आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR

आयकर अपील सं./I.T.A. No. 1308/Ahd/2018

(**निर्धारण वर्ष /** Assessment Year : 2013-14)

Smt. Parulben Rajubhai Trivedi 301, Amulya Apartment, 17, Prakash Nagar Society, Nr. Jay Hind School, Maninagar, Ahmedabad	**बनाम**/ Vs.	**ITO** Ward -6(1)(3), Room No. 104, 1st Floor, Narayan Chambers, Ashram Road, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ADOPT3852E		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से /**Appellant by :**	Shri Vartik Chokshi, A.R.
प्रत्यर्थी की ओर से/**Respondent by :**	Shri O. P. Sharma, CIT.D.R.

सुनवाई की तारीख / **Date of Hearing**	06/02/2019
घोषणा की तारीख /**Date of Pronouncement**	28/03/2019

आदेश/O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the Principal Commissioner of Income Tax-6, Ahmedabad ('Pr.CIT' in short), dated 26.03.2018 passed under s.263 of the Income Tax Act, 1961 (the Act) whereby the assessment order passed by the Assessing Officer (AO) dated 30.11.2015 under s. 143(3) of the Act concerning AY 2013-14 was sought to be set aside for *de novo* assessment in terms of supervisionary directions.

2. As per the grounds of appeal, the assessee has sought to challenge the jurisdiction assumed by the Pr.CIT under s.263 of the Act and as a corollary, sought to impugne the revisional order passed by the Pr.CIT under s.263 of the Act.

3. Briefly stated, an assessment under s.143(3) of the Act for AY 2013-14 was completed by the AO accepting the income returned vide order dated 30.11.2015. Thereafter, the Pr.CIT in exercise of its revisionary powers, issued show cause notice dated 15.06.2017 under s. 263 of the Act requiring the assessee to show cause as to why the assessment so framed under s.143(3) of the Act should not be modified/set aside on the ground that such order is erroneous in so far as it is prejudicial to the interest of the revenue. The show cause notice issued in this regard is extracted hereunder for ready reference:

> *"2. The assessee e-filed return of income for the A.Y. 2013-14 on 31.03.2014, declaring income of Rs.1,61,461/-. The same was assessed on 30.11.2015, u/s.143(3), accepting the returned income.*
>
> *2.1) On a perusal of case records, it shows that you have purchased three different properties on 06.02.2013 with same co-owners. The details are as under:*

Sr. No.	*Date of purchase*	*Consideration amount*	*Co -owner*
1	*06.02.2013*	*5,70,61,000/-*	*Hemal Kiritkumar & Sanjay Naranbhai Patel*
2	*06.02.2013*	*5,15,98,000/-*	*Paresh Dineshbhi Patel & Sanjay Naranbhai Patel*
3	*06.02.2013*	*1,51,76,000/-*	*Hemal Kiritkumar & Sanjay Naranbhai Patel*

> *You had stated that the source of Investment in the property was from unsecured loan. On verification of details submitted by you, it is seen that your share in purchase of above mentioned properties was of Rs.4,62,86,416/-. The source of these payments were shown as unsecured loan from Kirtiben R Patel, Rajeshkumar V Patel & Everest Extrusion. Further, it is noticed that the unsecured loan of Rs.1,56,80,000/- was taken from Everest Extrusion on 30.05.2013 which pertains to F.Y. 2013-14. Assessee has submitted confirmation of all parties and bank account of deposits showing the above transactions vide letter dated 27.11.2015. However, on perusal of*

bank statement of M/s. Everest Extrusion P Ltd., it is seen that amount of Rs.1.56 crores was transferred to the assessee on the same day when it was received. Looking to the fact that Everest Extrusion P Ltd has filed its return of income for the year under consideration declaring income at Rs.NIL, its creditworthiness to advance the loan of Rs. 1.56 crores to assessee is not is not established. As unsecured loan was the main source of your investment to purchase various properties on 06.02.2013, and unsecured loan was taken in F.Y. 2012-13 and 2013-14, the above transactions were to be cross verified from confirming parties and co-owners of the properties. The Assessing Officer did not make any enquiries in this regard.

3. From the discussions above, it is seen that the assessment order passed u/s.143(3) of the Income Tax Act, 1961 on 30.11.2015 for the A.Y. 2013-14 by the Assessing Officer is without application of mind and also without making necessary enquiries into the claims, thereby the impugned assessment order has been rendered erroneous in so far as prejudicial to the interest of the Revenue. You are therefore requested to show cause as to why order u/s.263 of the Income Tax Act, 1961 should not be passed revising the said assessment order.

4. You are requested to appear before me either personally or through your Authorized Representative on ***28.02.2018 at 4.00p.m.*** *at my office situated at the above address, alongwith a written reply to this notice."*

4. As per the show cause notice, the Pr.CIT observed on the basis of perusal of case records that the assessee has purchased certain properties during the year. It was further noticed that the co-ownership share in the properties so purchased is pegged at Rs.4,62,86,416/-. The aforesaid cost of purchase was stated to be met out of unsecured loans received from (i) Kirtiben R Patel, (ii) Rajeshkumar V Patel & (iii) Everest Extrusion. The Pr.CIT however found the order of the AO to be unsustainable in law mainly on two counts; (i) the creditworthiness of Everest Extrusion Pvt. Ltd. for advancement of loan of Rs.1.56 crore to the assessee is not established & (ii) the transactions ought to have been cross verified from confirming parties and co-owners of the properties which the AO has failed to do. The Pr.CIT thus alleged that the AO has failed to verify the creditworthiness of the lender namely Everest Extrusion Pvt. Ltd. and also failed to cross verify the transactions with the lenders and the

co-owners of the properties. Hence, the Pr.CIT concluded that the assessment order passed under s.143(3) of the Act is erroneous in so far as prejudicial to the interest of the Revenue as contemplated under s.263 of the Act. The response and the explanation of the assessee towards the show cause notice was taken note of by the Pr.CIT in its order. On consideration thereof, the Pr.CIT passed the order under s.263 of the Act whereby the assessment order was set aside with a direction to the AO to make fresh assessment *de novo* after making suitable inquiries towards source of fund for payment attributable to purchase of property as per the directions set out in the revisional order.

5. Aggrieved by the aforesaid action of the Pr.CIT, the assessee is in appeal before the Tribunal agitating the supervisionary jurisdiction usurped by the Pr.CIT under s.263 of the Act as well as the consequential order passed under s.263 of the Act.

6. The learned AR for the assessee broadly reiterated its detailed submissions made before the Pr.CIT and submitted that all relevant facts and evidences concerning the loans obtained from the lenders were placed before the AO in the course of the assessment. The Pr.CIT has alleged non-application of mind to these facts on the basis of review of the case records. The learned AR for the assessee pointed out that assessee has contributed Rs.4.37 Crores towards purchase of the property as co-purchaser. The payments for these purchases were made by the assessee from her bank account. It was submitted that Rs.2.47 Crores were paid during the FY 2012-13 concerning AY 2013-14 in question whereas Rs.1.90 Crore was paid in FY 2013-14 concerning subsequent AY 2014-15 as tabulated in Section 263 of the Act order. As regards source thereof, it was pointed out that Rs.2.47 Crores were sourced out of receipt on 22.02.2013 from Smt. Kirtiben R Patel through banking channels. This

money received from Smt. Kirtiben which was deployed for purchase of property. Another amount of Rs.190.21 Lakhs was received from Smt. Kirtiben R Patel on 22.06.2013. A sum of Rs.156.80 Lakhs was received from Everest Extrusion Pvt. ltd. through banking channel on 30.05.2013. Rs.50.90 Lakhs was received on 04.06.2013. The aforesaid amounts received in subsequent year from Rajesh Kumar V. Patel were utilized for balance payment towards property and for part reimbursement of loan received from Smt. Kirtiben R Patel. The learned AR emphasized that a specific query was raised towards source of investment for purchase of property by the issue of notice under s.142(1) of the Act dated 19.10.2015 and the assessee has duly explained that the source of investment in land is loan from Smt. Kirtiben R Patel. The aforesaid loan was supported by confirmation letter from the lender as well as the bank statement and income tax return of the lender Smt. Kirtiben R Patel. The bank statement of the assessee was also placed on record showing receipt of loan from bank account of the lender. The entire transaction was through banking channel. The learned AR further pointed out that the documents of the lender clearly revealed the identity of the creditor and the bonafides of the transaction carried out through normal banking channels. The loan was duly confirmed by the lender and was not repudiated in any manner. It was further pointed out that certain re-payments were made to the lender in the subsequent financial year as per the confirmation placed at page no.53 of the paper book.

6.1 The learned AR next contended that the Pr.CIT himself has observed that the very basis for selection of the case under scrutiny was '*large investment in property as compared to total income*'. In response thereof, specific query was raised by the AO as pointed out and reply thereof the assessee has explained the source of investment as pointed out. It was pointed out that the lender has also received money through banking channel from other sources prior to lending to

the assessee. On such facts, the AO completed the assessee on being satisfied about the source of investment in the land. The learned AR thus exhorted that in such a fact situation one cannot say that the AO was oblivious of the point in issue where the very genesis of scrutiny was to inquire about the source of investment. It was thus contended that entire gamut of circumstances are a reflection of the fact that the AO has passed the assessment order only after due application of mind.

6.2 The learned AR for the assessee thereafter referred to the show cause notice issued by the Pr.CIT and pointed out that the Pr.CIT has pointed out inadequacy in carrying out the assessment on two counts; firstly, loan of Rs.1.56 Crores was received by the assessee form Everest Extrusion Pvt. Ltd., the creditworthiness of which lender has not been established. In this regard, the learned AR pointed out that aforesaid amount was received by the assessee from Everest Extrusion Pvt. Ltd. in subsequent FY 2013-14 which is not a subject matter of AY 2013-14 (FY 2012-13) and thus such accusation of the Pr.CIT would not provide valid cause of action with reference to AY 2013-14. Besides, it was submitted that the aforesaid lender M/s. Everest Extrusion had received similar amount from M/s. Paramount LLP as reflected in the bank statement of that lender and source of source is established.

6.3 The learned AR thereafter referred to the show cause notice yet again and pointed out that the second allegation for usurpation of jurisdiction under s.263 of the Act by the Pr.CIT was that unsecured loan from the lender ought to have been cross verified from the confirming parties and co-owners of the properties. The learned AR submitted that the show cause notice for such allegation itself is quite vague and obscure. The reference was initially made to the loan from Everest Extrusion alone for which the creditworthiness was alleged to

be not established. As pointed out, the loan from Everest Extrusion in not relatable to FY 2012-13/AY 2013-14 at all. The Pr.CIT however thereafter expanded the scope of unsecured loan taken in both the FYs. 12-13 & 13-14 for the purposes of cross verification. In this context, the learned AR contended that besides obscurity in SCN, the cross verification of loan is not always incumbent upon a quasi-judicial authority. The source of investment in the instant case is loan from Smt. Kirtiben R. Patel. The relevant documentation including the confirmation/return of income/bank statement of the lender was provided to the AO. The source of the loan by Smt. Kirtiben R Patel is one Uday H. Vora. The learned AR submitted that entire gamut of transactions between the lender and the assessee is through banking channel. The lender, in turn, has also received money through banking channel alone. Therefore, the source of source also carries a proper and identifiable trail. In these circumstances, it was not incumbent upon the AO to make cross verification necessarily with the lender in the light of the decisions of the Hon'ble Gujarat High Court in the case of DCIT vs. Rohini Builder 256 ITR 36 (Guj); Nemichand Kothari vs. CIT 264 ITR 254 (Guwahati) and long line of other judicial precedents which holds that no obligation is cast upon the assessee to prove the 'source of source' of funds received by the lender *per se* prior to its lending to the assessee. The action of the AO in not making cross inquiry is thus not fatal *per se* to hold the order as erroneous. The learned AR further pointed out that any purported adverse remark in such inquiry could not have jeopardized the bonafides of loan in the hands of assessee duly confirmed by the lender. The additions towards breach of Section 68 of the Act, if any, could take place in the hands of the lender or in the hands of original source. Thus, such alleged inadequacy in inquiry was not prejudicial to the interest of the Revenue *per se*.

6.4 The learned AR thereafter vociferously submitted that apart from aforesaid argument, the revisional order under s.263 of the Act is also consistent with the show cause notice issued for assumption of jurisdiction. The learned AR pointed out that the basis for assumption of jurisdiction as per show case notice are two fold; i.e. (i) creditworthiness of loans of Rs.1.56 Crores from Everest Extrusion P. Ltd. is not established and (ii) the transactions relating to unsecured loan were not cross verified with the lenders. The Pr.CIT however while setting aside the order of the assessment has mainly discussed about the transactions carried out in the subsequent FY 2013-14 by the lenders and with the lenders. Secondly, the creditworthiness of Smt. Kirtiben R. Patel has been questioned vis-à-vis the income reported by her in the return of income which was not subject matter of show cause notice at all. The revisional order passed under s.263 of the Act is clearly abstract and inconsistent. The learned AR submitted that, as pointed out, loan from Everest Extrusion in subsequent financial year has no connection with assessment year for which the action under s.263 of the Act has been taken. Likewise, the creditworthiness of the lender Smt. Kirtiben R Patel is clearly explainable from the receipt by her from banking channel from other source and the law does not oblige that the lending should be carried out only out of own funds. It was thus contended that view taken by the AO towards admissibility of loan is not exceptional in nature but a plausible view in law. To augment its plea for inconsistency, the learned AR referred to the judgment of CIT vs. Ashish Rajpal [2009] 180 Taxman 623 (Delhi); Genesis Colors (P.) Ltd. vs. CIT [2014] 42 taxmann.com 552 (Delhi-Trib.) for the proposition that the revisional order under s.263 of the Act cannot be passed on an entirely different ground than what is taken for issuance of show cause notice.

6.5 The learned AR in conclusion submitted that the AO had clearly raised specific queries and found explanation satisfactory to his

opinion having regard to the documentary evidences filed by the assessee and therefore, no breach of Section 68 of the Act can be envisaged in the action of the AO to enable the Pr.CIT to resort to Section 263 of the Act. The learned AR therefore contended that the action of the Pr.CIT does not meet the requirement of law and the order passed under s.263 of the Act is bad in law and therefore, requires to be quashed.

7. The learned DR, on the other hand, relied upon the order of the Pr.CIT and submitted in furtherance that the absence of requisite inquiry on capacity of lender could invite the action under s.263 of the Act read with Explanation 2 thereto and therefore the revisional order cannot be faulted.

8. We have carefully considered the rival submissions and perused the revisional order of the Pr.CIT as well as the show cause notice issued for assumption of jurisdiction as well as the case laws cited. The assumption of jurisdiction under s.263 of the Act by the Pr.CIT and revisional order passed as a sequel thereto seeking to set aside the completed assessment under s.143(3) of the Act is in controversy.

8.1 The supervisionary jurisdiction conferred under s.263 of the Act has been invoked by the Pr.CIT to set aside the assessment order passed by the AO under s.143(3) of the Act for AY 2013-14 on two broad allegations capsulated as under:

(i) One of the unsecured lenders namely Everest Extrusion Pvt. Ltd. has filed its return of income at Rs. Nil and therefore its creditworthiness to advance loan of Rs.1.56 Crore is not established.

(ii) The transactions relating to unsecured loans were not cross verified from confirming parties (lenders).

In the backdrop of foundation of show cause notice under s.263 of the Act noted above, we would re-capitulate certain facts emerging from case records. As against the contribution of the assessee aggregating to Rs.437.06 Lakhs for purchase of property as co-owner, the assessee has made payments of Rs.246.86 Lakhs and Rs.196.20 Lakhs to the seller in FY 2012-13 (AY 2013-14) and FY 2013-14 (AY 2014-15) respectively through banking channel as tabulated by the Pr.CIT in its order. It is the case of the assessee that payment to the seller amounting to Rs.246.86 Lakhs during the financial year relevant to AY 2013-14 has been financed out of borrowals made from Smt. Kirtiben R Patel (Kirtiben) through banking channels. It is pointed out that no loan has been taken from Everest Extrusion Pvt. Ltd. during the FY 2012-13 at all. The transaction with Everest Extrusion Pvt. Ltd. is subject matter of subsequent AY 2014-15. Therefore, no occasion would arise for the AO to examine the creditworthiness of the aforesaid party as alleged in the show cause notice. From the facts noticed from record, we find force in this contention of assessee that transactions with Everest Extrusion are unrelated to AY 2013-14 in question. This being so, the first premise for issuance of show cause notice itself is without any promise and profoundly incorrect.

