

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH 'DB' AGRA**

(Through Physical/Virtual Hearing)

**BEFORE SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.35/Agr/2023
[Assessment Year: 2012-13]**

Gora Bai Sahu, Shri Ram Charan Sahu & L/H Late Gora Bai, Sony Colony, Ashok Nagar, Madhya Pradesh-473331	Vs	Income Tax Officer, Ashok Nagar, Madhya Pradesh-473331
PAN-FDZPS8877N		
Appellant		Respondent

Appellant by	Shri Pankaj Gargh, Adv.
Respondent by	Shri Sukesh Kumar Jain, CIT(DR)

Date of Hearing	17.07.2025
Date of Pronouncement	15.09.2025

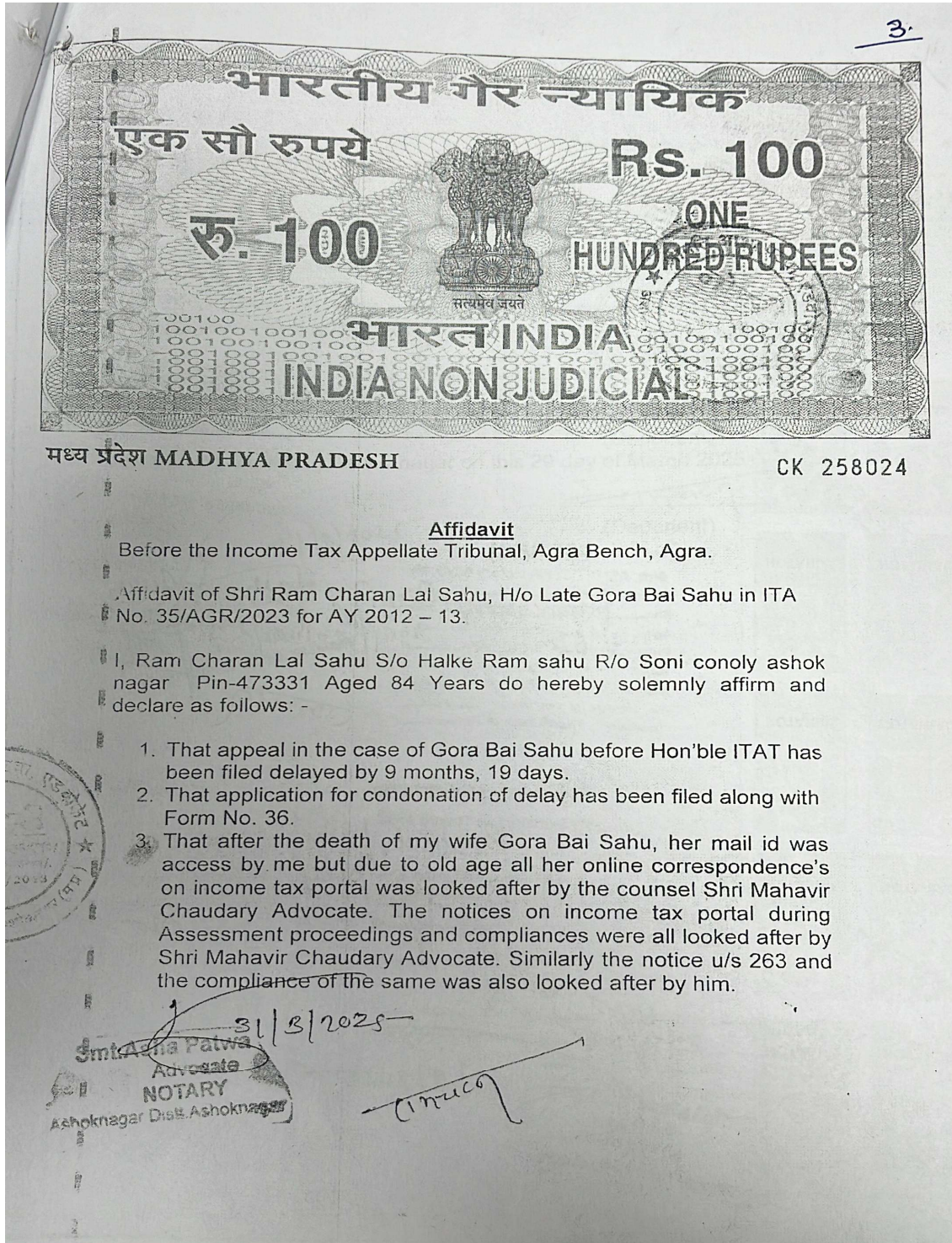
ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order u/s 263 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') of the Ld. Principal Commissioner of Income Tax, Gwalior, dated 14.03.2022, passed in respect of assessment order passed u/s 143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), dated 29.11.2019 for Assessment Year 2012-13 by the Income Tax Officer, Ashok Nagar, Madhya Pradesh.

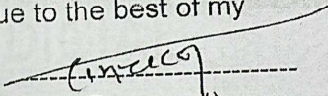
2. There is a delay of 9 months and 19 days in filing of the present appeal before us. In this regard, a condonation petition has been filed by the Shri Ramcharan Sahu, aged about 84 years husband of late Gora Bai Sahu

(assessee in this case). The said affidavit dated 29.03.2025 filed by Shri Ram Charan Sahu is reproduced as under:-

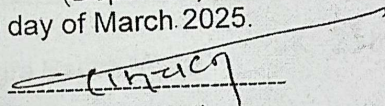


4. Order u/s 263 must have also been looked after by Shri Mahavir Chaudary but he never informed about the same to me. On receipt of Notice u/s 142 (1) dated 11.01.2023 sent on Income Tax Portal for subsequent assessment proceedings in consequent to Order u/s 263 , he informed me and also informed that appeal before Hon'ble ITAT against Order u/s 263 has mistakenly left to be filed.
5. Thereafter, the appeal against Order u/s 263 was got prepared and filed.
6. Thus, there was delay in filing the present appeal which is due to reasonable cause as mention above.
7. That the contents of this Affidavit are true to the best of my knowledge and belief.

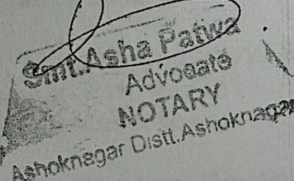
Verified and Signed at Ashok nagar on this 29 day of March. 2025.

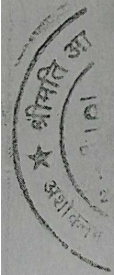


(Deponent)




(Deponent)

31/3/2025

Smt. Asha Patwa
Advocate
NOTARY
Ashoknagar Dist. Ashoknagar



2.1. Further, the affidavit dated 29.03.2025 of Advocate, Shri Mahavir Chaudary, explaining the reasons for not filing the appeal in time is as submitted by the assessee, which is reproduced as under:-



Affidavit

मध्य प्रदेश MADHYA PRADESH CK 258025

Before the Income Tax Appellate Tribunal, Agra Bench, Agra.

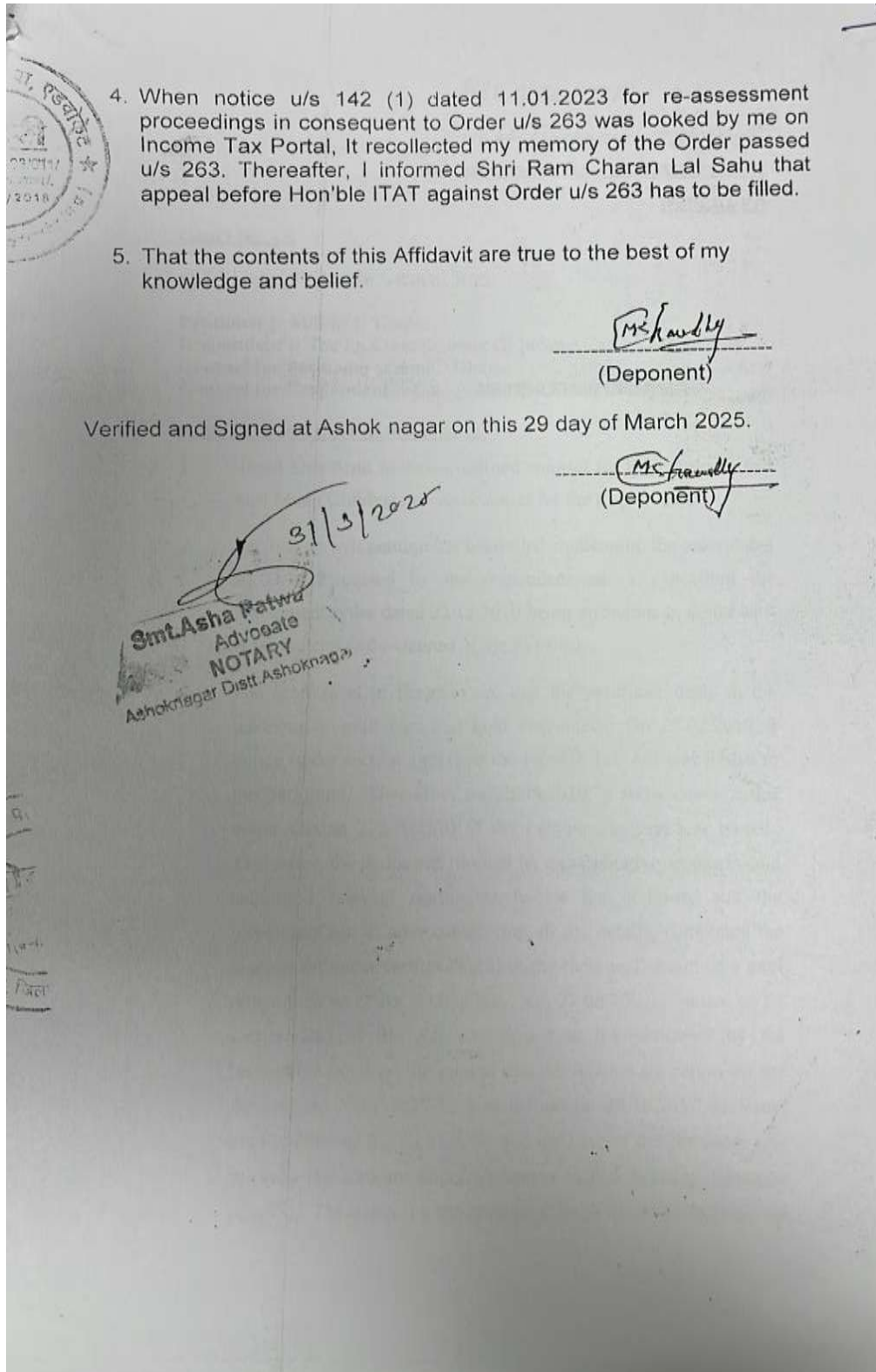
Affidavit of Shri Mahavir Chaudary, in ITA No. 35/AGR/2023 for AY 2012 – 13.

I, Mahavir Chaudary, S/o Prakash choudhary R/o station road ashok nagar Pin- 473331 Aged 59 Years do hereby solemnly affirm and declare as follows: -

1. That I am Practicing Advocate. All the Income Tax Matters of Late Smt. Gora Bai Sahu and her husband Shri Ram Charan Lal Sahu were looked after by me.
2. All the notices and the compliances during assessment proceedings of Late Smt. Gora Bai Sahu were looked after and made by me. Notice u/s 263 was also looked after by me and compliance of the same was also made by me.
3. I was not aware about that the Order u/s 263 was confirmed and the case was reopened As the Order u/s 263 was not received on email as well as physical mode further Income Tax Portal was not opened by me in that period. Due to this I could not inform her husband Shri Ram Charan Lal Sahu for filing of appeal before ITAT

31/3/2025

Smt. Asha Prava
Advocate
NOTARY
Ashoknagar Distt. Ashoknagar



3. We have considered the reasons for the above delay and we find that the explanation is reasonable and *bona fide* and we are satisfied that the

assessee was prevented by sufficient cause for the delay in filing of the appeal. We therefore condone the delay and admit this appeal for hearing.

4. Brief facts of the case:- This case was reopened u/s 148 of the Act vide noticed dated 28.03.2019 on the basis of AIR information of purchasing immovable property having value more than Rs. 30,00,000/-. The legal heir of the assessee Shri Ramcharan Lal Sahu filed the return of income of the assessee on 11.11.2019 declaring total income of Rs.2,10,500/-. The assessment was completed on 29.11.2019 at returned income. On perusal of assessment order and case records during review, it was noticed that the assessee had shown income from stitching job, whereas, at the time of assessment proceedings the income was considered from "income from other sources i.e. interest income." Further, it was also noticed that the assessee had paid Rs.20,00,000/- for property purchasing through cheque on 18.02.2012 and the amount for payment of this cheque was credited in the bank account on 13.02.2012 by transfer which was stated from savings of the assessee from stitching -job. It was also noticed that beside this, the assessee had made expenses of Rs.2,25,040/- on stamp duty and the AO had not examined the source of these payments. In view of the above facts, the Id. CIT initiated proceedings u/s 263 of the Act and a show cause notice dated 23.02.2022 fixing the case for hearing on 03.03.2022 was issued and the relevant extract of the show-cause notice issued by the Ld. PCIT is reproduced as under:-

"1.In response to the notice the assessee submitted reply stating that her source of income was from stitching job, whereas at the time of assessment proceedings the income was considered from "income from other sources" i.e. interest income. The issue of source of income was left to be examined thoroughly at the time of assessment proceedings.

2. Further, a show cause notice was issued to the assessee to assess the income at Rs. 33,29,040/- being 1/3 of total value of investment in purchase of land by 3 persons jointly, including the assessee. However, during the course of assessment it was replied that the sale consideration of property was of Rs. 60 lacs only, as against the market value of Rs. 93,12,000/- and the share of the assessee of Rs.20 lacs only. The assessee explained the source of this amount of investment of Rs.20 lacs from this bank account no. 31658222591 with central bank of India, Ashok Nagar as the payment was made through cheque no. 025951. On going through the bank statement it is observed that entry of Rs.20 lacs has been shown by transfer as on 13.02.2012 and the same has been transferred as per debit entry dated 18.02.2012. However, the source of this entry was stated by AR of the assessee on behalf of legal heir of assessee Shri Ramcharan Sahu as saving of the assessee during her life. In support of this nothing has been filed by the assessee. Moreover, this amount was transferred from other account of the bank. At the time of assessment proceedings it was left to be examined whether that account pertains to the assessee and how the amount was accumulated in that account to the extent of Rs. 20 lacs.

3. Further it is noticed that the notice u/s 133(6) of the I.T. Act was issued to the bank to furnish the details of credit entry of Rs. 20 lacs, stands un-responded till the assessment order passed and thus the source of this amount still remains to be unexplained. It is also observed that no explanation has been furnished regarding share of the assessee in respect of overhead expenses of Rs. 2,25,040/- i.e. 1/3 of Rs. 6,75,120/-. Thus the total amount of Rs. 22,25,040/- stands unexplained for lack of proper enquires or supportive documents.

5. In reply, the assessee vide letter dated 09.03.2022 submitted before the ld. PCIT that the assessee was an individual and the source of income was from stitching job and since the income of the assessee was below the taxable limit, the income tax return was not filed. It was further submitted that the assessment order has been passed after issuing notice u/s 133(6) of the Act after verification of bank accounts details, copy of registry and other property related documents. It was further submitted that the basic condition for issue of notice u/s 148 of the Act is after recording satisfaction that the income has escaped assessment and for which the reasons recorded for issue of notice u/s 148 of the Act and the ld. CIT cannot invoke

section 263 if there was lack of inquiry from the end of the Assessing Officer. It was also submitted that order of the Assessing Officer cannot be revised if it has been passed after application of mind and merely because the opinion of the ld. PCIT was different from that of Assessing Officer. The assessee also relied upon various case laws in support of the above two contentions as per the details mentioned on page no.3 of the order u/s 263 of the Act.

5.1. The Ld. Pr. CIT after considering the above submission of the assessee and case laws relied upon did not accept the explanation of the assessee. He held that on perusal of the assessment order and related case records, it was observed that the Assessing Officer did not enquire into the issue stated in show cause notice which should have been made during the assessment proceedings. The Ld. PCIT held that it was incumbent upon the Assessing Officer to investigate the facts required to be examined and verify it to complete the assessment as per law. The ld. PCIT further held that if the Assessing Officer fails to conduct the said investigation, he commits an error and the word 'erroneous' includes failure to make the enquiry. In such cases, he held that the order becomes erroneous because requisite enquiry or verification has not been made. Thereafter, the Ld. PCIT referring to the amendment made to clause (a) to explanation 2 inserted by the Finance Act, 2015 w.e.f. 01.06.2015 of section 263(1) of the Act held that this was fit case where action u/s 263 was justified and inescapable. In this regard, the ld. Pr. CIT also relied upon various case laws as listed at page no.4 and 5 of his order and concluded that in view of the reasons given above, the Assessing Officer had passed the order without proper enquiry and that this omission on part of the Assessing Officer rendered the order passed u/s

143(3)/147 of the Act dated 19.11.2019 for AY 2012-13, erroneous as well as prejudicial to the interests of revenue. Accordingly, he set-aside the same vide the order u/s 263 of the Act with a direction to the Assessing Officer to make it *de novo* assessment after proper examination, enquiry and verification on all aspects after giving reasonable opportunity to the assessee of being heard and bringing on record the relevant supporting material and evidences in support of the action of the Assessing Officer.

6. Aggrieved with the said order, the assessee is in appeal before us on the following grounds of appeal:

1. *Because the order passed by the Ld. Commissioner of Income Tax u/s 263 of the Income Tax Act is wrong, illegal, arbitrary and against the facts of the case. And no Notice u/s 263 of the Income Tax Act, 1961 was served on Appellant.*

2. *Because the assessment was originally completed u/s 147 / 143(3) of the Income Tax Act. In the assessment passed u/s 143(3) read with section 147 of the Income Tax Act the genuineness of source of payment was accepted considering the evidence furnished on the test of identity, genuineness of Transaction as mentioned in the Assessment Order. Consequently action of the Ld. CIT by invoking provision of section 263 is also wrong and bad in law.*

3. *Because in view of the fact that the assessee furnished requisite information and the Assessing Officer completed the assessment u/s 143(3) read with section 147 of the Act dated 29-11-2019 after considering the evidence filed and after a satisfaction about the genuineness of Source of payment, as is specifically mentioned in the order, it cannot be said that the Assessment Order is erroneous and prejudicial to the interest of revenue.*

4. *Because in the present case, since the assessment has been 0.00 passed u/s 143(3) read with section 147 of the Act by Assessing Officer after considering the evidence filed, the subsequent proceedings initiated by the Ld. CIT u/s 263 on same set off facts is merely a change of opinion which is not permissible and accordingly order passed u/s 263 is invalid and liable to be cancelled.*

5. *The impugned order passed by the learned Principal Commissioner of Income Tax is without a valid documentation*

No. (DIN) and consequently, the revision order is invalid and non-est on the facts and circumstances of the case.

6. The Impugned order passed by the learned Principal commissioner of income tax is contrary to the binding-CBDT Circular No 19/2019 dated 14.08.2019 and consequently, the revision order is invalid and non-est on the facts and circumstances of the case.”

6.1. Ground nos.1 to 4 of the appeal is on the legal validity of the order and also on the merits of the order. The same is being dealt later in this order.

6.2. In ground nos.5 and 6 of the appeal, the assessee has challenged the order on the ground that the order of the Ld. PCIT was without a valid Documentation Identification Number (DIN) and therefore, the order was bad in law. However, during the clarification hearing on 17.07.2025, the Ld. AR made a statement before the BAR, that these two grounds on account of non-mentioning of the DIN in the impugned order is not pressed. Therefore, the same are dismissed as not pressed.

7. During the hearing before us, the assessee filed a written submission in respect of ground nos. 1 to 4 of the appeal. The relevant extract of the same reproduced as under:-

“2. Proceedings in the present case was initiated u/s 147 for the reason "Information of immovable property" (kindly refer Page 1 of Assessment Order)

3. During course of Assessment Proceedings, specific enquiry by way of issue of notice u/s 142(1) as regards source of investment in the purchase of immovable property was made by the Jurisdictional Assessing Officer. The queries raised were duly complied with along with supporting documents. Bank statement and registered deed were filed before AO. (kindly refer Page 2 of the Assessment Order).

4. After due consideration and verification, the AO accepted the investment in the purchase of immovable property.

5. Order u/s 263 dated 14.03.2022 has been passed by Ld. PCIT, Gwalior. The reason mentioned by Ld. PCIT is at Page 4 Para 5.1 and Page 5 Para 7. The reason mentioned is that the Assessing Officer has passed the Assessment Order without proper enquiry.

6. In the Order passed u/s 263, the submission filed by the assessee has been reproduced. Ld. PCIT without mentioning any specific reason has arbitrarily rejected the submission filed. (Kindly refer Page 4 Para 5).

Submission

1. On the issue of investment in purchase of immovable property, specific query was made by the AO, duly mentioned in the Assessment Order and hence there is no failure on the part of AO.

2. The judgments referred and relied upon by Ld. PCIT in Order u/s 263 are all on the issue either no enquiry made by the AO or there is non-application of mind by the AO. None of the judgments is applicable to the facts of the present case.

3. Considering the facts as mentioned above, the Order passed by Ld. PCIT u/s 263 is wrong as the Assessment Order passed by the AO cannot be held to be erroneous. No specific finding of the Ld. PCIT. No evidence whatsoever brought on record in support of passing the Impugned Order.

4. Moreover, none of the condition as laid down in Explanation 2 to section 263 is applicable to the facts of the present case. On this ground alone the Order passed u/s 263 deserves to be cancelled. Reliance in this regard is placed on the judgment of Hon'ble Allahabad High Court in the case of *M.L. Chains v. PCIT* reported in 461 ITR 457.

5. Recently Hon'ble ITAT Agra Bench in number of cases has passed a consolidated Order and has allowed the appeals.

(Kindly refer page 7 para 5 of this Judgment).

6. Further reliance is placed on: -

* *PCIT v. Shreeji Prints (P). Ltd.* (130 taxmann.com 294) (Supreme Court)

**Meerut Roller Flour Mills (P). Ltd. V. CIT* (110 taxmann.com 170) (Allahabad HC)

**Shri Narendra Goel v. PCIT* (ITA No. 470/DEL/2021, date of order 17.05.2022) (ITAT Delhi Bench)

* *Rajendra Kumar Kanti Lal Patel v. PCIT* (ITA No. 354/SRT/2018, dated 22.02.2023) (ITAT Surat Bench)

**Aman Kumar Agarwal v. PCIT* (ITA. No. 14/AGR/2023, dated 22.10.2024) (ITAT Agra Bench)

8. The ld. CIT-DR supported the order u/s 263 of the Act passed by the Ld. PCIT, Gwalior.

9. We have heard both the parties and perused the material available on record. In this case, on the basis of AIR information, the assessment was reopened u/s 147 of the Act. It was noted by the Assessing Officer in the assessment order that the information regarding the investment of Rs.60 lakhs in an immovable property in which the assessee's share was 1/3rd i.e. Rs.20 lakhs was before him. Further, it was noted by the Assessing Officer that Rs.20 lakhs was paid by cheque, which was out of her past savings. It was further noted by the AO that the assessee in support of the above contention submitted a bank statement and the registered document and after examination, the same were taken on record. After considering all these facts, the Assessing Officer accepted the return of income of the assessee as per the returned income of Rs.2,10,500/-.

9.1. The short point in this case is as to whether the source of Rs.20 lakhs claimed as past savings by the assessee for which the assessment was reopened, was properly enquired by the Assessing Officer in the given facts of the case before accepting it. The Assessing Officer only noted it as a fact that it was stated by the assessee that the source of the above payment was out of her past savings and stopped at that. The Assessing Officer also did not bring on record in the assessment order that prior to the said payment of Rs.20 lakhs vide cheque no.025951 on 18.02.2012, there was a credit entry of Rs.20 lakhs on 13.02.2012 in her bank account which was the immediate source of the said payment. Further, the Assessing Officer has not brought on record any fact to show that he verified the source of above

credit entry of Rs.20 lakhs on 13.02.2012 and whether it represented her past saving as claimed by her. The Ld. PCIT in the show-cause notice had observed that nothing was filed by the assessee in support of her claim that it represented her past savings. The ld. PCIT further noted that moreover this amount was transferred from other account of the bank and at the time of assessment proceedings, it was left to be examined by the Assessing Officer as to whether that account pertained to the assessee and how the amount was accumulated in that amount to the extent of Rs.20 lakhs. It was further noted in the show-cause notice issued by the Ld. PCIT that the notice u/s 133(6) of the Act was issued by the Assessing Officer to the bank to furnish the details of credit entry of Rs.20 lakhs, which stood un-responded till the assessment order passed and thus the source of this amount remained unexplained till the passing of the assessment order. It was also observed by the Ld. PCIT that no explanation was furnished regarding share of the assessee in respect of over head expenses of Rs.2,25,040/- i.e. 1/3 of Rs. 6,75,120/- and thus the total amount of Rs.22,25,040/- remained unexplained for lack of proper enquires or supportive documents.

10. Thus, it is seen that neither at the assessment stage nor during the proceedings u/s 263 of the Act, the source of transfer of entry of Rs.20 lakhs in assessee's bank account no.3165822291 on 13.02.2012 with Central Bank of India which was the source of the payment through cheque no.02551 dated 18.02.2012 was explained by the assessee. In this case, it may be noted that the proceedings u/s 147 of the Act was initiated on the basis of AIR information regarding the purchase of the aforesaid immovable property and the source for the acquisition of the said property was required

to be thoroughly examined by the Assessing Officer. It is noted by the Assessing Officer in the assessment order that enquiries conducted by him vide notice u/s 142(1) of the Act regarding the source of Rs.20 lakhs and accepting it as her past saving which has been claimed by the assessee that it has been done by the Assessing Officer after due application of mind is not borne out of the facts on record. On a reasonable analysis, the said acceptance cannot pass even the basic test of reasonableness in the given facts of the case. As noted by the Id. PCIT a notice u/s 133(6) of the I.T. Act was issued by the Assessing Officer to the bank to furnish the details of credit entry of Rs. 20 lacs, which shows that the Assessing Officer considered his duty to examine the source of the credit entry of Rs.20 lakhs through cheque in the said bank account, because it was required in the given facts of the case. However, he completed the assessment accepting the claim of the assessee that the said Rs.20 lakhs represented her past saving without getting the requisite report from the bank. This fact makes the assessment order passed as erroneous as well as prejudicial to the interest of the revenue as this action of the Assessing Officer squarely falls under clause (a) & (b) to Explanation-2 (inserting by Finance Act, 2015 w.e.f 01.06.2015). It is also observed that no explanation has been furnished regarding share of the assessee in respect of over head expenses of Rs.2,25,040/- i.e. 1/3 of Rs. 6,75,120/- and therefore accepting this claim of the assessee also squarely falls under clause (a) & (b) to Explanation-2 (inserting by Finance Act, 2015 w.e.f 01.06.2015).

10.1. Thus, in the given facts of the case, the source of the total amount of Rs.22,25,040/- for acquiring the property for which the assessment was reopened u/s 147 of the Act vide notice dated 28.03.2019

was not enquired. In this regard, the observation of the Ld. PCIT in his show-cause notice that at the time of assessment proceedings, it was left to be examined by the Assessing Officer as to whether the account in which the credit entry of Rs.20 lakhs was credited belonged to the assessee and how the amount was accumulated in that account to the extent of Rs.20 lakhs is perfectly justified in the given facts of the case. The law regarding the lack of enquiry as contended by the assessee has undergone change in view of insertion of Explanation-2 w.e.f. 01.06.2015. Moreover, without making the necessary enquiries and taking a view in accepting the submission of the assessee cannot be termed as a possible view but an incorrect view, which can always be remedied by the Ld. PCIT by invoking the provisions of section 263 of the Act as has been done by the Ld. PCIT in this case. Therefore, the assessment order passed u/s 147 of the Act dated 29.11.2019 in this case is erroneous and prejudicial to the interest of the Revenue as the assessment order is passed without making inquiries and verification and allowing relief to the assessee as was required in the given facts of the case as discussed above. The case laws relied upon by the assessee are distinguishable in the given facts of the case.

11. In light of the above discussion, we decline to interfere with the impugned order dated 14.03.2022, passed u/s 263 of the Act.

12. Consequently, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 15th September, 2025.

Sd/-

Sd/-

[SUNIL KUMAR SINGH]
JUDICIAL MEMBER

Dated 15.09.2025.

Shekhar

[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi,

1.	Date of dictation of Tribunal order	01.09.2025 04.09.2025 08.09.2025
2.	Date on which typed draft order is placed before the dictating Member	10.09.2025,
3	Date on which typed draft order is placed before the other Member (in the case of DB)	
4.	Date on which the approved draft order comes to P.S./Sr.P.S	
5.	Date on which the fair Order is placed before the dictating Member for sign	
6.	Date on which the fair Order is placed before the other Member for sign (in the case of DB)	
7.	Date on which the Order comes back to P.S./Sr.P.S for uploading on ITAT website	
8.	Date of uploading, if not, reason for not uploading	
9.	Date on which the file goes to the Bench Clerk	
10.	Date on which order goes for xerox	
11.	Date on which order goes for endorsement	
12.	Date on which the file goes to the Superintendent/O.S. for checking	
13.	Date on which the file goes to the Assistant Registrar for signature on the order	
14.	Date on which the file goes to dispatch section for dispatch the Tribunal Order	
15.	Date of dispatch of order	
16.	Date on which file goes to Record Room after dispatch the order	