IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, MUMBAI
BEFORE SHRI G.S. PANNU, AM AND SHRI RAVISH SOOD, JM

आयकर अपील सं./ I.T.A. No. 2706/Mum/2015
(**निर्धारण वर्ष /** Assessment Year: 2008-09)

ATC Telecom Tower Pvt. Ltd. (earlier known as Essar telecom Infrastructure Pvt. Ltd.) 403, 4th Floor, Skyline Icon Andheri Kurla Road, Near Mittal Industrial Estate Mumbai-400 059	**बनाम/ Vs.**	Principal CIT-9 Aayakar Bhavan, Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./ **PAN/GIR No.** AAECA9823E		
(अपीलार्थी**/Appellant)**	**:**	**(**प्रत्यर्थी / **Respondent)**

अपीलार्थी की ओर से/**Appellant by**	**:**	Shri Porus Kaka, Senior Counsel & Shri Hitesh Chande, A.R.
प्रत्यर्थी की ओर से**/ Respondent by**	**:**	Shri R.P. Meena, D.R.

सुनवाई की तारीख**/ Date of Hearing**	**:**	06/07/2017
घोषणा की तारीख **/ Date of Pronouncement**	**:**	03/10/2017

आदेश / **O R D E R**

PER RAVISH SOOD, JUDICIAL MEMBER

The present appeal filed by the assessee is directed against the order passed by the **Principal Commissioner of Income-tax-9, Mumbai (for short 'Principal CIT)** under Section 263 of the **Income Tax Act, 1961 (for short 'Act')**, dated 20.03.2015. The assessee

assailing the order passed under Sec. 263 by the Principal CIT, had raised before us the following grounds of appeal:-

> *"Based on the facts and circumstances of the case and in law, ATC Telecom Tower Corporation Pvt. Ltd (Appellant) craves leave to prefer an appeal against the order passed by the learned Principal Commissioner of Income-tax - 9. Mumbai ('learned CIT') under Section 263 of the Income tax Act, 1961 ('Act') for AY:2008-09, on the following grounds, each of which is without prejudice to one another:*
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> 1. *The learned CIT erred in initiating proceedings/ assuming jurisdiction/ exercising jurisdiction under Section 263 of the Act and setting aside the order passed under Section 143(3) read with Section 147 of the Act.*
> 2. *The learned CIT erred in holding that the assessment order dated 28 March 2013 (erroneously mentioned by the learned CIT as 29 November 2012) is erroneous and prejudicial to the interest of the revenue in so far as the genuineness of the source of share application money credited in the books of accounts is concerned.*
> 3. *The learned CIT failed to appreciate that Section 68 of the Act has no application to facts of the case at hand.*
> 4. *The learned CIT erred in holding that ingredients of Section 68 of the Act remained unproved in the facts and circumstances of the case.*
> 5. *The learned CIT erred in holding that the assessment order was passed in a summary manner without considering the relevant aspects, details, making proper enquires and without any application of mind.*
>
> *The Appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.*
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> *The appellant prays that appropriate relief be granted based on the said grounds of appeal and the facts and circumstances of the case."*

2. Briefly stated, the facts of the case are that the assessee company which is engaged in the business of setting up of Telecom Towers and Infrastructure services had e-filed its return of income for Assessment Year: 2008-09 on 27.09.2008, declaring a loss of Rs.48,93,08,013/-. The assessee thereafter filed a revised return of income on 30.03.2010, declaring a loss of Rs.42,84,44,001/-. The revised return of income filed by the assessee was processed as such under Sec. 143(1) of the 'Act' on 26.04.2010. The case of the assessee

was thereafter taken up for scrutiny assessment under the Computer Assisted Selection of Cases for Scrutiny (for short 'CASS') and assessment under Sec. 143(3) was framed vide assessment order passed under Sec. 143(3), dated. 29.12.2010 accepting the revised loss of Rs. 42,84,44,001/- returned by the assessee. That as the income determined under the normal provisions of the 'Act' and the 'book profit' determined under Sec. 115JB, both were negative, therefore, the income of the assessee was taken at Rs. Nil.

3. That subsequent to the culmination of the assessment proceedings in the hands of the assessee, the A.O was in receipt of Factual Report (confidential) information prepared by the Addl. DIT (Inv.), New Delhi, which revealed that the name of the assessee had appeared in the course of the investigations in the 2G Scam. That the information received by the A.O revealed that a consideration of Rs. 700 crores that was paid by the assessee to Loop Telecom Limited in the Financial Year 2007-08, was subsequently refunded to the assessee. As per the information, the aforesaid transaction was not properly recorded in the books of account of the assessee. The A.O was further informed that the assessee had failed to fully and truly disclose all the material facts in respect of the nature, mode and source of the amount of Rs. 700 crores paid to Loop Telecom Limited. The A.O further observed that the assessee had increased its share capital during the year under consideration from Rs. 1,00,000/- to Rs. 19,20,96,800/-, however, no evidence was placed on record by the assessee to establish the identity, genuineness, creditworthiness, nature, mode and source of the transaction with reference to increase in share capital during the year under consideration. It was further observed by the A.O that though the assessee had increased its Reserves and Surplus during the year under consideration by an

amount of 179,79,71,200/-, however, no evidence was filed on record which could enable the A.O to establish the identity, genuineness and creditworthiness of the transaction with reference to the increase in the Reserves and Surplus during the year under consideration. It was further gathered by the A.O that though the assessee had during the year under consideration increased its Current liabilities from Rs. 42,40,78,321/- to Rs. 264,42,29,879/-, however, the assessee had failed to come forth with a full and true disclosure in respect of the nature, mode and source of the current liabilities amounting to Rs. 264,42,29,879/-. The A.O *inter alia* for the said reasons, holding a *bonafide belief* that the income of the assessee chargeable to tax had escaped assessment, therefore, reopened the its case under Sec. 147 of the 'Act'.

4. That a perusal of the 'reasons to believe' recorded by the A.O for reopening the case of the assessee revealed that as a result of the investigations in the 2G scam, information was shared with the office of the A.O that the transactions involving payment of an amount of Rs.700 crores by the assessee to Loop Telecom Limited, followed by a refund of the same, were not properly recorded in the books of account of the assessee. Thus, one of the primary reasons that had weighed in the mind of the A.O after deliberating on the aforesaid information received by him was that there was a failure on the part of the assessee to fully and truly disclose all the material facts in respect of the nature, mode and source of the amount of Rs. 700 crores paid by the assessee to Loop Telecom Limited during the Financial year 2007-08. Thus, to be brief and explicit, the nature, mode and source of the amount involved in the transaction of Rs. 700 crores between the assessee and Loop Telecom Limited, having not been fully and truly disclosed by the assessee, thus, was required to be deliberated

upon by the A.O in order to bring to tax the corresponding income, which had either wholly or partially escaped assessment.

5. The A.O reopened the case of the assessee under Sec. 147 of the Income tax Act, 1961 and a notice u/s 148, dated 20.02.2012 was issued and served on the assessee. The genesis of the issue leading to the reopening of the case was considered at length by the A.O in the body of the reassessment order. It was observed by the A.O that on the basis of an order dated 16.12.2010 of the **Hon'ble Supreme Court of India** in Civil Appeal No. 10660 of 2010, arising out of a petition for 'Special leave to appeal' (Civil Appeal No. 24873/2010) in the matter **Centre for Public Interest Litigation and Others Vs. The Union of India and others** the Hon'ble Apex Court with a view to ensure that in the serious matter of 2G spectrum scam a comprehensive and coordinated investigation be conducted by CBI and the enforcement directorate without any hindrance, had issued certain specific directions. The A.O further observed that pursuant to the investigations carried out on the basis of the aforesaid order of the Hon'ble Apex Court, the CBI had filed a charge sheet dated 21.10.2009 in the court of Special Judge (2G spectrum), Patiala House Court, New Delhi, which clearly named the petitioner and its directors as the accused and set out the details of the conspiracy hatched by the accused which had resulted in loss to the public exchequer. The A.O deliberating on the facts before him, observed that in furtherance of the Hon'ble Supreme Court monitored investigation, in or about August 2011, the CIT-V, Mumbai had received a secret/confidential communication containing factual report from the Directorate of Income-Tax investigations, New Delhi, on the basis of investigations carried out by the said directorate, naming the petitioner as being involved in the transactions having tax implications, which were

required to be verified by the assessing officers by carrying out further verifications/investigations by initiating necessary action, as deemed fit under the Income Tax Act. It was thus stated by the A.O that in the background of the aforesaid development and information obtained there from, and in order to assist in the Hon'ble Supreme Court monitored investigations, a Notice u/s 148 was issued to the assessee.

6. Be that as it may, the primary issue for reopening of the case of the assessee was to deliberate on the nature, mode and source of the amount involved in the transaction of Rs. 700 crores between the assessee and Loop Telecom Limited, in respect of which there was a failure on the part of the assessee to come forth with a full and true disclosure of all the material facts having a bearing on its tax liability. The A.O in the backdrop of the aforesaid facts called upon the assessee to furnish complete details of the source from where the amount of Rs. 700 crores was advanced to M/s Loop Telecom Limited, in order to facilitate making of payment by the latter towards licence fees for grant of **Unified Access Service License (for short 'UASL')** to the **Department of Telecommunications (for short 'DOT')**. The A.O also called upon the assessee to explain as to why no interest income was charged from Loop Telecom Limited. The assessee in compliance to the aforesaid query raised by the A.O, therein, vide its reply dated 02.11.2012, furnished details as regards the nature and source of the amount of Rs. 700 crores that was advanced to Loop Telecom Limited, as under:-

> *"During the previous year relevant to the aforesaid assessment year, the assessee advanced Rs. 700/- crores to LTL. The above advance was given pursuant to a MOU between the assessee, LTL and BPL Communications Ltd. The assessee had given the above advance in order to secure an order for providing passive telecom in structure and related operations and maintenance services to LTL. The copy of aforesaid MOU is enclosed as Annexure. 1*

Statement of account of LTL providing the payment and refund details is enclosed as Annexure-2:

Statement of account of Loop Telecom Ltd.(LTL)

Date	*Particulars*	*Amount paid/ (Received)(in Rs.)*
10.01.2008	*Paid to LTL*	*3,925,000,000*
11.01.2008	*Paid to LTL.*	*3,075,000,000*
26.02.2008	*Received from LTL*	*(50,000,000)*
26.02.2008	*Received from LTL*	*(200,000,000)*
12.03.2008	*Received from LTL*	*(20,000,000)*
17.03.2008	*Received from LTL*	*(180,000,000)*
	Balance receivable as on 31.03.2008	***6,550,000,000***

The above amount was paid out of funds received from Essar Communications Holdings Ltd., Mauritius as share application money. Copy of bank statement evidencing the payment of Rs.700 crores to LTL and source of such funding is enclosed as Annexure 3.

The assessee received interest of Rs.22.56 crores on the above amount which was accounted in AY: 2009-10. As the assessee had received the funds from ECHL as share application money towards subscription of shares, no interest was payable."

7. The A.O deliberating on the aforesaid reply of the assessee, observed that the assessee had advanced a sum of Rs.700 crores to Loop Telecom Limited in order to secure a business deal entered into with the said company for providing passive Infrastructure facility and maintenance services in all the 21 circles allotted to it. The A.O while enquiring into the source of the Share application money, as per the information provided by the assessee, resorted to getting the same verified by making a reference to the Mauritius Revenue Authorities through the **Foreign Tax and Tax Research (for short 'FT & TR')** division of the CBDT, under the provisions of the relevant Articles dealing with "Exchange of Information" of the Double Taxation Avoidance Agreement (DTAA) entered into between the said countries,

i.e Mauritius and India. The A.O further referred to the flow of inter-company funds which were received by the assessee and advanced to Loop Telecom Ltd., as under:

ECHL, Mauritius	*ETLPL(Assessee)*	*LTL*
	Cr.	*Dr. (Paid to LTL)*
10.01.2008	*Recd. Rs.392.49 Crores*	*Rs.392.5 Crores Paid*
11.01.2008	*Recd. Rs.333.63 Crores*	*Rs.307.5 Crores*

8. That it was observed by the A.O that though the assessee had claimed to have received a sum of Rs. 726.12 crores from **Essar Communications Holding Limited, Mauritius (for short 'ECHL')**, towards share subscriptions of the assesses equity by ECHL within a time span of two days, i.e on 10.01.2008 and 11.01.2008, however, out of the same an amount of Rs.700 crores was transferred as an advance to Loop Telecom limited on the said respective dates itself. It was observed by the A.O that the shares could only be allotted to ECHL, Mauritius, only on 19.03.2008, i.e exactly after two months from the date of receipt of share application money. Thus, the A.O in the backdrop of the aforesaid facts held a strong conviction that the flow of funds were inescapably directed to make available funds to Loop Telecom Limited, in order to facilitate making of payment of UASDL fees to the DOT. The A.O further referring to the facts pertaining to the termination of memorandum of understanding (for short 'MOU') between the assessee and Loop Telecom Limited, observed that as the UASL license could not be allotted to the latter within the time frame stipulated in the 'MOU', therefore, the amount paid to Loop Telecom Limited was required to be refunded back alongwith interest at the rate of 20% on the basis of daily running account balance between the aforesaid parties. The A.O holding a strong conviction that the sum of Rs. 700 crores paid to Loop Telecom Limited could safely be characterised as a loan on which interest was

liable to be charged @ 20% during the year under consideration, therefore, computed the correlating interest of Rs.29,27,77,777/- on the aforesaid amount of Rs. 700 crore. The A.O after making certain other additions reassessed the total loss of the assessee at Rs.12,98,66,740/-, vide his order passed under Sec. 143(3) r.w.s 147, dated. 28.03.2013.

9. The **Commissioner of Income Tax-8-Mumbai (for short 'CIT'),** after the culmination of the aforesaid reassessment proceedings by the A.O vide his order u/s 143(3) r.w.s. 147, dated 28.03.2013, called for the records of the assessee. The CIT after deliberating on the records of the assessee, therein being of the view that the reassessment order passed by the A.O was erroneous and prejudicial to the interest of the revenue, thus, vide his **Show Cause Notice (for short 'SCN')**, dated 09.09.2014, called upon the assessee to explain as to why the same may not be revised under Sec. 263 of the 'Act'. The reason seeking for revision of the reassessment order by the CIT, to the extent the same survives and had been assailed before us, pertains to the transaction involving verification of the source of payment of an amount of Rs.700 crores by the assessee to Loop Telecom Limited, was on the following grounds:

(i). The amount of Rs.726 crores which was claimed by the assessee company to have been received as share application money from ECHL was not disclosed by the assessee in the relevant part of the balance sheet explaining the source of funds.

(ii). That as it was the claim of the assessee before the A.O, that an amount of Rs. 726 crores was received from ECHL, a Mauritius based company, on account of share application

money, therefore, the A.O in order to verify the international money trail and the source of money, had thus in the course of the reassessment proceedings made a reference vide letter dated 22.11.2012 to the Jt. Secretary, FT&TR Division, CBDT, New Delhi, requesting that the information may be obtained from the authorities in Mauritius under the specific articles dealing with 'Exchange of Information' in the respective "Double Taxation Avoidance Agreement" between India and Mauritius. However, as the information was not received by the A.O in time, a further reminder was issued by the A.O on 05.03.2013 for obtaining the information. The information was received by the A.O only as on 28.03.2013, which was the date on which the A.O had passed the reassessment order under Sec. 143(3) r.w.s 147 of the 'Act'. Thus, the A.O had passed the reassessment order without waiting for and examining the information received from the Mauritius Revenue Authorities. The failure on the part of the A.O to wait for and verify the information which he himself had called for, thus, rendered the reassessment order passed by him as erroneous and prejudicial to the interest of the revenue.

(iii). That even otherwise, the information received from the Mauritius Revenue Authorities was neither complete, nor explained the source and creditworthiness of the persons giving the share application money. It was thus observed by the CIT that the A.O had no material on record to come to the conclusion that sources of share application money from ECHL was properly explained.

(iv). That as per the information received from the Mauritius Revenue Authorities, out of 12,43,07,689/- US dollars (2,95,90,743/- US dollars returned) claimed by the assessee to have been received from ECHL, only 85,00,000 US dollars were received through the bank accounts of ECHL. The information received from the Mauritius Revenue Authorities revealed that the balance amount was paid directly by **M/s Essar Global Limited (for short 'EGL')**, the holding company of ECHL, directly to the assessee. It was further observed by the CIT that even 85,00,000/-US dollars received by the assessee from ECHL was not belonging to ECHL, but was claimed to be given by EGL to ECHL.

(v). That it was observed by the CIT that there was no information as to how the following money had been received by the assessee:

S.No.	Amount disbursed	Date of disbursement	Nature of investment
1.	USD 6918904	13.09.2006	Investment in equity shares.
2.	USD 5479985	04.10.2006	Investment in equity shares.
3.	USD 3408800	28.02.2007	Investment in equity shares.
4.	USD 70409257	09.01.2008	Investment in equity shares.(out of USD 100,000,000 remitted, shares for USD 70,409,257 were allotted and the balance money was refunded by ETIPL.

(vi). That neither the source of receipt of share application money received by the assessee from ECHL was properly explained by the assessee, nor the same could be gathered from the information received by the A.O from the Mauritius Revenue Authorities. There was also no evidence as to how the money was acquired by EGL.

10. Thus, on the basis of the aforesaid reasons the CIT held a strong conviction that the action of the A.O in treating the sources of money claimed by the assessee to have been received from ECHL as properly explained while passing the reassessment order, was backed up absence of any evidence about the source and capacity of the persons giving the money and the genuineness of the transaction. The CIT further observed that as the money credited in the books of account of the assessee and the capacity of the persons giving the money and genuineness of the transaction were neither verified by the A.O nor proved to his satisfaction, therefore, the order of the A.O was not only erroneous but also prejudicial to the interest of the revenue.

11. The assessee in its reply to the 'SCN', submitted before the CIT that the A.O had during the course of the reassessment proceedings called for all the relevant details in respect of the share application money received by the assessee, deliberated on the same and finding them well in order, had thus not drawn any adverse inferences in the hands of the assessee. It was further averred by the assessee that even otherwise as per the settled position of law, where the identity of the shareholders or persons who

have subscribed to the share application/share capital of a corporate entity is established, then no addition in respect of such amounts would be called for under Sec. 68 in the hands of the corporate entity. That as regards the information received by the A.O from the Mauritius Revenue Authorities, it was submitted that as the same was not made available to the assessee, therefore, it was unable to comment as regards the same. That replying to the observations of the CIT as regards the amount of USD 10,00,00,000 received by the assessee directly from EGL, it was submitted that the said amount was received on behalf of ECHL and against the said amount shares were issued to ECHL. The assessee submitted before the CIT that submissions as regards receipt of the aforesaid amount from EGL on behalf of ECHL and allotment of shares against the same by the assessee to ECHL were furnished with the A.O during the course of the reassessment proceedings, which after deliberations and necessary verifications on his part, was accepted by him. The assessee further submitted that as per the mandate of Sec. 68, now when the first and the immediate source of the cash credits, i.e share application money received by it was explained to the satisfaction of the A.O during the course of the reassessment proceedings, therefore, it could not be called upon to explain the source of sources of the share application money received by it. Thus, in the backdrop of the aforesaid submissions the assessee had tried to impress upon the CIT that now when the onus cast upon it in respect of the source of the share application money was discharged to the satisfaction of the A.O in terms of the mandate of Sec. 68, therefore, the

reassessment order passed by the A.O on the said count could not be held to be erroneous and prejudicial to the interest of revenue.