8.2 We shall now turn to the other premise for show cause notice i.e. transaction relating to unsecured loan with the lenders. As pointed out on behalf of the assessee, loans received from Smt. Kirtiben R Patel represents the source of the investment is so far as FY 2012-13 (AY 2013-14) is concerned. Adverting to the facts point, as observed by the Pr.CIT himself, the case was selected for scrutiny specifically to examine the source of investment in properties. It is seen from case records that specific question in this regard was raised by AO vide notice dated 19.10.2015 issued under s. 142(1) of the Act. It is further seen that the assessee has duly replied to the query raised in this regard vide letter dated 26.10.2015 categorically and it was

explained to AO that the source of investment in land is loan from Smt. Kirtiben R Patel. It is also observed that to support the source of investments, a copy of confirmation, bank statement and income tax return of the lender Smt. Kirtiben R Patel was also placed before the AO. Noticeably, a part of the loan was repaid to the lender Smt. Kirtiben R Patel in the subsequent year. These facts placed on record remain undisputed. Once such concrete evidences from lender has been filed the identity and the genuineness of the loans taken through banking channel has gained sanctity. The primary onus cast upon the assessee with regard to the loan thus stands discharged. A moot question therefore would arise as to whether it was incumbent upon the AO to necessarily cross verify the transactions of loan with lender in each case while discharging its quasi-judicial functions under s.68 of the Act or not. To put it differently, whether lack of cross verification of money lent with respective lenders would sully the 'satisfaction' drawn by the AO as contemplated under S. 68 of the Act or not?. For this purpose, we take note of the position of law in this regard as enunciated by judicial precedents over time in succeeding para.

8.3 Section 68 of the Act provides that when any sum is found credited in the books of accounts of the assessee, he is expected to offer an explanation about its nature and source thereof to the satisfaction of the AO. Thus, the initial onus is indisputably on the assessee to establish there ingredients (a) identity (b) capacity of the creditor for advancement the money (*prima facie* creditworthiness) and (c) genuineness of transaction. The law however does not prescribe any quantitative test to find out whether the onus in a particular case has been discharged or not. It all depends on the facts and circumstances of each case. In some cases, the onus may be heavy whereas in others it may be nominal. There is nothing rigid about it as observed by the Hon'ble Supreme Court in the case of CIT v. Durga

Prasad More, [1971] 82 ITR 540 (SC). Significantly, S. 68 of the Act uses the expression 'may' and thus enables the AO to exercise statutory discretion in a pragmatic manner, for or against, the assessee. The AO is thus not obliged to invoke the sphere of S.68 of the Act in all cases where the source is not proved to the last mile. This apart, it is well settled that while discharging the onus cast upon the assesse, it is not the requirement of law that assessee needs also to prove the source of source i.e. money sourced by the lender to provide loan to the assessee. Once the assessee is able to establish the money has been received from the source belonging to third party, he cannot be burdened with a further onus of establishing the source from which such third party has been able to obtain money. Useful reference in this regard can be made to the decision of Hon'ble Gujarat High Court in case of Rohini Builders (supra) and also Nemi Chand Kothari (supra); ITO vs. Diza Holdings (P) Ltd. 255 ITR 573 (Kerala) and so on.

8.4 In the backdrop of the tenets of law relevant to the present case as digested above, we take a look at the facts emerging from the record with respect to loan taken from Smt. Kirtiben R Patel filed before the AO. From the bank statement of lender placed before Revenue, it is apparent that the lender has, in turn, received money by way of credit from other party i.e. Uday H. Vora. Thus, the assessee has established not only the source of loan obtained by her, assessee has also adequately demonstrated before the AO that lender has received money routed through banking channel before the money could be lent to the assessee. Thus, the burden of proof cast upon the assessee was broadly discharged. Needless to say, such onus can seldom be discharged to the hilt. In this background, a presumption can be safely drawn that the AO bore the capacity to draw satisfaction with the explanation offered by the assessee towards receipt of loan from Smt. Kirtiben R Patel and consequently it can be said that the

statutory discretion was exercised in favour of the assessee based on tell-tale evidences furnished by the assessee in this regard. The action of the AO thus cannot be wholly disregarded as untenable or implausible even in the absence of specific cross verifications. In this background, we advert to the second allegation made in the show cause notice under s.263 of the Act that the AO did not proceed with cross verifications which he ought to have. As observed, the transaction of loans received by assessee were clearly relatable from the bank account of the lender. The lender is also duly assessed to tax and has also confirmed the loans having advanced to the assessee. On these facts, a question would arise as to whether it was incumbent upon the AO to seek cross verification of the apparent facts to obtain the satisfaction towards explanation offered in terms of Section 68 of the Act or not. Having regard to the prerogative vested with the AO towards the extent and manner of inquiry for drawing satisfaction, a cross verification or otherwise would not make a transaction susceptible *per se* in the absence of any reason to suspect the entries. The cross verification of every type of loan not being integral to the purport of S.68 of the Act, the absence of such cross verification will not, in our view, render the action of the AO wholly unsustainable in law and consequently erroneous. Pertinently, the Pr.CIT, has not specified the nuances of cross verification expected in the show cause notice in an incisive manner. Be that as it may, the second allegation of the Pr.CIT would, in our understanding, not impeach the action of the AO on the touchstone of s.68 of the Act. In the light of the aforesaid discussion, the basis for issuance of show cause notice does not appear to be tenable in law in the given set of facts. Consequently, the assumption of jurisdiction under s.263 of the Act will have to be regarded as without authority of law.

8.5 Notwithstanding, we shall now advert to the observations made by the Pr.CIT by passing revisional order under s.263 of the Act.

From the text and tenor of the revisional order, it is manifest that the transactions of loan from lenders required proper and fuller inquiry and examination by the AO in the expectation of the Pr.CIT. It is the case of the Pr.CIT that the lender Smt. Kirtiben R Patel does not have enough income i.e. creditworthiness to advance a loan of about Rs.4.37 Crores to the assessee. While forming opinion adverse to the assessee, the Pr.CIT has essentially challenged the void in enquiry towards the question of creditworthiness of the lender. Without going into the merits of the aforesaid allegation of the Pr.CIT for a moment, we pause here to note an equally substantive argument on behalf of the assessee that the Revisional Commissioner is not permitted to shift the stand originally taken in the show cause notice at the time of passing the revisional order. As noticed, the grievance in the show cause notice was absence of cross verification from the lender. This is not the same as casting aspersions on the creditworthiness of the lender. However, at the stage of the passing order, the Pr.CIT has alleged inadequacy in enquiry *qua* creditworthiness. Thus, the contents of order under s.263 of the Act does not appear to be consistent with the show cause notice issued in this regard. This change in stand by the Pr.CIT cannot be approved in the light of the judgment of Hon'ble Delhi High Court in Ashish Rajpal (supra) and the decision of the co-ordinate bench of Tribunal in Genesis Colors (supra). We, thus, find merit in this plea of the assessee also. The revisional order of the Pr.CIT is thus vitiated in law on this score too.

8.6 There is another aspect to the matter. The Revisional Commissioner has remanded the matter back to the file of the AO essentially alleging inadequacy in inquiry/examination with reference to the source of loans. As noted earlier, the case was scrutinized mainly to achieve this objective and specific inquiry in this regard was made by the AO and in response thereof, the assessee filed documentations of the lender to support the genuineness of the loan

transaction. Thus, clearly, the case made out by the Pr.CIT is purportedly inadequacy in the extent of inquiry but not a case of total lack of inquiry with lenders. It is evolved by judicial precedents that in the case of inadequacy in inquiry (unlike lack of inquiry) on a point in issue, the Pr.CIT is expected to make some preliminary inquiry himself to be able to establish and show the error or mistake which renders the order of the AO unsustainable in law. It may be possible for the Pr.CIT in some cases to show and establish that facts on record or inferences drawn from facts on record *per se* justified or mandated further inquiry or investigation which the AO has erroneously not undertaken. However, such finding must be clear, unambiguous and not debatable. The Pr.CIT must demonstrate that the order is both erroneous as well as prejudicial to the interest of the Revenue by such lapse on the part of the AO. This is the position of law enunciated by the Hon'ble Delhi High Court in the case of CIT .v. Goetze (India) Ltd. (2014) 361 ITR 505 (Del). In this backdrop, a question would arise whether, firstly, the action of the AO is unsustainable in law or not, owing to such inadequacy and secondly, whether the mandate under s.68 of the Act for extent of inquiry by way of cross verification is absolute or left to the discretion to be reasonably exercised by the AO. When seen in the light of judicial precedents elucidating law pertaining to Section 68 of the Act, it appears that it is not obligatory on the part of the assessee to vouch the source of the source and thus, onus is reasonably discharged. This also means that the AO is not required to obdurately adhere to such expectation of superior authority. The AO is thus entitled to draw satisfaction in favour of the assessee in exercise of its statutory discretion. Secondly and significantly, if the source of source i.e. money lending from other source is ultimately found to be unexplained whether the addition is capable of being made in the hands of the assessee herein under s.68 of the Act when the lender has unequivocally confirmed the transaction and is independently assessable to tax. In the present set

of facts, it will be difficult to discredit the loan received *per se* and make additions in the realm of s.68 of the Act in the hands of the assessee in place of the lender where 'source of source' allegedly remains unproved eventually. Therefore purported inadequacy in inquiry as alleged, cannot be stated to be 'prejudicial to the interest of the Revenue' *per se* in so far as assessee herein is concerned even if such, inaction of AO towards fuller enquiry is branded as erroneous. Therefore, the mandatory twin conditions of Section 263 is also not found to be fulfilled when tested on the touchstone of taxability of loan in the hands of assessee on the grounds of unproved source of source. Where the AO has exercised its quasi-judicial powers and arrived at a conclusion with reasonable application of mind, such action cannot be brushed aside as erroneous etc. simply because the Revisional Commissioner does not feel satisfied with extent of the inquiry and expects observance of higher standards in this regard. Where the assessee has furnished relevant material and offered explanation, the assessment cannot be ordinarily set aside for framing better assessment without any objective material on record adverse to the assessee. We thus concur with the plea on behalf of the assessee that S.263 proceedings cannot be inflicted upon the assessee in these circumstances.

8.7 In the context of the issue involved, we also take note of the decision rendered by Hon'ble Bombay High Court in the case of CIT vs. Nirav Modi 390 ITR 292 (Bom.) where in somewhat similar circumstances, the decision of the Tribunal to cancel the order passed under s.263 of the Act was upheld. Thus, driven by the precedent, where the inquiry of 'source of source' is not found to be the requirement of law, the alleged inadequacy in this respect should not be fastened on the assessee. Notwithstanding, any doubt in the capacity of the lender would ordinarily invite action against the lender who is shown to have received money through banking channel from

other source prior to its lending and is also a regular tax assessee. Therefore, the prejudice contemplated under s.263 of the Act, if any, is *qua* the lender and not the assessee.

9. We are also alive to clause (a) of Explanation (2) to Section 263 of the Act inserted by Finance Act, 2015 w.e.f. 01.06.2015 which seeks to clarify that the order passed by the lower authorities to be erroneous in so far as prejudicial to the interest of the Revenue in the event of absence of inquiry which should have been made. The aforesaid clause only provides for situation where inquiries or verifications should be made by reasonable and prudent officer in the context of the case. Such clause cannot be read to authorize or give unfettered powers to the Revisional Commissioner to revise each and every type of mistake in an order. The applicability of the clause is thus essentially contextual. As observed in the preceding paras, even if inquiry with regard to source of source is omitted to be carried out, the provisions of Section 68 of the Act cannot be automatically fastened on the assessee. No objective material has been brought on record to implicate the assessee *per se*. Thus, seen from any angle, the assessment order passed under s.143(3) of the Act cannot be frustrated in the circumstances. Revisional order thus requires to be quashed and set aside.

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

This Order pronounced in Open Court on 28/03/2019

Sd/-	Sd/-
(MAHAVIR PRASAD)	(PRADIP KUMAR KEDIA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Ahmedabad: Dated 28/03/2019

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue

2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।