

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH**  
**BENCH 'A' CHANDIGARH**

**BEFORE: SMT. DIVA SINGH, JUDICIAL MEMBER &**  
**SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No. 453/CHD/2022**  
Assessment Year. : 2017-18

Shri Gurdeep Singh, Badri Nagar, Paonta Sahib, Sirmour (HP).	बनाम VS	The PCIT, Chandigarh.
स्थायी लेखा सं./PAN /TAN No: AARPN5979L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Nikhil Goyal, Advocate &  
Shri Ashok Goyal, C.A.

राजस्व की ओर से/ Revenue by : Shri Vivek Nangia, CIT-DR

तारीख/Date of Hearing : 31.10.2022  
उद्घोषणा की तारीख/Date of Pronouncement : 23.11.2022

**आदेश/ORDER**

**PER DIVA SINGH**

The present appeal has been filed by the assessee wherein the correctness of the order dated 26.03.2022 of Pr.CIT, Chandigarh-1 pertaining to 2017-18 assessment year is assailed on the following grounds :

1. Whether Ld. PCIT has erred in exercising jurisdiction under Section 263 of the Act, where specific inquiry was already conducted by the Ld. AO?
2. Whether on facts and circumstances of the case and in law the Ld. CIT has exceeded legislative jurisdiction under Section 263 of the Act, and the order passed is bad in law?

*3. That the Ld. CIT has erred in passing an order under Section 263 of the Act in the absence of any erroneous position prejudicial to the interest of revenue, in the original assessment order passed by Ld. ITO under Section 143(3) of the Act.*

*4. That Ld. CIT has erred in substituting an alternative view as against a view already adopted by the Ld. AO at the time of assessment proceedings under Section 143(3) of the Act.*

*5. That the Appellant craves leave to add, amend, or alter the grounds of appeal before the appeal is finally disposed off.*

2. The assessee as per record is the sole proprietor of M/s Sunrise Steels which was stated to be engaged in the trading of MS Bar, Angle, Patti etc. A perusal of the record shows that the assessee filed its return on 18.10.2017 which was accepted by the AO vide his order dated 27.12.2019. The ld. PCIT set aside this order passed by the AO u/s 143(3) of the Act exercising powers u/s 263 of the Act. This order is under challenge in the present proceedings.

3. The ld. AR inviting attention to the record submitted that he would be able to show on the basis of material available on record that the AO before the passing of the order had made complete enquiries. The order passed by ld. PCIT was assailed on the grounds that it has been passed without looking at the assessee's records.

3.1 For the said purpose, attention was invited to the Paper Book No.I wherein the queries raised by the AO and the detailed

replies to the notices issued to the assessee by the AO in the course of assessment proceedings are attached. The replies made available by the assessee to the AO alongwith the explanations also available in the Paper Book were heavily relied upon. The said Paper Book, it was submitted, also contains the copy of the Show Cause Notice dated 14.03.2022 issued to the assessee by the ld. PCIT. Relying upon these documents available in the Paper Book it was submitted that the ld. PCIT is presumed to have gone through the same. Reading from the order, it was submitted that he fails to show what was the shortcoming in the enquiries carried out by the AO. On a reading of the impugned order, it was submitted, no fact or evidence has been set out therein to justify holding that the order passed by the AO is erroneous as well as prejudicial to the interests of the Revenue. The exercise of power by the ld. PCIT, accordingly, was assailed to be arbitrary. It was argued that it does not satisfy the twin conditions which the ld. PCIT is bound to satisfy.

3.2. Before proceeding to address the issues further, attention was invited to paragraph 3 of the impugned order to show that the notice sent by the ld. PCIT has not been replied to by the assessee. It was submitted that as per his instructions, the

notice was sent to the assessee's Chartered Accountant who was having some health problems on account of which fact, the notice(s) received by him were never communicated to the assessee.

3.2.1 However, it was submitted that the assessee is not pleading lack of notice nor seeking an opportunity of being heard as on the basis of material available on record, he would be able to demonstrate that the order passed by the ld. PCIT is *de-hors* the facts and record.

3.3 Referring to the copy of the Show Cause Notice at pages 20 to 28, it was submitted that infact more or less the SCN is reproduced in the impugned order itself. Carrying the Bench through the impugned order, attention was invited to the facts as summarized in para 4 which were taken from the replies of the assessee already on records. This information is captured by the ld. PCIT in the Show Cause Notice as well as the impugned order which is month-wise details of sales and then proceeds to conjecture instead of referring to some hard fact or information. It was submitted that the ld. PCIT appears to be making out a case as though by stating facts on record some conjectures can be treated to be as though some fresh fact is noticed by him. Carrying the Bench through the replies made by

the assessee to the AO, it was submitted that these facts flagged by the ld. PCIT all along had been noticed by the AO. They were questioned. The replies were provided by the assessee to the AO in response to the queries raised by him in the course of the assessment proceedings. These facts from the record, it was submitted, the ld. PCIT has more or less extracted from the replies made available by the assessee to the AO in the course of assessment proceedings. It was submitted that nothing new is noticed by ld. PCIT. Specific attention was invited to Paper Book page 19 which was the continuing reply of the assessee to notice u/s 142(1) dated 13.12.2019.

3.4 Reading from the order, it was submitted that the ld. PCIT has taken note of the fact that the case was selected for complete scrutiny through CASS for a specific purpose. Thus, it was submitted that it was not a new fact that there were cash deposits during the demonetization period. The AO was conscious of this fact and even the ld. PCIT was very well aware of the fact why the AO was looking into it. This fact, it was submitted, would be evident from para 1 of the impugned order itself wherein the ld. PCIT has noticed that the case at the assessment stage was selected for Complete Scrutiny through CASS to **verify the abnormal increase in cash deposits during**

**the demonetization period during the year as compared to the pre-demonetization period.**

3.5. The ld. AR further invited attention to para 4.1 of the impugned order so as to point out that the ld. PCIT was aware that the AO had made specific enquiries as he has noticed in his order that the AO vide specific question No.10 sought month-wise details of sales and purchases in a specific format. The details required the assessee to clearly depict whether the payment was received/paid by cash or otherwise. Quoting from the impugned order, it was submitted that the ld. PCIT has also noticed that the AO required the assessee to further show *“in case there is a sharp variation in the above figures of the current year as compared to the preceding years figures, please explain the reason for such variations.”* The ld. PCIT also took note of the fact that vide question No. 11 and 12, the AO before the passing of the assessment order had also required the assessee to provide the following details :

*Que No.11 : Month-wise cash sales and cash deposits from 01.04.2015 to 31.03.2016.*

*Que No.12 : Month-wise cash sales and cash deposits from 01.04.2016 to 31.03.2017. ”*

3.6. However, on going through the replies available in the assessment folder the ld. PCIT it was submitted that either the

ld. PCIT misunderstanding the facts or arbitrarily in para 4.2 has held that *“the assessee had selectively replied to the questions posed by the AO”*. On a reading from para 4.2 of the order, it was pointed out that infact the ld. PCIT has herself selectively read the record as repeatedly the assessee is castigated for not providing the data to the AO pertaining to the preceding assessment year i.e. 2016-17 assessment year for a comparative analysis. This shortcoming, it was submitted is repeatedly pointed out by the ld. PCIT. Ignoring the facts, the ld. PCIT holds that the AO was required to make an analysis of the cash receipts before and after demonetization with respect to the previous financial year. Reading the conclusion of the order, it was submitted that the ld. PCIT has incorrectly on facts held that the AO has passively accepted the assessee's submission. Inviting attention to the replies made available to the AO in the course of the assessment proceedings which were available to the ld. PCIT also, it was submitted that the information made available was many a times required to be further explained. The assessee, it was argued, had specifically replied that this was the first year of setting up of this business for the assessee and hence admittedly there was no historic data available for comparative analysis which could have been made available by the assessee. Accordingly, it was his

submission that it is possibly a cut paste order where facts of some other case are over-lapping.

3.7 Over and above the written submissions, reliance has also been placed on the written synopsis para 1.11. Same is reproduced hereunder :

*1.11 As per the contention of the Ld. Pr. CIT that the Ld. AO failed to requisition and examine the cash book of the preceding year i.e., F.Y. 2015-16 and make a comparative analysis of the cash-in-hand and cash receipts vis-a-vis FY 2016-17, " All the questions that required the assessee to provide the data pertaining to the preceding year i.e., A.Y. 2016-17, were ignored by the assessee." It is very respectfully submitted that the Assessee started the business of M/s Sunrise Steels during this F.Y. 2016-17 itself which is why no comparative analysis could not have been made as to previous years.*

3.8 Referring to para 4.3 of the order, it was submitted that the ld. PCIT has alleged that the AO has omitted to examine the fact that within a span of 39 days i.e. in the month of October, 2016 and upto 08.11.2016 the assessee allegedly made huge cash sales i.e. amounting to Rs.55,07,396/- as against total sales of Rs.1,01,83,375/-. Referring to the record wherein replies made to the AO were available on record. He submitted that this tabulated chart also had been made available by the assessee to the AO. Thus, by mere reproduction of the same in the Show Cause Notice or thereafter in the impugned order, it was submitted, that the ld. PCIT cannot conclude that the order suffers from any error. The conjecture that comparative analysis was ignored by the AO, it was submitted, was contrary to fact



as this was the very first year of assessee's business. Thus, once these facts were evident on record and made available by the assessee to the queries raised by the AO as he had required the assessee to give the required information nothing much turns. The said response on record has been ignored by the ld. PCIT. It was urged that the reply of the assessee accepted by the AO must be shown to be erroneous or prejudicial to the interests of the Revenue. No such effort has been done.

3.9 It was argued that the ld. PCIT cannot selectively ignore the facts brought on record. The fact that there were huge sales in the month of October should have been seen considering the replies to the AO that there were corresponding depletion in the stock of the assessee and consequently heavy purchases stood reflected in contemporaneous evidences available for the month of November. These facts, it was submitted, were all comprehensively enquired into by the AO and explained and demonstrated by the assessee to his satisfaction by the replies available on record. These replies, it was argued were available to the ld. PCIT and she was duty bound to upset the same. The impugned order, it was submitted, should have been passed after looking at complete records available. It was argued that the order has been passed

ignoring the information and facts on record. Allegations made in sub-paras (a) to (m) from pages 5 to 8 of the impugned order, it was submitted, are basically conjectures and surmises. These conjectures, moreover, also are mutually exclusive to each other and cannot exist simultaneously on record. Accordingly, in the absence of any evidences, the allegation that a huge cash sales in the specific period was manufactured was strongly objected to. Para 1.12 and 1.13 relied upon in the synopsis filed are reproduced hereunder for completeness:

*1.12. Regarding the claim of the Ld. Pr. CIT that the Assessee had shown increased cash sales in the period from 01.10.2016 to 08.11.2016 in order to manufacture cash in hand so as to cover up the cash deposits made by him during demonetization from his other hitherto undisclosed income, it is stated that the Assessee's nature of business is predominantly cash oriented and moreover, the Assessee has already submitted his reply with respect to this query raised vide final show cause notice dated 13.12.2019 having DIN- ITBA/COM/F/17/2019-20/1022288651(1), (Refer Page No. of Paperbook -2), which is as follows:-*

- *During the month of October, the Assessee deposited Rs. 37,03,000/- in the Bank which was received as against the regular cash sales of Rs. 55,07,396/-.*
- *It is clearly evident from the trend of purchase that the sale was for the period prior to demonetization because when the stock was low during the period of October due to sale in the prior months there was immediate increase in purchases in November.*
- *All the details of Date wise Purchase, Sales, Withdrawal from bank and Deposit in Bank has already been submitted.*

*1.13. As regards the claims that the Assessee had not furnished his sales book and cash-in-hand books prior to 01.10.2016 and after 31.12.2016, it is submitted that the month-wise sales data and cash deposits have already been furnished. Further, the Ld. Pr. CIT contended that the use of the term "cash-in-hand" for cash sales, and "cash-in-hand book" for the cash book expose the Assessee's manipulation of cash-in-hand in his books of accounts. This is merely a conjecture and surmise on part of the Ld. Pr. CIT without appreciating the facts on record."*

*(emphasis supplied)*

3.10 It was further submitted that the allegation of the ld. PCIT that the Sale Book made available was to be discarded was arbitrary. It was submitted that without bringing any valid reason on record, the observations are at best mere prejudices. Calling the Cash Book questionable because of the nomenclature used by the assessee as 'cash in hand' was also strongly objected to. The attempt to arouse a suspicion by these hyper critical prejudices was strongly objected to. The PCIT's action of ignoring the facts that the evidences of the withdrawals made by the assessee from the specific bank accounts in the specific period were facts on record which cannot be brushed aside. The conduct of the assessee by virtue of deposits and withdrawals from the bank account, it was argued are facts set in stone. These are backed by sufficient evidences, facts and explanations. The action of the ld. PCIT to dismiss these on pure conjectures and surmises was strongly objected to. To further hold assessee's questionable on the grounds of prudence of a businessman, it was submitted, is again a conjecture. The well settled proposition that the AO cannot sit in the arm chair of a businessman to dictate how a prudent businessman should act was pressed in. Similarly, it was submitted that the same analogy would apply to the ld.

PCIT as it is not appropriate for the said authority to dictate how a prudent businessman should conduct his affairs. Notwithstanding the objection that it is not for the ld. PCIT to question, it was submitted that on this also, there was an explanation available to the AO as the AO had required the assessee to explain the facts. The ld. PCIT, it was submitted, could have easily discovered the explanation from the replies available on record. Thus, it was argued that the impugned order was passed without looking at the record and the assessment order was passed after making all due enquiries. Accordingly, the allegations that the records of the assessee were 'manufactured' was strongly objected to.

3.11 Further, referring to the allegations addressed in the Show Cause Notice found recorded in the impugned order also, the explanation of the assessee that the cash withdrawal was on account of construction contemplated, it was submitted, was also supported by an Affidavit. The explanation and the Affidavit has been discarded on the specious allegation that "*construction could not have been carried out in thin air*". The reply that construction plans to be carried out on land available on lease fell through due to dispute, it was argued was selectively ignored by ld. PCIT. For ready reference, over and

above the arguments, the written reply of assessee relied upon is reproduced :

*“1.14 The Ld. Pr. CIT in his order u/s 263 of the Act mentioned that "that the assessee had made cash withdrawals from his CC Accounts despite his claim of availability of a huge cash-in-hand against the so-called cash sales." He contended that why would a businessman draw huge from his cash credit accounts if he is sitting on such huge cash-in hand. "The pattern of cash withdrawals from the CC Accounts against the availability of such huge cash-in-hand on different dates thus make no rational business sense." It is hereby submitted that the Assessee has already furnished his reply stating that the said money was withdrawn for the purpose of constructing teen sheds on the land which was taken on lease. The construction work was more of Labour intensive which is why the money was withdrawn in piece meal on estimation basis but due to some dispute with the land owner the deal was not finalized and the said money was then deposited back in the bank account.”*

*(emphasis supplied)*

3.12 Similarly, the reply of the assessee in regard to the receipt of cash from debtors amounting to Rs.1,87,747/- it was submitted, was discarded arbitrarily by the ld. PCIT ignoring the facts and explanations on record. It was argued that the AO had also enquired into the same. Reply dated 16.09.2019 was relied upon. It was argued that supporting sale bills/vouchers were made available and were placed on record. It was his submission that the fact that these were provided and shown to AO is not disputed by the ld. PCIT also. Paper Book available on record was heavily relied upon. Addressing para 6 of the order, it was submitted that the ld. PCIT travelled beyond the demonetization period to further hold that the subsequent

period was not enquired into by the AO. For ready reference, reply filed in the present proceedings is extracted hereunder :

*1.15. As against another contravention of Ld. Pr. CIT regarding no inquiries or verification being conducted in respect of the Assessee's claim that cash amounting to Rs. 1,87,747/- being received from debtors, it is submitted to your goodself that the said query was raised by the Ld. AO vide notice u/s 142(1) of the Act dated 16.11.2019 against which the Assessee has also submitted his reply stating that "it is received from the debtors to whom credit sales was made and was duly shown in cash book date wise and the summary of same is being attached herewith"*

3.13 Similarly in para 7, it was submitted, the ld. PCIT travels to the household withdrawals and questions that the AO has not looked into them. Reply of the assessee available was relied upon as the issue also stood fully enquired into by the AO. The relevant para quoting the Objection of the assessee relied upon is extracted hereunder for completeness :

*1.17. Also, the Ld. Pr. CIT mentioned that no enquiries were made by the Ld. AO so as to ascertain the source of cash deposits made by the Assessee in his savings bank account No. 1122844397 with SBI and as well as no enquiries were conducted to verify the claim of the Assessee regarding his contribution of Rs. 10,000/- p.m. only towards the household expenses. It is hereby submitted that Ld. Pr. CIT has exceeded his jurisdiction in raising this question, he should not act as the Assessing officer as his duty was just to Re-do the Assessment Order.*

3.14 In para 8, it was submitted that the ld. PCIT has extracted the ordersheets of the assessment proceedings and in para 8.1 has concluded that the first reply of the assessee on 23.12.2019 has been accepted within three days. The said objection was strongly objected to. The assessment proceedings, it was submitted, was an ongoing proceeding where repeatedly replies

are being given by the assessee. These are faulted by the AO and further explained by the assessee. For ready reference, the written submissions relied upon are extracted hereunder for completeness :

*1.16 Against the contravention laid down by the Ld. Pr. CIT that :-*

*"It is evident from the above details that the notices issued by the assessing officer were not complied by the assessee. It was only on 23.12.2019, that the "FIRST REPLY" was actually submitted by the assessee. The merit of the given reply has already been discussed in the foregoing paragraphs. The assessing officer completed the assessment on 27.12.2019, i.e., within 3 days of the submission of the assessee's reply, merely by completing the formality of placing assessee's incomplete reply on record; by "test checking" the books of accounts, bills etc., and without conducting any worthwhile independent enquiries."*

*It is hereby submitted that the document which was furnished as a reply to Notice u/s 142(1) of the Act dated was named as "First Reply" but it was not in literal context the first reply which was ever furnished by the Assessee. **The Ld. Pr. CIT has failed to consider the fact that the authorized representative of the Assessee had also attended the personal hearing on 05.02.2019 and on 16.12.2019 and submitted Books of Accounts, bills and vouchers which were duly examined and verified by the Ld. AO.***

*1.18 Further all the verbal queries of the Assessee at the time of Assessment were answered to his satisfaction. Thus, the Assessing officer has formed an opinion after pursuing all the evidence submitted. Therefore, it is not a case of no inquiry or non-application of mind by the Ld. AO.*

*(emphasis supplied)*

3.15 Over and above, it was submitted that the aforesaid conclusion is incorrect on facts as per the recordings in the impugned order by the ld. PCIT herself. The assessee's first reply on record, it was submitted, was not on 23.12.2019 but on 25.02.2019. The assessee on the said date was represented,

participated in the proceedings and information was provided partly. For ready reference, relevant extract relied upon from the impugned order itself reads as under :

*“Assessee's authorized representative Sh. Varinder Bhatia, CA had attended the proceedings and submitted part information and also sought adjournment for 12.03.2019”.*

3.16 Then, again in 06.12.2019, the assessee has provided the following information as per extract of the ld. PCIT herself :

*“Assessee's authorized representative Sh. Varinder Bhatia, CA had attended the proceedings "Books of accounts, bills, Vouchers etc. produced by him, test checked with reference to the documents/ information furnished with reference to Cash deposits. Case discussed.”*

3.17 On 23.12.2019 which has been incorrectly considered by the ld. PCIT as first reply, the assessee has provided the information :

*“First Reply /Details required on cash deposit and as per letter dated 05.12.2019”.*

3.18 It was submitted that thereafter, the assessment order has been passed on 27.12.2019. Accordingly, it was argued that the AO has required the assessee to explain and the explanation made available by the assessee has been faulted with on the grounds that the AO has accepted the same without enquiries. Pointing to the record, it was submitted that as per record available to the ld. PCIT herself, the AO did not accept the assessee's reply and after faulting the assessee, the AO further required the assessee to explain as per his requirement. It was submitted that the assessee



did not understand the specific query of the AO initially and has given detailed reply thereafter accepting the confusion in understanding.

3.19. Accordingly, it was argued that the conclusions drawn in para 8.2 was strongly objected to as being based on pure conjectures and surmises.

3.20 Reading from the order, it was submitted, that the specific decisions relied upon by the ld. PCIT are of no help. Addressing the same, it was submitted, that reliance placed by the ld. PCIT on decisions of the Delhi High Court in the case of DG Housing Projects Ltd. (2012) 343 ITR 329 (Delhi) and Gee Vee Enterprises Vs Additional Commissioner of Income-tax (1975) 99 ITR 375 (Delhi). Addressing the decision of the Hon'ble Delhi High Court in the case of **D.G. Housing Projects Ltd.** (supra) it was submitted that the said decision was infact in favour of the assessee as in the facts of the said decision, the issue for consideration before the Court was the valuation of a property and it was held that it is a matter of opinion and hence, no question of law arose. The extract reproduced in page 11 para 9 of the impugned order, it was submitted, is an extract of the obiter wherein the Hon'ble Court made observations in passing. The said decision, it was argued in no way lends any strength to the credibility of the order passed in

the present proceedings as the ld. PCIT is to bring on record the fact supporting his conclusion that the AO has failed to conduct the investigation. The record on the contrary shows that all enquiries stood made by the AO. In the facts of the present case, it was argued the ld. PCIT has not demonstrated any error on the part of the AO.

3.21 Similarly, addressing the decision again of the Hon'ble Delhi High Court in the case of **Gee Vee Enterprises Vs Addl. CIT 99 ITR 375 (Delhi)** it was submitted that the issue for consideration before the Hon'ble Court was the availability of alternate remedy and when the statutory remedy was available. In these circumstances, considering the facts, the Court held that the invocation of Writ Jurisdiction of the Court was not warranted. Hence, the issue for consideration was entirely distinguishable. The extract reproduced at page 12 of the impugned order, it was submitted, is again an obiter in the said factual background. Hence, the said extract again lends no credibility to the action taken by the ld. PCIT in the present proceedings.

3.22 Addressing decision of another decision of the Hon'ble Delhi High Court relied upon by the ld. PCIT in the case of **Nagesh Knitwear Pvt. Ltd. (2012) 345 ITR 135** it was submitted by the ld. AR that again it is a quotation of the obiter from the decision of the

Hon'ble Delhi High Court in the case of DG Housing Projects Ltd. and does not support the impugned order. The issue for consideration before the Hon'ble High Court in the facts of Nagesh Knitwear Pvt. Ltd. it was submitted, was whether the assessee met and satisfied the requirements mentioned in the proviso to Section 80HHC(3) for claiming deductions. Referring to the said decision it was submitted that the Hon'ble Court therein was considering whether the benefits of export in the facts of the said case was to be allowed or not. Considering the facts of non-enquiry by the AO, the issue was decided in favour of the Revenue. The decision, it was submitted, was given on a question of law where supporting facts were found to have not been provided due to lack of enquiry. Accordingly, the reference to the obiter in **D.G. Housing Projects Ltd.** (supra) relied upon by the Court has no play in the facts of the present case.

3.23 Referring to the decision relied upon in para 11 page 12 to 13 in Smt. **Rampyari Devi Sarogi Vs CIT 67 ITR 84 (S.C)** and **Smt. Tara Devi Aggarwal Vs CIT 88 ITR 323 (S.C)**, it was submitted that these were peculiar cases where due to malafide actions on the part of the respective assessees, their returns had been filed before the non jurisdictional AO who had passed the order in undue haste. Hence, neither the facts are similar nor is

the proposition of law applicable. Reliance by the ld. PCIT, it was submitted, is misplaced.

3.24 The ld. PCIT, it was submitted, has also placed reliance in para 11 on the decision in the case of **Deniel Merchants Pvt. Ltd. Vs ITO** (Appeal No.2396/2017) dated 29.11.2017. It was submitted that reliance thereon is again misplaced. The issue for consideration in the said case before the Court was verification of share application money which was sought to be explained from the books of account and sale of stock etc. and again it has no applicability to the facts of the present case.

3.25 In para 12 the ld. PCIT has placed reliance upon the decision of Apex Court in the case of **Malabar Industrial Co.Ltd. Vs CIT 243 ITR 89 (S.C)**. It was submitted that the Department is relying upon the proposition that AO has accepted entries in the statement of accounts without making any enquiry. The assessee on the other hand is also heavily relying upon the said decision for the proposition that the twin conditions are required to be met and after AO took one of the possible views, it cannot be termed to be an error or a prejudice to the Revenue. It was argued that sufficiency of enquiries cannot be decided by the Revisionary Authority. On facts all enquiries are shown to have been made by the AO, the PCIT without showing what was wrong in accepting the

reply of the assessee cannot substitute his view from the view of the AO.

3.26 Referring to the decision in the case of **CIT Vs Jawahar Battacharjee 342 ITR 249** also relied upon by the ld. PCIT it was submitted that in the facts of the said case, the issue for consideration was the allowance of deduction claimed u/s 54F in the case of earning of capital gains from a penny stock company. The decision proceeded on failure of the AO to apply his mind and was purely factual. Said decision, it was submitted, has no play in the facts of the present case.

3.27 Similarly in the decision in the case of **CIT Vs Raja Industries (2012) 340 ITR 344** of the jurisdictional High Court relied upon by the ld. PCIT, it was submitted that in the facts of the said case, there was a surrender of Rs. 12 lacs made during search carried out u/s 133A which was forming part of the return filed. The AO without carrying out any enquiries instead of calling forth for the surrendered amount to be included in the returned income made an addition of Rs.20,000/-. This fact available on record rendered the order erroneous and prejudicial to the interests of the Revenue. The decision is fact specific.

3.28 Referring to the decision of the Apex Court in the case of **CIT Vs Amitabh Bachchan (2016) 69 taxmann.com 170 (S.C)** it

was submitted that in the facts of the said case, issue for consideration was the Show Cause Notice issued to the assessee in the course of the hearing and it was held to be not a case where the assessee has not participated. Thus, the said decision again has no role to play.

3.29 Referring to the decision of the Hon'ble Himachal Pradesh High Court in the case of **Virbhadrasingh (HUF) Vs PCIT (2017) 86 Taxmann.com 113**, it was submitted that the returned income of the assessee disclosing an income of Rs.10 lacs was revised by a returned income of Rs.2.1 Crore. The AO did not question the facts and accepted the revised return without any queries. It was this order which was held to be erroneous and prejudicial to the interests of the Revenue. Thus, it was argued that the reliance placed on these decisions by the ld. PCIT to support her order was misplaced.

3.30 Referring to para 13 of the impugned order, it was submitted that Explanation-2 added to Section 263 is a deeming fiction and can be invoked on facts where no enquiry has been made. However, in the facts of the present case, it was submitted, the assessee has more than sufficiently demonstrated that there were repeated enquiries by the AO. Replies of the assessee repeatedly are available on record. Thus, it was argued that on facts it was evident

that the satisfaction of the AO before the passing of the order has been arrived at after taking full facts on record and examining the issues. The ld. PCIT on the other hand it was submitted, has not brought any facts or evidence to show that the facts accepted by the AO were incorrect. In the said background he would heavily rely upon following decisions cited before the Bench:

S.NO.	PARTICULARS	PAGE NO.
1.	Commissioner of Income-tax, LTU v. Nuclear Power Corporation of India Ltd. [2022] 138 taxmann.com 332 (SC)	1-2
2.	Commissioner of Income Tax LTU v. Nuclear Power Corporation of India Ltd. Income Tax Appeal No. 1356 of 2017 (Bombay)	3-5
3.	Jiwan Kumar v. Principal Commissioner of Income-tax, Bathinda [2017] 82 taxmann.com 221 (Amritsar - Trib.)	6-10
4.	Commissioner of Income-tax v. Krishna Capbox (P.) Ltd. [2015] 60 taxmann.com 243 (Allahabad)	11-14
5.	Narain Singla v. Principal Commissioner of Income-tax, (Central), Ludhiana [2015] 62 taxmann.com 255 (Chandigarh - Trib.)	15-24
6.	Pawan Kumar v. Commissioner of Income-tax, Karnal [2015] 62 taxmann.com 260 (Chandigarh - Trib.)	25-31

3.31 Referring to the decisions, it was argued that if the ld. PCIT was of the view that the assessment order is erroneous, then he ought to address the specific error in the order itself and not build the case only on conjectures and suspicions. It was his submission that this fact had been specifically noticed by the Hon'ble Bombay High Court in the decision cited and the SLP filed by the Revenue was dismissed by the Apex Court. The decisions cited, it was submitted, are also in support of the proposition that mere

difference of opinion of the PCIT with the view taken by the AO cannot be held to be a valid exercise of power. The distinction drawn on lack of enquiry and no enquiry as repeatedly held by the Benches in the Chandigarh Zone in the case of Narian Singla V PCIT and Pawan Kumar V CIT (cited supra) further followed by the Amritsar Bench in the case of Jiwan Kumar (cited supra) was heavily relied upon.

3.32 Accordingly, addressing the facts, the legal position on the issue, it was submitted that the conclusion has been arrived at in para 13 is a casual exercise wherein ld. PCIT has not been able to demonstrate what were the facts which were incorrectly looked into. No contrary facts, it was submitted, have been referred to by the ld. PCIT based on any enquiry, information or evidence. Moreover, the replies available in the assessment records have not been considered. Accordingly, it was his prayer that the order setting aside proceedings may be quashed.

3.33 Relying upon the written submissions filed before the Bench, attention was invited to notice issued u/s 142(1) dated 05.12.2019 which is available at pages 1 to 5. The specific query raised by the AO, it was submitted, would show that this was not the first Show Cause Notice issued to the assessee. Reference has been made to questionnaire dated 24.01.2019. For ready reference, relevant



notice issued to the assessee by the AO in the course of the assessment proceedings is extracted hereunder :

**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE INCOME TAX  
DEPARTMENT OFFICE OF THE  
INCOME TAX OFFICER ITO NAHAN**

To, Sh. Gurdeep Singh Narang, S/o Sh. Tarlok Singh Narang,, Badri Nagar, Paonta Sahib, Distt. Sirmour 173025,Himachal Pradesh.		
<b>PAN:</b> AARPN5979L	<b>Dated:</b> 05/12/2019	<b>Letter No :</b> ITBA/COM/F/17/2019-20/1021761027(1)

Sir/ Madam/ M/s,

**Subject: Assessment proceedings in your case for the A.Y. 2017-18-Final Show Cause-Regarding-**

Kindly refer to assessment proceedings in your case for the A.Y. 2017-18.

2. You were asked to furnish information/documents vide this office notices u/s 142(1) issued from time to time. But till date you have not complied to any notices. As the case is going to be time barred on 31.12.2019 and keeping in view the principle of natural justice, you are given one more opportunity to show cause as under:-

i) As per the information available you have made cash deposits to the tune of Rs.2,39,00,000/- deposited in SBI and Rs.17,45,000/- deposited in Axis Bank during the year under consideration. Vide this office questionnaire dated 24.01.2019 and subsequent notices issued from time to time, you were asked to provide the nature and details of these cash deposits. In response you have stated that the said information will be submitted later. However, the requisite information has not been received till date. Therefore, you are once again requested to explain the nature and sources of these cash deposits along with corroboratory documentary evidences. You are also required to show cause that in the absence of the desired information/documents, as to why the cash deposits made by you to the tune of Rs.2,39,00,000/- deposited in SBI and Rs.17,45,000/- deposited in Axis Bank may not be treated as unexplained and added to your income for the year under consideration.

ii) As per computation you have claimed deduction u/s 80C at Rs.1,50,000/- and 80D at Rs. 13,062/-. Please provide the documentary evidences of the same. In the absence of the documentary evidences, kindly show cause as to why said deductions claimed u/s 80C and 80D may not be disallowed and added to your income.

iii) Further, you have claimed major expenses under various head in the P&L Account. Details of the same are as under:

S. No.	Head	Amount (in Rs.)
1	Freight	145250
2	Staff Welfare	65250
3	Printing & Stationary	14250
4	Rent	177500

5	Traveling	87520
6	Telephone	55320

As you have not provided any details w.r.t the above referred expenses with corroboratory documentary evidences as required vide this office letter issued from time to time, kindly show cause as to why 50% of the above mentioned expenses may not be disallowed and added to your income.

iv) On perusal of the record, it is seen that you have made addition of Rs.6,50,000/- in your capital account during the year under consideration. You were required to provide the documentary evidences with regard to the source of addition of Rs.6,50,000/- vide this office questionnaire dated 25.02.2019. But, no response has been submitted by you till date. In the absence of any documentary evidences with regard to the source of addition, please show cause as to why said addition to capital at Rs.6,50,000/- may not be treated as unexplained and added to your income for the .

3. Your reply should reach this office on or before 09.12.2019 latest by 11.00 A.M. positively. Please note that this is the final opportunity to submit the requisite information/documents, failing which it will be presumed that you have nothing to say in this regard and assessment will be completed as per the provisions of section 144 of the Income Tax Act,1961 on the basis of material available on record.

A notice u/s 142(1) is enclosed for compliance by 09.12.2019.

RAJIT KAUSHAS  
ITO NAHAN

3.34 Inviting attention to pages 6 & 7 which is reply to the aforesaid notice, it was pointed out that the assessee had explained that statement of accounts from the banks were awaited. Specific attention was invited to paras 8 and 9. For ready reference, the same is extracted hereunder :

“8. The assessee was engaged in the trading of MS Bar, Angle, Patti etc under the name and style of Sunrise Steels, situated at Taruwala Road, Near Hari om Colony, Badri Nagar, Paonta Sahib on a property owned by the father of the assessee and no rent is being paid for the property.

9. The assessee was engaged in only one business during the year under consideration and he was partner of other business namely Narang Brothers, where he received remuneration and interest on capital as per computation of income. Before the year under consideration, the assessee was also engaged in Liquor Business which was discontinued in the year under consideration.”

3.35 Attention was also invited to notice u/s 142(1) dated 13.12.2019 available at pages 8 to 12 wherein the AO requires the assessee to furnish the information again on e-proceeding facility. The information sought again, it was submitted, would show that the AO specifically required the assessee to explain that the deposits during demonetization period. It was submitted that the AO was conscious of the fact for which purposes, the specific returns have been selected for scrutiny. The said increase in the cash sales in the month of October were looked into and AO was conscious of those. The persons from whom cash has been received were all facts which had been enquired into. The withdrawals explained by the assessee for construction were issues enquired into and referred to in para 2 of the query raised by the AO. The expenditure was doubted by the AO and required to be further supported by the assessee. The withdrawals and the deposits were highlighted by the ld. PCIT in para 4 of her order were fully questioned by the AO. The assessee was required to give details of all the old and new currency deposits. For ready reference, relevant Show Cause Notice at pages 10 to 12 issued to the assessee and relied upon is extracted hereunder :

**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE INCOME TAX OFFICER  
ITO NAHAN**

To,  
Sh. Gurdeep Singh Narang,  
S/o Sh. Tarlok Singh Narang,, Badli Nagar, Paonta Sahib,  
Distt. Sirmour 173025,Himachal Pradesh  
India

PAN: **AARPN5979L**      Dated: **13/12/2019**      Letter No : **ITBA/COM/F/17/2019-20/1022288651(1)**

Sir/ Madam/ M/s,

**Subject: Final Show Cause notice for the A.Y. 2017-18-Regarding-**

Kindly refer to assessment proceedings in your case for the A.Y. 2017-18.

On perusal of the records it is seen that an amount of Rs.46,77,500/- has been deposited in cash during the demonetization period. From the details submitted by w.r.t the cash deposits, it is seen that in the A.Y. 2017-18 there is sudden increase in the cash sales in the month of October, 2016. Further, details of persons to whom cash sales were made was required to be submitted in the prescribed proforma but the same has not been submitted. Therefore, details and complete address of persons from whom cash received has not been provided. The all of sudden hike in cash sale clearly shows that books of accounts have been prepared to justify the cash deposits as cash sale to bring back the unaccounted money in the regular books of accounts.

The unusual hike in cash sales further gets corroborated on examination of cash deposits made by the assessee in the bank account during demonetization period.

2. The sources of cash deposits has been explained as under:

CAT	Item	Amount	
A.5	Cash Deposit between 9 <sup>th</sup> Nov., 2016 and 30 <sup>th</sup> Dec., 2016 (as confirmed)	4677500.00	

Note: If digitally signed, the date of digital signature may be taken as date of document.  
INCOME TAX OFFICE, NAHAN, NAHAN, Himachal Pradesh, 173001  
Email: NAHAN.ITO@INCOMETAX.GOV.IN

B.3	Cash withdrawal out of bank account		3448000.00
B.5	Cash received from identifiable persons (without PAN)		187747.00
	Cash received for services rendered/Sales		201433.00
	Cash in Hand		840320.00
Total			4677500.00

The Cash withdrawal out of bank account claimed at Rs.34,48,000/- are stated to have been withdrawn for construction purpose. The withdrawals have been made in piece meal ranging from 48000 to 500000 from 24.10.2016 to 28.12.2016. There was no reason to withdraw the cash in piece meal. Untill and unless 1<sup>st</sup> withdrawal is utilized/ consumed in construction work the question of subsequent withdrawals does not arise. This shows that the withdrawals were not made for construction work but for other purposes and utilized for the same.

3. From the above table it is seen that Cash has also been received from identifiable persons (without PAN) at Rs.1,87,747/- but no details thereof have been submitted despite according sufficient opportunities.

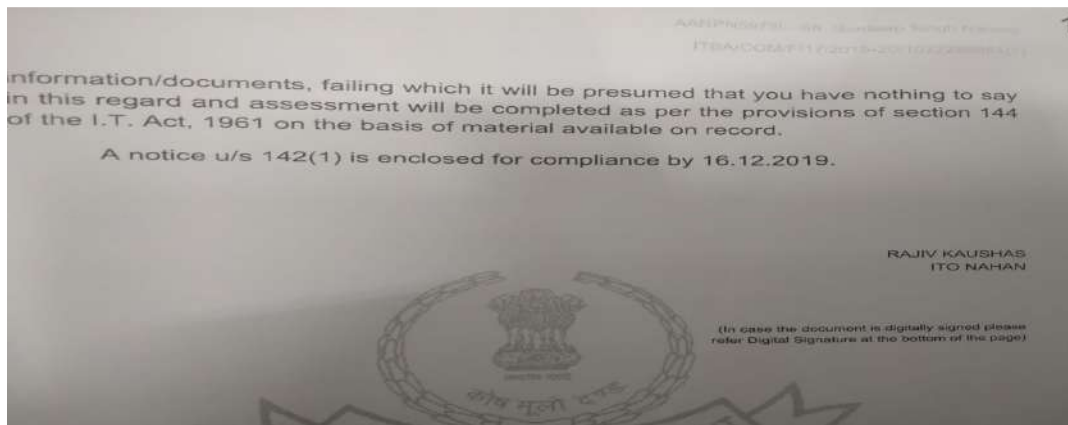
4. On one hand, you have claimed that cash has been deposited out of the bank withdrawals made prior to the demonetization period but on the other hand cash in hand has been shown at Rs.8,40,320/- only. Therefore, if the cash withdrawals were kept for some specific purpose they should be part of cash in hand.

5. No quantitative details of the items purchase, sold and closing stock etc. have been furnished along with stock register. In view of the above, genuineness of the sales, purchases and closing stock shown are not verifiable.

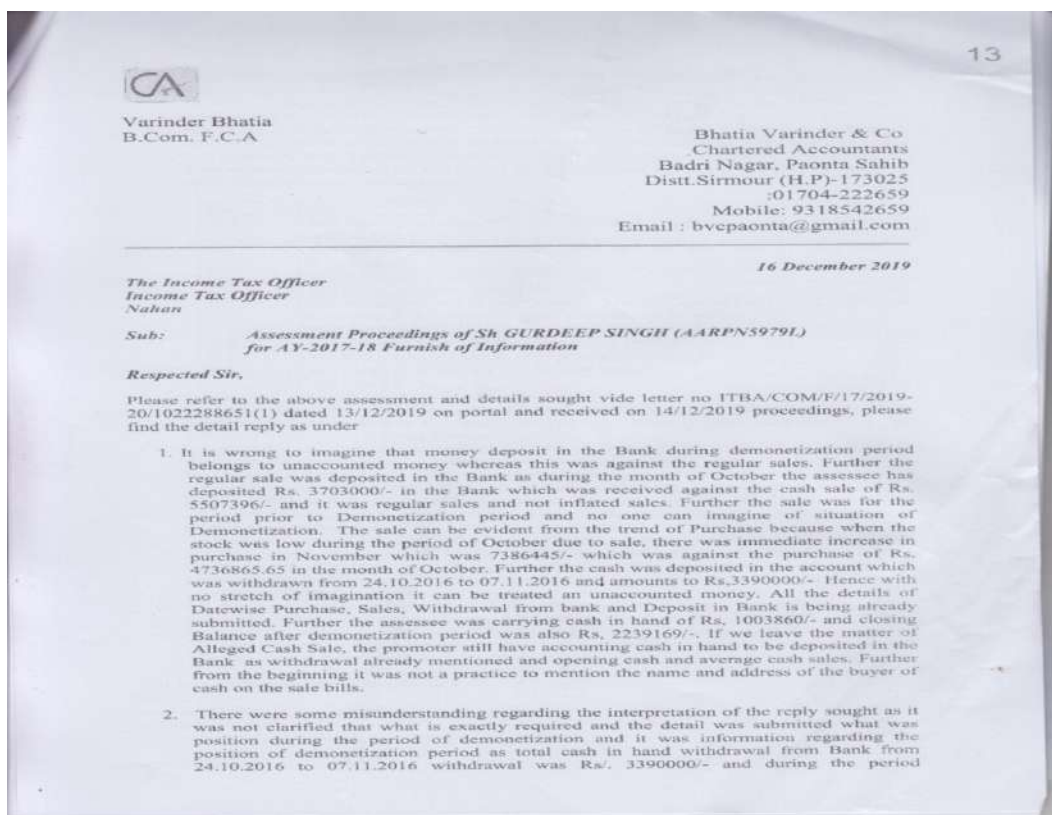
6. You have also not given the details of old and new currency deposits during the demonetization period.

In view of the above mentioned discrepancies, you are required to show cause as to why cash deposits during demonetization period at Rs.4677500/- may not be treated as unexplained.

Your reply should reach this office on or before **16.12.2019 latest by 11.00 A.M.** positively. Please note that this is the final opportunity to submit the requisite



3.36 The reply of the assessee made available to the AO from pages 13 to 19 was again highlighted to show that there was some misunderstanding on the part of the assessee in regard to the nature of replies sought by the AO. For ready reference, pages 13-14 bringing out these facts are extracted hereunder :



14

13.11.2016 to 24.12.2012 withdrawal was Rs. 58000/- The cash was received from debtors of Rs. 187747/- during the period of demonetization and cash sale of Rs. 201433/- was also of demonetization period. The above receipt of Rs. 187747/- from debtors and Rs. 201433/- of cash sale was the currency of such domination which was below the demonetization currency and was kept in Cash in hand. The deposit in Bank was currency prior to Demonetization period and was domination of 500/- and 1000/- and was deposited from the cash in hand as on 07.11.2016 which was 6993677/- and after the demonetization period i.e on 31.12.2016 the cash in hand was Rs. 2239169/- The position of the deposit in bank was as under

Cat.	Item	Amount
A.4	Cash deposit between 9 <sup>th</sup> Nov. 2016 and 30 <sup>th</sup> Dec. 2016 (as reported)	4677500.00
A.5	Cash deposit between 9 <sup>th</sup> Nov. 2016 and 30 <sup>th</sup> Dec. 2016 (as confirmed)	4677500.00
B.1	Cash out of earlier income or savings	
B.2	Cash out of receipts exempt from tax	0.00
B.3	Cash withdrawn out of bank account kept in Cash in hand withdrawn in the period prior to demonetization period i.e 24.10.2016 to 7.11.2016	3390000.00
B.4	Cash received from identifiable persons (with PAN)	0.00
B.5	Cash received from identifiable persons (without Pan)	0.00
B.6	Cash received from un-identification persons	0.00
	Cash in hand	1287500.00

- As regard cash of Rs. 187447/- received from Identified person, it is received from the debtors to whom credit sale was made and was duly shown in Cash book date wise and summary of the same is being attached herewith.
- As regard the cash in hand point of Rs. 840320/- it is already clarified in Para No 2 that it was cash withdrawn from the Bank prior to demonetization period i.e 24.10.2016 to 07.11.2016 and there was only wrong interpretation was taken about the reply to be submitted and it was assumed that detail of transaction during demonetization period is required to be submitted whereas the monthwise details of cash sales, cash deposited, cash withdrawals, cash in Hand is submitted with the reply. Now the correct position is hereby once again submitted.
- The assessee is not maintaining day to day quantity of since start of the business and Profit is being calculated on GP rate method and the same practice is being regularly adopted by the assessee and there is no change in such policy. However, the rate and quantity is mentioned in the Sales and Purchase vouchers and bills which is produced before your good honor for verification.
- All the currency deposited in Bank during demonetization period was belonging to the old currency and no new currency was deposited in the Bank.
- As regard the addition of Rs. 650000/-, the same has been withdrawn from the capital in Narang Brothers, in which assessee is a partner and all documents are submitted as proof of withdrawn in first reply at para no 11 & 12 of the reply

Hope you will find the above in order  
Thanking You  
Yours faithfully  
For Gurdeep Singh

Varinder Bhatia  
AR

3.37 Pages 15 to 19 of the Paper Book, it was submitted, highlight the replies made to the AO.

3.38 In the said backdrop, it was his submission that the impugned order has been passed mechanically based purely on

conjectures and surmises and it was his prayer that it may be quashed.

4. The ld. CIT-DR heavily relying upon the impugned order submitted that the assessee in the facts of the present case has not cared to address as to why the order passed is an ex-parte order and why despite issuance of notice, the assessee remained unrepresented. For the specific purpose, attention was invited to para 3 of the impugned order.

5. The ld. AR seeking permission to clarify the issue submitted that he had stated in his opening submissions referring to the fact that the Show Cause Notice issued to the assessee was issued to assessee's C.A. and this fact has been highlighted in his opening arguments. It was clarified by him that he is not pleading lack of opportunity as the conclusions drawn by the ld. PCIT, it was submitted, are ignoring the facts available on the assessment record itself and the ld. PCIT was bound to consider the record available to him. Thus, since the queries raised in the course of the assessment proceedings and the replies made available are sufficiently elaborate and complete thus, he is not seeking an opportunity of being heard and is assailing the order as having been passed ignoring the facts already available on the record of the Revenue.



6. The ld. CIT-DR submitted that in the facts of the present case, the assessee has not availed of the opportunity before the ld. PCIT. Accordingly, it was his submission that he would have no objection if the opportunity is granted to the assessee and the order is restored back. However, in the face of the objection of the assessee that he is not seeking an opportunity of being heard, ld. CIT-DR relied upon the impugned order. It was his submission that the assessee has selectively replied to the AO and reading from para 4.2 of the impugned order, it was his submission that no comparative analysis with the preceding assessment year was made available by the assessee and repeatedly the ld. PCIT has castigated the assessee for the said purpose. It was his submission that now for the first time, the assessee is coming up with the explanation that this was the first year. It was his submission that nowhere this fact was made known to the AO by the assessee. Hence, the AO has not carried out due enquiries or considered the facts as he was duty bound to consider. He has simply raised a query and accepted the returned income ignoring the fact that huge deposits were made in the demonetization period and comparative analysis from the earlier year was required to be done by him. Carrying the Bench through the Paper Book filed by the ld. AR, it was his submission that the first notice issued to the assessee by the AO was on 05.12.2019 and the incomplete replies of the assessee have



been accepted. Inviting attention to para 7 and 8 of the impugned order, it was submitted that even the household withdrawals contribution of Rs. 10,000/- has been accepted. No enquiries were made. In the said backdrop, reliance was placed upon decision of the Chandigarh Bench of the ITAT in the case of **Ashwani Marwaha ITA-307/CHD/2020 order dated 23.02.2022** to argue that the order may be upheld dismissing the appeal of the assessee.

6.1 It was the alternate prayer of the ld. CIT-DR that the issue may be remanded back in case the assessee is aggrieved that facts have not been seen properly.

7. The ld. AR in reply submitted that he would again want to emphasize that he is not challenging the service of notice. Attention was invited to the written submissions filed before the Bench. Specific attention was invited to para 1.6. For ready reference, it is extracted hereunder :

*“1.6 Further a final opportunity of being heard vide letter dated 22.03.2022 fixing the case for hearing for 25.03.2022 was allowed and thereafter passing an order u/s 263 of the Act. However, the Assessee could not attend the proceedings because the said notice was served to Assessee's CA, who was not in a best of his health at that point of time which is why he could not serve those notices to Assessee.*

7.1 Accordingly, it was his submission that he is not challenging the service of notice or seeking an opportunity of being heard. The prayer of the Revenue that the order may be remanded was strongly objected to. It was his submission that the order passed without considering the replies in the assessment record is an arbitrary

exercise based on conjectures and hence may be quashed. It was reiterated that para 4.2 of the impugned order would show that ld. PCIT infact has selectively considered the record and the allegation that the assessee has selectively replied, relied upon by the ld. CIT-DR, it was argued has no basis. It was again highlighted that the assessee as per page 6 para 6 informed the AO in writing which reply is available with the Department that the assessee was engaged in this business for the first time this year. The comparative analysis, hence, from the earlier year's position could not be given. Month-wise comparative data as per the reply made available by the assessee to the AO was relied upon. The suspicions entertained right from paras 4(a) to (m) it was submitted, are entirely based on conjectures. As an illustration, it was submitted that simultaneously it is alleged that there were no vouchers and at the same time, it is alleged that the vouchers relied on were of a different series. It was argued that both situations cannot simultaneously exist. Similarly, the allegations that the cash book became questionable as it was cash in hand was also pure conjecture. Thus, conclusions that these facts demonstrate that there was manipulation was strongly objected to and it was submitted that these cannot be given any legal sanction as it is purely conjecture. Deposits and withdrawals have been explained. The assessee's version of deposits and withdrawals are set in stone

and available as per bank record and the purpose for withdrawal and the deposits have been explained to the AO. Records are available to the ld. PCIT and apart from suspicions, there is nothing else. In the said backdrop, accordingly, it was his prayer that the order may be quashed.

7.2 Addressing the decision of Ashwani Aggarwal relied upon by the ld. CIT-DR, it was his submission that the said decision is very fact specific and is not applicable to the facts of the present case. On the other hand the proposition of law as laid down by the Chandigarh Benches repeatedly in the case of Narain Singla and Pawan Kumar fully apply.

8. We have heard the rival submissions and perused the material available on record. On a careful consideration of the same, we find that in the facts of the present case, the exercise of power by the ld. PCIT in setting aside the assessment order cannot be sustained. We have seen that the record clearly speaks of repeated enquiries made by the AO. These have been replied to by the assessee. We have seen that the queries were raised on the e-portal and specifically the AO has required the assessee to reply on e-portal. We have seen that the fact that enquiries have been made by the AO are accepted by the PCIT also as some of the queries have been extracted in the order by her. However, the ld. PCIT considering the fact that on record that there was no comparative

analysis of the assessee's sale and purchase in cash or otherwise from the earlier years despite the enquiries raised by the AO. The ld. PCIT incorrectly concluded that the AO has casually accepted whatever replies have been made by the assessee. Hence, it was concluded that the comparative analysis which the AO was required to examine was not examined. The ld. PCIT failed to consider the fact pleaded on record before the AO that the assessee in response to the specific query of the AO had responded that this was the first year of assessee's business and hence, there was no past comparison available which the assessee could file. This fact has not been noticed by the ld. PCIT which she was duty bound to consider. The power to set aside a validly passed assessment order is an onerous responsibility. The Revisionary Authority cannot be permitted to exercise the power on a shoddy perusal of the record. The Revisionary Authority is expected to exercise the power considering the record. The power cannot be permitted to be exercised on whims. It is seen that the replies of the assessee and the queries raised by the AO are through the e-portal and this fact stands un-demolished by the Revenue. We have extracted the queries raised by the AO in the earlier part of this order wherein the ITBA Portal reference is given. We have seen that the assessee has been required to give replies on the e-portal. We have also seen that the assessee's replies which were not in the format as per

CBDT Circular and wherein the AO found that the explanation was not sufficient and complete, the assessee has been required to by the AO again to re-file its submissions in the manner as required. We have also seen that it is not a case wherein right at the end, some reply has been made available which has been accepted by the AO as incorrectly alleged by the Revisionary Authority . We find that the impugned order is full of conjectures and surmises. Accordingly, on going through the material available on record, we hold that the impugned order cannot be upheld. For assumption of jurisdiction u/s 263, the ld. PCIT is bound to point out the error in the order and that too such an error which is prejudicial to the interests of the Revenue. The conclusion that it is a case of lack of enquiry or inadequate enquiry are incorrect presumptions in the facts of the present case. The order cannot be upheld. Accordingly, the order is directed to be quashed.

9. Before parting, it is necessary to refer to the decision relied upon by the ld. CIT-DR in the case of **Ashwani Marwah** (cited supra). On a perusal of the said order, we find that in the facts of the said case, the Revisionary Authority was found to have examined *the transactions and had carried out a broad analysis of the ledger account had come to the conclusion that the AO had failed to carry out adequate and proper enquiries which he should have been conducted in respect of the labour and wages payable.* Thus, in the facts of the

said case, it was not an act of mere set aside of the order of the AO which would have been an arbitrary exercise. It was a case where the Revisionary clearly spelt out the error and prejudice caused to the Revenue after a proper examination and consideration of record. The record available was fairly considered and a speaking order in terms of the mandate of law was passed. In the facts of the present case, for the detailed reasons given herein above, we have seen that the issues have been enquired into by the AO at length and the ld. PCIT has failed to point out any error let alone an error which can be said to be prejudicial to the interests of the Revenue. On the contrary, facts available on record have not been seen. Accordingly, the order fails. The impugned order is quashed.

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

Order pronounced on 23<sup>rd</sup> November, 2022.

**Sd/-**

**(VIKRAM SINGH YADAV)**

**लेखा सदस्य/ Accountant Member**

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant 2. प्रत्यर्थी/ The Respondent 3. आयकर आयुक्त/ CIT 4. आयकर आयुक्त (अपील)/ The CIT(A) 5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH 6. गार्ड फाईल/ Guard File

**Sd/-**

**(DIVA SINGH)**

**न्यायिक सदस्य/ Judicial Member**

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar