

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'B' BENCH, LUCKNOW
BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.89/LKW/2022
A.Y. 2012-13

Najma, Moh-Brahampur, Budaun, Uttar Pradesh-243601	vs.	PCIT, Bareilly, U.P.-243001
PAN: APPPN0267G		
(Appellant)		(Respondent)

Assessee by:	Sh. Rakesh Garg, Adv
Revenue by:	Sh. Neeraj Kumar, CIT DR
Date of hearing:	19.11.2025
Date of pronouncement:	13.02.2026

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the assessee against the order of the Id. PCIT, Bareilly under section 263 of the Income Tax Act on 22.03.2021 revising the order of the Assessing Officer passed under section 147 r.w.s. 143(3) of the Income Tax Act, 1961 on 30.06.2017. The grounds of appeal are as under:-

"Grounds No.1 The Learned PCIT, Bareilly has erred in initiating and completing the revisionary proceedings u/s 263 of the Act in the hands of the assessee, and setting aside the case to the Assessing officer, with total disregard to the facts and circumstances of the case, and is untenable under the law.

Grounds No. 2 The Learned PCIT, Bareilly erred in setting aside the assessment made vide order under section 143(3)/147 dated 30/06/2017 and passing an order under section 263 of the Act on the grounds that the original assessment order passed under section 143(3)/147 was erroneous and prejudicial to the interest of the revenue and directing AO to frame fresh assessment order (de novo) after giving reasonable opportunity of hearing to the appellants.

Grounds No. 3 The Learned PCIT, Bareilly has further failed to appreciate that the original assessment order was passed by the Assessing officer after considering all the issues mentioned in his show cause notice and after making due enquiries, and thus the case was not the one of lack of enquiry by the Assessing officer.

Grounds No. 4 The Learned PCIT, Bareilly erred in law as well as on the facts of the case in wrongly setting aside the assessment order dated 30/06/2017 despite there being complete application of mind by the AO on the subjected issues and it was nothing but a case of change of opinion, based on which, assumption of jurisdiction u/s 263 is not permissible. The impugned order dated 22/03/2022 therefore, lacks valid jurisdiction u/s 263 of the Act and hence, the same kindly be quashed.

Grounds No. 5 The Learned PCIT, Bareilly further failed to appreciate that where there were two possible views and a logical view had been taken by the Assessing officer in the original assessment proceedings, the revisionary proceedings could not be initiated to substitute his own view.

Grounds No. 6 That the finding of Learned PCIT, Bareilly that order of the learned Assessing Officer is erroneous and prejudicial to the interest of revenue is factually incorrect, legally misconceived, contrary to evidence on record; and in any case is vague, based on surmised considerations; and therefore unsustainable.

Grounds No. 7 That the Learned PCIT, Bareilly has erred in holding that it is a case of "lack of enquiry" and, further failing to appreciate that alleged inadequate enquiry in the manner suggested without any independent evidence and, without any further enquiries by him cannot be a basis for assumption of jurisdiction u/s 263 of the Act.

Grounds No. 8 The Learned PCIT, Bareilly has without conducting any independent enquiries has held the order to be erroneous and prejudicial to the interest of the revenue, has set aside the assessment back to the file of the Assessing officer with total disregard to the facts and circumstances of the case. The CIT has failed to appreciate that powers of revision u/s 263 cannot be exercised for redoing the investigation, rather the CIT ought to have done the investigation himself before restoring the matter to the AO.

Grounds No. 9 The Learned PCIT, Bareilly has further ignored that in view of the provisions of explanation 2 of section 263, it is incumbent to point out what more enquiries would the AO ought to have conducted.

Grounds No. 10 That the Learned PCIT, Bareilly has also failed to appreciate that, u/s 263 of the Act, an order of assessment cannot be set-aside to simply to make further enquiries and thereafter pass fresh order of assessment and as such, impugned order is contrary to law and hence, unsustainable. The learned Principal Commissioner of Income Tax has failed to appreciate that surmises, conjecture and suspicion could not be a basis much less a valid basis to invoke section 263 of the Act.

Grounds No. 11 That the Learned PCIT, Bareilly has framed the impugned order without granting sufficient opportunity to the appellant and therefore the order made is illegal, invalid and, vitiated order Prayer It is therefore prayed that, impugned order dated 22.3.2022 under section 263 of the Act be held to be without jurisdiction and, therefore be quashed and appeal of the appellant be allowed.

Grounds No. 12 The assessee's case does not fall within the mischief of section 263 and as such the order is bad in law and the same is liable to be cancelled.

Grounds No. 13 That the Appellant craves leave to amend alters, add or forego any of the above grounds."

2. The facts of the case are that the Assessing Officer receives an information from the Income Tax Officer (I&CI) that the assessee, Smt. Najma wife of Sh. Jabbar had deposited cash of Rs. 12,99,000/- in her savings bank account in the F.Y. 2011-12 relevant to the A.Y. 2012-13. A query was made to the assessee but because the assessee did not respond, the ld. AO derived reasons to believe that income chargeable to tax had escaped assessment for the A.Y. 2012-13 and accordingly, a notice under section 148 was issued. In compliance to the said notice, the assessee filed her return of income for the F.Y. 2012-13 showing an income of Rs.1,87,240/- . The ld. AO records that the action under section 148 was taken because of AIR information with relation to deposit of Rs. 12,99,000/- in cash and that in compliance to the various notices issued by him, the assessee's counsel had attended and furnished a reply which was not found to be acceptable. On consideration of the facts and circumstances of the case, he deemed it fit to make an addition of Rs. 30,000/- to the returned income of the assessee. He held that such an enhancement would be deemed to take care of trading as well as household expenses.

3. The record was called for by the ld. PCIT and the ld. PCIT observed that the case had been selected for scrutiny specifically on account of the deposit of Rs. 12,99,000/- in cash by the assessee in her savings bank account. But the AO did not examine the source of the cash deposit in her savings bank account or look into the details of the same. This made the assessment order under section 147 r.w.s. 143(3) of the Income Tax Act, 1961 as erroneous, in so far as it was prejudicial to the interest of the Revenue, as per Explanation 2 to section 263 of the Income Tax Act. He, therefore, asked the assessee to show cause as to why the order should not be revised, but upon not receiving any response from the assessee, he concluded that the order was erroneous in view of Explanation 2(a) to section 263 of the Act. Therefore, he cancelled the order directing the AO to frame it *de novo* by keeping the observations made by him and after giving due opportunity to the assessee to represent the matter.

4. The assessee is aggrieved at this order of the Id. PCIT, Bareilly and has accordingly come in appeal before us. Sh. Rakesh Garg, Advocate (hereinafter referred to as the Id. AR) submitted that this was not a case of no enquiry but at best could be called a case of inadequate enquiry. He pointed to the reply submitted by the assessee before the AO in which the assessee had submitted that she had not been filing returns prior to the issue of notice because she had income below taxable limits. Furthermore, she had been doing business of sale and purchase of Potatoes and Onions. The assessee had further submitted that the money that had been deposited into the account was from her business of sale of Potatoes and Onions and withdrawals from the said account had been used to make the purchases in this regard. The Id. AR submitted that after considering this response, the AO had chosen not to make any addition on the grounds on which the case was opened but had instead made an ad hoc addition of Rs. 30,000/- on account of trading as well as household expenses. The Id. AR invited our attention to the decision of the Hon'ble Delhi High Court in the case of PCIT-3, New Delhi vs. Delhi Airport Metro Express Pvt. Ltd. in ITA No. 705/2017 wherein the Hon'ble Delhi High Court had held that the Id. PCIT could only exercise the option of sending the entire matter back to the AO for a fresh assessment, if he undertook an enquiry himself with regard to that which she had held not to be enquired into. Accordingly, it was prayed that the facts of the said case were squarely applicable to that of the assessee and since the Id. PCIT had not indicated in his order as to what enquiries had not been done, therefore, he could not have sent the matter back to the AO as per the said decision of the Hon'ble Delhi High Court. The Id. AR further argued that no addition had been made on the point for which the case had been reopened and therefore, the Id. PCIT could not exercise his jurisdiction to pass an order under section 263 in respect of matters on which addition had not been made if the AO had found that the grounds on which the proceedings had been initiated for income escaping assessment, in fact did not exist. Accordingly, he prayed that the order of the Id. PCIT is fit to be quashed.

5. On the other hand, Sh. Neeraj Kumar, Id. CIT DR (hereinafter referred to as the DR) submitted that it was incorrect to state that no addition had been made on the ground on which the case was reopened. The case had been reopened to examine the cash deposits of Rs. 12,99,000/- and the AO had sustained an addition of Rs. 30,000/- out of the amount so deposited on the grounds that it would be sufficient to take care of the leakages on account of the trading results and household expenses. Thus, the Id. AR's submission that the Id. PCIT did not enjoy jurisdiction because of this was unfounded. Furthermore, the Id. CIT DR pointed out that the Id. PCIT had attempted to conduct an enquiry during the course of revision proceedings, but the assessee had not made compliance and therefore, he was thwarted from conducting the enquiry by himself. It was in those circumstances that he had referred the matter back to the Id. AO after observing that the Id. AO had failed to conduct enquiry on the issue on which the case was reopened i.e. the cash deposits in the bank account. The Id. CIT(A) also drew attention to the fact that the Act had been amended since 1.06.2015 vide the insertion of Explanation 2. Once this, the Act had been amended, as per the provisions of Explanation 2(a), any order that was passed without making enquiries or verification which ought to have been done, would be deemed to be erroneous in so far as it was prejudicial to the interest of Revenue. Hence, the said judgment of the Hon'ble High Court could have no application on an order under section 263 passed after 1.06.2015 on account of Explanation 2(a). Accordingly, he prayed that the order may be sustained.

6. We have duly considered the facts and circumstances of the case. We note that the case had been taken up for scrutiny on account of cash deposits of Rs. Rs. 12,99,000/- in the F.Y. 2011-12. We further observed that in response to the notice issued under section 148 to the assessee for the A.Y. 2012-13, the assessee filed a return of income in which she showed a total income of Rs. 1,87,240/- and submitted that the same represented her income from business of selling of Potatoes and Onions. It was further submitted before the AO that the assessee's income was below taxable limits and she was not a regular assessee. The assessee

further submitted before the ld. AO that cash deposited in her bank account represented the sale proceeds from the said business and that the purchases for the said business were also made by withdrawals from the said bank account. The ld. AO after considering the explanation of the assessee and the figures at hand, chose to restrict the addition to Rs. 30,000/- as he was not completely satisfied with the explanation. The ld. PCIT has held that the AO had not made sufficient enquiries on the issue of cash deposit. However, once the assessee had submitted before the AO that the deposits represented the turnover of her business, then, after considering the nature of the business the turnover claimed and the fact that it was a no accounts case, there was limited scope for the AO to make further enquiries on the source of the deposits. The ld. PCIT has also not indicated in his order as to what enquiry the AO should have done once the cash deposited had been explained as turnover of the assessee's business given the nature of the business and the extent of deposits. We are of the view, that even to invoke the provisions of Explanation 2(a) to section 263, the ld. PCIT is required to spell out what inquiries have not been made or what verification has not been done and which ought to have been done. Without specifying the same, in our opinion, the order cannot be deemed to be erroneous in so far as it is prejudicial to Revenue. In the circumstances, we hold that since the ld. PCIT has not spelt out the inquiries that the AO did not do or the verification that he ought to have done, the order cannot be deemed to be erroneous in so far as it is prejudicial to Revenue, within the meaning of Explanation 2(a) of section 263. Therefore, we hold that the order of the ld. PCIT is not in accordance with law and accordingly, we quash the same.

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

Order pronounced on 13.02.2026 in the Open Court.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED: 13/02/2026

Sh

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.