

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'B' BENCH, KOLKATA**

**Before Shri Sanjay Garg, Judicial Member  
&  
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 1270/KOL/2013  
Assessment Year: 2009-2010**

***Garud Credit & Holding Pvt. Limited,.....Appellant  
D.J. Shah & Co.,  
2, Elgin Road, Kolkata-700020  
[PAN: AAACG9791P]***

***-Vs.-***

***Income Tax Officer,.....Respondent  
Ward-9(2), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700069***

**Appearances by:**

*Shri Veekaas S. Sharma, CA, appeared on behalf of the  
assessee*

*Shri P.P. Barman, Addl. CIT, appeared on behalf of the  
Revenue*

**Date of concluding the hearing : February 06, 2023**

**Date of pronouncing the order : May 01, 2023**

**O R D E R**

**Per Dr. Manish Borad, Accountant Member:-**

This appeal at the instance of assessee for assessment year 2009-10 is directed against the order of ld. Commissioner of Income Tax, Kolkata-III, Kolkata dated 05.03.2013 framed under section 263 of the Act.

2. The grounds of appeal raised by the assessee are as under:-

- (1) For that in the facts and circumstances of the case the notice u/s 263 of the Income Tax Act 1961 issued by the learned Commissioner of Income Tax was without jurisdiction for want of proper notice and opportunity and the order passed on the basis of such notice was bad in law hence the same be quashed and or annulled.*
- (2) For that in the facts and circumstances of the case the notice u/s 263 of the Income Tax Act 1961 issued by the learned Commissioner of Income Tax was without jurisdiction and the order passed on the basis of such notice was bad in law hence the same be quashed and or annulled.*
- (3) For that in the facts and circumstances of the case the Learned Commissioner of Income Tax erred in holding that the assessment order passed by the learned assessing officer in the case of the appellant with inadequate inquiry and hence erroneous and prejudicial to the interest of revenue and thereby setting aside the said assessment order u/s 263 of the Income Tax Act 1961.*
- (4) For that in the facts and circumstances of the case the Learned Commissioner of Income Tax erred in holding that the assessment order passed by the learned assessing officer in the case of the appellant was erroneous and prejudicial to the interest of revenue and thereby setting aside the said assessment order u/s 263 of the Income Tax Act 1961.*
- (5) For that in the facts and circumstances of the case the Learned Commissioner of Income Tax failed to appreciate that the assessment order was not erroneous and prejudicial to the interest of revenue and as such the Learned Commissioner of Income Tax had no jurisdiction to interfere with the said assessment order.*
- (6) For that in the facts and circumstances of the case the order passed by the Learned Commissioner of Income Tax u/s 263 of the Income Tax Act 1961 is based on wrong appreciation of facts of the case and is bad in law.*
- (7) For that in the facts and circumstances of the case the order passed by the Learned Commissioner of Income Tax u/s 263 of the Income Tax Act 1961 failed to consider the correct law applicable to provisions of Section 68 of the IT Act 1961 and hence the order passed be quashed.*

- (8) *For that in the facts and circumstances of the case the directions contained in the order passed by the Learned Commissioner of Income Tax u/s 263 of the Income Tax Act 1961 are beyond jurisdiction and hence the same be struck down or quashed.*
- (9) *For that in the facts and circumstances of the case the order passed by the Learned Commissioner of Income Tax u/s 263 of the Income Tax Act 1961 is without any basis and hence the same be quashed.*
- (10) *The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.*

3. Brief facts of the case as called out from the records are that the assessee is a Private Limited Company engaged in the business of trading and investment. Income of Rs.16,940/- declared in the return for A.Y. 2009-10 filed on 24.09.2009. A notice under section 148 of the Act was issued on 07.12.2010 and duly served upon the assessee and reopening proceedings were carried out under section 147 of the Act. The reasons for reopening was on account of preliminary expenses written off under section 35D of the Act as well as higher amount of expenses claimed by the assessee during the year as compared to the preceding year. The ld. Assessing Officer noticed that during the year, there is a transaction of share capital and share premium received by the assessee at Rs.14,69,50,000/- from issue of 14,69,500 equity shares of face value of Rs.10/- each along with share premium of Rs.90/- per share. To verify the said transactions, notices under section 133(6) of the Act were issued to some of the share applicants on test check basis and thoroughly investigated the issue. The ld. Assessing Officer

further examined the expenses claimed during the year and finally completed the assessment without making any addition on account of share capital received during the year but disallowed the expenses of Rs.1,00,750/- and assessed the income at Rs.1,17,690/-.

4. Subsequently Id. CIT called for the assessment records and noticed that the Id. Assessing Officer has not examined the transactions of share capital and share premium received by the assessee during the year and thus assumed jurisdiction under section 263 of the Act. In the show-cause notice dated 01.02.2023, it was stated that *“on examination of records, it was found that 14,69,500 shares were issued by the said company at face value of Rs. 10/- each at a premium of Rs.90/- per share. In other words, the assessee company raised a paid up share capital of Rs.146 lacs with premium of Rs.13.23 crores. Further on perusal of the assessment records it is found that requisite inquiries were not conducted regarding the issue as to what prompted the subscribers to the shares to pay such substantial premium on shares of a little known company having no or insignificant business activities. It is apparent that the order was passed without application of mind”*.

5. The assessee filed written submission on 27.02.2013 stating that the Id. Assessing Officer has passed the order after applying his mind and has conducted proper inquiry regarding identity and creditworthiness of the shareholders. It was also stated that confirmation letters along with PAN, copy of Bank statement and

balance-sheet of the subscribing companies were filed before the ld. Assessing Officer, and therefore, proper inquiry has been conducted and thus proceedings under section 263 of the Act should be dropped.

6. However, the ld. CIT was not satisfied and he discussed about the common practice of introducing unaccounted money by way of share capital of dummy companies, huge premium received in new formed companies and thus observed that unaccounted monies claimed as share capital by creating a façade of paper work rotating the money through several banking channels. Thus the ld. CIT held the assessment order dated 15.02.2011 as erroneous and prejudicial to the interest of revenue observing as follows:-

*“I have considered the facts of the case and the decisions of the superior Courts cited above. I am of the opinion that the A.O. by not pursuing the inquiries to their logical end has made the order erroneous and prejudicial to the interest of revenue. The order is, therefore, set aside and the A.O. is directed to carry out through & detailed enquiries in the case. He should carry out inquiries about the various layers through which the share capital has been rotated. The A.O. is also directed to summon the present & past Directors of the assessee company and the subscriber companies and examine them. The A.O. should also examine as to when this company was sold. At that point of time the fictitious assets such as shares in other companies or loans given to other companies is converted back into cash by credit in the assessee company’s bank account. The source of this money also needs to be examined. Further, information should be sent to the A.Os of the subscriber companies and to the other companies through which the capital has been rotated regarding the findings of the A.O. Subsequent to the inquiries & verification of all relevant aspects of the case, the A.O. should pass a speaking order after providing adequate opportunity to the assessee”.*

7. Aggrieved, the assessee is now in appeal before the Tribunal.

8. The assessee has referred to the detailed written submissions placed on record and referred to various documents placed in the paper book running into 425 pages and made two-fold arguments. Firstly it is contended that the reopening proceedings carried out by the assessee vide issuance of notice under section 148 of the Act on 07.12.2010 and thereafter proceedings completed on 15.02.2011, are bad-in-law and *non-est* since statutory notice under section 143(2) of the Act was not issued to the assessee and, therefore, since the subject matter of the revisionary proceedings i.e. assessment order dated 15.02.2011 is nullity, bad-in-law and *non-est*, therefore, revisionary proceedings under section 263 cannot be carried out on the basis of such *non-est* assessment and the same deserves to be quashed.

9. The second fold of contention is that extensive inquiries and investigations were carried out by the ld. Assessing Officer before drawing one of the possible views and the same is evident from the order-sheet, which is part of the assessment records which indicate that all the relevant documentary evidences regarding the alleged share capital and share premium received were filed including the financials, bank statements, income tax return, confirmation letters and identity proof etc. In most of the cases, ld. Assessing Officer has issued notices under section 133(6) of the Act, which have been duly complied. Even the ld. Assessing

Officer has deputed an Inspector to examine the correctness of the assessee's claim and Inspector has given a report dated 10.02.2011 placed at page 92 of the paper book about the thirteen share subscribers stating that these parties were found at the address and he has verified the confirmation reply received with relevant documentary evidences. Thus since the detailed inquiry has been conducted by the ld. Assessing Officer in the reassessment proceedings on the issue which has been referred to by the ld. CIT in the impugned order and since the ld. Assessing Officer has taken a permissible view in law, therefore, ld. CIT erred in assuming jurisdiction under section 263 of the Act. The assessee placed reliance on plethora of judgments and the same are referred below:-

S.No.	Title	CITATION	AUTHORITY	Following Page No. of LPP
<i>Argument:- Mandatory to issue notice u/s 143(2)</i>				
	<i>CBDT Circular</i>	<i>No.549 dated 31.10.1989</i>	--	1
	<i>PCIT vs. Oberoi Hotels (P) Ltd.</i>	<i>(2018) 409 ITR 132 (Cal).</i>	<i>The Hon'ble High Court of Calcutta</i>	2 – 6
	<i>PCIT vs. Akzo Noble India Ltd.</i>	<i>(2018) 2 NYPCTR 708 (Cal)</i>	<i>The Hon'ble High Court of Calcutta</i>	7
	<i>ACIT &amp;Anr. vs. Hotel Blue Moon</i>	<i>(2010) 321 ITR 0362</i>	<i>The Hon'ble Supreme Court</i>	8 – 13
	<i>Alok Mittal vs. DCIT</i>	<i>(2017) 167 ITD 325 (Kol)</i>	<i>The Hon'ble ITAT, Kolkata Bench</i>	14 – 17
	<i>CIT vs. Sri Moins Iqbal</i>	<i>ITA No. 168/2009</i>	<i>The Hon'ble High Court of Allahabad</i>	18 – 28
	<i>PCIT-1 vs. M/s Consortium Nussli Comfort Net</i>	<i>ITA No.62/2022dated 24.03.2022</i>	<i>The Hon'ble High Court of Delhi</i>	29 – 33
<i>Argument:- Non issuance of notice u/s 143(2) renders the assessment non est</i>				
	<i>PCIT vs. Silver Line</i>	<i>(2016) 383 ITR 455 (Del)</i>	<i>The Hon'ble High Court of Delhi</i>	34 – 40
	<i>PCIT-08 Vs. Shri Jai Shiv Shankar Traders Pvt. Ltd.</i>	<i>ITA No. 519/2015</i>	<i>The Hon'ble High Court of Delhi</i>	41 – 49
<i>Argument:- CIT cannot assume jurisdiction over proceedings which does not exist in the eyes of law</i>				
	<i>Keshab Narayan Banerjee vs. CIT</i>	<i>(1998)66 CCH 0874</i>	<i>The Hon'ble High Court of Calcutta</i>	50 – 57
	<i>Concord Infra Projects Pvt. Ltd. Vs.</i>	<i>(2021) 63 CCH 0117</i>	<i>The Hon'ble ITAT, Kolkata Bench</i>	58 – 68

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	<i>PCIT</i>			
	<i>Classic Flour and Food Processing vs. ITO, Wd-11(4), Kolkata,</i>	764 to 766/Kol/2014 dated 05.04.2017.	<i>The Hon'ble ITAT, Kolkata Bench</i>	69 – 80
	<i>M/s Charam Vincom Pvt. Ltd. vs. I.T.O., Ward-3(1), Kolkata</i>	758/Kol/2019 dated 01.01.2020	<i>The Hon'ble ITAT, Kolkata Bench</i>	81 – 85
	<i>Minimax Commerce (P.) Ltd. vs. ACIT, Raipur</i>	(2021) 133 taxmann.com 188	<i>The Hon'ble ITAT, Raipur Bench</i>	86 – 90
	<i>Parveen Kumar Mittal vs. PCIT</i>	(2021)63 CCH 0256	<i>The Hon'ble ITAT, Chandigarh</i>	91 – 101
	<i>Supersonic Technologies (P) Ltd. Vs. PCIT</i>	(2019) 175 DTR 30	<i>Hon'ble ITAT, Delhi Bench</i>	102 – 121
	<i>Pioneer Distilleries Limited Vs. PCIT-1, Aurangabad</i>	ITA No. 479/PUN/2017	<i>The Hon'ble ITAT, Pune Bench</i>	122 – 129
<i>Argument:- No addition u/s 68 if identity of subscribers has been furnished.</i>				
	<i>CIT vs Lovely Exports (P) Ltd</i>	(2008) 216 CTR 195	<i>The Hon'ble Supreme Court</i>	130
<i>Argument:- Jurisdiction u/s 263 cannot be assumed in case of inadequate enquiry:</i>				
	<i>PCIT vs. Singhal Enterprises (P) Ltd.</i>	(2022) 6 NYPCTR 973 (Cal)	<i>The Hon'ble High Court of Calcutta</i>	131 – 134
	<i>PCIT Vs. SPML Infra Ltd.</i>	(2022) 6 NYPCTR 1314 (Cal)	<i>The Hon'ble High Court of Calcutta</i>	135 – 138
<i>Argument:- Issuance of notice u/s 133(6) of the Income Tax Act, 1961 held to be sufficient enquiry</i>				
	<i>PCIT vs. BMR Commercial (P) Ltd.</i>	(2022) 6 NYPCTR 1229 (Cal)	<i>The Hon'ble High Court of Calcutta</i>	139 – 142
<i>Argument:- Jurisdiction u/s 263 cannot be assumed in case of inadequate enquiry:</i>				
	<i>Salarpuria Properties (P) Ltd. Vs. PCIT</i>	(2022) 197 ITD 490 (Kol)	<i>The Hon'ble ITAT, Kolkata Bench</i>	143 – 154
	<i>Shringar Marketing (P) Ltd. vs. PCIT</i>	(2021) 190 ITD 16 (Kol)	<i>The Hon'ble ITAT, Kolkata 'A' Bench</i>	155 – 174
<i>Argument:- Case is squarely covered by the decision of Hon'ble Kolkata Tribunal holding the amendment brought by Finance Act, 2012 to be prospective</i>				
	<i>Starpoint Construction (P) Ltd. vs. PCIT</i>	(2022) 94 ITR TRIB (Trib) 299 (Kol)	<i>The Hon'ble ITAT, Kolkata Bench</i>	175 – 205
<i>Argument:- Jurisdiction u/s 263 can be assumed based on material on record only</i>				
	<i>CIT vs. G.M. Mittal Stainless Steel (P) Ltd.</i>	(2003) 263 ITR 255 (SC)	<i>The Hon'ble Supreme Court</i>	206 – 208
	<i>PCIT vs. J.K. Tyre &amp; Industries Ltd.</i>	(2022) 6 NYPCTR 1064 (Cal)	<i>The Hon'ble High Court of Calcutta</i>	209 – 212
	<i>Britannia Industries Ltd. vs. PCIT</i>	(2022) 36 NYPTTJ 1021 (Kolkata)	<i>The Hon'ble ITAT, Kolkata 'B' Bench</i>	213 – 230
<i>Argument:- Before assuming jurisdiction u/s 263 it is necessary for CIT to conduct inquiry – Power coupled with duty</i>				
	<i>PCIT vs. Britannia Industries Ltd.</i>	(2022) 6 NYPCTR 1475 (Cal)	<i>The Hon'ble High Court of Calcutta</i>	231 – 235
	<i>ITO vs. DG Housing</i>	(2012) 343 ITR 329	<i>The Hon'ble High Court of</i>	236 – 250

	<i>Projects Ltd.</i>		<i>Delhi</i>	
	<i>Suresh Chand Gautam vs. State of Uttar Pradesh</i>	<i>Writ Petition (Civil) No. 690 of 2015</i>	<i>The Hon'ble Supreme court of India</i>	<i>251 – 299</i>
<i>Argument:- No addition based on perception of culpability</i>				
	<i>PCIT vs. Himachal Fibers Limited</i>	<i>(2018) 98 taxmann.com 173</i>	<i>The Hon'ble Supreme Court of India</i>	<i>300 – 301</i>
	<i>PCIT vs. Himachal Fibers Limited</i>	<i>(2018) 98 taxmann.com 172</i>	<i>The Hon'ble High Court of Delhi</i>	<i>302</i>
<i>Argument:- No addition merely by reference to notorious practice:-</i>				
	<i>Lalchand Bhagat Ambica Ram vs. CIT</i>	<i>(1959) 37 ITR 288</i>	<i>The Hon'ble Supreme Court of India</i>	<i>303-318</i>
	<i>CIT vs. Discovery Estates P. Ltd</i>	<i>TS-63-HC-2013(Del)</i>	<i>The Hon'ble High Court of Delhi</i>	<i>319 – 327</i>
<i>Argument:- No addition merely by referring to the surrounding circumstances</i>				
	<i>CIT vs. Bedi &amp; Co. Pvt. Ltd.</i>	<i>(1998) 230 ITR 0580</i>	<i>The Hon'ble Supreme Court of India</i>	<i>328 – 332</i>
	<i>Bedi &amp; Co. Pvt. Ltd. vs. CIT</i>	<i>(1983) 144 ITR 0352</i>	<i>The Hon'ble High Court of Karnataka</i>	<i>333 – 336</i>
	<i>Baba Bhoothnath Trade &amp; Commerce Ltd. vs. ITO</i>	<i>ITA No. 1494 /Kol./2017</i>	<i>The Hon'ble ITAT, Kolkata</i>	<i>337 – 362</i>
	<i>CIT vs. Roseberry Mercantile (P) Ltd.</i>	<i>GA No.3296 of 2010 ITA No. 241 of 2010</i>	<i>The Hon'ble High Court of Kolkata</i>	<i>363 – 365</i>
<i>Argument:- Jurisdiction u/s 263 cannot be assumed for making roving or fishing inquiry</i>				
	<i>Jagu Dnyanu Deokate vs. ITO</i>	<i>(2022) 36 NYPTTJ 1504 (Pune)</i>	<i>The Hon'ble ITAT, PUNE "A" BENCH</i>	<i>366 – 371</i>
<i>Argument:- If AO adopts plausible view then usurpation of jurisdiction u/s 263 is bad in law</i>				
	<i>Malabar Industrial Co. Ltd. Vs. CIT</i>	<i>(2000) 243 ITR 83 (SC)</i>	<i>The Hon'ble Supreme Court of India</i>	<i>372 – 377</i>
	<i>CIT vs. J.L. Morrison (India) Limited</i>	<i>(2014) 366 ITR 593 (Cal)</i>	<i>The Hon'ble High Court of Calcutta</i>	<i>378 – 405</i>
	<i>Commissioner of Income Tax Vs. Max India Ltd.</i>	<i>(2007) 213 CTR 0266 (SC)</i>	<i>The Hon'ble Supreme Court of India</i>	<i>406 – 407</i>
	<i>Commissioner of Income Tax Vs. Nirav Modi</i>	<i>(2017) 390 ITR 0292</i>	<i>The Hon'ble High Court of Bombay</i>	<i>408 – 414</i>
	<i>Hill Queen Investment (P) Ltd. vs. PCIT,</i>	<i>(2021) 189 ITD 139 (Kol)</i>	<i>The Hon'ble High Court of Kolkata</i>	<i>415 – 433</i>
<i>Argument:- No onus to explain source of source and net worth is sufficient to establish creditworthiness</i>				
	<i>PCIT Vs. M/s Chain House International Pvt. Ltd.,</i>	<i>(2018) 408 ITR 561 (MP)</i>	<i>The Hon'ble High Court of Madhya Pradesh</i>	<i>434 – 460</i>
	<i>PCIT Vs. M/s Chain House International Pvt. Ltd.,</i>	<i>(2019) 2 SLPCTO 60 (2019) 262 Taxman 207</i>	<i>The Hon'ble Supreme Court</i>	<i>461</i>
<i>Argument:- Jurisdiction u/s 263 can be assumed based on material on record only:</i>				
	<i>CIT vs. Gabriel India Limited</i>	<i>(1993) 71 Taxman 585</i>	<i>The Hon'ble Bombay High Court</i>	<i>462 – 467</i>

10. On the other hand, ld. Departmental Representative vehemently argued supporting the finding of ld. CIT. Ld. D.R. and also submitted that most of the alleged share subscribers are paper/jama kharchi companies having poor financials, and no regular business activity and *prima facie* seems to be accommodation entry providing companies, wherein funds are rotated through a chain of companies and the same has not been examined by the ld. Assessing Officer with respect to the provisions of section 68 of the Act.

11. We have heard the rival contentions and perused the relevant material placed before us and carefully gone through the decisions relied by the ld. Counsel for the assessee. Revisionary proceedings under section 263 of the Act are challenged before us by the assessee claiming that the ld. CIT erred in assuming jurisdiction and further erred in carrying out the revisionary proceedings ignoring the fact that firstly the reassessment proceedings carried out by the assessment order dated 15.02.2011 are itself bad-in-law since statutory notice under section 143(2) of the Act was not issued and served upon the assessee before carrying out reassessment proceedings, and secondly thorough inquiry has been conducted by the ld. Assessing Officer regarding the issue of equity shares of 14,69,500 at a face value of Rs.10/- each and charging share premium of Rs.90/- per share.

12. So far as the first contention of the assessee that the impugned proceedings are bad-in-law because the subject matter

of the revisionary proceedings i.e. reassessment proceedings were itself bad-in-law and *non-est* since notice under section 143(2) of the Act was not issued and served upon the assessee, we notice that in the body of the assessment order, it is stated by the Id. Assessing Officer that notices under section 143(2) and 142(1) of the Act were issued and duly served upon the assessee. However, our attention is drawn to the RTI application dated 31.12.2020 filed by the assessee for providing the certified copies of replies and documents submitted by the assessee during the assessment on both the occasions and also notices/show-cause notices issued during the assessment proceedings under section 143(3) as well as 144 read with respect to section 263 of the Act. However, when the document were supplied to the assessee, the copy of notice under section 143(2) of the Act, if any, issued/served upon the assessee, was not supplied. Further, the assessee specifically requested to provide the copy of notice u/s 143(2) and proof of service, inviting attention to following documents:-

- (a) Letter filed on 05.09.2014 before the Learned DR for providing the certified copy of documents on assessment record, copy of said letter is placed on Page No. 1 of Supplementary Paper Book filed on 27.09.2022.
- (b) Letter dated 06.01.'20 filed before the Learned A.O - copy placed on Page No.23 of the PB filed on 24.6.2022.

(c) Letter dated 03.03.20 filed before the Learned A.O on 04.03.'20 - copy placed on Page No.26 of the PB filed on 24.6.2022,

(d) Letter dated 01.03.2022 filed before the Learned A.O on 09.03.2022- copy placed on Page No.31 to 33 of the PB filed on 24.06.2022.

13. The Learned AO provided the certified copies of all the documents lying in the assessment record. Copy of all the documents received from the Learned AO are placed on Page No.34 to 414 of the PB filed on 24.06.2022. Copy of Notice u/s 143(2) not provided to the assessee despite specific request. No whisper about issuance of notice u/s 143(2) in the Order Sheet copy whereof is placed on Page No. 76 to 78 of the PB filed on 24.06.2022. Thus, it is inferred that no notice u/s 143(2) was served on the assessee before completing the assessment. Even ld. D.R. failed to rebut this contention and could not file any proof about issuing and serving notice under section 143(2) of the Act. So far as legal position is concerned holding that it is mandatory to issue notice u/s. 143(2) of the Act before carrying out the assessment proceedings. Reliance placed on following decisions:-

S.No.	Title	CITATION	AUTHORITY Following Page No. of LPB
1	CBDT Circular	No.549 dated 31.10.1989	1
2	PCIT vs. Oberoi Hotels (P) Ltd.	(2018) 409 ITR 132 (Cal).	The Hon'ble High Court of Calcutta 2-6
3	PCIT vs. Akzo Noble India Ltd.	(2018)2 NYPCTR 708 (Cal)	The Hon'ble High Court of Calcutta 7
4	ACIT &Anr. vs. Hotel	(2010) 321 ITR 0362	The Hon'ble Supreme Court 8-

	<i>Blue Moon</i>			13
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5	Alok Mittal vs. DCIT	(2017) 167 ITD 325 (Kol)	The Hon'ble ITAT, Kolkata Bench	14-17
6	CIT vs. Sri Moins Iqbal	ITA No. 168/2009	The Hon'ble High Court of Allahabad	18-28
7	PCIT-1 vs. M/s Consortium Nussli Comfort Net	ITA No.62/2022date d 24.03.2022	The Hon'ble High Court of Delhi	29-33

14. It has been consistently held that the assessment completed u/s 143(3) r.w.s. 147 without issuance of notice u/s 143(2) renders the assessment order as *non est*. The assessee placed reliance on following judicial pronouncements wherein it has been held that the assessment order passed u/s 143(3) r.w.s. 147 without issuing notice u/s 143(2) is bad in law and is a nullity.

Sl. No.	TITLE	CITATION	AUTHORITY	Page No. of LPB
1.	PCIT vs. Silver Line	(2016) 383 ITR 455 (Del)	Hon'ble High Court of Delhi	34-40
2.	PCIT-08 Vs. Shri Jai Shiv Shankar Traders Pvt. Ltd.	ITA No. 519/2015	Hon'ble High Court of Delhi	41-49

15. Further the assessee placed reliance on following judicial pronouncements wherein it has been held that if the assessment order passed by the Learned A.O. is bad-in- law and *non est* then the Learned CIT cannot assume jurisdiction over such assessment order, which does not exist in the eyes of law:-

S.No.	TITLE	CITATION	AUTHORITY	Following Page No. of LPB
1	<i>Keshab Narayan Banerjee vs. CIT</i>	(1998)66 CCH 0874	Hon'ble High Court of Calcutta	50-57
2	<i>Concord Infra Projects Pvt. Ltd. vs. PCIT</i>	(2021)63 CCH 0117	Hon'ble ITAT, Kolkata Bench	58-68
3	<i>Classic Flour and Food Processing vs. ITO, Wd-11(4), Kolkata,</i>	764 to 766/Kol/2014 dated 05.04.2017.	Hon'ble ITAT, Kolkata Bench	69-80
4	<i>M/sCharamVincom Pvt. Ltd. vs I.T.O., Ward-3(l), Kolkata</i>	758/Kol/2019 dated 01.01.2020	Hon'ble ITAT, Kolkata Bench	81-85
5	<i>Minimax Commerce (P.) Ltd. vs. ACIT, Raipur</i>	(2021) 133 taxmann.com 188	Hon'ble ITAT, Raipur Bench	86-90
6	<i>Parveen Kumar Mittal vs. PCIT</i>	(2021)63 CCH 0256	Hon'ble ITAT, Chandigarh	91-101
7	<i>Supersonic Technologies (P) Ltd. Vs. PCIT</i>	(2019) 175 DTR 30	Hon'ble ITAT, Delhi Bench	102-121
8	<i>Pioneer Distilleries Limited Vs. PCIT-1, Aurangabad</i>	ITA No. 479/PUN/2017	Hon'ble ITAT, Pune Bench	122-129

16. Thus in view of the above judicial pronouncements and ld. D.R. being unable to place any documentary evidence on record to prove that the assessee was served with the notice under section 143(2) of the Act at the time of carrying out the reassessment proceedings after the issue of notice under section 148 of the Act dated 07.12.2010, we are inclined to hold that such reassessment proceedings were itself bad-in-law and *non-est* and the same cannot be a subject matter of the revisionary proceedings and thus on this legal ground itself, the revisionary proceedings under section 263 of the Act are quashed.

17. Now dealing with the second fold of contention made by the assessee challenging the assumption of jurisdiction under section 263 of the Act, since the issue before us pertains to the

invocation of jurisdiction u/s 263 of the Act, we find that the provisions of Section 263 of the Act has a direct bearing on the issue raised before us, therefore, it is pertinent to take note of this Section which reads as under:

*"263(1) The 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 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, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.*

*Explanation- For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,-*

*(a) an order passed on or before or after the 1<sup>st</sup> day of June, 1988 by the Assessing Officer shall include-*

*(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;*

*(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorized by the Board in this behalf under section 120;*

*(b) record shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner;*

*(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1<sup>st</sup> day of June, 1988, the powers of the Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.*

*(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.*

*(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.*

*Explanation- In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded."*

18. On a bare perusal of the sub section-1 would reveal that powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned Commissioner was not required the assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show-

cause notice pointing out the reasons for the formation of his belief that action u/s 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the 4<sup>th</sup> compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order. He may set aside the order and direct the Assessing Officer to pass a fresh order. At this stage, before considering the multi-fold contentions of the Id. Representatives, we deem it pertinent to take note of the fundamental tests propounded in various judgments relevant for judging the action of the CIT taken u/s 263.

19. Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC)* has laid down following ratio with regard to provisions of section 263 of the Act:

*“There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer; it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. 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 ITO adopted one of the courses permissible in law and it has resulted in loss of revenue;*

*or where two views are possible and the ITO 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 ITO is unsustainable in law. It 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 v. CIT [1973] 88 ITR 323 (SC). [Emphasis Supplied]"*

20. Now in light of judicial precedence, let us examine the second fold of contention by the assessee that extensive inquiries and investigation was carried out by the Ld. AO before adopting one of the possible views, hence, assessment order cannot be said to be erroneous. We note that Ld. AO sought specific information about the shareholders vide notice u/s 142(1) dated 21.12.2010, copy whereof is placed on Page No. 4 of the PB filed on 24.6.2022. The assessee duly furnished the complete particulars of all the shareholders, which is evident from Page No.408 to 409 of the PB filed on 24.06.2022,

21. The Learned A.O himself carried out extensive inquiries and investigation by exercising the powers conferred on him u/s 133(6) Income Tax Act, 1961 which is evident from documents obtained from the assessment record and placed on Page No. 34 to 414 of the PB filed on 24.6.2022, the copies of notices issued u/s 133(6) of the Income Tax Act, 1961 by the Ld. AO to the shareholders are placed on following Page Number of the Paper Book filed on 24.6.2022 (Page No.79 to 91 of the Paper Book):

SI. No.	Name of the Shareholder	Amount of Investment in share capital of assessee	Copy of notice under section 133(6) placed on following page
1	Rasraj Dealer Pvt. Ltd.	95,00,000/-	79
2	Shambhu Agencies Pvt. Ltd.	1,15,00,000/-	80
3	Pearl Distributors Pvt Ltd.	72,00,000/-	81
4	Tanisha Vyapaar Pvt. Ltd.	75,00,000/-	82
5	Destiny Heights Pvt. Ltd.	91,50,000/-	83
6	Ganesh Vincom Pvt. Ltd.	87,50,000/-	84
7	GoodwardVyapaar Pvt. Ltd.	65,00,000/-	85
8	Greenfield Vinimay Pvt. Ltd.	90,00,000/-	86
9	Idea Vinimay Pvt. Ltd.	65,00,000/-	87
10	Kasturi Barter Pvt. Ltd.	90,00,000/-	88
11	Reliable Heights Pvt. Ltd.	1,05,00,000 /-	89
12	PavitraTrexim Pvt. Ltd.	1,25,00,000/-	90
13	Sakar Sales Pvt. Ltd.	91,50,000/-	91
Subtotal - A		11,67,50,000/-	

Other Shareholders:-

SI. No.	Name of the Shareholder	Amount of Investment in share capital of assessee
1	Ankit Dealers Pvt. Ltd.	35,00,000/-
2	Gouri Merchandise Pvt. Ltd.	10,00,000/-
3	HaraparbatiTracom Pvt. Ltd.	20,00,000/-
4	Luminant Traders Pvt Ltd	30,00,000/-
5	Pacific InfiwarePvt Ltd	30,00,000/-
6	RashinoVyapaarPvt Ltd	32,00,000/-
7	Response Vincom Pvt. Ltd..	36,00,000/-
8	S.K.Fintex Pvt. Ltd.	45,00,000/-
9	Starshine Towers Pvt. Ltd.	24,00,000/-
10	Tanya Enclave Pvt. Ltd.	40,00,000/-
Subtotal - B		3,02,00,000/-
Grand Total - (A+B)		14,69,50,000 /-

22. It is quite apparent that the Ld. AO had carried out extensive inquiries and investigation in respect of as many as 13 shareholders from whom the aggregate amount of share capital raised was Rs.11,67,50,000/-, thus, virtually the entire share capital was thoroughly examined by the Ld. AO and since the results of inquiry and investigation supported the veracity of share capital, hence, the Ld. AO drew one of the possible views.

23. Further we observe that the order passed by the Learned A.O cannot be said to be without application of mind inasmuch as the Learned A.O had duly applied his mind which is evident from the fact that the Learned A.O had issued notices u/s 133(6) of the Income Tax Act, 1961 and had even deputed the Inspector for carrying out spot inspection and had called for several documents from the subscriber companies that are placed on Page No. 93 to 327 of the PB filed on 24.06.2022, the Learned A.O had gone through the books of accounts of the assessee with reference to the relevant documentary evidences which is evident from the notings in the order sheet which is placed on Page No. 76 to 77 of the PB filed on 24.06.2022. The books of accounts were produced on 25.01.2011 and which was cross checked with the bank account statement of the assessee and the Learned A.O duly considered the Inspector's report which is evident from order sheet entry dated 10.02.2011. Thus, the observation of Learned CIT that the assessment order was passed without application of mind is bereft of merit.

24. Further we find that the Learned PCIT has held that proper enquiry was not conducted regarding the identity and creditworthiness of shareholders, but no doubt was expressed as far as genuineness of the receipt of share capital is concerned, in other words, genuineness of the receipt of share capital has not been doubted either in the show cause notice or in the impugned order u/s 263 which is evident from Para 3 of the impugned order u/s 263. We also note that the assessee had duly furnished

the name and address of all the subscriber companies. Based on the result of the enquiry conducted by the Learned A.O, it was found by the Learned A.O that all the subscriber companies are very much in existence and are holding valid CIN and PAN and details whereof are as under:-

Sl. No	Name of the subscriber Company	Corporate Identification Number (CIN)	PAN	Amount of share capital subscribed
1	Destiny Heights Pvt. Ltd.	U45400WB2007PTC116983	AACCD7563L	91,50,000/-
2	Ganesh Vincom Pvt. Ltd.	U51109 WB2008PTC121299	AADCG0228N	87,50,000/-
3	GoodwardVyapaar Pvt. Ltd.	U29253WB2007PTC119721	AADCG2325G	65,00,000/-
4	Greenfield Vinimay Pvt. Ltd.	U51109WB2007PTC118709	AADCG0183A	90,00,000/-
5	Idea Vinimay Pvt. Ltd.	U51109WB2008PTC126214	AABC19051P	65,00,000/-
6	Kasturi Barter Pvt. Ltd.	U51109WB2008PTC121667	AADCK2518H	90,00,000/-
7	PavitraTrexim Pvt. Ltd.	U51109 WB1993PTC060167	AABCP5170C	1,25,00,000/-
8	Pearl Distribution Pvt. Ltd.	U51109 MH2007PTC283633	AAecp3592M	72,00,000/-
9	Rasraj Dealer Pvt. Ltd.	U51909GJ2007PTC071066	AADCR7489N	95,00,000/-
10	Reliable Heights Pvt. Ltd.	U70101WB2007PTC117588	AADCR8214M	1,05,00,000/-
11	Sakar Sales Pvt. Ltd.	U45400GJ2007PTC068034	AALCS2545L	91,50,000/-
12	Shambhu Agencies Pvt. Ltd.	U51109 WB2008PTC1213 00	AALCS4808A	1,15,00,000/-
13	Tanisha Vyapaar Pvt. Ltd.	U17120GJ2005PTC120323	AACCT2326B	75,00,000/-
	TOTAL			11,67,50,000/-

Moreover, the existence of the subscriber companies stood established from the fact that all the subscriber companies were found at their given addresses by the Inspector of Income Tax and that the notices issued u/s 133(6) were duly served on all the subscribers and the subscribers had duly responded to the

notices issued u/s 133(6), thus, the identity of the subscribers stood established beyond all shadows of doubt.

25. As far as creditworthiness of the subscriber companies is concerned, the same was evident from the audited financial statements of the subscriber companies from which the Learned A.O found that all the subscriber companies had sufficient Tangible Net Worth as tabulated herein below:-

Sl.No.	Name of the subscriber company	Amount of share capital subscribed	Tangible net worth as on 31.03.2009 based on the audited financial statement
1	Destiny Heights Pvt. Ltd.	91,50,000/-	18,62,94,107/-
2	Ganesh Vincom Pvt. Ltd.	87,50,000/-	29,70,00,000/-
3	GoodwardVyapaar Pvt. Ltd.	65,00,000/-	16,11,25,000/-
4	Greenfield Vinimay Pvt. Ltd.	90,00,000/-	15,86,55,881/-
5	Idea Vinimay Pvt. Ltd.	65,00,000/-	14,55,75,000/-
6	Kasturi Barter Pvt. Ltd.	90,00,000/-	4,56,50,000/-
7	PavitraTrexim Pvt. Ltd.	1,25,00,000/-	23,98,99,316/-
8	Pearl Distributors Pvt Ltd.	72,00,000/-	13,00,63,338/-
9	Rasraj Dealer Pvt. Ltd.	95,00,000/-	10,49,50,000/-
10	Reliable Heights Pvt. Ltd.	1,05,00,000/-	16,95,54,807/-
11	Sakar Sales Pvt. Ltd.	91,50,000/-	22,04,23,493/-
12	Shambhu Agencies Pvt. Ltd.	1,15,00,000/-	21,41,54,599/-
13	Tanisha Vyapaar Pvt. Ltd.	75,00,000/-	3,47,00,000/-
	Total	11,67,50,000/-	

26. We notice that during the course of reassessment proceedings, ld. Assessing Officer has called for complete details of the share capital and share premium of Rs.14,69,50,000/- to which the assessee has filed all relevant details, which were further utilized by the ld. Assessing Officer for the purpose of issuing notice under section 133(6) of the Act. He moved a step further for digging into the issue and deputed an Inspector to examine the claim of the assessee about the identity and creditworthiness of the share subscribers and genuineness of the

transactions to which a assessee favoring report was filed by the  
Inspector dated 10.02.2011 and the same is reproduced below:-

**Inspectors Report**

Reg: Name of the assessee: **M/s. Garud Credit & Holdings (P) Ltd.**  
Address : 27, Weston Street, 5<sup>th</sup> Floor,  
Kolkata-700012,  
PAN : AAACG9791P.  
AY : 2009-10.

As directed by the ITO Wd-9(2), Kolkata, I had been at the addresses of the following parties and served notices u/s 133(6) upon them. Later on as per direction of the ITO Wd. 9(2), Kolkata, I verified the confirmation reply received with relevant documents and bank statement of the assessee and transactions are found in order

Name and addresses of the companies	PAN
1) Goodward Vyapaar Pvt. Ltd., 5/1, Clive Row, 3rd Floor, Kolkata-700 001.	AADCG2325G
2) Ganesh Vincom (P) Ltd., 6, N. G. Basak Road, Block-A, Phase-II, Flat No.-1E, Kolkata-700080.	AADCG0228N
3) Destiny Heights (P) Ltd. Netai Dey, TATA Gate, Ananda Thirtha, Kolkata-700 119.	AACCD7563L
4) Greenfield Vinimay (P) Ltd., 137/12, Narikeldanga Main Road, Kolkata-700012	AADCG0183G
5) Idea Vinimay (P) Ltd, 4, G. C. Avenue, Kolkata-700012	AABCI9051P
6) M/s. Kasturi Barter (P) Ltd. 4, G. C. Avenue, Kolkata-700012	AADCK2518H
7) M/s. Pavitra Trexim (P) Ltd. 5/1, Clive Row, 3rd Floor, Kolkata-700 001.	AABCP5170C
8) M/s Pearl Distributers (P) Ltd. 50, Dakshindari, Lake Town, Kolkata-700048.	AAECP3592M
9) M/s. Rasraj Dealer Pvt. Ltd. 5/1, Clive Row, 3rd Floor, Kolkata-700 001.	AADCR7489N
10) M/s. Sarkar Sales (P) Ltd. 13, K.B. Sarani, 2 <sup>nd</sup> floor, R. No.204A, Kolkata-700080	AALCS2545L
11) M/s. Tanisha Vyapaar (P) Ltd. P41, Princep Street, 5 <sup>th</sup> Floor, Kolkata-700072.	AACCP2326B
12) M/s. Reliable Height (P) Ltd. 498/H/1, Rabindra Sarani, 8, Shyamapukur, Kolkata-700005.	AADCR8214M
13) M/s. Shambhu Agencien (P) Ltd. 6, N. G. Basak Road, Block-A, Phase-II, Flat No.-1E, Kolkata-700080.	AALCS4808A

Report is submitted.

Dated: 10/02/2011

**Certified to be True Copy** (Tapan kumar Biswas)  
Inspector.

ANIL KUMAR NAYAK  
Income Tax Officer  
ITO, Ward-9(1), Kolkata  
Code No: WBG-W-107(93)

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27. Further we notice the following details of the share subscriber companies were filed before the ld. Assessing Officer for necessary examination:-

23.	Documents pertaining to Subscriber Namely <b>Destiny Heights Private Limited</b>			
	• Reply to Notice u/s 133(6)	93	93	No
	• Confirmatory Letter	93	93	No
	• Bank statement	94	97	No
	• Income Tax Return for A.Y 2009-10	98	98	No
	• Audited Balance Sheet as on 31.03.2009	99	109	No
24.	Documents pertaining to Subscriber Namely <b>Ganesh Vincom Private Limited</b>			
	• Reply to Notice u/s 133(6)	110	110	No
	• Confirmatory Letter	111	111	No
	• Bank statement	112	116	No
	• Income Tax Return for A.Y 2009-10	117	117	No
	• Audited Balance Sheet as on 31.03.2009	118	124	No
25.	Documents pertaining to Subscriber Namely			

	<b>Goodward Vyapaar Pvt Ltd</b>			
	• Reply to Notice u/s 133(6)	125	125	No
	• Confirmatory Letter	126	133	No
	• Bank statement	134	134	No
	• Income Tax Return for A.Y 2009-10	136	136	No
	• Audited Balance Sheet as on 31.03.2009	137	145	No
26.	Documents pertaining to Subscriber Namely <b>Greenfield Vinimay Private Limited</b>			
	• Reply to Notice u/s 133(6)	146	146	No
	• Confirmatory Letter	147	147	No
	• Bank Statement	148	150	No
	• Income Tax Return for A.Y 2009-10	151	151	No
	• Audited Balance Sheet as on 31.03.2009	152	164	No
27.	Documents pertaining to Subscriber Namely <b>Idea Vinimay Private Limited</b>			
	• Reply to Notice u/s 133(6)	165	165	No
	• Confirmatory Letter	166	166	No
	• Bank statement	167	167	No
	• Income Tax Return for A.Y 2009-10	168	168	No
	• Audited Balance Sheet as on 31.03.2009	169	175	No
28.	Documents pertaining to Subscriber Namely <b>Kasturi Barter Private Limited</b>			
	• Reply to Notice u/s 133(6)	176	176	No
	• Confirmatory Letter	177	177	No
	• Bank statement	178	179	No
	• Income Tax Return for A.Y 2009-10	180	180	No
	• Audited Balance Sheet as on 31.03.2009	181	186	No
29.	Documents pertaining to Subscriber Namely <b>Pavitra</b>			

	<b>Trexim Pvt Ltd.</b>			
	• Reply to Notice u/s 133(6)	187	187	No
	• Confirmatory Letter	189	195	No
	• Bank statement	196	196	No
	• Income Tax Return for A.Y 2009-10	201	201	No
	• Audited Balance Sheet as on 31.03.2009	202	215	No
30.	Documents pertaining to Subscriber Namely <b>Pearl Distributors Pvt Ltd.</b>			
	• Reply to Notice u/s 133(6)	216	216	No
	• Confirmatory Letter	216	216	No
	• Bank statement	217	218	No
	• Income Tax Return for A.Y 2009-10	219	219	No
	• Audited Balance Sheet as on 31.03.2009	220	232	No
31.	Documents pertaining to Subscriber Namely <b>Rasraj Dealers Pvt Ltd.</b>			
	• Reply to Notice u/s 133(6)	233	234	No
	• Confirmatory Letter	235	244	No
	• Bank statement	245	245	No
	• Income Tax Return for A.Y 2009-10	246	246	No
	• Audited Balance Sheet as on 31.03.2009	247	257	No
32.	Documents pertaining to Subscriber Namely <b>Reliable Heights Private Limited</b>			
	• Reply to Notice u/s 133(6)	258	258	No
	• Confirmatory Letter	258	258	No
	• Bank statement	259	262	No
	• Income Tax Return for A.Y 2009-10	263	263	No
	• Audited Balance Sheet as on 31.03.2009	264	276	No
33.	Documents pertaining to Subscriber Namely <b>Sarkar</b>			

	<b>Sales Pvt Ltd.</b>			
	• Reply to Notice u/s 133(6)	277	277	No
	• Confirmatory Letter	278	278	No
	• Bank statement	279	282	No
	• Income Tax Return for A.Y 2009-10	283	283	No
	• Audited Balance Sheet as on 31.03.2009	284	297	No
34.	Documents pertaining to Subscriber Namely <b>Shambhu Agencies Private Limited</b>			
	• Reply to Notice u/s 133(6)	298	299	No
	• Confirmatory Letter	300	300	No
	• Bank statement	301	305	No
	• Income Tax Return for A.Y 2009-10	306	306	No
	• Audited Balance Sheet as on 31.03.2009	307	313	No
35.	Documents pertaining to Subscriber Namely <b>Tanisha Vyapaar Private Limited</b>			
	• Reply to Notice u/s 133(6)	314	314	No
	• Confirmatory Letter	315	315	No
	• Audited Balance Sheet as on 31.03.2009	316	327	No

28. The creditworthiness of the subscribe companies was self evident from the fact that the payments were received on account of share capital through proper banking channel from all the

subscriber companies. As far as genuineness of the transaction is concerned, it is self evident from the fact that all the subscriber companies to whom the notices were issued u/s 133(6) had duly confirmed the factum of investment having been made in the shares of the assessee company that too through proper banking channel. We find support from the following judicial pronouncements:

1	<i>PCIT Vs. M/s Chain House International Pvt. Ltd.,</i>	<i>(2018) 408 ITR 561 (MP)</i>	<i>The Hon'ble High Court of Madhya Pradesh</i>	<i>434 - 460</i>
2	<i>PCIT Vs. M/s Chain House International Pvt. Ltd.,</i>	<i>(2019) 2 SLPCTO 60, (2019) 262 Taxman 207</i>	<i>The Hon'ble Supreme Court</i>	<i>461</i>
2	<i>PCIT vs. Goodview Trading Pvt. Ltd.</i>	<i>ITA No. 377/2016, dated 26.11.2016</i>	<i>The Hon'ble High Court of Delhi</i>	
4	<i>Baba Bhoothnath Trade &amp; Commerce Ltd. vs. ITO</i>	<i>ITA No. 1494/Kol./2017, dated 15.04.2019</i>	<i>The Hon'ble ITAT Kolkata</i>	

29. We further observe that the Learned CIT himself admitted that enquiry was conducted by the Learned A.O, however, he resorted to a assumption of jurisdiction u/s 263 merely because the Learned A.O did not conduct those enquiries which according to Learned CIT, ought to have conducted. Thus, admittedly, it's not a case of lack of enquiry, at the most, it may be stated that it is a case of inadequate enquiry, however, it's a trite law that jurisdiction u/s 263 cannot be assumed in the case where there has been an enquiry though inadequate and jurisdiction u/s 263 can be validly assumed where there is *lack of enquiry* and not in case of inadequate enquiry and for this view reliance placed on following judicial pronouncements:-

1	<i>PCIT vs. Singhal Enterprises (P) Ltd.</i>	(2022) 6 NYPCTR 973 (Cal)	The Hon'ble High Court of Calcutta	131 - 134
2	<i>PCIT vs. SPML Infra Ltd.</i>	(2022) 6 NYPCTR 1314 (Cal)	The Hon'ble High Court of Calcutta	135 - 138
3	<i>PCIT vs. BMR Commercial (P) Ltd.</i>	(2022) 6 NYPCTR 1229 (Cal)	The Hon'ble High Court of Calcutta	139-142
4	<i>Salarpuria Properties (P) Ltd. Vs. PCIT</i>	(2022) 36 NYPTTJ 1516 (Kol); (2022) 197 ITD 490 (Kol)	The Hon'ble ITAT, Kolkata A' Bench	143 - 154
5	<i>Shringar Marketing (P) Ltd. vs. PCIT</i>	(2021) 190 ITD 16 (Kol)	The Hon'ble ITAT, Kolkata A' Bench	-174

30. The Learned CIT held the order to be erroneous on the ground that the source of the subscriber companies was not forthcoming from the bank statements but there is no merit in the said observation of Learned CIT inasmuch as Section 68 of the Income Tax Act as it stood before its amendment by Finance Act, 2012 w.e.f. A.Y2013-14 did not cast upon the assessee to explain the source of source of subscribers and all that Section 68 provided was that the assessee has to explain the nature and source of sum found credited in the books of accounts. Evidently, the Learned CIT has swayed by the amended provisions of Section 68 which were not at all applicable in the year under consideration which is pertaining to assessment year 2009-10 i.e. prior to A.Y 2013-14 and in this regard, reliance is placed on the decision of this Tribunal in the case of *Starpoint Construction (P) Ltd. vs. PCIT* reported in (2022) 94 ITR TRIB (Trib) 299 (Kol), and in the case of *PCIT Vs. M/s Chain House International Pvt. Ltd., ITA Nos. 112, 111 and 110/2018, dated 07.08.2018 (2018) 408 ITR 561 (MP)*, against which the SLP filed by the Revenue has been dismissed by the Hon'ble Supreme Court.

31. Further we find that issuance of notice under section 133(6) of the Act tantamounts to be a sufficient enquiry as held by the

Hon'ble Jurisdictional High Court vide the recent order dated 31.10.2022 in the case of *PCIT vs. BMR Commercial Private Limited* reported in (2022) 6 NYPCTR 1229 (Cal), wherein Hon'ble Court upheld the order of this Tribunal, wherein this Tribunal had found that enquiry was conducted by the Learned A.O by issuance of notice u/s 133(6) of the Income Tax Act, 1961 and held it to be sufficient inquiry and formation of plausible view by the Learned A.O based on the results of inquiry conducted by issuing notices u/s 133(6). The Hon'ble Calcutta High Court relying upon the decision of the Hon'ble Supreme Court in *Malabar Industries Company Ltd. vs. CIT* reported in 243 ITR 83 as well as the decision of the Hon'ble Supreme Court in *CIT vs. Max India Ltd* reported in 166 Taxman 188 dismissed the appeal of the revenue and thereby accepted that once the Learned A.O had conducted inquiry by issuing notices u/s 133(6) then jurisdiction u/s 263 cannot be assumed.

32. Further this Tribunal in its order dated 03.08.2022 in the case of *Salarpuria Properties Private Limited vs. PCIT* reported in 197 ITD 490 relied upon the decision of the Hon'ble Delhi High Court in the case of *Sunbeam Auto Ltd.* reported in 227 CTR 133, wherein the issue of lack of inquiry and inadequate inquiry was discussed at length and it was held that the jurisdiction u/s 263 cannot be assumed in case of inadequate inquiry, conversely, jurisdiction u/s. 263 can be assumed only in case of lack of inquiry.

33. We further find that the Ld. CIT did not himself carry out any inquiry or investigation before implicating the veracity of share capital raised by the assessee. In this view of the matter, the LCIT cannot hold the assessment order passed by the A.O. to be erroneous merely based on perception of culpability or by merely referring to notorious practice prevailing in the trade circle and for this proposition, we find support from following judicial pronouncements:-

S.No.	TITLE	CITATION	AUTHORITY	Following Page No. of LPB
1	<i>PCIT vs. Britannia Industries Ltd.</i>	<i>(2022) 6 NYPCTR 1475 (Cal)</i>	<i>Hon'ble High Court of Calcutta</i>	231-235
2	<i>ITO vs. DG Housing Projects Ltd.</i>	<i>(2012) 343 ITR 329</i>	<i>Hon'ble High Court of Delhi</i>	236 - 250
3	<i>Suresh Chand Gautam vs. State of uttar Pradesh</i>	<i>Writ Petition (Civil) No. 690 of 2015</i>	<i>Hon'ble Supreme court of India</i>	251-299

34. Further Ld. Counsel for the assessee during the course of hearing has referred to the following judicial pronouncements:

i) No addition based on perception of culpability:-

S.No.	TITLE	CITATION	AUTHORITY	Following Page No*
1	<i>PCIT vs. Himachal Fibers Limited</i>	<i>(2018) 98 taxmann.com 173</i>	<i>Hon'ble Supreme Court of India</i>	300-301
2	<i>PCIT vs. Himachal Fibers Limited</i>	<i>(2018) 98 taxmann.com 172</i>	<i>Hon'ble High Court of Delhi</i>	302

ii) No addition merely by reference to notorious practice:-

S.No.	TITLE	CITATION	AUTHORITY	Following Page No. of LPB
1	<i>Lalchand Bhagat Ambica Ram vs. CIT</i>	<i>(1959) 37 ITR 288</i>	<i>Hon'ble Supreme Court of India</i>	303-318

2	<i>CIT vs. Discovery Estates P. Ltd</i>	<i>TS-63-HC-2013 (Del)</i>	<i>Hon'ble High Court of Delhi</i>	319-327
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iii) No addition merely by referring to the surrounding circumstances.

S.No.	TITLE	CITATION	AUTHORITY	Following Page No. of LPB
1	<i>CIT vs. Bedi &amp; Co. Pvt. Ltd.</i>	<i>(1998) 230 ITR 0580</i>	<i>Hon'ble Supreme Court</i>	328-332
2	<i>Bedi &amp; Co. Pvt. Ltd. vs. CIT</i>	<i>(1983) 144 ITR 0352</i>	<i>Hon'ble High Court of Karnataka</i>	333-336
3	<i>Baba Bhoothnath Trade &amp; Commerce Ltd. vs. ITO</i>	<i>ITA No. 1494/Kol./2017</i>	<i>The Hon'ble ITAT, Kolkata</i>	337 - 362
4	<i>CIT vs. Roseberry Mercantile (P) Ltd.</i>	<i>GA No.3296 of 2010 ITA No. 241 of 2010</i>	<i>The Hon'ble High Court of Kolkata</i>	363 - 365

Jurisdiction u/s 263 cannot be assumed for making roving or fishing inquiry;

S.No.	TITLE	CITATION	AUTHORITY	Following Page No. of LPB
1	<i>Shringar Marketing (P) Ltd. vs. PCIT</i>	<i>(2021) 190 ITD 16 (Kol)</i>	<i>The Hon'ble ITAT, Kolkata •C' Bench</i>	155-174
2	<i>Jagu Dnyanu Deokate vs. ITO</i>	<i>(2022) 36 NYPTTJ 1504 (Pune)</i>	<i>The Hon'ble ITAT, Pune "A" Bench</i>	366-371

35. Further we find that It's a trite law that where two views are possible and if the A.O. has drawn one of the possible views, then such an order cannot be said to be erroneous and therefore, jurisdiction u/s 263 cannot be assumed and same has been held in following judicial pronouncements:-

S.No.	TITLE	CITATION	AUTHORITY	Following pages
1.	<i>Malabar Industrial Co. Ltd. Vs. CIT</i>	<i>(2000) 243 HR 83 (SC)</i>	<i>The Hon'ble Supreme Court</i>	372 - 377
2.	<i>CIT vs. J.L. Morrison (India) Limitd</i>	<i>(2014) 366 ITR 593 (Cal)</i>	<i>The Hon'ble High Court of Calcutta</i>	378-405
3.	<i>Commissioner of Income Tax Vs. Max India Ltd.</i>	<i>(2007) 213 CTR 0266 (SC)</i>	<i>The Hon'ble Supreme Court</i>	406-407

4.	<i>Commissioner of Income Tax Vs. NiravModi</i>	<i>(2017) 390 ITR 0292</i>	<i>The Hon'ble High Court of Bombay</i>	<i>408-414</i>
5.	<i>Hill Queen Investment (P) Ltd. vs. PCIT,</i>	<i>(2021) 189 ITD 139 (Kol)</i>	<i>The Hon'ble High Court of Kolkata</i>	<i>415-433</i>
6.	<i>Starpoint Construction (P) Ltd. Vs. PCIT</i>	<i>(2022) 94 ITR TRIB (Trib) 299 (Kol)</i>	<i>The Hon'ble ITAT, Kolkata Bench</i>	<i>175 – 205</i>

36. Thus there is no dispute to the fact that an extensive inquiry has been conducted by the ld. Assessing Officer regarding the issue of share capital and share premium received by the assessee during the year and the ld. Assessing Officer has made proper application of mind and taken possible view as permissible in law which are duly backed by the documentary evidences filed by the assessee, independent inquiry conducted by the ld. Assessing Officer and settled judicial precedence, therefore, since the issue referred in the show-cause notice under section 263 of the Act has been properly examined by the ld. Assessing Officer, there remains no justification for ld. CIT to assume jurisdiction on the very same issue and, therefore, we quash the impugned revisionary proceedings carried out under section 263 of the Act and allow all the grounds of appeal raised by the assessee.

**37. In the result, the appeal filed by the assessee is allowed.**

Order pronounced in the open Court on 1<sup>st</sup> May, 2023.

Sd/-

Sd/-

**(Sanjay Garg)  
Judicial Member**

**(Manish Borad)  
Accountant Member**

**Kolkata, the 1<sup>st</sup> day of May, 2023**

*Copies to :*(1) **Garud Credit & Holding Pvt. Limited,  
D.J. Shah & Co.,  
2, Elgin Road, Kolkata-700020**

(2) **Income Tax Officer,  
Ward-9(2), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700069**

(3) Commissioner of Income Tax, Kolkata-III,  
Kolkata;

(4) *The Departmental Representative*

(5) *Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***