

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE SH. LALIET KUMAR, JUDICIAL MEMBER  
AND DR. M. L. MEENA, ACCOUNTANT MEMBER**

**I.T.A. No. 703/Asr/2019  
Assessment Year: 2011-12**

Smt. Ravinder Bawa Prop. M/s Ramco Auto Industries, Preet Nagar, Jalandhar [PAN: AAMPB 2811N] <b>(Appellant)</b>	<b>Vs.</b>	Income Tax Officer, Ward-2(3), Jalandhar  <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Sh Surinder Mahajan, Sh. Kuldeep Bhagat, C.A. &amp; Sh. Vikas Bhagat, Adv.</b>
<b>Respondent by</b>	<b>Sh Anupam Kant Garg CIT(DR)</b>

<b>Date of Hearing</b>	<b>09.07.2021</b>
<b>Date of Pronouncement</b>	<b>14.07.2021</b>

**ORDER**

**Per Laliet Kumar, J.M.**

This appeal of the assessee is directed against the order dated 26.09.2019 passed by the Pr. Commissioner of Income Tax-1, Jalandhar in respect of A.Y. 2011-12 on the following grounds:-

1. That on the facts and circumstances of the case, Ld PCIT, Jalandhar-1 ('Ld. CIT') has grossly erred in law in assuming jurisdiction u/s 263 of the Income Tax Act, 1961. The order passed u/s 263 of the Act directing the AO to enhance the assessee's income is illegal and bad in law.
2. That on the facts and circumstances of the case Ld PCIT, Jalandhar -1 ('Ld.CIT') has grossly erred in directing the AO to make addition of Rs 4,50,00,000/- u/s 69A of the Act.
3. That on the facts and circumstances of the case Ld PCIT, Jalandhar -1 ('Ld.CIT') has grossly erred in law in passing order u/s 263 of the Act even though the assessment order u/s 143(3)/147 of the Act dated 26.12.2018 passed by the AO was neither erroneous nor prejudicial to interest of revenue.
4. That on the facts and circumstances of the case Ld PCIT, Jalandhar -1 ('Ld.CIT') has grossly erred in law in passing order u/s 263 of the Act, when the assessment has already been concluded by the AO u/s 143/147 of the Act after seeking explanations and making all the enquiries necessary for completion of assessment reopened u/s 148 of the Act for specific issue of amount credited Rs 4,50,00,000/- in assessee's bank account with PNB Industrial Area, Jalandhar.
5. that without prejudice to our aforesaid legal grounds of appeal 1 to 4, even otherwise:
  - a) the Ld. PCIT has grossly erred in concluding that unaccounted cash belonging to the assessee was deposited in the bank account of Saradjyot singh.
  - b) the LD PCIT has grossly erred in disregarding the fact that loan was repaid by the assessee by debit to her current account. Since current account of the assessee stood debited by Rs 4,50,00,000/- for the purpose of repayment of loan, there is no question of introduction of unaccounted cash into my bank account.
  - c) The Ld PCIT has grossly erred in completely dismissing the letter dated 21.09.2013 (authenticated copy filed on 11.09.2019), letter dated 04.06.2019 & letter dated 29.08.2019 filed by the bank officials wherein they have confirmed that amount of Rs 4,50,00,000/- was not deposited in the bank account of assessee. In the said letters, the bank officials have confirmed that the amount debited to assessee's current account was erroneously posted in Saradjyot Singh saving bank account no. 0242000125537289 instead of loan account of the assessee.
  - d) The Ld PCIT grossly erred in not granting the assessee an opportunity to cross examine chief Manager, PNB who allegedly retracted his statement on 11.09.2019.
  - e) The LD PCIT has grossly erred in not accepting the request of the assessee that statement of Sh. R.D. Singh (the then Chief Manager of PNB), Sh. R.K.Abhi (the then manager of PNB), Sh. Som Nath Nagpal and Sh. Pawan Kumar sharma be recorded to

know the facts of the case. This has resulted in violation of principle of natural justice, which makes the order passed u/s 263 of the Act bad in law.

### **Brief Facts**

1. The Appellant filed return declaring income of Rs. 6,46,015/- on 25-09-2011. The appellant received communication dated 14.3.2018 under section 133(6) of the Act for the verification of financial transaction pertaining to the credit entries of Rs. 4,50,00,000/- in Punjab National Bank account no 0242002101004903 and 024200PC000376 of Appellant during the financial year 2010-11 relevant to AY 2011-12.
2. The appellant had filled reply to notice u/s 133(6) of the Act vide letter dated 19.03.2018 alongwith enclosures wherein explanation for credit entry of Rs. 4.50 crores with supporting evidence was filed. (Paper Book Page No. 10 to 26). It was submitted that the entries pertained to amount advanced in bank account no 024200PC000376 (loan account) and corresponding credit given by the bank in account no 0242002101004903. The appellant had provided all information sought by the officials, including details of Pan, relevant bank statements and balance sheet to the respondent.
3. Thereafter Appellant received notice dated 29.03.2018 issued u/s 148 of the Act, on 30.03.2018. it may relevant to mention here that reasons for reopening were provided to the assessee vide letter dated 20.3.2018 (page 204) wherein it was mentioned that “a TEP in assessee case was received from the investigation wing through the Joint Commissioner date 27/3/2017.As per Bank statements of assesses account no 024200PC00037676 an amount of Rs 4.5 cr has been credited in it on 10/7/2010.”

4. Appellant vide letter dated 03.04.2018 informed the Assessing Officer that return already filed be treated as return in response to notice u/s 148 of the Act.

5. Thereafter the AO had issued the notice under section 142(1) of the Act on 8.8.2018 and 143(2) of the Act were received.

6. During assessment proceedings, information was filed vide letters dated 05.10.2018, 09.10.2018, 30.11.2018. the information was filled by the assessee credit entry of same date in the account of the assessee includes copy of loan account showing the entry of loan amount of Rs 4.5 cr in account number 0242002101004903 , letter dated 21.9.2013 whereby bank had informed to the official of the respondent that “ It is true from the record the no cash of Rs 4.5 cr was deposited as there is no details of currency in cash deposit voucher. We have already informed that on 06.07.2010 Rs 4.5 cr was wrongly posted in SF ac no 0242000125537289( saradjot singh ) instead of ac no 0242002101004903 ( Ramco auto) by clerk/ officer through oversight ) ( page 53 of pb)

7. The AO vide letter dated 8/8/2018 and 14.12.2018 had had directed the Branch Manager of Punjab national Bank to provide information's like details of voucher dated 6.7.2010 pertaining to account no 0242002101004903, account statement of 024200PC00037676 and bank statement of Sh Sarabjot

Singh a/c no 0242000125537289 along with details of beneficiary of amount transferred . ( page 202 and 209 of PB)

8. The Bank had given reply to the letter dated 14.12.2018, vide its communication dated 19.12.2018 and provided the requisite information to the AO.

9. The AO had completed the assessment vide order dated 26.12.2018. No additions were made by the AO on account of alleged cash deposit in the Bank account.

10. That Ld. Principal Commissioner of Income Tax-1, Jalandhar issued show cause notice dated 03.05.2019 and Appellant was asked to file objections to the proposal to hold assessment order for A.Y. 2010-11 u/s 147 of the Act as erroneous in so far as prejudicial to interest of the revenue.

11. In the Show cause notice u/s 263 of the it was mentioned as under u/s 263 of the Act at page 1 & 2 of the order.

12. That written submissions it was mentioned as under :----- were filed vide letter dated 28.05.2019 (Paper Book Page No. 9 to 62), letter dated 01.07.2019 (Paper Book Page No. 63 to 121), letter dated 08.08.2019 (Paper Book Page No. 122 to 127), letter dated 21.08.2019 (Paper Book Page No. 128 to 183), letter dated 29.08.2019 (Paper Book Page No. 184 to 187), letter

dated 11.09.2019 (Paper Book Page No. 188 to 195), letter dated 12.09.2019 (Paper Book Page No. 196 to 199)

13. That in exercise of powers u/s 263 of the Act Ld. Principal Commissioner of Income Tax-1, Jalandhar in para 9.3 of order u/s 263 of the Act has held as under:-

*“In view of the above facts and discussion, I am satisfied that assessment order passed by the Assessing Officer on 28.12.2018 is erroneous in so far as it is prejudicial to the interest of the revenue. Therefore, the Assessing Officer is directed to enhance the said order passed on 28.12.2018 in the light of the discussion made above and charge interest as per Income Tax Act, 1961.”*

**Submissions of the AR**

14. AR for the assessee had submitted that order u/s 263 of the Act was passed in mechanical manner without application of mind since in the show cause notice as well as in the order u/s 263 of the Act assessment order dated 18.12.2018 has been held to be erroneous in so far as it is prejudicial to interest of revenue whereas there is no assessment order dated 28.12.2018. it was submitted that the AO had passed the order on 26/12/2018 and not on 28/12/2018.

15. Ld Ar had submitted that based on anonymous complaint that there were credit entries of Rs. 4,50,00,000/- in account no. 0242002101004903 and 024200PC00037676 maintained with Punjab National Bank, notice u/s 133(6) of the Act was received by the Appellant which was issued by Assessing Officer after obtaining prior approval of Ld. Principal Commissioner

of Income Tax-1, Jalandhar. That Appellant vide letter dated 19.03.2018 filed reply to notice u/s 133(6) of the Act wherein it was explained that Appellant has raised a working capital term loan of Rs. 4,50,00,000/- which was debited in the loan account no. 024200PC00037676 and amount was credited to current account no. 0242002101004903. Copy of balance sheet and copy of return filed were also filed.

16. Ld .AR had submitted that Assessing Officer recorded reasons to initiate proceedings u/s 147 of the Act, issued notice u/s 148 of the Act (Paper Book Page No. 24 & 204). Perusal of reasons recorded will reveal that proceedings were initiated to verify credit entries amounting to Rs. 4,50,00,000/-. Assessing Officer had made enquiries from the bank and asked Branch manager to provide details towards credit entries of Rs. 4,50,00,000/- in the account of the Appellant to which reply was filed by the banker.

17. During the assessment Reply dated 05.10.2018, 09.10.2018, 03.11.2018 and 04.12.2018 were filed before AO and in all the replies, it was explained that no cash has been deposited in the bank account. Bank certificate dated 21.09.2013 certifying that no cash has been deposited was also filed. (Paper Book Page No. 61)

18. Ld AR had submitted submissions were filed before Principal Commissioner of Income Tax-1, Jalandhar during proceedings u/s 263 as detailed below:-

- i. Written Submissions dated 01.07.2019 filed before Principal

Commissioner of Income Tax-1, Jalandhar wherein following documents were enclosed.

- a) Copy of sanction letter of working capital loan. (Paper Book Page No. 65)
- b) Copy of A/c No. 024200PC00037676. (Paper Book Page No. 66)
- c) Copy of A/c No. 0242002101004903. (Paper Book Page No. 67)
- d) Copy of A/c No. 0242003171104. (Paper Book Page No. 68)
- e) Copy of A/c No. 0242000125537289. (Paper Book Page No. 69)
- f) Copy of cash book of branch from 30.06.2010 to 10.07.2010. (Paper Book Page No. 71 to 117)
- g) Details of FDR's in the name of Ravinder Bawa from 30.06.2010 to 10.07.2010. (Paper Book Page No. 118)
- h) Certificate of bank to the effect that no cash entry of Rs. 4.50 crores has been transacted in these accounts. (Paper Book Page No. 119)
- i) Copy of Saving Account no. 02420003000970611 from 30.06.2010 to 10.07.2010. (Paper Book Page No. 120)
- j) Certificate of bank to the effect that no cash entry of Rs. 4.50 crores has been transacted in any bank accounts. (Paper Book Page No. 121)

II. Written Submissions dated 08.08.2019 filed before Principal Commissioner of Income Tax-1, Jalandhar wherein following documents were enclosed.

- a) Letter dated 06.08.2019 to bank towards clarification of whether cash deposited by the firm on 06.07.2010. (Paper Book Page No. 123 to 124)
- b) Reply dated 08.08.2019 from bank towards confirmation that no cash has been deposited by the firm on 06.07.2010. (Paper Book Page No. 125)
- c) Affidavit by proprietor of the firm. (Paper Book Page No. 126-127)

III. Written Submissions dated 21.08.2019 filed before Principal Commissioner of Income Tax-1, Jalandhar wherein following documents were enclosed.

- a) Balance Confirmation Certificate. (Paper Book Page No. 129)
- b) Bank Statement for the period 30.06.2010 to 10.07.2010. (Paper Book Page No. 130 to 163)

IV. Written Submissions dated 21.08.2019 filed before Principal Commissioner of Income Tax-1, Jalandhar wherein copy of complaint filed against bank officials enclosed.

V. Written Submissions dated 29.08.2019 filed before Principal Commissioner of Income Tax-1, Jalandhar wherein following documents were enclosed.

- a) Copy of transactions recorded. (Paper Book Page No. 185 to 186)
- b) Copy of bank certificate to the effect that loan was secured against FDR in the name of Smriti Jain. (Paper Book Page No. 187)

VI. Written Submissions dated 11.09.2019 filed before Principal Commissioner of Income Tax-1, Jalandhar wherein following documents were enclosed.

- a) Copy of bank statement of C/A No. 0242002101004903. (Paper Book Page No. 189)
- b) Copy of letter dated 29.08.2019 certifying no cash has been deposited. (Paper Book Page No. 190 & 191)
- c) Copy of voucher dated 10.07.2010. (Paper Book Page No. 192)
- d) Copy of letter dated 21.09.2013 addressed to Deputy Director of Income Tax, Jalandhar by Punjab National Bank certifying no cash has been deposited. (Paper Book Page No. 193 & 194)
- e) Copy of bank certificate dated 04.06.2019 certifying no cash has been deposited. (Paper Book Page No. 195)

VII. Written Submissions dated 12.09.2019 filed before Principal Commissioner of Income Tax-1, Jalandhar wherein following documents were enclosed.

- a) Affidavit certifying no cash has been deposited. (Paper Book Page No. 198 & 199)

19. Ld. AR had submitted that the impugned order is not sustainable in the eyes of law, as the order passed by the AO was not erroneous and prejudicial to the interest of revenue. It was further submitted that words “erroneous and prejudicial “to the interest of revenue have not been defined in the law. 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 certain assessment, the same cannot be branded as erroneous simply because, the order should have been written more elaborately. Case may be visualized 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 estimates himself. On perusal of the records, one 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 high figure than the one determined by the Income-tax Officer. That would not be ground to re-examine the accounts and determine the income himself at a higher figure. This 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 termed to be erroneous. It may be said in such a case that the order in question is prejudicial to the interest of the revenue. But that by itself would not be enough because the first requirement, namely, that the order is erroneous, is absent. Similarly if an order is erroneous but not prejudicial to the interest of the revenue, then the power of suo motu revision cannot be exercised. Any and every erroneous order cannot be the subject – matter of revision because the second requirement must be fulfilled. Ar had placed reliance on Malabar Industrial Co. Ltd. (243 ITR 83 SC) .

20. It was further submitted that if an AO acting in accordance with law makes certain assessment, the same cannot be branded as erroneous by CIT simply because according to him the order should have been written more elaborately. Cases may be visualized where the AO 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 CIT, 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 CIT he would have estimated the income at a figure higher than the one determined by the AO. That would not vest the CIT with power to re-examine the accounts and determine the income himself at a higher figure. It is because the AO has exercised the quasi judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the CIT does not feel satisfied with the conclusion. Ar relied upon COMMISSIONER OF INCOME TAX vs. ARVIND JEWELLERS HIGH COURT OF GUJARAT ( (2002) 124 TAXMAN 615 COMMISSIONER OF INCOME TAX vs. SUNBEAM AUTO LTD. HIGH COURT OF DELHI (2009) 227 CTR (Del) 133 : (2011) 332 ITR 167 COMMISSIONER OF INCOME TAX vs. VINOD KUMAR GUPTA HIGH COURT OF PUNJAB & HARYANA (2007) 165 TAXMAN 225 ,COMMISSIONER OF INCOME TAX v . DESIGN & AUTOMATION ENGINEERS (BOMBAY) (P) LTD. HIGH COURT OF BOMBAY (2009) 177 TAXMAN, COMMISSIONER OF INCOME TAX vs. MUNJAL CASTINGS HIGH COURT OF PUNJAB & HARYANA (2008) 168 TAXMAN 241,COMMISSIONER OF INCOME TAX vs. MAHENDRA KUMAR BANSAL HIGH COURT OF ALLAHABAD (2008) 297 ITR 99 (All) ,COMMISSIONER OF INCOME TAX vs. DEEPAK MITTAL HIGH COURT OF PUNJAB AND HARYANA (2010) 37 DTR 0008, (2010) 324 ITR 0411,COMMISSIONER OF INCOME TAX vs. LEISURE WEAR EXPORTS LTD. HIGH COURT OF DELHI (2010) 46 DTR 0097, (2012) 341 ITR 0166 etc .

21. Ld AR had submitted that once assessment is framed u/s 148 of the Act after verification of reasons recorded to initiate proceedings u/s 148 of the Act Commissioner of Income Tax is not justified in exercise of power u/s 263

of the Act. Ar referred the decision in the case of PARGAT SINGH VS. ITO ITAT CHANDIGARH (2005) 95 TTJ 0295, DEWAS SILK MILLS VS CIT ITAT INDORE (2005) 92 TTJ 0481 (TM) .

22. Reliance is also placed upon the decision of the Hon'ble ITAT Mumbai in the case of Narayan Tatu Rane vs. ITO [2016] 70 [taxmann.com](http://taxmann.com) 227 (Mum) wherein it has been held section 263 could be invoked only if the assessment order has been passed without making inquiry or verification which a reasonable and prudent Officer would have carried out in such cases. Law does not provide to stretch the inquiries and verification to an extent which may tantamount to oppression and harassment of a tax payer. Therefore the action of the AO cannot be impugned under s.263 of the Act. Further, the Hon'ble Gujarat High Court in the case of CIT vs. Arvind Jewellers 259 ITR 502 (Guj) has held that provisions of Section 263 of the Act cannot be invoked to correct each and every type of mistake or error committed by the AO. Further, reliance is placed on the decision of Hon'ble Gujarat High Court in the case of CIT vs. R. K. Construction Co. (2009) 313 ITR 65 (Guj) for the proposition that where the AO has taken a particular view on the basis of evidences produced before him, it is not open for the Commissioner, in the revisional proceedings under s.263 of the Act, to take a different view on the same material. The AO in the instant case has specifically examined all the issues raised by Pr.CIT albeit not probably in the manner in which the Pr.CIT would have liked but this cannot be the ground for assumption of jurisdiction under s.263 of the Act. Thus, the assessment order under review cannot be labelled as erroneous

in so far as prejudicial to the interest of the Revenue within the terms of Section 263 of the Act in the circumstances so narrated.

22.1 The condition precedent to the exercise of jurisdiction under section 263, was that the order sought to be revised must be erroneous in so far as it was prejudicial to the interest of revenue. When two views were possible, the assessment could not be revised. ***Grasim Industries Ltd. vs. CIT (2010) 321 ITR 92 / 229 CTR 347 / 35 DTR 142 (Bom.*** Since an enquiry was specifically held with reference to which a disclosure of details was called for by the Assessing Officer and made by the assessee, the observation of the CIT that the Assessing Officer had arrived at his findings without conducting an enquiry was erroneous and therefore the CIT wrongly exercised the powers by recourse to section 263. ***CIT vs. Development Credit Bank Ltd. (2010) 323 ITR 206 / 40 DTR 61 (Bom.)***

22.2 Mere lack of inquiry by Assessing Officer not sufficient for revision under section 263. ***CIT vs. Vikas Polymers (2010) 236 CTR 476 / 47 DTR 348 / 194 Taxman 57 (Delhi)***

22.3 Non-Examination of issue by Assessing Officer does not per se make assessment order prejudicial to interest of revenue for revision under section 263.. ***Institute of Chartered Accountants of India vs. DIT (2011) 50 DTR 409 (Delhi)(Trib.)***

22.4 Order under section 263 passed by the CIT setting aside the assessment order on the ground that the Assessing Officer has not made enquiries in respect of certain issues is not valid, ***CIT vs. Leisure Wear Exports Ltd. (2010) 46 DTR 97 (Delhi)*** Tribunal having found that the Assessing Officer had made reasonably detailed enquiries, collected relevant material including the seized documents, and discussed various facts of the case with the

assessee's Chartered Accountants before making the assessments, there was no valid basis for the CIT to exercise jurisdiction under section 263 and to direct the Assessing Officer to make fresh assessments by going deeper in to the matter. **CIT vs. Hindustan Marketing & Advertising Co. Ltd. (2010) 46 DTR 109 (Delhi)**. Assessment Order was set aside by Commissioner on ground, that Assessing Officer had made Assessment without making proper enquiry. Held, that when Assessing Officer has specifically mentioned in the order that books of accounts alongwith Purchase / Sales, Invoices, ledgers, Bank Accounts were examined, verified and test checked, setting aside by Commissioner, in absence of any finding that Assessing Officer's order is factually incorrect, and not justified. **Vijay Kumar Mehta vs. CIT (2010) 195 Taxman 63 (Patna)(SMC)**. Whether CIT has *suo motu* powers to pass the Order by merely stating that Assessing Officer has not properly enquired – Same materials were there before the Assessing Officer who had passed the impugned Order by applying his mind – Recourse to section 263(1) cannot be taken if the Order is erroneous but not prejudicial and vice versa – Held, provision 263 has not been rightly invoked. **CIT vs. Vikash Polymers (2010) 236 CTR 476 (Delhi)**

- 22.5 Merely because an assessment order does not refer to queries raised by Assessing Officer during course of scrutiny and response of assessee thereto, it cannot be said that there has been no enquiry and the assessment is erroneous and prejudicial to interest of revenue. **CIT vs. Ashish Rajpal (2009) 180 Taxman 623 (Delhi)**. Order passed by Assessing Officer in accordance with law, judicial pronouncements and after considering relevant replies duly supported by evidence cannot be branded as erroneous, merely

because commissioner is of other view or in his opinion order passed is weak and not a detailed order. Section 263 empowers the commissioner to have a supervisory jurisdiction and does not visualize a case of substitution of his judgment for that of Assessing Officer. **Allied Engineers vs. CIT (2009) 180 Taxman 70 (Delhi)**

- 22.6 There should be an incorrect assumption of facts or an incorrect application of law by Assessing Officer to bring order of Assessing Officer within category of its being erroneous under section 263 – To qualify an assessment order as an order being prejudicial to interest of revenue, order should cause lawful loss of tax to revenue – On facts stated under heading Assessment - Additions to income, order passed by Assessing Officer could not be said to be erroneous prejudicial to interest of revenue to bring case within parameters of section 263. **Ashok Manilal Thakkar v/s. Asstt. CIT (2005) 97 ITD 361 /279 ITR 143 / (2006) 99 TTJ 1262 (Ahd)**. 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. **(Parashuram Pottery Works Co. Ltd. v. ITO [1977] 106 ITR 1 (SC))**.

- 22.7 The Hon'ble Delhi High Court in the case of **Nabha Investment Pvt. Ltd. V/s Union of India and others, 246 ITR 41** has held that : *"a bare reading of the*

*section 263 makes it clear that the pre-requisites to the exercise of jurisdiction by the Commissioner under the said provision is :*

*(i) That the order passed by Assessing Officer is erroneous, and*

*(ii) That it is prejudicial to the interest of the revenue.*

22.8 *If either of the condition is missing i.e. if the order of A.O is erroneous but is not prejudicial to the interest of the revenue or if it is not erroneous but is prejudicial to the interest of the revenue, recourse cannot be had to the provision contained in section 263(1) of the Act. It is not necessary that every order passed by the A.O, which may result in loss of revenue, is to be treated as an erroneous order in as much as it is prejudicial to the interest of the revenue. An order is erroneous if the view taken by the assessing officer is not in accordance with the law. If an order is in accordance with law, the decision of the Income tax officer cannot be regarded as erroneous merely because in the opinion of the Commissioner it should have been made or written in a different manner. The section does not visualize change of opinion or substitution of the judgment of the Commissioner for that of the Income tax Officer. It is axiomatic that if the order is not erroneous, it will not vest the Commissioner with the power to invoke section 263(1) of the Act. Even if he is of the opinion that the order in question is prejudicial to the interest of the revenue.”*

22.9 The judgment of Hon’ble Allahabad High Court in case of K.N. Agarwal Vs. C.I.T 189 ITR 769 as well as decision of Allahabad High Court in case of C.I.T.

Vs Lata Sunderlal 96 ITR 310(All), the decision of the Bombay high court in case of C.I.T Vs. Paul Brothers 216 ITR 548, the judgment of the Calcutta high court in case of Russel properties Private Ltd. Vs. CIT 109 ITR 229 are also relevant.

*“Where assessment order is in accordance with law, it cannot be termed to be erroneous, C.I.T Vs. Ashoka Traders SLP Civil no. 2374-2375 of 1995 dismissed by the Supreme Court 212 ITR (ST) 369.”*

23. It was submitted that the observations of Principal Commissioner of Income Tax-1, Jalandhar on page 9 to 22 of order are based on assumptions and presumptions as PCIT had not examined the record/ material available on AO file as well as his file , as he failed to consider following documents:-

- a) Sequence of events given by the Appellant as incorporated in para 5.1 of the order
- b) Copies of bank account of the Appellant filed during assessment proceedings and proceedings u/s 263 of the Act (Paper Book Page No. 15 to 18, 33 to 59 & 65 to 69)
- c) Copy of bank cash book from 30.06.2010 to 10.07.2010 (Paper Book Page No. 71 to 117)
- d) Certificate of the bank to the effect that no cash of Rs. 4,50,00,000/- has been deposited in the account of Appellant (Paper Book Page No. 119 to 121, 125, 189, 190 &191)

e) Affidavit of the Appellant that no cash has been deposited in the bank (Paper Book Page No. 126, 127, 198 & 199)

f) Copy of letter of bank to Deputy Director of Income Tax (Inv.) certifying that no cash has been deposited (Page 193 to 195 of paper book)

23A AR for the assessee had submitted that no enquiry was made by PCIT from the various persons, despite repeated requests by the assessee from Sh. R.D Sewak, Sh. R.K. Abhi, Sh. Manohar Sharma, Sh. Somnath Nagpal and Sh. Pawan Kumar Sharma officers of the bank know the about the correct facts of the case However the PCIT had rejected the request by observing at at point no. 3 page 7 of the order “the production of the bank employees at this time would only delay the proceedings as they would only stand for the documents of the bank and would not have any other document/evidence in their possession to make any other claim” .

24. Lastly it was submitted that in para 4.2 page 8 of the order, Ld. Principal Commissioner of Income Tax-1, Jalandhar has wrongly observed that position of law stands substantially altered with the inception of explanation 2 in section 263 by Finance Act 2015. It was submitted this explanation cannot be invoked, as the law in force at the time of cause of action is required to be applied rather than the law as available to PCIT at the time of exercising the jurisdiction is to be applied for the above it was submitted that explanation 2 in section 263 cannot be applicable

retrospectively. For this proposition reliance is being placed on, SATISH KUMAR VS PR CIT ITA NO. 258/ASR/2019 ,A.V. Industries vs. ACIT ITA No.3469/M/2010, Metacaps Engineering & Mahendra Construction Co. vs. CIT I.T.A. No. 2895/Mum/2014 .

### **Submissions of the DR**

25. Per Contra Ld. DR for the Revenue had drawn our attention to paragraph 4.3 of the order of the Pr. CIT whereby it was mentioned that no independent inquiry was made by the Assessing Officer. Further it was noted that the AO had not issued summons to the Chief Manager PNB to cross verify the fact of cash deposit in the bank account of the assessee. The letters issued by the Bank ant to cross check the claims made by the assessee. Further the Ld. DR had drawn our attention to paragraph 6 of the order of Pr. CIT wherein it was mentioned that the amount was routed through Saradjot Singh's account by using a colorable device rather and outright sham scripted and executed for the purpose of lending legitimacy to the assessee's unaccounted income. Further DR had submitted that the assessee had failed to show that the cash did not belong to the assessee and she had nothing to do with the account. The Ld. DR had also drawn our attention to paragraph 7.1, 7.2 and 9.1 of the order wherein the Ld. Pr. CIT had mentioned as under:

"7.1 In the present case, the assessee had deposited Cash amounting to Rs. 4.5 crores which is treated as unexplained money. - The assessee is found to be the owner of the Money appearing in bank accounts, as is apparent from the use of the money to repay the Assessee's loan, but has not offered any acceptable and cogent

explanation regarding the source of such Money found in its bank accounts. The scheme of Section 69A of the Income-tax Act, 1961, would show that in cases where the nature and source of acquisition of money, bullion, etc., owned by the assessee is not explained at all, or not satisfactorily explained, then, the value of such investments and money or value of articles not recorded in the books of accounts may be deemed to be the income of such assessee. The provisions of section 69A of the Act treat unexplained money, bullion, etc., as deemed income where the nature and source of investment, acquisition as the case may be, have not been explained or satisfactorily explained. Therefore, in these cases, the source not being known, such deemed income covered under the provisions of Section 69A of the Act in view of the scheme of those provisions.

For application of Section 69A of the Act, two conditions are required to be satisfied.

- (1) investment/expenditure are not recorded in the books of account of assessee;
- (ii) The nature and source of acquisition of assets or expenditure are not explained or not explained satisfactorily;

The expression "nature and source" used in this section should be understood to mean requirement of identification of source and its genuineness. To explain "Nature" it would require the assessee to explain the description of investment or expenditure and the period and the manner in which it was done. To explain the source it would require the assessee to explain the corpus or fund from where investment or expenditure has been met.

7.2. In the present case, the assessee company has routed Cash in its bank account with the connivance of the bank officials as discussed in details above. Further, the nature and source of such Deposits made

in the bank accounts were not at all explained, leave alone satisfactory explanation. Further, for invoking deeming provisions under Section 69A of the act, there should be clearly identifiable asset or unexplained Money. It is amply proved beyond doubt that the assessee has deposited Cash in bank account and the source of the cash remains unexplained, and the sum of Rs.4,50,00,000/- are identifiable unexplained assets. All three limbs of Section 69A of the Act stands qualified in the case of the assessee, i.e.

- ❖ ***the assessee was found to be owner of the Money;***
- ❖ ***such Money was not recorded in the books of accounts; and***
- ❖ ***its nature and source is not identifiable.***

9.1 From the facts of the case aforesaid, it is clearly established that the assessee has employed colorable device to avoid the payment of legitimate tax and the action of the assessee is intended to defraud the revenue. Therefore, considering the totality of the facts and circumstances of the case and taking into account the various judicial pronouncements, the explanation offered by the assessee about the said credit is not satisfactory. In this case, the assessee has failed to prove this fact that the Cash deposited is normal business cash or does not belong to her, I therefore, hold that the amount of Deposits made in the bank accounts, represents income from undisclosed sources. The assessee has concealed its true income which otherwise is taxable. Further, by relying upon the decision of Hon'ble Supreme Court in the cases cited above that there was ample evidence that Cash was deposited in bank accounts, which is prima facie evidence against the assessee that the deposits are undisclosed income on which the Department can proceed in absence of good explanation. The assessee has made cash deposits amounting to Rs 4,50,00,000/- and the source thereof remains unexplained. The assessee failed to give any explanation about the nature and source of cash deposits, hence the

value of Credit entries, including Cash deposits, appearing in the Bank Account as detailed in the body of the Order is deemed as unexplained money u/s 69A and falls within the ambit of section 69A of the Income Tax Act, 1961 and is therefore directed to be added to the Total Income of the assessee.”

26. We have heard the rival contention, the parties and perused the material available on record. Before we deal with the factual in the present case we would like to state to settle principle in number invocation of the jurisdiction u/s 263 of the Act as has been laid down by the Hon’ble Supreme Court and High Court in the following manner.

27. In our considered opinion the revenue has failed to demonstrate that the order passed by the assessing officer was erroneous and prejudicial to the interests of the revenue. Under the provisions of the Act, the PCIT may call for and examine the record of any proceeding this Act and pass an order only if the twin conditions are satisfied, namely, the order passed by the Assessing Officer is erroneous; and also prejudicial to the interest of the revenue. The Hon’ble Supreme Court in the case of Malabar Industrial Co. Ltd. Vs CIT (2000) 243 ITR 83 (supra) has held that both of the above conditions have to be satisfied. It has been held that,

“A bare reading of section 263 of the Income-tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner

suo motu under it, is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent-if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue-recourse cannot be had to section 263(1) of the Act. The provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to erroneous order of the Income-tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue. The phrase "prejudicial to the interest of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."

28.A similar view has also been taken by the Hon'ble Apex Court in the case of CIT Vs Max India Ltd. (2007) 295 ITR 282 (supra), wherein it has been held as under:

29. "The phrase "prejudicial to the interests of the Revenue" in section 263 of the Income-tax Act, 1962, has to be read in conjunction with the expression "erroneous" order passed by the Assessing Officer, Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when the Assessing Officer adopts one of two courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the Revenue, unless the view taken by the Assessing Officer is unsustainable in law."

30.

31. In the matter ITO v. D.G. Housing Projects Ltd. 2012 (343) ITR 329 (Delhi), wherein it has been observed as under:-

16. Thus, in cases of wrong opinion or finding on merits, the PCIT 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

32.The observation of the Hon'ble Bombay High Court in case of CIT v.

Nirav Modi, 390 ITR 292 on this issue is as under :

4 (a) The powers u/s. 263 of the Act can be exercised by the Commissioner on satisfaction of twin conditions viz. the assessment order should be erroneous and prejudicial to the revenue. This power cannot be exercised unless the Commissioner is able to establish that the order of the Assessing Officer is erroneous and prejudicial to the revenue. Thus, where there are two possible views and the Assessing Officer has taken one of the possible views, no occasion to exercise powers of revision can arise. It was also held that revisional powers also cannot be exercised for directing a fuller inquiry to find out if the view taken is erroneous, when a view has already been taken after inquiry. This power of revision can be exercised only where no inquiry as required under the law is done. It is not open to enquire in cases of inadequate inquiry.

33.The principles that emerge out of the above cited decisions are that

the twin requirement of the order being erroneous and prejudicial to the interests of revenue should be satisfied and that the CIT should invoke the powers u/s 263 only after an enquiry by him to establish the twin conditions.

34. Further we are also of the opinion that merely the assessing officer has formed an opinion which is not in line of thinking of the revisional Commissioner and there are two possible views, then also the revisional Commissioner cannot exercise the power for provision under section 263. For the above said purposes we rely upon the decision of the Bombay High Court in the matter of C.I.T. Vs. Gabriel India Ltd. 203 ITR 108 (Bom) has held that:

“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 a detailed explanation in that regard by a letter in writing. All these were part of the record of the case. Evidently, claim was allowed by the Income tax Officer on being satisfied with the explanation of the assessee. This decision of the Income tax officer could not be held to be “erroneous” simply because in his order he did not make an elaborate discussion in that regard.”

35. From the perusal of the record of the present case, it is apparent that before issuance of notice u/s 147 the investigation being of the Revenue has issued the notices to the Bank and in reply thereof the official of the Bank vide their communication dated 21.9.2013 had mentioned that no cash was deposited by the assessee in her Bank account, as there is no details of currency in cash deposit .

36. During argument our attention was drawn to letter dated 14.3.2018 written by the Assessing Officer at page 9 of the paper book where the Assessing Officer while exercising jurisdiction u/s 133(6) of the Act as for the following information.

1. Whether you are an Income Tax Assessee or not?
2. Please furnish a self attested copy of your PAN
3. Furnish detail of all your sources of income.
4. Source of credit entries in your above mentioned Bank Accounts during F.Y. 2010-11

37. The same was duly replied by the assessee vide reply dated 19/3/2018 which submitted along with the documents sought by the officials. Along with the reply the assessee had also filed the Pan card ,ITRS , bank statements relevant for the period, computation of income ,balance sheet certificate etc .issued by the Bank at paper book page 100 and 119 dated 04.06.2019 that no cash has been received and paid in actual.

38. As mentioned hereinabove the notice u/s 148 dated 29.3.2018 was issued to the assessee on account of cash deposit in the Bank account. In the reasons it was mentioned "As per Bank statements of assessee,s account no 024200PC00037676 an amount of Rs. 4,50,00,000/- has been credited in it on 10/7/2010.

39. The reasons dated 20.03.2018 for reopening provides as under:

“Since no PAN of the assessee is available on record as on date, it cannot be ascertained whether any return of income for the AY 2011-12 is filed by the assessee or not.

A TEP in assessee’s case was received from the investigation wing through the JCIT, Range -2, Jalandhar vide his office letter no. 2069 dated 27.3.2017. As per bank statements of assessee’s account no. 024200PC00037676, an amount of Rs 4,50,00,000/- has been credited in it on 10.7.2010.

Since no return of income for the AY 2011-12 is available, it is not ascertained whether the transaction made are from assessee’s disclosed sources or not.”

40. The assessee filed reply read to the notice under section 148 on 3<sup>rd</sup> April 2018. Thereafter the assessing officer had issued the notice under section 142(1) of the act calling upon the assessee to furnish various details in respect of the cash entries, provide the bank account statements, bank certificate et cetera. This

41. The Assessing Officer during the assessment proceedings had called upon the Bank Manager to furnish the following information vide communication dated 7/8.8.2018 calling upon to provide the following information u/s 133(6) of the Act

“2. In this connection you are requested to provide the voucher complete narration and if transfer the bank account please provide the name of bank, of the below noted bank accounts and date of entries.

M/s Ramco Auto Industries A/c No. 0242002101004903

Date of voucher	In which account transfer	Amount
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06.07.2010	To 3171104	4,50,00,000/-
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Please provide the name of bank and name of account holder of A/c no. 3171104 if the account is with your branch. Please provide the account statements for the period of 1.4.2010 to 31.3.2011.

M/s Ramco Auto Industries A/c No. 024200PC00037676

Date of voucher	In which account transfer	Amount
10.07.2010	Transfer	4,50,00,000/-

Please provide the name of bank and name of account holder from /to whom amount transferred/received

Sh. Saradjyot Singh s/o Manohar Singh A/c no. 024200125537289

Date of voucher	In which account transfer	Amount
03.04.2010	To 3171104	7,00,000/-
12.04.2010	To 3171104	53,00,000/-
22.05.2010	To 3171104	25,00,000/-
31.05.2010	To 3171104	15,00,000/-
14.06.2010	To 3171104	8,00,000/-
23.06.2010	To 3171104	7,00,000/-
01.07.2010	To 3171104	10,00,000/-

05.07.2010	To 3171104	30,00,000/-
10.07.2010	PC37676	4,50,0,000/-
13.07.2010	To 3171104	9,00,000/-
14.07.2010	To 3171104	9,00,000/-
16.07.2010	To 3171104	8,00,000/-
19.07.2010	To 3171104	5,00,000/-
22.07.2010	To 3171104	14 00,000/-
23.07.2010	To 3171104	9,00,000/-
26.07.2010	To 3171104	9,00,000/-
30.07.2010	To 3171104	11,00,000/-
07.08.2010	To 3171104	2,00,000/-
17.08.2010	To 3171104	7,00,000/-
21.12.2010	To 3171104	5,07,500/-

Please provide the name of bank and name of account holder from/to whom amount transferred/received.

This information is being called u/s 133(6) of the Income Tax Act, 1961, and the information must reach this office by 28.08.2018. Please note that non-compliance to this letter may attract penal action as per provision of Income Tax Act, 1961.

42. Our attention was also drawn to the another notice dated 14.12.2018 calling for further information from the branch manager of PNB bank (page 209 of the paper book)

43. The reply was given by the bank officials and the documents were provided vide reply dated 19.12.2018. For the ready reference we are reproducing herein below the reply dated 19.12.2018 (page 210)

- The entry dated 06.07.2010 of Rs 4.50 crore was transferred from Ramco Auto Industries Account to sundry account (3171104) which was further debited through cash transaction on 06.07.2010. Further it appears that the same amount was credited by cash to Saadjyot Singh account 06.07.2010
- The voucher is enclosed herewith (cash deposit on 06.07.2010 and transfer of same amount on 10.07.2010)
- Details of FDRs pledged is enclosed.
- Cash day book dated 06.07.2010 is enclosed.

44. From the perusal of the above said notice sent to the Bank and the reply given by the Bank, it is clear that the Assessing Officer had sought the information under the law not only on 08.08.2012 but also on 14.12.2018 and the said information, sought by the Assessing Officer were duly provided by the Punjab National Bank to the Assessing Officer. The sum and substance of the information

furnished by the Punjab National Bank under the certification of the Branch Manager/Chief Manager under the Bankers Evidence Act, was that the no cash has been deposited by Ramco Auto Industries on 06.07.2010. This fact was further corroborated with the cash book of the Bank dated 06.07.2010, cash Vouchers and other documents sent by the Bank to AO. In our view once the Assessing Officer had received duly certified reply from the Bank along with Bank statement of the assessee as well as of Saradar Singh, cash vouchers, and other information under the certification of the Bankers Evidence Act, then no further confirmation of the record by recording the statement of the officials was required to be made by the assessing officer.. The said information was furnished by the officials of the bank in response to the notice issued by the assessing officer as per the Bankers Evidence Act 1891, is clearly admissible piece of evidence and no further corroboration is required. The Hon'ble jurisdictional High Court in the matter of State Bank of India vs H. Satish Hosiery Factory and another 2003 SCC OnLine P&H 1185 : (2005) 1 RCR (Civil) 120 had held as under :

*13. The learned counsel for the defendant has argued that the statement of account does not contain the date on which statement of account was prepared and thus such statement of account is not admissible. Such certificate is required to be dated and subscribed by the principal accountant, manager of the bank with his name and official title. Since the date on such certificate is not mentioned, therefore, it is not a certified copy within the meaning of Section 2(8)*

*of the Bankers Books Evidence Act. Sections 2(8) and 4 of the Bankers Books Evidence Act read as under:*

*“2(8). Certified copy means a copy of any entry in the books of bank together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is, contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business, and that such book is still in the custody of the bank (and where the copy was obtained by a mechanical or other process which in itself ensured the accuracy of the copy, a further certificate to that effect, but where the book from which such copy was prepared has been destroyed in the usual course of the banks business after the date on which the copy had been so prepared, a further certificate to that effect each such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title)”.*

*“4. Mode of proof of entries in ‘bankers’ books.—Subject to the provisions of this Act, a certified copy of any entry in a bankers book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.”*

*14. A perusal of the provisions of the Act shows that certified copy of any entry in a bankers book is to be received as prima facie evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case as the original entry is now by law admissible but not further or otherwise.*

45. Hon'ble Supreme Court of India in the matter of Chandrdhar Goswami vs Guhwati Bank LTd AIR 1967 SC 1058 had also decided the in the same manner .
46. From the perusal of the above decision and provision of banking book's evidence 1891, it is clear that once certified documents were given by the Branch Manager/Chief Manager of the Bank while discharging its duty in pursuance to the notice issued by any authority, then the said information is admissible in the eyes of law and no further corroboration is required.
47. In our considered opinion, the Assessing Officer had made adequate inquiry u/s 148 before passing the said order.
48. We have gone through the order passed by the PCIT and we found that the PCIT had failed to bring one record the material/evidence which shows that the assessee had deposited the cash in her bank account.
49. The PCIT in the order had mentioned about the various letters written by the bank. We are reproducing herein below the relevant portion of the order for the completeness of record (page 11, 5.3)
- Letter dated 21.09.2013 filed before DIT(I&CI) authenticated copy filed on 11.9.2019: the letter claims that Rs 4,50,00,000/- was remitted through RTGS on 6.7.2010 in reference of the purchase, but due to slow connectivity, the transaction could not be put through and amount was transferred to sundry. However there are no documents showing request for RTGS or letter or debit voucher

signed by the assessee to the bank dated 6.7.2010 requesting for adjustment of the loan. The letter confirms that on 6.7.2010 Rs 4,50,00,000/- was posted in SF A/c no. (0242000125537289 (Saradjyot singh) instead of A/c no. 0242002101004903 9 Ramco Auto) by the clerk/officer through oversight. Thus Rs 4.5 crores deposited in cash on 6.7.2010 was to be deposited directly into Ramco Auto Industries account.

- Letter Dated 4.6.2019- the letter relied upon by the assessee to claim that no cash has been deposited by voucher dated 6.7.2010, only states that 'seems only book entry', it does not confirm that these are only book entries. The system generated vouchers and the cash book clearly show that these are cash transactions.
- Letter dated 29.8.2019- this letter has been relied upon by the assessee to confirm that no cash has been credited in Saradjyot Singh A/c 0242000125537289.

50. From the perusal of the various letters written by the bank to the revenue, it is abundantly clear that no cash was deposited by the assessee in her bank account. These documents and other correspondence clearly shows that the AO had made sufficient enquiry to find out whether the cash was deposited in the bank account of the assessee or not. After due satisfaction, that no cash was deposited in assessee's bank account, the assessment order was passed without making any addition.

51. As mentioned in herein above the reopening u/s 148 was made for the reasons that there was cash deposits of Rs 4.5 crore in the bank account of the assessee. The PCIT in paragraph 5.5 of her order as mentioned that “it is true that the voucher by virtue of which cash of Rs 4.5 crore has been deposited in the bank does not bear signatures of the assessee but the evidence is strongly against the assessee.” Further the PCIT on page 13 confirms that the cash was deposited in the bank account of Saradiyot Singh. By mentioning that “the system generated voucher of the bank with the same transaction id no. M615025 however, shows deposit of cash in account of Saradjyot Singh account number 0242000125537289.
52. The finding recorded by the PCIT that the account of Saradjyot Singh was used to route the cash amount in the account of the assessee, is not supported by any document or evidence. In fact the loan of Rs 4.5 crores was sanctioned in favour of assessee on 29.6.2010 and the same was credited in the assessee bank account on 10.07 2020
53. The PCIT, had further failed to accede to the request of the assessee whereby she had requested for examination of Shri RD Sewak, the then Chief Manager of the bank, Sh. RK Abhi the then manager of the bank, sh. Manohar singh the then Sr. Manager of the branch, Sh. Som Nath Nagpal, sh. Pawan Kumar sharma for the following reasons (page 7 of the impugned order)
- (1) The onus was on the assessee to explain the alleged transaction as it related to her bank account and if she wanted any person to be produced to prove any of her claims, the onus was on her to produce them.

(2) The assessee in her request did not give the present addresses of the bank employees whose statements it want to be recorded if she wanted assistance of the department in producing them.

(3) The production of the bank employees at that time would only delay the proceedings as they would only stand by the documents of the bank and would not have any other document/evidence in their possession to make any other claim.

54. Quiet contrary to her reasons for not permitting assessee to examine these persons, the statement of the Chief Manager was recorded by the AO on 11.9.2019 u/s 131 and the letter dated 29.8.2019 was confronted to him. The PCIT records that cash might have been deposited.

55. The PCIT had also reproduced the summary of the statement recorded the section 131 at page 11 of her order in following manner:

1. Day book prepared by the Cashier- at the time of receiving the cash: it was stated by the Chief Manager in his statement that the same has been sold in Raddi as a part of weeding out of old records. This cash book was an important evidence to show primary receipt of cash by the cashier at the time of deposit itself. Non-production shows connivance of the bank officials.
2. All Vouchers for 30.06.2010, 06.07.2010 and 10.07.2010- Except payment voucher for 30.06.2010 none of the other vouchers were available with the bank and they did nto produce the same. The chief manager stated in response to summons u/s 131 that the original vouchers of transactions showing deposit of cash into account transfer

of entry from Ramco current account to loan account for repayment, if any, transfer of entry from Saradjyot Singh account to Ramco account are not available. Non production of vouchers for the specific dates further shows connivance of the bank officials.

3. Signed voucher for debiting current A/c of the assessee and crediting loan a/c of the assessee: It was confirmed by Chief Manager PNB, Industrial Area that no such voucher is available and only a request letter dated 6.7.2010 is available and that too only a copy and not the original letter signed by the assessee. Under the circumstances it is not possible to get the letter validated even from a forensic expert. It is surprising that for debit of the assessee's bank account no signed voucher is there and a letter is sufficient.

4. Journal for all dates i.e. from 30.06.2010 to 10.07.2010 the bank produced journal for all dates except 6.7.2010, on the plea that the entry on this date is voluminous and hence cannot be produced.

56. From the perusal of the extract of the statement dated 11.9.2019, of the Chief Manager recorded u/s 131, it is abundantly clear that the bank was not in possession of any document like cash book, vouchers, signed vouchers of debit and credit and journal for the dates i.e. from 30.06.2010 to 10.07.2010. In the absence of these documents it cannot be assumed that any cash was deposited by the assessee either in her own account or in the account of Saradjyot Singh or the amount was debited and credited in her account. In our view the whole

order of the PCIT is premised on conjectures and surmises without any cogent reliable evidence.

57. As mentioned above the bank had written various letters confirming that no cash was deposited in the account of the assessee at any point of time relevant to issue in hand. Therefore the invocation of power u/s 263, was without any basis.

58. In our considered opinion, the observation on the Ld. PCIT that the documents furnished by the Bank in response to the notice of AO were not required to be corroborated with the statement of the Chief Manager for the reason that the documents issued under the Bankers Book Evidence Act 1891 are admissible in law. Further the whole case of reopening hinges on, the cash deposit in the bank account of the assessee, the above said fact was denied by the bank in the documents submitted to the assessing officer in response to the notice issued by the assessing officer to the bank.

59. Further we are also of the opinion that when the assessee had requested Pr. CIT to examine the officials of the bank then the Pr. CIT had denied the summoning of the said officials by observing at point no. 3 page 7 of the order as under :

*“the production of the bank employees at this time would only delay the proceedings as they would only stand for the documents of the bank and would not have any other document/evidence in their possession to make any other claim” .*

60. In our considered opinion, the Pr. CIT cannot be permitted to blow hot and cold, on the one hand, the Pr. CIT is holding that order of AO was erroneous as documents issued by the Bank were required to be corroborated Chief Manager and on the other hand Himself is not making enquiry/ examining the officials of

the Bank to ascertain the true facts by denying the summoning of the officials of the Bank on the request of the assessee. In our considered opinion the Principle CIT had failed to bring on record any piece of evidence or documents which shows that the cash was deposited in the account of the assessee on the date mentioned in the reasons for reopening of the assessment.

61. Nonetheless, once the certified copy of the cash book, bank account, vouchers and other documents were produced before the AO and PCIT, which clearly shows that no cash was deposited in the Bank account than, in our view, the finding recorded by the Pr. CIT, was not correct as the same was not borne out of the record.
62. The PCIT had failed to establish the fulfillment of twin conditions as mentioned herein above before invoking the jurisdiction u/s 263 of the Income Tax Act. The Pr. CIT has failed to bring on record how the order passed by the Assessing Officer was prejudicial to the interest of the Revenue and further how it was erroneous.
63. Note sheet of the assessment proceeding of AO clearly shows enough evidence of making the inquiries from the assessee as well as from the Bank and examination of the other relevant documents.
64. The order passed by the Assessing Officer though was short, however elaborate enquiries were made by him before writing the order and dropping the proceedings under section 148, as sufficient material was brought on record, which shows that no cash was deposited in the Bank account. Further AO had examined complete record of the Bank, the cash book, the Bank statement of the assessee as well as that of Sh. Saradjot Singh and thereafter Assessing

Officer had chosen not to make any addition on account of above said amount. In the light of the above and respectively following the decision of Bombay High Court in the Matter of C.I.T. Vs. Gabriel India Ltd. 203 ITR 108 (Bom), we are of the opinion that the proceeding u/s 263 of the Act at the level of Pr. CIT were not called for and accordingly the action initiated u/s 263 was without any merit and accordingly we quash the same.

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

**Order pronounced in the open court on 14 07.2021**

Sd/-  
**(Dr. M. L. Meena)**  
**Accountant Member**

Sd/-  
**(Laliet Kumar)**  
**Judicial Member**

Dated: 14.07.2021

*GP/Sr. Ps.*

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By Order