

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'F', NEW DELHI**

Before Sh. Bhavnesh Saini, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2644/Del/2016 : Asstt. Year : 2011-12

Gurvinder Singh Suri, C/o M/s RRA Taxindia, D-28, South Extension, Part-I, New Delhi-110049	Vs	Pr. Commissioner of Income Tax (Central)-1, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAAPS8291D		

Assessee by : Sh. Rakesh Gupta, Adv.

Revenue by : Smt. Sushma Singh, CIT DR

Date of Hearing: 02.03.2020

Date of Pronouncement: 13.05.2020

ORDER

Per Dr. B.R.R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. Pr. CIT (Central)-1, New Delhi dated 01.03.2016.

2. The moot ground raised by the assessee pertains to assuming jurisdiction u/s 263 of the Income Tax Act, 1961 with regard to claim of Rs.12,00,000/- allowed by the Assessing Officer u/s 57 of the Act.

3. The pertinent facts of the case are that the assessee earned income by way of salary & bonus, income from house property, share of business profit, capital gains from transfer of property and income from other sources. The interest earned by the assessee was Rs.44,02,030/-. The assessee has offered to tax an amount of Rs.32,02,030/- under the head "income from other sources" after claiming deduction on account of

payment of interest of Rs.12,00,000/-. The Id. PCIT during the revisionary proceedings u/s 263 held that the Assessing Officer has not looked into/enquired the claim of expenses u/s 57 during the assessment proceedings. The Id. PCIT held that for allowing the deduction u/s 57, nexus between the income earned and the expenditure incurred to earn this income is a mandatory requirement and this requirement has not been established during the assessment proceedings. Disregarding the explanation offered by the assessee vide letter dated 10.11.2015, the Id. PCIT has set aside the order of the Assessing Officer holding that the AO allowed the deduction without any enquiry and examination of this issue.

4. The Id. AR argued on the strength of the submissions made before the authorities below and referred to the details of earning of interest and payment on account of interest.

5. The Id. DR argued, drawing the attention to the Explanation II of the Section 263 of IT Act introduced by the Finance Act, 2015 w.e.f. 01.06.2015. She also relied on the judgments in the case of Deniel Merchants Pvt. Ltd. Vs ITO (SC) and also relied on the written submission of the Id. CIT DR, Smt. Sulekha Verma. The submissions in writing are as under:

"In this regard, it is humbly submitted that Explanation 2 has been inserted in Section 263 of I.T. Act by Finance Act 2015 w.e.f. 01.06.2015 which is reproduced below:

Explanation 2. — For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner—

- (a) the order is passed without making inquiries or verification which should have been made;*
- (b) the order is passed allowing any relief without inquiring into the claim;*
- (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

In the above case, it is humbly submitted that the following decision may kindly be considered with regard to validity of proceedings u/s 263 of I.T. Act:

1. *Hon'ble Supreme Court in the case of Deniel Merchants Pvt. Ltd. vs. ITO (Appeal No. 2396/2017) dated 29.11.2017.*

The relevant judgement of Hon'ble Calcutta High Court in this case is also enclosed. In this group of cases, Hon'ble Supreme Court has dismissed SLPs in cases where AO did not make any proper inquiry while making the assessment and accepting the explanation of the assessee(s) insofar as receipt of share application money is concerned. On that basis the Commissioner of Income Tax had, after setting aside the order of the Assessing Officer, simply directed the Assessing Officer to carry thorough and detailed inquiry.

2. *Malabar Industrial Co. Ltd. Vs CIT [2000] 109 Taxman 66 (SC)/[2000] 243 ITR 83 (SC)/[2000] 159 CTR 1 (SC)*

where Hon'ble Supreme Court held that where Assessing Officer had accepted entry in statement of account filed by assessee, in absence of any supporting material without making any enquiry, exercise of jurisdiction by Commissioner under section 263(1) was justified.

3. *Rajmandir Estates (P.) Ltd. Vs PCIT [70 taxmann.com 124 (Calcutta)/[2016] 240 Taxman 306 (Calcutta)/[2016] 386 ITR 162 (Calcutta)/[2016] 287 CTR 512]*

Where Hon'ble Calcutta High Court held that where assessee with a small amount of authorised share capital, raised a huge sum on account of premium and chose not to go in for increase of authorised share capital merely to avoid payment of statutory fees and Assessing Officer passed assessment order without carrying out requisite enquiry into increase of share capital including premium received by assessee, Commissioner was justified in treating assessment order as erroneous and prejudicial to interest of revenue

4. *Rajmandir Estates (P.) Ltd. Vs PCIT [2017] 77 taxmann.com 285 (SC)/[2017] 245 Taxman 127 (SC)*

Hon'ble Supreme Court has dismissed SLP against High Court's ruling that where assessee with a small amount of authorised share

capital, raised huge sum on account of premium, exercise of revisionary powers by Commissioner opining that this could be a case of money laundering was justified.

5. *Shree Maniunathesware Packing Products & Camphor Works Vs CIT [1998] 96 Taxman 1 (SC)/[1998] 231 ITR 53 (SC)/[1997] 143 CTR 406 (SC)*

Hon'ble Supreme Court held that word 'record' used in section 263(1) would mean records as it stands at time of examination by Commissioner but not as it stands at time of order passed by Assessing Officer. Material which had already come on record though subsequently to making of assessment could be taken into consideration by Commissioner. Commissioner was justified in invoking section 263 on basis of valuation report submitted by DVO subsequent to assessment order.

6. *Order of Hon'ble SUPREME COURT OF INDIA in the case of CIT v. Amitabh Bachchan 384 ITR 200 dated MAY 11, 2016*

Section 263 does not require any specific show cause notice detailing specific grounds on which revision of assessment order is tentatively being proposed affecting initiation of exercise in absence thereof or to require commissioner to confine himself to terms of notice and foreclosing consideration of any other issue or question of fact; Commissioner is free to exercise his jurisdiction on consideration of all relevant facts, provided an opportunity of hearing is afforded to assessee to contest facts on basis of which he had exercised revisional jurisdiction.

7. *Order of Hon'ble ITAT F-Bench in the case of PTC Impex (India) Pvt. Ltd. Vs CIT. ITA No. 2860/Del/2010 dated 03.04.2018*

Hon'ble ITAT Delhi F- Bench has held as under:

"21. We have carefully considered the rival contention and also gone through the order of the Ld. CIT u/s 263 and the order of the assessing officer passed u/s 143 (3) of the act which was subject to revision by the CIT. We have also perused the various case laws cited before us by the parties. According to section 263 of the Act, Commissioner of Income tax can resort to corrective measures by revising the assessment order passed by the Assessing Officer, if after examining records such assessment order passed by the Assessing Officer, he (the Commissioner of Income-tax) found that such an order passed by the Assessing Officer is erroneous and prejudicial to the interest of revenue. In Malabar industrial Co Ltd versus CIT 243 ITR 83 (SC) Hon"ble Supreme Court held the Commissioner has satisfied of twin conditions namely (i) that the order is erroneous, (ii) that it is prejudicial to the interest of

revenue. As held in several judicial precedents that Commissioner does not have power to revise the order of the Ld. assessing officer where there are two views possible and the Ld. assessing officer has taken one of the possible views. Further, where the Ld. assessing officer has made some enquiry and has reached at a conclusion. Therefore, on debatable issues and where there is absence of "Lack of Inquiry" the powers of the CIT cannot be exercised under section 263 of the act. There exists a difference between "Lack of Inquiry" and "inadequate Inquiry". In the present case on all the four issues raised by the Ld. CIT, in the paper book submitted by the assessee or in the arguments raised by the Ld. authorized representative we did not find that Ld. AO has made any enquiry on all ITA No. 2860/Del/2010 A Y 2005-06 PTC Impex (India) Pvt. Ltd vs. Commissioner Of Income tax the 4 issues. Therefore, according to us there is no Inquiry made by the Ld. assessing officer on the issues raised by CIT in proceedings under section 263 of the act. The arguments of Ld. Authorized representative on the issue with respect to cash deposited in the bank account, loan repaid, bank interest on fixed deposit receipt and absence of narration in the bank statements were more on the aspect that no such addition can be made in the hands of the assessee. However, nothing is lead before us that makes us to ascertain that Ld. AO during the course of assessment proceedings have inquired about all those things at all. Merely because there are disallowances under section 10 B of the act and addition on account of undisclosed sales which is precisely made on the basis of the information available with the Ld. assessing officer in tax audit report only, it cannot be said that on these 4 issues the Ld. AO has made any enquiry. The Ld. assessing officer notes in the assessment order that despite request the assessee has not produced the complete books of accounts along with the bills and vouchers before him. The Ld. authorized representative vehemently referred to page No. 19 of the order of the Ld. CIT (appeals) dated 15/3/2010 wherein it is stated that books of accounts and vouchers were produced before the assessing officer on 26/12/2007 and 29/12/2007 (Saturday) but not taken on record by the AO. The assessment in the present case was framed under section 143 (3) of the act on 31/12/2007. This itself shows that assessing officer has not looked at the books of accounts which are allegedly produced before AO as per version of the assessee on 26/12/2007. This too is the submission of the assessee before CIT (A) which has not been adjudicated by CIT (A). Even otherwise, mere production of books of accounts does not make the issues before us fall in to the category of "inadequate inquiry". If we agree to such an argument then, in all cases where the books of accounts were produced before the Id AO, then the case would fall outside the purview ITA No. 2860/Del/2010 A Y 2005- 06 PTC Impex (India) Pvt. Ltd Vs. The Commissioner of Income tax of section 263 of the act. Further No records of communication by the AO to assessee

and reply by assessee to Id AO was shown to us to show on these four issues that the Assessing Officer had applied his mind on any of them. According to us case before us is of Jack of inquiry" and not absence of any inquiry. All judicial precedents relied up on before us related to „ absence of adequate inquiry but none of them dealt with the issues of complete lack of inquiry as in case before us. Hence, we do not have any hesitation in upholding action of Id CIT in invoking his jurisdiction u/s 263 of the act. Hence, order passed u/s 263 of the act by the Id CIT is upheld and appeal of the assessee is dismissed."

8. *Order of Hon'ble HIGH COURT OF KARNATAKA in the case of CIT vs. Infosys Technologies Ltd. 341 ITR 293 dated 04.01.2012*

"Section 263 is a section which enables the Commissioner to have a look at the orders or proceedings of the lower authorities and to effect a correction, if so needed, particularly if the order or proceeding is erroneous and prejudicial to the interest of the revenue. This provision occurs in a taxing statute, the object of which is to raise revenue for the State, and section 263 is an enabling provision conferring jurisdiction on the Commissioner to revise the order of the authorities below in certain circumstances particularly when it is erroneous and prejudicial. One can at once realize that the provision is intended to plug leakage to the revenue by an erroneous order passed by the lower authorities, whether by mistake or in ignorance or even by design. It makes little difference as to for what reasons the order is passed by the lower authority, so long as it becomes erroneous and prejudicial to the interest of the revenue. Ultimately, the object is to ensure that leakage of the revenue is plugged and some tax due to the State not reaching the coffers of the State is prevented by exercise of revisional jurisdiction of the Commissioner. [Para 18]

9. *Order of Hon'ble Delhi ITAT in the case of CIT vs. Apollo Tyres Ltd., 65 ITD 263 (Copy Enclosed)*

"A plain reading of section 263 clearly indicates that the Commissioner may call for and examine the records of any proceedings under the Act. For this purpose, he is not required to show as to what reasons prompted him to call for and examine the record. The provisions also do not prescribe any limitation that the Commissioner should suo motu call for and examine the record and he cannot take into consideration or rely upon any report or information which may be supplied to him by the other officers of the department or on the basis of any information which he may obtain from any other source. The authority of the Commissioner to call for and examine the record on the basis of any information from any source or suo motu is purely an administrative matter. If after calling for and examining the records, the Commissioner

considers that the order of the Assessing Officer is erroneous insofar as it is prejudicial to the interests of the revenue, then subsequent proceeding acquires quasi-judicial character. On comparison of sections 263 and 264 it would be seen that in section 264 the Commissioner may, either of his own motion or on an application by the assessee, call for the records of any proceeding under the Act. However, in section 263 the expression 'on his own motion' is absent. In the absence of such an expression and also in view of the fact that there is no restriction or limitation on the power of the Commissioner to call for and examine the record of any proceeding pursuant to the report given by the Assessing Officer or by other Departmental Officer, the Commissioner could validly call for and examine the record of the assessee in the instant case for the relevant year pursuant to a letter of the Assessing Officer containing a proposal under section 263. Therefore, there was no merit in the contention of the assessee in this regard."

10. *Order of Hon'ble Delhi High Court in the case of Gee Vee Enterprises vs Addl. CIT, 99 ITR 375*

Where it is held that the Commissioner can regard the order as erroneous on the ground that in the circumstances of the case, ITO should have made further inquiries before accepting the statements made by the assessee in his return and it was observed that reason is obvious. The position and functions of the ITO are very different from that of civil court.

11. *Order of Hon'ble Delhi Bench in the case of Perfetti Van Melle India Pvt. Ltd., ITA No. 3046/Del/2016 for A.Y. 2009-10 order dated 11.01.2019.*

"11. We have heard both the parties and perused all the records. It is pertinent to note that the assessee is engaged in manufacturing of a variety of confectionary productions which includes Big Babool, Alpenlibe, Centre Fresh, Center Fruit, Center Shok, Chater Pater, Chlor-mint, Choco-tella, Cofitos, Happydent White, Protex Happydent, Marbels, Mentos etc. From these products it can be seen that all products are not that of pharma, chlor- mint, ayurved based products. There are confectionary products as well. The Pr. CIT after perusal of the quarterly statement furnished by the assessee company with the Commissioner, Central Excise, Meerut for F.Y. 2008-09, noticed that the assessee company had also manufactured other products such as 'chewing gum', 'toffee' and 'bubble gum' in addition to manufacturing of Pharma Products for which the assessee company is not entitled for deduction u/s 80IC of the Act as these article or things are not specified in the Fourteenth Schedule. But the Assessing Officer has not made any enquiries or verification which should have been made before

allowing any relief u/s 80IC of the Act to the assessee company. The decision of the Hon'ble Supreme Court in Malabar Industrial Company Ltd. vs. CIT (243 ITR 83) (SC) held that the Commissioner has to satisfy himself of both the conditions, firstly order being erroneous and 8 ITA No. 3046/Del/2016 secondly order being prejudicial to the interest of revenue. Both these tests have been seen by the Principal Commissioner of Income Tax in the present case and aptly applied in the present case. It is also held by the Hon'ble Apex Court that the provisions cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. Thus, the Pr. CIT has looked into the aspect of the Assessment Order in the present case to the extent of erroneous and thus, Section 263 of the Act is attracted in the present case. Section 263 of the Act is not invoked simply for correcting mistake or error committed by the Assessing Officer in the present case. It can be observed that the Pr. CIT has considered all the contentions of the assessee and thereafter rightly come to the conclusion that the Assessing Officer failed to consider the fact that whether the assessee is entitled for claim under Section 80IC or not in respect of the products which do not come under the ambit of Fourteenth Schedule. It can be seen that the Pr. CIT has properly invoked the provisions of Section 263 and there is no procedural lapse on the part of the Pr. CIT. In fact, the Assessing Officer did not made any inquiry and there is no mention of the same in the Assessment Order itself which proves that the order is passed without making inquiries or verification which should have been done by the Assessing Officer before allowing the claim u/s 80IC of the Act. Thus, it is prejudicial to the interest of the Revenue and there is loss of revenue. The Pr. CIT after issuing the Show Cause Notice u/s 263 of the Act given ample opportunity to the Assessee for explanation and dealt with the reply/details filed by the assessee in proper manner. Thus, proper opportunity was given by the Pr. CIT to the assessee during the proceeding's u/s 263 of the Act. The present case is covered by the decision of the Hon'ble Apex Court in case of Deniel Merchants Private Limited & Anr. Vs. Income Tax Officer (Appeal No. 2396/2017 order dated 29.11.2017). The Hon'ble Supreme Court held as under: "In all these cases, we find that the Commissioner of Income Tax had passed 9 ITA No. 3046/Del/2016 an order under Section 263 of the Income Tax Act, 1961 with the observations that the Assessing Officer did not make any proper inquiry while making the assessment and accepting the explanation of the assessee(s) insofar as receipt of share application money is concerned. On that basis the Commissioner of Income Tax had, after setting aside the order of the Assessing Officer, simply directed the Assessing Officer to carry thorough and detailed inquiry. It is this order which is upheld by the High Court. We see no reason to interfere with the order of the High Court. The Special Leave Petitions are dismissed."

Thus, in the present case the Assessing Officer has not properly adjudicated the issue of claim u/s 80IC before allowing the same to the assessee company, therefore, the Pr. CIT has rightly invoked Section 263 of the Act and passed the order. Therefore, the Order under Section 263 of the Income Tax Act, 1961 passed by the Principal Commissioner of Income Tax is just and proper. There is no need to interfere with the same. The appeal of the assessee is dismissed. "

12. *Order of Hon'ble Delhi Bench in the case of Ramesh Kumar., ITA No. 1982/Del/2018 for A.Y. 2014-15 order dated 25.01.2019.*

"16. We have heard the arguments of both the parties and gone through the facts on record. All the arguments, facts, decisions, case laws cited by the Ld. AR and the Ld. DR have been perused and duly considered for adjudication. To the notice issued by the Assessing Officer pertaining to the Long Term Capital Gains the assessee has replied that he had purchased the shares on 16/03/2012 and sold in July 2013 and received sale proceedings of Rs. 11,29,599/-. It was replied that the original shares purchased were of M/s Panchshul Marketing Ltd. which stands merged with M/s Kailash Automobile and the shares of Kailash Automobiles were allotted in the ratio of 1:1. Beyond this information there were no enquiries conducted by the Assessing Officer. The reliance of the Ld. AR on the case of Gabriel India Ltd. is of no help to the assessee as it enunciated two principles namely i.) the order is erroneous ii) by the virtue of the order being erroneous prejudice is caused to the interest of the Revenue. In the instant case there has been an information with the department which has been passed on to the Assessing Officer for verification and failure of the Assessing Officer to verify the transactions in the light of the information available makes the order erroneous and also prejudicial to the interest of the Revenue. The Assessing Officer has mentioned about inputs from investigation wing in assessment order but has not examined absolutely anything regarding the genuinity of the transactions. The Ld. PCIT had enough material in his custody to prima facie to show that the tax which was lawfully 14 exigible has not been imposed. Similarly in the case of Sunbeam Auto the courts have held that in the case of lack of enquiry course of action under section 263 is valid. In this case on the facts of the record it can be observed that the Assessing Officer has not applied his mind regarding the allowability of the exemption of the Long Term Capital Gain. This is not the case of inadequate enquiry but is a clear case of lack of enquiry which makes it different from the case of Nirav Modi (supra). Obtaining of the information about the transaction cannot be taken as akin to enquiring about the information. This is a clear case of no enquiry for which the Ld. PCIT has rightly invoked the provisions of Section 263. We also find that the Ld. PCIT has clearly brought about the error in the

assessment order and has also directed the Assessing Officer to take remedial action to take action as per the law after providing due opportunity to the assessee. Thus, it can be said that the Ld. PCIT has not exceeded his jurisdiction nor directed the Assessing Officer to pass the assessment order in any particular way thus not interfering in the judicial function of the Assessing Officer.

17. Ongoing through the facts, it can be observed that the Assessing Officer has not conducted any enquiry and this is a clear case of lack of enquiry not a case inadequate enquiry. Further non application of mind by the Assessing Officer can be easily gauged from the fact that the information available with the Assessing Officer has not been utilised during the assessment proceedings which makes the case fit for applying the provisions of explanation 2 (a) of section 263. Thus based on the facts on record the contention of the assessee cannot be held to be valid in which are detailed as under

(a) The order passed by the Assessing Officer is neither erroneous nor prejudicial to the interests of the revenue: The order passed has been found to be erroneous and prejudicial to the interest of the revenue as per the case law cited and on facts of the case.

(b) The assessee is not covered in any of the conditions mentioned in 15 Explanation 2 of Section 263(1) : The assessee has found to be squarely covered by the provisions of section 263 91) explanation 2 as no enquiries or verification has been conducted which should have been made by the Assessing Officer.

(c) Merely because the CIT may not agree to the order of the Assessing Officer just due to change of opinion, the said orders cannot be treated as an erroneous order prejudicial to the interest of Revenue : This is not a case of the Principal CIT not agreeing to the order of the Assessing Officer and nor a case of change of opinion. In fact the Assessing Officer has nor formed any opinion in allowing the long term capital gains and practically has not examined the issue at all.

(d) There is a distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even if it was inadequate, it does not give right to the Commissioner to pass orders under section 263 merely because of a different opinion From the assessment order questionnaire it can be unequivocally held that this is a clear case of lack of enquiry.

(e) The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. There are no fishing or ruin enquiries conducted

by the Ld. Principal CIT nor directed the Assessing Officer to conduct such enquiries.

(f) The assessee has already furnished all the documentary evidences which proves that transactions related to sale and purchase of shares are genuine There is absolute difference between enquiry calling of information, investigation and examination. From the action of the Assessing Officer it can be said that no enquiry has been conducted in this case.

(g) Merely because the stock price moved sharply, the assessee is not to be 16 blamed for bogus transactions where he has purchased and sold the stocks through registered brokers and confirmed by valid contract notes as per law. The order u/s 263 has not been based on the stock price but it was based on the information and extensive investigation and the conclusion drawn thereof by the revenue extensive investigation by the department.

(h) The transactions cannot be brushed aside on suspicion and surmises where the transactions of the shares are genuine The Ld. Principal CIT has invoked the provisions of section 263 based on the valid tangible information which has been extensively investigated by the department as the Assessing Officer has failed to discharge his statutory duties in accordance with the Income Tax Act which led to the order being erroneous and prejudicial to the interest of the revenue.

18. Hence keeping in view the entire facts of the case, the judgment of the Apex Court in the case of Malabar Industrial Co. Ltd. 243 ITR 83 wherein the action under section 263 is upheld when the Assessing Officer has accepted the statement of account filed by the Assessee without making any enquiry, the judgment of Hon'ble Supreme Court in the case of Daniel Merchants Pvt. Ltd. which held that in the case where Assessing Officer did not make any proper enquiry, the Ld. PCIT is correct in directing the Assessing Officer to carry thorough and detailed enquiry.

19. Ongoing through the questionnaire, assessment order, we have no hesitation to say that the Assessing Officer has not applied his mind to the issue of share transactions for which the detailed information is available regarding the suspicious nature of the transactions. Accordingly, to us, based on the facts and circumstances, the case before us is a case of absolute lack of enquiry but not a case of inadequate enquiry by him. Hence, order passed u/s 263 of the act by the Id CIT is upheld and appeal of the assessee is dismissed."

6. Heard the arguments of both the parties and perused the material available on record.

7. We find that the judgments quoted by the revenue mostly pertain to the cases where the AO did not make any proper enquiry in so far as the receipt of share application money is concerned. They were the cases where the orders were patently erroneous are prejudicial to the interest of revenue. The judgments in the case of Amitabh Bachchan (supra), Infosys Technologies Ltd. (supra) are differentiated and found to be not applicable to the instant case.

8. We find that the assessee has shown the computation of assessable income as under:

Income from other sources:

<i>Interest received from bonds</i>		9,780.00
<i>Interest received on Loan</i>	4,402,030.00	
<i>Less: Interest paid on Loan</i>	<u>1,200,000.00</u>	3,202,030.00
<i>Meeting fees received</i>		4,500.00
<i>Interest received on S.B.</i>		11,949.00
<i>Interest received n P.P.F.</i>	240,246.00	
<i>Less: Exempt u/s 10(11)</i>	<u>240,246.00</u>	
<i>Dividend received on shares</i>	18.00	
<i>Less: Exempt u/s 10(34)</i>	<u>18.00</u>	<u>3,220,259.00</u>

9. During the assessment proceedings, the AO has requisitioned the details of loans & advances received and also the loans & advances given vide notice u/s 142(1) of the Act dated 25.04.2013. The complete details have been provided by the assessee to the Assessing Officer vide reply dated 12.06.2013. As per the details furnished before the AO, the assessee has received interest from BHL Forex & Finlease Ltd. of Rs.44,02,030/- and the assessee paid interest of Rs.12,00,000/- to Multiplex Fincap Ltd. The complete details of the loans given and received have been enquired by the Assessing Officer. The amount of the loan given to BHL Forex & Finlease Ltd. was Rs.2,41,00,000/- during the year and the opening balance stands at Rs.1,14,87,686/-. During the year the

payment of Rs.8,77,891/- was made leaving a closing balance of Rs.3,91,11,825/-. The total interest received was Rs.44,02,030/-. Thus, we find that this loan has been an ongoing financial transaction with the assessee for a minimum period of three years. The confirmation has also been obtained the Assessing Officer along with details of the cheques issued on account of interest payment. The details of TDS have also been filed before the AO. The assessee has also received salary & bonus from BHL Forex & Finlease Ltd. which has been duly offered to tax. Regarding the payment of interest, the details of opening balance, closing balance of the loans received have also been filed and examined by the Assessing Officer. The opening balance with Multiplex Fincap Ltd. was Rs.1,50,00,000/-. The interest received during the year is Rs.12,00,000/- and the closing balance of Rs.1,62,000/- has been reflected in the details filed by the assessee as examined by the Assesing Officer. Thus, we find that this is also an ongoing transaction between the assessee and loanee. Thus, we find that both the parties are having regular transactions with the assessee over a period of time. Hence, the clause (a) of the Explanation II to Section 263 finds no application to the facts of the case. Further, the Id. PCIT has not brought anything on record as to how the action of the Assessing Officer culminated in treating the assessment order as erroneous and prejudicial to the interest of the revenue. We find that the order of the Assessing Officer is neither erroneous as it did not violate any provisions of Explanation II to Section 263 nor it is prejudicial to the interest of the revenue as no loss of revenue could be brought to light by the Id. PCIT in the revisionary proceedings. Hence, we hold that the opinion of the Id. PCIT that the order has been passed without making enquiries or verifications with should have been made has no tangible justification on the facts of the instant case.

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

Order Pronounced in the Open Court on 13/05/2020.

Sd/-

(Bhavnesb Saini)
JUDICIAL MEMBER

Dated: 13/05/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B.R.R. Kumar)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR