

आयकरअपीलीयअधिकरण, राजकोटन्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAJKOT BENCH, RAJKOT**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
And  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकरअपीलसं./ITA No. 84/Rjt/2022  
निर्धारणवर्ष/Asstt. Year: 2012-2013

M/s RNG Finlease Pvt. Ltd., Plot No.2621/2622, Road D-2, Gate-1, Metoda GIDC, Rajkot-360021.  <b>PAN: AAACR9073P</b>	Vs.	The Principal Commissioner of Income Tax, Rajkot-1, Rajkot.
<b>(Applicant)</b>		<b>(Respondent)</b>
Assessee by :		Shri Mehul Ranpura, A.R.
Revenueby :		Shri Sanjeev Jain, CIT-D.R.

सुनवाईकीतारीख/**Date of Hearing** : **01/07/2022**  
घोषणाकीतारीख/**Date of Pronouncement**: **24/08/2022**

**आदेश/ORDER**

**PER BENCH :**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Principal Commissioner of Income, Rajkot-1 dated 03/02/2022 arising in the matter of assessment order passed under s.263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-13.

2. The only interconnected issue raised by the assessee is that the learned Principal CIT erred in holding the assessment framed under section 143(3) of the Act as erroneous insofar as prejudicial to the interest of Revenue under the provisions of section 263 of the Act.

3. The brief facts of the case are that the assessee is a Private Limited Company and engaged in the business of Providing loans and finance. It is registered as NBFC by the RBI Kolkata and Ahmedabad Regional offices. The assessee has filed its original return of income for the AY 2012-13 on 29-09-2019 declaring total income at Rs. NIL only. The income tax return was processed u/s 143(1) of the Act without any modification. Subsequently, an information was received from the DDIT(Inv.) unit-3(1) Kolkata vide letter dated 28-01-2019 wherein it was alleged that Shri Nawal Kishore Jalan, Kolkata is engaged in the activity of providing the accommodation entries by selling paper company / shell company, providing bogus LTCG to various beneficiary. It was also noticed that the assessee being RNG Finlease Pvt Ltd was one of the paper company and indulged in the providing accommodation entries. As such the assessee, to the extent of Rs.7,18,69,500/-, has provided accommodation entries to other beneficiaries in the year under consideration. Accordingly, the AO on the basis of above information, reopened the assessment under section 147 of the Act by issuing a show cause notice u/s 148 of the Act dated 31-03-2019. Thereafter, notices u/s 143(2) and 142(1) were also issued to the assessee.

3.1 The assessee in response to such notice replied its submission by letter dated 17-12-2019. The AO duly considered the submission of the assessee and framed the assessment u/s 147 of the Act by order dated 28-12-2019 after making an addition of Rs. 48,00,0000/- only.

4. The PCIT on examination of the case records of the assessee, found that the AO has not properly verified the accommodation entry of Rs. 7,18,69,500/- in the line as per the statement recorded u/s 131 of the Act of Shri Nawal Kishore Jalan, Kolkata who was accommodation entry provider. The AO has also not verified the bank statement of the assessee thoroughly during the assessment proceeding. It is clear that the AO has not properly examined the facts of the case

and issues under consideration. Accordingly, the PCIT initiated the proceedings under section 263 of the Act vide show cause notice dated 17<sup>th</sup> January 2022.

4.1 The assessee in response to such show cause notice submitted that the assessee was engaged in the business of providing finance and it was registered as NBFC. During the year under consideration, the assessee had made financial transaction with its associate company namely M/s Radhe Renewable Energy Development Ltd. The directors in the assessee and M/s Radhe Renewable Energy Development Ltd. are common. Therefore the question of providing the accommodation entry and creating bogus LTCG, does not arise. The assessee further submitted that each entry of financial transaction pertaining to year under consideration has been explained the AO during the assessment proceedings. The AO reproduced such explanation in para 5 of the assessment order. Further, it can be seen that Shri Naval Kishore Jalan has no role in the transaction of the assessee with its associated concern.

4.2 However, the Id. PCIT after considering the assessment records and submission of the assessee observed that the assessment has been completed without conducting any inquiry/ verification. Furthermore, the incorrect application of law tantamount to erroneous order which also causes prejudice to the interest of Revenue. Thus the Id. PCIT accordingly invoked the provision of section 263 read with explanation 2 of the Income Tax Act and held the assessment framed as erroneous in so far prejudicial to the interest of Revenue.

5. Being aggrieved by the order of the learned PCIT, the assessee is in appeal before us.

6. The learned AR before us filed a paper book running from pages 1 to 42 and contended that the assessment was framed by the AO after considering the necessary details and verification and application of mind. The learned AR in

support of his contention drew our attention on pages 12 to 17 where the copy of the Show cause notice dated 03-12-2019 was placed where the assessee was asked about the financial entries provided by itto various entities amounting to Rs. 7,18,69,500/- during the year under consideration. Likewise, the learned AR also drew our attention on pages 18 to 24 of the paper book where the reply of the assessee in response to the show cause notice issued to the assessee as mentioned above was placed. Thus, the learned AR contended that it cannot be said that the assessment order is erroneous and causing prejudice to the interest of Revenue in the given facts and circumstances.

7. On the contrary, the learned DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the present case relates whether the assessment order has been passed by Ld. AO without making inquiries or verification with respect to the information received from the DDIT (Inv.), Unit-3, Kolkata vide letter dated 28-01-2019 along with the statement of Shri Nawal Kishore Jalan, Kolkata who is an accommodation entry provider as discussed above and hence the assessment is erroneous insofar prejudicial to the interest of the Revenue and thus requiring revision by Pr. CIT u/s 263 of the Act.

8.1 An inquiry made by the Assessing Officer, considered inadequate by the Commissioner of Income Tax, cannot make the order of the Assessing Officer erroneous. In our view, the order can be erroneous if the Assessing Officer fails to apply the law rightly on the facts of the case. As far as adequacy of inquiry is considered, there is no law which provides the extent of inquiries to be made by the Assessing Officer. It is Assessing Officer's prerogative to make inquiry to the extent he feels proper. The Commissioner of Income Tax by invoking revisionary powers under section 263 of the Act cannot impose his own understanding of the

extent of inquiry. There were a number of judgments by various Hon'ble High Courts in this regard.

8.2 Delhi High Court in the case of **CIT Vs. Sunbeam Auto 332 ITR 167 (Del.)**, made a distinction between lack of inquiry and inadequate inquiry. The Hon'ble court held that where the AO has made inquiry prior to the completion of assessment, the same cannot be set aside u/s 263 of the Act on the ground of inadequate inquiry. The relevant observation of Hon'ble Delhi High Court reads as under:

"12..... There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry", that such a course of action would be open. ———

From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. **The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure.** It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.

**15. Thus, even the Commissioner conceded the position that the Assessing Officer made the inquiries, elicited replies and thereafter passed the assessment order. The grievance of the Commissioner was that the Assessing**

**Officer should have made further inquiries rather than accepting the explanation. Therefore, it cannot be said that it is a case of 'lack of inquiry'.**

8.3 The Hon'ble Bombay High Court in case of **Gabriel India Ltd. [1993] 203 ITR 108 (Bom)**, discussed the law on this aspect in length in the following manner:

"The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. **The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity.**

8.4 The Mumbai ITAT in the case of **Sh. Narayan Tatu Rane Vs. ITO, I.T.A. No. 2690/2691/Mum/2016, dt. 06.05.2016** examined the scope of enquiry under Explanation 2(a) to section 263 in the following words:-

"20. Further clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-à-vis its reasonableness in the facts and circumstances of the case. **Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquiries or verification that would have been carried out by a prudent officer.** Hence, in our view, the question as to whether the amendment brought in by way of Explanation 2(a) shall have retrospective or prospective application shall not be relevant."

8.5 The Hon'ble Supreme Court in recent case of **Principal Commissioner of Income-tax 2 v. Shree Gayatri Associates\*[2019] 106 taxmann.com 31 (SC)**, held that where Pr. CIT passed a revised order after making addition to

assessee's income under section 69A in respect of on-money receipts, however, said order was set aside by Tribunal holding that AO had made detailed enquiries in respect of such on-money receipts and said view was also confirmed by High Court, SLP filed against decision of High Court was liable to be dismissed. The facts of this case were that pursuant to search proceedings, assessee filed its return declaring certain unaccounted income. The Assessing Officer completed assessment by making addition of said amount to assessee's income. The Principal Commissioner passed a revised order under section 263 on ground that Assessing Officer had failed to carry out proper inquiries with respect to assessee's on money receipt. In appeal, the Tribunal took a view that Assessing Officer had carried out detailed inquiries which included assessee's on-money transactions and Tribunal, thus, set aside the revised order passed by Commissioner. The Hon'ble High Court upheld Tribunal's order. The Hon'ble Supreme Court while dismissing the SLP filed by the Department held as under:-

"We have heard learned counsel for the Revenue and perused the documents on record. In particular, the Tribunal has in the impugned judgment referred to the detailed correspondence between Assessing Officer and the assessee during the course of assessment proceedings to come to a conclusion that the Assessing Officer had carried out detailed inquiries which includes assessee's on-money transactions. It was on account of these findings that the Tribunal was prompted to reverse the order of revision. No question of law arises. Tax Appeal is dismissed"

8.6 The Supreme Court in the another recent case of **Principal Commissioner of Income-tax-2, Meerut v. Canara Bank Securities Ltd[2020] 114 taxmann.com 545 (SC)**, dismissed the Revenue's SLP holding that 263 proceedings are invalid when AO had made enquiries and taken a plausible view in law, with the following observations:

"Having heard learned counsel for the parties and having perused the documents on record, we see no reason to interfere with the view of the Tribunal. The question whether the income should be taxed as business income or as arising from the other source was a debatable issue. The Assessing Officer has taken a plausible view. More importantly, if the Commissioner was of the opinion that on the available facts from record it could be conclusively held that income arose from other sources, he could and ought to have so held in the order of revision. There was simply no necessity to remand the proceedings to the Assessing Officer when no further inquiries were called for or directed"

8.7 From an analysis of the above judicial precedents, the principle which emerges is that the phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Assessing Officer adopts one of the course permissible in law and it has resulted in loss of revenue; or where two views are possible and the Assessing Officer has taken one view with which the Commissioner of Income-tax does not agree, it cannot be treated as an erroneous order causing prejudice to the interests of the Revenue unless the view taken by the Assessing Officer is unsustainable in law, or the AO has completely omitted to make any enquiry altogether or the order demonstrates non-application of mind.

8.8 Now coming to the facts before us, in the case of the assessee, the AO during the course of assessment proceedings, made enquiries on this issue and after consideration of written submissions filed by the assessee and documents / evidences placed on record, and then framed the assessment under section 143(3) read with section 147 of the Act. This fact can be verified from the show cause notice issued by the AO and submission made by the assessee against such notice as detailed below.

i. Notice dated 03-12-2019:

*"You are aware that Assessment Proceedings u/s 143(3) r.w.s. 147 of the I.T. Act, 1961 for AY 2011-12 is pending in your case. Accordingly, you were issued and served a notice u/s 143(2) of the IT Act, 1961 on 19.08.2019. In this connection, you were issued a questionnaire vide notice u/s 142(1) of the I.T. Act, dated 19.08.2019.*

*2. Dy. Director of Income tax (Investigation) Unit-3(1), Kolkata vide letter F. No.: DDIT (Inv.)/Unit-2(1)/Kolkata/Nawal Jalan/2018-19 dated 28/01/2019 has pass the information that Shri Nawal Kishore Jalan, Kolkata, an entry provider, is engaged in activities of providing accommodation entries by selling paper companies / facilitating the sale and the Shell companies / providing bogus LTCG to various beneficiaries. As per the information, it is noticed that M/s. RNG Finlease Pvt. Ltd. was one of the paper companies indulged into providing accommodation entries to other beneficiaries during the year under consideration. The modus operandi adopted by the companies handled by Nawal Kishore Jalan is elaborated as under:*

*"General Modus operandi in the business of forming new paper companies and raising their share capital artificially by routing different cheques and then selling the companies to genuine buyer for commission, is explained in detail below:*

*Modus Operandi-1*

*Some of the persons are engaged in the business of forming new paper companies and raising their share capital artificially by routing different cheques and then selling the companies to genuine buyer for commission. The stepwise process is as under:*

- *To purchase the companies, normally unknown clients approach through brokers/middlemen to the entry-operator. There can be more than one middleman in the whole process. Sometimes, the old clients approach directly according to their needs.*

- *Once the requirement of the clients is known then the rates are fixed for selling the companies. The basis on which the rates are fixed is scrutiny assessment of the companies u/s. 143(3) of the I.T. Act, 1961. The companies which have already had scrutiny assessments are sold in higher price vis-a-vis those companies which have not gone through scrutiny assessment.*

- *Once a company is being sold the first step taken is to change the Directors and at the same time the old Directors continue the Directorship. Then the shareholding pattern of the company is also changed. The new shareholders purchase the share from the old shareholders at a very nominal price. Generally, the price of the shares are decided at the face value of shares and the premium is not included. The new shareholders are mostly related group companies or individuals of the final beneficiaries.*

- *Money is received from the final beneficiary mostly in the form of cash which is deposited in undisclosed bank accounts of proprietorship concerns controlled by the entry-operator. By issuing cheques from cash deposit accounts, through several layers, funds are brought in the companies which will buy the unquoted shares shown in the books of accounts of the company being sold as investments. The sale proceeds are received in cheques. The said fund thereby will be transferred to the accounts of final beneficiary companies. Once the beneficiaries bring the money in their books, they either make investments in quoted share, fixed deposits, plant & machineries or purchase of land. Sometimes, investments in real assets is also made from the books of the sold companies and in this way the form of investment is changed from being investment in unquoted shares in paper companies to actual utilization of fund."*

*In view of the above modus operandi applied by Nawal Kishore Jalan, he employed so many dummy directors in the company. And after selling the company, to change the directors of the company.*

*Analysis of information collected/received:*

*During post search inquiry, analysis of the tally data along with bank books was done which was found in the hard drives impounded from the premises of Shri Nawal Kishore Jalan. It has been admitted by Nawal Kishore Jalan that he has transferred M/s. Attractive Vincom Pvt. Ltd. has been transferred by him (i.e. sold by him) on commission basis and commission arose from sale of it, has been offered for taxation. On verification of company details of M/s. Attractive Vincom Pvt. Ltd., it has been found that Shri Sandipkumar Vallabhdas Makadia was the director of the said company. Shri Sandipkumar Vallabhdas Makadia was also a director in RNG Finlease Pvt. Ltd. during A.Y. 2011-12 along with other four directors. As per the modus operandi of Nawal Kishore Jalan, Shri Sandipkumar Vallabhdas Makadia has resigned from the directorship of the said company. M/s.*

*Attractive Vincom Pvt. Ltd. is a company run by Nawal Kishore Jalan and subsequently sold by him. Further, bank statements of various companies were collected from different banks and consequently a list of paper companies have been prepared. The list contained specific details of the assessee i.e. M/s. RNG Finlease Pvt. Ltd. in following manner:*

S. No.	PAPER COMPANY	BANK	Date	Beneficiary (Particulars)	Narrations	Payment	PAN
1	RNG FINLEASE PVT LTD	IDBI Bank Book	30/03/2012	Pawanshiv Vanijya Ltd	Through RTGS	494000	AAGCP4905N
2	RNG FINLEASE PVT LTD	DBI Bank Book	20/10/2011	PURULIA BOTTLING P LTD	To	300000	AAFPCP7490M
3	RNG FINLEASE PVT LTD	HDFC BANK Book	10/05/2011	Radhe Exim Pvt Ltd	To	1500000	AADCR1763P
4	RNG FINLEASE PVT LTD	HDFC BANK Book	16/05/2011	Radhe Exim Pvt Ltd	To	1500000	AADCR1763P
5	RNG FINLEASE PVT LTD	HDFC BANK Book	04/04/2011	Radhe Renewable Energy Development Pvt Ltd	To	500000	AACCR7723E
6	RNG FINLEASE PVT LTD	HDFC BANK Book	08/04/2011	Radhe Renewable Energy Development Pvt Ltd	To	3875000	AACCR7723E
7	RNG FINLEASE PVT LTD	HDFC BANK book	13/04/2011	Radhe Renewable Energy Development Pvt Ltd	To	6000000	AACCR7723E
8	RNG FINLEASE PVT LTD	HDFC BANK book	18/04/2011	Radhe Renewable Energy Development Pvt Ltd	To	2500000	AACCR7723E
9	RNG FINLEASE PVT LTD	HDFC BANK book	27/04/2011	Radhe Renewable Energy Development Pvt Ltd	to	3500000	AACCR7723E
10	RNG FINLEASE PVT LTD	HDFC BANK book	02/05/2011	Radhe Renewable Energy Development Pvt Ltd	To	1500000	AACCR7723E
11	RNG FINLEASE PVT LTD	HDFC BANK book	18/05/2011	Radhe Renewable Energy Development Pvt Ltd	To	3500000	AACCR7723E
12	RNG FINLEASE PVT LTD	HDFC BANK book	27/05/2011	Radhe Renewable Energy Development Pvt Ltd	To	1500000	AACCR7723E
13	RNG FINLEASE PVT LTD	HDFC BANK book	05/07/2011	Radhe Renewable Energy Development Pvt Ltd	To	13650000	AACCR7723E
14	RNG FINLEASE PVT LTD	HDFC BANK book	07/07/2011	Radhe Renewable Energy Development Pvt Ltd	To	1500000	AACCR7723E
15	RNG FINLEASE PVT LTD	HDFC BANK book	28/07/2011	Radhe Renewable Energy Development Pvt Ltd	To	2500000	AACCR7723E
16	RNG FINLEASE PVT LTD	HDFC BANK book	01/08/2011	Radhe Renewable Energy Development Pvt Ltd	To	4400000	AACCR7723E
17	RNG FINLEASE PVT LTD	HDFC BANK book	09/08/2011	Radhe Renewable Energy Development Pvt Ltd	To	1250000	AACCR7723E
18	RNG FINLEASE PVT LTD	HDFC BANK book	09/08/2011	Radhe Renewable Energy Development Pvt Ltd	ch no 85532	100000	AACCR7723E
19	RNG FINLEASE PVT LTD	HDFC BANK book	07/10/2011	Radhe Renewable Energy Development Pvt Ltd	To	5000000	AACCR7723E

20	RNG FINLEASE PVT LTD	HDFC BANK book	07/02/2012	Radhe Renewable Energy Development Pvt Ltd	To	100000	AACCR7723E
21	RNG FINLEASE PVT LTD	HDFC BANK book	22/02/2012	Radhe Renewable Energy Development Pvt Ltd	CH NO. 85582	2500000	AACCR7723E
22	RNG FINLEASE PVT LTD	Indian Overseas Bank Book	08/02/2012	Reliable Infradesign Pvt. Ltd	Dipak jain	1000000	AAFRCR3332J
23	RNG FINLEASE PVT LTD	HDFC BANK book	10/11/2012	Shantol Green Energy (India) Pvt Ltd	To	1000000	AAQCS2877J
24	RNG FINLEASE PVT LTD	HDFC BANK book	16/11/2012	Shantol Green Energy (India) Pvt Ltd	To	500000	AAQCS2877J
25	RNG FINLEASE PVT LTD	HDFC BANK book	14/02/2012	Shantol Green Energy (India) Pvt Ltd.	To	1000000	AAQCS2877J
26	RNG FINLEASE PVT LTD	HDFC BANK Book	14/02/2012	Shantol Green Energy (India) Pvt Ltd.	To	500000	AAQCS2877J
27	RNG FINLEASE PVT LTD	IDBI BANK Book	30/03/2012	Shivrashi Enclave Ltd.	Through RTGS	494000	AARCS1795G
28	RNG FINLEASE PVT LTD	Corporation Bank Book	31/03/2012	Sidcul	Ch. No. :	5306500	AASCS8356C
29	RNG FINLEASE PVT LTD	Indian Overseas Bank Book	25/11/2011	Sino Credit & Leasing Ltd	CH NO.: RTGS IOBAH1 132900069 6 SUNIL DOKANIA	1600000	AAACS1172N
30	RNG FINLEASE PVT LTD	Indian Overseas Bank Book	19/12/2011	Sino Credit & Leasing Ltd	sunil dokania rtgs	2200000	AAACS1172N
31	RNG FINLEASE PVT LTD	HDFC BANK book	21/12/2011	Sonalben Rajeshbhai Kodiya	Ch No. 85542	600000	AAACS1172N

*Shri Nawal Kishore Jalan has gone through the entries and confirmed and affirmed the same at the time of recording statements on oath u/s 131 of the Income Tax Act, 1961 before the DDIT (Inv.) Unit 2(1), Kolkata.*

*3. It has been informed that you have provided accommodation entries to various entities during the year under consideration to the extent of Rs. 7,18,69,500/-. You have been issued notices u/s 142(1) of the I.T. Act, 1961 on various dates. However, you have grossly failed to comply notice u/s 142(1) of the I.T. Act, 1961. Therefore, it is established that you have nothing to say in the matter and the amount of Rs.7,18,69,500/- being the accommodation entries provided by you should not be treated as unexplained and added to the total income.*

*4. If you failed to do so, the assessment shall be finalized ex-parte u/s 144 of the I.T. Act, 1961 treating transactions made by you as unexplained and undisclosed and also penal action as per Act shall be initiated against you."*

ii. Reply dated 17-12-2019

(i) *Shri Naval Kishore Jalan [Jalan] may have provided certain details about such companies. However, he did not make available any details and natures of*

*transactions which may prompt the AO to even raise any doubt about the genuineness of transactions.*

- (ii) *In fact the AO has reproduced his version as reported by DDIT, Kolkata.*
- (iii) *The AO did not make any analysis of the information received from the Investigation Wing.*
- (iv) *The AO has issued the show cause notice without application of his mind and verification of details available on record.*
- (v) *The real facts are that the assessee did carry loan transactions with the parties except the parties mentioned at Sr. No. 1, 2, 27 and 28 during the year. The assessee periodically received funds and paid as per business expediency. The assessee is a NBFC and as such it is business of the assessee to advance the loans.*
- (vi) *Thus, there is no case of any accommodative entry credited in the books of company in the name of parties listed above.*
- (vii) *Further, it is submitted that the assessee has no bank account with IDBI bank and Corporation Bank and we had not entered in to any dealing with the parties mentioned at Sr. No. 1,2,27 and 28 of the list above. Thus, while making such allegation the AO ought to have verified the facts with the assessee by issue of preliminary notice before issue of show cause notice.*
- (viii) *In respect of each party the clarifications are made as under. The relevant ledger and copy of accounts were made available while complying with the objections against the recording the reasons for reopening supra.*

<i>Sr. No.</i>	<i>Bank</i>	<i>Date</i>	<i>Beneficiary.</i>	<i>Amount</i>	<i>Explanation</i>
<i>1</i>	<i>IDBI</i>	<i>30.03.12</i>	<i>PawanshivVanijya Ltd.</i>	<i>4,94,000</i>	<i>No transaction has been made with this company. Copy of our bank statement is attached at Page 8 to 19.</i>
<i>2</i>	<i>IDBI</i>	<i>21.10.11</i>	<i>PuruliaBotteling Pvt. Ltd.</i>	<i>3,00,000</i>	<i>----do----</i>
<i>3.</i>	<i>HDFC</i>	<i>10.05.11</i>	<i>Radhe Exim Pvt. Ltd.</i>	<i>15,00,000</i>	<i>It is running account since years. The assessee had credit balance of ` 2.15 cr. and at the end it is reduced to `31.37 lacs. Thus the assessee had more payment than the receipt.</i>  <i>Copy of ledger was attached with reply to the reasons recorded</i>

					for reopening.  Copy of contra, acknowledgement of ROI and bank statement of Corporation Bank of Radhe Exim Ltd is attached at Page 20 to 23.
4	HDFC	16.05.11	--do--	15,00,000	---do---
5	HDFC	04.04.11	Radhe renewable Energy Dev. Ltd.	50,00,000 [no 5 lacs]	It is running account. During the year firstly we paid `50,00,000 on 04.04.2011 and then total transactions of `7.94 Cr. were made and at the end of the year balance of `77.52 was receivable. Thus, the assessee did paid more than the received How it be accommodative entries.  Copy of ledger was attached with reply to the reasons recorded for reopening.  Copy of contra, acknowledgement of ROI and HDFC bank statement of account No. 03792320000740 and BOI account No. 313030110000006 and 31020110000010 of Radhe renewable Energy Dev. Ltd.is attached at Page 24 to 131.
6	HDFC	08.04.11	--do--	38,75,000	As per 5 above.
7	HDFC	13.04.11	--do--	60,00,000	--do--
8	HDFC	18.04.11	--do--	25,00,000	--do--
9.	HDFC	27.04.11	--do--	35,00,000	--do--
10	HDFC	02.05.11	--do--	15,00,000	--do--
11	HDFC	18.05.11	--do--	35,00,000	--do--
12	HDFC	27.05.11	--do--	15,00,000	--do--
13	HDFC	05.07.11	--do--	1,36,50,000	--do--
14	HDFC	07.07.11	--do--	15,00,000	--do--
15	HDFC	28.07.11	--do--	25,00,000	--do--

16	HDFC	01.08.11	--do--	44,00,000	--do--
17	HDFC	09.08.11	--do--	12,50,000	--do--
18	HDFC	09.09.11	--do--	1,00,000	--do--
19	HDFC	07.10.11	--do--	5,00,000	--do--
20	HDFC	07.02.12	--do--	1,00,000	--do--
21	HDFC	22.03.12	--do--	25,00,000	--do--
22	IOB	08.02.12	Reliable Infradesign P. Ltd.	10,00,000	<i>The assessee had advanced the funds as per business requirements. This is not a case of any receipt which may prompt the AO to even treat as accommodative entry. Copy of ledger was attached with reply to the reasons recorded for reopening.</i>  <i>Payment made on 08.02.2012 is verifiable from our bank statement attached supra.</i>
23	HDFC	10.11.11	Shantol Green Energy (India) Pvt. Ltd.	10,00,000	<i>In fact the assessee paid the first amount on 10.11.11 and then the account was become regular one and the end of the year '31 lacs were receivable. Thus, the assessee did pay to the borrower and not receipt to treat as accommodative entries. Copy of ledger was attached with reply to the reasons recorded for reopening.</i>  <i>Copy of contra and acknowledgement of ROI and bank statement of SBI, Porbandar account Nos. 00000031954500350 and 00000032119506459 of Shantol Green Energy (India) Pvt.</i>

					<i>Ltd. are attached at Page 132 to 143.</i>
24	HDFC	16.01.12	--do--	5,00,000	--do--
25	HDFC	14.02.12	--do--	10,00,000	--do--
26	HDFC	14.02.12	--do--	5,00,000	--do--
27	IDBI	30.03.12	Shivrashi	4,94,000	No such transaction was carried out. This is verifiable from our bank statements attached supra.
28	Corp bank	31.03.12	Sidcul	53,06,500	--do--
29	IOB	25.11.11	Sino Credit & Leasing Ltd.	16,00,000	At the beginning of the year amount of `39.97 lacs was payable and during the year amount of `38 lacs were received leaving meager amount of `1.97 lacs as receivable. Thus, it is running account. Copy of ledger was attached with reply to the reasons recorded for reopening.  These are the payments and as such to treat it as accommodative entry is misplaced.  The payment of Rs. 16 lakhs on 25.11.2011 and Rs. 22 lacs on 19.12.2011 is verifiable from our bank statements attached supra.
30	IOB	19.12.11	--do--	22,00,000	--do--
31	HDFC	21.12.11	Sonalben R. Kodiya.	6,00,000	The amount advanced on 21.12.2011 is received back on 19.03.15. How it is accommodative entry?  Copy of ledger was attached with reply to the reasons recorded for reopening.

					<p><i>Copy of ITR and contra account of Sonalben are attached at Page 144 to 146.</i></p> <p><i>The amount of Rs. 6 lacs is the payment and as such to treat it as accommodative entry is misplaced. Further the amount was received back on 19.03.2015.</i></p>
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- (x) *The ledgers attached in reply to objections against reopening supra, shows that in major cases the accounts are running accounts and there are credits as well as debits as such it cannot be termed as accommodative entries because accommodative entries are by and large are on credit side and remain payable or receivable for indefinite period. In number of cases where there are only payments made to the parties as advances are held to be accommodation entries and proposed to be unexplained income is against the provisions of the Act and accounting principles.*
- (xi) *The allegations made in the show cause notice are erroneous because the transactions between the assessee and the parties are not isolated one. It is continues process of business transactions of loans and advances. Also, there is no discussion in the show cause notice about the outcome of proceedings in the case of Shri Jalan the alleged entry operator.*
- (xii) *Further, in show cause notice, the figures of receipts in the books of the company are considered but the repayment made by it has not at all been considered. Thus, the show cause notice is based on choose and pick method which is prejudicial to the assessee.*
- 3.0 *Further, as a matter of fact, the assessee is a Non banking financial institution registered with Reserve Bank of India which may kindly be observed from the records. Copy of certificate of registration is already on record. During the year previous under consideration we had received loans as well as returned loans in the course of our business transactions which are duly reflects in the books of both the parties. Thus, nowhere we were beneficiaries, but our fund given as loan has been received back. Thus, allegations made in the show cause notice are factually wrong and as such the show cause notice is liable to be vacated.*
- 4.0 *So far as the issue of reopening of assessment on the basis of information received from the Investigation Wing Kolkata, our submissions made in reply to the reasons recorded supra hold well and thus, for sake of brevity it is not repeated.*
- 5.0 *In the nutshell it may be appreciated that the quantum of addition proposed is worked out on the amount received on earlier advances and/ or new loans in regular course of business without considering the payments made by the assessee company is against the principle of accounting. Further the amounts of some transactions were taken in to*

*account where the company had not made any transactions. Thus, the reopening is against the provisions of the Act and half hearted deserve to be dropped.*

*6.0 In view of the facts stated as above, there is no case of receipt of accommodation entry as alleged. The proposed addition of Rs 7,18,69,500/- is strongly objected and the assessee company prays to drop the proceedings and oblige. However, an opportunity of being heard may be granted before taking any adverse decision.*

8.9 From the above, it is revealed it is not the case that the AO has not made any enquiry. Indeed the Pr. CIT initiated proceedings under section 263 of the Act on the ground that the AO has not made enquiries or verification which should have been made in respect of information received from the DDIT (Inv) Unit-3, Kolkata. It is not the case of the Pr. CIT that the Ld. AO did not apply his mind to the issue on hand or he had omitted to make enquiries altogether. In the instant set of facts, the AO had made enquiries and after consideration of materials placed on record accepted the genuineness of the claim of the assessee.

8.10 At this juncture, it is also important to note that the learned PCIT in his order passed under section 263 of the Act has made reference to the explanation 2 of section 263 of the Act. It was attempted by the learned PCIT to hold that there were certain necessary enquiries which should have been made by the AO during the assessment proceedings but not conducted by him. Therefore, on this reasoning the order of the AO is also erroneous insofar prejudicial to the interest of revenue. In this regard, we make our observation that the learned PCIT has not invoked the explanation 2 of section 263 of the Act in the show cause notice dated 17 January 2022 about the same. Therefore, the opportunity with respect to the explanation 2 of section 263 of the Act was not afforded to the assessee. Thus, on this count the learned PCIT erred in taking the re-course of such provisions while deciding the issue against the assessee. Secondly, the learned PCIT has also not specified the nature and the manner in which the enquiries which should have been conducted by the AO in the assessment proceedings. Thus, in the absence of any specific finding of the learned PCIT with respect to the enquiries which should

have been made, we are not convinced by his order passed under section 263 of the Act.

8.11 In view of the above and after considering the facts in totality, we hold that there is no error in the assessment framed by the AO under section 143(3) read with section 147 of the Act, causing prejudice to the interest of revenue. Thus, the revisional order passed by the learned PCIT is not sustainable and therefore we quash the same. Hence the ground of appeal of the assessee is allowed.

9. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open Court on 24/08/2022 at Ahmedabad.**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**  
24/08/2022  
*Manish*