12. That in the meantime the jurisdiction over the case of the assessee was transferred from the CIT-8, Mumbai to the **Principal Commissioner of Income Tax-9, Mumbai (for short Principal CIT).** The Principal CIT after deliberating on the contentions of the assessee in the backdrop of the facts borne from the record, however, did not find favour with the same and concluded that the reassessment order passed by the A.O under Sec. 143(3) r.w.s 147, dated. 28.03.2013 was erroneous and prejudicial to the interest of the revenue, on the following grounds:

(i). That the original assessment which was earlier completed by the A.O vide order passed by him under Sec. 143(3), dated. 29.12.2010, was reopened under Sec. 147, primarily for the reason that the information received from the DGIT(Inv),New Delhi, revealed that the source of investments made by the assessee by way of advances given to Loop Telecom Limited was not properly examined/verified by the A.O while framing the assessment. Thus, as the primary issue which had weighed in the mind of the A.O while reopening the concluded assessment of the assessee was to verify the source of the amount of Rs. 700 crores advanced to Loop Telecom Limited, which as claimed by the assessee was from the amount of the share application money of Rs. 726 crores (USD 185 million) received by it from ECHL, a Mauritius based company, therefore, the A.O in order to verify the international money trail and source of

money made a reference vide letter dated. 22.11.2012 to the Jt. Secretary, FT & TR Division, CBDT, New Delhi, requesting that the information may be obtained from the authorities in Mauritius under the specific articles dealing with 'Exchange of Information' in the respective Double Taxation Avoidance Agreements between India and Mauritius. However, the A.O without examining the contents of the relevant information that was provided by the Mauritius Revenue Authorities, had passed the reassessment order under Sec. 143(3) r.w.s 147 of the 'Act'.

(ii). That a perusal of the information received from the Mauritius Revenue Authorities revealed that the same neither did specify the source of the share application money invested by ECHL, nor established the capacity or creditworthiness of ECHL so as to prove the genuineness of the transaction beyond doubt, in terms of the mandate of Sec. 68.

(iii). The information received from the Mauritius Revenue Authorities was in itself found to be incomplete, as the same neither did specify the source nor as to how the money was received by the assessee company. It was observed by the Principal CIT that as per the information received from Mauritius Revenue Authorities, the total disbursement made by ECHL was of USD 17,12,16,946 from 13.09.2006 to 10.01.2008, therefore, it was beyond comprehension as to how the same, as accepted by the A.O, explained the alleged investment of USD 185 million from the said source.

(iv). That though the information received from the Mauritius Revenue Authorities referred to remittance of part payment of the investment made by ECHL by its parent company viz. EGL, which is stated to have been transferred through American Express Bank Ltd., however, no such bank account statement as claimed in the report was found enclosed alongwith the aforesaid information so received.

(v). That though it was claimed that there was direct transfer of funds by EGL on behalf of ECHL out of share application money receivable by ECHL from EGL, but however, neither the details as regards the same were made available on the record by the assessee during the course of the reassessment proceedings, nor were enquired into by the A.O.

13. Thus, in the backdrop of the aforesaid facts it was observed by the Principal CIT that as the A.O had not examined the information received from the Mauritius Revenue Authorities, therefore, the same had remained unverified and not subject to any enquiry by him while passing the reassessment order. It was further observed by the Principal CIT that the Authorised representative for the assessee had during the course of the revision proceedings categorically admitted before him that neither the A.O had during the course of the reassessment proceedings raised any specific queries as regards the alleged funds received from EGL, nor any such details were furnished by the assessee on its own with the A.O. The Principal CIT observed that it was for the very first time during the course of the revision proceedings before him, that the assessee had vide

its letter dated 15.12.2015 placed on record a copy of the letter dated. 12.11.2014 received from ECHL, wherein the latter had confirmed the investment of USD 185 million towards subscription of shares of the assessee alongwith the source of the funds of such investment. The assessee again for the very first time during the course of the revision proceedings before the Principal CIT, had therein placed on his record another letter dated. 12.11.2014 received by ECHL from EGL, alongwith a certificate dated 11.11.2014 issued by Mazars, Chartered Accountants, Mauritius, in respect of investment of USD 185 million by EGL in ECHL, alongwith the source of such funds. The Principal CIT further observed that the assessee during the course of the revision proceedings had for the very first time placed on his record another letter dated. 27.01.2015 explaining the source of the share application money received by the assessee company from ECHL. It was observed by the Principal CIT that out of the total amount of USD 185 million, an amount of USD 100 million as claimed by the assessee was directly remitted by EGL on 09.01.2008, as advance towards issue of shares on behalf of ECHL to the assessee company. The assessee had further submitted before the Principal CIT that as per the copy of the bank statement and swift advice forwarded by EGL, the said sum was paid out of the closure proceeds of the fixed deposit of USD100 million on 09.01.2008 with ICICI Bank, UK Plc.

14. The Principal CIT in the backdrop of his aforesaid observations, thus concluded as under:

(i). the A.O had completed the assessment without considering the information which was called for by him from the Mauritius Revenue Authorities.

(ii). the A.O had not made proper enquiries with regard to the preliminary or basic facts about the source of the share application money found credited in the books of account of the assessee, inasmuch as out of USD 185 million, the assessee itself for the first time during the revision proceedings had admitted that a sum of USD 100 million was received directly from EGFL (allegedly claimed to be on behalf of EHCL), but no further enquiries to ascertain the veracity of the said claim was ever made by the A.O.

15. The Principal CIT on the basis of his aforesaid observations concluded that as the A.O had failed to make proper enquiries and investigations before accepting the claim of the assessee as regards the source of the cash credits in its books of account, therefore, the reassessment order passed by the A.O without proper application of mind, rendered the order passed by him as erroneous and prejudicial to the interest of the revenue. Thus, in the backdrop of his aforesaid conviction, the Principal CIT set aside the reassessment order with a direction to the A.O to pass a fresh order, as per law, after making necessary enquiries and investigations and affording reasonable opportunity of being heard to the assessee.

16. Aggrieved, the assessee had assailed the order passed by the Principal CIT under Sec. 263 of the 'Act', before us. The Authorised representative (for short 'A.R') for the

assessee Sh. Porus F. Kaka, the ld. Senior Counsel, took us through the 'SCN', dated. 09.09.2014 that was issued by the Principal CIT. The ld. A.R taking us through Page No. 3 of the 'SCN', submitted that out of the amounts mentioned, it was only the disbursement made on 09.01.2008 towards investment in equity shares of USD 70,409,257 (out of the remitted amount of 100,000,000) which pertained to the year under consideration, while for all the other amounts were not relatable to the year under consideration. The ld. A.R submitted that the Principal CIT had initiated the revision proceedings under Sec. 263 to look into the sources of the source of the entity from whom the share application money was received by the assessee. The ld. A.R submitted that the A.O had during the course of the reassessment proceedings called for all the relevant details in respect of the share application money received by the assessee, and only after deliberating at length on the same to his satisfaction, not drawn any adverse inferences in the hands of the assessee. The ld. A.R in order to drive home his contention that exhaustive details in respect of the share application money were called for by the A.O during the course of the reassessment proceedings, and the same were duly made available on his record by the assessee, thus, took us through the replies which were filed by the assessee with the CIT during the course of the revision proceedings, bringing to his notice the nature of information which was placed on the record of the A.O. The ld. A.R took us through the copy of letter dated. 16.10.2014 that was filed by the assessee with the CIT in its reply to the 'SCN'. It was submitted by the ld. A.R that the assessee had in the course

of the reassessment proceedings furnished with the A.O the complete details of the shareholders (name, address and percentage holding), details of subscribers of the share capital, number of shares, amount of share capital, amount of securities premium etc. It was further submitted by the ld. A.R that the complete details of funding of Rs. 700 crores advanced by the assessee to Loop Telecom Limited, alongwith the details of subscription to share capital and securities premium were furnished with the A.O. The ld. A.R submitted that the purpose of advancing of an amount of Rs. 700 crores to Loop Telecom Limited, in the backdrop of the tripartite agreement between the assessee, Loop Telecom Limited and BPL Communications Ltd., was explained at length to the A.O. That as per the ld. A.R the complete details of the share application money received by the assessee from ECHL, a Mauritian company, alongwith the bank statement evidencing the identity of the share applicant, genuineness of the infusion of funds by way of share application money were furnished to the satisfaction of the A.O. The ld. A.R further took us through the reply dated. 15.12.2014 furnished by the assessee to the 'SCN' issued by the CIT. It was averred by the ld. A.R that during the course of the revision proceedings it was submitted before the CIT that though the copies of the order sheets and letter dated 18.03.2013 received by the Foreign Tax & Research Division, CBDT ('FTD') from the Mauritius Tax Authorities were received by the assessee, however, the copies of certain other documents, viz. (i). the letters written by the A.O to the 'FTD' to seek details from the Mauritius Tax Authorities (including letter dated 22.11.2012 and

reminder dated. 05.03.2013); (ii). the letter written by FTD to Mauritius Tax Authorities; and (iii). the letter written by the FTD to the A.O with respect to the response received from the Mauritius Tax Authorities, alongwith the date of receipt of the same by the A.O were however not made available. The ld. A.R further drew our attention to the copy of the resolutions each dated. 28.05.2008 pertaining to the allotment of 10000000 equity shares and 45500000 equity shares of Rs. 10/- each by the assessee company to Essar Communication Holding Ltd (ECHL), at a premium of Rs. 90/- per share. The ld. A.R further took us through the copy of the letter dated. 18.03.2013 which was received by the Joint Secretary (FT & TR-II) and Competent Authority, Foreign Tax & Tax Research Division, New Delhi, from the Mauritius Revenue Authority. The ld. A.R drew our attention to Page 2 of the aforesaid letter (Page 98 of 'APB'), which revealed that the source of funds received by the assessee company was the share application money received from the parent company, viz. EGL, and in lieu of the said remittance by the latter, shares were allotted by ECHL to EGL. It was submitted by the ld. A.R that the copy of the bank statement of American Express Bank Ltd for subscription of USD 85,000,000 was enclosed by the Mauritius Revenue Authority, alongwith its aforesaid letter. The ld. A.R submitted that the aforesaid letter of Mauritius Revenue Authority further mentioned that the other payments were made directly by EGL to the assessee on behalf of the company, viz. ECHL. The ld. A.R further took us through a certificate dated.11.11.2014 issued by Mauritius based Mazars, Chartered accountants (Page 102 of 'APB') to Essar

Global Fund Ltd. (EGL). That as per the said certificate, an amount of USD 185 million was invested by EGL in the equity shares of ECHL. As per the certificate, out of the total amount of USD 185 million, an amount of USD 100 million was directly remitted by EGL on behalf of EHCL to Essar Telecom Infrastructure Pvt. Ltd. (i.e the assessee company as earlier known) on 09.01.2008, while for the balance amount of USD 85 million was transferred by EGL to ECHL on 10.01.2008. That as per the certificate the source of the infusion of USD 185 million was received by EGL through its overseas Essar entities, the ultimate source of which was the loan raised from Standard Chartered Bank (London). The ld. A.R had on the basis of his contentions tried to impress upon us, viz. (i). that the A.O had during the course of the reassessment proceedings called for all the relevant details in respect of the share application money, and only after being satisfied with the source of the share application money received by the assessee company, had accepted the same; and (ii). that even otherwise from a perusal of the letter dated. 18.03.2013 of the Mauritius Revenue Authority, and the Certificate dated. 11.11.2014 issued by Mauritius based Mazars, Chartered accountants, the complete details as regards the nature and source alongwith the genesis of the amount of USD 185 million received by the assessee as advance from ECHL for investment in equity shares of the assessee company was established beyond any scope of doubt.

17. The ld. A.R took us through the operative part of the order passed by the Principal CIT. The ld. A.R submitted

that the concluded assessment of the assessee that was framed by the A.O vide his order passed under Sec. 143(3), dated. 29.12.2010, was reopened on the ground that there was failure on the part of the assessee to fully and truly disclose all the material facts in respect of the nature, mode and source of the amount of Rs. 700 crores which was advanced by the assessee to Loop Telecom Limited. In the backdrop of the aforesaid facts, it was averred by the ld. A.R that the revision proceedings had been embarked upon by the Principal CIT on the ground that the A.O had failed to verify the source of the share application money of Rs. 726 crores received from ECHL (i.e the amount out of which Rs. 700 crores was paid to Loop Telecom Limited). It was submitted by the ld. A.R that it was beyond comprehension that now when the concluded assessment was reopened for verifying the nature, mode and source of the share application money received by the assessee (from which amount of Rs. 700 crores was given to Loop Telecom Limited), how could the very issue which formed the foundation of such proceedings would have escaped attention and not deliberated upon by the A.O during the course of the reassessment proceedings. It was the case of the ld. A.R that not only the very basis for initiating the revision proceedings by the Principal CIT, on the ground that the A.O had failed to verify the source of the share application money received by the assessee company from ECHL, failed on a perusal of the substantial documentary evidences which were called for by the A.O during the course of the reassessment proceedings and placed on his record by the assessee, but also the aforesaid reasoning for initiating

the revision proceedings by the Principal CIT was devoid of any logical reasoning. The ld. A.R rebutted the observations of the Principal CIT that as the reassessment order was required to be passed by the A.O latest by 31.03.2013, therefore, the A.O without waiting for the report of the Mauritius Revenue Authorities, had thus hushed through the matter and concluded the reassessment vide his order dated 28.03.2013. The ld. A.R submitted that the said observation of the Principal Commissioner of Income-tax was bereft of any force of law. It was submitted by the ld. A.R that as per the clearly worded Sec. 153(4)(viii), the period falling between the making of a reference by the competent authority, till the date of receipt of information by the CIT or the Principal CIT, or a period of one year, whichever is less, was excluded for computing the period of limitation for framing of assessment by the A.O. The ld. A.R taking support of the aforesaid settled position of law, submitted that it was incorrect on the part of the Principal CIT to hold that the A.O apprehending barring of the time limitation contemplated under the law for passing of the reassessment order, had thus hushed through the proceedings. It was submitted by the ld. A.R that as a matter of fact, the A.O after thorough application of mind to the facts and issue before him had framed the reassessment, being well aware that the time limitation for passing of the reassessment order already stood extended on a reference having been made by the Competent authority to the Mauritius Revenue Authority. The ld. A.R submitted that from a perusal of the report received on 28.03.2013 by the Joint Secretary (FT&TR) Division, CBDT, New Delhi, from the Mauritius

Revenue Authority, it could safely be gathered that the source of the share application money received by the assessee company from ECHL was found to be well in order. The ld. A.R in order to fortify his aforesaid contention took us through a letter dated. 13.08.2014, which we find is a letter addressed by the CIT-5, Mumbai to the CIT-8, Mumbai, while transferring the assessment folder of the assessee to the latters office. That in the aforesaid letter it was stated by the CIT-5, Mumbai that a perusal of the report received from Mauritius Revenue Authority revealed that there was no adverse report in respect of receipt of share application money by the assessee from ECHL, the source of which was the amounts received from EGL. The ld. A.R drew our attention to the observation of the CIT-5, Mumbai, wherein the latter had advised the CIT-8, Mumbai, that in the absence of any adverse report from the Mauritius Revenue Authority, there was no necessity of making addition in the year under consideration or reopening of the case of the assessee for the earlier years. The ld. A.R in the backdrop of the aforesaid facts vehemently submitted that the validity of the revision proceedings could be gathered from the fact that the revenue in itself was satisfied that the source of the share application money received by the assessee was found to be well in order, and in the absence of an adverse report, no proceedings for the year under consideration were called for in the hands of the assessee.

18. The ld. A.R further taking support from the judgments of the **Hon'ble Supreme Court** in the case of **CIT Vs. Lovely Exports (P) Ltd. (2008) 216 CTR (SC) 195** and **CIT Vs,**

Stellar Investment Ltd. (2001) 251 ITR 263 (SC), therein averred that as held by the Hon'ble Apex Court that where the share application money is received by the assessee company from alleged bogus shareholders who had been identified, the department is free to proceed to reopen their individual assessments in accordance with law, but the amount of the share application money cannot be regarded as the undisclosed income of the assessee company. The ld. A.R further relied on the judgment of the **Hon'ble High Court of Delhi** in the case of **CIT Vs. Sophia Finance Ltd. (1994) 205 ITR 98 (Del)**, wherein it was held that if the shareholders are identified and it is established that they have invested money in the purchase of shares, then the amount received by the company would be regarded as a capital receipt. Thus, in the backdrop of the aforesaid judicial pronouncements it was averred by the ld. A.R that now when it stood established beyond any scope of doubt, that the amount of USD 185 million was received by the assessee company from ECHL by way of share application money, therefore, in the light of the duly identified shareholder, viz. ECHL, the amount of share subscription received by the assessee company could not be assessed as an unexplained cash credit in the hands of the assessee.

19. The ld. A.R further drew our attention to the *first proviso* of Sec. 68, as was made available on the statute vide the Finance Act, 2012, w.e.f 01.04.2013. It was submitted by the ld. A.R that as per the *first proviso,* in case the A.O is not satisfied with the explanation of the assessee company as regards the nature and source of the amount credited in

its books of account (not being company in which public are substantially interested) by way of share application money, share capital or share premium or any such amount by whatever name called, would bring the assessee company within the sweep of Sec. 68 in respect of the said amount. It was averred by the ld. A.R that as the *first proviso* had prospectively been made available on the statute vide the Finance Act, 2012, w.e.f 01.04.2013, therefore, the same would not be applicable to the case of the assessee for the A.Y. 2008-09. The ld. A.R in order to fortify his contention that the *first proviso* of Sec. 68 is to be given a prospective effect, relied on the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT-1 Vs. M/s Gagandeep Infrastructure Pvt. Ltd. (ITA No. 1613 of 2014; dated. 20.03.2017) (Bom)**, wherein the Hon'ble High Court had observed that the *proviso* of Sec. 68 which was introduced vide the Finance Act, 2012 w.e.f 1st April, 2013, would be effective only from the Assessment Year 2013-14 onwards. Alternatively, the ld. A.R further submitted that the said *first proviso* would only be applicable where the person in whose name such credit is recorded in the books of account of the assessee company is a 'resident'. Thus, it was submitted by the ld. A.R that for both of the aforesaid reasons the *first proviso* would not be applicable in the case of the assessee company. The ld. A.R putting to rest any scope of revision by the Principal CIT, on the ground that the A.O had failed to apply the *first proviso* of Sec. 68, further submitted that even if for a moment it was assumed (not admitted) that the *first proviso* of Sec. 68 was to be applied retrospectively, even then, as the same was made

available on the statute vide the Finance Act, 2012 w.e.f 01.04.2013, and thus was not available before the A.O at the time when he had passed the reassessment order, viz. 28.03.2013, therefore, the Principal CIT could not have characterised the reassessment order passed by the A.O as erroneous for not invoking the *first proviso,* as the same was not available on the statute at the relevant point of time when the reassessment order was passed.

20. That it was further submitted by the ld. A.R that inadequate enquiries by the A.O cannot form a basis for assumption of jurisdiction by the CIT for revising the order passed by the A.O. It was thus the contention of the ld. A.R that though in a case where there was a total non-application of mind by the A.O, the exercise of revision jurisdiction by the CIT, would be justified, however, where the A.O while framing the assessment had raised queries, and replies as regards the same were furnished by the assessee, then the same cannot be characterised as a case of non-application of mind by the A.O and the Commissioner of Income-tax would not be justified in dislodging the order passed by the A.O by invoking his jurisdiction under Sec. 263. The ld. A.R in order to fortify his aforesaid contention, relied upon the following judicial pronouncements:

(i). Mrs. Khatiza S. Oomerbhoy
(2006) 100 ITD 173 (Mum)

(ii). Commissioner Of Income-tax Vs.Fine Jewellery (India) Ltd.
(2015) 372 ITR 303 (Bom)

(iii). Small Wonder Industries Vs. CIT-24, Mumbai

(ITA No. 2464/Mum/2013; dated. 24.02.2017)(Mum)

(iv). Commissioner of Income-tax Vs. Anil Kumar Sharma (2011) 335 ITR 83 (Delhi).

21. That it was further submitted by the ld. A.R that for invoking of the jurisdiction for revision under Sec. 263, the CIT must be satisfied of the existence of the twin conditions contemplated in the said statutory provision, viz. the assessment order should be erroneous and prejudicial to the interest of the revenue. It was further averred by the ld. A.R that revisional power cannot be invoked by the CIT for directing a fuller enquiry to find out if the view taken is erroneous, if a view had already been taken by the A.O after enquiry. The ld. A.R taking support from the order of the **Hon'ble High Court of Bombay** in the case of **Commissioner of Income-tax, Central –III Vs. Nirav Modi (2016) 71 taxmann.com272 (Bombay)** submitted that where the A.O after making detailed enquiries in respect of certain cash credits appearing in the books of account of the assessee, took a view that the assessee had duly proved the identity, source and creditworthiness of the parties and accepted the genuineness of the transaction, the CIT without indicating any doubt as regards the genuineness of the evidence produced by the assessee could not revise the order in exercise of his revisional jurisdiction under Sec. 263. The ld. A.R further taking support of the aforesaid judicial pronouncement, submitted that if during the course of the assessment proceedings queries were raised by the A.O and the assessee responded to the same, then even if an assessment order does not mention the same, it would not

mean that the A.O had not applied his mind to the issues. In the backdrop of the aforesaid facts, it was thus averred by the ld. A.R that even a non-speaking order passed by an A.O cannot form the basis for revision under Sec. 263. The ld. A.R placed heavy reliance on the judgment of the Hon'ble jurisdictional High Court in the case of *Nirav Modi (supra)*, to support his contention that now when in the present case the A.O in the course of the reassessment proceedings had called for, verified and on being satisfied as regards the source of the share application money, not drawn any adverse inferences and accepted the claim of the assessee, therefore, the Principal CIT was not justified in exercising his revisional jurisdiction, for the reason that there was no mention of the said exercise carried out by the A.O in the body of the reassessment order. The ld. A.R submitted that the 'Special Leave Petition' filed by the revenue against the aforesaid judgment of the Hon'ble High Court had been dismissed by the **Hon'ble Apex Court** in **The Commissioner Of Income-tax, Central-III Vs. Nirav Modi (SLP (C).....CC No(s). 23490/2016; dated. 14.12.2016.**

22. The ld. A.R culminating his contentions, therein submitted that the Principal CIT had wrongly assumed jurisdiction in exercise of the powers vested with him under Sec. 263 and had wrongly set aside the reassessment order passed by the A.O under Sec. 147 r.w.s 143(3), for the following reasons :

(i). The full details as regards the share application money was called for by the A.O and furnished by the assessee in the course of the original assessment framed under Sec.

143(3) on 29.12.2010, and the reassessment order passed under Sec. 147 r.w.s 143(3), dated. 28.03.2013.

(ii). That during the course of the reassessment proceedings exhaustive enquiries as regards the share application money received by the assessee from ECHL were made by the A.O, both in India and abroad.

(iii). The report received by the Joint Secretary (FT&TR), Division, CBDT, New Delhi, from the Mauritius Revenue Authority, was in no way adverse. The ld. A.R in support of his contention relied on the letter dated. 13.08.2014, addressed by the CIT-5, Mumbai to the CIT-8, Mumbai, while transferring the assessment folder to the latters office. The CIT-5, had observed that a perusal of the information received from Mauritius Revenue Authorities revealed that there was no adverse report in respect of receipt of share application money by the assessee from ECHL, the source of which was the amounts received from EGL. The CIT-5,Mumbai, in his said letter had advised the CIT-8,Mumbai, that in the absence of any adverse report from the Mauritius Revenue Authority, there was no necessity for making addition in the year under consideration or reopening of the earlier years in the case of the assessee.

(iv). That no observation had been recorded by the Principal CIT, which contradicts the information provided by the assessee or the Mauritius Revenue Authorities.

(v). That the *first proviso* of Sec. 68 which had been made available on the statute vide the Finance act, 2012, with prospective effect from 01.04.2013, was not applicable to the

case of the assessee for three reasons, viz. (i). the proviso which was applicable prospectively w.e.f 01.04.2013, thus, would not apply to the case of the assessee; (ii). the *proviso* was applicable only where the person in whose name such credit is recorded in the books of the company is a 'resident', thus, on the said count also was not applicable to the case of the assessee as the share subscriber, viz. ECHL was a resident of Mauritus ;and (iii). that even if the *proviso* was to be given retrospective applicability, the reassessment order passed by the A.O on 28.03.2013 could not be revised for not invoking of the *proviso* by the A.O, as the same was not available on the statute at the time when the reassessment order was passed.

23. Per contra, the ld. Departmental representative (for short 'D.R') submitted that as the report from the Mauritius Revenue Authority which was called for by the A.O, was in itself received on the day on which the reassessment order was passed by the A.O, viz. 28.03.2013, therefore, the order passed by the A.O without waiting for and verifying the said report, clearly rendered the reassessment order passed by the A.O, without making any enquiry as regards the source of the share application money, as erroneous and prejudicial to the interest of the revenue. It was averred by the ld. D.R that the failure on the part of the A.O to wait for and consider the report of the Mauritius Revenue Authority, was clearly a case of a "No enquiry" and not a case of an "Inadequate enquiry". The ld. D.R in the backdrop of his aforesaid contentions submitted that the Principal CIT after duly appreciating that there was non-application of mind

and no verification by the A.O, as regards the source of the amount claimed by the assessee to have been received as share application money from ECHL, therefore, had rightly set aside the reassessment order on the said issue, with a direction to the A.O to adjudicate the same afresh after making necessary verifications and affording reasonable opportunity of being heard to the assessee. The ld. D.R in support of his aforesaid contention relied on the judgment of the **Hon'ble High Court of Madhya Pardesh** in the case of **CIT Vs. Deepak Kumar Garg (2008) 299 ITR 435 (MP).** The ld. D.R submitted that as the appeal of the assessee was devoid and bereft of any force of law, therefore, the same may be dismissed. The ld. A.R rebutting the aforesaid contentions of the revenue, submitted that the reply furnished by the Mauritius Revenue Authority was in itself the conclusion of the enquiry, because the reopening of the proceedings was in itself started on the said basis. The ld. A.R while resting his case, averred that as the Principal CIT had wrongly exercised his revisional jurisdiction, therefore, the order passed by him under Sec. 263 may be vacated.

24. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that the ld. A.R for the assessee had assailed the validity of the order passed by the Principal CIT on multiple grounds. Per contra, it is the case of the ld. D.R that the Principal CIT after deliberating on the records of the assessee, therein finding that the reassessment order passed by the A.O under Sec. 147 r.w.s 143(3) on 29.12.2010 was erroneous and prejudicial to the

interest of the revenue, had thus rightly revised the order in exercise of the powers vested with him under Sec. 263.

25. We shall now advert to and deal with the multiple objections that had been raised by the ld. A.R before us while assailing the validity of the order of revision passed by the Principal CIT under Sec. 263, as under:-

(i). The ld A.R had at the very outset submitted before us that the concluded original assessment of the assessee, which was framed by the A.O vide his order passed under Sec. 143(3), dated. 29.12.2010, was reopened on the ground that there was failure on the part of the assessee to fully and truly disclose all the material facts in respect of the nature, mode and source of the amount of Rs. 700 crores which was advanced by the assessee to Loop Telecom Limited. In the backdrop of the aforesaid facts, it was averred by the ld. A.R that the revision proceedings had been embarked upon by the Principal CIT on the very same ground that the A.O while passing the reassessment order had failed to make verifications as regards the claim of the assessee that the cash credit of Rs. 726 crores received by it during the year under consideration (out of which the amount of Rs. 700 crore was advanced to Loop Telecom Limited) was the advance received by the assessee towards share application money from ECHL. It was submitted by the ld. A.R that it was beyond comprehension that now when the concluded original assessment was in itself reopened for verifying the nature, mode and source of the amount of Rs. 700 crores which was advanced by the assessee to Loop Telecom Limited, the said issue which formed the very

foundation of initiation of such reassessment proceedings itself would had escaped attention and not deliberated upon by the A.O during the course of the said reassessment proceedings. We have given a thoughtful consideration to the aforesaid contention of the ld. A.R. That at the first blush the contention advanced by the ld. A.R appeared to be very well reasoned and logical. We though find ourselves to be in agreement with the ld. A.R that now when the concluded assessment of the assessee was in itself reopened on the ground that the assessee had failed to come forth with the full and true disclosure of all the material facts in respect the nature, mode and source of the amount of Rs. 700 crores which was advanced by the assessee to Loop Telecom Limited (which was out of the amount of Rs. 726 crores claimed by the assessee to have been received in advance from ECHL for making investment in shares of the assessee company), then if not beyond comprehension, but the least expected, the A.O while framing the reassessment could not have lost sight of the said very basis on which the case of the assessee was reopened. Be that as it may, we cannot however remain oblivious of fact that mistakes do emerge from orders passed by the Assessing officers, thus rendering them amenable for revision by the Commissioner of Income-tax under Sec. 263, and those passed in the case of a reopened assessment are no exception. We are of the considered view that an order passed by the A.O in a reopened assessment is equally amenable for revision by the Commissioner of Income-tax in exercise of the powers vested with him under Sec. 263, as a first time assessment order passed in the course of a regular assessment would be. We

are of the view that this objection raised by the ld. A.R would loose all relevance, once on the deliberation of the facts by us herein below, it emerges that the reassessment order passed by the A.O is erroneous and prejudicial to the interest of the revenue.

(ii). The ld. A.R had further averred before us that the *first proviso* of Sec. 68 which was made available on the statute vide the Finance act, 2012, with prospective effect from 01.04.2013, was not applicable to the case of the assessee for three reasons, viz. (i). the proviso which was applicable prospectively w.e.f 01.01.04.2013, thus, would not apply to the case of the assessee; (ii). the proviso was applicable only where the person in whose name such credit is recorded in the books of the company is a 'resident', thus, on the said count also was not applicable to the case of the assessee as the share subscriber in its case, viz. ECHL from whom share application money was claimed by the assessee to have been received was a resident of Mauritus; and (iii). that even if the proviso was to be given retrospective applicability, the reassessment order passed by the A.O on 28.03.2013 could not be revised for not invoking of the proviso by the A.O, as the same was not available on the statute at the time when the reassessment order was passed. The ld. A.R in order to drive home his contention that the *first proviso* which was made available on the statute vide the Finance Act, 2012, was applicable prospectively w.e.f 01.04.2013, had relied on the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT-1 Vs. M/s Gagandeep Infrastructure Pvt. Ltd. (ITA No. 1613 of 2014; dated. 20.03.2017)(Bom)**, wherein

it was held that the *proviso* to Sec. 68 which was introduced vide the Finance Act, 2012 w.e.f 1st April, 2013, would be effective only from the Assessment Year 2013-14 onwards. We are in agreement with the contention of the ld A.R that the first *proviso* of Sec. 68 would only be applicable w.e.f Assessment Year 2013-14, and as such would not apply to the case of the assessee for the year under consideration, viz. Assessment Year 2008-09. But then, we find that neither the Principal CIT in his order passed under Sec. 263 had applied the *first proviso* of Sec. 68 to the case of the assessee, nor is it the case of the revenue before us. We find that the Principal CIT in his order passed under Sec. 263 had only looked into the basic scheme of Sec. 68, and in the backdrop of the facts emerging from the records before him, had observed that the assessee had failed to satisfy the conditions contemplated in the basic section itself. We find that the Principal CIT while deliberating on the records of the assessee in the course of the revision proceedings, had merely looked into the satisfaction of the basic conditions contemplated in the aforesaid statutory provision, viz. Sec. 68, from the applicability of which the assessee can claim no escape. We find that the Principal CIT by referring to the settled position of law, had observed that the assessee was under a statutory obligation to have established the 'Nature' and 'Source' of the amount of USD 185 million as was credited in its books of account during the year, and was claimed by it to have been received as an advance from ECHL for making investment in its equity shares. We find that the Principal CIT while verifying the fact as to whether the assessee had discharged the onus as stood cast upon it,

had strictly confined himself to the basic scheme of Sec. 68. We are of the considered view that the Principal CIT being well within his jurisdiction, had after necessary deliberations observed that the assessee had failed to discharge the onus as stood cast upon it under Sec. 68. We have given a thoughtful consideration to the contention of the ld. A.R as regards the non-applicability of the *first proviso* of Sec. 68 to its case, and being of the considered view that as the same does not emerge from the order of lower authorities, therefore, our indulgence for adjudicating the same does not arise. We thus decline to admit the aforesaid contention of the ld. A.R

(iii). The ld. A.R had further submitted before us that as per the settled position of law, in a case where share application money is received by a company from alleged bogus shareholders, who had been identified, there the department though remains well within its jurisdiction to reopen the individual assessments of such shareholders in accordance with law, but, the amount of the share application money cannot be regarded as the undisclosed income of the company. The ld. A.R in order to buttress his aforesaid contention had relied on the judgments of the **Hon'ble Supreme Court** in the case of **CIT Vs. Lovely Exports (P) Ltd. (2008) 216 CTR (SC) 195** and **CIT Vs, Stellar Investment Ltd. (2001) 251 ITR 263 (SC)**, as well as the judgment of the **Hon'ble High Court of Delhi** in the case of **CIT Vs. Sophia Finance Ltd. (1994) 205 ITR 98 (Del).** Thus, in the backdrop of the aforesaid judicial pronouncements, it was averred by the ld. A.R that now

when the amount of USD 185 million was received by the assessee company from ECHL by way of share application money, therefore, in the light of the duly identified shareholder, viz. ECHL, the amount of share subscription received by the assessee company from ECHL cannot be assessed as an unexplained cash credit in the hands of the assessee. We have given a thoughtful consideration to the facts of the case, and are of the considered view that the claim of the ld. A.R that the amount of USD 185 million was received by the assessee company from ECHL by way of share application money, is in itself haunted by serious doubts and rather is the subject matter of the order passed by the Principal CIT. Be that as it may, we now take up the aforesaid legal proposition canvassed before us by the ld. A.R that where share application money is received by a company from alleged bogus shareholders, who had been identified, there such amount is though liable to be assessed in the hands of the shareholders, in accordance with law, however, the same cannot be regarded as the undisclosed income of the assessee company. We are of the considered view that after the judgments of the **Hon'ble Supreme Court** in the case of **Lovely Exports (P) Ltd. (supra)** and **Stellar Investment Ltd (supra)**, the aforesaid issue is no more *res integra* and stands settled. We are of the considered view that as observed by us hereinabove, the claim of the assessee that the amount of USD 185 million was received by it as share application money from ECHL, is in itself the bone of contention between the assessee and the revenue. However, without prejudice to our aforesaid observation, we are of the considered view that even otherwise the said

contention of the assessee raised before us is premature. We find that our indulgence in the present appeal had been sought only for adjudicating as to whether the Principal CIT in exercise of the powers as stood vested with him under Sec. 263, was right in law and well within his jurisdiction in revising the reassessment order that was passed by the A.O under Sec. 143(3) r.w.s 147, dated.28.03.2013, or not. We are of the considered view that our scope of adjudication has to remain strictly confined for adjudicating the validity of the order of revision passed by the Principal CIT under Sec. 263. We are afraid that the contention of the ld. A.R that the amount of the share application money received by the assessee company in light of the aforesaid settled position of law could not be assessed as the undisclosed income of the assessee company, is absolutely premature. That as observed by us hereinabove, we are confined to adjudication of the validity of the order of revision passed under Sec. 263 by the Principal CIT, which had been assailed before us. We are of the considered view that the aforesaid contention raised by the ld. A.R before us, does not have any bearing on the adjudication of the validity of the order passed by the Principal CIT under Sec. 263. We are further of the view that the aforesaid contention so raised before us is seriously premature, and seeking an adjudication on the same by us, would be nothing short of putting the cart before the horse. We thus in the backdrop of our aforesaid observations, thus, refrain from entertaining the aforesaid contention raised by the ld. A.R before us.

(iv). The ld. A.R had further submitted before us that as the assessee in compliance of the mandate of Sec. 68, had in the course of the reassessment proceedings duly explained to the satisfaction of the A.O the first and the immediate source of the cash credits, i.e share application money of USD 185 million claimed to have been received by it from ECHL, therefore, it could not be called upon to explain the sources of the source of the entity from whom the share application money was received by it. We are principally persuaded to be in agreement with the contention of the ld. A.R that as held by the **Hon'ble High Court of Bombay** in the case of **Commissioner of Income-tax, Central-III Vs. Nirav Modi (2016) 71 taxmann.com 272 (Bombay)**, the mandate of Sec. 68 does not call for an enquiry of the sources of source. However, the fact as to whether the Principal CIT in the present case had embarked into any such exercise of making an enquiry into the sources of the source from whom the amount of USD 185 million was received by the assessee, would emerge only after a careful deliberation of the facts of the case. We find that the assessee had averred before the Principal CIT that as the onus cast upon it to explain the source of the share application money had duly been explained to the satisfaction of the A.O in the course of the reassessment proceedings, therefore, in terms of the mandate of Sec. 68 the reassessment order passed by the A.O on the said count could not be held to be erroneous and prejudicial to the interest of revenue. We are of the considered view that the correctness of the aforesaid claim of the assessee can be gathered on a perusal of the facts pertaining to receipt of

USD 185 million, which as claimed by the assessee was received as advance for share application money from EHCL, for making of investment in the equity of the assessee company. We find that as claimed by the ld. A.R, the assessee had during the course of the reassessment proceedings furnished details with the A.O in respect of the amount of USD 185 million, which as claimed by the assessee was the share application money received by it from ECHL. The ld. A.R by taking us through the various replies which were filed with the CIT in reply to the 'SCN' issued to it, viz. replies dated 16.10.2014 and 15.12.2014, had thus submitted that exhaustive details in respect of the share application money were called for by the A.O during the course of the reassessment proceedings, which were duly made available on his record by the assessee. We find that as claimed by the ld. A.R, the assessee had during the course of the reassessment proceedings furnished details of the shareholders (name, address and percentage holding), details of subscribers of the share capital, number of shares, amount of share capital, amount of securities premium, copies of the resolutions, each dated. 28.05.2008, pertaining to the allotment of 10000000 equity shares and 45500000 equity shares of Rs. 10/- each by the assessee company to Essar Communication Holding Ltd (ECHL) at a premium of Rs. 90/- per share etc. It was further submitted by the ld. A.R that details of the share application money received by the assessee from ECHL, a Mauritian company, alongwith the bank statement evidencing the identity of the share applicant, genuineness of the infusion of funds by way of share application money were also furnished to the

satisfaction of the A.O. Thus, it was the contention of the ld. A.R that substantial documentary evidence to substantiate the nature and source of the amount of USD 185 million was furnished by the assessee to the satisfaction of the A.O during the course of reassessment proceedings, which was accepted by him and no adverse inferences as regards the same were drawn in the hands of the assessee. Be that as it may, we however find that as per the information received from the Mauritius Revenue Authorities, out of the amount of 12,43,07,689/- US dollars (2,95,90,743/- US dollars returned) claimed by the assessee to have been received from ECHL, only 85,00,000 US dollars were received through the bank accounts of ECHL. The information received from Mauritius Revenue Authorities revealed that the balance amounts were paid directly to the assessee by EGL, the holding company of ECHL. We further find that as observed by the Principal CIT, even the amount of 85,00,000/- US dollars received by the assessee from ECHL were not belonging to ECHL, but is stated in the report received from the Mauritian Revenue Authority to have been given by EGL to ECHL. We are of the considered view that the aforesaid sources of the amount of USD 185 million had emerged for the first time from the report of the Mauritius Revenue Authorities, which was received only as on 28.03.2013 by the Joint Secretary (FT&TR), Division, CBDT, New Delhi, from the Mauritius Revenue Authority. We find that a bare perusal of the information received from the Mauritius Revenue Authorities revealed that the source of funds of USD 185 million claimed by the assessee to have been received during the year under consideration as share

application money from ECHL, apparently found its source from EGL, viz. (i). amount of USD 85,00,000 which was claimed to be received through the bank accounts of ECHL, was not belonging to ECHL but was claimed to be given by EGL to ECHL; and (ii). the balance amount of USD 100 million was directly remitted by EGL on 09.01.2008, as advance towards issue of shares on behalf of ECHL to the assessee company. We are of the considered view that in the backdrop of the aforesaid facts which had emerged for the very first time from the information received from the Mauritius Tax Authorities on 28.03.2013, was neither examined nor verified by the A.O, who had already framed the reassessment vide his order passed under Sec. 147 r.w.s 143(3), on the same date. We further find that as observed by the Principal CIT during the course of the revision proceedings, the Authorised representative for the assessee had categorically admitted before him that neither the A.O had during the course of the reassessment proceedings raised any specific queries as regards the alleged funds received from EGL, nor any such details were furnished by the assessee on its own to the A.O during the course of the said reassessment proceedings. We further find that the Principal CIT had in his order of revision observed that it was for the very first time during the course of the revision proceedings before him, that the assessee had vide its letter dated 15.12.2015 placed on record a copy of the letter dated. 12.11.2014 received from ECHL, wherein the latter had confirmed the investment of USD 185 million towards subscription of shares of the assessee alongwith the source of the funds of such investment. We further find that the

assessee had again for the very first time during the course of the revision proceedings before the Principal CIT, placed on his record another letter dated. 12.11.2014 which was received by ECHL from EGL, alongwith a certificate dated 11.11.2014 issued by Mazars, Chartered Accountants, Mauritius, in respect of investment of USD 185 million by EGL in ECHL, alongwith the source of such funds. We further find that it was also observed by the Principal CIT that the assessee for the very first time, had vide its another letter dated. 27.01.2015, while explaining the source of the share application money received by it from ECHL, had submitted that out of the total amount of USD 185 million, an amount of USD 100 million was directly remitted by EGL on 09.01.2008 as advance towards issue of shares on behalf of ECHL to the assessee company. We have deliberated on the aforesaid facts and have given a thoughtful consideration to the same. We are of the considered view that the genesis of the entire sequence of the aforesaid events was the information received on 28.03.2013 by the Joint Secretary (FT&TR), CBDT, New Delhi, from the Mauritius Revenue Authority. We find that the aforesaid information pertaining to the source of the amount of USD 185 million was never there before the A.O in the course of the reassessment proceedings, and as admitted by the Authorised representative of the assesses before the Principal CIT in the course of the revision proceedings, neither the A.O had during the course of the reassessment proceedings raised any specific queries as regards the alleged funds received from EGL, nor any such details were furnished by the assessee on its own with the A.O during

the course of the reassessment proceedings. We are of the considered view that in the backdrop of the aforesaid facts, now when the source of the amount of USD 185 million was neither furnished by the assessee before the A.O during the course of the reassessment proceedings, nor was verified by him on his own, therefore, we do not find any infirmity in the order of the Principal CIT, therein directing the A.O to verify the source of the amount of USD 185 million received by the assessee. Before parting, we may further observe that the amount of USD 185 million which is claimed by the assessee to have been received from ECHL as advance for making of investment in the equity of the assessee company, as gathered from the records, is stated to be the amount belonging to EGL, wherein while for an amount of USD 100 million is stated to have been directly received by the assessee from EGL on behalf of EHCL, while for the balance amount of USD 85 million was also received by ECHL from EGL. We thus are of the considered view that in the backdrop of the aforesaid facts, the directions of the Principal CIT to the A.O to also make necessary verifications as regards the amounts received from EGL, which as observed by us hereinabove to the extent of USD 100 million happens to be the first or immediate source of the amount received by the assessee, therefore, cannot be faulted with. Be that as it may, in the backdrop of the aforesaid state of facts, we are not persuaded to accept the contention of the ld. A.R that the Principal Commissioner of Income-tax had embarked into verification of the sources of the source from which the amount of USD 185 million was received by the assessee.

(v). We now advert to the core issue on the basis of which the Principal CIT had revised the reassessment order passed by the A.O under Sec. 147 r.w.s. 143(3), dated 28.03.2013. We find that the Principal CIT after deliberating on the facts of the case, held a conviction that the A.O had completed the assessment without considering the information which was called for by him from the Mauritius Tax Authorities. It was observed by the Principal CIT that the A.O had not made proper enquiries with regard to the preliminary or basic facts about the source of the share application money found credited in the books of account of the assessee, inasmuch as out of USD 185 million, the assessee itself for the first time during the revision proceedings had admitted during the course of the revision proceedings that a sum of USD 100 million was received directly from EGL (allegedly claimed to be on behalf of EHCL), but no further enquiries to ascertain the veracity of the said claim was ever made by the A.O. We have given a thoughtful consideration to the contentions of the authorised representatives for both the parties in the backdrop of the material available on record. We find that the Principal CIT after deliberating on the records of the assessee before him, observed, that the original assessment which was framed by the A.O vide his order under Sec. 143(3), dated. 29.12.2010, was reopened under Sec. 147, on the basis of information received from the DGIT(Inv), New Delhi, which revealed that the source of advances of Rs. 700 crores given by the assessee company to Loop Telecom Limited was not properly examined/verified by the A.O while framing the assessment. The Principal CIT observed, that as the primary issue which had weighed in

the mind of the A.O while reopening the concluded assessment of the assessee was to verify the source of the amount of Rs. 700 crores advanced to Loop Telecom Limited, which as claimed by the assessee was from the amount of the share application money of Rs. 726 crores (USD 185 million) claimed by the assessee to have been received from ECHL, a Mauritius based company, therefore, the A.O in order to verify the international money trail and source of money, made a reference vide letter dated. 22.11.2012 to the Jt. Secretary, CBDT, New Delhi, (for short 'FT & TR'), requesting that the information may be obtained from the revenue authorities in Mauritius, under the specific articles dealing with 'Exchange of Information' as per the terms of the India-Mauritius "Double Taxation Avoidance Agreement". The A.O at whose behest the very process of verification of the claim of the assessee that the amount of USD 185 million credited in its books of account during the year was the share application money received from ECHL, was triggered, realizing that there was delay on the part of the Mauritius Revenue Authority in furnishing its report, therefore, issued a reminder on 05.03.2013 for obtaining the information. The Principal CIT observed that the information was received by the A.O only as on 28.03.2013, which was the date on which the A.O had passed the reassessment order under Sec. 143(3) r.w.s 147 of the 'Act'. We find that it was observed by the Principal CIT that as the A.O had passed the reassessment order without waiting for and examining the information received from the Mauritius Revenue Authorities, therefore, the failure on the part of the A.O to wait for, examine and verify the aforesaid information

which was called for by the A.O himself, therefore, due to the non-verification of the nature and source of the amount of USD 185 million by the A.O, on the said count itself rendered the reassessment order passed by him as erroneous and prejudicial to the interest of the revenue.

(vi). We further find that the Principal CIT, independent of the aforesaid fact of non-verification of the report received from the Mauritius Revenue Authorities by the A.O, observed, that even otherwise the information received from the Mauritius Revenue Authorities was neither complete, nor explained the source and creditworthiness of the persons giving the share application money. We find that on the basis of his aforesaid observations, the Principal CIT held a conviction that the A.O had no material on record to come to the conclusion that sources of share application money from ECHL was properly explained. We find that in the backdrop of the aforesaid facts, it was further observed by the Principal CIT that neither the source of the share application money received by the assessee from ECHL was properly explained by the assessee, nor it could be gathered from the information received by the A.O from the Mauritius Revenue Authorities. There was also no evidence as to how the money was acquired by EGL. We find that the Principal CIT had further observed, that as per the information received from the Mauritius Revenue Authorities, as against the amount of USD 185 million claimed by the assessee to have been received from ECHL as share application money, only an amount of USD 85 million (amount given by EGL to ECHL) was received through the bank accounts of ECHL. We

find that the Principal CIT deliberating on the information received from Mauritius Revenue Authorities, observed that the balance amount of USD 100 million (out of USD 185 million) was stated to have been paid directly on behalf of ECHL by the latters holding company, viz. EGL, directly to the assessee. The Principal CIT had further observed that though the information received from the Mauritius Revenue Authorities referred to part payment of the investment made by ECHL by its parent company viz. EGL, which is stated to have been transferred through American Express Bank Ltd., but no such bank account statement, as claimed, was found enclosed alongwith the report of the Mauritius Revenue Authority. We further find that the Principal CIT had observed, that though it was claimed that there was direct transfer of funds by EGL on behalf of ECHL out of share application money receivable by ECHL from EGL, but however, as admitted by the authorised representative for the assessee before him during the course of the revision proceedings, neither any details as regards the same were made available on the record by the assessee during the course of the reassessment proceedings, nor was the same enquired into by the A.O. We find that the Principal CIT, on the basis of his aforesaid observations had concluded that as the A.O had not examined the information received from the Mauritius Revenue Authorities, therefore, the same had remained unverified and not subject to any enquiry by him while passing the reassessment order. Thus, in the backdrop of his aforesaid observations, it was concluded by the Principal CIT that the non-verification and non application of mind by the A.O rendered the reassessment order passed

by him under Sec. 147 r.w.s 143(3) as erroneous and prejudicial to the interest of the revenue.

(vii). We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We have given a thoughtful consideration to the issue before us. We find that as observed by us hereinabove, the original assessment which was framed by the A.O vide his order passed under Sec. 143(3), dated. 29.12.2010, was reopened under Sec. 147 on the basis of information received from the DGIT(Inv),New Delhi, that the source of advances of Rs. 700 crores given by the assessee company to Loop Telecom Limited were not properly examined/verified by the A.O while framing the assessment. That as the primary issue which had weighed in the mind of the A.O while reopening the concluded assessment of the assessee was to verify the source of the amount of Rs. 700 crores advanced to Loop Telecom Limited, which as claimed by the assessee was from the amount of the share application money of Rs. 726 crores (USD 185 million) received by it from ECHL, a Mauritius based company, therefore, the A.O in order to verify the international money trail and source of money had made a reference vide letter dated. 22.11.2012 to the Jt. Secretary, FT & TR, CBDT, New Delhi, requesting that the information may be obtained from the revenue authorities in Mauritius under the specific articles dealing with 'Exchange of Information' as per the terms of the India-Mauritius "Double Taxation Avoidance Agreement", and the claim of the assessee that the amount of USD 185 million credited in its

books of account was the share application money received from ECHL, may thus be verified. We find that as the necessary information was not forthcoming, therefore, the A.O who had triggered the seeking of the aforesaid information from the Mauritius Revenue Authorities, being well aware of the fact that the said information was indispensably required to facilitate verification of the aforesaid claim of the assessee, therefore, issued a reminder on 05.03.2013 for obtaining the information. The Principal CIT observed that as the report from the Mauritius Revenue Authority was received on 28.03.2013, on which date itself the reassessment order under Sec. 147 r.w.s 143(3) was framed by the A.O, therefore, the A.O by not waiting for the requisite details, had thus, without examining and verifying the report of the Mauritius Revenue Authority, passed the reassessment order. We are of the considered view that now when the assessee in the course of the reassessment proceedings had submitted before the A.O that the amount of USD 185 million was received by it as share application money from ECHL, a Mauritius based company, therefore, the A.O after deliberating on the 'material' placed on record by the assessee, realizing well that the said claim of the assessee could not be summarily accepted on the very face of it, had thus made a reference vide letter dated. 22.11.2012 to the Jt. Secretary, FT & TR Division, CBDT, New Delhi, requesting that the information may be obtained from the revenue authorities in Mauritius under the specific articles dealing with 'Exchange of Information' as per the terms of the India-Mauritius "Double Taxation Avoidance Agreement", as regards the aforesaid claim of the assessee.

We thus are of the considered view that the importance of the verification of the aforesaid claim of the assessee in respect of the source of the amount of USD 185 million, was well recognized by the A.O. We further find that as the necessary information was not forthcoming, therefore, the A.O who had triggered the seeking of the said information from the Mauritius Revenue Authorities, being well aware of the fact that the said information was indispensably required to facilitate verification of the aforesaid claim of the assessee, therefore, issued a reminder on 05.03.2013 for obtaining the information. Now, interestingly it can safely be gathered that the importance of the report from the Mauritius Revenue Authority for making necessary verifications as regards the claim of the assessee, remained as such from 22.11.2012 (i.e date of reference by A.O) till 05.03.2013 (filing of reminder by the A.O). The pressing on the part of the A.O as regards the report of the Mauritius Revenue Authority can be appreciated from the very fact that even as on 05.03.2013 the A.O required the aforesaid information, so that the verification of the claim of the assessee as regards the source of the amount of USD 185 million could be brought to a logical end. But then, surprisingly the A.O did not wait for the information from the Mauritius Revenue Authority, and aborting the very process of seeking of the requisite information, which in itself was triggered by him, followed by a reminder, passed the reassessment order on 28.03.2013, i.e on the same date on which the report was received from the Mauritius Revenue Authority. Thus, as the reassessment already stood framed by the A.O, therefore, he had no occasion to examine

the report, make necessary verifications and raise requisite enquiries. We are afraid to say that such conduct of the A.O to frame the reassessment order without waiting for, examining and verifying the report of the Mauritius Revenue Authority, which we find was indispensably required by him till 05.03.2013 was however abruptly aborted, thus can only be characterised by us as an order passed by him without making any verification as regards the nature and source of the amount of USD 185 million which was claimed by the assessee as having been received as share application money from ECHL. We may further observe that there is nothing available on record which could persuade us to conclude that some information/material independent of the seeking of the information from the Mauritius Revenue Authority was gathered by the A.O, which thus rendered the very requirement of waiting for the report from Mauritius Revenue Authority, purposeless. We thus in the backdrop of the aforesaid facts are of the considered view that the failure on the part of the A.O to examine the report received from the Mauritius Revenue Authority was clearly a case of non-application of mind by the A.O, who can safely be concluded to have accepted without making any verification the claim of the assessee that the amount of USD 185 million received by it was by way of share application money from ECHL. We thus are of the considered view that in the backdrop of the aforesaid facts, it can safely be concluded that the reassessment order passed by the A.O was erroneous and prejudicial to the interest of the revenue. We are of the considered view that as observed by us hereinabove, that as the A.O who had himself triggered the seeking of the

aforesaid information from the Mauritius Revenue Authority, which was followed by a reminder from him, was however most surprisingly aborted without any rhyme and reason, therefore, it can safely and rather inescapably be concluded that he had absolutely failed to examine the report received from the Mauritius Revenue Authority and thus failed to examine the veracity of the aforesaid claim of the assessee as regards the source of the amount of USD 185 million. We are persuaded to be in agreement with the Principal CIT that the A.O while passing the reassessment order had summarily accepted the claim of the assessee as regards the source of the amount of USD 185 million without making any verification as regards the same, therefore, is clearly a case of non-application of mind by the A.O. That in the backdrop of the aforesaid facts, we are of the considered view that the proposition of law as laid down by the **Hon'ble High Court of Bombay** in the case of **Commissioner of Income-tax, Central–III Vs. Nirav Modi (2016) 71 taxmann.com272 (Bombay)**, as had been relied upon by the assessee before us, is found to be distinguishable on facts, and thus would not assist the case of the assessee. We have further deliberated on the report received from the Mauritius Revenue Authority (Page 97-98 of 'APB'), and find ourselves to be in agreement with the Principal CIT, that independent of the aforesaid fact of non-verification of the report received from the Mauritius Revenue Authorities by the A.O, even otherwise the information received from the Mauritius Revenue Authorities was neither complete, nor explained the source and creditworthiness of the persons giving the share application money. We are further of the considered view

that the certificate of Mazar, Chartered accountants, Mauritius, to which our attention was drawn by the ld. A.R, in the backdrop of the fact that the latter had categorically stated as not being the Chartered accountant of EGL, as well as in the backdrop of the disclaimer forming part of his certificate, thus does not inspire much confidence and cannot be accepted without making necessary verifications of the facts mentioned therein. We are also not impressed by the contention of the ld. A.R that the CIT-5, Mumbai while transferring the case records of the assessee to the CIT-8, Mumbai, had in his letter dated 13.08.2014 advised that as no adverse report was received from the Mauritius Revenue Authority, therefore, there was no requirement of reopening the case of the assessee for the year under consideration and the preceding years. We are of the considered view that as per the mandate of Sec. 263, the requirement contemplated under the said statutory provision is the satisfaction of the CIT in whose revisional jurisdiction the case of the assessee falls, therefore, the view or advise of the CIT-5, Mumbai, who was rendered *functus officio* as regards the case of the assessee, thus in the present case was not binding on the CIT-8, Mumbai, to whom the case of the assessee was transferred. We thus are of the considered view that the advice of the CIT-5, Mumbai did not have any bearing on the assumption of jurisdiction by the CIT-8, Mumbai or the passing of the order of revision u/s 263 by the Principal CIT-9, Mumbai as regards revising of the reassessment order passed by the A.O under Sec. 147 r.w.s 143(3). We thus decline to accept the aforesaid contention so raised before us.

26. We thus in the backdrop of our aforesaid observations are of the considered view that the Principal CIT had rightly revised the reassessment order passed by the A.O under Sec. 143(3) r.w.s 147, being of the view that the A.O had completed the reassessment without making proper enquiries with regard to the preliminary or basic facts about the source of the share application money found credited in the books of account of the assessee, as well as not considering the information which was called for by him from the Mauritius Tax Authorities. We thus are of the considered view that the Principal CIT, remaining well within his jurisdiction had set aside the reassessment order passed by the A.O under Sec. 143(3) r.w.s 147, with a direction to adjudicate afresh the issue as regards the amount of USD 185 million, claimed to have been received by the assessee as share application money from ECHL, after making necessary verifications and affording reasonable opportunity of being heard to the assessee. We thus in the backdrop of our aforesaid observations uphold the order passed by the Principal CIT-9 under Sec. 263 of the 'Act'.

27. The appeal of the assessee is dismissed.

Order pronounced in the open court on 03/10/2017.

Sd/-	Sd/-
(G.S. PANNU)	(RAVISH SOOD)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 03.10.2017

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**