

**SIN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.126/Nag./2025**  
(Assessment Year : 2013-14)

Gajanand Financial Consultancy Pvt. Ltd.  
N-86, MIDC, Hingna Road  
Nagpur 440 016 PAN – AADCG2049R

..... Appellant

v/s

Principal Commissioner of Income Tax  
(Central), Nagpur

..... Respondent

Assessee by : Shri Manoj G. Moryani  
Revenue by : Shri Pankaj Kumar

Date of Hearing – 23/06/2025

Date of Order – 22/09/2025

**ORDER**

**PER K.M. ROY, A.M.**

By this appeal, the assessee has challenged the impugned order dated 05/03/2024, passed under section 263 of the Income Tax Act, 1961 (for short "*the Act*") by the learned Principal Commissioner of Income Tax (Central), Nagpur, [*learned PCIT*] for the assessment year 2013-14.

2. Following grounds have been raised:-

"1. The order passed U/s. 263 by the Pr. Commissioner of Income Tax, Central, Nagpur is illegal, invalid and bad in law;

2. The Pr. Commissioner of the Income Tax, Central, Nagpur ought to have considered order passed U/s. 143(3) r.w.s. 147 by the assessing officer in which all the issues were discussed and considered at the time of assessment proceedings and the assessing officer has considering all the aspects of the matter and made addition of Rs. 5,57,10,000/- U/s. 68 on protective basis, therefore order U/s. 263 passed by the Pr. Commissioner of Income Tax, Central, Nagpur is unjustified, unwarranted and excessive.

3. The Pr. Commissioner of Income Tax, Central, Nagpur ought to have considered order passed U/s. 143(3) r.w.s. 147 by the assessing officer is not erroneous and not prejudicial in the interest of revenue and assessment were made on protective basis. Therefore order passed U/s. 263 is unjustified, unwarranted and excessive.

4. The assessee has preferred the appeal against order passed U/s. 143(3) r.w.s. 147 which is pending before the CIT(A) on same subject matter; therefore order passed u/s. 263 is unjustified, unwarranted and excessive.

5. The Pr. Commissioner of Income Tax, Central, Nagpur has not considered the entire written submission of the assessee and passed order U/s. 263 without going into merits of the case; therefore the order passed is unjustified, unwarranted and excessive.

6. The Pr. Commissioner of Income Tax, Central, Nagpur erred in not considering that the order passed by assessing officer making addition of Rs. 5,57,10,000/- on protective basis U/s. 68 is pending before CIT(A) and thereby propose to make further addition of Rs. 4,60,00,000/- on same issue, therefore the order passed U/s. 263 is illegal, invalid and bad in law.

7. The appellant seeks permission to add any other ground of appeal or amend or alter the aforesaid ground of appeal."

3. There is a delay of 267 days in filing the instant appeal by the assessee. The assessee has filed application seeking condonation of delay which is also supported by a sworn affidavit, the contents of which are extracted herein below:-

"1. In the case of deponent/assessee company Principal Commissioner of Income Tax, Central, Nagpur has passed order U/s. 263 on 05/03/2024.

2. In the case of deponent/assessee all Income Tax matters and assessment proceedings has been handled by R.M. Shah & Co. Chartered Accountants through its Partner CA Ramesh Shah whose office is situated at Central Avenue, Gandhibagh, Nagpur. The accountant of the deponent/assessee Shri Vijay Rakshiye has sent the aforesaid order in the office of CA Ramesh Shah, who is looking after the regular matter of the deponent/assessee company.

3. In the case of the deponent/assessee search action was conducted at the business and residential premises of Tapadiya Group on 16/01/2019 and entire search matter were handled by CA Rajesh Loya Partner of M/s. Loya Bagdi & Co. situated at opposite Diksha Bhumi, Laxmi Nagar, Nagpur.

4. CA. Ramesh Shah was under bonafide impression that CA Rajesh Loya would have filed the appeal against the order passed by Pr. CIT, Central, Nagpur and CA Rajesh Loya was under bonafide impression that CA. Ramesh Shah has filed the appeal against the order passed by Pr. CIT, Central, Nagpur before Hon'ble the Income Tax Appellate Tribunal, Nagpur Bench, Nagpur.

5. The representative of the deponent/assessee company Shri Vijay Rakshiye went to office of CA Ramesh Shah and enquired about filed appeal against the order passed Pr. CIT, Central, Nagpur before Hon'ble the Income Tax Appellate Tribunal, Nagpur Bench, Nagpur and he stated that CA Rajesh Loya may have filed appeal and when representative of the deponent/assessee company when went to the office of CA Rajesh Loya and enquired about appeal against the order passed by Pr. CIT, Central, Nagpur he has stated CA Ramesh Shah may have filed appeal.

6. Due to above misunderstanding between the counsel the deponent/assessee inadvertently has not filed the appeal against the order passed by Pr. CIT(A), Central, Nagpur U/s. 263. The deponent/assessee company has approached to new counsel on 19/02/2025 and as per advise of new counsel deponent/assessee is filing this appeal on 22/02/2025 alongwith delay of 294 days which may kindly be condoned. The delay be kindly condoned in the interest of justice as appeal be heard and decided on merits.

7. However due to above reason the assessee is being filed appeal on 22/02/2025 therefore delay of 294 days, delay be kindly condoned in the interest of justice.

Hence this affidavit."

4. After considering the submissions of the learned Authorised Representative for the assessee and the averments made in the

affidavit, we are of the opinion that the assessee was compelled in filing the appeal belatedly and we are satisfied that the delay in filing the appeal is due to reasonable cause. The assessee was actively pursuing the matter for appropriate legal remedy and he must not suffer for un-precedented latches. Liberal and proactive approach is desirable in such circumstances. Consequently, we condone the delay of 267 days in filing the present appeal and admit the same for adjudication on merit, as no mala fide intention can be ascribed to the assessee.

5. Facts in Brief:- The assessee is a Company engaged in financial activities. The assessee, on 30/09/2013, filed its return of income for the year under consideration declaring total loss of ₹ (-)4,250. A search and seizure action under section 132(1) of the Income Tax Act, 1961 (for short "*the Act*") was conducted on 16/01/2019, by the Investigation Wing of the Income Tax Department at the business and residential premises of Tapadiya Group of cases. During the investigation by the DDIT (Inv.) Kolkata, concerning shell companies and entry providers, it was found that the assessee company has provided accommodation entries towards share capital and unsecured loans to M/s. Tapadiya Polyester Pvt. Ltd. Accordingly, the case was re-opened under section 147 of the Act and the notices were issued under section 148 of the Act in response to which the assessee had filed return of income declaring loss of ₹ (-)

4,250. Accordingly, statutory notices along with questionnaires have been issued from time to time for calling explanation for share capital, unsecured loans. In response to notices learned Authorised Representative (for short "*the learned A.R.*") for the assessee submitted written submission along with supporting evidence regarding receipt of share capital and unsecured loans and explained the transactions of investment. Accordingly, assessment under section 147 of the Act were completed determining total income at ₹ 5,57,04,750, by making addition under section 68 of the Act on account of unexplained cash credit on protective basis. Thus, the addition was sustained on the ground of re-opening.

2. Meanwhile, the learned Principal Commissioner of Income Tax ("*the learned PCIT*"), in exercise of power of assuming jurisdiction conferred upon her under section 263 of the Act, issued notice dated 22/11/2023.

The key observations in the notice are narrated below:–

*"4. It is seen from the details available in the assessment record as well as from the order of assessment that the following issue in the assessment order for the Assessment Year 2013-14 has not been dealt by the assessing officer properly and this requires further examination and verification. In fact the, the assessing officer has also submitted the proposal under section 263 of the I.T. Act on this issue.*

*4.1 On verification of the assessment records and the Assessment Order for the A.Y 2013-14, it was noticed that as per the closing balance as on 31-03-2012 the non-current investment of the assessee was at Rs. 13,05,10,000/-. Out of which Rs.3,00,00,000/- were investment in the shares of Tapadia Polyesters Pvt. Ltd. as on 31-03-2012. During the financial year 2012-13 relevant to the A.Y. 2013-14, remaining investment of Rs.10,05,10,000/- in the shares of different companies have been sold by the assessee and further invested Rs. 4.24,49,000/-in*

*the shares of (TPPL). During the year the assessee has also M/s. Tapadia Polyester Pvt. Ltd. (TPPL). provided unsecured loan of Rs 1,32,61,000/- to M/s. Tapadia Polyester Pvt. Ltd. (TPPL). As such total investment in M/s. Tapadia Polyester Pvt. Ltd. (TPPL) work out to be Rs.5,57,10,000/-. As it had been concluded that the money actually belonged to TPPL only, the same was added in TPPL on substantive basis and on protective basis in the case of assessee.*

*It was observed that out of total receipt of Rs. 10,05,10,000/-, the assessee had invested back the sale proceeds of Rs.5,57,10,000/- only in TPPL and the same was added back to the income of the TPPL on substantive basis and in the hands of assessee on the protective basis. However remaining amount of Rs.4,48,00,000/-(Rs. 10,05,10,000-Rs.5,57,10,000) was added to the income of TPPL on substantive basis but remained to be added in the hands of the assessee. Hence, failure to add back the amount in the hands of the assessee has resulted in under assessment of income by Rs.4,48,00,000/-. As such the order passed by the assessing officer is erroneous and prejudicial to the interest of revenue. Further the details of these non current investments is also not on record.*

*5. In view of the above facts, I am of the concerted opinion that the order of assessment u/s 143(3) r.w.s. 147 passed by the AO is erroneous in so far as it is. prejudicial to the interest of revenue. (It is proposed to set-aside the order of assessment dated 28.03.2022 and issue the directions to the assessing officer as deemed fit in the facts and circumstances of the case. case."*

Subsequently, a reminder was issued on 06/02/2024.

3. In reply to the above notice, the assessee filed written submissions on 17/02/2024, which read as under:-

*"We have earlier received notice for hearing u/s. 263 bearing number ITBA/REV/F/REV1/2023-24/1058151106(1) dated 22.12.2023 and now in receipt of notice bearing number ITBA/REV/F/REV1/2023-24/1060560260(1) DATED 06.02.2024 in case of assessee for above-mentioned Asstt. Year proposing to invoke the provisions of section 263 to review the under passed u/s. 143(3) r.w.s. 147 dated 28.03.2022 stating that the impugned order is erroneous and prejudicial to the interest of revenue. We respectfully object to the notice issued u/s. 263 since the order of the Ld. AO is not erroneous in so far as it is not prejudicial to the interest of the Revenue and further submit as under for the favour of your kind consideration:*

(1) The AO in the assessment order passed u/s. 143(3) r.w.s. 147 dated 28.03.2022 made addition of Rs. 5,57,10,000/- u/s. 68 holding that the nature and source of funds credited in the books of assessee company on account of sale of investment held of total Rs. 10,05,10,000/- which were utilized for making investment in Tapadia Polyester Pvt. Ltd. (TPPL) were not satisfactorily explained. The addition was made on protective basis as it was alleged that the assessee company provided accommodation entry to TPPL in the form of investment in share capital and unsecured loan to the tune of Rs. 5,57,10,000/-. Your goodself proposed to bring the balance amount of Rs. 4,48,00,000/- (Rs. 10,05,10,000/- (-) Rs. 5,57,10,000) out of total investment sold by assessee company during the year to tax also in the hands of assessee company on protective basis. The addition of impugned amount is already made in the hand of TPPL on substantive basis. We object to the proposed action of bringing the impugned amount to tax. No incriminating document was found during the course of search which could be made basis for the addition already made and proposed now in the show cause notice issued u/s. 263.

(2) We have to submit that the assessment order u/s. 143(3) r.w.s. 147 is passed after making inquiry on the alleged amount of investment sold during the year and after having examined the replies of the assessee with due application of mind. The AO issued various notices during assessment proceedings in which he enquired about the investment made in TPPL and source thereof. WE draw your kind attention to notice dated 26.02.2021 (Point No. 1, 2 and 3), notice dated 28.12.2021 (Point No. 2, 3(iv)), notice dated 02.03.2022 (Point No. 2, 3, 4, 7, 8). Further, show cause notice dated 21.03.2022 was also issued in which he proposed to make addition of Rs. 4,48,00,000/- which is the balance remaining out of total investment sold of Rs. 10,05,10,000/- after reducing amount invested of Rs. 5,57,10,000/- in TPPL. The assessee filed replied to above notices furnishing details and documents with respect to the investment in the company TPPL and source thereof. We draw your kind attention to Point No. 4, 5, 6 of reply dated 10.01.2022, Point No. 1 and 2 of reply dated 09.02.2022 and Point No. 2 to 8 of reply dated 08.03.2022. The assessee have furnished following details and documents in the above replies;

(i) The details of investment of the company in the share of Tapadia Polyesters Pvt. Ltd. made during the year amounting to Rs. 4,24,49,000/- were furnished. It was informed that the investment in the share capital of Tapadia Polyesters Pvt. Ltd. is through banking channel. The ledger account of share capital account was furnished.

(ii) It was informed that the company has granted unsecured loan of Rs. 1,32,61,000/- to Tapadiya Polyesters Pvt. Ltd. in the year under consideration. The payment is made through banking channel. The ledger account of Tapadia Polyester Pvt. Ltd. loan account was furnished.

(iii) The copy of bank statement and ledger of bank account in the books of assessee is furnished in which source of investment in share of TPPL and unsecured loan given to TPL is mentioned.

(iv) The company had sold the share of various companies held as non-trade investment in the books of accounts. The amount of Rs. 10.05 Cr. received in the Bank through RTGS is on account of sale of such shares. A chart containing the names of the companies, date and amount received through banking channel which was utilized for the purpose of further investment in Tapadia Polyesters Pvt. Ltd. was furnished. The details fo share sold was furnished.

(v) The company Tapadia Polyester Pvt. Ltd. issued shares of total rs. 8,84,49,00,000/- to assessee company out of which share to the extent of Rs. 4.60 Cr. were sold by assessee company to Antariksh Barter Pvt. Ltd. (ABPL) and the assessee received full amount from ABPL. The copy of ledger account of ABPL for the year under consideration was furnished. The amount was received through Banking channel only.

We draw your kind attention to the show cause notice issued during assessment proceedings dated 21.03.2022. The AO also proposed to disallow the remaining amount of Rs. 4,48,00,000/- u/s. 68 of the Income Tax Act as now proposed in the 263 proceedings. However, AO after being satisfaction with the explanation, made no addition with respect to the same in the assessment order.

Copy of notices issued and reply furnished are attached herewith. Thus, it is not the case where no inquiry was made. Proper notice for inquiring the transaction was issued by the AO and detailed submission alongwith evidences were furnished. Therefore, such a case cannot be treated as a case of "no inquiry" as envisaged in clause (a) of Explanation 2 to section 263(1) and in para 4 of the notice issued u/s. 263 that the impugned issue in the assessment order has not been dealt with by AO is incorrect in view of above facts of the case and further examination and verification of the impugned issue as mentioned in para 4 of the notice issued u/s. 263 is vitiated the law.

Lack of enquiry/no enquiry is different from inadequate enquiry and is only in case no enquiry by the AO, Pr. CIT/CIT can exercise jurisdiction u/s. 263 of the Act and not in case where the AO has made enquiries as seems appropriate in the facts and circumstances of the case. Similar proposition was upheld in following rulings;

(i) Bombay High Court in the case of CIT v. Nirav Modi – [2016] 71 taxmann.con 272 (Bombay) [SLP dismissed by SC]

(ii) Delhi Tribunal in the case of Braham Dev Gupta v. PCIT – [2017] 88 taxmann.com 831

*We also rely on following decision in support of our contention that when proper and due enquiry is made by AO in the assessment proceedings and order is passed after due application of mind then there is no scope for invoking revisions proceedings u/s. 263 of the Act.*

*(i) Supreme Court in the case of PCIT vs. Shree Gayatri Associates – [2019] 106 taxmann.com 31 (SC)  
If details inquires made by AO, revision u/s. 263 is not sustainable*

*(ii) High Court of Bombay in case of CIT V. Gabriel India Ltd. [1993] 71 Taxman 585 (Bombay)*

*(iii) Hon'ble Gauhati ITAT in the case of Abdul Hamid vs. ITO [2020] 117 Taxmann.com 986 dated 17<sup>th</sup> July 2020 held that there is no concept of "partial application of mind" by the AO and there could either be application of mind or non-application of mind*

*(iv) Delhi Tribunal Special Bench in the case of Salors International Ltd. v. Addl. CIT [2005] 2 SOT 705 (Delhi) (Trib.). It was held that "Merely because from a perfectionist point of view, it is felt that some more enquires and verification could have been made by the AO, assessment order cannot be declared to be erroneous and prejudicial to the interest of revenue."*

*Thus, in view of above the observation made by your goodself in para 4 of the show cause notice dated 21.11.2023 that the impugned issue of sale of share of TPPL to Antariksha Barter Pvt. Ltd. is not dealt by AO properly is incorrect and there is no scope of further examination and verification.*

*The AO has properly made enquiry and dealt with the issue and after being satisfied passed the assessment order with making addition with respect of the same.*

*(3) Furthermore, it is pertinent to mention that the addition with respect of the impugned amount of Rs. 4,60,00,000/- which is on account of amount invested by Antariksh Barter Pvt. Ltd. in the share of TPPL by way of purchasing the same from assessee company is already made in the hands of Antariksh Barter Pvt. Ltd. on protective basis. The copy of assessment order passed in case of Antariksh Barter Pvt. Ltd. for A.Y. 2013-14 dated 28.09.2021 is attached herewith. We draw your kind attention to para 7.1 of the assessment order wherein AO has mentioned the above facts of making investment by Antariksh Barter Pvt. Ltd. in the share of TPPL and made addition of total investment by ABPL in TPPL amounting to Rs. 14,10,00,000/- (which includes above share of Rs. 4.60 Cr. purchase from assessee company) as unexplained credit u/s. 68 of the Act on protective basis as mentioned in para 8 and 8.1 of the assessment order.*

*Thus, once the addition of impugned amount of Rs. 4.60 Cr. is already made in the hands of Antariksh Barter Pvt. Ltd. on protective basis, the same cannot be made in the hands of assessee as well. The proposal of making addition thereof is therefore not in accordance with law.*

*(4) Further and more importantly, an assessment order should not be subject to revision U/s. 263 merely because another view of possible on the issue already decided by the AO. The AO had considered submission of the assessee and accepted the transaction of sale of shares of TPPL to Antariksh Barter Pvt. Ltd. Further, as information above addition of balance amount of Rs. 4.60 Cr. was already made in the hands of APBL on protective basis. Thus, the another view now proposed for the said amount to make addition in the hands of assessee on explained above. Therefore, merely because Ld. PCIT did not agree to the opinion/information of the AO who has conducted sufficient enquiry regarding the issue raised in this show cause notice issued by Ld. PCIT, provisions of section 263 of the Act cannot be invoked in order to substitute his own information/opinion.*

*We rely on following judgments including that the Hon'ble Apex Court;*

- (i) Supreme Court in the case of Greenworld Corporation - [2009] 181 Taxman 111 (SC)*
- (ii) Malabar Industrial Co. Ltd. V/s CIT (243 ITR 83) (SC)*
- (iii) CIT V/s. Max India Ltd (295 ITR 282) (SC)*
- (iv) High Court of Gujrat in case of Aryan Arcase Ltd. Vs. CIT [2017] 84 taxmann.com 293 (Gujrat)*
- (v) Delhi High Court in the case of CIT v. Vodafone Essar Sough Ltd. - [2012] 28 taxmann.com 273 (Delhi)*
- (vi) Delhi High Court in the case fo CIT v. Anil Kumar Sharma - [2010] 194 Taxman 504 (Delhi)*

*(5) It is respectfully submitted that the issue regarding genuineness of the transaction of investment in Share Capital and Unsecured Loan of TPPL and nature and source of sum utilized for such investment as pointed out in para 6.4 of the Assessment order passed in the case of assessee is already contested in appeal before CIT(A) and thus the matter is sub-judiced before the appellate authority. It is settled law that when the subject matter is disputed and pending before appellate authority, the same cannot be put on the radar of revision proceedings. The relevant provision is reproduced below:*

*263. (1) The Principal Chief Commissioner or Chief Commissioner of Principal Commissioner or Commissioner may call for and examine the record of any proceedings under this Act, and if he considers that any order passed therein by the Assessing Officer or the Transfer Pricing Officer, as the case may be is erroneous in so far it is prejudicial to the interest of 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*

- (i) .....
- (ii) .....
- (iii) .....

*Explanation 1. – For the removal of doubts, it is hereby declared that, for the purposes of this sub-section*

- (a) .....
- (b) .....

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

*Considering the above provisions of law, we have to submit that the action of invoking revision proceedings would cause substantial prejudice to the petitioner. In fact, the consequential order would render the appeal otiose and leaving the assessee high and dry.*

*We place reliance on following decision to fortify our contentions.*

(i) *Madras High Court in CIT v. Vam Resorts and Hotels Pvt. Ltd. [(2018) 409 ITR 567]*

(ii) *Allahabad High Court in CIT v. Vam Resorts and Hotels P. Ltd. [(2019) 418 ITR 723]*

*It is well-settled law that once the proceedings are before Ld. CIT(Appeals) in respect of certain issues, then the same issue again cannot be re-agitated by taking recourse to proceedings under section 236 of the Act*

(iii) *Smt. Renuka Philip v. ITO 409 ITR 537 (Madras)*

*It is held that when appeal is pending before Commissioner (Appeals), exercise of jurisdiction under section 263 by Principal Commissioner would be barred.*

(iv) *Gokuldas Exports [2012] 20 taxmann.com 491 (Karnataka)*

*The High Court held that if in given facts and circumstances of a case, two views are possible and one view has been adopted by Assessing Officer, then that view alone would not be sufficient to exercise powers under section 263 by Commissioner*

(v) *R.M. Tradelink Vs. PCIT (ITAT Rajkot) in ITA No. 68/Rjt/2022*

*In view of above, when the issue of addition of interest income is subject matter of appeal, the same cannot be proposed in any way in the revision proceedings u/s. 263.*

*In view of the above submission, facts of the case and case laws relied upon, it is required to kindly drop the revisions proceedings.  
We would be high obliged of your favourable action."*

4. The learned PCIT, however, observed that the Assessing Officer failed to examine the nature and source of funds credited in the books of assessee company on account of sale of investment for total ₹ 10,05,10,000, which were utilized for making investment in Tapadia Polyester Pvt. Ltd., were not satisfactorily explained. It is seen that the assessee has invested the entire amount of ₹ 10,17,10,000, in the Tapadia Polyester Pvt. Ltd. i.e., ₹ 8,84,49,000, in the form of share capital and ₹ 1,32,61,000, in the form of unsecured. Loan. The above action of the Assessing Officer for taxing only ₹ 5,57,10,000, is not found correct as the assessee was not able to prove the source of entries of ₹ 10,17,10,000, as it is seen that the assessee Gajanand Financial has made an investment of ₹ 8,84,49,000, on account of issue of 88,44,900 shares of Tapadiya Polyester of ₹ 10 each and also ₹ 1,32,61,000, in the form of unsecured loan given to the Tapadia Polyester Pvt. Ltd. It is seen that the assessment order is erroneous inasmuch as it is prejudicial to the interests of Revenue for the reason stated by the learned PCIT in his order. Accordingly, the learned PCIT negated the submissions of the assessee. She set aside the assessment order and directed the Assessing

Officer to reframe the assessment after making necessary enquiries to ascertain the income of the assessee by passing fresh assessment order in accordance with law. The observations of the learned PCIT are as follows:—

*"The reply of the assessee is not acceptable as already pointed out above the sale of shares by the assessee to the Antariksha Barter Pvt. Ltd. is a subsequent action. The entire investment was made by the assessee itself in the Tapadia polyester Pvt. Ltd. The AO should have added the entire amount of Rs. 10,17,10,000/- as the assessee failed to explain the source of investment in the Tapadia Polyesters Pvt. Ltd.*

*(b) It is seen from the record that during the course of assessment proceedings. the AO vide show cause notice dated 21/03/2022 has asked out of Rs. 10,05, 10,000/- you have invested Rs.5,57,10,000/- in M/s Tapadia Polyester Pvt. Ltd. You are requested to show cause why the remaining amount of Rs.4,48,00,000/-should not be added to your total income u/s 68 The AO on the basis of submission made by the assessee during the course of assessment proceedings has held that " The total amount of shares issued by M/S TPPL to the assessee company during F.Y.2012-13 is Rs. 8,84,49,000/-. Out of these, shares amounting to Rs. 4,60,00,000/- were sold by Gajanan Financial Consultancy Pvt. Ltd to Antriksha Barter Pvt. Ltd during F.Y.2012-13 itself. Hence actual share capital introduced by the assessee company in M/s TPPL is Rs.4,24,49,000/-. The finding given by the AO is factually incorrect as already stated in para (a) above that the sale of shares to the Antariksh Barter is the subsequent action as seen from the Copy of account of the Antariksha Barter in the books of Gajanan Financial Consultancy Pvt. Ltd.*

*As such the taxation of Rs. 4,60,00,000/- in the hands of Antariksha Barter Pvt. Ltd should not be mixed with the amount to be taxed in the hands of Gajanan Financial Consultancy Pvt. Ltd as the purchase of shares of Tapadia Polyester Pvt. Ltd is between Gajanan Financial Consultancy Pvt. Ltd and Antariksha Barter Pvt. Ltd. As such Antariksha Barter Pvt. Ltd has to separately explain the source for buying shares from Gajanan Financial Consultancy Pvt. Ltd.*

*Therefore the action of the AO taxing only Rs.5,57,10,000/- is not correct. Assessee is required to explain the source of entire investment of Rs. 10,17,10,000/- i.e., Rs.8,84,49,000/- in the form of share capital and Rs.1,32,61,000/- in the form of unsecured loan given to Tapadia Polyester Pvt. Ltd. Therefore, the order passed by the AO u/s 147 dated 28-03-2022 is erroneous and prejudicial to the interest of revenue.*

*9. Considering the specific facts as discussed above and also keeping in view the provisions of Explanation 2 to section 263 of the Act as the AO has not made inquiries and verification on the above issues, which should have been made, I am of the considered view that the assessment order passed by the AO u/s 147 dated 28-03-2022, is erroneous in so far as it is prejudicial to the interest of revenue. Accordingly, the order is set aside for framing fresh assessment. The A.O is directed to consider the issues as discussed above and make necessary enquiries to ascertain the income of the assessee and pass the assessment order afresh in accordance with the law, after providing an opportunity of being heard to the assessee."*

Upon issuance of the impugned order so passed by the learned PCIT, the assessee being aggrieved is in appeal before the Tribunal.

6. In the course of hearing, the learned Authorised Representative for the assessee furnished a Paper Book running into 163 pages, containing following documents:-

- 1. Copy of acknowledgment of return and computation of income*
- 2. Copy of notice U/s. 148 of the Act dated 19/02/2021*
- 3. Copy of notice U/s. 142(1) dated 26/02/2021 alongwith annexure*
- 4. Copy of assessment order U/s. 143(3) r.w.s. 147 dated 26/03/2021 computation sheet alongwith computation sheet*
- 5. Copy of notice U/s. 143(2) r.w.s. 147 dated 14/06/2021*
- 6. Copy of reply to notice U/s. 148*
- 7. Copy of acknowledgment of e-proceedings response showing the details submitted by the assessee*
- 8. Copy of notice U/s. 142(1) dated 28/12/2021 alongwith annexure*
- 9. Copy of reply filed in response to notice U/s. 142(1)*
- 10. Copy of Tax Audit Report and audited Balance Sheet, Profit & Loss A/c*
- 11. Details of unsecured loans*

12. *Copy of Bank Book of IDBI Bank*
13. *Details of Shares*
14. *Copy of acknowledgment of e-proceedings response showing the details submitted by assessee*
15. *Copy of notice U/s. 142(1) dated 17/01/2022 alongwith annexure*
16. *Copy of reply filed in response to notice U/s. 142(1) alongwith details*
17. *Copy of acknowledgment of e-proceedings response showing the details submitted by assessee*
18. *Copy of notice U/s. 142(1) dated 31/01/2022*
19. *Copy of reply filed in response to notice U/s. 142(1) alongwith details*
20. *Copy of acknowledgment of e-proceedings response showing the details submitted by assessee*
21. *Copy of notice U/s. 142(1) dated 02/03/2022 alongwith annexure*
22. *Copy of reply filed in response to notice u/s 142(1)*
23. *Details of share sold*
24. *Copy of ledger account of Antriksh Barter Pvt. Ltd.*
25. *Details of Short Term Loan to companies*
26. *Detail of Short Term Loans & Advances*
27. *Details of short term borrowing*
28. *Copy of acknowledgment of e-proceedings response showing the details submitted by assessee*
29. *Copy of show cause notice dated 16/03/2022*
30. *Copy of reply filed in response to show cause notice*
31. *Copy of acknowledgment of e-proceedings response showing the details submitted by assessee*
32. *Copy of show cause notice dated 21/03/2022*

33. *Copy of acknowledgment of e-proceedings response showing the details submitted by assessee*
34. *Copy of assessment order U/s. 147 of the Act dated 28/03/2022*
35. *Copy of notice of hearing dated 22/11/2023*
36. *Copy of reply filed in respect of proceedings U/s. 263*
37. *Copy of acknowledgment of e-proceedings response showing the details submitted by assessee*
38. *Copy of assessment order U/s. 147 dated 28/09/2021 in case of Antriksh Barter Pvt. Ltd.*
39. *Copy of acknowledgment of e-proceedings response showing the details submitted by assessee."*

7. The learned A.R. for the assessee in support of his arguments relied on the following case laws, the copies of which are placed on record by way of Paper Book:–

- "i) CIT v/s Gabriel India Ltd. (1993) 203 ITR 108 (Mum. HC);*
- ii) CIT v/s Arvind Jewellers(2003) 259 ITR 0502 (Guj. HC);*
- iii) CIT v/s Max India Ltd. (2004) 268 ITR 0128 (P&H HC);*
- iv) Smt. Lila Choudhury -Vs.-Commissioner of Income Tax & Ors. (2007) 289 ITR 0226 (Gau. HC);*
- v) Chennai Finance Co. Ltd. -Vs.-Assistant Commissioner of Income Tax, (2004) 89 TTJ 0591 (Hyd. ITAT);*
- vi) Ashok Leyland Finance Ltd. -Vs.-Assistant Commissioner of Income Tax, (1997) 59 TTJ 0736 (Chen. ITAT);*
- vii) CIT v/s Nirav Modi, (2017) 390 ITR 0291 (Bom. HC);*
- viii) Micro Inks Ltd. -Vs.-Pr. Commissioner of Income Tax, (2018) 407 ITR 0681 (Guj. HC)."*

8. The learned Authorised Representative for the assessee suggested that invocation of provisions of section 263 of the Act is unwarranted and the Assessing Officer has taken a plausible view after carrying out a full-fledged enquiry. He reiterated the submissions made before the learned PCIT and drew attention to the numerous notices issued by the Assessing Officer and replies submitted thereto to demonstrate enquiry and application of mind.

9. Per-contra, the learned Departmental Representative pressed that there is an underassessment as the addition ought to have been made for ₹ 10,17,10,000, instead of ₹ 5,57,10,000, leading to short determination of income by ₹ 4.60 crore. He vehemently averted that the revision order under section 263 of the Act need not be disturbed as the Assessing Officer has himself submitted the proposal under section 263 of the Act on this issue.

10. We have extended our careful and meticulous attention to the documents on record and submissions strenuously argued upon by both the sides. At this juncture, we once again reproduce Para-4.1 of the show cause notice.

*"4.1 On verification of the assessment records and the Assessment Order for the A. 2013-14, it was noticed that as per the closing balance as on 31-03-2012 the non-current investment of the assessee was at Rs. 13,05,10,000/-. Out of which Rs.3,00,00,000/- were invested in the shares of Tapadia Polyesters Pvt. Ltd. as on 31-03-2012. During the financial year 2012-13 relevant to the A.Y. 2013-14, remaining investment of Rs, 10,05,10,000/- in the shares of different companies*

*have been sold by the assessee and further invested Rs. 4,24,49,000/- in the shares of M/s. Tapadia Polyester Pvt. Ltd. (TPPL). During the year the assessee has also provided an unsecured loan of Rs.1,32,61,000/- to M/s. Tapadia Polyester Pvt. Ltd. (TPPL). As such total investment in M/s. Tapadia Polyester Pvt. Ltd. (TPPL) works out to be Rs.5,57,10,000/-. As it had been concluded that the money actually belonged to TPPL only, the same was added in TPPL on substantive basis and on protective basis in the case of assessee.*

*It was observed that out of total receipt of Rs. 10,05,10,000/-, the assessee had invested back the sale proceeds of Rs.5,57,10,000/- only in TPPL and the same was added back to the income of the TPPL on substantive basis and in the hands of assessee on the protective basis. However, the remaining amount of Rs. 4,48,00,000/- (Rs. 10,05,10,000-Rs.5,57,10,000) was added to the income of TPPL on substantive basis but remained to be added in the hands of the assessee. Hence, failure to add back the amount in the hands of the assessee has resulted in under assessment of income by Rs.4,48,00,000/- As such the order passed by the assessing officer is erroneous and prejudicial to the interest of revenue. Further the details of these non current investments is also not on record."*

11. It is apparent that in the show cause notice, the underassessed sum was initially determined ₹ 4.48 crore, but in the order, it is quantified at ₹ 4.60 crore. This is a clear pointer to the fact that there was no independent application of mind by the learned PCIT, because the directions as per order is at variance with show cause notice and the assessee was never put to notice about enlargement. Moreover, the addition of ₹ 5,57,10,000, in Tapadia Polyester Pvt. Ltd. was made on substantive basis. The Assessing Officer in equivocal terms has clearly held that the real cash belongs to Tapadia Polyester Pvt. Ltd. The operative portion of the assessment order dated 26/03/2021 of Tapadia Polyester Pvt. Ltd. is highlighted below:-

*"8. In view of the elaborate discussion in the foregoing paras, it is held that the share capital and the unsecured loan advanced by these 2*

*companies are being treated as accommodation entries and the real cash belongs to the assessee company which is routed through these companies. Hence the sum of Rs.14,10,00,000/- said to have been received from ABPL and Rs.5,57,10,000/- said to have been received from GFCPL are being added u/s.68 of the IT Act and taxed u/s 115BBE accordingly. For the same reasons, penalty proceedings u/s.271(1)(c) is being initiated separately)*

9. Subject to the above, the assessment is finalised as under:

<i>Returned income u/s. 139</i>	<i>: Rs.4,36,460/-</i>
<i>Assessed income u/s. 143(3)</i>	<i>: Rs.4,61,460/-</i>
<i>Returned income u/s. 148</i>	<i>: Rs.4,61,460/-</i>
<i>Add: Unexplained cash credit (discussed above in Para no. 4)</i>	<i>: Rs. 14,10,00,000/-</i>
<i>Add: Unexplained cash credit (discussed above in Para no. 5)</i>	<i>: Rs. 5,57,10,000/-</i> -----
<i>Assessed income</i>	<i>: Rs.19,71,71,460</i> -----

12. The impugned assessment order in case of the assessee was passed on 28/03/2022, by the successor Assessing Officer holding the same jurisdiction. When the assessment of Tapadia Polyesters Pvt. Ltd. was passed about a year back, there was no mention of substantive, because the Assessing Officer clearly held that cash belonged to the assessee company. The protective assessment was not made simultaneously, but is stemming from assessment pursuant to re-opening. The Assessing Officer has clearly observed that Gajanand Financial Consultancy Pvt. Ltd. has only provided accommodation entry to Tapadia Polyesters Pvt. Ltd. and the addition was made on protective basis in order to protect interest of Revenue. Now, since the order of Tapadia Polyesters Pvt. Ltd. has not been subject to provisions of section

263 of the Act, the addition under protective assessment cannot be tinkered with. As per status of proceedings, the learned D.R. and the learned A.R. both have confirmed vide letter dated 02/07/2025 and 23/06/2025, that the appeals Tapadia Polyesters and Gajanand Financial Consultancy Pvt. Ltd., both are pending before the CIT(A)-3, Nagpur. There cannot be double standard in case of substantive and protective assessment, because such protective assessment is made only for the purpose of protection of Revenue. It is to be noted that in case of Antariksh Barter Pvt. Ltd., the assessment was finalized on 28/09/2021, holding as follows:-

*"7.25 Meanwhile, during the course of search in the case of Tapadiya Group, Nagpur, details regarding the accommodation entries provided by the assessee to*

*M/s. Tapadlya Polyester Pvt. Ltd. has come to light and the assessee's case was centralized. It is seen from the records that M/s. TPPL is in receipt of unsecured loans to the tune of Rs.7.10 crore and share capital of Rs.2.410 crores.*

*8. In view of all of the above discussion of seized documents and books of accounts of the assessee, the only inference that can be drawn is that the Assessee Company, has only provided accommodation entry to M/s TPPL In the form of share capital of Rs 7,00,00,000 and unsecured loan of Rs 7,10,00,000 totalling to Rs.14,10,00,000/- during the FY 2012-13. The Assessee Company has not provided the supporting documents in respect of Share Capital and unsecured loans Introduced In TPPL. Hence it is treated as unexplained cash credit amounting to Rs 14,10,00,000/- u/s.68 of the IT Act. Penalty proceedings u/s 271(1)(c) of the Act is hereby Initiated separately for concealment of income..*

*8.1 Hence, in order to protect the interest of the revenue, the addition of Rs.14,10,00,000/- is made in the case of the Assessee....."*

13. The learned PCIT has held that ₹ 4.60 crore has to be explained by Antariksh Barter Pvt. Ltd. However, we find that the same has already

been subsumed by the total addition of ₹ 14.10 crore on protective basis. This is a clear pointer that the learned PCIT did not examine the record prior to passing the order. At this juncture, we deem it appropriate to refer to a recent order passed by the Hon'ble Supreme Court in V-Con Integrated Solution Pvt. Ltd., [TS-5067-SC-2025-0] vide judgment dated 04/04/2025, wherein the Hon'ble Apex Court has held as under:-

*"In our opinion, the order passed by the High Court, which upheld the decision of the Tribunal, is correct on facts and in law. This case does not involve a failure by the assessing officer to conduct an investigation. Instead, according to the Revenue, it is a case where the assessing officer having made inquiries erred by not making additions.*

*The assessee does not have control over the pen of the Assessing Officer. Once the Assessing Officer carries out the investigation but does not make any addition, it can be taken that he accepts the plea and stand of the assessee.*

*In such cases, it would be wrong to say that the Revenue is remediless. The power under Section 263 of the Income Tax Act, 1961, can be exercised by the Commissioner of Income Tax, but by going into the merits and making an addition, and not by way of a remand, recording that there was failure to investigate. There is a distinction between the failure or absence of investigation and a wrong decision/conclusion. A wrong decision/conclusion can be corrected by the Commissioner of Income Tax with a decision on merits and by making an addition or disallowance.*

*There may be cases where the Assessing Officer undertakes a superficial and random investigation that may justify a remit, albeit the Commissioner of Income Tax must record the abject failure and lapse on the part of the Assessing Officer to establish both the error and the prejudice caused to the Revenue.*

*Recording the aforesaid, the special leave petition is dismissed."*

There is no failure to conduct investigation in this case.

14. We further find that the Assessing Officer, in the present case, had issued notices seeking explanations from the assessee and enquiring all

the details such as holding of shares, investment, made including unsecured loan towards shares given and source of investment in shares and loans and, therefore, it cannot be said that the order passed by the Assessing Officer is erroneous. We have also gone through the contents of the Paper Book filed by the learned A.R. and we find that the assessee has filed all the details before the Assessing officer which are placed on record at Page-50 & 51, 83 To 85, 89 & 90, 110 & 111 of the Paper Book, which demonstrates that the assessee has already disclosed all the necessary issues and facts before the Assessing Officer. The assessee pointed out that the details of sale of non-trade investment company-wise to establish that funds were received on liquidation of assets disclosed in regular boA (Paper Book Page-60, Note no.7 – Non-current investments). The Assessing Officer, after considering the entire record, has consciously formed an opinion and accordingly, he taxed the assessee and made addition under section 68 of the Act of ₹ 5,57,10,000. The contentions of the assessee were incisively examined during the assessment proceedings in case of both the other companies namely M/s. Tapadia Polyester Pvt. Ltd. and Antriksh Barter Pvt. Ltd. However, the additions were again made by the Assessing Officer on a protective basis which tantamount to double taxation on the same income. It is a trite law that protective assessment has to be passed simultaneously where there is a doubt as to the hands in which income is to be assessed. The principle is well settled by the Hon'ble Supreme Court decision in Lalji

Haridas v/s ITO, [1961] 43 ITR 387 (SC). It is excruciating to note that without disturbing the substantive assessment of other two companies under section 263 of the Act, the learned PCIT is embarking on a different trajectory to revise the assessment in the case of assessee which is made on a protective basis thereby creating a divergence in the quantum of additions under substantive and protective assessment which, in our considered view, cannot be countenanced and the methodology so adopted by her is quite alien in legal jurisprudence. In view of the aforesaid discussion, we hold that the order passed by the Assessing Officer is correct and justified which also does not amount to passing of erroneous order which is prejudicial to the interests of Revenue. The case laws relied upon by the learned A.R. as also the latest verdict of the Hon'ble Supreme Court buttresses the case of the assessee.

15. Certain key observations are highlighted below, which will clearly demonstrate the flawed approach of the learned PCIT (Central), Nagpur:—

- i) The genesis of the entire proceeding stems from show cause notice dated 22/11/2023 (Paper Book Page–126–128). In Para–5 of the show cause notice, the PCIT (Central), Nagpur, has unequivocally proposed to set aside the order of the assessment dated 28/03/2022, and issue the directions to the Assessing Officer as deemed fit in the facts and circumstances of the case;

ii) This remark clearly lays down that the learned PCIT has proceeded on a pre-meditated mind set as she has already decided the course of action at the time of issue of show cause notice. This is a clear travesty of justice as the purpose of issuing notice to participate with clean hand with a predetermined prejudiced mind is clearly vitiated and it is apparent that the opportunity granted is merely a superficial one;

iii) The selfsame issue of addition of ₹ 4.48 crore as proposed in show cause notice dated 22/11/2023, was also raised in the show cause notice dated 21/03/2022 issued (Paper Book Page-112) by the DCIT, Central Circle-1(2), Nagpur. The contents of the notice are reproduced below:-

*"On perusal of the balance sheet and bank statement of the assessee company it is seen that the assessee company has received Rs. 10,05,10,000/- from various companies for sale of shares of companies in which the assessee company had made investment in previous years. In this regard, notice u/s 142(1), dated 31.01.2022 has been issued to you. In response to the said notice, you have submitted the list of name of the purchaser companies through which the above mentioned amount has been received.*

*1.1 Further, it is observed on perusal of the information available to this office that the all the purchaser companies from which you have received fund of Rs. 10,05,10,000/- are shell companies and have been stroked off by MCA for being mere shell companies and used for providing accommodation entries to various beneficiaries all over India.*

*1.2 It is clear that these companies have provided accommodation entries to the assessee company. Out of Rs. 10,05,10,000/- you have invested Rs. 5,57,10,000/- in M/s TPPL. You are requested to show cause why the remaining amount Rs. 4,48,00,000/- should not be added to your total income u/s 68 of the Income Tax Act, 1961."*

iv) Subsequently, the assessee replied on 25/03/2022, which is reproduced below:-

*"Sir, We object to the proposed addition mentioned in the show cause notice dated 21st March, 2022. The assessee received amount from various companies which were duly registered under the Companies act having PAN and were active in the year under consideration. The subsequent action on purchaser companies mentioned in the notice cannot be the reason to doubt the amount received by the assessee. Further your goodself will appreciate the amount is received on account of realization of non current assets and not as Unsecured Loan and therefore no addition could be found of amounts so received. Your good self is aware that a search was conducted on Mr. Pravin Tapadia and his company Tapadia Polyesters Pvt Ltd. No evidence was found as a result of search in the premises of aforesaid assessee's to doubt the transaction of the various of amounts received by the assessee company. The seized document was found at the premises of Mr. Vinod Garg and Mr. Pravin Tapadia has already denied any connection with any such Document. Your good self is already aware that out of the amount of Rs. 10,05,10,000/-, the assessee had made investment of Rs. 8,84,49,000/- in the share capital of Tapadia Polyesters Pvt. Ltd. Out of the aforesaid investment in shares, Antariksh Barter Pvt. Ltd. had owned the investment in shares of TPPL to the extent of Rs.4,60,00,000/-. Consequently, the addition of Rs. 4,60,00,000/- has already been made in the case of Antariksh Barter Pvt. Ltd. mention of which can be found in their assessment order. In such circumstances, we object to further addition of Rs.4,48,00,000/- in the case of assessee."*

Thus, the application of mind by the Assessing Officer before framing the order is patently established;

v) At this juncture, it is deemed expedient to reproduce Para-6.3 to 7 (Paper Book Page-123-124) of the assessment dated 28/03/2022;

*"6.3 Nature of transactions with the companies from whom the assessee company received funds:*

*During the course of post search enquiries statement of Shri Pravin Tapadia was recorded on oath u/s 131 of the Income Tax Act, 1961 at Nagpur on 19.02.2020. He was asked to produce the bank statement and books of accounts of M/s Gajanand Financial Consultancy Pvt. Ltd. He produced the same. He was further asked to explain the nature of transactions with the companies*

and persons from whom funds were received by M/s Gajanand Financial Consultancy Pvt. Ltd. during FY 2012-13 along with documentary evidences. He stated that the funds were received on account of realization of book debt from the said companies on account of sale of stocks in previous years without any supporting evidences. During the course of this assessment, notice u/s 142(1) was issued calling for documentary evidences in support of these transactions. The same have not been furnished till date.

Further on verification of the books of accounts of Mis Gajanand Financial Consultancy Pvt. Ltd. it was found that the outstanding debtors as on 01.04.2012 were NIL. Hence, the reply given by Shri Pravin Tapadia that the funds received by M/s Gajanand Financial Consultancy Pvt. Ltd. were on account of realization of book debt is factually incorrect.

In the view of above facts, the nature and genuineness of transactions of M/s Gajanand Financial Consultancy Pvt. Ltd. with the said companies from whom funds were received is not explained satisfactorily by the assessee. Further, the credit-worthiness of the parties from whom funds were received by M/s Gajanand Financial Consultancy Pvt. Ltd. also remains unexplained. Further it is seen that M/s Gajanand Financial Consultancy Pvt. Ltd. is also a mere conduit for transferring the said funds received from the said Kolkata companies to the main beneficiary ie Tapadia Polyesters Pvt. Ltd. Hence, the genuineness and creditworthiness of the parties from whom funds were received by M/s Gajanand Financial Consultancy Pvt. Ltd, and which were subsequently transferred to M/s TPPL also remains unexplained.

6.4 In view of all of the above discussion of seized documents and books of accounts of the assessee, it appears that M/s Tapadiya Polyester Pvt. Ltd. has introduced its own unaccounted income in the form of share capital and unsecured loan from the assessee company by layering it through various bank accounts and transferring the same to Assessee Company's bank account. It is seen from the records that M/s. TPPL is in receipt of unsecured loans to the tune of Rs. 1,32,61,000, and share capital of Rs. 4,24,49,000/-Hence, the only inference that can be drawn is that M/s. Gajanand Financial Consultancy Pvt. Ltd. has only provided accommodation entry to M/s TPPL in the form of share capital and unsecured loan to the tune of Rs.5,57,10,000/- during the FY 2012-13. Hence the sum of Rs. 5,57,10,000/- is treated as unexplained cash credit u/s 68 of the IT Act as the nature and source are not satisfactorily explained by the assessee.

7. Hence, in order to protect the interest of the revenue, the addition of Rs. 5,57,10,000/- is made in the case of the Assessee on Protective basis. Penalty proceedings u/s. 271(1)(c) for

*concealment of particulars of income, of the Income Tax Act is hereby initiated separately."*

vi) There is no quarrel to the proposition that the Assessing Officer had definitely come into an opinion that Tapadia Polyester Pvt. Ltd. has introduced its own unaccounted income in the form of share capital and unsecured loan from the assessee company by layering it through various bank account and transferring the same to assessee's bank account. He finally concluded that the assessee has only provided accommodation entry to Tapadia Polyester Pvt. Ltd. in the form of share capital and unsecured loan to the tune of ₹ 5,57,10,000, during the financial year 2012-13.

vii) As per assessment order dated 26/03/2021, in the case of Tapadia Polyester Pvt. Ltd. (Paper Book Page-9 to 36), the sum of ₹ 5,57,10,000, received from the assessee was added under section 68 of the Income Tax Act, 1961 (for short "*the Act*") and taxed under section 158BBE of the Act vide Para-8 of the order is extracted below Para-11 of this order.

viii) As per notice dated 14/06/2021 under section 143(2) r/w section 147 of the Act (Paper Book Page-37-40) the reasons for reasoning are encapsulated below:-

*"Notice under section 143(2) read with section 147 of the Income-tax Act, 1961('Act)*

*Dear Taxpayer,*

*Thank you for filing your return of income for under section 148 of the Act, vide Ack, no. 274133141250221 on 25/02/2021. income for Assessment Year 2013-14 in response to notice*

*2. While acknowledging the care and diligence you have taken in preparing the return, there are certain issues as mentioned below which need further clarification:-*

*Issues as per reasons recorded for reopening*

1. *M/s Gajanand Financial Consultancy Pvt Ltd is a company registered in Kolkata. Its registered address during FY 2012-13 and 2013-14 was 14/15, Munshi Sadruddin Lane, Kolkata. This company was taken over by the Garg family (Vinod Garg and Vaibhav Garg) who are also shareholders and Directors in Assessee Company. The case was centralised to this circle as the search was conducted in Tapadiya Group on 16/01/2020 by the DDIT (Inv.), Unit-3, Nagpur.*

2. *The assessee M/s Gajanand Financial Consultancy Pvt Ltd is a company. The assessee company filed its original return of income for AY 2013-14 on 30/09/2013 declaring total loss of Rs.4,250/-. The same has been processed u/s 143(1) of the IT Act and no further assessments have been made. The income returned for the relevant asstt. year is only (-)Rs.4,250/-.*

3. *During the course of search in the case of Tapadiya Group, Nagpur, details regarding the accommodation entries provided by the assessee to M/s. Tapadiya Polyesters Pvt. Ltd.*

*has come to light and the assessee's case was centralized.*

4. *During the post search enquiries and investigations sample cash trail of the funds received from the Gajanand Financial Consultancy Pvt. Ltd. was also established. Following is the detailed analysis of the sample cash trail found:*

5. *From the bank account statement of Gajanand Financial Consultants Pvt. Ltd., it is found that it has received amount of Rs.41,50,000/- from Astabhuja Sales Pvt. Ltd. on 19.07.2012. On the same day, Astabhuja Sales Pvt. Ltd. received total amount of Rs.43,58,000/- from 4 bank accounts in the name of Kalika Corporation, Satguru Corporation, Sai Baba Traders, Balaji Corporation respectively. On verification of these 4 bank accounts it was found that cash of Rs.8,99,500/-, Rs.9,96,000/-, Rs.8,50,000/-, Rs.7,50,000/- was deposited in these accounts respectively on the same day and it was transferred to Astabhuja Sales Pvt. Ltd.*

6. *On further enquiry it was found that all these 4 bank accounts, namely, Kalika Corporation, Satguru Corporation, Sai Baba Traders, Balaji Corporation are in the name of same person named Tapas Purkait. He had opened these bank accounts in different proprietary names. These accounts were opened in May/June 2012 and were closed in June/Dec 2013. During this short period of around one to one and half years, huge cash deposits were done in these accounts and same day the amounts were transferred to various Kolkata based shell companies. On perusal of ITR of Tapas Purkait for FY 2012-13 and 2013-14, it was found that he disclosed total sale receipts of Rs. 17.92 lakhs and Rs.17.50 lakhs respectively. The total*

*income disclosed by Tapas Purkait for these FY is Rs.1.87 lakhs and Rs.1.75 lakhs respectively. But the total amount of cash deposits in the above-mentioned 5 bank accounts is substantially more than these sale receipts shown by Tapas Purkait in his ITR, Further it is found that Tapas Purkait has transferred the amount of cash deposits in his bank accounts on the same day to various Kolkata based Shell Companies namely Astabhujia Sales Pvt. Ltd., Pujya Commercial Pvt. Ltd., Astabhujia Sales Pvt. Ltd., Paryapt Sales Pvt. Ltd., etc. It was found that Astabhujia Sales Pvt. Ltd., from whom amount was transferred to Gajanand Financial Consultancy Pvt. Ltd., is struck off by MCA for being mere paper company without any business activity.*

*7. During the course of post search enquiries, statement of Shri Pravin Tapadia was recorded on oath u/s 131 of the IT, 1961 at Nagpur on 19.02.2020. He was asked to produce the bank statement and books of accounts of M/s Gajanand Financial Consultancy Pvt. Ltd. He produced the same. He was further asked to explain the nature of transactions with the companies and persons from whom funds were received by M/s Gajanand Financial Consultancy Pvt. Ltd. during FY 2012-13 along with documentary evidences. He stated that the funds were received on account of realization of book debt from the said companies on account of sale of stocks in previous years. He was asked to produce the documentary evidences regarding the same, but he didn't submit any documents or evidences in this regard till date.*

*8. Further on verification of the books of accounts of M/s Gajanand Financial Consultancy Pvt. Ltd. it was found that the outstanding debtors as on 01/04/2012 were NIL. Hence, the reply given by Shri Pravin Tapadia that the funds received by M/s Gajanand Financial*

*Consultancy Pvt. Ltd. were on account of realization of book debt is factually incorrect. Further he has not submitted any details of the stocks which were sold to the said companies. The companies from whom funds were received by M/s Gajanand Financial Consultancy Pvt. Ltd. are Shell Companies located in Kolkata and most of them have been struck off by MCA for being mere paper companies and not having any actual business activity. Remaining companies have been investigated by Directorate of Income Tax (Investigation), Kolkata and have been found to be shell companies operated by various entry providers based in Kolkata.*

*9. In the view of above facts, the nature and genuineness of transactions of M/s Gajanand Financial Consultancy Pvt. Ltd. with the said companies from whom funds were received is not explained satisfactorily. Further, the creditworthiness of the parties from whom funds were received by M/s Gajanand Financial Consultancy Pvt. Ltd. also remains unexplained. Following is the amount of share capital invested by Gajanand Financial Consultancy Pvt Ltd. in Tapadia*

*Polyesters Pvt. Ltd. and amount of unsecured loan given by M/s Gajanand Financial Consultancy Pvt. Ltd. to the assessee company during the FY 2012-13:*

<i>F.Y.</i>	<i>2012-13</i>
<i>Share Capital</i>	<i>4,24,49,000</i>
<i>Unsecured Loan</i>	<i>1,32,61,000</i>
<i>Total</i>	<i>5,57,10,000</i>

*10. The source for this investment said to be received from various shell companies remains unexplained in the hands of the assessee company.*

*11. In view of all the above, I have reason to believe that the assessee company has not made a true and full disclosure about the affairs of the company, the income earned during the relevant financial year and hence income chargeable to tax has escaped assessment. Hence the provisions of clause (b) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.*

*3. In view of the above, you may submit your response with supporting documents (if any) on the above mentioned issues to undersigned electronically in 'E-proceedings' facility through your account in e-Filing website([www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in)) at your convenience on or before 29/06/2021*

*4. In course of assessment proceedings, if required specific questionnaire(s) or requisition(s) for*

*5. A brief note on E-Proceeding is enclosed for your kind reference. In case you require any assistance in filing your response, you may contact toll free Call Centre number 1800 103 4215."*

Notice under section 148 dated 19/02/2021 (Paper Book Page-3) was issued after obtaining necessary satisfaction of the learned PCIT (Central), Nagpur.

ix) It is worthwhile to reproduce Para-4.1 of show cause notice dated 21/11/2023 (Paper Book Page-127).

Simultaneous reference to Para-7 supra, will clearly establish that the proposition as laid down by the learned PCIT is clearly tangent to the actual state of affairs because no such amount was ever added to the income of the Tapadia Polyester Pvt. Ltd. Hence, the very basis of initiating revision is fragile, if lowed, baseless unsustainable and perverse, because no such addition was ever perpetrated. We are unable to persuade ourselves to the viability of the averments of the learned PCIT. There is absolutely no basis or reason whatsoever to draw the conclusion on the edifice of which the entire revisionary proceeding has been crystallized.

16. Respectfully placing reliance on a Latin Legal Maxim "*Sublato Fundamen to Cadit Opus*" which translates to "*when the foundation is removed, the structure fails*". Essentially, it emphasizes that a legal structure cannot stand if its foundation is flawed or illegal. Another noteworthy feature is that when learned PCIT herself was satisfied that income had escaped to the tune of ₹ 5,57,10,000.

17. Prior to issue of notice under section 148 of the Act, and more so when the addition has been done on the same amount, there can be hardly any scope for branding the order as erroneous and prejudicial to the interests of Revenue. In the case of Dr. Shiva Kanta Mishra v/s CIT, 380 ITR 257 (All.), Their Lordships have clearly opined that the Assessing Officer cannot make addition in re-assessment proceedings under the cover of "*protective basis*". Protective assessment could only be made at the stage where there was any doubt or dispute about the assessability of

a particular sum either in relation to the assessment and / or in relation to the assessee.

18. In the absence of substantive assessment of ₹ 1,00,51,000, in the hands of Tapadia Polyester Pvt. Ltd., there cannot be any protective assessment in the case of the assessee. The principle was reinforced in ITO v/s Keshava Nanda Kakati, [2021] 192 ITD 445 (Gau. Trib.). It is beyond comprehension how the explanation from Antariksha Barter Pvt. Ltd. to explain the source for buying shares from Gajanand Financial Consultancy Pvt. Ltd. is relevant for framing assessment in the case of the ass. We hasten to add that learned PCIT had acted in a perfunctory manner and had brushed aside the elaborate explanation put forth before her without effectively repudiating the same. The order under section 263 of the Act suffers from patent multiple latches and aberrations and hence requires to be set aside and quashed with concomitant restoration of the assessment order.

19. Consequently, we set aside the impugned order passed by the learned PCIT by holding that the order of the Assessing Officer is not amicable for revision under section 263 of the Act. The impugned order passed under section 263 of the Act passed by the learned PCIT is quashed and the assessment order is restored.

20. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 22/09/2025

**Sd/-**  
**N.K. CHOUDHRY**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 22/09/2025**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur