

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI  
BEFORE SRI MAHAVIR SINGH, JM AND SRI N.K. PRADHAN, AM**

**ITA No.1090/Mum/2015  
(A.Y:2011-12)**

<b>M/s Kukreja Development Corporation.</b> 4 <sup>th</sup> , and 5 <sup>th</sup> Floor, Sai Commercial Building, B.K.S. Devshi Marg, Govandi (E), Mumbai-400007	Vs.	<b>Commissioner of Income Tax</b> Central-2, Mumbai
<b>PAN No.AABFK0411A</b>		
<b>Appellant</b>	..	<b>Respondent</b>
<b>Assessee by</b>	..	Shri.Naresh Kumar, AR
<b>Revenue by</b>	..	Shri. R.P Meena, CIT DR
<b>Date of hearing</b>	..	<b>22-12-2016</b>
<b>Date of pronouncement</b>	..	<b>22-12-2016</b>

**ORDER**

**PER MAHAVIR SINGH, JM:**

This appeal by the assessee is arising out of the revision order of CIT Central-2, Mumbai passed u/s 263 of the Income Tax Act, 1961 (hereinafter ‘the Act’), dated 17-12-2014. The Assessment was framed by ACIT Central Circle 31(7), Mumbai for the A.Y. 2011-12 vide order dated 28-01-2014 u/s 143(3) of the Act.

2. The only issue in this appeal of assessee is against the order of CIT for passing a revision order u/s 263 of the Act, revising the assessment framed by ACIT Central Circle 31(7), Mumbai u/s 143(3) of the Act dated 28-01-2014. For this assessee has raised following four grounds: -

*“1. The Hon'ble CIT Central - 2 (herein after referred as CIT) has erred in invoking Provisions of Section 263 of the Income Tax Act, 1961 by issuing the Notice inspite of the fact that Scrutiny assessment has been completed by the ACIT Central Circle – 31 U/s 143 (3) of the Income Tax Act, 1961 after duly examined and considering facts while framing the assessment order U/s 143 (3) of Income Tax Act, 1961. The Hon'ble CIT has erred in raising the issues and making rowing enquiries in the Proceedings U/s 263 of the Income Tax Act, 1961. Further Order U/s 263 is also passed without any conclusion merely setting aside the assessment to the file of the learned assessing officer which is unjustified. It is therefore submitted that the order passed U/s 263 should be cancelled.*

*2. Without prejudice to ground No. 1, The CIT has mentioned that Interest of Rs.1.38Crores is claimed however provisions of Section 36 (11) (iii) along with explanation 8 to Section 43 (1) does not appear to looked into by the learned assessing officer. The issue raised with regard to Interest was duly examined and the same cannot*

*be considered in the Order U/s 263 of the Income Tax Act, 1961. In conclusion, CIT has set aside the order without examining the documents and explanation filed during the 263 proceedings and mere set aside of the order to such extent is unjustified. Accordingly, the necessary direction should be given in this regard.*

3. *Without prejudice to ground No. 1, The CIT has mentioned that applicability of Section 14A does not appear to have looked into by the learned assessing officer. The issue raised with regard to Section 14A was duly examined and the same cannot be considered in the Order U/s 263 of the Income Tax Act, 1961. In conclusion, CIT has set aside the order without examining the documents and explanation filed during the 263 proceedings and mere set aside of the order to such extent is unjustified. Accordingly, the necessary direction should be given in this regard.*

4. *Without prejudice to ground No. 1, The CIT has mentioned that loan creditors have not been examined by the learned assessing officer. The issue raised with regard to loans was duly examined and the same cannot be considered in the Order U/s 263 of the Income Tax Act, 1961. In conclusion, CIT has set aside the order without examining the documents and explanation filed during the 263 proceedings and mere set aside of the order to such extent is unjustified. Accordingly, the necessary direction should be given in this regard.*

3. The learned Counsel for the assessee drew our attention to the findings of CIT in Para 7 which reads as under: -

*“7. I have examined the contention of the assessee. The details given were not there before the AG neither did he examine the same while accepting the assessee's claim. The assessment order is therefore set aside on the specific issue discussed above. The AO will examine the applicability of Section 36(1)(iii) along with explanation 8 to Section 43(1) and decide the issue as per the provisions of IT Act, A O will also examine the applicability of Section 14A vis-à-vis exempt income and decide the matter as per the provisions of the IT Act. The Assessing Officer will examine the unsecured loans taken by the assessee. Needless to say that Assessing Officer will give adequate opportunity to the assessee and will decide the matter with an open mind.”*

According to him, the observations of CIT that enquiries were not conducted is supported by the decision of co-ordinate Bench in assessee's sister concern in ITA No.1089/Mum/2015 in the case of M/s OP Enterprises order dated 13-04-2016, wherein Tribunal, on exactly identical issues have confirmed the revision order vide Para 2.3 as under: -

*“2.3. However, if the ratio laid down in the aforesaid cases is analyzed with respect to the facts of the present appeal, it is noted that in the assessment order, merely, it has been mentioned that the details/explanation called for have been examined and placed on record and further that the receipt on account of sale of wind power, sale of flats from projects and stock of unsold projects. Next issue discussed in the assessment order*

*is with respect to disallowance of depreciation on motor car and no discussion has been made with respect to section 36(1)(iii) along with explanation 8 to section 43(1), while allowing the interest on borrowing. Likewise, no discussion has been made with respect to investment of Rs.5.31 crores in UTI mutual funds, wherein, dividend of Rs.2.53 lakhs was claimed as exempt. It is also noted that during the year, fresh interest free unsecured loans were raised, amounting to Rs.3.74 cores from Om Prakash and Company and Rs.7.19 crores from Reshma Kukreja. The Ld. Assessing Officer neither examined the genuineness of loans, its creditworthiness, in the light of applicability of section 68 of the Act. Taking fresh loan by the assessee was not even contradicted by the assessee. In view of this factual matrix, we agree with the finding of the ld. Commissioner that the assessment order is erroneous as well as prejudicial to the interest of Revenue. The Assessing Officer neither conducted proper enquiries nor applied his mind on the issues, thus, the order is erroneous and prejudicial to the interest of the Revenue. Now come to the impugned order, which clearly indicates that even in the impugned order, the issues were set aside to the file of the Assessing Officer to decide afresh and to make appropriate enquiries and after examining the details and also to provide due opportunity of being heard before finalizing the assessment, thus, no grievance is caused to the assessee, because the assessee is at liberty to contest the observation made by the ld. Commissioner. Our view is fortified by the decision in Indian Textile vs CIT (157 ITR 112) (Mad.), Gee Vee Enterprises vs Addl. CIT (99 ITR 375)(Del.), Thalibai F Jain vs ITO 101 ITR 1 (Karn.) and CIT vs HPFC 186 Taxman 105 (HP), CIT vs Pushpa Devi 164 ITR 639 (Patna). We are aware that before the Commissioner invokes the revisional jurisdiction u/s 263, he should be satisfied that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Hon'ble Gujarat High Court in CIT vs M. M. Khambatbala 198 ITR 144 (Guj.) even went to the extent that revisional powers can be exercised even if the issue is debatable. Totality of facts, clearly indicates that the Ld. Commissioner justifiably invoked revisional jurisdiction as is oozing out from the facts available on record. It is further noted that in para 7 of the impugned order, certain direction with respect to examining the unsecured loans, taken by the assessee and applicability of section 36(1)(iii) of the Act and 14A vis-à-vis exempt income has been asked for and it has been specifically directed that adequate opportunity be provided to the assessee and further directed the Assessing Officer to decide with an open mind. It is not the case that own view of the Ld. Commissioner has been thrust upon the Assessing Officer to decide the case in a particular manner. If the assessee is satisfied that necessary details, if filed, were not put to black and white then there should be no fear in the mind of the assessee. It is also not the case that scope of examination/enquiries on the issues was enlarged rather liberty was granted to the Assessing Officer to examine the issues in hand in a justifiable manner Even otherwise, the mandate of Article 265 of the Constitution of India is to levy and collect due taxes only. Thus, considering the totality of facts, we are of the view, that revisional powers were justifiably invoked by the Ld. Commissioner, therefore, the appeal of the assessee is having no merit, consequently, dismissed.”*

4. The learned Counsel for the assessee fairly and candidly conceded the position. Accordingly, we dismiss the appeal of assessee and AO is directed to framing the assessment after allowing opportunity of being heard to the assessee and examined each

and every evidence as directed by coordinate Bench in the case of M/s OP Enterprise. The appeal of assessee is dismissed.

**5. In the result, the appeal of the assessee is dismissed.**

Order pronounced in the open court on 22-12-2016.

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Mumbai, Dated: 22-12-2016

*Sudip Sarkar /Sr.PS*

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,  
Assistant Registrar  
**ITAT, MUMBAI**