer issued notice dated 24.10.2019 u/s 142(1) of the Act along with annexure which are specified forms to verify the cash deposits during demonetization

period i.e. (9th November to 30th December, 2016) and the assessee has furnished complete details as called for by the AO in the specific formats on 16.11.2019 which are placed at pages 32 to 37. The Ld. Counsel for the assessee further submits that the assessee has also furnished cash book, stock register, VAT returns and explained the source of cash sales and cash deposits into the bank account. The Ld. Counsel submits that the Assessing Officer examined all these details furnished by the assessee as called for specifically in the specified formats and passed the order u/s 143(3) and, therefore, the order cannot be said to be erroneous and prejudicial to the interest of the Revenue.

6. The Ld. Counsel further referring to page 178 of the Paper Book, which is the reply furnished by the assessee during the course of assessment proceedings in respect of the capital introduced by the partners, submits that complete details were provided by the assessee regarding source of funds introduced, the confirmations given by Smt. Vijaya Laxmi Verma who is the mother of the two partners of the firm who has given amounts to her sons through banking channels. Ld. Counsel submits that the assessee has also produced bank statement of Smt. Vijaya Laxmi Verma, Income tax return of Smt. Vijaya Laxmi Verma to prove the identity and creditworthiness of the donor. All these details regarding source of funds introduced by the partners in the form of capital was furnished. It is also submitted that Assessee furnished the details of sale of shares by the partners in various companies which are

also the source for the capital introduced into the firm. Therefore, the Ld. Counsel for the assessee submits that the assessee has furnished all the details required by the Assessing Officer in respect of cash sales and cash deposits made into bank account and also in respect of introduction of capital by the two partners in the firm and all these details were examined in the course of assessment proceedings and the assessment was completed u/s 143(3) of the Act and, therefore, it cannot be said that the order passed by the AO u/s 143(3) of the Act is erroneous and prejudicial to the interest of the Revenue. The Ld. Counsel submits that all these details were also furnished before the Ld. Pr.CIT in the course of proceedings before her and Ld. Pr.CIT has not considered all the replies furnished nor examined all the above evidences furnished before her before holding that the assessment order is erroneous and prejudicial to the interest of Revenue.

7. The Ld. Counsel for the assessee placing reliance on the decision of the Punjab & Haryana High Court in the case of Hari Iron Trading Company vs. CIT, 263 ITR 437 and the decision of the Delhi High Court in the case of CIT vs. Eicher Ltd., 294 ITR 310 submits that the assessee has no control over the way in which the Assessing Officer frame its assessment order. The Ld. Counsel submits that if there is an omission in the assessment order to declare the correctness of facts or the authenticity of the details as submitted by the assessee then the blame cannot be placed on the doors of the assessee.

8. The Ld. Counsel for the assessee further submits that no error has been pointed out by the Ld. Pr.CIT and in the absence of any error pointed out by the Ld. Pr.CIT and not conducting necessary enquiries herself before holding that the order is erroneous and prejudicial to the interest of Revenue, the Pr.CIT grossly erred in setting aside the assessment order passed u/s 143(3) of the Act for *denovo* assessment which is not permissible. Reliance was placed on the decision of the Hon'ble Delhi High Court in the case of DCIT vs. Jyoti Foundation, 357 ITR 388. Reliance was also placed on the decision of Delhi High Court in the case of CIT vs. Kailash Jewellery House (ITA No. 613/2010 dated 09.04.2010).

9. The Ld. Counsel for the assessee further submits that only in case of no enquiry revision under section 263 may be permissible and if there is an enquiry no prejudice is caused to the Revenue and revision is not permissible for inadequate enquiry. Reliance was placed on the decision of Delhi High Court in the case of CIT vs. NDTV, 262 CTR 604 and CIT vs. Sunbeam Auto Ltd., 332 ITR 167.

10. The Ld. Counsel further submits that when two views are possible and the Assessing Officer adopts one of the possible view with which the Pr.CIT does not agree then that order would not be an order prejudicial to the interest of the Revenue for invoking the provisions of Section 263

of the Act. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Company vs. CIT 243 ITR 83.

11. Ld. Counsel placing reliance on the decision of ITAT, Surat Bench in the case of Pramod Kesari Chand Shah vs. Pr.CIT in ITA No. 43/SRT/2018 and the decision of Delhi Bench of ITAT in the case of Champ Info Software vs. Pr.CIT in ITA No. 2799/Del/2018 dated 21.06.2019 submits that when cash deposits were examined in original assessment proceedings revision u/s 263 is not permissible.

12. Ld. Counsel for the assessee also made written synopsis/arguments which are as under: -

> *"This appeal is against the Section 263 order of the Principal CIT, Delhi-10, New Delhi ordering a fresh assessment after holding the assessment order dated 12.12.2019 passed u/s 143(3) of the Income-tax Act, 1961 (the Act) by the Asst. Commissioner of Income-tax, Circle 51(1), New Delhi (AO hereafter) as being erroneous and prejudicial to the interest of revenue.*
>
> *2. The ground taken in appeal reads as under:-*
>
> > *"That on the facts and in the circumstances of the case and in law the Pr. Commissioner of Income Tax, Delhi-10, New Delhi erred in passing order under section 263 of the Income Tax Act, 1961 ('the Act' for short) holding the order passed by the Asst. Commissioner of Income Tax, Circle 51(1), Delhi to be erroneous and prejudicial to the interest of revenue and directing the Assessing Officer to make a fresh assessment de novo.*
> >
> > *The order being without jurisdiction, arbitrary, misconceived, erroneous and unlawful must be quashed."*

3. According to the Pr. CIT, the AO failed to make any meaningful or logical enquiry. It is alleged that during assessment the AO had failed to verify the source of cash deposits and had also not enquired about the abnormal increase in cash sales keeping in view the nature of assessee's business. The Pr. CIT has inter alia raised the following specific points to hold the assessment to be erroneous and prejudicial to the interests of the Revenue:-

"i) Merely raising a query by the AO did not establish that he had examined the facts when no satisfactory explanation was submitted by the assessee during the assessment proceedings;

ii) The AO had not asked for the source of cash deposit during the assessment proceedings;

iii) The assessee had also not provided the details of cash deposits during the assessment proceedings;

iv) The assessee had failed to provide documentary evidences to prove its contentions even during the revision proceedings;

v) If cash was tantamount (sic) in the books of the assessee before the demonetization period then if could have been deposited during the relevant period or during the demonetization period;

vi) The assessee had regularly deposited cash in the preceding previous years into the bank but has failed to do so in the relevant assessment year which aspect the AO has failed to examine;

vii) The purchases made during the month of November 2016 did not match with the comparative of sales during the same period;

viii) The AO had failed to verify the stock / inventory maintained by the assessee; and

ix) The assessee has failed to provide explanation in respect of source introduced as capital and had not proved the creditworthiness of the lender."

4. It is submitted that the Pr. CIT is palpably wrong in his conclusions and that his action u/s 263 of the Act in the subject case is vicious and void ab initio. That is for the

reason that the AO had made the requisite and adequate enquiries and carried out the assessment as per the directions contained in the CBDT Circular for the scrutiny and examination of demonetization cases (please refer pages 18 to 28 of the Paper Book). The format in which information had to be sought by the AO's had been prescribed by the CBDT. All such information which was required to be collated by the CBDT had indeed been submitted by the assessee to the AO during the course of the assessment proceedings. All of it had been examined by the AO and was found to be in order. Please refer pages 30 to 37 of the Paper Book. More specifically there was neither any requirement as prescribed by the CBDT which was omitted to be provided by the assessee nor was anything left unexamined by the AO. It is only after considering all such material, details and explanations on record and after rigorously scrutinizing them and finding no anomaly that the AO concluded the assessment in the manner in which it was done. To put it differently no discrepancy, deficiency or blemish of any sort was noticed by the AO in the accounts of the year and in particular with reference to the transactions during the demonetization period was located by the AO.

5. It is noteworthy that the Principal Commissioner (Pr. CIT) who alleges error in the assessment order does not himself, even after the most excruciating enquiries, identified even one single error of fact in the assessment order. That is not to talk of prejudice being caused to the Revenue due to an error in the assessment order being identified by Principal CIT. As to the nine specific points enlisted by the Pr. CIT to hold the assessment order as erroneous and prejudicial to the Revenue the following facts in rebuttal are stated point wise:-

(i) The Commissioner's observation that merely by raising a query the AO did not establish that he had examined the facts when no satisfactory explanation was submitted by the assessee during the assessment proceedings tantamounts to the Commissioner conceding that the AO had raised queries on the relevant points and further that explanation was submitted by the assessee though considered as unsatisfactory by the Pr. CIT. So the fact that the AO had raised queries and the explanation had been given by the assessee with reference thereto is admittedly a material part of the records of

assessment. The AO was satisfied with the explanations submitted by the assessee. That was the judicial prerogative of the AO which the Pr. CIT could not legally challenge without pointing out an error therein. How that explanation which passed the AO's satisfaction was unsatisfactory at the level of the Pr. CIT is also not stated in the revision order. Being so the observation as made by the Pr. CIT is baseless and erroneous. The Pr. CIT was duty bound to bring out the error both in the explanation of the assessee and how it fetched acceptance by the AO. Failure of the Pr. CIT to bring material on record to demonstrate the error reduces the objection as raised by the Pr. CIT hollow and nugatory.

(ii) The AO had indeed asked for the source of cash deposits. He had asked for the pattern of cash-in-hand which was submitted by the assessee as per pages 33 & 34 of the Paper Book. The assessee had placed before the AO the complete sale and purchase accounts with the stock register which all established beyond doubt the manner of accrual of cash and of its deposit into the bank account. The AO, perhaps as a measure of abundant caution had obtained and placed the entire cashbook on record (pages 38-84). The objection raised by the Pr. CIT in this regard is ex facie erroneous.

(iii) The pattern of cash deposits into the bank had been submitted by the assessee to the AO as per details contained on pages 33 & 34 of the Paper Book. In fact, the AO had gone a step further and for comparison of purposes had sought the pattern of cash-in-hand in the succeeding assessment year also. That was placed by the assessee as per page 34 of the Paper Book.

(iv) The Pr. CIT is wrong in observing that documentary evidence to prove the contentions were not filed by the assessee during the revision proceedings. All details which was submitted to the AO were also explained to the Pr. CIT. The Pr. CIT had the entire record of assessment before him during the final hearing. That included monthwise cash and credit sales, list of top 20 parties to sales & purchases and the related VAT returns. Please see pages 85-95 of

the Paper Book. The entire stock details were also in the records of assessment. Please see pages 96-138 of the Paper Book.

(v) & (vi) The manner in which the businessman conducts his business is the sole prerogative of the businessman. The Pr. CIT could neither device nor dictate the mode and manner of conduct of business by the assessee based on his subjective notions. His observation, therefore, that the cash could have been deposited by the assessee before the demonetisation period is otiose and is clearly devoid of any substance or merit. In point of fact the AO had done a comparative study of cash deposits in the subject year with that of the later year. For the Pr. CIT to say that this aspect was not examined by the AO is ex facie erroneous for it is against the facts on record.

(vii) The Pr. CIT's observation that purchases made during the month of November 2016 did not match with the comparative sales during the same month clearly shows that the Pr. CIT was unaware of the modalities of this business. Such is not so in business particularly in this jewellery business, where the sales are sporadic depending upon festivals, marriage season etc.

(viii) The Pr. CIT is palpably wrong in holding that the AO had failed to verify the stock/inventory maintained by the assessee. These details were gone into deeply and incisely by the AO. Those details are contained in the pages 96-138 of the Paper Book.

(ix) The source of the capital augmented during the year was duly explained to the AO with confirmation from the respective contributors who are relatives of the partners. Those details are part of the assessment records on pages 139, 140, 141 and 145 of the Paper Book. The AO, in the assessment, abided by the Delhi Tribunal decision where it ruled that the infusion of capital in the accounts of partners is required to be examined in the assessment of the partners. Incidentally the two partners whose capital had been augmented by their relatives were being assessed by the same AO. Also the AO found that the prima facie onus on the

assessee to explain the credits in the capital accounts were in any case discharged. The Pr. CIT has apparently erred in reading and understanding the material on the records of assessment.

The AO had commenced the assessment proceedings by forwarding to the assessee the CBDT circulars and instructions as under for compliance:-

1. *Instruction No. 3/2017 dated 21.02.2017 issued vide F.No. 225/100/2017/ITA-ll;*

2. *Instruction No. 4/2017 dated 03.03.2017 issued vide F.No. 225/10//2017/IT A-ll;*

3. *SOP dated 15.11.2018 issued vide F.No. 225/363/2017/IT A-ll;*

4. *SOP dated 03.03.2019 issued vide F.No. 225/363/2017/ITA-ll; and*

5. *Internal Guidance Note dated 13.06.2019 issued vide F.No. 225/145/2019/ITA-ll.*

The assessee was asked to submit the details and explanations on the lines as prescribed by the Instructions and SOP's devised by the CBDT. All such data and records as opined to necessary by the CBDT were collected and placed on record and were duly examined by the AO. For the purpose the AO had served notice u/s 142(1) of the Act dated 24.10.2019(Paper Book pages 21-28) which was duly complied with by the assessee. The AO had also obtained the reasons for the comparatively higher sales during the demonetisation period in November 2016 and also for the lesser sales in December 2016. The AO was convinced that the higher sales occurred due to an unforeseen and exceptional circumstances of demonetization and that the sales in December 2016 in cash were less due to the non-availability of the new currency notes. The AO had also called for and placed on record RBI Circulars rationing the distribution and supply of the new Rs. 500/- and Rs. 2000/- notes (Paper Book pages 17-17A). All in all a deep and thorough investigation was carried out by the AO before closing fhe assessment. The Pr. CIT has not appreciated these acts and deeds of the AO. The Pr. CIT has carried out the revision exercise in a casual manner without proper application of mind. What could be a meaningful or

logical enquiry has been omitted to be elucidated by the Pr. CIT.

6. The Pr. CIT has omitted to appreciate that the AO is not required to certify so the correctness of facts and documents expressly or explicitly in the assessment order. The assessee has no control over the way in which the AO frames ifs assessment order. If fhere is an omission in the assessment order to declare the correctness of facts or the authenticity of the details as submitted by the assessee then the blame cannot be placed on the doors of the assessee. In any case that is not the issue in the subject case. An assessment order be held erroneous and so prejudicial to revenue on the ground that the order is brief or skefchy. The decision of the Punjab and Haryana High Court and the Delhi High Court on this point are illuminating and illustrative. They are in the cases of Hari Iron Trading Co. vs. Commissioner of Income-tax [2003] 263 ITR 437 (P&H) and Commissioner of Income- tax vs. Eicher Ltd. [2007] 294 ITR 310 (Del). This is what the courts said in the two cases:-

(a) Hari Iron Trading Co. vs. Commissioner of Income-tax [2003] 263 ITR 436 (P&H):

"The Commissioner can exercise powers under sub-section (1) of section 263 of the Income-tax Act, 1961, only after examining the record of any proceedings under the Act. The expression "record" has been defined in clause (b) of the Explanation so as to include all records relating to any proceedings available at the time of examination by the Commissioner. It is not only the assessment order but the entire record which has to be examined before arriving at a conclusion as to whether the Assessing Officer had examined any issue or not……"

"……..The assessee had no control over the way the assessment order was drafted."

(b) Commissioner of Income-tax vs. Eicher Ltd. [2007] 294 ITR 310 [Del):

"An assessee has no control over the way an assessment order is drafted. Generally, issues which are accepted by the Assessing Officer do not find mention in the assessment order and only such points

are taken note of on which the assessee's explanations are rejected and additions / disallowances are made."

7. It is a point well accepted now after several decisions of High Courts that unless error is identified by the Commissioner in the assessment order he would not be vested with the power or jurisdiction to pronounce the order prejudicial to the Revenue. The decision of the apex Court in Malabar Industrial Co. Ltd. vs. Commissioner of Income-tax [2000] 243 ITR 83 (SC) is most relevant on this point. The Court observed as under:-

"The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when an Income-tax officer adopted one of the courses permissible in law and it has resulted in loss of Revenue; or where two views are possible and the Income-tax officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue, unless the view taken by the Income-tax Officer is unsustainable in law. If has been held by this court that where a sum not earned by a person is assessed as income in his hands on his so offering the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 (SC) and in Smt. Tara Devi Aggarwal vs. CIT [1973] 88 ITR 323 (SC)."

8. On the need of the Commissioner to identify the error in the assessment order the Delhi High Court in DIT vs. Jyoti Foundation [2013] 357 ITR 388 (Delhi) at pages 394 and 395 observed as under:-

"Thus, in cases of wrong opinion or finding on the merits, the Commissioner of Income-tax has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under section 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order passed is not sustainable in law and the said finding must be

recorded. The Commissioner of Income-tax cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous……".

"……..This distinction must be kept in mind by the Commissioner of Income-tax while exercising jurisdiction under section 263 of the Act and in the absence of the finding that the order is erroneous and prejudicial to the interests of the Revenue, exercise of jurisdiction under the said section is not sustainable. In most cases of alleged inadequate investigation, it will be difficult to hold that the order of the Assessing Officer, who had conducted enquiries and had acted as an investigator, is erroneous, without the Commissioner of Income-tax conducting verification / inquiry. The order of the Assessing officer may be or may not be wrong. The Commissioner of Income-tax cannot direct reconsideration on this ground but only when the order is erroneous. An order of remit cannot be passed by the Commissioner of Income-tax to ask the Assessing Officer to decide whether the order was erroneous. This is not permissible. An order is not erroneous, unless the Commissioner of Income-tax hold and records reasons why it is erroneous. An order will not become erroneous because on remit, the Assessing Officer may decide that the order is erroneous. Therefore, the Commissioner of Income-tax must after recording reasons hold that the order is erroneous. The jurisdictional precondition stipulated is that the Commissioner of Income-tax must come to the conclusion that the order is erroneous and is unsustainable in law."

9. In sum it is submitted that the AO found no dearth, deficiency, error or deviation from accepted standard operating procedure for assessment of demonetisation cases. The Pr. CIT has not pointed out any shortcoming. No fallacy or impropriety in the assessment order has been brought on record by the Pr. CIT. The Pr. CIT has attempted to substitute her subjective and uninformed opinion over the blemishless, appropriate and balanced opinion of the AO. The whims and fancies of a superior authority cannot displace the rational and balanced opinion of a judicial authority though the latter may be at a lower hierarchical level. Further for the mere reason that the AO has not made any approbatory remarks in the assessment the order about the transactions in the

demonetisation period itself the AO could not be said to have framed the assessment without meaningful or logical enquiries. All requirements and enquiries adumbrated by the Board have been made in the subject case. The records of assessment speak for the manner in which AO has complied with the CBDT directions and instructions. The impugned order of the Pr. CIT is, therefore, misconceived, vitiated, arbitrary and erroneous which merits to be quashed."

13. On the other hand, the Ld. DR strongly supported the order of the Ld. Pr.CIT. Ld. DR submits that there was no enquiry made by the Assessing Officer regarding cash deposits and, therefore, the Ld. Pr.CIT has rightly invoked the revisionary proceedings u/s 263 of the Act. Ld. DR also placed reliance on the following decisions in support of his submissions that when there is no proper examination or enquiry or verification by the Assessing Officer exercise of jurisdiction by the Commissioner u/s 263 was justified:

1. *Nagpal Garment Industries Pvt. Ltd. vs. CIT, 113 taxmann.com 4 (MP);*
2. *Anuj Jayendra Shah vs. Pr. CIT, 67 taxmann.com 38 (Mum.);*
3. *Sify Software Ltd. vs. ACIT, 80 taxmann.com 273 (Chennai).*

14. In reply the Ld. Counsel for the assessee submitted that Ld. Pr.CIT has neither proved lack of enquiry by the Assessing Officer and nor pointed out any error in the order passed by the Assessing Officer. Ld. Counsel submits that Ld. Pr.CIT has completely ignored the submissions of the assessee before passing the order u/s 263 and the case laws relied on by the Ld. DR are distinguishable on facts.

15. We have heard the rival submissions, perused the orders of the authorities below and the case laws relied on. We observe that in the course of assessment proceedings, the Assessing Officer issued notice u/s 142(1) dated 24.10.2019 along with annexure, which is placed at page no. 21 to 28 of the Paper Book calling for various details in respect of month wise cash sales, month wise cash deposits, month wise details of sales and purchases, cash book, copies of VAT/Service Tax returns, the details of commission paid in specific formats prescribed by the CBDT for verification of cash deposits during demonetization period. In response to the said notice, the assessee filed the following information before the Assessing Officer on 16.11.2019 in the course of assessment proceedings:

Sl.No.	Particulars
1.	Copy of reply dated 16.11.2019 along with annexures.
2.	Copy of Cash Book for the period from 01.04.2016 to 31.03.2017 as annexure to letter 09.11.2019.
3.	Month-wise details of cash and credit sales as well as cash and credit purchases for the FY 2016-17 and 2015-16.
4.	Copy of list of top 20 sales parties along with their PAN & Address for the relevant FY 2016-17 with comparative figure for the FY 2015-16.
5.	Copy of list of top 20 purchase parties along with their PAN & Address for the relevant FY 2016-17 with comparative figure for the FY 2015-16.
6.	Copy of VAT returns for the FY 2016-17 & 2015-16.
7.	Item-wise and month-wise detail of quantity of stock.
8.	Copy of stock register.

16. It is also observed that the Assessing Officer issued notice u/s 142(1) of the Act dated 02.12.2019 along with annexure calling for the details in respect of capital introduced into the assessee firm by the partners and to explain the source with supporting evidences. In response to the said notice the assessee field its reply dated 05.12.2019 giving the details of capital introduced in the firm by the partners the

sources along with the confirmations, bank statements, Income tax return of Smt. Vijaya Luxmi Verma who is the mother of the assessee from whom both the partners borrowed money and also giving the details of shares sold by them explaining the sources for introduction of capital in the firm. The Assessing Officer accepting the explanations of the assessee completed the assessment on 12.12.2019 u/s 143(3) and computed the income as declared by the assessee in its return of income. Subsequently, the Pr. CIT issued show cause notice u/s 263 of the Act stating that the assessment order passed u/s 143(3) is erroneous in so far as it is prejudicial to the interest of the Revenue, bserving that cash sales made in the month of November, 2016 till 8th November in the month of December, 2016 seems to be abnormal, keeping in view the nature of business carried out by the assessee and the Assessing Officer failed to verify the sources of cash deposits, failed to make any meaningful, logical enquiry in this case regarding introduction of capital by the partners into the form. Assessee furnished detailed reply which is placed at page nos. 1 to 16 of the Paper Book explaining the sources of cash deposits made into the bank account. The assessee also explained various anomalies pointed out by the Ld.Pr.CIT in its reply particularly the increase in cash sales during the period from 01.11.2016 to 08.11.2016 and compared with that of the same period corresponding to the previous year viz-a-viz the credit sales during that period. In the reply the assessee stated that the Assessing Officer made every possible

query regarding increase in cash sales and the assessee had fully replied every query and on satisfaction regarding the increase in cash sales the Assessing Officer has not pointed out any discrepancy therein in the assessment order passed u/s 143(3) of the Act.

17. We observe that the assessee submitted a detailed reply to the show cause notice issued by the Ld. Pr.CIT explaining the sources for cash deposits and sources for introducing capital by the partners as under: -

"1. Cash deposited during demonization:-

It is respectfully submitted that the assessee was a Partnership firm of Sh. Rahul Verma and Sh. Anshuman Verma during the year under consideration. The assesse firm was engaged in the business of Gold, Silver & Diamond Jewellery and articles during the year under consideration.

During demonetization period from 09.11.2016 to 30.12.2016 the assessee firm had deposited Rs. 65,92,000/- in its bank account on the following dates:-
Rs. 50,00,000/- on 11.11.2016
Rs. 15,92,000/- on 15.11.2016
Rs. 65,92,000/- Total

Ongoing through the notice of hearing u/s 263 it has been learn that there are 2 observations regarding cash deposit in demonetization period. The contention of the assesses on these observations is as under:

Point No.- 3 of notice u/s 263

Observation No.-1

It is has been pointed out in the notice of hearing u/s 263 that "on perusal of the assessment records and ongoing through the information filed by the assessee in respect of the month wise cash sales during the F.Y. 2016=17, it is seen that the assessee has made cash sales of Rs.32,59,351 in the month of

November'2016 till 8th November & Rs.82Q0/- in the month of December'2016 which seems to be abnormal keeping in view the nature of business carried out by the assessee.

Reply

In this connection it is submitted that the reason for sale of Rs 8200/= in cash only in the month of Dec 2016 was quiet obvious because on the declaration of demonetization old specified bank notes of Rs.500 & Rs.1000 were scrapped w.e.f 09.11.2016 and in their place new Rs.500/- & Rs.2Q00 notes were introduced. Since new notes were under printing and the sufficient notes could not be print till December 2016, hence there was a huge shortage of new currency. Thus Reserve Bank of India imposed various limits ,, for withdrawal of cash from ATM and Banks. Till December'2016 Rs.24000 can be withdrawn from the bank in a week by a person (Copy of the RBI Circular dated 13-11- 2016 is enclosed herewith for your ready reference).

It is further submitted that even for the purpose of marriages maximum amount of Rs.2.50 lacs were allowed to the citizens whose date of marriages was on or before 30-12-2016. Resultant there was a huge cash shortage in the market. These cash 'withdrawal were even insufficient for their daily needs. The cash sales of jewellery was badly effected due to shortage of cash in circulation. Hence there was a meager cash sales in the month of December'2016.

Nevertheless it has been brought to your knowledge that as compare to the previous year December'2015 sales the credit sales was increased from RsA81 crores to Rs.5.75 crores in December'2016 i.e. by Rs.94 lacs whereas cash sales was reduced from Rs.5.50 lacs to Rs,812Q only in the respective month due to the reason mentioned above.

***Observation No.-2** :*

The AO has neither asked for the justification nor the assessed has filed any justification regarding the abnormal increase in cash sales. The AO had failed to verify the source of cash deposits The above facts shows that the AO has failed to make any meaningful logically enquiry in this case. As such this assessment order is erroneous/ in so far & it is prejudicial to revenue"

A note on justification regarding abnormal increase in sales

In this connection it is reiterated that during the demonetization period the assessee firm had deposited Rs.65,92,000 in specified currency in the bank. The source of these Rs.65,92,000 was providing to the assessing officer in the form of table regarding month wise cash sales and cash deposited for the period from 01=04-2016 to 31-03-2017 along with copy of complete cash books of the said period as sought by AO through Point No.-6(v) of our letter dated 16.11.2019.

The source of cash deposit of Rs.65,92,000 can be easily understand in the following summarized form instead of the tabular form sought by AO.

Cash in hand available as on 30-09-2016	*Rs.27,78,041*
Add : Cash sales in the month of October'2016	*Rs. 11,27,362*
Add: Cash sales during the period 01-11-2016 to 08-11-2016	*Rs. 32,59,351*
	Rs.71,64,754

Less : Expenses in the month of October & till 8th November [-]

Out of which Rs.65,92,000 was deposited during demonization period as stated above.

Now the question arises regarding abnormal increase in cash sales. The comparative month wise cash sales for both the financial years 2015-16 & 2016-17 were provided to the AO via Point No.6(ix) and 6(x) on 16-11-2019 in response to her notice dated 24-10-2019. The relevant portion is re-produced here:

	2016-17	*2015-16*
	Cash sales (without VAT)	*Cash Sales (without VAT)*
October	*11,27,362*	*6,67,805*
November upto 8th	*32,59,351*	*NIL*

As far as the sales of October'2016 is concerned there is a difference of Rs.4.55,008 only which is not a major difference as compare to the last year. The cash sales were held in the month of October'2016 due to festival season starting from Navratri followed by Dushehra, Karvachauth, Dhanteras, Diwali, Bhaiduj and Chhatpuja.

As far as cash sales for the period from 01-11=2016 to 08-11-2016 is concerned, there is a cash, sales of Rs.32,59,351 as against nil sale in the same period of the fast year. This sales was because of the upcoming wedding season which was going to

start from 11.11.2016 resultant there was cash sale of Rs.25,41,819 on 06.11.2016 and Rs.717,532 on 08-11-2016. Your attention is invited that in this period of 8days the credit sales was also of Rs.3.35 crores as against the credit sales of Rs.49 lacs only in the same period of last year which was more than 7 times. It was just because of the forthcoming wedding season in the month of Novermber-2016 as stated above. (Refer table 6(viii) for verification) The sales trend in the jewellery business cannot be similar if we compare any month of this year with the similar month of previous year.

Since the turnover of every month effect by many factors like variation in the date of festival seasons, wedding seasons, variation in gold rate price etc. hence strict comparison cannot be made. Since in the year under consideration the wedding season was going to be start from 11.11.2016 hence during the period of 8 days from 01.11.2016 to 08.11.2016 the cash sales was of Rs 32,59,351 as against NIL and credit sales was of Rs 3.35 crores as against 49 lacs since the similar wedding season was not upcoming in the month of November 2015.

Regarding the abnormai increase in cash sales the AO made necessary query to satisfy herself in this regard, as we!! the Assessee filed all the details sought by her vide her notice dated 24-10-2019 reply of the same was filed on 16-11-2019 she had asked through Point no.-6 the following:

Further submitted that the worthy CBDT vide their instruction number F.No.- 225/145/2019-ITA-ll dated 09-08-2019 had issued a verification check list for the assistance of AO's for OCM cases and framing of assessment in demonetization related cases, copy of which is enclosed herewith for your ready reference. The AO besides her own wisdom also asked the requisite details through point No.- 6 above and the assessee had duly filed all the requisite details and documents :

1] *Justification regarding cash in hand through point no.-6(iv).*
(Point to be appreciated that the assessee firm had immediately deposited the cash in bank i.e. Rs.50 lacs on 11-11-2016 and Rs.15.92 lacs on 15-11-2016 irrespective of the fact that the Govt, had allowed to deposit the same till 30th December'2016 which itself justify the holding of cash on 08- 11 -2016 since after the 2nd day of the working the assessee firm deposited Rs.50 lacs the

maximum amount were being accepted by the bank on a single day.

2] Copy of cash book from 01-04-2016 to 31-03-2017 through point No.-6(v).

3] Copy of online response given to the department with reference to the cash deposit during demonetization period through point No.-6(vii).

4] Month wise details of cash and credit sales as well as cash and credit purchases in the requisite form for the current F.Y, 2016-17 as well as preceding F.Y. 2015-16 to comparing the same through point No.-6(viii).

5] Month wise cash sales and cash deposited for the period from 01-04-2015 to 31-03-2016 through point No.-6(ix).

6] Similarly month wise cash sales and cash deposited for the period from 01-04-2016 to 31-03-2017 as well specifically asked for cash sales made in the November till 08-11-2016 and cash deposited in demonetization period through Point No.- 6(x).

Accordingly it can oe very well said that the AO had made every query to justify the reason for increase in cash saies not only through her wisdom but also as per instruction given by CBDT (supra). Point to be noted is that out of the lota! turnover of Rs.52 crores there is a cash sales of Rs.99 lacs only in the entire YeaF whlch is less than 2% of the total turnover hence there is no abnormal cash sales"

 # It is not the first time in the year under consideration that the cash sales was happened. In the following month there was cash sales of above Rs.HQ lacs as detailed below:

MONTH	*SALES*
July'2016	*20,13,282*
October'2016	*11,27,362*
January'2017	*11,56,031*

All these facts were brought on record during assessment through point No.-6(x) for the consideration and perusal of the AO.

 # Similarly it was not the first time that the assessee had deposited cash in the bank, in the year itself, the assessee had deposited in the followings months too :

MONTH	*CASH DEP.*
April'2016	*1,00,000*
August'2016	*5,00,000*
September'2016	*16,50,000*
TOTAL	*22,50,000*

All these facts were brought on record during assessment through point No.-6(x) for the consideration and perusal of the AO. -

Since the Ld.AO made every possible query regarding increase In cash sales "and the assessee had fully replied of .her every query, it can be very well understand that she was fully satisfied regarding the increase in cash sales since she has not pointed out any discrepancy therein.

Verification of source of cash deposit *: It is hereby submitted that this case was selected for scrutiny for the following reasons (as per notice dated 24-10-2019) :*

1] ***Cash deposit for demonetization period (9th November to 30th December'2016)***

In this connection it is submitted that the case was specifically selected for verification of source of cash deposited as mentioned above it is a usual practice of the assessing officers to mentioned only the adverse finding in the body of the assessment order passed under u/s 143(3) of the income tax act AND where the assessing officers are satisfied on the issue involved in any case they do not record their satisfaction in the body of assessment order itself. It is a usual practice they always mentioned in the body of assessment order that the requisite details have been called and examined which the assessing officer did so in our case. Hence, it can't be said that Just because the AO did not bring this fact into the assessment order and has passed the order in brief does not mean that the AO has not examined the source of cash deposit

FURTHER, in our case the source of cash deposit was primary cash sates and for the purpose of genuineness of the cash sales, the AO sought a number of following information, documents/records etc. The Assessee firm submitted the same on the income tax portai for her verification and record:

1] Copies, of all VAT returns for the period from 01-04-2016 to-31-03-2017 along with reason of revision in vat returns if any for the period prior to demonetization period.

Please appreciate that all the returns were filed in time and none was revised for the purpose of revising the turnover. The assessee firm was registered with the Delhi VAT department. The cash sales made during the year were subject to charge of VAT accordingly cash sales were duly reported to the VAT Department in time as per Act.

2] The quantity wise details of Stock of every month showing Opening quantity, purchase quantity, sales quantity and closing quantity were submitted.

The separate quantity wise detail of all the stock for all the 12 months separately were submitted for the perusal of the AO and it is to be noted that no discrepancy was pointed out by the AO.

3] Copy of day wise stock register in respect of all stock items such as Gold bar, alloy and Mixing , Gold and diamond jewellery etc. were also submitted before AO for her verification.

In this regard it is submitted that the assessee firm is maintaining day wise stock register in respect of ail the stock items as stated above.

Please appreciate that there was enough stock to effect the cash sales. The alleged cash sales were made out of the stock of materials held by assessee firm and were duly recorded in the stock register. Similarly., ail the purchases, sales & stock are interlink and inseparable. Every purchase had increased the stock and every sale had decreased the stock. It is also to be notes here that during the 8 days of November i.e. from 1st November to 8th November there is a cash and credit sales of Rs.3.87 Crores but to make the sales during the said period the assessee firm had not made any purchases. The entire sales in these 8 days were made out of the stock held by the assessee firm.

The assessee firm was having enough stock of jewellery not only at the time of making alleged cash sales, rather

throughout the year. For instance at the- beginning of the year it was having stock worth of Rs.16.40 crores and at the end of the year Rs. 16.35 crores.

4] Name and addresses of the 20 tops suppliers from whom purchases were made were provided to the assessing officer. PAN of these suppliers were also provided to the assessing officer for her verification. It is worth to mention here that there is no cash purchase except of Rs. 19,200/- for Alloy used to be mix for manufacturing of jewellery.

5] Copy of day wise cash book for the period 01.04.2016 to 31.03.2017 in which the alleged cash sales were duly recorded.

6] The assessee firm has maintained proper books of accounts and the same have been audited u/s 44AB of the income Tax Act. Copies of financial statement for the year under consideration along with Audit Report u/s 44AB were also submitted before the assessing officer.

7] The books of accounts are regularly maintaining in normal course of business along with stock register on day to day basis. All the purchases and sales are duly recorded in the financial books as well as stock record. The movement of stock is directly linked to the purchase and saies, the audit report u/s 44AB, financial statement furnished clearly shows the reduction of stock position and matching with the sales which go to say that the cash generated represent the sales hence there is no reason to disbelieve the sales.

8] That in the case of cash sales (less than Rs.2 lacs) PAN, address, name of the buyer, telephone number of the buyer are not provided by the customer being not mandatory required. Hence in the case of cash sales the genuine-ness can be verified only from the cash book, cash memos, availability of the stock and VAT Returns which the AO had asked to file and the assessee had uploaded on the portal for verification. CBDT instruction dated 09.08.2019 (supra) also advised the assessing officer to verify all these documents to determine the genuineness of the cash sales. The AO did so and there is no reason to disbelieve the sales.

9] It is humbly submitted that all the alleged cash sales had offered as revenue receipt in the trading and profit & loss account of the firm, resultant its income has been part of income shown in the return of income filed for the year. Since the income has already been offered for tax, the question of loss of tax to the revenue does not arise.

The reliance is place in the following judicial pronouncement

a) *In the case of **Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 [SC], the Hon'ble Apex Court** decided the matter in favour of assessee of the ground that it was clear on the record that the assessee maintained the books of accounts according to the mercantile system and there was sufficient cash balance in its cash books and the books of account of the assessee were not challenged by the Assessing Officer. If the entries in the books of accounts are genuine and the balance in cash is matching with the books, it can be said that the assessee has explained the nature and source of such deposit.*

b) *Kailash Jewellery House vs, CIT Delhi as held by Hon'ble High Court of Delhi 1TA613/2010*

"4…….. The Tribunal also observed that it is not in dispute that the sum of Rs.24,58,400 was credited in the saie account and had been duly included in the profit disclosed by the assessee in its return. It is in these circumstances that the Tribunal observed that the cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same.

(copy of which is enclosed herewith for your ready reference)

c) *Pramod Kesharichand Shah Vs. The Principal Comm. Of Income Tax Valsad, ITA No.43/SRT/2018 ITAT Surat Bench, Surat.*

"The bench held that during the reassessment proceedings, the assessee submitted the details and the explanations of Rs.18,00,000 cash deposited in the bank account. Just because the Assessing Officer did not bring this assessment order and has passed order in

brief, does not mean that assessing officer has not examined the cash deposit. The assessing officer has applied his mind and passed the reassessment order under section 143(3) r.w.s. 147 of the Income Tax Act. Hence, order passed by the Assessing Officer should not be erroneous. The assessee also submitted the details of cash deposit in response to notice under section 142(1) of the Act. The assessee also submitted the copy of the cash book before the assessing officer. Thus, the assessee has submitted the details of cash deposit from his side and it was on the Assessing Officer to examine it."

and

*d) The reliance has been placed on the latest case of **ACIT vs. Hiraparana Jewellers [2021] 128 taxman.com 291 (Vishakhapatnam- Trib).***

Copies of gist of the case and complete order are enclosed herewith for your reference. The case has been decided after reviewing and referred the number of Hon'ble apex court decisions and Delhi High Court.

The list is not repeated here for the sake of brevity in which HAT held:

"On appeal, Visakhapqtnam ITAT held that purchases, sales, and stock are interlinked and inseparable. Every purchase increases the stock, and every sale decreases the stock. To disbelieve the sales, either the assessee should not have sufficient stocks in their possession, or there must be defects in the stock registers/stocks. Once there was no defect in the purchases and sales, and the same matches inflow and the outflow of stock, there was no reason to disbelieve the sales.

Tribunal had gone through the trading account and find that there was sufficient stock to affect the sales, and it didn 9t find any defect in the stock and the sales. Since assessee had, already admitted the sales as revenue receipt, there was no case for making the addition under \ Section 68 or tax the same under Section 115BBE again. "

Accordingly on relying of this Hirapanna Case it can be very well said that the order passed by the AO is not prejudicial to the interest of revenue also.

In conclusion it can be very well conclude

i) that the AO had made proper enquiry which should have been made at her level best and as per her wisdom which satisfied the condition prescribed In clause(a) of the explanation 2 section 283 (as inserted from 01-06-2015).

ii) Similarly, the order has been made in accordance with the instructions dated 09- 08-2019 (supra) issued by CBDT the apex body and fully satisfied the condition laid down in clause (d) to the explanation to section 263 (as inserted from 01-04- 2015)

Without prejudice to the above your attention is also drawn on the following decisions pronounced by Hon'ble Courts for your consideration:

I] It was settled by honorable Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT [(2000) 243 ITR 83 (SC)J wherein it was held that if the A.O. adopts one of the possible courses available in the scheme of the I.T. Act which results in any loss of revenue or when two view's are possible and the A.O. adopts one of them with which the C.I.T. does not agree, then it would not be an order prejudicial to the interest of revenue for invoking tine jurisdiction u/s. 263 of the Act.

Accordingly the order passed is neither erroneous in so far and it is nor prejudicial to the revenue. You are therefore requested please to drop the proceeding so initiated on the basis of the above facts and findings.

Through the Point No.-4 it has been remarked that the credit worthiness of Smt. Vijay Laxmi Verma has not'been verified by the AO.

In this connection it is submitted that Smt. Vijay Laxmi Verma had given a sum of Rs,70,47,000 to his elder son Sh, Rahul Verma and Rs.67,19,000 to his younger son Sh. Anshuman Verma who have introduced the same in the firm as their capita! contribution.

At the outside without prejudicial to the mentioned hereafter it is hereby submitted that Smt. Vijay Laxmi Verma had given the above mentioned amount to their son by selling Equity Shares of Eicher Motors limited to the tune of Rs.1,37,77,075/- r.npy of ITR-V showing this exempted Income

is enclosed herewith for your perusal and record. During the assessment the confirmation from Smt. Vijay Laxmi Verma along with her Bank Statement were submitted before the Ld. AO for her verification and perusal. Smt. Vijay Laxmi Verma is assessed to tax vide PAN-ADPPV3701R and had filed her return of income for the year under assessment. She being had given the said amount to her sons out of her declared income hence it is not prejudicial to the interest of revenue. Besides above it is submitted that the assessee is a partnership firm and both the partners are income tax payee and filing their return of income regularly. The entire capital was introduced by the partners through banking channels, copy of the bank statements of the partners were also filed.

It is further submitted that it is a well settled law that the credit in the capital account of a partner cannot be brought to tax as income of the assessee firm u/s 68 of the Income Tax Act. Reliance is placed on the following judicial pronouncement :

i) 257 Taxman 440 (SC) Pr. Cit v. Vaishnodevi Refoils & Soivex affirmed the judgment in the case of Pr. CIT v. Vaishnodevi Refoils & Soivex reported in 253 Taxman 135 (Guj)

ii) 49 ITR 723 (Bom) Orient Trading Co. Ltd. v. CIT

iii) 245 ITR 160 (MP) CiT v. Metachem Industries

iv) 252 ITR 344 (P&H) CIT v. Barna Electro Corporation

v) 11 TMI 630 (P&H) CIT v. Metal & Metals of India

vi) 208 CTR 459 (P&H) C1T v. Rameshwar Dass Suresh Pal Cheeka

vii) 53 Taxman 135 (Guj) Pr. CIT v. Vaishnodevi Refoils & Solvex

viii) 141 UR 706 (All) CIT v. Jaiswal Motor Finance

ix) 218 ITR 508 (All) India Rice Mills v. CIT

x) 221 ITR 239 (All) Surendra Mahan Seth v. CIT

xi) 263 CTR 612 (All) Zafa Ahmad and Co. v. CIT

xii) 268 ITR 381 (Pat) CIT v. Md. Perwez Ahmad and Others

xiii) 282 CTR 200 (Pat) CIT v. Anurag Rice Mills

xiv) 268 ITR 381 (Pat) CIT v. Md. Parwez Ahmad

xv) 400 ITR 120 (Jhar.) Prayag Tendu Leaves Processing Co. v. CIT

xvi) 291 ITR 232 (Mad.) CIT v. Taj Borewells

xvii) ITA No. 2912/D/2014 dated 20.12.2017 Shri Gems v. ITO

xviii) ITA No. 3734/D/2018 dated 29.3.2019 AMS Roadlines vs. DCIT

It is further submitted that during the assessment the date wise introduction of capital by the partners was submitted on 05-12=2019 along with the source of their capital introduction with the documentary evidence. It has been further submitted that in the case of funds received from mother Smt. Vijay Laxmi Verma, her confirmation with PAN and copy of her saving bank account duly highlighted the concerned entries were provided to the Ld. AO.

It is trite law and has also been held by the Hon'ble Jharkhand High Court in case of Prayag Tendu Leaves Processing Co. v. CIT (Supra) that under section 68, Assessing Officer, while assessing a Partnership Firm, can ask for source of income of partnership firm, but 'source of source' cannot be examined.

Thus in view thereof Hon'ble Jharkhand High Court has held as under:

"In view of the aforesaid decisions where assessee has given support of the gift or the amount received from the particular person with necessary documents, such as, copies of demand drafts and cheques etc., no addition could have been made by this appellant in respect of the amount received by the assessee. Under Section 68 of the Income Tax Act, the Assessing Officer while assessing a Partnership Firm, can go behind the source of income of the partnership firm, but he cannot go to "source of source". The aforesaid aspect of the matter has been properly appreciated by the income Tax Appellate Tribunal by allowing the appeal preferred by the respondent - assessee and no error has been committed by the Income Tax Appellate Tribunal, Circuit Bench, Ranchi."

Your attention is also invited on the decision held by HAT Delhi bench -B New Delhi order dated 21-06-2019 in the case of Champ Info Software vs. Pr. Commissioner of income Tax Noida, ITA No. 2799/Del/2018. The relevant para's are reproduced here under:

"5.5 In the instant case, the Id. PC1T has essentially exercised revisionary power u/w 263 of the Act to examine the source of source of partner which is not permissible In the eye of law. In fact during the course of hearing before us, it was bought to our notice that notice u/s 148 of the Act has been issued in case of Shri Shaleen Vajpayee and, therefore, revenue is otherwise not without any legal recourse of examining such investment in the firm."

"5.7 Accordingly, respectfully following the ratio of the various judgments as referred to in the preceding paragraphs, we have no hesitation in holding that the Id. Pr.CIT had wrongly invoked the revisionary powers u/s 263 of the Act and we have no option but to quash the same. If is so ordered accordingly. Grounds 1 to 6 thus stand allowed."

It is hereby submitted that the case is supposed to be re-assessed in pursuance of the section 263 on the ground that the credit worthiness of Smt. Vijay Laxmi Verma who give money to her sons is not verified by the AO. In this connection it is submitted that as per the section 68 the source to source is not mandatory in the case of partnership firm. It is in the case of company in which public is not substantially interested is required to explain the source of source as per the clause(a) of the first proviso.

Section 68 is reproduced here:

<u>Section - 68 Cash Credit</u>

Where any sum is found credited in the books of an assessee maintained for any previous year and assessee offer no-explanation above the nature and source thereof or the explanation offered by him is not, in the opinion of the AO, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year.

Provided that where the assessee is a company, (not being a company in which the public are substantially interested) and the sum so credited consists of share application money, share capita!, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless :

(a) the person, being a resident in whose name such credit is recorded in the books of such company also

offers an explanation about the nature and source of such sum so credited, and

(b) such explanation in the opinion of the AO aforesaid has been found to be satisfactory.

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10

If we go through the above provision the source to source is to be explained in the case of companies in which public is not substantially interested for the verification of share application money, share capital, share premium or such other amount. This section does not require to explain the credit worthiness of the source to source for others.

Your attention is invited that the firm had established the identity of the person who invested in the firm being partner. The partner has also provided copy of their bank account and explained the source of investment date wise as well as amount wise with evidences, the firm had discharged its onus, and the AO cannot charge tax on the firm as decided in a number of cases as detailed above, hence the order passed by the AO is neither erroneous nor prejudicial to the interest of the revenue.

The reliance has also been placed in the case of Champ Info. Software vs. Pr.CIT in the Income Tax Appellate Tribunal Delhi Bench B New Delhi vide ITA No.-2799/Dei/2018 order dated 21-06-2019. Copy of the order is also enclosed herewith for your ready reference.

On the basis of the above facts it can be said that the assessment order is neither erroneous nor prejudicial to the interest of the revenue. You are therefore requested please to drop the proceeding on this ground too and oblige."

18. The Ld. Pr. CIT passed order u/s 263 on 09.03.2022 holding that the Assessing Officer has not made any meaningful and logical enquiries in respect of sources of cash deposits into its bank account. The Pr. CIT observed that the Assessing Officer has not verified the abnormal

increase in cash sales and there was no satisfactory explanation by the assessee, Assessing Officer failed to verify the stock/inventory maintained by the assessee in respect of cash sales. The Ld. Pr.CIT also observed that assessee failed to provide explanation in respect of sources of funds introduced as capital and creditworthiness of the lender.

19. On perusal of the order of the Ld. Pr.CIT, we observed that the Ld. Pr.CIT has not considered the entire reply of the assessee and only a part reply was extracted in her order. The Pr.CIT has not examined the contentions raised by the assessee in its detailed reply giving various reasons for increase in cash sales viz-a-viz credit sales, purchases, stocks, etc. for source of cash deposits into bank account. Ld. Pr.CIT also completely ignored the submissions of the assessee in respect of explanation and the evidences furnished by the assessee in respect of capital introduced by the partners into the partnership firm. We observed that in course of assessment proceedings, the assessee was called upon to explain and furnish the information in respect of source of cash deposit in a specified format prescribed by the CBDT for examining the cash deposits and considering the submissions and explanations the assessment was completed even though the Assessing Officer did not record his satisfaction in the assessment order. On reading of the assessment order, the replies/information furnished by the assessee during the course of assessment proceedings, it cannot be said that there is no enquiry at all made by the Assessing Officer. There is an enquiry by

the AO in respect of the source of cash deposit as the Assessing Officer required the assessee to furnish the information in the prescribed format which was furnished by the assessee. It cannot be said that there is no enquiry by Assessing Officer at all simply because the AO did not express his satisfaction in so many words on the replies and evidences furnished by the Assessee especially when the assessment was taken up for scrutiny for examining the cash deposits during demonetization period with specific information was called for in the specified format. There may be inadequate enquiry but it cannot be said that there is absolutely no enquiry at all by the Assessing Officer. We also observe that the Ld. Pr.CIT has not pointed out any error in the assessment order except saying that the Assessing Officer has not made enquiries.

20. The Hon'ble Delhi High Court in the case of DIT vs. Jyoti Foundation (supra) observed as under:

> *"Thus, in cases of wrong opinion or finding on the merits, the Commissioner of Income-tax has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under section 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order passed is not sustainable in law and the said finding must be recorded. The Commissioner of Income-tax cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous……."*.
>
> *"……This distinction must be kept in mind by the Commissioner of Income-tax while exercising jurisdiction under section 263 of the Act and in the absence of the finding that the order is erroneous and prejudicial to the interests of the Revenue, exercise of jurisdiction under the*

said section is not sustainable. In most cases of alleged inadequate investigation, it will be difficult to hold that the order of the Assessing Officer, who had conducted enquiries and had acted as an investigator, is erroneous, without the Commissioner of Income-tax conducting verification / inquiry. The order of the Assessing officer may be or may not be wrong. The Commissioner of Income-tax cannot direct reconsideration on this ground but only when the order is erroneous. An order of remit cannot be passed by the Commissioner of Income-tax to ask the Assessing Officer to decide whether the order was erroneous. This is not permissible. An order is not erroneous, unless the Commissioner of Income-tax hold and records reasons why it is erroneous. An order will not become erroneous because on remit, the Assessing Officer may decide that the order is erroneous. Therefore, the Commissioner of Income-tax must after recording reasons hold that the order is erroneous. The jurisdictional precondition stipulated is that the Commissioner of Income-tax must come to the conclusion that the order is erroneous and is unsustainable in law."

21. In the case of CIT vs. Sunbeam Auto Ltd., (332 ITR 167) the Hon'ble Delhi High Court held that if there was any enquiry even inadequate that would not by itself give occasion to the Commissioner to pass orders u/s 263 of the Act merely because he has a different opinion in the matter. It was held that it is only in cases of lack of enquiry that such a course of action would be opened. While holding so the Hon'ble High Court observed as under: -

"We have considered the rival submissions of the Counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income Tax u/s 263 of the Income Tax Act. As noted above, the submission of Ld. Counsel for the Revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order, which apparently does not give any

reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned Counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders u/s 263 of the Act, merely because he has a different opinion in the matter. It is only in cases of "lack of inquiry" that such a course of action would be open."

22. The Hon'ble Bombay High Court in the case of Gabriel India Ltd., (203 ITR 108) held as under:

"…..From a rending of sub-section (1) of section 263, it is clear that the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the Income Tax Officer is 'erroneous in so far as it is prejudicial to the interests of the Revenue'. It is not an arbitrary or unchartered power, it can be exercised only on fulfillment of the requirements laid down in sub-section (1). The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-

judicial controversies as it must in other spheres of human activity.

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 law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualize a case of substitution of the judgment of the Commissioner for that of the Income Tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualized where the Income Tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the Officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income Tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income Tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be formed to be erroneous simply because the Commissioner does not formed 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 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….

We may now examine the facts of the present case in the light of the powers of the Commissioner set out above. The Income Tax Officer in this case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given detailed explanation in that regard by a letter in writing. All these are part of the record of the case. Evidently, the claim was allowed by the Income Tax Officer on being satisfied with the explanation of the assessee. Such, decision of the Income Tax Officer cannot be

held to be 'erroneous' simply because in his order he did not make an elaborate discussion in that regard."

23. In the case of CIT vs. D.G. Housing Projects Ltd., 343 ITR 329 the Hon'ble Delhi High Court held as under: -

***"12**. The Assessing Officer is both an investigator and an adjudicator. If the Assessing Officer as an adjudicator decides a question or aspect and makes a wrong assessment which is unsustainable in law, it can be corrected by the Commissioner in exercise of revisionary power. As an investigator, it is incumbent upon the Assessing Officer to investigate the facts required to be examined and verified to compute the taxable income. If the Assessing Officer fails to conduct the said investigation, he commits an error and the word „erroneous" includes failure to make the enquiry. In such cases, the order becomes erroneous because enquiry or verification has not been made and not because a wrong order has been passed on merits.*

***13**. Delhi High Court in Gee Vee Enterprises vs. Additional Commission of Income-Tax, Delhi-I & Ors.,(1975) 99 ITR 375, has observed as under:-*

"The reason is obvious. The position and function of the Income-tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence may be accepted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word "erroneous" in section 263 emerges out of this context. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order

becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct."

***14**. In the said judgment, Delhi High Court had referred to earlier decisions of the Supreme Court in Rampyari Devi Sarogi vs. CIT (1968) 67 ITR 84 (SC) and Tara Devi Aggarwal vs. CIT (1973) 88 ITR 323 (SC), wherein it has been held that where Assessing Officer has accepted a particular contention/issue without any enquiry or evidence whatsoever, the order is erroneous and prejudicial to the interest of the Revenue. After reference to these two decisions, the Delhi High Court observed:-*

"These two decisions show that it is not necessary for the Commissioner to make further inquiries before cancelling the assessment order of the Income-tax Officer. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the case the Income-tax Officer should have made further inquiries before accepting the statements made by the assessee in his return."

***15**. The aforesaid observations have to be understood in the factual background and matrix involved in the said two cases before the Supreme Court. In the said cases, the Assessing Officer had not conducted any enquiry or examined evidence whatsoever. There was total absence of enquiry or verification. These cases have to be distinguished from other cases (i) where there is enquiry but the findings are incorrect/erroneous; and (ii) where there is failure to make proper or full verification or enquiry.*

***16**. In the case of Commissioner of Income Tax vs. Sunbeam Auto Ltd. (2011) 332 ITR 167 (Del), Delhi High Court was considering the aspect, when there is no proper or full verification, and it was held as under:-*

"We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income-tax under section 263 of the Income-tax Act. As noted above, the submission of learned counsel for the Revenue was that while passing the assessment order, the Assessing Officer did not

consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order, which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between " lack of inquiry" and " inadequate inquiry" . If there was any inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter. It is only in cases of "lack of inquiry" that such a course of action would be open. In Gabriel India Ltd. [1993] 203 ITR 108 (Bom), law on this aspect was discussed in the following manner (page 113):

> *" . . . From a rending of sub-section (1) of section 263, it is clear that the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the Income-tax Officer is „erroneous in so far as it is prejudicial to the interests of the Revenue‟ . It is not an arbitrary or unchartered power, it can be exercised only on fulfilment of the requirements laid down in sub-section (1). The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate*

proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well- accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. (See Parashuram Pottery Works Co. Ltd. v. ITO [1977] 106 ITR 1 (SC) at page 10) . . .

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 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 the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be formed 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 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 . . .

We may now examine the facts of the present case in the light of the powers of the Commissioner set out above. The Income-tax Officer in this case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given detailed explanation in that regard by a letter in writing. All these are part of the record of the case. Evidently, the claim was allowed by the Income-tax Officer on being satisfied with the explanation of the assessee. Such decision of the Income-tax Officer cannot be held to be „ erroneous" simply because in his order he did not make an elaborate discussion in that regard."

17. *Thus, in cases of wrong opinion or finding on merits, the CIT has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under Section 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order passed is not sustainable in law and the said finding must be recorded. CIT cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, again the CIT must give and record a finding that the order/inquiry made is erroneous. This can happen if an enquiry and verification is conducted by the CIT and he is able to establish and show the error or mistake made by the Assessing Officer, making the order unsustainable in Law. In some cases possibly though rarely, the CIT can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the Assessing Officer had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the Assessing Officer to conduct further enquiries without a finding that the order is erroneous. Finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction under Section 263 of the Act. In such matters, to remand the matter/issue to the*

Assessing Officer would imply and mean the CIT has not examined and decided whether or not the order is erroneous but has directed the Assessing Officer to decide the aspect/question."

24. The principle laid down by the above decisions squarely applies to the facts of the assessee's case. The Ld. Pr.CIT in order to hold the assessment order as erroneous and prejudicial to the interest of the Revenue should make enquiries himself pointing out the error or omission on the part of the Assessing Officer in conducting the enquiries. On a reading of the order of the Ld. Pr.CIT it is observed that no such exercise has been done by the Ld. Pr.CIT before concluding that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. The assessee has furnished explanations along with all evidences before the Ld. Pr.CIT and the Ld. Pr.CIT failed to point out the deficiencies in conducting the enquiries by the Assessing Officer. The Ld. Pr.CIT in the order observes that the assessee has failed to prove the source of cash deposits of Rs.65,92,000/- in its bank account during the period of demonetization, neither the Assessing Officer had asked for the source of cash deposits during the assessment proceedings nor had assessee provided any details ignoring the fact that the Assessing Officer specifically called for the details in the specified format as per the CBDT Circular to examine the cash deposits made by the assessee and the assessee had given a detailed reply explaining the circumstances and the sources for cash deposits by producing details of purchases, sales, cash book, stock registers, VAT return etc., and the increase in demand of

gold during that period being wedding season when compare to the corresponding previous year. All these details and explanation were also produced before the Ld. Pr.CIT, however, the Ld. Pr.CIT in her order observed that even during the revision proceedings assessee has failed to provide the documentary evidences to prove its contention which is entirely contrary to record. The Ld. Pr.CIT had made no efforts to examine the evidences and replies furnished by the assessee explaining the anomalies pointed out by the Ld. Pr.CIT. On a reading of the order of the Ld. Pr.CIT, we see that the Ld. Pr.CIT set aside the assessment order as erroneous and prejudicial to the interest of the Revenue directing the Assessing Officer for making fresh enquiries and to consider the cash sales under the purview of section 68/69 of the Act on the pretext that there was no enquiry by the Assessing Officer in the course of assessment proceedings simply stating that the AO had not called for the details and assessee had not furnished evidences and explanations regarding cash deposits and the sources of funds introduced as capital by the partners, which is not permissible under law.

25. In the case of Ld. Pr.CIT vs. Delhi Airport Metro Express Pvt. Ltd. in ITA No. 705/2017 dated 05.09.2017 the Hon'ble Delhi High Court held that for the purpose of exercising jurisdiction u/s 263 of the Act the conclusion that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue has to be preceded by some minimal enquiry by the Pr.CIT. It was held that if that basic exercise has

not been undertaken by the Pr.CIT he cannot exercise the second option available to Pr.CIT u/s 263 of the Act by sending the entire matter back to the Assessing Officer for a fresh assessment. The Hon'ble High Court opined that the second option of sending back the entire matter to the Assessing Officer can be exercised only after the Pr.CIT undertakes an enquiry himself. In the case on hand before us, the Ld. Pr.CIT has not made basic exercise, enquiries herself with respect to the evidences/explanation on record before concluding that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue even though elaborate submissions were made by the assessee along with evidences to prove its case that the assessment order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue.

26. The decisions relied on by the Ld. DR are distinguishable on facts and have no application to the facts of the assessee's case.

27. In view of what is discussed above and following the judgments referred to above, we set aside the order of the Ld. Pr.CIT dated 09.03.2022 passed u/s 263 of the Act. Grounds of appeal of the assessee are allowed.

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

Order pronounced in the open court on 24/03/2023

Sd/-	**Sd/-**
(G.S. PANNU)	**(C.N. PRASAD)**
PRESIDENT	**JUDICIAL MEMBER**

Dated: 24/03/2023

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi