

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B': NEW DELHI**

**BEFORE SHRI SUDHIR KUMAR, JUDICIAL MEMBER  
AND  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.2798/Del/2025  
(ASSESSMENT YEAR 2020-21)**

|                                                                                                |                                               |                                                     |
|------------------------------------------------------------------------------------------------|-----------------------------------------------|-----------------------------------------------------|
| KPA Apparels Private Limited<br>26-A, Hanuman Road,<br>Delhi-110 001.<br><b>PAN-AAFCK3894E</b> | Vs.                                           | Income Tax Officer,<br>Ward-14(3),<br>Delhi-110002. |
| <b>(Appellant)</b>                                                                             |                                               | <b>(Respondent)</b>                                 |
| <b>Assessee by</b>                                                                             | Shri S. Sadhoo, CA &<br>Shri. J.M. Singh, CAs |                                                     |
| <b>Department by</b>                                                                           | Ms. Pooja Swaroop, CIT- DR                    |                                                     |
| <b>Date of Hearing</b>                                                                         | 18/02/2026                                    |                                                     |
| <b>Date of Pronouncement</b>                                                                   | 14/05/2026                                    |                                                     |

**ORDER**

**PER MANISH AGARWAL, AM:**

This appeal is filed by the Assessee against the order of the Ld. Principal Commissioner of Income Tax, Delhi-4 [ld. PCIT, in short] dated 17.03.2025 in Revision No. PCIT, Delhi-4/Revision-263/100000777938/2025 passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') revising the Assessment Order passed u/s 143(3) of the Act dated 17.09.2022 for AY 2020-21.

2. The assessee has raised the following grounds of appeal:

- “1. *That on the facts and circumstances of the case and in law, the order dated 17.03.2025, passed by the Principal Commissioner of Income Tax, Delhi-4 [Ld. PCIT], under section 263 of the Income Tax Act, 1961 ('the Act') setting aside the assessment to be made de novo being without jurisdiction and unlawful is void ab initio and deserves to be quashed.*

2. *That the Ld. PCIT erred on facts and in law in exercising revisionary powers under section 263 of the Act on issues in the impugned order, without satisfying the twin jurisdictional conditions of the assessment order being: (a) erroneous; and (b) prejudicial to the interests of the Revenue and consequently, the impugned order being unlawful deserves to be quashed.*
  3. *That the Ld. PCIT erred in setting aside the assessment order by exercising powers under section 263 of the Act, without appreciating that: (a) it was not a case of lack of enquiry on any of the issues raised; (b) the view taken by the assessing officer in respect of the various issues was, in any case, a plausible view; and (c) revisionary proceedings under section 263 could not be initiated on a mere 'difference of view'.*
  4. *That the PCIT erred in setting aside the assessment order on certain issues (ground nos. 5 to 6), with vague directions, without even recording any prima facie findings on merits, thereby, not demonstrating how and why the final assessment order was erroneous and prejudicial to the interests of the Revenue, qua such issues.*
  5. *That on the facts and circumstances of the facts as well as in law, the Ld. PCIT has erred in alleging that the appellant has violated the provisions of Section 269T of the Act and therefore liable for penalty under section 271E of the Act without considering the facts and binding judgements including that of Hon'ble Jurisdictional High Court at Delhi in the case of Commissioner of Income-tax v. Noida Toll Bridge Co. Ltd. [2004] 139 Taxman 115/[2003] 262 ITR 260 (Delhi).*
  - 5.1 *In any case and without prejudice, penalty proceedings u/s 271E being independent of assessment proceedings, non-consideration of provisions of section 269T in the assessment order have no bearing on assessed income and assessed tax thereby having no prejudice to the interest of revenue.*
  6. *That the Ld. PCIT has erred in invoking the provisions of Section 263 in respect of various expenses claimed without considering the submissions and without mentioning as to how any of such expense is not allowable which were allowed by the Ld. AO after necessary verification and application of mind.*
  - 6.1 *That the Ld. PCIT failed to appreciate that revisionary proceedings under section 263 of the Act could not be initiated merely to: (a) conduct vague/roving enquiries; or (b) authorize the assessing officer to conduct roving/fishing enquiries, by merely setting aside the assessment.*
  7. *That the Grounds of Appeal as herein are without prejudice to each other."*
3. Briefly stated facts are that the assessee filed its return of income for Asst. Year 2020-21 on 08.02.2021 declaring total loss of Rs. 39,49,687/-. The assessment was completed in terms of the order passed on 17.09.2022, wherein

after examining the details filed by the assessee in response to notices issued from time to time, loss declared by the assessee was accepted. Thereafter Id. PCIT, based on the Revenue audit objection that assessee has received loans of Rs.1,48,50,000/- in violation of provisions of 269SS of the Act and thus, liable for penalty u/s 271D of the Act. Further the Revenue had pointed out that as per Form 3CD of tax audit report, it is reported by the Auditor that assessee has made repayment of loan of Rs. 3,99,47,000/- other than by crossed cheque or bank draft or by using any electronic system, therefore, violated the provisions of section 269T of the Act and thus, liable for penalty u/s 271E of the Act. The Ld. PCIT after receiving the audit objections, perused the assessment folder and that the assessment order dated 17.09.2022 was passed without making enquiry on the above stated issues and thus prima facie is erroneous in so far as it is prejudicial to the interests of revenue and issue show cause notice dated 13.02.2025, asked the assessee to explain the aforesaid issues pointed out by the revenue audit.

4. With respect to the *first issue* of receipt of loan in violation of section 269SS, the AO vide its reply has stated that it had received Rs.1,48,50,000/- from M/s New Delhi Exports House through banking channel and thus, there is no violation of section 269SS of the Act. Regarding the *Second issue* of repayment of loans in violation to section 269T of the Act, it is submitted that there was closing balance of liability against loan received from M/s New Delhi Exports House of Rs.2,88,47,000/- and in terms of the directions given by the said company and in terms of Tri-party agreement dated 31.03.2020 executed between the assessee, M/s New Delhi Exports House and its partners Smt. Kusum Uppal, the outstanding of the loan appearing in the name of M/s New Delhi Exports House stood transferred to Smt. Kusum Uppal. However, by way of this transfer, liability of loan was never discharged and journal entry was carried out for

transfer of loan from one account to other account. Thereafter, ld. PCIT dropped the proceedings with respect to the violation of provisions of section 269SS, however has observed that the assessee has given loans in violation to the provisions of section 73 of the Companies Act, 2013 relating “Prohibition on acceptance of deposits from public” by accepting the loan from M/s New Delhi Exports House and further violated the provisions of section 185 of the Companies Act dealing with “Loan to directors, etc.” by advancing the loan to Smt. Kusum Uppal which is also in violation to the provisions of section 269T of the Act. The Ld. PCIT further observed in para 8 of the order that the AO has accepted the submissions with respect to the expenses of Rs. 6,14,89,161/- without making further enquiry or investigation. Accordingly, the ld. PCIT concluded that the assessment order passed u/s 143(3) is erroneous and prejudicial to the interest of Revenue by invoking the section 263 of the Act.

5. Against the said order, the assessee is in appeal before the Tribunal. Since, all the grounds of appeal taken by the assessee are with respect to the action of Ld. PCIT in holding the assessment order as erroneous and prejudicial to the interest of the Revenue, the same are taken together for consideration. Regarding the observation of ld. PCIT that the assessment order was passed without making enquiry or investigation, ld. AR submits that the AO has completed the assessment proceedings order after proper examination of audited financial statements, detailed information filed as asked for from time to time. For this Ld. AR drew our attention to para 5 at page 2 of the assessment order wherein the AO has observed that the assessee was asked to clarify the reasons on which the case was selected for scrutiny and after considering the submissions filed on various dates explaining and clarifying the reasons of selection of scrutiny, the

order was passed. The Ld. AR submits that provisions of clause (a) to Explanation-2 of section 263, applies where the assessment order is passed without making any enquiry or verification which a prudent officer should carried out and there is difference between lack of enquiry and inadequate enquiry. If there is even inadequate that would not give rise to exercise jurisdiction u/s 263 of the Act. For this Ld. AR placed reliance on the judgment of jurisdictional High Court in the case of *CIT vs. Sunbeam Auto Limited* reported in (2010) 189 *Taxmann* 436 (Delhi) and *CIT Vs. Vodafone South Ltd.* reported in [2012] 28 *taxmann.com* 273(Delhi).

6. The Ld. AR further submits that the dual conditions as prescribed u/s 263 of the Act i.e. the order must be erroneous as well as prejudicial to the interest of Revenue should be satisfied cumulatively. Ld. AR submits that in the instant case, both the conditions are not satisfied, therefore, the provisions of section 263 cannot be invoked. For this reliance is placed on the judgment of Hon'ble Supreme Court in the case of *Malabar Industries Co. Ltd. vs. CIT* [2000] 243 *ITR* 83 (SC), and on the judgement of Hon'ble Bombay High Court in the case of the *CIT vs. Gabriel India Ltd.* 203 *ITR* 108 (Bom.).

7. On merits of the issues, Ld. AR submits that first allegation of Ld. PCIT is that assessee has violated the provisions of section 269T of the Act. The Ld. AR submits that the penalty proceedings u/s 271E of the Act for violation of provisions of section 269T of the Act are separate and independent proceedings, and for this violation assessment order cannot be held as erroneous and prejudicial to the interest of Revenue. It is further submitted that loan was never repaid and there was mere change in the name of lender which was done as per

the tri-party agreement executed between the parties and thus, once of the loan was not repaid, there was no violation of provisions of section 263 of the Act. For this reliance is placed on the judgment of Hon'ble Jurisdictional High Court in the case of *Commissioner of Income-tax v. Noida Toll Bridge Co. Ltd.* reported in [2003] 262 ITR 260 (Delhi). Further reliance is placed on the judgment of the Co-ordinate Bench of ITAT Delhi in the case of *ITO vs. Dinesh Jain* reported in [2014] 52 taxmann. com 108 (Delhi). Ld. AR submits that non invocation of penalty proceedings u/s 270E of the Act could be held as error, however since it is separate and independent proceedings and, therefore, that alone cannot be a reason to hold the order as prejudicial to the interest of Revenue. With respect to the other allegation of Ld. PCIT of non-verification of expenses, ld. AR submits that the Ld. PCIT in the show cause notice dt. 13.02.2025, placed at PB pages 39 to 42 never raised this issue and for the first time through revision order, observed that AO has not made proper enquiry and investigation before the allowing these expenses. Ld. AR submits that the assessee was not show caused on this issue, therefore, this issue cannot be made the basis for holding the assessment order as erroneous and prejudicial to the interest of Revenue. He further submits that all the enquiries and verification was carried for the reasons for which the case of the assessee was selected for scrutiny and thus it is not a case of inadequate enquiry and it cannot be said that no enquiry or verification was done and, therefore, provisions of section 263 cannot be invoked. Accordingly, ld. AR for the assessee requested for cancellation of the order so passed.

8. On the other hand, the Ld. CIT-DR vehemently supported the orders of the lower authorities and submits that the Ld. PCIT in the order has discussed each

and every aspect at length and reached to the conclusion that the order was passed without verification. Ld. CIT-DR submits that the assessment order is very short and no detailed discussion was made on the issues for which the case was selected for scrutiny. Since, the assessee has violated the provisions of Companies Act in accepting the loan from public which is prohibited under the Companies Act and further advanced to the directors which is also in violation to the provisions of section 185 of the Companies Act, 2013. This fact has not been examined/considered by the AO, therefore, the assessment order is erroneous and prejudicial to the interest of the Revenue and it is thus prayed for confirmation of the order of Ld. PCIT.

9. Heard the parties and perused the materials available on record. It is observed that Ld. PCIT in the show cause notice issued for initiating proceedings u/s 263 of the Act, vide Notice dated 13.02.2025 has raised two issues **(i)** violation of provisions of section 269SS liable for levy of penalty u/s 271D of the Act **(ii)** violation of the provisions of section 269T liable for levy of penalty u/s 271E of the Act. It is observed that while holding the assessment order as erroneous and prejudicial to the interest of the Revenue, the Ld. PCIT in the impugned order though had accepted the submissions with respect to first issue of violation of provisions of section 269SS of the Act, however, has raised one more issue i.e. non-verification /enquiry of the expenses claimed. Since, the Ld. PCIT has exceeded the jurisdiction and raised new issue other than the issue for which proceedings u/s 263 were initiated, therefore, this issue cannot be taken at a later stage without confronting the assessee. The Co-ordinate Bench of Tribunal in the case of *Shail Gas Pvt. Ltd. vs. Pr. CIT* in *ITA No.630/Del/2021* vide order dated 05.08.2024 held that revision order passed by the PCIT u/s 263 beyond

reasons in the show cause notice issues is without jurisdiction and allowed the appeal of the assessee. The relevant observations of the Co-ordinate Bench in para 7 to 18 of the order are as under:

“7. We find that the case of the assessee was selected for limited scrutiny u/s 143(2) of the Income Tax Act, 1961 for A.Y. 2015-16. The assessment proceedings for A.Y. 2015-16 were initiated vide notice dated 27.07.2016 as is also mentioned in the Assessment Order and reproduced in the impugned order u/s 263.

8. The points taken up for limited scrutiny are, 1) low income in comparison to high loan advances, investment in shares, 2) low income in comparison very high investment & 3) large increase in investment in unlisted equities during the year.

9. Notice u/s 142(1) dated 09.08.2016 issued and queries raised specifically on issues under ‘limited scrutiny’ vide point 10 to 12 of questionnaire. The assessee duly submitted the documentary evidence in relation to the all the queries and explained reason to low income to investments made with the source of investment in unlisted equities with reason thereof.

10. The AO conducted direct enquiries u/s 133(6) to verify the genuinity and source of investment in unlisted equities. The AO after duly considering replies and material on record including 133(6) replies, completed the assessment proceedings u/s 143(3) vide Assessment Order dated 09.08.2017 after making disallowance of Rs. 21,633/- u/s 14A of Act.

11. Before the ld. PCIT, the assessee filed its reply on 26.03.2021 including Valuation Certificate by Chartered Accountant along with duly verified balance sheet on the valuation date 28.02.2015 by him and audited/approved balances sheet as on 31.03.2015 in support of valuation of market rate in terms of Rule 11UA, whereby it was demonstrated that FMV of equity share as on date of valuation 28.02.2015 is Rs. 9.94 per share and as on 31.03.2015 is Rs.9.79 per share.

12. The proceedings u/s 263 were completed on 31.03.2021 setting aside the original assessment order dated 09.08.2017 with the direction to examine two issues afresh:

- a. Value of investment u/s 56(2)(via) read with rule 11UA to ascertain income under that provision —Issue referred in SCN though with changed basis.
- b. Sources of long terms loans with income thereon.

13. From the record and the order of the ld. PCIT, we find that no show cause notice has been issued to the assessee asking for any

*explanation with regard to sources of long terms loans with income thereon, however, the same has been directed to be examined by the Assessing Officer. The ld. PCIT has fall into error by directing the AO on the issue for which no show cause has been issued to the assessee.*

14. *Further, we find that the case was selected for "limited scrutiny" to enquire large investment in unquoted share and ld. AO duly examined the source and genuinity of such investment with reason thereof whereby assessee had a vested interest in Sanwariya Gas Ltd., as per scope and ambit of limited scrutiny, therefore the issue of valuation of shares with applicability of provisions of section 56(2)(viib) as raised in SCN u/s 263 being beyond the scope of "limited scrutiny" is also beyond the scope of section 263.*

15. *Reliance is placed on the following Judicial Pronouncements:*

i) *PCIT vs. Shark Mines and Minerals (P.) Ltd. [2023] 151 taxmann.com 71 (Orissa)*

*"9. Indeed, the Court finds that the Madras High Court has while affirming the decision of ITAT in Smt. Padmavathi (supra) taken the view that while exercising suo motu revisional power under section 263 of the Act, the CIT cannot travel beyond the scope of the issues which form part of the 'limited scrutiny' in the original Assessment Order. This Court concurs with the above view.*

*10. What persuades this Court to reach this conclusion is the requirement in law that if the AO has to go beyond the scope of the issues for which 'limited scrutiny' has to be undertaken by him, he has to seek prior permission of the superior officer in terms of the CBDT Instruction No. 7/14 dated 26th September, 2014 and Instruction No. 20/15 dated 19th December, 2015. Consequently, it was not open to the Pr. CIT while exercising suo motu revisional power under section 263 of the Act to find fault with the assessment order of the AO on the ground of its being erroneous on an issue not covered by the 'limited scrutiny' when the AO could not have possibly examined such issue. To reiterate, in the present case, the limited scrutiny was in respect of excess disallowance under section 40A(3) of the Act whereas the SCN under section 263 was regarding the FIFO method of valuation of closing stock adopted by the Assessee. These were, as rightly noted by the IT A T, unconnected issues and the assessment order could not have been held to be "erroneous and prejudicial to the interest of Revenue" when the AO could not have travelled beyond the issues forming subject matter of the 'limited scrutiny.'*

ii) *CIT vs. Smt. Padmavathi [2020] 120 taxmann.com 187 (Madras)*

*“15. The substantial question nos. 1 and 2 are interconnected namely, the power of the PCIT under section 263 of Act and whether he could have set aside the assessment on the ground that the assessing officer did not invoke Section 56(2)(vii)b(ii). The reading of the assessment order shows that the case was selected for limited scrutiny only on this aspect regarding the sale consideration paid by the assessee for purchase of the immovable property and the source of funds. The assessing officer has noted that the sale consideration paid by the assessee was Rs. 41,50,000/- and she has paid stamp duty and other expenses of Rs. 5,75,000/-. The source of funds was verified and the assessing officer was satisfied with the same. The PCIT while invoking his power under section 263 of Act, faults the assessing officer on the ground that he did not make proper enquiry. It is not clear as to what in the opinion of the PCIT is 'proper enquiry'. By using such expression, it presupposes that the assessing officer did conduct an enquiry. However, in the opinion of the PCIT, the enquiry was not proper in absence of not clearly stating as to why in the opinion of PCIT, the enquiry was not proper, we have to necessarily hold that the invocation of the power under section 263 of the Act was not justified.”*

*iii) Naga Dhunseri Group Ltd. [2023] 146 taxmann.com 424 (Calcutta)*

*“(iii) Whether on the facts and circumstances of the case and in law Learned Income-tax Appellate Tribunal is justified in not appreciating the facts that one of the reasons for selection of the case for limited scrutiny was to verify the introduction of capital in NBFC/Investment Companies which is connected with the issue of disallowance under section 14A of the Income-tax Act, 1961?”*

*6. A bare reading of the above instruction clearly shows that the PCIT cannot make a roving enquiry in the guise of a limited scrutiny and as such the instruction issued by the CBDT is binding on the Department.'*

*16. Order u/s 263 based partially on the issue raised in the notice and also on entirely new issue without any SCN or without providing any opportunity is beyond the mandate of section 263.*

*17. Further, reliance is placed on the following case laws:*

*(i) Krishak Bharati Cooperative Ltd. Vs. ACIT [2016] 67 taxmann.com 138 (Delhi)*

*“14. Keeping in view of the facts and circumstances of the case and the precedents relied upon, the validity of the order passed u/s. 263 needs to be considered. As per the admitted position, show cause notice was issued only with regard to one issue*

*whereas order u/s. 263 has been passed on certain other issues also as discussed above. Admittedly on the other issues, we find that there was complete denial of opportunity to the assessee-society, which is violative of well established principles of natural justice.....In the case of Ashish Rajpal (supra), the Hon'ble Delhi High Court have further observed that the threshold condition for setting aside the assessment u/s. 263 is that before passing an order, opportunity has to be granted to the assessee and such opportunity is a necessary concomitant of the inquiry the Commissioner is required to conduct to come to a conclusion. The defect of not allowing opportunity cannot be cured by first reopening assessment and then granting an opportunity to respond to the issue before the Assessing Officer during the course of the fresh assessment proceedings. Having regard to the legal position emerging from various cases including Hon'ble Jurisdictional High Court case, we are of the view that lack of opportunity on some of the issues in the show cause notice, vitiates the proceedings u/s. 263 and consequently the order u/s. 263 passed by the learned PCIT is also rendered bad in law."*

*Above case is affirmed in CIT vs. Krishak Bharati Cooperative Ltd. (2017) 80 taxmann.com 326(DEL HC)*

*(ii) B.S. Sangwan vs. ITO [2015] 53 taxmann.com 402 (Delhi)*

*"where specific addition sought to be made as per SCN but ultimately directed to conducted enquiries on the issue thus the basis is changed which is not allowable u/s 263."*

*(iii) Electra Paper and Board Pvt. Ltd. vs. Income Tax Officer in ITA No. 222/Chd./2021*

*"8 In other words, the twin conditions mandated under Rule 11U(b) for a balance sheet on the basis of which valuation is to be made i.e.*

- (i) The Balance Sheet should be drawn of the date of valuation; and*
- (ii) The Balance Sheet should be audited by the Auditors of the Company appointed under the provisions of the Companies Act;*

*are satisfied in present case. In our considered opinion, the emphasis is on drawing of balance sheet on the date of valuation. The rule does not mandate that the balance sheet should also be audited on the date of valuation. Even if the balance sheet is audited subsequently, it would be sufficient compliance of the provisions of Rule 11U(b). However, in spirit and purpose of the provisions of rule defining 'balance sheet ', there should not be material change in the financials of the Balance Sheet after audit*

*so that it may not lose the tenacity and relevance of 'balance sheet on the date of valuation'.*

*9. In light of the facts discussed above, we hold that the balance sheet on the basis of which FMV of shares allotted on 31.3.2016 was determined by the assessee falls within the meaning of 'Balance Sheet' as envisaged under Rule 11U. Hence, we find no error in the FMV of shares determined by the assessee on the basis of balance sheet drawn on 31.3.2016."*

*18. Hence, keeping in view the entire facts and circumstances of the case and the judicial pronouncements mentioned above, we hold that, the order of the ld. PCIT passed u/s 263 cannot be affirmed owing to the reasons of, i) the order is passed beyond jurisdiction, ii) the order passed is beyond the limited scrutiny, iii) the order has been passed on the issues for which no show cause notice has been issued, iv) the issues flagged by the ld. PCIT have examined by the AO, v) the decision of the ld. PCIT determining the difference on the value of the shares at Rs.1.50 per share is against the provisions of the Act as the assessee can resort to the method of valuation as per DCF/NAV as per Rule 11UA at their discretion".*

10. As the facts narrated above in the present case before us, are identical to the facts of the aforesaid case wherein the Co-ordinate Bench after following various judgments and Hon'ble Orissa High Court, Madras High Court, Kolkata High Court and jurisdictional High Court has held that Ld. PCIT exceeded his jurisdiction by raising fresh issue which was not part of the notice issued for initiation of proceedings u/s 263 of the Act. Accordingly, we hold that assessment order is not erroneous and prejudicial to the Revenue on the issue of verification of expenses which was not raised in the show cause notice dt. 13.02.2025 issued by ld. PCIT.

11. With respect to other issue of violation of provisions of section 269T of the Act liable for levy of penalty u/s 271E of the Act, it is observed that the assessee in terms of the tri- party agreement executed between the lender M/s New Delhi Exports House and Smt. Kusum Uppal partner of M/s New Delhi

Exports House, made a journal entry of transfer of outstanding balance of loan amount in its books of accounts in the name of M/s New Delhi Exports House to the ledger account of Smt. Kusum Uppal. It is further observed that the Ld. PCIT has alleged that this transaction is in violation of provisions of section 73 and section 185 of the Companies Act, 2013. Though the assessee has not violated any provision of the Companies Act, 2013 however, in the income tax proceedings, the same could be made basis to hold the assessment order as erroneous and prejudicial to the interest of revenue. Further the assessee claimed that M/s New Delhi Exports House is a firm in which Director of the assessee company are partners which includes Smt. Kusum Uppal. As per the Companies Act, loan can be taken from the Directors or their entities in which they are interested and such loan came under the exception categorically and therefore, there is no violation of section 73 of the Companies Act. With respect to the violation of section 185 of the Companies Act, it is observed that assessee company has taken loan from M/s New Delhi Exports House which was transferred in name of Smt. Kusum Uppal and, therefore, it is not a case of advancing the loan rather through journal entry, outstanding loan was transferred from account to another account. Thus, the provisions of section 185 of the Companies Act, 2013 are not at all attracted.

12. Regarding initiation of proceedings u/s 263 for violation of provisions of section 269T of the Act, the ***Hon'ble Delhi High Court in the case of CIT v. Noida Toll Bridge Co. (supra)*** has held as under:

*"Where the Tribunal had noticed that (i) the transaction was by an account payee cheque, (ii) no payment on account was made in cash either by the appellant or on its behalf, no loan was accepted by the appellant in cash, and (iv) the payment of Rs 4.85 crores was made by the appellant through ILFS, which held more than 30 per cent, of the paid-up capital of the appellant. by journal entry in the books of account of the appellant by crediting the account of ILFS*

*Held, that the provisions of section 269SS of the Income-tax Act, 1961, were not attracted and penalty could not be imposed"*

13. Similarly, the Hon'ble Jurisdictional High Court in the case of ***Worldwide Township Projects Ltd. [2014] 367 ITR 433***, the Hon'ble jurisdictional High Court held as under:

*"A plain reading of section 269SS of the Income-tax Act, 1961, indicates that the import of the provisions is limited. It applies to a transaction where a deposit or a loan is accepted by an appellant otherwise than by an account payee cheque or an account payee draft. The ambit of the section is clearly restricted to a transaction involving acceptance of money and not intended to affect cases where a debt or a liability arises on account of book entries. The object of the section is to prevent transactions in currency. This is also clearly explicit from clause (i) of the Explanation to section 269SS of the Act which defines loan or deposit to mean 'loan or deposit of money. The liability recorded in the books of account by way of journal entries, i.e., crediting the account of a party to whom monies are payable or debiting the account of a party from whom moneys are receivable in the books of account, is clearly outside the ambit of the provisions of section 269SS of the Act because passing such entries does not involve acceptance of any loan or deposit of money."*

14. The Co-ordinate Bench of the Tribunal in the case of ITO vs. Dinesh Jain (supra) has held that the provisions of section 269T are applicable where the actual repayment is loan is made and merely by making the book entry it cannot be said that there is a repayment of loan. The relevant observations of the Co-ordinate Bench are as under:

*"9. Even on the merits, it is not a fit case for levy of penalty under section 271E. Penalty under section 271E is leviable if a person repays any loan, otherwise, than in accordance with provisions of section 269T. As per section 269T no person shall repay the loan otherwise, than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan. Now in this case admittedly the appellant has transferred the loan by way of journal entry to his wife. Therefore, the question is whether there is violation of section 269T so as to penalise the appellant as required under section 271E, When the appellant has transferred the loan from himself to his wife by way of journal entry, it is only the substitution of one debtor by another debtor. So far as creditors, i.e., MGF Developments Ltd. is concerned, it has not received any amount and since the creditors has not received any amount, it cannot be said*

that there is a repayment of loan. Section 269 would come into play only when there is actual repayment of loan. Merely because loan is assigned by the appellant to his wife by way of journal entry, it cannot be said that there is a repayment of loan, otherwise, than by account payee cheque or account payee bank draft, so as to penalise the appellant under section 271E. In view of these facts, we entirely agree with the learned Commissioner of Income-tax (Appeals) that even on the merits the appellant is not liable to be penalised under section 271E. We, therefore, find no justification to interfere with the order of the learned Commissioner of Income-tax (Appeals) and the same is sustained.  
10. In the result, the Revenue's appeal is dismissed.

(Underlining ours)

*Thus, the Hon'ble Jurisdictional High Courts and Hon'ble jurisdictional ITAT has consistently held that Section 269SS/T is not applicable in the case of credit by way of journal entry or book entry. In view of the facts and law, we pray before your Honors to set aside the order of Ld. CIT on the present issue.*

15. It is further observed that the Assessing Officer in terms of notices issued from time to time, made detailed enquiry and verification of the issues on which the case was taken up for scrutiny which are as under:

- (a) High Value receipt of repayment of loan other than through banking channel.
- (b) High liabilities as compared to low income of receipts
- (c) High increase unsecured loan during the year
- (d) High commission income and loan at profit.

16. It is further observed that the AO in the assessment order at para 5, after verifying all the submissions has made following observations:

*“5. During the course of assessment proceedings, the assessee was asked to clarify the reasons on which the instant case was selected for scrutiny. The submission of the assessee on various dates, wherein the assessee clarified and explained the reasons for selection of scrutiny.*

17. From the perusal of the above, it is observed that the AO has reached to conclusion that the income declared by the assessee is correct after making proper enquiry and verification of the issue for which the case taken up for scrutiny. The

Hon'ble Delhi High Court in the case of in the case of Sunbeam Auto Ltd. (supra) and the Hon'ble Bombay High Court in the case of CIT vs Gabriel India Ltd. (supra) has held that under section 263, the ld. PCIT cannot ask to make enquiries in the manner he likes, once it is established that the Assessing Officer has made the enquiries and verifications, they may be in the opinion of Ld. PCIT are inadequate however this alone cannot be the reason for holding the assessment order as erroneous and prejudicial to the interest of the Revenue.

18. The Co-ordinate Bench of ITAT, Delhi in the case of ***Mukul Rohatgi vs PCIT*** in ***ITA No.2427/Del/2025*** vide order dt. 16.02.2026, has held that once the AO has made the inquiries and investigations and ld. PCIT must bring the material on record to point out what was the error based on which the revisionary powers are exercised by Ld. PCIT. The relevant observations as contained in para 43 of the order are reproduced as under:-

*43. "On each of the issues discussed above i.e., investment made by the assessee in various funds whether these are equity oriented funds or not and liable to capital gain tax under the head 'long term capital gain' to be taxed under Section 112A of the Act or normal provisions under the head 'short term capital gain', secondly, the nil ALV or lower ALV as discussed in regard to above stated properties, in the above part of this order vide Paragraph No. 07 to 40, and non-initiation of penalty proceedings under Section 271C of the Act, whether these attract the revision provisions under Section 263 of the Act or not. We note that the learned PCIT was of the view that the investment made by the assessee in funds was not equity oriented funds and once these are not equity-oriented funds, these are not to be taxed under the special rate of taxation under Section 112A of the Act. We note that the assessee could explain before us that the funds are equity-oriented funds and we have given a clear finding in paragraph 6 of this order. We also find that the PCIT has not given a finding or has not observed that how these funds are not equity oriented funds and without that, the PCIT cannot invoke the revisionary power. We are of the view that consideration of the PCIT as to whether an order is erroneous insofar as it is prejudicial to the interest of the Revenue must be based on materials on record of the proceedings called for by him. If there is no such material on record on the basis of which it can be said that the PCIT acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without justification. In similar circumstances, Hon'ble Bombay High Court in the case of CIT Vs. Gabriel India Ltd. (199) 203 ITR 108 (Bom) held the*

*similar views. We are of the view, though, it is not expected of the PCIT to record his final conclusion in the order passed in revision proceedings under Section 263 of the Act, but, he must, at least indicate in his order how the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. The revisional power under Section 263 of the Act is not meant to be exercised to correct every error of fact, but the error must be of such a nature that it is erroneous and prejudicial to the interest of the Revenue. The PCIT, in revisional proceedings under Section 263 of the Act, has no jurisdiction to set aside the order of assessment merely to conduct another Investigation without finding the basis or without any material that the order is erroneous one and also prejudicial to the interest of the Revenue. We noted from the findings of the PCIT, in the present case before us, on various issues that the PCIT has not recorded reason for his conclusion, which is necessary for any quasi-judicial order required to be made by a quasi-judicial authority. The necessary consequence of revision order is that while passing the order revising an order passed by a subordinate authority, the PCIT must record reasons in support of his conclusion that the order is revised being erroneous and that it would be prejudicial to the interest of the Revenue due to such errors. In case the PCIT does not indicate the reasons for invoking the provisions of Section 263, his order cannot be held to be valid. In the present case, the entire material in regard to all the funds and the properties where ALV was questioned by the PCIT, the assessee has produced relevant material and offered explanations in pursuance to the notices issued under Section 142(1) and 143(2) of the Act and, after considering the materials and explanations, the Assessing Officer passed the assessment order and came to a conclusion and accepted the explanation. The mere fact that a different view can be taken, should not be the basis for an action or invocation of Section 263 of the Act. Such action, if taken, cannot be held to be justified because the material was there in the assessment record and the said material was considered by the Assessing Officer and a particular view was taken. This view of ours is supported by the decision of Hon'ble Supreme Court in the case of *The Malabar Industrial Co. Ltd. Vs. CIT (2000) 243 ITR 83 (Supreme Court)*.”*

19. The Hon'ble Supreme Court in the case of ***Pr. CIT vs Shreeji Prints (P.) Ltd.*** reported in **[2021] 130 taxmann.com 294 (SC)** has held as under:-

*“Section 69, read with section 263, of the Income-tax Act, 1961 - Unexplained investments (Unsecured loans) - Assessment year 2013-14 - Assessee-company had received unsecured loans from two different companies - Commissioner noting that said loans were shown as investment in assessee's name in balance sheet of respective companies exercised revisionary powers and passed an order without giving an opportunity to assessee of being heard, invoking Explanation 2 to section 263 - High court by impugned order held that since Assessing Officer has made inquires in details and accepted genuineness of loans receive by assessee, such view of Assessing Officer was a plausible view and same cannot to be considered erroneous or prejudicial to interest of revenue - Whether SLP against said impugned order was to be dismissed – Held, Yes”*

20. The Hon'ble Supreme Court in the case of **PCIT vs NYA International**, while dismissing the SLP filed by the Revenue in Special Leave Petition (civil) Diary No.1845/2025 the Hon'ble Court vide order dated 17.02.2025 has observed as under:-

*“Delay condoned.*

*This special leave petition is misconceived and is completely contrary to the law pertaining to Section 263 of the Income Tax Act, 1961.*

*The notice under Section 148 of the 1961 Act referred to two reasons. The first reason was with regard to non-declaration of the account in ING Vysya Bank with a credit of Rs.70,13,43,319/- (Rupees seventy crores thirteen lakhs forty three thousand three hundred and nineteen only). The second reason was with regard to the claim of deduction under Section 10AA of the 1961 Act.*

*It is accepted that a reassessment order under Section 148 read with Section 143(3) of the 1961 Act was passed. Addition was not made for the first reason.*

*In the given facts, the assertion by the Revenue that inquiry and verification in re the bank account was not made is ex-facie incorrect. This being the position, this is not a case of failure to investigate, but as no addition was made, the Revenue can argue that it is a case of wrong conclusion and decision in the re-assessment proceedings. Therefore, to exercise jurisdiction under Section 263 of the 1961 Act, the Commissioner of Income Tax should have examined the merits and only on reaching a finding that the re-assessment order was erroneous and prejudicial to the interest of the Revenue made an addition.*

*This is not a case of 'no inquiry and verification', but as made out by the Revenue, a case of wrong conclusion. The difference between the two situations is clear and has different consequences.*

*This being the position, the High Court was right in dismissing the appeal preferred by the Revenue.*

*The special leave petition is dismissed in the above terms.*

*Pending application(s), if any, shall stand disposed of.”*

21. The **Hon'ble Delhi High Court** in the case of **PCIT vs. Clix Finance India Ltd.** reported in **[2024] 160 Taxmann.com 357 (Delhi)** while concurring to the findings of the Tribunal has observed as under:

*“27. Considering the aforesaid judicial pronouncements, it can be safely concluded that inadequacy of enquiry by the AO with respect to certain claims would not in itself be a reason to invoke the powers enshrined in Section 263 of the Act. The Revenue in the instant case has not been able to make out a sufficient case that the CIT has exercised the power in accordance with law. Rather, in our considered opinion, the facts of the case do not indicate that the twin conditions contained in Section 263 of the Act are fulfilled in its letter and spirit.*

*28. Notably, the ITAT, while making a categorical finding that the CIT had failed to point out any definite or specific error in the assessment order, has satisfactorily explained both the claims in question in Paragraph 8.2 of its order, which reads as under:-*

*"8.2 In the Impugned Order, the Ld. Commissioner of Income Tax-IV, Delhi held that the AO had not examined the aforesaid two issues properly and, therefore, set aside the issues for further inquiries to be conducted by the AO. As regards the first issue is concerned, we note that out of total provision of Rs. 1114.68 lacs, a sum of Rs. 7,60,76,105/- was suo moto added back in the computation of income and a further sum of Rs. 73,46,160- was disallowed by the AO in the original assessment order dated 30.3.2005. Therefore, out of Rs. 1114.68 lacs, Rs. 834.22 lacs already stood disallowed in the original assessment order. The balance amount represented actual write off which was palpably clear from page 2 of the impugned order itself. No deduction on account of any such provision was, therefore, allowed to the assessee. Hence, there is no error or prejudice to the interest of revenue. As regards second issue it was noted that interest rate swap was an actual loss and only the net loss of Rs. 114.05 lacs after setting of gain of interest rate swap was claimed as deduction. However, we find that both these issues were duly examined by the AO vide Questionnaire dated 2.11.2004 (Page 1-2 of the Paper Book) to which replies dated 9.12.2004, 20.12.2004 and 6.1.2005 (Page No. 3-39 of Paper Book-1) were furnished and, therefore, the finding of the Ld. CIT that the issues were not examined properly was not correct. Even the Ld. CIT has not pointed out the definite and specific error in the original assessment order and observed that the inquiry made by the AO was inadequate or improper without first pointing out the error in the original assessment order passed by the AO, particularly because both the aforesaid issues were duly examined at the stage of the original assessment proceedings, hence, the impugned order is beyond jurisdiction, bad in law and void-ab-initio."*

*29. It is discernible from the aforesaid findings of the ITAT that both the claims were duly examined during the original assessment proceedings itself and neither there was any error nor the same was prejudicial to the interests of the*

*Revenue. Thus, the findings of fact arrived at by the ITAT do not warrant any interference of this Court.*

**30.** *So far as the reliance placed by the CIT on Umashankar Rice Mill is concerned, the same is misplaced, particularly in light of the insertion of Explanation 2 to Section 263 of the Act, brought in place by the Finance Act, 2015. The said amendment markedly specifies various conditions to exercise the authority vested in the Commissioner under Section 263 of the Act, leaving no ambiguity in the interpretation of the said provision.*

**31.** *In view of the aforesaid, the appeal preferred by the Revenue is dismissed alongwith the pending application(s), if any."*

22. In the instant case, ld. CIT(A) invoked the provisions of Explanation-2 of section 263 which conferred power to the PCIT/CIT to give directions to the AO for making fresh examination and verification, which is inserted by Finance Act, 2015 in Section 263 with effect from 01.06.2015. As per this Explanation, to declare an order to be erroneous in so far as it is prejudicial to the interest of the revenue, if in the opinion of appropriate authority- (i) the order was passed without making inquiries or verifications which should have been made; (ii) the order is passed allowing any relief without inquiring into the claim; (iii) the order is not in accordance with any direction or instructions etc. issued by the Board u/s 119; or (iv) the order was not in accordance with binding judicial precedent.

23. The Hon'ble Delhi High Court in CIT V/s Vikas Polymers (supra), further observed that as regards the scope and ambit of the expression "erroneous", Hon'ble Bombay High Court in CIT vs. Gabriel India Ltd. (supra) held with reference to Black's Law Dictionary that an "erroneous judgment" means "one rendered according to course and practice of Court, but contrary to law, upon mistaken view of law; or upon erroneous application of legal principles" and thus it is clear that an order cannot be termed as "erroneous" unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as "erroneous" by the

Commissioner simply because, according to him, the order should have been written differently or more elaborately. The Section does not visualize the substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is not in accordance with law. Further, each and every erroneous order cannot be the subject matter of revision because the second requirement also must be fulfilled. There must be material on record to show that tax which was lawfully leviable has not been imposed as held in Gabriel India Ltd.(supra). However, the expression "prejudicial to the interest of the revenue", as held by the Supreme Court in the Malabar Industrial Co. Ltd. (supra), is not an expression of art and is not defined in the Act and, therefore, must be understood in its ordinary meaning. The Commissioner's exercise of revisional jurisdiction under the provisions of Section 263 cannot be based on whims or caprice. It is trite law that it is a quasi-judicial power hedged in with limitation and not an unbridled and unchartered arbitrary power. The exercise of the power is limited to cases where the Commissioner on examining the records comes to the conclusion that the earlier finding of the Income-tax Officer was erroneous and prejudicial to the interest of the revenue and that fresh determination of the case is warranted. There must be material to justify the Commissioner's finding that the order of the assessment was erroneous insofar as it was prejudicial to the interest of the revenue.

24. The judgements cited by the revenue are on the issue where no enquiry was made by the AO or lack of enquiry on the part of the assessee or where AO has raised the issue but was not replied by the assessee to the satisfaction of the appropriate authorities. In the instant case, Ld. Pr. CIT invoked the Explanation 2 section 263 of the Act to hold the order passed is without making enquiries and verification. However, as observed above in the present case, detailed enquiries

and verifications were made on various occasions and after considering the submissions of the assessee on every occasion, AO accepted the returned income.

25. In view of the above facts and circumstances of the case and discussion made, we are of the considered opinion that the AO has passed the assessment after making of proper enquiry and verification which should have been done in due course of assessment proceedings and, therefore, the assessment order is neither erroneous nor prejudicial to the interest of the Revenue more particularly when assessee has made violation of section 269T of the Act and, therefore, we are quashed the order passed u/s 263 of the Act. All the grounds of appeal raised by the assessee are thus, allowed.

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

Order pronounced in the open Court on 14.05.2026.

*Sd/-*

**(SUDHIR KUMAR)  
JUDICIAL MEMBER**

*Sd/-*

**(MANISH AGARWAL)  
ACCOUNTANT MEMBER**

Dated:14.05.2026  
*PK/Sr. Ps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI