

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH

श्री संजय गर्ग, न्यायिकसदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No. 754/CHD/2018

निर्धारणवर्ष / Assessment Year : 2013-14

Shri Varinder Kumar Gupta, # 278, Urban Estate, Phase-1 Patiala	बनाम	The ITO, Ward -5, Patiala
स्थायीलेखासं./PAN NO: ANPPG 8996Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे/Assessee by : Shri Ashwani Kumar, CA

राजस्वकीओरसे/ Revenue by : Smt. C. Chandrakanta, CIT DR

सुनवाईकीतारीख/Date of Hearing : 05.03.2020

उदघोषणाकीतारीख/Date of Pronouncement : 06.05.2020

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the revision order dated 29.03.2018 passed by the Ld. Principal Commissioner of Income Tax, [hereinafter referred to as 'PCIT'] invoking his jurisdiction u/s 263 of the Income Tax Act, 1961 (in short 'the Act') whereby, the Ld. PCIT has set aside the assessment order dated 23.03.2016 and restored the matter to the Assessing Officer with a direction to make assessment afresh on specific issues as mentioned in the impugned order of the PCIT.

2. The brief facts of the case are that the assessee filed return of income on 31.03.2014 declaring income from salary, house property, business and income from other sources at Rs.8,43,730/-. The case was selected for scrutiny under CASS. The Assessing Officer (the 'A.O.' for brevity) accepted the return of income without making any addition in this case vide order dated 23.03.2016 passed under section 143(3) of the Act. However, the Ld. PCIT after perusal of the assessment record was of the view that the assessment order was erroneous in as much as it was prejudicial to the interest of the revenue in respect of certain issues, hence, he issued show cause notice u/s 263(1) of the Act to the assessee as under:

"3. As per CIB information, you made the following cash deposits in your bank accounts:-

1.	69,25,000	15.06.2012
2.	30,75,000	14.06.2012
3.	7,50,000	19.12.2012
4.	1,00,00,000	10.09.2012
5.	3,07,200	01.10.2012
6.	60,00,000	11.09.2012
Total	2,70,57,200	

As per AIR Information, you made following cash deposits in your bank accounts:-

1.	1,60,00,100	31.03.2013
2.	1,04,74,700	31.03.2013

When enquired, you filed copy of cash book. As per Cash Book (copy obtained and available in records), you had shown opening cash-in-hand of Rs. 1,06,03,607/-. You are maintaining bank accounts in different banks and hence maintaining such a huge cash in hand should have been examined from the angle of unexplained investments, which the Assessing Officer failed to do so. You introduced cash of Rs.50,00,000/- on 01.06.2012 and Rs.1,00,00,000/- on

06.08.2012, in your Proprietary concern i.e. Gulshan Estates, sources of which had not been examined by the Assessing Officer. Source of deposits of cash by way of cash flow statement with supporting evidence had not been obtained by the Assessing Officer.

4. You shown receipt of Rs.1,00,00,000/- from your wife Smt. Gulshan Gupta on 21.04.2012 and of Rs.32,50,000/- on 16.06.2012 against opening debit (opening) of Rs.4,11,48,066/-. Source/Availability of funds in the hands of Smt. Gulshan Gupta had not been obtained by the Assessing Officer. Neither the corresponding bank account of Smt. Gulshan Gupta nor her copy of return filed was obtained by the Assessing Officer. No enquiry seems to be carried out in order to know nature of investment made by Smt. Gulshan Gupta out of funds received from you. This should have been examined to know about benami investment tantamount to transfer of assets without any adequate consideration as per the provisions of Section 64(1) (iv) of the Income Tax Act, 1961 made by you through your wife. No interest had been charged on the debit balance.

5. You shown receipt of Rs.7,00,000/- on 30.11.2012 and of Rs.5,00,000/- on 30.03.2013 from Sh. Ranjan Gupta against opening debit balance of Rs. 17,67,960/, Source/Availability of funds in the hands of Sh. Ranjan Gupta had not been obtained. No interest had been charged on this debit balance.

6. You received back Rs.8,00,000/- on 11.02.2013 and Rs.6,55,000/- on 23.02.2013 in cash out of opening debit balance of Rs.14,55,000/- from Sh. Kulwant Singh. Genuineness of cash receipt with PAN Identity of Sh. Kulwant Singh had not been obtained by the Assessing Officer. No interest was charged on this advance. No examination made to rule out possibility of introducing own funds by you under the grab of squaring up outstanding debit balance. Genuineness of this entry should have been examined.

7. As per details, you had given Rs.4 Crores on 22.06.2012 by way of eight demand drafts of Rs. 50,00,000/- each on 22.06.2012 to Ms. Setu Raman, out of which four drafts of Rs.50,00,000/- each were cancelled subsequently on 05.09.2012. These eight drafts were purchased from HDFC Account No. 123600. Huge deposits in this account had not been examined critically as per the provisions of Section 68 of the Income Tax Act, 1961 and had been presumed as genuine by the Assessing Officer simply on the basis of these transactions being of banking nature. Huge transactions in the bank accounts in respect of an assessee who has shown meager income of Rs.8,43,730/- only should have been examined in depth. No income from such a large investment of Rs.2 crone had been shown by you in the return. No cash flow statement furnished by you though specifically asked by the Assessing Officer in the questionnaire.

8. You gave interest free loans to VK. Holding at Rs.7,30,000/, V.K. Infratech Pvt. Ltd. Rs.1,66,30,000/- during the year. The nature of investments had not been examined. You had also given interest free advances to M/s V.K. Real tech Ltd., Delhi with opening debit balance Rs.2,53,02,000/- and closing balance Rs.1,97,02,000/, Benefit derived from these investments should have also been examined by the Assessing Officer. Without deriving any benefit directly or indirectly, such huge investments were not made. The Indirect benefit derived by

such investment by any member of your family in terms of income was assessable u/s 64 of the Income Tax Act,1961. The Assessing Officer failed to make this enquiry to a logical end. The profit and loss account with balance sheets of these concerns should have been obtained and examined by the Assessing Officer.

9. *As per the ledger entries available in the assessment records, you shown advances against properties from the following persons with opening balance, without any transaction in the current year as under:-*

1	Amarbir Singh	5,70,000
2	Amarjeet Kaur	6,50,000
3	Amar Jit Kaur	26,00,000
4	Nand Mohan Sethi	13,25,000
5	Anish Goyal	1,50,000
6	Anju Sethi	10,50,000
7	Ashok Kumar Nabha	1,00,000
8	Dr. Sheel Kant Pajni	1,57,000
9	Dr. S.N. Goyal	2,00,000
10	Gurdarshan Singh	1,00,000
11	Jasmeet Dhaliwal	23,55,000
12	Kamlesh Kaushal	2,75,000
13	Khushdeep Kaur	6,00,000
14	K.K. Pajni	21,77,000
15	K.L. Goyal	1,70,000
16	KS. Kang	1,00,000
17	K.S. Kang & Amarjeet	1,00,000
18	Kusum Goyal	1,00,000
19	Nachhtar Singh	15,00,000
20	Narpinder Kaur	16,00,000
21	Neha	1,00,000
22	Parkash Chand Kansal	5,00,000
23	Rajesh Jain, Dehradun	20,00,000
24	Ramandeep Kaur	5,30,000
25	Ramesh Kumar	50,000

26	Ranjan Gupta S/o Sh. Jagdish Chand Gupta	24,00,000
27	Rattan Singh	1,60,000
28	Shakun International	4,00,000
29	Shashi Bala	6,27,000
30	Shiv Kumar	1,30,000
31	Simla Kansal	1,00,000
32	Sonia Pajni	3,00,000
33	Sumitra	8,15,6000
34	Surinder Singh	4,99,000
35	Vishal Kaushal	2,75,000
	Total	2,47,65,000/-

There is nothing on the assessment records to suggest that the Assessing Officer made any enquiry to ascertain genuineness of above huge credit balances, which appear to be your own funds ploughed back under the grab of advances against properties. Advances against properties result in sale of properties and are never obtained for indefinite period. No documents in the shape of agreements to sell property had been obtained in respect of aforesaid advances by the Assessing Officer. The nature of these advances should have been examined by the Assessing Officer by obtaining complete addresses of the persons giving such advances. Particulars of persons with their PANs and Identities were not obtained and advances had been accepted as genuine by the Assessing Officer without any examination. Creditworthiness of the person's giving advances for indefinite period should have been probed by the Assessing Officer. Detailed investigation in respect of these advances could have resulted in unearthing particulars of income apparently concealed by the assessee."

3. In response to the aforesaid notice, the assessee filed reply on dated 12.03.2018 the contents of which have been summed up by the Ld. PCIT in the impugned order, which read as under:

" The relevant submissions stated that as per CIB information regarding cash deposits in the bank account of the assessee was filed during the course of assessment proceedings. The case for the assessment year 2012-13 was also taken in scrutiny on the same fact. The assessee has been keeping cash in hand of a higher volume. The nature of business of the assessee requires cash in hand to clinch beneficial deals. However, during the course of assessment proceedings, the source of deposits in bank, copies of bank accounts, cash book and ledger were submitted before the Assessing Officer.

That the case was selected on the basis of AIR information and the information was duly submitted during assessment proceedings before the AO.

Various deposits mentioned were made out of cash in hand available with the assessee, which is clarified by the following chart.

Sr. No.	Amount	Date	Cash in hand
1	69,25,000	15.06.2012	92,14,330
2	30,75,000	14.06.2012	1,22,93,970
3	7,50,000	19.12.2012	57,46,634
4	1,00,00,000	10.09.2012	5,03,04,857*
5	3,07,200	01.10.2012	2,42,50,512*
6	60,00,000	11.09.2012	1,19,53,542

These two entries are reflected the in cash book of M/s Gulshan Estates, Patiala where in the assessee is proprietor.

The aggregate deposits mentioned at Rs.1,60,00,100/- and Rs.1,04,74,700/- are breakup of the total deposits from 1 to 6 above. The total of Rs.1,60,00,100/- is relatable to Sr. Nos. 1,2,3,& 6 and that 1,04,74,700/- to Sr. Nos. 4 & 5 which are deposits out of cash available in those books. The cash in hand is verifiable from the copy of the cash books forming part of the record.

4. The assessee is an individual and operates two proprietary concerns; one in his name and the other in the name of Gulshan Estates. While separate books of account have been maintained by the assessee the transactions mentioned at Rs.1,00,00,000/- and 50,00,000/- were transferred from Gulshan Estate to V.K. Gupta which fact was examined during the course of assessment proceedings. No fresh deposit was received in the account of Gulshan Gupta. There was debit opening balance of Rs.4,11,48,066/- and payments of Rs.1,32,50,000/-. She is assessed to tax. The amounts were repaid by her and thus were not in the nature of cash credit. Since the identity of funds has been properly maintained, there could not be a case of any Benami Transaction. It is a case of return of the amounts recoverable it was not a case of fresh cash credit. The amounts were received through account payee cheque. No interest was charged as the assessee has capital and interest free loans much more than the amount advanced. In this regard the assessee relied upon the decision of Punjab & Haryana High Court in the case of Bright Enterprises Pvt. Ltd. V.CIT, reported in 2016) 381 ITR 107.

5. Since it was a debit balance in the account of Sh. Ranjan Gupta, part of which was repaid during the period relevant for the above assessment year. Source of repayment are better known to debtor under the provisions of section 68 of the income tax Act 1961 the assessee is not required to prove the source of repayment by the creditor regarding non payment of interest by Sh. Ranjan Gupta. The amount of interest of free loans is much more than the amount advanced, inter alia to Sh. Ranjan Gupta the case of the assessee is supported by decision of Punjab & Haryana High Court in the case Bright Enterprises Pvt. Ltd. supra.

6. Since charging of interest on cancellation of deal was sine qua non of the transactions, non charging of interest cannot be objectionable. Further how a person arranges the funds

on cancellation of a contract is not the responsibility of the assessee and hence no adverse inference may be drawn.

7. The assessee purchased eight drafts of Rs.50,00,000/- each out of cash in hand available in the books and is quite apparent from the copy of the cash book submitted before AO during assessment proceeding. Out of these 4 drafts were cancelled and the other 4 were got encashed by the concerned person. The amount was given for arranging loans for the business. Later it was apprehended that the assessee was victim of fraud, the balance four drafts were encashed. It is not a case of accepting any deposit, there is no question of application of the provisions of section 68.

8. The assessee is a partner in the firm styled as V.K. Holdings and the capital investment therein is in the nature of investment. Similarly, the company styled as V.K. Infrainvest Pvt. Ltd. In which the assessee is a shareholder. Contract for green fee was allotted. The amount was advanced to the company for the purpose of business expediency. Similar is the situation in the case of V.K. Realtech. No benefit was drawn from these investments.

9. All 35 advances in format of para 9 are against the properties pertain to the earlier year and that too were examined during the course of assessment proceedings of the earlier year, it was found that no fresh advance was received in the period relevant for the above assessment year.

It was contended that mere change of opinion at a later stage is not legal ground for revision u/s 263, when this issue was already examined and accepted and accepted by the A.O. That the provisions of section 263 are supervisory in nature and can only be invoked where two conditions; that the order passed by the A.O is either erroneous or prejudicial to the interest of the Revenue are satisfied. Under the facts and circumstances of the case it cannot be said that there is any error in the order of the A.O. The A.O. has duly made enquiry concerning issues pointed out in the notice. There is no supervening post assessment information suggesting that the A.O. committed any error, thus his action cannot be said to be prejudicial to the interest of the Revenue. The power of revision is not meant to be exercised for the purpose of directing the office to hold another investigation when the order of the officer was not found to be erroneous. Reliance was placed on the following case laws:

CIT v. Chawla Trunk House, (1983) 139 ITR

CIT v. Kanda Rice Mills, (1989) 178 ITR 464.

ITAT Chandigarh in Baljees v. ACIT, (2004) 85 TTJ (Chd.) 543

Malabar Industrial Company Ltd. v. CIT (2000) 243 ITR 83

Amrik Singh v. Income Tax Officer, (2003) 127 taxman (Trib.) 87

ITAT Chandigarh decision in Smt. Neena Khullar, Samrala v. The CIT-II, Ludhiana, in ITA No. 443/Chandi/2012 dated 24.09.2012,

CIT v. Anil Kumar Sharma [2011]235 ITR 83

CIT v. Rajiv Agnihotri, [2011] 332 ITR 608"

4. The Id. PCIT however, repeating the contentions raised in the show cause notice concluded that the assessment order had been framed by the A.O. without making inquiries or verifications which should have been made and even without application of mind. He therefore, held that the

assessment order passed by the A.O. was erroneous in so far as it was prejudicial to the interest of revenue. He accordingly set aside the order of the A.O. to make assessment a fresh on the issues as noted above.

5. The assessee has thus come in appeal before us contesting the above action of the Ld. PCIT.

6. At the outset, the Ld. Counsel for the assessee has invited our attention to the assessment order in question dated 23.03.2016 passed u/s 143(3) of the Act and has submitted that the return filed by the assessee was originally processed u/s 143(1) of the Act, however, the case was later selected for scrutiny under the CASS because as per CIB information, the assessee had made cash deposits in his bank account. The Ld. Counsel in this respect has submitted that the Ld. Assessing officer, therefore, had made adequate enquiries regarding the source of deposits by the assessee in his bank account, the details and explanation regarding which were duly supplied by the assessee to the Assessing officer and the Assessing officer being satisfied with the evidences given by the assessee completed the assessment accepting the returned income. The Ld. Counsel for the assessee in this respect has relied upon the notices dated 10.06.2015, 25.06.2015, 28.07.2015 and 27.01.2016 issued by the A.O. raising various queries and asking the assessee to furnish the necessary details and evidences in that respect. The Ld. Counsel has further relied upon the copies of replies dated 22.06.2015, 19.10.2015, 2.11.2015 and 12.01.2016 to submit that

that all the queries raised by the A.O. were duly replied and necessary details and documents duly furnished and that each of the issue was duly explained to the satisfaction of the A.O. The Ld. Counsel further referring to the reply filed in response to the show cause notice issued by the Ld. PCIT has submitted that even detailed explanation was given to the Ld. PCIT also on each of the issue raised by him, however, the Ld. PCIT has failed to take into consideration the same. The ld. Consel for the assessee has further has relied upon the following submissions in the shape of chart to submit that each of the contention/issue raised by the Ld. PCIT had not only been examined by the A.O. but the detailed and convincing explanations on each of the issue were submitted to the Ld. PCIT also:

Sr. No.	Allegation made out by the PCIT	Examination of the issue by the A.O/PCIT
1.	Higher amounts of cash in hands shown Should have been examined from the Angle of unexplained investment. Capital of Rs.1,50,00,000/- was credited in the books of Gulshan Estates and the source thereof as narrated to be from the cash book.	Admittedly, it has been noted by the ld. PCIT in para 3 at page 2 of the notice (Page 29 of PB) that the assessee filed the copy of the cash book and cash flow statement which form part of the record of the ld. A.O. It has not been established by any contemporary evidence that the plea taken by the assessee was not correct.
2.	Out of the debit balance of Rs. 4,11,48,066/- Against Smt. Gulshan Gupta amount aggregating to Rs. 1,32,50,000/- were received on two dates i.e. Rs. 1,00,00,000/- on 21.04.2012 & Rs. 32,50,000/- on 16.06.2012, the source of which in the hands of the payer was not asked	The A.O was seized of the matter and vide letter dated 25.06.2015 (PB page 5 Para No. 10 detail of loans and advances received / given was duly called for in reply to which copies of accounts of loans and advances were filed. The issue was again clarified vide letter dated 19.10.2015 (placed at page 18 of PB). In respect of Dr. Gulshan Gupta and Ranjan Gupta, wife and son of the assessee, their copies of account duly confirmed by them were filed giving their PAN No.
3.	No interest was charged on the debit balances of Gulshan Gupta and Ranjan Gupta	During the course of revision proceeding it was explained to the learned PCIT that since the capital of the assessee and amount of interest free loans was much more than the interest free advances no adverse inference could be

		drawn in view of the decision of the Hon'ble jurisdictional High Court in the case of Bright Enterprises Pvt. Ltd. v/s CIT (2016) 381 ITR 107
4.	Receipt of 12,00,000/- from son Ranjan Gupta; 7,00,000 on 30.11.2012 and 5,00,000/- on 30.03.2013 against debit balance of Rs. 17,67,960/-	Facts are same as discussed in 3 above.
5.	Repayment of opening balance of Rs.14,55,000/-in two installments of Rs. 8,00,000/- on 11.02.2013 and Rs. 6,55,000/- on 23.02.2013 by Kulwant Singh. The A.O did not examine the genuineness of the credit and chargeability of interest on the debit balance.	Since it was noticed by the Id. PCIT that the entire amount of Rs.14,55,000/- was opening balance there could not be any question of examination of the debt on the phraseology of section 68 and would be futile exercise. Regarding non charging of interest the reasons have already been stated in 3 above.
6.	Eight drafts of Rs.50,00,000/-each were show any income from the source and no cash flow statement in regard to this entry filed by the assessee though specifically asked.	It was explained before the Id A.O. as were as the PCIT that 8 drafts of aggregate value of Rs. 4,00,00,000/- were purchased from HDFC bank out of which 4 were cancelled and 4 delivered to Mr. Setu Raman for arranging loans. It is an admitted fact by both the A.O and PCIT that complete copy of the cash book is on record. The allegation of not filling cash flow statement is perverse to the facts on record. Under these circumstances there being no deposit in the books of account, the question of deposit under section 68 does not arise.
7.	The books of account revealed investment of Rs. 7,30,000/- in V.K. holding and Rs. 1,66,30,000/- in V.K. Infratech Pvt. Ltd. The A.O. did not examine about the nature of the investment as well as the income there from. Similarly, there is an opening debit balance of Rs. 2,53,02,000/- in regard to which both the queries concerning nature and outcome thereof were not called for.	It was explained before both the authorities that the assessee was partner in the firm V.K. holding and shareholder in the other two companies which did not give any dividend. The Id. A.O was fully aware of the fact and called for the explanation of the assessee vide query No. 13 of letter dated (PBP — 22) regarding source and purpose of the advances made to V.K. holdings Setu Raman and Gulshan Gupta. In the reply filed copy of account of Setu Raman was filed and regarding the others and it was explained that the advances to Smt. Gulshan Gupta and contribution of capital of V.K. Holdings were carried forward balances this fact was explained vide query reply to no. 13 of letter dated 4.03.2016 filed on the same day.
8.	Advances against the properties received but the A.O. did not make any enquiry as to the genuineness and factual aspect of the matter. No document was obtained by the A.O. concerning the advances. No document in the nature of agreement to cell had been obtained. The nature should have been examined by obtaining complete the details from the assessee.	Vide letter dated 19.10.2015 it was explained vide reply to query no. 2 that expect for loans and advances except loan /advances to Gulshan Gupta and Ranjan Gupta all other advances and loans were old. During the course of proceeding of under section 263 it was explained to the PCIT (page 36 of the paper book) all 35 advances were against sale of plots which pertained to assessment year 2012-13

		and IN ere examined during course of assessment proceeding of the year. So for as the year under appeal is concerned no advance was received hence there was no occasion for the learned A.O to make any enquiry as to genuineness or the factual aspect of the case. No document was required to be drawn as the advances were not received in the year under appeal.
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From the above chart it would transpire that:-

1. In respect of the Sr. No. 1 of the chart the Id. PCIT is of the view that since the assessee was maintaining huge cash balances, besides the reasons given by the assessee, the Id. A.O should examine the issue from the angle of possible unexplained investment for which there is nothing adverse on record. As per the reply filed during revision proceedings, the Id. PCIT was not justified in substituting this subjective satisfaction on that of the Id. A.O.

2. In respect of Sr. No. 2 and 4 the repayments of outstanding amounts from Smt. Gulshan Gupta and Ranjan Gupta their copies of accounts were filed mentioning their PAN. Both were regular income tax assesses in relevant period. Having filed their confirmed copies of account, the learned PCIT could not expect the learned A.O. to go into the source of the source and origin of the origin. In this regard kindly refer to the decision of S. Hastimal v/s CIT reported in (1963) 49 ITR 273.

3. In respect of Sr. No. 3 the learned PCIT has objected that no interest has been charged by the assessee from Smt. Gulshan Gupta and Mr. Ranjan Gupta. As mentioned above the amount of capital of the assessee and the interest free loans taken is much more than the interest free loans advance no notional interest could be charged to tax. Reliance was placed on the decision of Bright Enterprises (supra)

4. In Sr. No. 5 the genuineness of the advance of Rs. 14,55,000/- given in earlier years should have been examined by the Id. A.O. Since the amount was not received in the year there is no question of seeking evidence.

5. Regarding Sr. No. 7 due enquiries were made as mentioned in the foregoing part of the chart.

6. Regarding advances against sale of plots the issue cropped up but since no part of the advance was received year under appeal no query was necessary on this aspect

7. In the reply dated 12march,2018 before the PCIT reference was made to various decisions of various courts, *interalia*, the decision of the Hon'ble Jurisdictional High Court and the Hon'ble Tribunal but the learned PCIT has neither discussed nor distinguished any of them .

In the light of above discussion, the order of the Id PCIT is null and void and is, therefore, liable to be quashed.”

7. The Ld. Counsel for the assessee, therefore, has submitted that Ld. PCIT totally ignored the submissions of the assessee. That the assessee had duly given explanation on each of the contention raised by the ld. PCIT. However, the Ld. PCIT proceeded to set aside the assessment order with a predetermined mind and without considering or deliberating on any of the submissions made by the assessee.

8. The Ld. DR on the other hand has placed reliance on para 4.8 of the impugned order of the PCIT to submit that the Ld. PCIT has categorically observed that the A.O. simply accepted the submissions on the assessee but failed to make the required enquiries and verifications.

9. We have considered the rival contentions made by the representatives of both the parties. A perusal of the notices issued by the A.O. and replies thereto furnished by the assessee reveal that all the queries raised by the A.O. including about the source of deposits were duly answered by the assessee supported with the documentary evidence. It has also been mentioned in the assessment order that after discussion and verification of details /explanations furnished by the assessee the income of the assessee was assessed at ₹.843730/-. However, the Ld. PCIT has set aside the assessment order on the ground that the assessing

officer should have made more enquiries. The issue before us is that whether the Ld. PCIT was justified u/s 263 in setting aside the assessment order and directing the A.O. to make more/further enquiries in the relevant facts and circumstances of this case.

10. To arrive at the correct conclusion of the case, we deem it necessary to reproduce the relevant provisions of section 263 of the Act.

“Section 263(1) in The Income- Tax Act:

(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the² Assessing] Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he, may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.”

11. The sum and substance of the above reproduced section 263(1) can be summarized in the following points:

- 1) The Commissioner may call for and examine the record of any proceeding under the Act;
- 2) If he considers that the order passed by the AO is
 - (i) erroneous; and
 - (ii) is prejudicial to the interest of Revenue;
- 3) He has to give an opportunity of hearing in this respect to the assessee; and
- 4) He has to make or cause to make such enquiry as he deems necessary;

- 5) He may pass such order thereon as the circumstances of the case justify including,
- (i) an order enhancing or,
 - (ii) modifying the assessment or
 - (iii) cancelling the assessment and directing a fresh assessment.

Now in the light of above provisions, we have to examine as to whether the order of the Ld. PCIT is a valid order sustainable in the eyes of law or not.

12. As noted above, the first and foremost condition for the exercise of jurisdiction u/s 263 by the Ld. PCIT is that in his consideration the order of the A.O. must be erroneous. As per the settled proposition, it is not the mere whim or wish of the PCIT to consider any order of the A.O. as erroneous, rather such consideration should be based upon justifiable reasons. Then at the first stage the Ld. PCIT may call upon and examine the records relating to such proceedings. In this case, the Ld. PCIT was of the view that the A.O. had not made the requisite enquiries. However, in reply to the show cause notice, when the assessee had shown from the record that the necessary enquiries were made by the AO and the AO had applied his mind and the view adopted by him was one of the possible views, then without considering the reply of the assessee and without recording his reasoned disagreement/dissatisfaction there to, it was not open

to the Ld. PCIT to brand the order of the A.O. as erroneous. Admittedly, the AO asked the assessee to furnish the necessary details from time to time which were duly furnished by the assessee and after considering the same the AO passed the assessment order.

13. Then the second step for the Ld. PCIT, as per the provisions of section 263 as enumerated above, was that after getting the reply/explanation from the assessee, the Ld. PCIT was supposed to examine the contention of the assessee in respect of each of the issue. Before passing an order of modifying, enhancing or cancelling the assessment, he was supposed either to himself make or cause to make such an enquiry as he deems necessary. The words "as he deems necessary", in our view, do not mean that the Ld. PCIT was left with a choice either to make or not to make an enquiry. As per the relevant provisions of section 263, it was incumbent upon the Ld. PCIT to make or cause to make an enquiry. So far as the words "as he deems necessary" are concerned, the said words suggest that the enquiries which are necessary to form a view as to whether the order of the AO is erroneous and prejudicial to the interest of Revenue or not?

Admittedly, in this case also, the Ld. PCIT had asked the assessee to furnish the necessary details and explanations, to which the assessee had given a pointwise detailed reply. As noted above, as per the first ground, the Ld. PCIT observed from

the opening cash in hand that since the assessee was maintaining huge cash balances, the ld. A.O should have examined the issue from the angle of possible unexplained investment. We agree with the submissions of the counsel for the assessee as to when there was no such issue or fact on the file regarding the source of any investment made by the assessee, where was the question of examining the issue on purely and imaginary suspicions. Opening cash in hand was carried/ brought forward from the closing cash in hand of the previous assessment year. The Ld. DR could not convince us as to how the Ld. PCIT was justified to direct the A.O. to make enquiries regarding the source of cash in hand of the previous assessment year in the assessment proceedings for the subsequent year i.e. in the assessment year under consideration. Further, regarding the source of the amount received from Smt. Gulshan Gupta and Ranjan Gupta, the assessee duly explained that the same were the repayments of the amounts earlier received by them from the assessee. Then the Ld. PCIT observed that no interest has been charged by the assessee from Smt. Gulshan Gupta and Mr. Ranjan Gupta. However, we fail to understand how this fact was relevant, when there was neither any observation made by the A.O. nor by the Ld. PCIT that assessee had used interest bearing funds to give advances to Smt. Gulshan Gupta and Mr. Ranjan Gupta.

Moreover, the assessee explained to the Ld. PCIT that the amount of capital of the assessee and the interest free funds of the assessee were much more than the interest free loans advance given to the aforesaid persons. Ld. PCIT failed to make any observation as to why he did not get satisfied from the reply of the assessee on this point. Even the Ld. DR could not convince us as to how the Ld. PCIT was justified to direct the A.O. to make the enquiry regarding the genuineness of the advance of Rs. 14,55,000/- given in earlier years. We agree with the counsel for the assessee that since the amount was not received in the year there is no question of seeking evidence in this respect. Regarding the nature of investments made by the assessee, It was explained that the assessee was partner in the firm V.K. holding and shareholder in the other two companies which did not give any dividend. The Ld. DR could not point out as to what further enquiries were required to be made by the A.O. in this respect. Further regarding advances against sale of plots ,it was explained to the Ld. PCIT that no part of the advance was received in the year under consideration.

Once a point wise reply was given by the assessee, then, in our view, a duty was cast upon the Ld. PCIT to examine the reply of the assessee and to make or cause to make necessary inquires to reach to the conclusion that the order of the AO was erroneous so far as it was prejudicial to the interest of Revenue.

However, as is apparent from the impugned order of the Ld. PCIT, in this case, the Ld. PCIT did not even bother to consider reply and details furnished by the assessee what to say of calling for any enquiry etc. The Ld. PCIT just repeated the contents of the show cause notice and set aside the assessment order on the ground that the A.O should have made more enquiries. Even we find that the Ld. PCIT has directed the A.O. to make further fishing and roving enquiries which even do not germane from the facts and issues involved. Even we find that the Ld. PCIT has directed the A.O. to make further fishing and roving enquiries which even do not germane from the facts and issues involved.

The Hon'ble Supreme Court in the case of "CIT vs. G.M. Mittal Stainless Steel (P) Ltd." (2003) 263 ITR 255 has observed that the satisfaction by the Commissioner must be one objectively justifiable and based on material either legal or factual when available, it cannot be mere ipse dixit of the Commissioner.

14. In view of the above discussion the order of the Commissioner exercising jurisdiction under section 263 of the Act cannot be held to be sustainable in law and the same is accordingly set aside.

In the result appeal of the assessee stands allowed.

Order pronounced in the Open Court on 06.05.2020

Sd/-

(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

Sd/-

(संजय गर्ग / SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

Dated : 06.05.2020

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File