

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

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.117/Asr/2022  
Assessment Year: 2017-18**

Hoshiarpur Traders, Near Lajwanti Stadium, Tanda Chowk, Hoshiarpur. [PAN: AAIFH5571P] <b>(Appellant)</b>	<b>Vs.</b>	PCIT-1, Jalandhar.  <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Sh. Rahit Kapoor, CA and Sh. V.S. Aggarwal.</b>
<b>Respondent by</b>	<b>Sh. Rohit Mehra, CIT.DR</b>

<b>Date of Hearing</b>	<b>19.10.2022</b>
<b>Date of Pronouncement</b>	<b>11.11.2022</b>

**ORDER**

**Per:Anikesh Banerjee, JM:**

The instant appeal of the assessee is directed against the order of the Id. Pr. Commissioner of Income Tax -1, Jalandhar, [in brevity the PCIT] bearing appeal No.DIN & Order No.ITBA/REV/F/Rev5/2021-22/1042161981(1), date of order

30.03.2022, the order passed u/s 263 of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2017-18. The impugned order was emanated from the order of the Id. Dy. Commissioner of Income Tax, Circle, Hoshiarpur, (in brevity the AO) order passed u/s 143(3) of the Act date of order 24.12.2019. The assessee has raised the following grounds:

*“1. That on the facts and in the circumstances of the case and in law, Ld. Principal Commissioner of Income Tax (CIT) erred in passing order u/s 263 of the Income Tax Act, 1961 (the Act), when the assessment for the impugned assessment year 2017-18 had already been concluded by Assessing officer (AO), u/s 143(3) of the Act, after seeking explanations and making all the enquiries necessary for the completion of assessment. Appellant prays order so passed u/s 263 may please be held as bad in law.*

*2. That the PCIT has failed to appreciate that the assessment order was neither erroneous nor prejudicial to the interest of the revenue and thus order u/s 263 is bad in law, illegal, ultra-vires, in excess of and/or in want of jurisdiction and otherwise void. That the order u/s 263 setting aside already*

*completed assessment as made by the Assessing Officer u/s 143(3) of the Income Tax Act is based upon incorrect assumption of fact which cannot render the order erroneous. Furthermore, inaction of AO towards inadequate enquiry cannot be said to be prejudicial to the interests of the revenue. Therefore, the mandatory twin conditions of section 263 are not fulfilled.*

*3. That the Ld. PCIT has erred in invoking clause (a) of explanation 2 of section 263(1) of as the explanation does not authorize unfettered powers to the CIT to revise each and every order passed by the AO.*

*4. That on the facts and in the circumstances of the case and in law, Ld. PCIT erred in directing the AO to examine the details pertaining to capital introduced by partners by ignoring the fact that all the partners were being assessed to Income Tax regularly in their individual capacity and all the evidences in support thereof were already submitted and examined by Ld. AO. Thus, appellant prays the said direction may please be held as bad in law.*

*5. That on the facts and in the circumstances of the case and in law, Ld. PCIT erred in directing the AO to examine the*

*creditworthiness of the partner. That the PCIT has ignored the legal precedent that the partnership firm is not required to explain source of income in respect of amount contributed by partners towards capital of firm. That the PCIT has ignored that the assessee firm has duly discharged its onus by submitting assessment orders, audited balance sheet, copy of ITR and capital account of all the partners who have made capital contribution in the firm.*

*6. Without prejudice to ground no. 5 above, the Ld. PCIT has erred in not appreciating that the investment made by the partners in the firm has already been examined during assessment proceedings framed u/s 143(3) of respective partners. Therefore, the assessment framed u/s 143(3) by the AO is neither prejudicial to interest of revenue nor erroneous.*

*7. That on the facts and in the circumstances of the case and in law, Ld, PCIT erred in directing the AO to inquire into the identity, genuineness and creditworthiness of Unsecured loans ignoring the fact that necessary details in this regard has already been submitted before AO during assessment proceedings and examined by Ld. AO. Thus, appellant prays the direction of CIT is bad in law.*

8. *That the order u/s 263 by the Ld. PCIT is illegal, bad in law and without jurisdiction as the Ld. PCIT has failed to consider the replies furnished by the assessee before passing the order u/s 263. That the PCIT has failed to consider the submissions of the assessee regarding the unsecured loans raised by the assessee. The PCIT has ignored that the assessee firm has duly discharged its onus by submitting Income tax returns, bank statements and confirmations in respect of unsecured loans in reply to notice u/s 263. That the PCIT has failed to make any independent enquiry before initiating proceedings u/s 263.*

9. *That there was no prima facie satisfaction recorded by the PCIT on the basis of material available on record and on the basis of reply submitted by the assessee that the order passed by AO was erroneous and prejudicial to the interest of revenue.*

10. *That the order passed u/s 263 is without jurisdiction because the PCIT has travelled on issue of capital contribution by the partners, and which is not flagged in the notice u/s 143(2). That the PCIT has no jurisdiction to convert the limited scrutiny into complete scrutiny by invoking the provisions of section 263.*

*11. That the appellant craves leave to add, amend, or alter any of the above grounds of appeal before or during the course of appellate proceedings.”*

2. Tersely, we advert, the fact of the case that the assessee is a partnership firm and the dealer of the liquor. The assessment was completed u/s 143(3) of the Act. The notice u/s 263 was issued by the Id. PCIT and the details submission was filed by the assessee against the show cause notice & finally the Id. PCIT had set aside two issues for further verification before the Id. AO considering the assessment order erroneous & prejudicial to the revenue. Primarily the set aside issues are a) Introduction of capital contributed by the partners; b) amount raise through unsecured loan. The ground for setting aside of the assessment order was that creditworthiness and the genuineness of the transaction was not verified during the assessment proceeding.

The source of the introduction of capital and receiving of unsecured loan was not verified as per observation of the revisional authority. During the assessment proceeding, the assessee complied the notice u/s 142(1) of the Act & filed submission against the requirement of the Id. AO. The Id. PCIT has formed

opinion that the verification was insufficient in relation to creditworthiness and the genuineness of the transaction. Accordingly, the order passed u/s 143(3) was erroneous and prejudicial to the interest of revenue and liable to be set aside. Aggrieved assessee filed an appeal before us by challenging the order passed u/s 263 of the Act.

3. Broadly, the two issues were set aside by the Id. PCIT for further verification before the assessing authority. During hearing before ITAT, the Id. Counsel has filed the paper book with brief note which are kept in the record. The observation of the Id. PCIT in para no. 3 and 4 of order U/s 263 is extracted as below:

*“3. In response to the show cause notices, the assessee filed reply reiterating the submissions made during assessment. Copies of the two replies and of the ledger accounts of creditors, etc. as filed during assessment proceedings were again filed. It was stated that assessments in the case of partners have been framed u/s 143(3) of the Act and investments made by them including their investment in the assessee firm had been examined in their individual cases by their respective AOs.*

*4. I have considered the reply of the assessee to the SCN u/s 263 of the Act and the assessment records.*

*(1). The case was selected under CASS for complete scrutiny on the following issues:*

i. Large Squared up Loans during the year

ii. Mismatch in expenditure of personal nature.

(II). Verification of Large Squared up Loans during the year was one of the reasons for selection of the case under CASS and hence it merited a proper examination. The assessee did not furnish complete information on this issue as was called for by the Assessing Officer during assessment proceedings, yet the AO completed the assessment and accepted the explanation of the assessee without taking note of the fact that the information as called for by him had not been furnished. The AO also did not make any independent or requisite enquiries or verifications regarding the source, financial capacity of the creditors or of the genuineness of transactions as were called for in the facts and circumstances of the case.

III). The squared-up loans were as under:

<i>Name of the creditor</i>	<i>Amt. taken during the year</i>	<i>Amt. returned during the year</i>	<i>Closing balance</i>
<i>Naresh Aggarwal</i>	<i>80,00,000</i>	<i>15,00,000</i>	<i>65,00,000</i>
<i>Gautam Construction Co</i>	<i>75,00,000</i>	<i>75,00,000</i>	<i>nil</i>
<i>Prem Arora</i>	<i>40,00,000</i>	<i>40,00,000</i>	<i>nil</i>

(IV) Vide questionnaire dated 17.10.2019 at point no.3, the assessee was asked by the AO to furnish the following:



“Complete details of unsecured loans including squared up accounts with opening and closing balances and sources / copy of accounts for amounts received during the year. Give complete address and PAN of depositors”.

In response, a reply was received on 14.11.2019 in which the assessee filed copies of ledger accounts of the creditors in its own books of account. Details were given in a table as below. No PANs of the creditors were given.

<i>Name of creditor</i>	<i>PAN</i>	<i>Op. Bal.</i>	<i>Amt. Taken</i>	<i>Amt. Returned</i>	<i>Closing Balance</i>	<i>Remarks</i>
<i>Naresh Aggarwal</i>		<i>0</i>	<i>80,00,000</i>	<i>15,00,000</i>	<i>65,00,000</i>	<i>In this regard, we are enclosing herewith the ledger for your ready reference. (Refer pg 118).</i>
<i>Amardeep Singh</i>		<i>27,488</i>	<i>0</i>	<i>0</i>	<i>27,488/-</i>	<i>In this regard, we are enclosing herewith the ledger for your ready</i>

						<i>reference. (Refer pg 120).</i>
Gautam Construct ion Co		0	75,00,000	75,00,000	0	In this regard, we are enclosing herewith the ledger for your ready reference.(Ref er pg 119)
Prem Arora		0	40,00,000	40,00,000	0	In this regard, we are enclosing herewith the ledger for your ready reference. (Refer pg 121)

*The assessee was again asked by the AO vide letter dated 28.11.2019 to file the following:*

*“Complete address, PAN and source of addition to unsecured loans during the year with complete evidence. File confirmations and copy of acknowledgements of ITRs for AY 2017-18.”*

**1<sup>ST</sup> ISSUE INTRODUCTION OF CAPITAL:-**

4. Considering the two issues the counsel has divide issues separately and argued accordingly. First, the counsel pointed out the first issue “introduction of capital contribution” by the partners.

4.1 The ld. Counsel first pointed out that the ld. AO issued notice u/s 142(1) on dated 17.10.2019 which is annexed in **APB 1 to 3**. The ld. Counsel has drawn our attention on the reply which was filed to the ld. AO in detailed. The reply is also annexed in **APB page 4 to 9**.

4.2 For explanation of creditworthiness and genuineness of the transaction the ld. Counsel has submitted the details before the ld. PCIT in relation to notice u/s 263 which is annexed in **page no. 35 to 36 of APB** and both replies before the AO on dated 21.03.2019 and 28.11.2019, **APB page 35 to 36**. The same reply was submitted before the ld. PCIT in relation to the notice u/s 263 which is annexed in **APB pages 60 to 67**. Also, the e-Proceedings Response Acknowledgment is annexed in **APB page no. 62 to 63**.

4.3 The ld. Counsel in argument further mentioned the relevant paragraph of the order of ld. PCIT u/s 263 in page no. 8 which is extracted as below:

*“XII). During the entire assessment proceedings, no independent verification or examination of the source of very substantial addition to the Partners' capital was made. No information was called by the AO from the partners u/s 133(6) of the Act. The relevant bank statements / other accounts of the partners were not examined to see as to how the credit balances had built up in these accounts from where large capital contribution was made by the partners.*

*(XIII). Thus the source of the large capital of Rs.37,63,96,365/- introduced in the books of the assessee firm under the head Capital introduction by the partners remained unverified though the AO had initiated queries in this regard by asking the assessee to explain sources of addition to partners' capital accounts vide notice u/s 142(1) dated 17.10.2019.*

*The assessment is thus erroneous and prejudicial to the interest of revenue.*

5. *As mentioned above, the assessment has been concluded In this case by the Assessing Officer without carrying out the necessary enquiries and verifications on the issue flagged under CASS for which the case had been selected for scrutiny, as well as other issue as the case was selected for complete scrutiny as mentioned in paras above.*

6. *In view of above, the assessment order passed by the Assessing Officer on 24.12.2019 is held to be erroneous in so far as it is prejudicial to the interest of revenue in terms of provisions contained in clause (a) of Explanation 2 below sub section (1) of section 263 of the I.T. Act, 1961. The assessment order is set aside to this extent, i.e., to the extent of the issues discussed above, to the file of the assessing officer to pass a fresh order after making necessary enquiries/investigations in the light of the discussions made above and after giving due opportunity of being heard to the assessee.”*

4.4 Further argued that all the assessments for this assessment year 2017-18 was completed related to this partner. The source of the ‘introduction of capital’ was already be verified by the assessing authority related to the individual assessee during the individual scrutiny assessments. During the argument the following details are mentioned by the Id. Counsel that the assessee has raised legal objections on the amount of capital contribution made by the partners cannot be added in the hands of the firm u/s 68 on the basis of following points:

a. That all the partners of the firm from whom the capital was raised are identifiable and separately assessed to tax.

b. That the amount received by the assessee firm had duly been reflected in the books of accounts of the appellant firm.

c. That the investment made by the partners in the firm duly stands reflected in the hands of Audited Balance Sheet of the partners.

d. That in major partners the assessment has been completed by the concerned AO and the capital investment has duly been verified by the respective AO.

e. That the assessee has duly discharged his onus cast on it, therefore, no addition can be made in the hands of assessee firm, particularly considering the situation where the assessee firm has duly produced the relevant documents as required u/s 68 of the Act.

4.5 The Id. Counsel further argued that the assessee had submitted the details in relation to the introduction of capital before the PCIT which is reproduced in tabular form as below:

<u>Name of Partners</u>	<u>Amount Contributed</u>	<u>Remarks</u>
<u>Harpreet Singh Gulati AELPG5810P</u>	7,27,00,000	1. In this regard we are enclosing here with the <u>copy of assessment order for the AY 2017-18 duly submitted before worthy PCIT in reply to notice u/s 263. (Refer page no. 68-74).</u>

	<p>2. <b><u>The PCIT was also apprised with the issue that the investment made by the partner has duly been verified by the respective assessing officer vide questionnaire dated 09.12.2019 for AY 2017-18 [Refer Page no. 75-77].</u></b> The relevant question raised by the assessing officer in the questionnaire (<b>Relevant Page no 77</b>) is being re-produced for your ready reference: -</p> <p><i>“Please furnish copies of ledger account in all the concerns where you are a partner/director”.</i></p> <p>2.1 In response to the same, the partner Sh. Harpreet Singh Gulati furnished capital account along with the cash book during assessment proceedings to substantiate the course of capital investment being made during the year under consideration. <b><u>The copy of reply is enclosed at page no. 80 of the paper book.</u></b></p> <p>2.2 The <b>copy of cash book</b> as submitted during the assessment proceedings of the partner Harpreet Singh Gulati duly submitted before the PCIT under proceedings u/s 263 is enclosed for your ready reference. (<b>Refer page no. 81 to 291 of the paper-book</b>)</p> <p>3. Your Honour will appreciate that the investment made by the partner has duly been reflected in the <b>audited balance sheet</b> submitted before the PCIT and submitted before the AO of the partner. <b>Plases refer page no 242.</b> The <b>complete audit report</b> is enclosed at <b>page no 305 to 311.</b></p> <p>4. The <b><u>copy of ITR along with the computation of income</u></b> in which the share of the partner from the firm M/s Hoshiarpur Traders has duly been provided to the PCIT. [<b>Refer page no 292 to 296 of the paper book relevant page no 294</b>].</p> <p>5. The date wise <b>investment account of M/s Hoshiarpur Traders</b> in the books of the partner is enclosed at <b>page no 312-316.</b></p>
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		<p>6. The audited Balance sheet along with the audit report was also submitted to the PCIT, Copy of same is enclosed at <b>page no. 297 to 311 relevant page 310.</b></p> <p>7. That from the above facts, it is evident that the AO of the partner has made a detailed enquiry through notice dated 09.12.2019 and the assessment order u/s 143(3) has been passed on 27-12-2019 i.e. after the reply to such questionnaire was furnished. Therefore, in no circumstance, it can be said that the order is erroneous or prejudicial to the interests of the revenue.</p>
<p><b><u>UW Enterprises P</u></b> <b><u>Ltd</u></b> <b>AABCU0663M</b></p>	<p>3,25,76,635</p>	<p>1. In this regard we are enclosing here with the copy of assessment order for the AY 2017-18 duly submitted before worthy PCIT in reply to notice u/s 263. <b><u>(Refer page no. 318-324 relevant page no 323-324).</u></b></p> <p>2. That the <b>detail of contribution</b> made by the partners <b>through banking channel</b> along with the bank statement as duly submitted before the PCIT. <b>Refer Page no 325-340.</b></p> <p>3. Your Honour will appreciate that the investment made by the partner has duly been reflected in the <b>audited balance sheet</b> submitted before the PCIT and submitted before the AO of the partner. <b>Plases refer page no 362.</b> The <b>complete audit report</b> is enclosed at <b>page no 346-365.</b></p> <p>4. The <u>copy of ITR along with the computation of income in which the share of the partner from the firm M/s Hoshiarpur Traders has duly been provided to the PCIT.</u> [Refer page no 341-345 of the paper book relevant page no 342].</p> <p>5. That the AO vide questionnaire dated 23-11-2019 has specifically asked the detail in which the company is having interest in form of</p>



		<p>shareholding/partnership. The same was submitted during the assessment proceedings vide reply dated 18-12-2019.</p> <p>6. That from the above facts, it is evident that the AO of the partner has made a detailed enquiry through notice dated 23.11.2019 and the assessment order u/s 143(3) has been passed on 27-12-2019 i.e. after the reply to such questionnaire was furnished. Therefore, in no circumstance, it can be said that the order is erroneous or prejudicial to the interests of the revenue.</p>
<p><b>A.D. Enterprises P Ltd</b>  <b><u>AAHCA5833H</u></b></p>	<p>22,51,20,000</p>	<p>1. In this regard we are enclosing here with the copy of assessment order for the AY 2017-18 duly submitted before worthy PCIT in reply to notice u/s 263. <b><u>(Refer page no. 366--373 relevant page no 372-373).</u></b></p> <p>2. That during the assessment proceedings of the partner M/s A.D. Enterprises P Ltd was asked to explain the source of investment made in Hoshiarpur Traders. It was submitted by the partner that the same was made out of cash sales of Rs. 112 crore out of Total sales of Rs. 729 crores. The copy of reply of submitted to AO is enclosed at page no. 405 to 407. The copy of same was also submitted to before PCIT and therefore the PCIT was well versed with the fact that the enquiry of capital investment by A.D. Enterprises P Ltd had duly been verified by the concerned AO.</p> <p>4. That the assessee has also furnished date-wise capital account to the PCIT and the copy of the same is enclosed at <b><u>page no 374-375. Furthermore, the assessee also submitted copy of cash book duly submitted during assessment proceedings to substantiate the source of capital investment made during the year under consideration.</u></b> The copy of the cash book is enclosed at page no. 453-562 of the paper book.</p> <p>5. Your Honour will appreciate that the investment made by the partner has duly been reflected in the <b>audited balance sheet</b> submitted before the PCIT and</p>

		<p>submitted before the AO of the partner. <b>Plases refer page no 401.</b> The <b>complete audit report</b> is enclosed at <b>page no 383-403.</b></p> <p>4. The copy of ITR along with the computation of income in which the share of the partner from the firm M/s Hoshiarpur Traders has duly been provided to the PCIT. [<b>Refer page no 378-382 of the paper book relevant page no 379</b>].</p>
<p><b><u>Akash Spirits P Ltd</u></b> <b>AAHCA5832H</b></p>	<p>2,05,00,000</p>	<p>1. <b><u>That during the proceedings under section 263 it was submitted before the PCIT that the capital contribution was made out of cash in hand available as on 31-03-2016.</u></b> In this regard, the audited balance sheet FY 2015-16 along with cash book for FY 2016-17 of the partner Akash Spirits was duly furnished during the course of proceedings u/s 263. <b>The copy of the ITR along with Audit report for FY 2015-16 is enclosed at page no. 424 to 447 and Cash book Refer page no. 448-485)</b></p> <p>2. The copy of the computation of income in which the share of the partner from the firm M/s Hoshiarpur Traders has duly been provided to the PCIT. [<b>Refer page no 412-416 of the paper book relevant page no 413</b>].</p> <p>3. That it is a matter of record that the Investment made by the company in Akash Spirits P Ltd has duly been reflected in the audited Balance sheet of the company. (<b>Refer page 417 to 423 relevant page 421</b>)</p> <p>4. The date wise <b>investment account of M/s Hoshiarpur Traders</b> in the books of the partner is enclosed at <b>page no 485.</b></p>
<p><b><u>GautamAggarwal</u></b> <b><u>ADNPA7060L</u></b></p>	<p>2,55,00,000</p>	<p>1. That the assessee has furnished date-wise capital account, Copy of ITR and copy of computation of partner ShriGautamAggarwal during the proceedings under section 263.<b>The copy of the same is enclosed at page no 486-487 and</b></p>

		<p>543 to 544.</p> <p>2. <u>That during proceedings under section 263 the assessee had furnished the copy of affidavit regarding capital contribution made by partner Gautam Aggarwal. (Refer page no. 542 of the paper book)</u></p> <p>3. Furthermore, the assessee also submitted copy of cash book of Gautam Aggarwal to substantiate the source of capital investment made. <b>The copy of the cash book submitted before PCIT is enclosed at page no. 488-541 of the paper book.</b></p>
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4.6 The following details were submitted by the assessee before both the revenue authorities in relation to the source and creditworthiness of the partners;

- a) Copy of cash book **APB page nos. 81 to 94.**
- b) Audited balance sheet **APB page nos. 2 to 42.**
- c) APB page nos. 305 to 311 and date wise investment **APB page nos. 312 to 316.**

4.7 In further argument the assessee submitted the following judicial ruling which is as follows:

“i. Judgment in the case of **Principal Commissioner of Income-tax v. Vaishno Devi Refoils & Solvex** reported in [2018] 96 taxmann.com 469 [SC)

**SUPREME COURT OF INDIA** and the relevant portion is reproduced below:

*"Section 68 of the Income-tax Act, 1961 - Cash credit (Firm/partner, in case of) - Assessment year 2010-11 - For relevant year, Assessing Officer made addition to income of assessee-firm under section 68 on account of capital introduction by one partner of firm - He was of view that creditworthiness of partner who introduced capital had not been proved - High Court in impugned order noted that amount received by assessee-firm had been duly reflected in books of account maintained by concerned partner and that assessee had furnished retails with regard to source of capital introduced in firm and concerned partner had also confirmed such contribution and concluded that assessee had duly discharged onus cast upon it. Further, court noted that if Assessing Officer was not convinced about creditworthiness of partner who had made capital contribution, inquiry had to be made at end of partner and not against firm - Whether SLP against said decision was to be dismissed- Held, yes [Para 2] [In favour of assessee]"*

ii. Judgment in the case of **Kesharwani Sheetalaya Sahsaon v. Commissioner of Income Tax** reported in [2020] 116 taxmann.com 382 (Allahabad) of HIGH

**COURT OF ALLAHABAD** and the relevant portion of the judgment is reproduced as below:

*“section 68 of the Income-tax Act, 1961 - Cash credits (Firm partner, in case of) - Assessment year 1999-2000 assessee firm, engaged in business of cold storage, filed its return of income - Assessing Officer noted that assessee had credits of certain amount in name of several partners - He held credits as unproved and made an addition under section 68 on account of such credits - It was noted that partners of assessee firm were all identifiable and separately assessed to tax - Partners had shown agricultural income in their personal returns of past years which had been accepted by department as such - Whether burden of proving source of credits by partners in assessee firm having been sufficiently explained, impugned addition could not be made in hands of assessee firm and same was to be deleted - Held, yes [Para 321 [In favour of assessee]*

iii. Judgment in the case of **Commissioner of Income-tax vs. Rameshwar Dass Suresh Pal Cheeka 163 TAXMAN 270 (PUNJ. & HAR.) HIGH COURT OF PUNJAB AND HARYANA IT REFERENCE NO. 95 OF 1999 DECEMBER 8, 2006** [Refer Page no 10-12 of judgement paper book] and the relevant portion of the judgment is reproduced below:

*“Section 68 of the Income-tax Act, 1961 - Cash credits - Assessment year 1987-88 - During course of assessment, Assessing Officer found that 'K' i.e., partner in assessee-firm, deposited certain amount in her capital account - Assessing Officer did not accept explanation of 'K' that apart from being a partner of assessee firm, she had income from interest and other sources, which were declared under Amnesty Scheme and added said amount to income of firm on account of cash credit - Tribunal, however, accepted assessee's plea that once partner, accepted having made deposits, no addition could be made in firm's income and held that no case was made out for addition to income of assessee-firm, even if deposits made with firm by partner were unexplained income of partner - Whether Tribunal was justified in holding so - Held, Yes”*

iv. Judgment in the case of **Commissioner of Income-tax v. Burma Electro Corpn.** [2003] 126 TAXMAN 533 (PUNJ. & HAR.) HIGH COURT OF PUNJAB AND HARYANA IT APPEAL NO. 101 OF 1999 dated AUGUST 9, 2000 [Refer page no. 13-15 of judgement paper book] and the relevant portion is reproduced below:

*“Section 68 read with section 260A, of the Income-tax Act, 1961 - Cash credits - Assessment year 1989-90 Assessing Officer made additions to returned income of assessee-firm on account of unexplained cash credits in capital accounts of some partners - Tribunal deleted additions on ground that though there was no evidence*

*on record to show availability of funds with partners at time of investment with assessee-firm, concerned partners admitted to have made those investments and revenue also failed to bring on record any material to indicate that those investments were profits of assessee-firm - Tribunal held that it could not be assessed as income of assessee in terms of section 68 but might be assessed in individual hands of partners, if it is permissible under section 69 - Whether reasons assigned by Tribunal for deleting additions were directly referable to provisions of section 68 and there was no cogent reason to interfere with same merely because on a reappraisal of entire matter, it might have been possible to form a different opinion - Held, yes”*

- v. Judgment in the case of **Kailash Chand Agarwal v. Income Tax Officer, Ward-3, Bharatpur** reported in [2017] 88 taxmann.com 540 (Rajasthan) **HIGH COURT OF RAJASTHAN**, the relevant portion is reproduced as below:

*"Section 68 of the Income-tax Act, 1961 - Cash credit (Firm, in case of) - Where assessee-firm had received cash credits as capital of partners and in regard to source of such capital contribution, it had given enough evidences in shape of entries in books of account of firm as well as partners for those capital contributions, onus cast upon assessee in regard to capital contributions made by partners as per section 68 was duly discharged [In favour of assessee]. The assessee-firm had received the cash credits as capital of partners. The firm had offered an explanation in regard to the sources of the capital contributions by the partners. It had given enough evidences in the shape of entries in the books of account of the firm as well as the partners for those capital contributions, in the shape of confirmations from the creditors who had given the money to the partners and in the shape of the copies of the returns of income/statements of computation of income/capital accounts of all the creditors. The Assessing Officer, however, rejected assessee's explanation and made addition under section 68.*

*Held that on facts, onus cast upon the assessee in regard to the capital contributions made by the partners as per section 68 was duly discharged and, therefore, addition made under section 68 was to be deleted."*



**2<sup>ND</sup> ISSUE AMOUNT RAISED THROUGH UNSECURED LOAN:-**

5. Next issue is related to the amount raise through unsecured loan. The Id. Counsel further argued that both in assessing authority and before the Revisional Authority the assessee has submitted the details related to the loan creditors.

6. The Id. Counsel first draw our attention in **APB pages 667 to 676** the submission of information before the PCIT in further argument the following details was submitted:

Name of Party	Address	Document submitted before AO	Documents submitted before PCIT
Prem Arora AHNPK7425P	55, Blue City Colony, Meera Court, Loharka Road, Amritsar	<p>1. Copy of Income Tax Return for Asstt. Year 2017-18 (please refer page 45 of the paper book)</p> <p>2. Ledger account of Prem Arora in the books of Hoshiarpur Traders (please refer page no. 551 of the paper book)</p> <p>3. Confirmation from Prem Arora that he has received advance from Hoshiarpur Traders (please refer page 44 of the paper book).</p>	<p><b><u>It was clarified to the PCIT that unsecured loans was never raised but the advance was given to Prem Arora and the same was returned back. The relevant portion of reply submitted before the PCIT is reproduced below:</u></b></p> <p><i>“As regard Prem Arora it is most respectfully submitted that the said amount was advanced in 31-03-2016 and the amount receivable was Rs. 40,00,000/-. In this regard we are enclosing here with the Audited balance sheet for last year. The said amount was receivable in L-1 and copy of account for the last year is also enclosed for your ready reference. However, inadvertently the said amount was reported in the schedule no. 31a of the audit report by the auditor. The said amount was received back on 23-09-2016 and 27-09-2016. In This regard we are enclosing here with the ledger account of FY 2016-17 along with bank statement for FY 2015-16 in which the said amount was advanced to PremArora. Therefore, no unsecured were loan were raised from PremArora.”</i></p>

			The copy of reply submitted before the PCIT is enclosed at page no. 667 to 676 of the paper book (relevant page is 675).
<b><u>Gautam Construction</u></b> <b><u>ADNPA7060L</u></b>	VPO Lachowal, Tanda Road, Hoshiarpur	<p>1. <b>Ledger account of M/s. Gautam Construction Co., in the books of accounts of the assessee placed at page 43 of Paper Book.</b></p> <p>2. <b>Confirmations from the party M/M/s. Gautam Construction Co. please refer page 547 of the paper book.</b></p>	<p>The following documents were submitted before the PCIT</p> <p>1) <b>Income Tax return for AY 2017-18 along with computation of income. (Refer page no. 543 to 544). The lender has filed the return of income at Rs. 1,48,95,140/-.</b></p> <p>2) <b>Copy of OD limit account statement of M/s. Gautam Construction Co. maintained with HDFC Bank from which sum was paid to the assessee. Please refer page no. 548 of the paper book.</b></p> <p>3) <b>Confirmed copy of account of assessee in the books of M/s. Gautam Construction Co. (Refer page no. 547).</b></p>
<b>Naresh Aggarwal</b> <b>AAYPK0642G</b>	13R, Model Town, Hoshiarpur	<p>1. <b>Copy of account of Sh. Naresh Aggarwal in the book of assessee. Please refer page no. 39 of the paper book.</b></p> <p>2. <b>Certificate from the Capital Small Finance Bank that the amount of Rs. 80 lacs was remitted on 05.04.2016 from the account number 004200001924 belonging to Sh. Naresh Aggarwal. Please refer <u>page no. 40 of the paper book.</u></b></p>	<p>The following documents were submitted before the PCIT</p> <p>1. <b>Confirmed copy of account of the assessee in the books of Sh. Naresh Aggarwal. Please refer page no. 545 of the paper book.</b></p> <p>2. <b>Bank statement of Sh. Naresh Aggarwal maintained with Capital Small Finance Bank. Please refer to page 546 of the paper book.</b></p> <p>3. <b>The affidavit of Sh. Naresh Aggarwal was also submitted before the PCIT in which it has been clarified by Sh. Naresh Aggarwal that the amount of Rs. 80 lacs has been remitted out of opening bank balance maintained with Capital Small Finance Bank. Please refer page 677 of the paper</b></p>

			<p>book.</p> <p>4) Copy of ITR of Naresh Aggarwal for AY 2015-16 declaring income of Rs 1103580/- Please refer page no 687.</p> <p>5) Copy of bank statement for FY 2015-16 Please refer page no</p>
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The Id. Counsel for the assessee respectfully relied on the judicial findings which are as below:

<p>CIT, Faridabad v. Laul Transport Corporation [2009] 180 Taxman 185 (Punjab &amp; Haryana) CHANDIGARH BENCH</p>	
<p>CIT v. Mark Hospitals (P.) Ltd. [2015] 58 taxmann.com 226 (Madras)</p>	
<p>Garima Polymers (P.) Ltd. v. ACIT, Central Circle-16, New Delhi [2021] 131 taxmann.com 4 (Delhi - Trib.)</p>	
<p><b>Mod Creations (P.) Ltd. v. Income-tax Officer</b> [2011]13 taxmann.com 114 (Delhi)</p>	<p><i>Section 68 of the Income-tax Act, 1961 - Cash credits - Assessment year 2002-03 - During relevant assessment year, assessee-company had raised unsecured loans from five persons who were its directors and shareholders - Payments were made through banking channels - During assessment proceedings, assessee furnished income-tax returns and bank statements of said creditors along with their affidavits stating therein source of funds which were used in lending amounts to assessee - Assessing Officer, however, held that both, genuineness of transactions as also creditworthiness of creditors remained unexplained and added amount of aforesaid credits to assessee's income - Whether, on facts, assessee had discharged initial onus placed on it and if revenue still had a doubt with regard to genuineness of transactions in issue or as regards creditworthiness of creditors, it would have had to discharge onus which had shifted on to it - Held, yes - Whether no such exercise having been undertaken by revenue authorities, addition under section 68 in hands of assessee was unjustified - Held, yes [In favour of assessee]</i></p>

<p><b>Gaurav Triyugi Singh v. Income Tax Officer 24(3)(1), Mumbai</b></p> <p>[2020] 121 taxmann.com 86 (Bombay)</p>	<p><i>Section 68 of the Income-tax Act, 1961 - Cash credit (Unsecured loan) - Assessment year 2010-11 - Whether in order to establish receipt of credit in cash, as per requirement of section 68, assessee has to explain three conditions, namely, identity of creditor; genuineness of transaction; and credit worthiness of creditor - Held, yes - Assessee individual had taken unsecured loan of certain amount from one ST - Assessing Officer observed that ST had given said loan amount from its bank account and prior to which this amount was credited to her bank account as gift from two persons, namely, RBS and SST who were her relatives - He was of view that sources RBS and SST were suspected - Consequently, he treated loan amount received by assessee from ST as unexplained cash credit and made additions under section 68 - It was noted that loan amount was given to assessee through cheque by ST - There was no dispute as to identity of creditor ST - There was also no dispute about genuineness of transaction - That apart, creditor had explained as to how credit was given to assessee as amount was received by it from RBS and ST - Further, revenue could not prove or bring any material to impeach source of credit - Whether, on facts, assessee had discharged its onus as per requirement of section 68 and it was not required for assessee to explain sources of source i.e. genuineness of receipt of amount by ST from RBS and SST - Held, yes - Whether, therefore, impugned addition under section 68 made to income of assessee was to be deleted - Held, yes [Paras 13 to 16] [In favour of assessee]</i></p>
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7. The Id. CIT-DR vehemently argued & relied on the order of revisional authority. But unable to bring any contrary fact in relation to the submission of the assessee.

8. We heard the rival submission and relied on the documents available in the record. The entire finding of the revisional authority was not on any cogent material. The assessment was completed by a process of verification on which the assessee had completely participated. After the thoughtful consideration of the case, we observed that the observation of the revisional authority is related to lack of investigation by the assessing authority related to creditworthiness &

genuineness of transaction related to assessee with partners & loan creditors. The assessee in its support had complied the requirements as raised by both the revenue authorities. Though the assessment order does not patently indicate that the issue in question had been considered by the Assessing Officer, the record showed that the Assessing Officer had applied his mind. Once such application of mind is discernible from the record, the proceedings under Section 263 would fall into the area of the Commissioner having a different opinion.

The assessee also respectfully relied on the following case laws in which it has been held as under:

Citation	Head Notes
<b>Meerut Roller Flour Mills (P.) Ltd v CIT,</b> 110 taxmann.com 170 (Allahabad) / [2019] 267 Taxman 18	<i>Where Commissioner passed a revisional order under section 263 directing Assessing Officer to examine matter relating to unsecured loans obtained by assessee, -It was noted that in course of assessment, Assessing Officer had raised various queries from assessee in respect of unsecured loan which were duly replied by assessee along with documentary evidence in regard to each of query - Whether in aforesaid circumstances, unless Commissioner exercising power under section 263 brought on record any evidence showing that order of Assessing Officer was erroneous, as same was passed without application of mind or Assessing Officer had made an incorrect assessment of fact or incorrect application of law, revisional order passed by him was not sustainable - Held, yes - Whether since Commissioner failed to do so, impugned revisional order was to be set aside - Held, yes [Paras 21 and 22] [In favour of assessee]</i>
<b>CIT v. Nirav Modi</b> [2017] 77 taxmann.com 15	<i>SLP dismissed against High Court's ruling that where Assessing Officer after making proper and detailed enquiries, took a view that amount received by assessee as gift from his relatives was a genuine transaction, impugned revisional order passed by Commissioner directing Assessing Officer to enquire into capacity of donors and to decide about genuineness of gift afresh, was not sustainable</i>

(SC)	
<p><b>CIT v Hindustan Marketing &amp; Advertising Co. Ltd.</b> 196 Taxman 368 (DEL)</p>	<p><i>Commissioner set aside assessment orders holding that ITO had not made adequate and detailed investigations/enquiries in respect of a major area of assessee-company's operation and source of its income - Tribunal quashed revisional order passed by Commissioner - Whether in view of fact that ITO had made reasonably detailed enquiries, had collected relevant material and discussed various facets of case with assessee, order of Commissioner to direct fresh assessment by going deeper into matter would not form a valid or legal basis to exercise jurisdiction under section 263 - Held, yes - Whether, therefore, impugned order of Tribunal was to be upheld - Held, yes</i></p>
<p><b>SMT. ANITA MALPOTRA V. ITO</b> 109 TTJ 76 (ITAT, Amritsar)</p>	<p>Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interest of revenue - Assessment year 2001-02 - Against assessment order passed by Assessing Officer, Commissioner passed order under section 263 on grounds that Assessing Officer had failed to make enquiry/investigation about expenditure incurred on electricity and production obtained, and that production was required to be worked out by taking into account decision in case of Sant Stone Crusher (P.) Ltd. order dated 19-9-2005 in IT Appeal No. 185/(Asr.) 2005 - However, facts revealed that during assessment proceedings, Assessing Officer had examined and test checked books of account, copies of electricity bills and other documents produced by assessee and had duly discussed each item of income and expenditure with assessee - <u>Whether in such circumstances, it could not be said that assessment was completed without any enquiry</u> - Held, yes - Whether further, since there is no universal formula/standard that production in all cases would be same/constant, subjective assessment made in above-cited case could not be a yardstick for holding that Assessing Officer had completed assessment without making any inquiry or investigation - Held, yes - Whether therefore, Commissioner was not justified in exercising power under section 263 and revising assessment order - Held, yes</p>

9. In this regard reliance is being placed upon the order of jurisdictional Punjab and Haryana High Court in the case of Pr. Commissioner of Income-tax (Central) vs. Kanin (India) 141 taxmann.com 83.

*“Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interest of revenue (Explanation 2(a)) - Assessment year 2013-14 - Whether in order to attract section*

*263 Assessing Officer's order must be erroneous and also prejudicial to interest of revenue - Held, yes - Whether before reaching conclusion that order of Assessing Officer is erroneous and prejudicial to interests of revenue, revisionary authority itself has to undertake some enquiries to establish that assessment order is erroneous and prejudicial to interests of revenue - Held, yes - Whether where order was passed by Principal Commissioner holding that assessment made by Assessing Officer was erroneous and prejudicial to interest of revenue as assessment order had been passed without making inquiries or verification, however, Principal Commissioner was not in a position to point out as to what inquiries or verification should have been made but had not been made by Assessing Officer so as to make present case fall within Explanation 2(a) to section 263, Tribunal rightly set aside order passed by Principal Commissioner - Held, yes [Paras 9 to 12] [In favour of assessee].”*

10. Respectfully considering the orders of Apex court & coordinate bench the investigation by the Id. AO cannot be called ‘lack of investigation’. The Id. PCIT has not brought any material on record to show that the view taken is contrary to law or the investigation is erroneous. In the light of these discussions and placing

respectful reliance on the decisions of Hon'ble Supreme Court, Hon'ble High Court of Delhi, Hon'ble High Court of Allahabad & Coordinate bench of Amritsar, cited supra, we are of the considered view that the Id. PCIT is not justified in setting aside the order of the Id. AO. Accordingly, the directions of the PCIT are quashed.

11. In the result, the appeal of the assessee bearing **ITA No. 117/Asr/2022** is allowed.

**Order pronounced in the open court on 11.11.2022**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

Copy of the order forwarded to:

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

True Copy  
By Order