

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**
(Conducted Through Virtual Court)

**ITA No. 59/RJT/2021
Assessment Year 2016-17**

| | | |
|--|----|---|
| Metropole Tiles Pvt. Ltd. Survey No. 603P, Lakhdhirpur Road, B/h Metro City Tiles, Morbi PAN No: AAJCM6361J (Appellant) | Vs | The PCIT, Rajkot-1, Rajkot (Respondent) |
|--|----|---|

**Appellant by : Shri Saurabh Soparkar, A.R.
Respondent by : Shri Sushil Madhuk, D.R.**

Date of hearing : 21-06-2022
Date of pronouncement : 24-08-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

The present appeal has been filed by the Assessee against the order dated 24.03.2021 passed by the Ld. Principal Commissioner of Income Tax, Rajkot-1 invoking powers u/s. 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2016-17.

2. The brief facts of the case is that the assessee is a Private Limited Company engaged in the business of manufacturing of Ceramic Vitrified Tiles. For the Assessment Year 2016-17, the assessee filed its Return of Income declaring total income of Rs. 59,320 on 30.09.2016. Later the assessee filed a Revised Return on 09.10.2017 claiming a loss of Rs. 6,25,62,558/-. The Return of Income was processed u/s. 143(1) of the Act and then taken up for complete scrutiny assessment to examine the followings:

- 1) Whether outward foreign remittance is from disclosed sources and appropriate withholding and reporting obligation have been complied with;
- 2) Whether the share capital is genuine and from disclosed sources;
- 3) Whether receipt of foreign remittance has been correctly offered for tax; and,
- 4) Whether sundry creditors are genuine.

2.1. Notices u/s. 143(2) and 142(1) have been issued to the assessee through 'TBA-Assessment' portal. The assessee filed its submission through online. It is noticed by the A.O. from ITS data that the assessee has received interest income on fixed deposits amounting to Rs. 4,01,458/- whereas the same receipt is shown at Rs. 59,318/- by the assessee. Therefore the difference of Rs. 3,42,140/- being the interest income received on fixed deposits is added as the taxable income and thereby determined the assessed income as Rs. 4,01,460/- and demanded tax thereon.

2.2 This assessment order was being verified by the Ld. PCIT. It is found that 1,80,09,970/- equity shares have been issued at Rs. 10

each raising equity share capital of Rs. 18,00,99,700/- and total 23 persons/entities have subscribed to the Share Capital. Besides, fresh unsecured loans of Rs. 2,17,00,000/- have also been raised by the assessee from 5 persons. Regarding these shares application money and unsecured loans, copies of ITR-Vs, copy of their bank Statements and copy of confirmations and balance sheets in respect of some of the share applicants as well as the loan providers have been submitted during the assessment proceedings before the A.O.

2.3. On perusal of the above records, it is noticed by the PCIT that the details submitted in respect of the share applicants and the loan providers, that the copies of bank statements of the share investors or loan providers are not visible (not uploaded properly in four cases) and are incomplete (not reflecting all the entries in other four cases). Further, majority of the confirmations from these persons are either unsigned or not found in the details submitted by online. Some of the shareholders/loan providers claimed to have made invested/lent amounts which are 10-30 times of their annual returned income namely:-

a) Smt. Vasantiben Makadia invested Rs. 1 Crore in Equity Shares of the assessee company while her returned income of Assessment Year 2016-17 is only Rs. 2,00,830/-.

b) Smt. Ritaben D Adroja (Patel) invested Rs. 1.65 Cr in Eq. Shares of the assessee company while her returned income of Assessment Year 2016-17 is only Rs. 7,40,680/-.

c) Shri Bhavin N Bhila who gave unsecured loan of Rs. 50 Lacs to the assessee-company whereas his returned income of Assessment Year 2016-17 is only Rs. 2,40,930/-.

Apart from this most of the investors are female persons engaged in the Tailoring work (Silai Work) or Tuition work and an overview of their bank statements reveal that their accounts were merely used to route the money into the books of the assessee company through banking channel. Summary of the Share investments and Unsecured Loan details are as follows:

| Sr Name No | Un sec Loan during the year | Share Investment During the year | Copy of ITRV (AY) | Returned income | Agri + oth exempt income | Bank Stmt Provided | Confirmation | Balance Sheet Given |
|-------------------------------------|-----------------------------|----------------------------------|-------------------|-----------------|--------------------------|--------------------|--------------|---------------------|
| 1 Bhavin N Bhila | 50,00,000 | 0 | 2016-17 | 240930 | 0 | Limited | No | No |
| 2 dhansukhbhai jadhavbhai Kasundra | 6500000 | 7000000 | 2016-17 | 297850 | 491760' | No | YES | YES |
| 3 NileshR Makadia | 5000000 | 11950000 | 2016-17 | 388370 | 738612 | YES | No | No |
| 4 Sapna Vipul Shah | 200000 | 3000000 | 2016-17 | 405460 | 20454 | YES | YES | No |
| 5. Viral C Dhodasara | 5000000 | 21249700 | 2016-17 | 748870 | 558666 | illegible | YES | YES |
| 6.Dilipbhai Adroja | 0 | 13500000 | 2016-17 | 2041480 | 1349703 | YES | No | No |
| 7. Geetaben Adroja | 0 | 800000 | 2016-17 | 331550 | 0 | YES | No | YES |
| 8. Jitendra Ramvadh Rai | 0 | 400000 | 2016-17 | 533367 | 0 | YES | No | No |
| 9. Natwarlal L Bhila | 0 | 4000000 | 2016-17 | 283775 | 0 | YES | No | No |
| 10. Parimal D Ambani | 0 | 2000000 | 2016-17 | 192790 | 0 | YES | No | No |
| 11 Parsottam Laljibhai Patel | 0 | 6500000 | 2016-17 | 906850 | 880843 | YES | No | No |
| 12. Ratilal Laljibhai Patel | 0 | 6500000 | 2016-17 | 1027400 | 552507 | YES | No | No |
| 13. RitabenDilipbhai Adroja (Patel) | 0 | 16500000 | 2016-17 | 740680 | 0 | YES | NO | No |
| 14. Sunil Mittal | 0 | 13000000 | 2016-17 | 617660 | 267 | Limited | No | No |
| 15. Shweta Mittal | 0 | 8000000 | No | No | No | Yes | No | YES |
| 16. Adroja Tejablben Chandrashekar | 0 | 11500000 | 2016-17 | 727260 | 0 | Yes | No | No |
| 17. Vasantiben Makadia | 0 | 10000000 | 2016-17 | 200830 | 62144 | Yes | No | YES |
| 18. Chandresh Ratilal Patel | 0 | 19500000 | No | No | No | No | No | No |
| 19. Falguni H Padalia | 0 | 2000000 | 2016-17 | 411160 | 0 | Limited | No | YES |
| 20. Hashmukhbhai L. Fuitariya | 0 | 7000000 | 2016-17 | 274130 | 336402 | YES | No | YES |
| 21. Jayeshbhai Pravinbhai | 0 | 4500000 | 2016-17 | 1743940 | 64.5935 | illegible | No | YES |

| | | | | | | | | |
|------------------------------------|----------|-----------|---------|---------|---------|-----------|-----|-----|
| <i>Panara</i> | | | | | | | | |
| 22. Mahadevbhai L Adroja | 0 | 3200000 | 2015-16 | 907700 | 1800587 | Illegible | No. | Yes |
| 23 Pankaj M Patel | 0 | 2000000 | 2016-17 | 437690 | 153162 | Limited | No | Yes |
| 24. Tribhovanbhai Laljibhai Adroja | 0 | 6000000 | 2015-16 | 1109540 | 1109540 | illegible | No | Yes |
| | | | | | | | | |
| Total | 21700000 | 180093700 | | | | | | |

2.4. Thus, it is seen from the above Table, the assessing officer accepted the claim of genuineness of Share Capital Investment by various persons without making inquiries or verification of the claim, as prescribed in clause (a) & (b) of first proviso to Section 68 of the Act. Thus, it is evident from record, the A.O. passed the assessment order without making inquiries or verification which should have been made as per the provisions of the I.T. Act. Therefore invoking Explanation 2 to Section 263 of the Act the assessment order dated 26.12.2018 passed by the A.O. is an erroneous order and prejudicial to the interest of the Revenue. Therefore a detail show cause notice dated 17.09.2019 issued to the assessee calling upon its objection by giving opportunity of being heard.

2.5. The assessee vide its reply dated 09.12.2020 submitted that the case of the assessee was selected for scrutiny assessment on four points, the reasons mentioned does not include verification of unsecured loans, therefore A.O. was not required to verification the unsecured loans. However the assessee company submitted the evidences to substantiate the unsecured loans taken from various parties. The loan parties are the Relatives and family members of

the Director of the assessee company and also belong to the same community. For this reason, even though interest has not been paid on the unsecured loans, due to this being the first year of the assessee company. Regarding the allegation of the bank statements of shareholders are not visible or are incomplete, unsigned. The assessee replied that complete details have been submitted to the A.O. during the course of assessment proceedings by uploading the same. This alone would not be legal ground to initiate revision proceedings u/s. 263 of the Act especially when the assessee submitted every details before the Assessing Officer. However a hard copy of all the documents related to the shareholders are submitted before Ld. PCIT. The next allegation of some of the shareholders have invested in assessee company which is more than 10 to 30 times of their annual income. The assessee submitted that it is a normal business practice from all over the world to invest in shares of companies by borrowing from either family members, friends or from banks & financial institutions. The law does not stipulate that a shareholder can invest in share of company only out of his current annual income, whereas the shareholder can also borrow money from others and invest in shares. Therefore this cannot be a reason to revise the assessment order passed by the Ld. A.O. Regarding the Supreme Court judgment in the case of PCIT vs. NRA Iron & Steel Pvt. Ltd. (2019) 103 Taxmann.com 48 (SC). The facts of the judgment is in relation to shareholder companies based in Kolkata which were just paper companies whose director could not be produced before the A.O. for verification. That the said judgment will not be applicable to the

facts of the assessee's case. When the assessing officer considered the submission of the assessee it cannot be held that the A.O. did not examine the allowability of the claim by proper inquiry and in such case the assessment order neither suffers from 'lack of inquiry' nor any error on this count. The Ld. CIT does not have unfettered power to initiate revisional proceedings by re-examining and directing a change by taking different view and if he himself is not able to form opinion, then he cannot direct another enquiry by the assessing officer by invoking powers under section 263 of the Act and relied upon in the case of DLF Infocity Developers (Chennai) Ltd. vs. ACIT (2013) 37 taxmann.com 311 and the Delhi High Court in the case of CIT vs. International Travel House Ltd. (2010) 194 Taxmann.com 324. The assessee further submitted that the assessee company has responded further query raised by the A.O., merely because the said aspect is not reflected in the assessment order that would not mean the A.O. had not applied his mind and relied upon Bombay High Court judgment on this proportion, in the case of CIT vs. Fine Jewellery (India) Ltd. (2015) 230 Taxmna.com 641, CIT vs. Nirav Modi (2016) 71 Taxmann.com 272, and in the case of Ideal Cellular Ltd. Vs. DCIT (2008) 301 ITR 407 (Bombay). The submitted to drop the revision proceedings initiated u/s. 263 of the Act.

2.6. The Ld. PCIT considered the above submission of the assessee and passed the impugned order as follows:

15. In this connection, it may be noted that the assessee case was selected for complete scrutiny mainly to examine whether the share capital introduced by assessee was genuine, and also from disclosed sources and whether the sundry creditors were genuine. In this connection it may be noted that on perusal of assessment record as also very specifically pointed out in show cause notice,

apart from mere filing of balance sheet, no explanation of any share holder is available on record explaining the nature and source of investment recorded in the books of the assessee company. It was the duty of the A.O. to have properly verified the identity, creditworthiness as also genuineness of all the share holders and creditors who have introduced their money during this financial year. However the A.O. has not conducted any inquiry to this effect and In fact simply accepted the assessee's submission. Therefore, it is a case where assessment has been completed without any inquiry on the points for which the case was selected for scrutiny.

16. It is settled law that any order is passed by the AO without conducting proper inquiry is deemed to be erroneous order and prejudicial to the interest of revenue.

For such proposition of law reliance is placed on the following case laws:-

- i. CIT vs. Kamal Galani, 2018 ITL 1562(Gujarat).*
- ii. Deniel Merchants Pvt. Ltd. vs. ITO (Appeal No. 2396/2017) dated 29.11.2017(SC).*
- iii. Malabar Industrial Co. Ltd. Vs CIT, 243 ITR 83 (SC).*
- iv. Ramesh Kumar Vs. ITO, Wd-3, Hisar, ITA No. 1982/Del/2018 dated 25.01.2019 ITAT(Delhi Bench "F").*
- v. Rampyari Devi Sarogi Vs. CIT 67 ITR 84 (SC)*
- vi. Malabar Industrial Co. Ltd. Vs. CIT 243 ITR 83 (SC)*
- vii. Swarup Vegetable Products Industries Ltd. Vs. CIT 187 ITR 412 (ALL)*
- viii. Rajalakshmi Mills Ltd. Vs. ITO 121 ITD 343, 313 ITR(AT) 182*
- ix. SRM Systems & Software Pvt. Ltd. Vs. ACIT 2010-TIOL-646-HC- MAD-IT (ITAT, SB-Chennai)*

17. I have carefully considered the relevant record including assessment record, written submission of the assessee as also provisions of section of 263 of IT. Act. In this connection, it may be mentioned that two essential condition for invoking the provisions of 263 of IT. Act are that:-

(1) The order passed by the assessing officer is erroneous.

and that

(II) The order is prejudicial to the interest of revenue.

Further, as per Explanation 2 of Section 263 which has been inserted w.e.f. 01.04.2015, any order passed without making inquiry or verification which should have been made is also deemed to be erroneous order. The provisions of Explanation 2 are also reproduced as under:-

"Explantion 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 interest of revenue, if, in the opinion of the Principal Commissioner or Commissioner-

- a. the order is passed without making inquires 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 1 19; or*
- d. the order has not been passed in accordance with any direction 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.]*

The issue whether the assessee's case covered under the provisions of 263 is to be examined, keeping in view the facts mentioned above.

18. Keeping in view the above facts, I hold that the assessment order dtd. 26.12.2018 finalized by the assessing officer is erroneous and prejudicial to the interest of revenue within the meaning of sec 263 of the I.T. Act and hence the order passed by the assessing officer is hereby set aside. The AO is directed to frame the assessment order afresh after conducting indepth inquiries in respect of share capital, share premium as also sundry creditors shown during the period under consideration. The AO is also directed to properly consider the observations and discussions on these issues made in the above paras and complete the assessment after giving proper opportunity of being heard to the assessee.

3. Aggrieved against the impugned revision order, the assessee before us raising the following Grounds of Appeal:

- 1. Ld. Pr. CIT, Rajkot - 1 erred in law and on facts revising a scrutiny assessment order which is neither erroneous nor prejudicial to the interest of revenue.*

2. This action of Id. Pr. CIT revising an order passed by AO raising relevant queries and extensive verification of the details submitted during assessment by the appellant is without any justification to invoke revisional jurisdiction.

3. Ld. Pr. CIT erred in law and on facts holding that assessment completed without any inquiry on the points for which case was selected for scrutiny as erroneous and prejudicial to the interest of revenue failed to appreciate clear difference between "Lack of inquiry" and "Inadequate inquiry."

4. Ld. Pr. CIT erred in law and on facts invoking revisional jurisdiction in absence of AO noting in assessment order response to the query raised that was properly responded by the appellant during the assessment proceedings.

5. Ld. Pr. CIT erred in law and on facts revising scrutiny assessment order merely because he held a different opinion than AO in the matter.

6. Ld. Pr. CIT erred in law and on facts revising scrutiny assessment order relying on judgment of Hon'ble apex court rendered on completely different set of facts.

7. Ld. Pr. CIT erred in law and on facts holding assessment order as erroneous and prejudicial to the interest of revenue since AO failed to inquire source of source of investment made in share capital of the appellant company.

4. The Id. Senior Counsel Shri Saurabh Soparkar appearing for the assessee reiterated the submissions made before the Id. PCIT and also filed a Paper Book and compilation of case laws wherein copies of the show cause notice issued u/s. 263 reply filed by the assessee, Return of Income and Audited Annual Accounts, notice issued u/s. 142(1) by the A.O. on 11.09.2018 and reply filed by the assessee on 18.10.2018 with copies of unsecured loan providers, ledger account, Income Tax Return, Bank Statements and Balance Sheet of the parties, details of shareholders who have invested in assessee company. The Paper Book is running to 284 pages. The Ld. Senior Counsel taken us through page No. 42B of the Paper

Book wherein the Assessing Officer requested the assessee to furnish the details/documents along with supportive evidences.

6. Please furnish complete and exhaustive details of unsecured loans. You are Also requested to furnish:-

(i) Details of unsecured loans remained outstanding at the end of the previous year under consideration.

(ii) Details of unsecured loan square off during the previous year under consideration.

9. Details of interest received & paid during the F.Y. 2015-16 along with name of parties and the rate at which the interest was received & paid and also interest account.

11. Complete name and address of Sundry Creditors and Sundry Debtor having outstanding balance as on 31/03/2016 along with copy of account.

4.1. The assessee vide its reply dated 28-10-2018 which is available at page no. 43 of the Paper Book held as follows:

6. Complete and Exhaustive details of Unsecured Loan:

a. Details of Unsecured Loans remained outstanding at the end of previous year are as under:

| SrNo | Name | O/s. Amount as on 31.03.2018 |
|------|------------------------|------------------------------|
| 1 | Bhavin N Bhiia | 5000000 |
| 2 | Dansukhbhai 3 Kasundra | 6500000 |
| 3 | Nilesh R Makadia | 5000000 |
| 4 | Sapna V Shah | 200000 |
| 5 | Viral C Godasara | 5000000 |

9. No interest received from parties and paid to parties during the year under consideration.

11. Name and address of sundry Creditor and Sundry debtors along with statement are as under:

| | | |
|--|---|--|
| | Metropole Tiles Pvt Ltd | |
| | List of Sundry Creditors As on 31.03.2016 | |

| Sr. No. | Supplier/Vendor Name | Due/Outstanding Amount (Rs.) |
|---------|--|------------------------------|
| 1 | Krishna Colour Chem-Morbi | 637,193 |
| 2 | Simco Sales Agency-Morbi | 412,113 |
| 3 | Urna International-Morbi | 1,308,276 |
| 4 | 'Gujarat Gas Ltd-Morbi | 3,268,715 |
| 5 | 'Vldres India Ceramics Pvt Ltd-Kadi | 579,383 |
| 6 | IParesh Plastic Industries-Morbi | 58,454 |
| 7 | Tushnil Impex Pvt Ltd-Morbi | 75,600 |
| 8 | Amarnath Marble-Kishangarh | 83,875 |
| 9 | Asian Solvochem-Morbi | 71,336 |
| 10 | Bhura Multi Minerals-Bhilwara | 119,809 |
| 11 | Bikaner Minerals & Chemicals-Bikaner | 505,871 |
| 12 | Dhartidhan Export-Bhilwara | 372,959 |
| 13 | Ceetanjali Minerals-Ajmer | 461,598 |
| 14 | Sokul Enterprise-Morbi | 123,795 |
| 15 | Gouri Mineral-Beawar | 474,398 |
| 16 | Guru Kripa Minerals-Rajasmand | 268,829 |
| 17 | Krishna Clay & Chemicals-Bikaner | 253,292 |
| 18 | Krishna Minerals-Bhilwara | 67,761 |
| 19 | lalji Minerals-Nagaur | 309,172 |
| 20 | Mahadev Mines & Chemical-Nagaur | 98,731 |
| 21 | Marudhar Mineral & Chemicals-Beawar | 670,877 |
| 22 | P. K. Minerals-Rajasmand | 72,038 |
| 23 | .R. D. Mines & Minerals-Bikaner | 651,960 |
| 24 | Tiishika Mines & Minerals-Nagaur | 127,912 |
| 25 | Satyam Marketing-Morbi | 411,815 |
| 26 | Shree Construction Co-Bikaner | 17,748 |
| 27 | Shree Radhey Minerals-Ajmer | 36,783 |
| 28 | Shri Shyam Grinding Mill-Jaipur | 278,298 |
| 29 | Snf (India) Pvt Ltd-Vishakapatnam | 749,260 |
| 30 | .Soil Mines & Minerals-Morbi | 203,530 |
| 31 | Sugan Minerals-Pali | 25,165 |
| 32 | Vijay Chand Daga & Company-Bikaner | 139,882 |
| 33 | Patel Shipping Agency-Ghandidham | 141,050 |
| 34 | Unique Speditorer Pvt. Ltd-Ghandidham | 36,674 |
| 35 | Velocity Global Logistics Pvt. Ltd-Murnabi | 26,989 |
| 36 | 7 Star Lable & Printer-Morbi | 13,251 |
| 37 | Nsfole CareService-Rajkot | 72,700 |

| | | |
|--------------------------|---|------------|
| 38 | Satellite Computer-Morbi | 1,751 |
| 39 | Chandan Electric Service-Rajkot | 1,095,619 |
| 40 | Msafhvir Electric-Morbi | 21,311 |
| 41 | Sfee Steel Building Technology-Ahrnedabad | 23,828,910 |
| 42 | IMaybhai D. Sompura | 101,945 |
| 43 | Afehay Fabricators-Kalol | 32,841 |
| 44 | Active Engineers-Ahmedabad | 533,785 |
| 45 | Asfeance Steel Corporation-Rajkot | 203,819 |
| 46 | AitSca Electric Stores-Morbi | 17,950 |
| 47 | tegeJ Pumps Pvt Ltd-Rajkot | 136,174 |
| 48 | Atossrn Sales & Service-Morbi | 75,900 |
| 49 | Cajsary Electricals Pvt Ltd-Morbi | 23,342 |
| 50 | Dew-en Trading Co.-Surendranagar | 106,000 |
| 51 | Garresh Equipments-Ahmedabad | 370,650 |
| 52 | Gaaaam Machine Tools - Rajkot | 4,400 |
| 53 | Gtnraar Traders - Rajkot | 32,186 |
| 54 | Hakhni Steel - Ahmedbad | 645,120 |
| 55 | Hamrarshan Instru-Lab-Ahmedabad | 18,500 |
| 56 | NavkarTraders-Rajkot | 798,000 |
| 57 | Nifkenth Tractor & Agriculture-Morbi | 300,000 |
| 58 | Omtkar Electricals-Morbi | 1,331,270 |
| 59 | Par Techno-Heat Private Limited-Ahmedabad | 306,000 |
| 60 | P. Prabhudas Engineering Pvt. Ltd-Rajkot | 172,370 |
| 61 | Ptafeant Gears - Ahmedabad | 279,726 |
| 62 | Royal Battery Service-Morbi | 79,889 |
| 63 | Sacmi Engineering India Pvt Ltd-Ahmedabad | 727,239 |
| 64 | SaiilSjesels Pvt. Ltd-Rajkot | 23,888 |
| 65 | Shiwkran Dlgitek Pvt. Ltd-Ahmedabad | 121,380 |
| 66 | Shiwkewn Microweigh Products-Ahmedabad | 13,052 |
| 67 | Sunrobo Energy System - Morbi | 173,565 |
| 68 | Super Stainless Steel - Ahmedabad | 375,773 |
| 69 | Vijayvaragiya Technologies Pvt. Ltd. -Morbi | 66,150 |
| 70 | Tradesafe-Ahmedabad | 3,500 |
| 71 | Rajavi Esterprise-Ahmedabad | 1,536,150 |
| 72 | Sonu Enterprise-Morbi | 970,834 |
| 73 | Gopi LogJstic-Khutch | 18,360 |
| 74 | Kajol Freight Carriers-Khuch | 51,480 |
| Grand Total of Creditors | | 47,825,921 |

Copy of Accounts are enclosed herewith as EXHIBIT D. Further, contra ledger of Sundry Creditor for Indigenous Machinery are also enclosed herewith as EXHIBIT D.

Commercial Production is not started during the year. No Sundry debtors are o/s in the books of accounts.

4.2. The assessee also further submitted list of shareholders along with shareholding pattern as follows:

1. List of Shareholder along with Shareholding pattern

| Sr no | Name | Op Balance | Addition during the year | Share allotted amount | Closing Balance | % of Holding |
|-------|-----------------------------------|------------|--------------------------|-----------------------|-----------------|--------------|
| 1 | Ghandrashekhar Ratilalbhai Patel | 0 | 19,500,000 | 19,500,000 | 19,500,000 | 10.83% |
| 2 | Dhansukhbhai Jadavjibhai Kasundra | 0 | 7,000,000 | 7,000,000 | 7,000,000 | 3.89% |
| 3 | Dilipbhai Ratilalbhai Patel | 0 | 13,500,000 | 13,500,000 | 13,500,000 | 7.50% |
| 4. | Falguni H. Padalia | 0 | 2,000,000 | 2,000,000 | 2,000,000 | 1.11%\ |
| 5 | Gitaben Mahadevbhai Adroja | 0 | 800,000 | 800,000 | 800,000 | 0.44% |
| 6 | Hasmukh Laljibhai Fultariya | 0 | 7,000,000 | 7,000,000 | 7,000,000 | 3.89% |
| 7 | Jayeshbhai Pravinbhai Panara | 0 | 4,500,000 | 4,500,000 | 4,500,000 | 2.50% |
| '8 | Jeetendra Ramvadh Rai | 0 | 400,000 | 400,000 | 400,000 | 0.22% |
| 9 | Mahadev Bhai Laljibhai Adroja | 0 | 3,200,000 | 3,200,000 | 3,200,000 | 1.78% |
| 10 | Natvarlal L. Bhila | 0 | 4,000,000 | 4,000,000 | 4,000,000 | 2.22% |
| 11 | Nilesh R. Makadia | 50000 | 11,950,000 | 11,950,000 | 11,950,000 | 6.64% |
| 12 | Pankaj M. Patel | 0 | 2,000,000 | 2,000,000 | 2,000,000 | 1.11% |
| 13 | Parimal D Ambani | 0 | 2,000,000 | 2,000,000 | 2,000,000 | 1.11% |
| 14 | Parsotambhai Laljibhai Patel | 0 | 6,500,000 | 6,500,000 | 6,500,000 | 3.61% |
| 15 | Ratilal Laljibhai Patel | 0 | 6,500,000 | 6,500,000 | 6,500,000 | 3.61% |
| 16 | Reetaben Dilipbhai Patei | 0 | 16,500,000 | 16,500,000 | 16,500,000 | 9.16% |

| | | | | | | |
|----|--------------------------------|---------|-------------|-------------|-------------|---------|
| 17 | Sapna Vipul Shah | 0 | 3,000,000 | 3,000,000 | 3,000,000 | 1.67% |
| 18 | Sunil Mittal | 0 | 13,000,000 | 13,000,000 | 13,000,000 | 7.22% |
| 19 | Sweta Mittal | 0 | 8,000,000 | 8,000,000 | 8,000,000 | 4.44% |
| 20 | Tejalben Chandrashekhar Patel | 0 | 11,500,000 | 11,500,000 | 11,500,000 | 6.39% |
| 21 | Tribhovanbhai Laljibhai Adroja | 0 | 6,000,000 | 6,000,000 | 6,000,000 | 3.33% |
| 22 | Vasantiben N Makadia | 0 | 10/300,000 | 10,000,000 | 10,000,000 | 5.55% |
| 23 | Viral C. Ghodasara | 50000 | 21,249,700 | 21,249,700 | 21,249,700 | 11.80% |
| | TOTAL | 100,000 | 180,099,700 | 180,099,700 | 180,099,700 | 100.00% |

Copy of Ledger account and copy of ITR and Computation of Income with Copy of bank statement attached herewith as **EXHIBIT H**.

Justification for not complied with notice u/s. 142(1) served on us dated 18.07.2018

We would humbly like to draw your kind attention to the fact that we did not received any u/s 142(1) of Income Tax Act, 1961, issued by your good selves on 18.07.2018. It is only upon the receipt of another notice, we become aware about the aforesaid notice. It is not ignorance or willful object to non-comply from our side.

4.3. The Id. Senior Counsel submitted there were proper and detailed enquiries conducted by the Assessing Officer by issuing notice u/s. 142(1) and 143(2) and in reply the assessee furnished details with evidences to the queries raised by the Assessing Officer. Therefore the revision proceedings initiated by the Ld. PCIT is against the provisions of Section 263 of the Act and relied upon judgment by the Calcutta High Court in the case of PCIT vs. Anindita Steels Ltd. (2022) 137 taxmann.com 203 wherein the Hon'ble High Court held as follows:

Section 68, read with section 263, of the Income-tax Act, 1961 – Cash credits (Loans) – assessment year 2009-10 – whether Principal Commissioner cannot substitute opinion to that of Assessing Officer on same material which was noted by Assessing Officer in reassessment proceeding- Held, yes – Assessment was reopened under section 147 and after discussing case and conducting enquiry relief was granted to assessee – Thereafter, Principal Commissioner

proposed to revise reassessment order by issuing show-cause notice on ground that Assessing Officer had failed to examine and that no enquiry was conducted into veracity of loans by Assessing Officer – Tribunal, however found that Assessing Officer conducted enquiries both with assessee as well as with accepted these loans as genuine – Further, Tribunal noted that no independent enquiry was conducted by Principal Commissioner to justify assumption of jurisdiction under section 263 – Whether therefore, order passed by Principal Commissioner was bad in law and Tribunal rightly granted relief to assessee – Held, yes

4.4. The Supreme Court judgment in the case of Principal Commissioner of Income Tax vs. Shreeji Prints (P.) Ltd. (2021) 130 taxmann.com 294 wherein the Hon'ble Supreme Court held as follows:

Section 69, read with section 263, of the Income-tax Act, 1961 – Unexplained investments (unsecured loans) – Assessment year 2013-14 – assessee- company had received unsecured loans from two different companies – Commissioner noting that said loans were shown as investment in assessee's name in balance sheet of respective companies exercised his revisionary powers and passed an order without giving an opportunity to assessee of being hear, invoking Explanation 2 to section 263 – High Court by impugned order held that since Assessing Officer has made inquires in details and accepted genuineness of loans received by assessee, such view of Assessing Officer was a plausible view and same cannot to be considered erroneous or prejudicial to interest of revenue – Whether SLP against said impugned order was to be dismissed – Held, yes

4.5. The Jurisdictional High Court in the case of CIT vs. Kamal Galani (2018) 95 taxmann.com 261 (Gujarat) wherein the Hon'ble High Court held as follows:

Section 69A, read with section 263, of the Income-tax Act, 1961- Unexplained money (Revision) – Block period 1-4-1996 to 25-7-2002 – Assessee was subjected to black assessment proceedings – during such proceedings, Assessing Officer found that there was introduction of amount in capital account of assessee – Further, assessee had received loan from his brother – With respect to introduction of capital, assessee had pointed out that he was an NRI for over two years and he had made foreign remittances over a period

of time – As regards unsecured loan received from his brother, assessee pointed out that he was running a successful business of trading, was engaged in various commercial and non-commercial activities and he was man of standing and means Assessing Officer accepted explanation of assessee and did not make any addition in respect of those amounts whether once Assessing Officer carried out details inquiries, it was not open for Commissioner to reopen issues on mere apprehension and surmises- Held, yes whether, therefore, Tribunal was justified in setting aside impugned revisional order- Held, yes.

4.6. The Co-ordinate Bench judgment in the case of Ambe Tradecorp Pvt. Ltd. vs. PCIT (Central) in ITA No. 53/Ahd/2021 order dated 21.09.2021 and the Hon'ble Delhi Bench ITAT order in the case of Dwarkadhis Buildwell (P.) Ltd. vs. CIT (2019) 109 taxmann.com 5. The Hon'ble Gujarat High Court judgment in the case of Mitesh Rolling Mills (P.) Ltd. vs. CIT (2002) 124 Taxmann.com 620 (Guj.) and the Co-ordinate Bench judgment in the case of Kavita Jayeshkumar Kotak vs. PCIT (Central) in ITA No. 54/Ahd/2021 order dated 28.04.2022.

4.7. Thus the Ld. Senior Counsel submitted that when the Assessing Officer while framing assessment order made proper enquiries. Thus there is a clear difference between 'Lack of inquiry' and 'Inadequate inquiry', the ld. PCIT cannot revise the assessment order merely because he held a different opinion than that is verified by the Assessing Officer during the assessment proceedings. Therefore the revisional proceedings initiated u/s. 263 is liable to be quashed.

5. Per contra ld. D.R. Mr. Sushil Madhuk appearing on behalf of the Revenue supported the order of the Ld. PCIT and submitted the

assessment order passed by the Assessing Officer is a cryptic order without any discussion on the enquiry made by the A.O. on the share application money invested by various persons. The Assessing Officer has not verified genuine of the transaction credit worthiness of the investors, therefore the assessment order is an erroneous and prejudicial to the interest of Revenue as per first proviso to Section 68 of the Act, which was inserted by the Finance Act, 2012 with effect from 01.04.2013 which clearly applicable to the Assessment Year 2016-17, in the present assessee case. Therefore the revision proceedings initiated u/s. 263 is well valid in law and required to uphold the same and consequently dismiss the assessee appeal.

6. We have given our thoughtful consideration and perused the materials available on record. Though the original assessment order passed by the Assessing Officer is a cryptic order without much discussion on the verifications made by the A.O. and the explanation offered by the assessee. As can be seen from the Paper Book filed by the assessee, more particularly page no. 43 onwards wherein assessee's detailed reply dated 28.10.2018 which is extracted in 4.1 & 4.2 above. Wherein details above the unsecured loans remained outstanding at the end of the 31.03.2018 with copy of the Ledger account, Income Tax Return of the respective parties, computation of income, balance sheet, Profit and Loss account were enclosed. The assessee also replied that no commercial production is started during this assessment year, therefore raw material on purchased is shown as closing stock in

the books of accounts and no other expenses debited in the profit and loss account. The assessee also further submitted name and addresses of the sundry creditors and sundry debtors. Further contra ledger of sundry creditors also filed. Similarly, the assessee enclosed list of shareholders with shareholding pattern in assessee's company with copy of the ledger account, copy of the Income Tax Return and copy of the bank statement were submitted to the Assessing Officer vide Exhibit-H. It is further seen on these documents were electronically uploaded by the assessee in reply to the 143(2) notice, the A.O. having been satisfied with the explanation offered by the assessee. The Assessing Officer has accepted the explanations and completed the assessment order u/s. 143(3) of the Act. It is not the case of the assessee that the A.O. has not conducted necessary inquiry, verification before passing the assessment order.

6.1. The assessing officer has verified the share application money which were being routed through banking channels and the respective Income Tax Return by the investors were also been verified by the Assessing Officer. Similarly, on the unsecured loans the same were received by the assessee company through banking channels by way of cheques and the bank statements were also been produced before the Assessing Officer for verification along with Return of Income filed by the respective assessee/creditors. Thus, the Assessing Officer accepted the genuineness of the share application money and unsecured loans received by the assessee. Such a view of the Assessing Officer was a plausible view and the

same cannot be considered as erroneous or prejudicial to the interest of revenue. Thus it is not open to the Ld. PCIT to revise the issues on mere apprehensive and surmises that the A.O. has not made proper verification before passing the assessment order. It is settled principle of law by the Hon'ble Apex Court in the case of CIT vs. Shreeji Prints (P.) Ltd. (cited supra) when Assessing Officer made enquiries in detail and accepted the genuineness of loan received by the assessee such view of the Assessing Officer was a plausible view and same cannot be considered as erroneous or prejudicial to the interest of revenue. Thereby the revision proceedings initiated invoking to Explanation 2 to Section 263 of the Act is held to be invalid and the same is not sustainable in law.

6.2. We are further guided by the Jurisdictional High Court judgment in the case of CIT vs. Arvind Jewellers [2003] 259 ITR 502, wherein the Division Bench referring to the judgment of the Supreme Court in the case of Malabar Industrial Co. Ltd. observed that the provisions of Section 263 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 and incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous . The Hon'ble Supreme Court judgment has also made it clear 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, cannot be treated as prejudicial to the interests of the Revenue. It is further emphatically stated that when

an Income- tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree it cannot be treated as an erroneous order and prejudicial to the interests of the Revenue, unless the view taken by the Income-tax Officer is unsustainable in law”.

6.3. In this context of the present case, applying ratio of the above referred judgments, the scope of the Commissioner’s power of revision u/s. 263 of the Act would be, when the Assessing Officer conducts no inquiry or proper inquiries or does not apply his mind to the legal issues arising out of the material on record, the revisional powers would be available. On the other hand, if the Assessing Officer has conducted proper inquiries and come to legal conclusions which are plausible, the Ld. PCIT would not be justified in invoking revisional jurisdiction directing further inquiries or taking a different view. In the present case, the Assessing Officer has issued a detailed notice u/s. 142(1) calling for various details from the assessee and the assessee also had made detailed replies to the above notice with proper evidences and necessary records namely ledger account, Income tax return, bank statements, confirmations letter, etc. It is the case of the assessee that all these unsecured loans transaction and investment in shares were being routed through banking channels and the respective bank accounts were being submitted before the Assessing Officer for verification. Thus the Assessing Officer having

carried out such detailed inquiries satisfied with the explanation offered by the assessee, it was not open for the Ld. PCIT to thereafter revise the issues on mere apprehensions and surmises. In the light of the above facts and a legal position, we are of the considered view that the Assessing Officer had made detailed inquiries and after applying his minds and satisfied genuineness of the loans received by the assessee as well as the share application money through banking channels which is plausible view adopted by the Assessing Officer.

6.4. It would useful to refer to some of the Supreme Court and High Court decisions on this subject which would throw useful light on the scope of enquiry under Explanation 2 to Section 263 of the Act.

6.5. The case laws held as follows:

(1) CIT vs. Nirav Modi [2017] 77 taxmann.com 78 (SC)

Section 68, read with section 263, of the Income-tax Act, 1961- Cash credit (Gift) – Assessment Years 2007-08 and 2008-09 – assessee received certain amount as gifts from his father and sister who were non-residents in India – Assessing Officer after making detailed enquiries, took a view that assessee had duly proved identity, source and creditworthiness of donors Commissioner, however, passed a revisional order under section 263 directing Assessing Officer to enquire into capacity of donors and to decide about genuineness of gifts afresh – it was noted that Commissioner in his order of revision, did not indicate any doubt in respect of genuineness of evidence produced by assessee – Moreover, satisfaction of Assessing Officer on basis of documents produced was not shown to be erroneous – High Court by impugned order held that it was a case where a view had been taken by Assessing Officer after making proper enquiry and, thus, Tribunal was justified in setting aside impugned revisional order – Whether Special leave Petition filed against impugned order was to be dismissed – Held, Yes in favour of assessee.

(2) CIT vs. Reliance Communication Ltd. [2016] 76 taxmann.com 226 (SC)

Section 68, read with section 263, of the Income-tax Act, 1961 - Cash credits (FCCBs) - Assessee raised funds by way of FCCBs during year under consideration - Assessing Officer completed assessment accepting income declared by assessee - Commissioner noticed that no investigation was carried out by Assessing Officer to establish name and address, genuineness and creditworthiness of actual subscribers to FCCBs in terms of section 68 - He thus passed a revisional order setting aside assessment - Tribunal noted that Assessing Officer had made detailed enquiries about aforesaid aspect and mere fact that he did not make any reference to said issue in assessment order, could not make said order erroneous and prejudicial to interest of revenues - High Court by impugned order held that finding recorded by Tribunal being a finding of fact, no substantial question of law arose therefrom - Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes [Para 11] [In favour of assessee.]

(3). CIT Vs. Well Wisher Construction (P.) Ltd. [2019] 106 taxmann.com 260 (SC).

Section 2(14), read with sections 28(i) and 263, of the Income-tax Act, 1961 - Capital gains - Capital asset (Surrender of plot) - Assessment year 2008-09 - Assessee entered into a joint venture agreement for acquisition of a plot from Maharashtra Industrial Development Corporation (MIDC) - Allotment of plot was made by MIDC in February, 2006 - Assessee relinquished its right, title and interest in said plot in favour of other company - While filing return for relevant assessment year, assessee claimed that liability for payment of tax was not attracted - Assessing Officer taking a view that assessee did not carry on any business activity during relevant year or earlier years, accepted assessee's claim - Commissioner passed a revisional order setting aside assessment on ground that income earned by assessee was in nature of business income - Tribunal noted that Assessing Officer had thoroughly examined issue during course of scrutiny assessment proceedings and, had given a very categorical finding that any property whether connected with business or not other than stock-in-trade was a capital asset - Thus, Tribunal set aside revisional order passed by Commissioner - High Court upheld Tribunal's order - Whether, on facts, SLP filed against High Court's decision was to be dismissed - Held, yes [Para 2] [In favour of assessee]

(4). Pr.CIT vs. Deep Industries Ltd. [2016] 67 taxmann.com 6
(Gujarat)

Section 14A, read with section 263, of the Income-tax Act, 1961 and rule 8D of the Income-Tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income (Investment in mutual fund) - Assessment year 2009-10 - Assessee earned exempt income from investment in mutual fund - Assessing Officer disallowed part of interest expense under section 14A on account of earning said exempt income - Commissioner, by invoking powers under section 263, disallowed entire interest expense - Whether when view adopted by Assessing Officer was a plausible view, merely because Commissioner was of opinion that Assessing Officer should have assessed interest expenditure at a higher figure, it could be said that assessment order was erroneous so as to warrant exercise of revisionary powers under section 263 - Held, no [Para 9] [In favour of assessee]

(5) CIT vs. Shree Gayatri Associates [2019] 106 taxmann.com 31
(SC).

Section 69A, read with section 263, of the Income-tax Act, 1961 – Unexplained moneys (On-money receipts) – Pursuant to search proceedings, assessee filed its return declaring certain unaccounted income – Assessing Officer completed assessment by making addition of said amount to assessee’s income – Commissioner passed a revisional order under section 263 on ground that Assessing Officer had not carried out detailed inquiries which included assessee’s on-money transactions – Tribunal thus set aside revisional order passed by Commissioner – High Court upheld Tribunal’s order – Whether, on facts, SLP filed against decision of High Court was to be dismissed – Held, yes in favour of assessee.

(6) CIT vs. Amit Corporation [2012] 21 taxmann.com 64 (Guj.).

Section 263 of the Income-tax Act, 1961 – Revision – Of orders prejudicial to interest of revenue – Whether when, during course of framing of assessment, Assessing Officer had access to all records of assessee, and after perusing said records, he framed assessment, said assessment could not be re-opened in exercise of revision power under section 263 for making further inquiries- Held, yes in faovur of assessee.

6.6. In our considered view, it is evident that the Id. Assessing Officer has made due inquiries by issuing notices and the assessee also filed detailed submissions with evidences. Even though the assessment order does not discuss all these aspects in detail with regards to the submissions of the assessee, it cannot be held the assessment order is erroneous and prejudicial to the interest of the Revenue. The above proposition has been upheld in the cases (cited supra) by the Hon'ble Supreme Court and Other High Courts. Thus, we find no error in the order passed by the Assessing Officer so as to justify initiation of revision proceedings u/s. 263 by the Ld. PCIT. Therefore the Revision order dated 24-03-2021 is hereby quashed and the grounds of appeal raised by the Assessee are hereby allowed.

7. In the result, appeal filed by the Assessee is allowed.

Order pronounced in the open court on 24 -08-2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 24/08/2022

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

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

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद