

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, F: NEW DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
AND  
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER  
ITA No.- 1162/Del/2020  
[Assessment Year: 2015-16]**

M/s Shanti Rice Mills, C/o Parvesh Kumar Sharma, Advocate, 493-L, Model Town, Karnal, Haryana.	Vs	PCIT, Karnal Bay Site No.- 25-30, Sector-12, Karnal.
<b>PAN- AAIFS5617B</b>		
Assessee		Revenue

Assessee by	Shri Rakesh Jain, Adv.
Revenue by	Ms. Monika Singh, CIT(DR)

<b>Date of Hearing</b>	<b>24.09.2025</b>
<b>Date of Pronouncement</b>	<b>22.12.2025</b>

**ORDER**

**PER BRAJESH KUMAR SINGH, AM,**

This appeal by the assessee is directed against the order of the learned Principal Commissioner of Income Tax, Karnal, dated 20.03.2020 [hereinafter referred to as the 'Ld. PCIT'] passed under Section 263(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). This order was passed by the PCIT, Karnal, setting aside the assessment order dated 07.02.2017 passed by the ITO,

Ward-4, Karnal, (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Act, pertaining to A.Y. 2015-16. The AO noted in the assessment order that the assessee is a firm consisting of two partners namely Sri Sunil Goel and Smt. Neelam Goel.

2. The Ld. PCIT on perusal of the said assessment order dated 07.12.2017, along with the relevant assessment records noted that it reveals certain apparent discrepancies and errors. The Ld. PCIT noted that the assessee had taken loan of Rs. 1,80,000/- and Rs. 3,60,000/- from his daughter Ms. Nidhi Goel and his son Shri Ankit Goel, respectively. The Ld. PCIT further noted that on the date of the receipt of the said loans, there was an equivalent amount of cash deposits in the respective bank accounts of Ms. Nidhi Goel and Shri Ankit Goel, the source of which was not examined by the Assessing Officer. Further, the Ld. PCIT noted that the assessee had received unsecured loans of Rs. 8,00,000/- from M/s Shree Balaji Filling Station on 31.12.2014 and an equal amount of Rs. 8,00,000/- in cash was deposited in the bank account of M/s Shree Balaji Filling Station the source of which was also not examined by the Assessing Officer. Further, the Ld. PCIT noted that the partner of the firm Shri Sunil Kumar had introduced fresh capital of Rs. 19,50,000/- but source of the capital introduced was not explained and also not examined by the AO. In view of these facts, the Ld. PCIT observed that the above assessment order passed was evidently erroneous in so far as it was prejudicial to the interest of the Revenue, in terms of Section 263(1) of the Act, and accordingly, vide letter dated 05.02.2020

show caused the assessee to explain as to why action should not be taken in its case in terms of section 263(1) of the Act. The extract of the said show cause is placed at para no. 2 at page no. 1 to 3 of the impugned order u/s 263 of the Act.

2.1 The assessee filed its explanation vide letter dated 20.02.2020 on 18.03.2020, when the assessee attended the proceeding u/s 263 of the Act before the Ld. PCIT. The assessee in its explanation before the Ld. PCIT submitted that the Assessing Officer after going through their Income Tax Return and computation of income and after getting their confirmation and after utilising his mind had accepted the loan as genuine in the case of Ms. Nidhi Goel and Sri Anki Goel. Further, as regards the loan from M/s Shree Balaji Filling Station, it was submitted that M/s Shree Balaji Filling Station is a regular Income Tax Assessee and the firm had an annual gross turnover of Rs. 8,69,21564.95. It was further submitted that the daily sales approximately came to Rs. 2,50,000/- and the deposit of Rs. 8,00,000/- of three days sales were very much genuine. It was further submitted that during the course of assessment proceedings, it had confirmed the loan and the Income Tax officer after applying his mind and after verifying the genuineness of the loan had accepted the same. Regarding the introduction of capital of Rs. 19,50,000/- by partner Sri Sunil Kumar, the assessee explained that, the bank statement shows that Rs. 19,50,000/- is credited on 18/06/2014 in the bank account of Sri Sunil Kumar and the same was transferred to assessee firm on same date. It was further explained that Rs.

19,50,000/- was transferred by RTGS by M/s Parwati Trading Co. Nissing in which the Sunil Kumar's father was a partner. The Ld. AR also filed the copy of cash book of M/s Parwati Trading Co. and submitted that the Income Tax Officer after verifying the genuineness of credit and after applying this mind had accepted the credit worthiness of the transaction.

2.2 Thereafter, the assessee submitted that the proceeding u/s 263 of the Act were initiated on the basis of audit objection raised by the Audit party and relying upon various case laws submitted that such a proceeding initiated u/s 263 of the Act, on the basis of audit objection was not tenable. Further, the assessee submitted on the basis of various case laws that assessment order cannot be revised on the ground that the enquiry should have been more detailed.

2.3 However, the Ld. PCIT did not accept the above contentions of the assessee and relied upon various case laws which held that where there was lack of proper enquiry or application of mind by the Assessing Officer the invoking of provisions u/s 263 of the Act was rightful and justified. Regarding the loan from Ms. Nidhi Goel and Sri Ankit Goel, the Ld. PCIT observed that it was very evident that both Ms. Nidhi Goel and Sri Ankit Goel, on their very meagre incomes of Rs. 2,22,000/- and Rs. 2,28,000/- in their respective return of income for A.Y. 2015-16 could not explain the above stated cash deposits, and hence, the creditworthiness of the above two loans creditors was not established. The ld. PCIT also noted from the bank account

of Ms. Nidhi Goel that an amount of Rs. 5,13,000/- was transferred to Markemdeswar University and observed that at the time of giving loan she was a full-time student.

2.4 Regarding the loan of Rs. 8,00,000/- from M/s Shree Balaji Filling Station, the Ld. PCIT noted that the Income Tax Return of M/s Shree Balaji Filling Station for A.Y. 2015-16 showed a total income of Rs. 2,65,320/-. The Ld. PCIT further noted that the balance sheet filed along with the Income Tax Return showed a loan of Rs. 8,00,000/- to the assessee but the bank statement filed during assessment proceedings showed cash deposit of Rs. 8,00,000/- on 31.12.2014 in the bank account of M/s Shree Balaji Filling Station and the same amount was transferred to the assessee firm on the same day. The Ld. PCIT further noted that the opening credit balance as on 31.12.2014 was Rs. 17,104/-and after credit & debit of the entry of Rs. 8,00,000/- the credit balance remained the same amount of Rs. 17,104/-. In view of the above facts of the case, the Ld. PCIT noted that the genuineness and creditworthiness of unsecured loan of Rs. 8,00,000/--raised during the year was not established and observed that in these circumstances, amount of. Rs. 8,00,000/- was apparently to be treated as unexplained cash credit u/s 68 of the I.T. Act, 1961 and required to be assessed in the hands of the assessee. Further, the Ld. PCIT observed that the deposit of Rs. 8,00,000/- in the bank account of M/s Shree Balaji Filling Station needs to be verified with respect to the purchases and sales made by the said

concern particularly when the income returned was so meagre and directed the AO to make the requisite verification from the concerned party.

2.5 Regarding the capital amounting to Rs. 19,50,000/- introduced by its partner Sri Sunil Kumar, the Ld. PCIT noted that the capital account of the partner of the assessee, Sh. Sunil Kumar, shows introduction of fresh capital of Rs. 19,50,000/-. The Ld. PCIT further noted that the bank statement shows that Rs.19,50,000/- was credited on 18.06.2014 in the bank account of the partner Shri Sunil Kumar and the said amount was transferred to the assessee's account on the same date. The assessee explained before the Ld. PCIT that it was a transfer from M/s Parwati Trading Co. Nissing. On Perusal of the extract of the cash book of M/s Parwati Trading Co. the Ld. PCIT noted that it showed a cash deposit of Rs.19,50,000/- on 18.06.2014 in the bank account of M/s Parwati trading Co. The Ld. PCIT further noted that the assessee was, however, unable to explain the source of this cash deposit of Rs.19,50,000/- in the bank account of M/s Parwati Agro Food. The Ld. PCIT further noted that cash book of M/s Parwati Trading Co. was called for but not submitted during the course of these proceedings and observed that the credit of the said amount in the accounts of Sh. Sunil Kumar, the partner, had hence remained unsubstantiated with regard to the creditworthiness of the loan creditor and hence genuineness of the transaction and the said amount was liable to be treated as unexplained cash credit in the hands of the assessee u/s 68 of the I.T. Act, 1961.

2.6 In view of the above facts, the Ld. PCIT held that it was clear that the AO had passed the order dated 07.12.2017 in a casual and perfunctory manner without caring to go through the details of the case and conducting any worthwhile enquiries on critical issues. The Ld. PCIT further observed that the AO failed to exercise due diligence in respect of each and every issue involved in the assessee's case, and has passed a summary assessment order after simply obtaining a few documents from the assessee and placing them on record. Accordingly, the Ld. PCIT held that the order passed by the A.O. was, erroneous in so far as it is prejudicial to the interest of Revenue and accordingly set-aside with the directions to the A.O. to make the assessment afresh after *inter alia* considering all the facts/issues discussed above, and after conducting comprehensive enquiries in respect of all the issues.

3. Against the above order of the Ld. PCIT, the assessee has filed the present appeal before us raising the following grounds of appeal:

*“1. That the order of the Principal Commissioner of Income Tax Karnal is arbitrary illegal and against the facts.*

*2. That the principal Commissioner of Income Tax Karnal erred in law in passing order u/s 263(1) of the Income Tax Act. When ld. ITO has already verified the documents.”*

4. During the hearing before us, the Ld. AR reiterated the submissions made before the Ld. PCIT, during the proceedings u/s 263 and relied upon its submissions filed by letter dated 20.02.2020 placed at 19-22 of the Paper Book filed by the assessee.

5. The Ld. CIT(DR) relied upon the order of the PCIT and also filed a written submission and the relevant extract of her written submission is reproduced below:

**“ (A) Assessment order dated 07.12.2017 is erroneous and prejudicial to the interest of Revenue-**

<b><i>Error apparent in the assessment order dated 07.12.2017</i></b>	<b><i>Submission on behalf of the Department</i></b>
<p><i>1. Assessee has raised fresh unsecured loan dated 30.03.2015 of Rs. 1,80,000/- during the year under consideration, from Ms. Nidhi Goel D/o Sh. Sunil Kumar (Partner).</i></p>	<ul style="list-style-type: none"> <li>• <i>Lender namely Ms. Nidhi Goel was barely 18 years old (DOB 15.11.1996) at the time of giving the said unsecured loan.</i></li> <li>• <i>Bank statement of Ms. Nidhi Goel maintained with SBI shows fee transfer dated 27.06.2014 to Markendeshwar University, Ambala for sum of Rs. 5, 13,000/- which indicates that she was a full time student at that time. Hence, it is right to suggest that she didn't have creditworthiness to lend such a substantial amount.</i></li> <li>• <i>The amount of Rs. 1,80,000/- was deposited in cash dated 1 1.04.20)14 in her bank a/c and on the same day, the amount was transferred to assessee firm.</i></li> <li>• <i>ITR filed for A.Y 2015-16 shows a total income of Rs. 2,22,000/-from coaching &amp; training. On a very meager income, the creditworthiness of loan creditor thus has not been established.</i></li> </ul>
<p><i>2. Assessee has raised fresh unsecured loan dated 30.03.2015 of Rs. 3,60,000/-, during the year under consideration, from Sh. Ankit Goel S/o Sh. Sunil Kumar (Partner).</i></p>	<ul style="list-style-type: none"> <li>• <i>Lender namely Sh. Ankit Goel was 21 years old (DOB 26.02.1993) at the time of giving the said unsecured loan.</i></li> <li>• <i>Similarly, the amount of Rs. 3,60,000/- was deposited in cash dated 30.03.2015 in his bank a/c and on the same day, the amount was transferred to assessee firm. Hence, it seems to be an accommodation entry.</i></li> <li>• <i>ITR filed for A.Y 2015-16 shows a total income of Rs. 2,28,000/-again from coaching &amp; training. On</i></li> </ul>

	<i>a very meager income, the creditworthiness of loan creditor thus has not been established.</i>
<i>3. Assessee has raised fresh unsecured loan dated 31.12.2014 of IRS. 8,00,000/-during the year under consideration, from M/S Shree Balaji Filling Station.</i>	<ul style="list-style-type: none"> <li>• <i>There is cash deposit of Rs. 8,00,000/- dated 31.12.2014 and the same amount is transferred to the assessee firm the same day.</i></li> <li>• <i>Opening credit balance dated 31.12.2014 was Rs. 17,104/- and after credit &amp; debit entry, the credit balance remained the same.</i></li> <li>• <i>The ITR for A.Y 2015-16 shows a total income of Rs. 2,65,320 only and the balance sheet filed shows a loan dated 31.12.2014 of Rs. 8,00,000/- to the assessee. Hence, when income return is so meager the genuineness and creditworthiness of unsecured loan raised during the year under consideration is not established.</i></li> </ul>
<i>4. Assessee partner namely Sh. Sunil Kumar has introduced a fresh capital of Rs. 19,50,000/- dated 18.06.2014 during the year under consideration.</i>	<ul style="list-style-type: none"> <li>• <i>Fresh capital of Rs. 19,50,000/- was introduced by Sh. Sunil Kr. (Partner of assessee firm) but the source of capital introduced is not explained.</i></li> <li>• <i>Sum of Rs. 19,50,000/- are credited dated 18.06.2014 in SBI a/c and the said amount is transferred to assessee firm on same date.</i></li> <li>• <i>The assessee has explained the transfer of Rs. 19,50,000/- from M/S Parwati Trading Co. Nissing, however, the assessee has been unable to explain the source of this cash deposit in the bank a/c of M/S Parwati Agro Food.</i></li> <li>• <i>The cash book of M/S Parwati Agro was called for but not submitted during the course of proceedings before the Ld. CIT(A).</i></li> </ul>

6. We have heard the rival contentions and perused the material available on record. In this case, the issues on which the Ld. PCIT, initiated the proceedings u/s 263 of the Act, can be summarized as under:

**A. Unsecured loans raised by the assessee during F.Y. 2014-15 relevant to A.Y. 2015-16**

Sr. No.	Date	Amount	Taken from	ROI	Source of funds of the creditors	Source of income in Return
1.	30.03.2015	1,80,000/-	Nidhi Goel D.O.B. 15.11.1996	2,22,000/- ROI filed	Cash deposit of Rs.	Coaching and Training

			Daughter of partner Sri Sunil Kumar	on 07.10.2015	1,80,000/- in her bank on 30.03.2015	
2.	11.04.2014	1,80,000/-	Ankit Goel D.O.B. 26.02.1993 Son of partner of Sri Sunil Kumar	2,28,000/- ROI filed on 07.10.2015	Cash deposit of Rs. 1,80,000/- in his bank account on 11.04.2014	Coaching and Training
3.	30.03.2015	1,80,000/-	Ankit Goel D.O.B. 26.02.1993 Son of partner of Sri Sunil Kumar	do	Cash deposit of Rs. 1,80,000/- in his bank account on 30.03.2015	do
4.	31.12.2014	8,00,000/-	M/s Balaji KSK Filling Station	265320	Cash deposit of Rs. 8,00,000/- on 31.12.2014 to in its bank account	Petrol Pump Business
<b>Capital in the firm introduced by Sri Sunil Kumar</b>						
5.	18.06.2014	Rs. 19,50,000/-	Sri Sunil Kumar	Not available	Transfer from Parwati Trading Company, Nissing in which Sunil Kumar's father is a partner, wherein on there was a cash deposit of Rs. 19,50,000/- its bank account	Not available

6.1 In this regard, the ld. AR submitted that the necessary queries were made by the AO regarding the source of the above funds and the requisite replies were submitted by the assessee and upon satisfaction of replies / details filed by the assessee the Ld. Assessing Officer accepted the unsecured loan of Rs. 13,40,000/- and Rs. 19,50,000/- received as capital and passed the assessment order u/s 143(3) of the Act, dated 07.02.2017 in this case. Further, the Ld. AR referred to the query dated 19.01.2017 issued by the AO during the course of assessment proceedings placed at 50 to 52 of the Paper Book and the corresponding reply dated 18.09.2017 and 11.10.2017 filed by the assessee during the assessment proceedings placed at 53 and 54A of the Paper Book. In this regard, the relevant extract of the query of the AO and the reply of the assessee are reproduced as under:

**Letter dated 19.01.2017**

*“ 9. Copy of account of secured/unsecured loans/squared up accounts/cash credits during the year alongwith confirmation of the loans raised during the year. To prove the genuineness of the said loans, capacity and credit worthiness of the creditors alongwith source from where the loans were advanced and any other documents in support thereof. Also furnish PAN and the designation of concerned Assessing Officer of the creditors if assessed to tax.*

*22. Please furnish certified copy of partnership deed.”*

**Letter dated 18.09.2017**

*“ 9. That the copy of ledger A/c of Unsecured Loans are enclosed.”*

**Letter dated 11.10.2017**

*“1. That in connection with the assessment proceedings, the Assessee has now submitting a copy of ITR, computation and Bank Statement of Ankit Goel & Nidhi for A.Y 2015-16 are enclosed for your kind perusal please.*

*2. That the copy of ITR & Computation of M/s Shri Balaji KSK Filling Station for A.Y 2015-16 are enclosed for your kind perusal please.*

*3. That the copy of Ledger A/c of our firm related to M/s Shri Balaji KSK Filling Station and the confirmation of Ledger A/c of M/s Shri Balaji KSK Filling Station are enclosed for your kind perusal please.”*

6.2 The perusal of the above replies of the assessee and the supporting documents filed by the assessee do not show that the assessee explained the immediate source of cash deposits of Rs. 32,90,000/- in the respective bank accounts of its loan creditors and in the bank account from whom capital amounting to Rs. 19,50,000/- was received during the year.

6.3 From the facts on record and on perusal of the tabular chart in para no. 6 of this order, it is very apparent that the immediate source of the unsecured loan of Rs. 13,40,000/- (Rs. 1,80,000/- + Rs. 3,60,000/-) + Rs. 8,00,000/- and capital of Rs. 19,50,000/- totalling Rs. 32,90,000/- received by the firm is the cash deposit of equivalent of Rs. 32,90,000/- in the respective bank of accounts of the person as discussed above and detailed in the tabular chart in para no. 6 of this order. However, no query either by the AO or any explanation by the assessee to explain the source of said cash deposits are there on record.

6.4 The plea of the assessee that the source of the loan taken / capital introduced was verified by the AO is not acceptable because, no explanation regarding the source of the said cash deposits was furnished by the assessee. No explanation is there on record to show that in the case of Ms. Nidhi Goel and Sri Ankit Goel, the source of the said cash deposit was out of the proceeds of coaching and training or otherwise.

6.5 Similarly, only the ledger extract of the cash book of period as on 31.12.2014 showing an opening balance of Rs. 8,50,428.66 as placed on page 24 on the Paper Book (reproduced below) in the case of Shree Balaji KSK Filling Station was filed by the assessee, which was also the date of the cash deposit of an amount of Rs. 8,00,000/- in its bank account without giving the basis of the aforesaid cash balance as on 31.12.2014.

**SHRI BALAJI KSK FILLING STATION**  
PUNDRI ROAD DHAND

**Cash Book**  
for 31-Dec-2014

Date	Particulars	Vch Type	Vch No.	Debit	Page Credi
31-12-2014	Cr Opening Balance			8,50,428.66	
31-12-2014	Cr PETROL SALE ACCOUNT	Sales		24,796.00	
	Cr DIESEL SALE ACCOUNT	Sales		40,448.00	
	Dr STATE BANK OF INDIA NISANG	Contra			8,00,000.0
				9,15,672.66	8,00,000.0
					1,15,672.6
	Dr Closing Balance			9,15,672.66	9,15,672.6

For Shri Balaji K.S.K. Filling Station  
Ramesh Chandra  
Prora

6.6 Similarly, only the ledger extract of the cash book of period as on 18.06.2014 as placed on page 27 in the case of Shree Balaji KSK Filling Station (reproduced below) is there on the record which is also the date of the cash deposit in the

partnership firm M/s Parwati Trading Company in which the father of Shri Sunil Kumar was a partner. In this regard, the Ld. PCIT in her order had also noted that the cash book of M/s Parwati Trading Company was called for but was not submitted and thus the credit of the said amount in the accounts of Shri Sunil Kumar the partner, who introduced a sum of Rs. 19,50,000/- in the assessee's account remained unsubstantiated with regard to the creditworthiness of the loan creditors and genuineness of the transaction was not satisfied.

The image shows two pages of a handwritten cash book. The left page is partially obscured by a vertical black bar. The right page contains the following entries:

DATE	PARTICULARS	LEDGER FOLIO	AMOUNT	TOTAL
			Rs. P.	Rs. P.
18/11/14	By Cash in hand		195000	
20/11/14	To Bank		195000	
				390000
				193779.64
				193779.64

6.7 On perusal of the enquiries made by the Assessing Officer it is seen that the said enquiries only brought on record the factum of the unsecured loan taken by the assessee and the capital introduced in its account. However, as noted above, the

immediate source of the above unsecured loans given by the said creditors and the capital introduced by the partner was an equivalent amount of cash deposits in the respective bank accounts as discussed above. As the primary source of the above unsecured loans / capital was cash deposit, in the given facts of the case the primary enquiry, that was required to be done by the Assessing Officer was to examine about the precise source of the said cash which was not done by the Assessing Officer in this case. Even in the case of Shree Balaji Filling Station, the explanation regarding the cash deposits in its bank account on 31.12.2014 was out of debit opening cash balance on 31.12.2014 was without the cash flow statement explaining the basis of the said cash balance of Rs. 850428.66.

6.8 Therefore, in view of the above facts it is not a case of inadequate enquiry as contended by the assessee because in the given facts of the case it cannot be said that an improper enquiry as conducted by the Assessing Officer in this case should be construed as “an inadequate enquiry” rather it is a case of “lack of enquiry” because as discussed above, the immediate source of the unsecured loan of Rs. 13,40,000/- (Rs. 1,80,000/- + Rs. 3,60,000/-) + Rs. 8,00,000/- and capital of Rs. 19,50,000/- totalling Rs. 32,90,000/- received by the firm is the cash deposit of equivalent of Rs. 32,90,000/- in the respective bank of accounts of the person as discussed above and detailed in the tabular chart in para no. 6 of this order was not at all enquired by the Assessing Officer in this case. In such a situation of “lack of enquiry” the Ld. PCIT

was justified to pass an order u/s 263 of the case setting aside the assessment order on the ground that it was erroneous in so far as it was prejudicial to the interest of the revenue as observed by the Hon'ble Delhi High Court in the case of DIT vs. Jyoti Foundation 357 ITR 0388 (Delhi) in para 15 and 16 of its order which is reproduced as under:

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

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

"... From a reading of sub-section (1) of section 263, it is clear that the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the Income-tax Officer is 'erroneous in so far as it is prejudicial to the interests of the Revenue'. It is not an arbitrary or unchartered power, it can be exercised only on fulfilment of the requirements laid down in sub-section (1). The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable

*manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. (See Parashuram Pottery Works Co. Ltd. v. ITO (1977) 106 ITR 1 (SC) at page 10) From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of the substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be formed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed. We may now examine the facts of the present case in the light of the powers of the Commissioner set out above. The Income-tax Officer in this case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given detailed explanation in that regard by a letter in writing. All these are part of the record of the case. Evidently, the claim was allowed by the Income tax Officer on being satisfied with the explanation of the assessee. Such decision of the Income-tax Officer cannot be held to be erroneous' simply because in his order he did not make an elaborate discussion in that regard."''''*

*16. Thus, in cases of wrong opinion or finding on merits, the CIT has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under Section 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order passed is not sustainable in law and the said finding must be recorded. CIT cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous. In cases where there is Inadequate enquiry but not lack of enquiry,*

*again the CIT must give and record a finding that the order/inquiry made is erroneous. This can happen if an enquiry and verification is conducted by the CIT and he is able to establish and show the error or mistake made by the Assessing Officer, making the order unsustainable in Law. In some cases possibly though rarely, the CIT can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the Assessing Officer had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the Assessing Officer to conduct further enquiries without a finding that the order is erroneous. Finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction under Section 263 of the Act. In such matters, to remand the matter/issue to the Assessing Officer would imply and mean the CIT has not examined and decided whether or not the order is erroneous but has directed the Assessing Officer to decide the aspect/question.*

*(emphasis supplied by us)*

6.9 In view of the above facts, wherein it has been brought on record that the immediate source of the unsecured loan of Rs. 13,40,000/- (Rs. 1,80,000/- + Rs. 3,60,000/-) + Rs. 8,00,000/- and capital of Rs. 19,50,000/- totalling Rs. 32,90,000/- received by the firm is the cash deposit of equivalent of Rs. 32,90,000/- in the respective bank of accounts of the person as discussed above and detailed in the tabular chart in para no. 6 of this order, which has not been examined at all by the Assessing Officer as discussed above, it will be rare case of “lack of enquiry” as highlighted by the Hon’ble Bombay High Court in the case of CIT vs. Gabriel India Ltd. (supra) as referred above on the basis of which we hold that in the given facts of the case the order passed by the Ld. PCIT setting aside the impugned assessment order on the ground that the same was erroneous in so far as it was prejudicial to the interest of revenue u/s 263 of the Act was justified and legally tenable.

6.10 Similarly, the Hon'ble Punjab & Haryana High Court, in the case CIT vs. Deepak Mittal 324 ITR 411 (P & H) relied by the assessee had discussed about the detailed enquiries made by the Assessing Officer regarding the issue as to whether the assessee was indulging in manufacturing process or not before allowing the assessee's claim for deduction u/s 80IB(4) of the Act. As discussed above, no such enquiry was made by the Assessing Officer in this case as required in the given facts of the case, and therefore, the above decision will not be applicable in the present case, in view of the distinguishing facts.

6.11 Further, the Co-ordinate Bench of the Tribunal in the case of Ashok Kumar Gupta, in ITA No. 369/Del/2021, vide order dated, 14.12.2023, wherein the facts are similar to the facts of the present case, where an amount of Rs. 11,24,000/- was deposited in cash in the bank account of the assessee which was claimed to be deposited by the wife and the daughter of the assessee noted that the Assessing Officer had conducted detailed enquiry which is discussed in para no. 10 to 10.2, which is reproduced as under:

*" 10. After taking into consideration the facts of the matter and the submissions made, it comes up that consequent to the notice u/s 147/148 dated 28.11.2017 notice u/s 142(1) of the Act was first issued on 02.06.2017 which is available at page 5 of the paper book and in which a specific query was raised to the assessee mentioned at sl. No.5: "Please furnish source of cash deposits amounting to Rs. 17,60,200/- made during the FY 2009-10." This was responded by the assessee by reply dated 14.06.2017 available at page 54 of the paper book wherein the assessee informed that during the FY 2009-10, cash deposits was of Rs.11,24,000/- instead of Rs.17,00,200/-. The details of date wise deposits were provided. Further, it was submitted that the assessee's wife Smt. Kamlesh Gupta during the financial year was doing boutique work and out of her earning had deposited cash in her husband's savings bank account. She has not filed any return. Further, the assessee's daughter Nikita Gupta was doing tuition work and she had also deposited her earnings in her father's account and balance cash deposits were out of past savings and gifts received from relatives.*

10.1 Again, the ld. AO, by letter dated 08.08.2017, made available at page 6 of the paper book, sought further information from the assessee with regard to specific information about cash deposits and the assessee responded to the same by letter dated 22.08.2017 made available at page 8 of the paper book wherein again, it was re-asserted that the source of cash was salary, other source of income, past savings and family members', i.e., wife's and daughter's savings.

10.2 The Ld. AR has also pointed out that the Ld. AO was also provided information with regard to the earnings of his wife and daughter which are made Further, at page No.50 of the paper book, there is copy of another letter dated 21.07.2017 written to the AO mentioning that the assessee's wife has qualification and experience to run the boutique work from home and his daughter also is qualified holding Bachelor's degree and masters degree in Computers to give coaching. Confirmations from the wife dated 17th July, 2017 and from the daughter dated 18th July, 2017 are made available at pages 51 and 55 respectively of the paper book were also provided to the AO."

6.12 In view of these facts, the co-ordinate Bench held that the proceedings u/s 263 of the Act, in the said case was not justified and the relevant extract of the said order in para no. 11 is reproduced as under:

*"11. In spite of the aforesaid substantial evidences before the AO and on the assessment record, the ld. PCIT was of the belief that the Id. AO should not have been convinced with the story put forth by the assessee. The ld. PCIT observed that the assessee has failed to give bifurcation of the amounts deposited by his wife or daughter or in the form of gifts/savings. The Id. AO had made relevant queries directly touching the issue and sufficient evidences were filed by the assessee. The Bench is of the considered view that when, admittedly, the assessee is a salaried person, then the onus was on the assessee to explain how any other money in his account, apart from the salary, was credited. He had discharged his onus by direct evidence which were relied by AO. The observations of the Id. PCIT to find the assessment order erroneous and prejudicial to the interest of the Revenue are based on his own understanding of the evidences furnished by the assessee. His conclusion may be more prudent but not sufficient to hold that the assessment order was erroneous or prejudicial to interest of Revenue without establishing it is not in accordance with law. The Revisional Power u/s 263 of the Act is not meant to substitute the opinion of a superior tax authority on mere difference of opinion."*

6.13 However, as discussed above, no enquiry at all was conducted by the Assessing Officer in this case regarding the source of the cash deposits amounting to Rs. 32,90,000/- which was the immediate source of unsecured loans amounting

to Rs. 13,40,000/- received by the assessee and capital introduced amounting to Rs. 19,50,000/- in the books of the assessee. Therefore, the above order of the Tribunal does not support the case of the assessee for the reasons as discussed above.

6.14 As regards, the objection of the assessee that the proceedings, u/s 263 of the Act cannot be initiated on the basis of audit objection has been carefully considered but not found to be acceptable. The assessee has relied upon the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Sohana Woolen Mills 296 ITR 238 in support of his contention. The same has been carefully perused and the relevant extract of the said order on the relevance of audit objection for initiating proceeding u/s 263 of the Act has been discussed in para no. 7 of the said order, which is reproduced as under:

*“7.A reference to the provisions of [Section 263](#) of the Act shows that jurisdiction thereunder can be exercised if the CIT finds that the order of the AO was erroneous and prejudicial to the interest of Revenue. Mere audit objection and merely because a different view could be taken, were not enough to say that the order of the AO was erroneous or prejudicial to the interest of the Revenue. The jurisdiction could be exercised if the CIT was satisfied that the basis for exercise of jurisdiction existed. No rigid rule could be laid down about the situation when the jurisdiction can be exercised. Whether satisfaction of the CIT for exercising jurisdiction was called for or not, has to be decided having regard to a given fact situation.”*

6.15 Thus, it is seen that the Hon'ble Punjab & Haryana High Court in the above order observed and held that it will depend on the facts of the case and the audit objection to decide as to whether the said audit objection can be a ground to initiate

proceeding u/s 263 of the Act. Therefore, in view of the above discussion, it cannot be said that audit objection cannot be a basis for initiating proceedings u/s 263 of the Act and the submission of the assessee is hereby rejected.

6.16 In view of the above facts as discussed above, we hold that it is a case of lack of enquiry by the Assessing Officer while passing the impugned assessment order regarding the source of the cash deposits amounting to Rs. 32,90,000/- which was the immediate source of unsecured loans amounting to Rs. 13,40,000/- received by the assessee and capital introduced amounting to Rs. 19,50,000/- in the books of the assessee rather than a case of inadequate enquiry as contended by the assessee.

6.17 Therefore, in the given facts of this case, we hold that order of the Ld. PCIT passed u/s 263(1) of the Act was justified and accordingly, we dismiss the ground nos. 1 and 2 of the appeal of the assessee.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 22<sup>nd</sup> December, 2025.

Sd/-  
**[VIKAS AWASTHY]**  
**JUDICIAL MEMBER**

Sd/-  
**[BRAJESH KUMAR SINGH]**  
**ACCOUNTANT MEMBER**

**Dated-** 22.12.2025.  
Pooja.

Copy forwarded to:  
1. Assessee

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

Asst. Registrar,  
ITAT, New Delhi,