

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: G : NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER  
AND  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITAs No.2479 & 2480/Del/2024  
Assessment Years: 2013-14 & 2014-15

Sarena Private Limited,  
15, Harcharan Bagh,  
Andheria More,  
Chhatarpur,  
New Delhi – 110 074.

Vs Pr. CIT,  
Central,  
Delhi-3.

PAN: AAACS2945R

(Appellant)

(Respondent)

Assessee by : Shri Ambareesha Agrawal, CA &  
Shri D.P Bansal, CA  
Revenue by : Shri Mahesh Kumar, CIT-DR  
Date of Hearing : 03.07.2025  
Date of Pronouncement : 22.08.2025

ORDER

PER ANUBHAV SHARMA, JM:

These appeals are preferred by the Assessee against the orders of the Principal Commissioner of Income-tax (Central), Delhi-3 (hereinafter referred to as the Id. PCIT) dated 27.03.2024, passed in Revision Nos. PCIT (Central), Delhi-3/Revision-263/100000456497/2023 and PCIT (Central), Delhi-3/Revision-263/100000456498/2023, u/s 263 of the Income-tax Act, 1961(hereinafter referred as 'the Act') revising the assessment orders dated

14.03.2022 passed by the Dy. Commissioner of Income Tax, Central Circle-30, New Delhi (hereinafter referred to as the Ld. AO) u/s 147 r.w.s. 143(3) of the Act.

2. The assessee is a private limited company whose return was processed u/s 143(1) of the Act and later was selected for complete scrutiny and assessment order u/s 143(3) of the Act was passed accepting the returned income. Consequently, on the alleged information from the Investigation Wing, Delhi, regarding the assessee being the beneficiary of accommodation entries from companies controlled by Shri Pradeep Kumar Jindal during AY 2013-14 and 2016-17, the case of the assessee was reopened u/s 147/148 of the Act. The assessee has responded to the questionnaires issued u/s 142(1) of the Act and the assessment was completed without making any addition. The assessment order was made subject of revision u/s 263 of the Act and, accordingly, the impugned order u/s 263 dated 27.03.2024 was passed wherein the assessment order u/s 147 r.w.s. 143(3) of the Act dated 14.03.2022 was found to be erroneous and prejudicial to the interest of the Revenue and was set aside for fresh adjudication by the AO.

3. On going through the impugned order u/s 263 of the Act, it can be observed that primarily for the reason that there was failure on the part of the AO for making inquiries and verification, the assessment order was found to be erroneous so far as prejudicial to the interest of the Revenue. The assessee has

challenged the impugned orders in two years involved before us and as for convenience, the grounds for AY 2013-14 and facts in the impugned order for AY 2013-14 shall be considered. The grounds for AY 2013-14 are reproduced below:-

*“1. On the facts, in the circumstances of the case and in law, the impugned order passed by the learned PCIT (Central), Delhi-3, New Delhi is illegal, not sustainable in law and on facts.*

*2. On the facts, in the circumstances of the case and in law, the learned PCIT has gravely erred in assuming jurisdiction and in passing the impugned order u/s 263 on the basis of the illegal initiation/invocation of the reassessment proceedings u/s 147/148 which is not sustainable both in law and on facts.*

*3. On the facts, in the circumstances of the case and in law, the PCIT has erred in setting aside the re-assessment order which was passed on the basis of plausible view after having made necessary enquiries and examination of the relevant records in the absence of any incriminating material etc. against the assessee.*

*4. On the facts, in the circumstances of the case and in law, it is incorrect that the learned PCIT(Central), Delhi-3, New Delhi had suo-moto called for the assessment records for the A.Y. 2013-14 for exercising the power under section 263 of the I T Act, 1961. In fact, it was only on account of the AO's proposal for review of the re-assessment order passed by him only u/s 147 read with section 143(3) of the I T Act, 1961 in the case of the assessee. Such action of the PCIT (Central), Delhi-3, New Delhi ultra vires the provisions of section 263(1) of the I T Act, 1961, invalidates the action ab-initio and cannot be validated by any subsequent action.*

*5. On the facts, in the circumstances of the case and in law, it is totally incorrect to state on the part of the learned PCIT that the learned AO duly disposed of the objections raised by the assessee. In fact, the objections raised against the re-opening u/s 147 were not at all disposed of/replied. Further, the objections raised against the notice u/s 263 were also never disposed of by the learned PCIT. Therefore, the impugned order passed is not sustainable in law in the light of the judgement of the Apex Court in the case of GKN Driveshafts (India) Ltd. vs. ITO & Ors. 259 ITR 19(SC).*

*6. That on the facts, in the circumstances of the case and in law, the Ld. PCIT grossly erred in passing the order under section 263 without specifying or demonstrating as to how the re-assessment order passed*

*under section 147 was erroneous and prejudicial to the interest of the Revenue.*

*7. On the facts, in the circumstances of the case and in law, the learned PCIT has erred in distinguishing the case of the assessee from the case of Sajan Kumar Jain & others vs. PCIT whereby the hon'ble High Court of Delhi decided inter-alia the legal issues regarding the value of the testimony without any corroborative evidence, not providing the copy of the recorded statements and not giving the opportunity to the assessee to cross-examine those persons whose statements were used against the assessee. The same issues are also involved in the case of the assessee.*

*8. On the facts, in the circumstances of the case and in law, the impugned order passed by the learned PCIT (Central), Delhi-3, New Delhi is not sustainable for lack of jurisdiction. Further, the learned PCIT has gravely erred in passing the impugned order after more than 10 months from the date of last hearing without disposal of objections and further opportunity to the assessee. All these facts establish that the impugned order is totally illegal and against the principles of natural justice.*

*9. On the facts, in the circumstances of the case and in law, the learned PCIT has erred in setting aside the case without any demonstration/specification as to what remained unproved u/s 68 of the I. T. Act, 1961 on the part of the assessee in the course of the re-assessment proceedings.*

*10. That the appellant craves the leave to add, amend, modify, delete any of the grounds of the appeal before or at the time of hearing and all the above grounds are without prejudice to each other."*

4. On hearing both the sides, we find that the assessee has not only challenged the impugned order u/s 263 of the Act, but, has also questioned the reopening itself and has relied the decision of the coordinate Bench in the case of Suraj Pulses in ITA No.309/Del/2017, order dated 06.07.202 to submit that where the impugned order u/s 263 of the Act is challenged, the validity of reassessment proceedings can also be challenged. In this regard, we are of the considered view that there is no dispute to this assertion and reliance in this

regard can be also placed on the decision of co-ordinate bench in ITA No.2622/Del/2024 Shobhit Goel (HUF), Versus PCIT, Faridabad, order dated 27.02.25, in which both of us, was also on bench has considered this issue and has held as follows;

*“7. We have heard the rival submissions and perused the materials available on record. At the outset, the issue raised by the AR in additional ground of appeal is with regard to the validity of the reassessment proceedings and legality of consequent order passed u/s 147 r.w.s 144B of the Act dated 28/03/2022 from which the present revision proceedings u/s 263 of the Act originated.*

*It is true that before us, assessee has challenged the order passed by the ld. Pr. CIT u/s.263 of the Act, however, since the assessee has raised the issue of validity of reassessment order, we first answer the question as to whether or not such legality of the re-assessment framed could be examined in appellate proceedings challenging the order passed u/s.263 of the Act. The coordinate bench of Mumbai Tribunal in the case of Westlife Development Ltd. reported in (2016) 49ITR (T) 406 (Mumbai) held that during the course of appellate proceedings against the order passed u/s.263 of the Act, the validity of the assessment order from which such proceedings have been originated could be examined. The relevant observations as made in the above decision of the Tribunal are as under:-*

*8. Challenging the jurisdictional defects of assessment order for assailing the jurisdictional validity of the revision order passed under s. 263 : The first issue that arises for our consideration is - whether the assessee can challenge the jurisdictional validity of order passed under s. 143(3) in the appellate proceedings taken up for challenging the order passed under s. 263 ? If we analyse the nature of both of these proceedings, which are under consideration before us, we find that the original assessment proceedings can be classified in a way as 'primary proceedings'. These are, in effect, basic/foundational proceedings and akin to a platform upon which any subsequent proceedings connected therewith can rest upon. The proceedings initiated under s. 263 seeking to revise the original assessment order is off shoot of the primary proceedings and therefore, these may be termed as 'collateral proceedings' in the legal framework. The issue that arises here is whether any illegality/invalidity in the order passed in the 'primary proceedings' can be set up in the 'collateral proceedings' and if yes, then of what nature ?*

*8.1. We have analysed this issue carefully. There is no doubt that after passing of the original assessment order, the primary (i.e., original proceedings) had come to an end and attained finality and, therefore, outcome of the same cannot be disturbed, and therefore, the original assessment order framed to conclude the primary proceedings had also attained finality and it also cannot Shobhit Goel (Huf) vs. PCIT be disturbed at the instance of the assessee, except as permitted under the law and by following the due process of law. Under these circumstances, it can be said that effect of the original assessment order can not be erased or modified subsequently. In other words, whatever tax liability had been determined in the original assessment order that had already become final and that cannot be sought to be disturbed by the assessee. But, the issue that arises here is that if the original assessment order is illegal in*

terms of its jurisdiction or if the same is null & void in the eyes of law on any jurisdictional grounds, then, whether it can give rise to initiation of further proceedings and whether such subsequent proceedings would be valid under the law as contained in [IT Act](#)? It has been vehemently argued before us that the subsequent proceedings (i.e. collateral proceedings) derive strength only from the order passed in the original proceedings (i.e. primary proceedings). Thus, if order passed in the original proceedings is itself illegal, then that cannot give rise to valid revision proceedings. Therefore, as per law, the validity of the order passed in the primary (original) proceedings should be allowed to be examined even at the subsequent stages, only for the limited purpose of examining whether the collateral (subsequent) proceedings have been initiated on a valid legal platform or not and for examining the validity of assumption of jurisdiction to initiate the collateral proceedings. If it is not so allowed, then, it may so happen that though order passed in the original proceedings was illegal and thus order passed in the subsequent proceedings in turn would also be illegal, but in absence of a remedy to contest the same, it may give rise to an 'enforceable' tax liability without authority of law. Therefore, the Courts have taken this view that jurisdictional aspects of the order passed in the primary proceedings can be examined in the collateral proceedings also. This issue is not *res integra*. This issue has been decided in many judgments by various courts, and some of them have been discussed by us in followings paragraphs. 8.2. In a matter that came up before Hon'ble Supreme Court in the case of [Kiran Singh & Ors. vs. Chaman Paswan & Ors.](#) [1955] 1 5CR 117 the facts were that the appellant in that case had undervalued the suit at Rs. 2,950 and laid it in the Court of the Subordinate Judge, Monghyr for recovery of possession of the suit lands and mesne profits. The suit was dismissed and on appeal it was confirmed. In the second appeal in the High Court the Registry raised the objection as to valuation under [s. 11](#). The value of the appeal was fixed at Rs. 9,980. A contention then was raised by the plaintiff in the High Court that on account of the valuation fixed by the High Court the appeal against the decree of the Court of the Subordinate Judge did not lie to the District Court, but to the High Court and on that account the decree of the Shobhit Goel (Huf) vs. PCIT District Court was a nullity. Alternatively, it was contended that it caused prejudice to the appellant. In considering that contention at p. 121, a four Judge Bench of Hon'ble Supreme Court speaking through Vankatarama Ayyar, J. held that : "It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties."

8.3. This judgment was subsequently followed by Hon'ble Supreme Court in the landmark case of [Sushil Kumar Mehta vs. Gobind Ram Bohra](#), (1990) 1 SCC 193, wherein an issue arose whether a decree can be challenged at the stage of execution and whether a decree which remained uncontested operates as *res-judicata* qua the parties affected by it. Hon'ble apex court , taking support from aforesaid judgment, observed as under : "In the light of this position in law the quest ion for determination is whether the impugned decree of the Civil Court can be assailed by the appellant in execution. It is already held that it is the Controller under the Act that has exclusive jurisdiction to order ejection of a tenant from a building in the urban area leased out by the landlord. Thereby the Civil Court inherently lacks jurisdiction to entertain the suit and pass a decree of ejection. Therefore, though the decree was passed and the jurisdiction of the Court was gone into in issue Nos. 4 and 5 at the *ex-parte* trial, the decree there-under is a nullity, and does not bind the appellant. Therefore, it does not operate as a *res judicata*. The Courts below have committed grave error of law in

holding that the decree in the suit operated as *res judicata* and the appellant cannot raise the same point once again at the execution."

8.4. Similar view has been taken by Hon'ble Supreme Court by following aforesaid judgments recently in the case of Indian Bank vs. Manual Govindji Khona reported in 2015 (3) SCC 712. Further, similar view was emphasized by Hon'ble Bombay High Court (GOA Bench) in the case of Mavany Brothers vs. CIT (Tax Appeal No. 8 of 2007) [reported at (2015) 120 DTR (Bom) 286-- Ed.] in its order dt. 17th April, 2015 wherein it was held that an issue of jurisdiction can be raised at any time even in appeal or execution.

Shobhit Goel (Huf) vs. PCIT 8.5. The aforesaid principles, enunciated by the Apex Court in the case of Kiran Singh & Ors. vs. Chaman Paswan & Ors., supra were reiterated by the apex Court in the cases of Superintendent of Taxes vs. Onkarmal Nathmal Trust (AIR 1975 SC 2065) and Dasa Muni Reddy vs. Appa Rao (AIR 1974 SC 2089). In the first of these decisions it was pointed out that revenue statutes protect the public on the one hand and confer power upon the State on the other, and the fetter on the jurisdiction is one meant to protect the public on the broader ground of public policy and, therefore, jurisdiction to assess or reassess a person can never be waived or created by consent. This decision shows that the basic principle recognized in Kiran Singh (supra) is applicable even to revenue statutes such as the IT Act. Dasa Muni Reddy (supra) is a judgment where the principle of 'coram non iudice' was applied to rent control law. It was held that neither the rule of estoppel nor the principle of *res judicata* can confer the Court jurisdiction where none exists. Here also the principle that was put into operation was that jurisdiction cannot be conferred by consent or agreement where it did not exist, nor can the lack of jurisdiction be waived.

8.6. These judgments were subsequently noticed by Hon'ble Gujarat High Court in the case of P.V. Doshi vs. CIT (1978) 113 ITR 22 (Guj). This case arose under the IT Act with reference to the provisions of s. 147 dealing with re-assessment. The facts were that the assessment was sought to be reopened under s. 147 and notice under s. 148 was issued. Validity of reopening was not challenged upto Tribunal and additions were challenged on merits only. The Tribunal restored the matter to the AO with some directions to reexamine the issue on merits. When the matter came back to the AO the assessee specifically raised the point of jurisdiction to reopen the assessment, contending that the notice of reopening was prompted by a mere change of opinion. The AO rejected plea of the assessee but the AAC accepted this ground and also held the reassessment to be bad in law on jurisdictional ground. Against the order of the AAC the Revenue went in appeal before the Tribunal and specifically raised the plea that the question of jurisdiction to reopen the assessment having been expressly given up by the assessee in the appeal against the reassessment order in the first round, the assessee was debarred from raising that point again before the AAC and the AAC was equally wrong in permitting the assessee to raise that point which had become final in the first round and in adjudicating upon the same. The plea of the Revenue impressed the Tribunal which took the view that after its earlier order in the first round of proceedings the matter attained finality with regard Shobhit Goel (Huf) vs. PCIT to the point of jurisdiction which was given up before the AAC and not agitated further and that in the remand proceedings what was open before the AO was only the question whether the addition was justified on merits and the point regarding the jurisdictional aspect was not open before the AO. According to the Tribunal, the assessee having raised the point in the first round and having given it up could not revive it in the second round of proceedings where the issue was limited to the merits of the additions. In this view, the Tribunal accepted the Revenue's plea. The assessee thereafter carried order of the Tribunal in reference before the Gujarat High

Court. The High Court after considering various judgments of the Supreme Court on the point of jurisdiction to reopen the assessment and also after specifically discussing the judgment of the Supreme Court in [Onkarmal Nathmal Trust](#) (supra) and [Dasa Muni Reddy](#) (supra) held that the Tribunal was in error in holding that the question of jurisdiction became final when it passed the earlier remand order. It was held that neither the question of res judicata nor the rule of estoppel could be invoked where the jurisdiction of an authority was under challenge. According to Hon'ble Gujarat High Court, the rule of res judicata cannot be invoked where the question involved is the competence of the Court to assume jurisdiction, either pecuniary or territorial or over the subject-matter of the dispute. Hon'ble High Court further held that since neither consent nor waiver can confer jurisdiction upon the AO where it did not exist, no importance could be attached to the fact that the assessee, in the first round of proceedings, expressly gave up the plea against the erroneous assumption of jurisdiction by the assessing authority. According to the Hon'ble Court, the "finality or conclusiveness could only arise in respect of orders which are competent orders with jurisdiction and if the proceedings of reassessment are not validly initiated at all, the order would be a void order as per the settled legal position which could never have any finality or conclusiveness. If the original order is without jurisdiction, it would be only a nullity confirmed in further appeals". In this view of the matter, Hon'ble High Court finally answered the reference in favour of the assessee.

8.7. It is further noted that many of these judgments were discussed and followed by the Co-ordinate Bench of the Tribunal in the case of [Indian Farmers Fertilizers Co-operative Ltd. vs. Jt. CIT](#) (2007) 107 TTJ (Del) 98 :

(2007) 105 ITD 33 (Del), wherein a similar issue had arisen. In this case, the issue raised before the bench was whether it is open to the assessee, not having appealed against the reassessment order, to set up or canvass its correctness in collateral proceedings taken for rectification thereof under s.154. The bench minutely analysed law in this regard and applying the principle of 'coram non judge' and following aforesaid judgments of the supreme court, it was held that if an assessee seeks to challenge the reassessment proceedings as being without jurisdiction, when action for rectification is sought to be taken on the assumption of the validity of the reassessment order, then the assessee has to step in and protect its interests and the liberty to question even the validity of the reassessment proceedings ought to be given to it....." (emphasis, italicised in print, supplied).

8.8. Similar view was taken in another decision of the Tribunal in the case of [Dhiraj Suri vs. Addl. CIT](#) (2006) 99 TTJ (Del) 525 : (2006) 98 ITD 87 (Del). In the said case, appeal was filed by the assessee before the Tribunal against the levy of penalty. In the appeal challenging the penalty order, the assessee challenged the validity of block assessment order which had determined the tax liability of the assessee on the basis of which penalty was levied subsequently. The revenue objected with respect to the ground of the assessee raising jurisdictional issues of assessment proceedings in the appeal against the penalty order. After analysing the legal position, as clarified by Hon'ble Gujrat High Court in the case of [P.V. Doshi](#), supra and Hon'ble Bombay High Court in the case of [Jainaravan Babulal vs. CIT](#) (1988) 69 CTR (Bom) 201 : (1988) 170 ITR 399 (Bom) the bench held as that if the block assessment itself is without jurisdiction then there is no question of levy of any penalty under s.158BFA(2) and therefore it is open to the assessee to set up the question of validity of the assessment in the appeal against the levy of penalty.

8.9. We also derive support from another judgement of Hon'ble Bombay High Court in the case of [Inventors Industrial Corporation Ltd vs. CIT](#) (1991) 96 CTR (Bom) 206 : (1992) 194

*ITR 548 (Bom) wherein it was held that assessee was entitled to challenge the jurisdiction of the AO to initiate re-assessment proceedings before the CIT(A) in the second round of proceedings, even though he had not raised it in earlier proceedings before the AO or in the earlier appeal.*

*8.10. Thus, on the basis of aforesaid discussion we can safely hold that as per law, the assessee should be permitted to challenge the validity of order passed under s. 263 on the ground that the impugned assessment order was nonest and we hold accordingly.”*

5. Now, with regard to grounds No.1 and 2 before us, questioning the assumption of reopening, it is submitted that the AO had invoked the provisions of section 147 of the Act on the borrowed satisfaction and there was no corroborative evidence. Further, it is alleged by the ld. counsel that the AO had invoked the provisions of section 147 of the Act in compliance to directions of superior authority and on incorrect assertion that there was no true and full disclosure of material facts. The ld. counsel has submitted that the case of the assessee was reopened solely on the basis of change of opinion without considering the original assessment order u/s 143(3) of the Act as it was admitted that there was no incriminating material or fresh tangible material against the assessee. It was submitted that jurisdiction u/s 147 of the Act was invoked on the basis of testimonies of Pradeep Kumar Jindal alone which did not at all incriminate the assessee in any manner and the assessee was in fact not given opportunity for cross examination. The ld. AR has also questioned the approval granted u/s 151 of the Act alleging the same to be mechanical. It was also submitted that in any case, if testimonies of Shri Pradeep Kumar Jindal were

treated as incriminating material, provisions of section 153C of the Act ought to have been invoked.

5.1 The Ld. DR at the same time has submitted that there was no change of opinion at the time of reopening.

6. In this context, we find that at pages 125 to 137, the copy of reasons for reopening of the case for AY 2013-14 are made available and on going through the same, we find that it is primarily a detailed reproduction of the outcome of search and seizure proceedings in the case of Shri Pradeep Kumar Jindal on 18.11.2015 wherein it was found to be engaged in providing accommodation entries by way of share capital, of unsecured loans, bogus purchases, etc. A perusal of the same shows that after reproducing the whole of the content of the Investigation Wing Report at page 135, it is mentioned that the assessee was found to have received Rs.1,25,00,000/- from four different entities allegedly controlled by Shri Pradeep Kumar Jindal. It can be observed that by way of paras 3, 4 and 5 at page 135, the AO has very summarily mentioned that on the basis of the report of the Investigation Wing coupled with the inquiry made by them being examined, the assessee was found to have received accommodation entries and, thus, the AO concluded that there is escapement of income for which reopening was justified.

6.1 In para 9 at page 136 of the paper book, it is mentioned by the AO that in this case, return of income was filed for the year under consideration and

assessment u/s 143(3) of the Act was made on 15.03.2016 and since four years from the end of relevant assessment year has expired, the requirement to initiate proceedings under section 147 of the Act arises for the reason that income for the year under consideration has escaped assessment because of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for the assessment year under consideration are made out. However, what is important is the observations of the AO as follows:-

*“It is true that the assessee has filed a copy of annual report and audited P& L A/c and balance sheet along with return of income where various information/ material were disclosed. However, the requisite full and true disclosure of all material facts necessary for assessment has not been made as noted above. It is pertinent to mention here that even though the assessee has produced books of accounts, annual report, audited P&L A/c and balance sheet or other evidence as mentioned above, the requisite material facts as noted above in the reasons for reopening were embedded in such a manner that material evidence could not be discovered by the AO and could have been discovered with due diligence, accordingly attracting provisions of explanation 1 of section 147 of the Act.”*

7. At outset, we are of the considered view that once the assessee has produced all books of account, annual reports, audited P&L Account, balance sheets, then, to allege that there was non-disclosure of the facts fully and truly cannot be attributed to the assessee without first alleging that vital facts were camouflaged or otherwise likely to escape the attention of any reasonable exercise of assessment functions of a tax officer. Nothing is mentioned in reasons for same nor we find such circumstances, given the nature of issue involved for which by mere apparent examination of financials would have brought relevant facts to the knowledge of AO.

8. Next, very apparently merely on the basis of Investigation Wing inquiry report and the findings, the reasons for reopening are recorded. In the reasons, there is no mention of any specific or corroborative material supporting the conclusion drawn on the basis of information provided by the Investigation Wing. In this context, we would like to rely the decision of the coordinate bench in the case of Banke Bihari ITA No.5128 order dated 22.04.2016 wherein the reopening merely on the basis of information received from the Investigation Wing without independent application of mind and drawing conclusion was found to be defective and mechanical. Reliance can also be placed on the decision of the Hon'ble Delhi High Court in the case of CIT vs. SFIL Stock Brokings Ltd., 325 ITR 285 (Del) and PCIT vs. Meenakshi Overseas vs. ITO, 395 ITR 677 (Del). Thus, on this basis alone, the reopening deserves to be quashed leading to the impugned order u/s 263 of the Act becoming inconsequential. Thus, the grounds in hand are decided in favour of the assessee.

9. Grounds No.1 and 4: In regard to these grounds, it was submitted by the ld. counsel that nowhere in the impugned order u/s 263 of the Act, the ld.PCIT has pointed out as to what act of the AO led to assessment order being erroneous and prejudicial to the interest of the Revenue and without making any inquiry, a very general direction was issued. It was submitted that the jurisdiction was also assumed on the recommendation of the AO himself and the whole exercise was a sham exercise.

9.1 The ld. DR has, however, supported the assumption of jurisdiction and submitted that assessment order was very cryptic and without making any inquiry the assessment order was passed.

10. In this regard, after going through the impugned order u/s 263 of the Act, it is very apparent that the ld. PCIT has merely reproduced the reasons for reopening based on an Investigation Wing report and concluded that the AO has failed to do necessary verification regarding the genuineness and credit worthiness of the lending parties. The ld. PCIT has observed that the assessee's explanation was accepted hastily without exercising due diligence despite having credible information and evidence provided by the Investigation Wing. However, based on the assessment records, not a word has been mentioned as to what was absent in the inquiries conducted by the AO and how the submissions filed by the assessee in the proceedings were not required to be given credibility. In this context, we find that the assessee, by letter dated 04.03.2016 and 15.03.2016, copies of which are available at pages 226 to 227 of the paper book, has provided all the necessary bank statements, tax audit report, details of unsecured loans, confirmation of balances from the lenders along with their bank statements, copy of ITR and based upon the same the AO had drawn a conclusion accepting the return of income.

11. In fact, for subsequent AY 2015-16 and 2016-17 with regard to the assessee receiving share capital from same set of entities, the reassessments u/s 147 of the Act were set aside by the ld. first appellate authority itself and as the revenue approached this Tribunal, the co-ordinate bench in ITA No.1753 and 1754/Del/2022 vide order dated 22.10.2024, has dismissed the appeal of the Revenue and we would like to reproduce para 10 of the said order dated 22.10.2024 (supra):-

*“10. Considered the rival submissions and material placed on record. We observed that ld. CIT (A) has gone through the assessment order and the detailed submissions of the assessee and it is noticed that various companies who have lent unsecured loan to the assessee had sufficient creditworthiness and have been engaged in the business of lending on interest. All the companies have responded to the notices issued u/s 133 (6) of the Act before the Assessing Officer and substantiated before him that they are earning substantial interest on loan which is evident from the audited profit & loss account submitted before the Assessing Officer. The assessee also recorded the abovesaid unsecured loan in its books of account and paid interest by duly deducting TDS as applicable on the payment of interest. Ld. CIT(A) observed that the above terms of lending unsecured loan to the assessee is real business transactions and cannot be treated as accommodation entries. Further, he observed that assessee also submitted year-wise profit & loss account of the of the abovesaid companies i.e. lender companies before the authorities and further assessee has demonstrated that assessee has paid the relevant interest on the borrowed money which is close to the market rate and also duly deducted TDS. It is also observed by the ld. CIT (A) that the assessee has repaid abovesaid borrowed loan in subsequent years. The Assessing Officer has conveniently ignored all these facts. It is also brought to our notice that all the above transactions were duly recorded in the books of account and there is no undisclosed cash credit involved in these transactions even though Assessing Officer proceeded to disallow the same u/s 68 of the Act. After considering the overall facts on record, we do not see any reason to disturb the finding of the ld. CIT (A). Accordingly, ground no.1 raised by the Revenue is dismissed.”*

12. On the basis of the aforesaid discussion, we are of the considered view that conclusion of Id. CIT(A) that there was a lack of inquiry by the AO is not sustainable under law. The jurisdiction was assumed on erroneous belief. The ground are accordingly decided in favour of the assessee.

13. Consequently the appeals succeed and same are allowed. Impugned assessment as well as the order u/s 263 of the Act, both are quashed.

Order pronounced in the open court on 22.08.2025.

Sd/-

(MANISH AGARWAL)  
ACCOUNTANT MEMBER

Dated: 22<sup>nd</sup> August, 2025.

dk

Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi