THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'H', NEW DELHI

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

Sh. Anubhav Sharma, Judicial Member

ITA No. 664/Del/2022 : Asstt. Year : 2014-15

Vinod Kumar Gupta, A-11, Jawala Nagar Meerut, Meerut, Uttar Pradesh-250002	Vs	Pr. CIT, Ghaziabad
(APPELLANT)		(RESPONDENT)
PAN No. AAQPG8113L		

Assessee by: Sh. Salil Kapoor, Adv. &
Sh. Sumit Lal Chandani, Adv.
Revenue by: Sh. Surender Pal, CIT DR

Date of Hearing: 20.07.2022		Date of Pronouncement: 30.08.2022

ORDER

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

The present appeal has been filed by the assessee against the order of ld. PCIT, Ghaziabad dated 19.03.2022.

2. Following grounds have been raised by the assessee:

> *1. That in view of the facts and circumstances of the case and in law, the impugned notice dated 23.02.2022 issued under Section 263 of the Income Tax Act, 1961 ('the Act'), and the impugned order dated 19.03.2022 passed under Section 263 of the Act is illegal, bad in law, without jurisdiction and liable to be quashed.*
>
> *2. That the impugned notice dated 23.02.2022 and the impugned order dated 19.03.2022 does not satisfy the jurisdictional requirement for invocation of Section 263 of the Act. The Principal Commissioner of Income Tax ('PCIT') has erred in not establishing how the Assessing Officer ('AO') committed any error in passing the assessment order dated 07.07.2020under 143(3) read with Section 254 of the Act of the Act.*

3. That, without prejudice, the assessment order dated 07.07.2020 for A.Y. 2014-15 passed by the Joint Commissioner of Income Tax ("Joint CIT") is illegal, bad in law and without jurisdiction as the Joint CIT had no jurisdiction to pass the said assessment order. That Joint CIT was not competent to pass the assessment order. Hence, the assessment order passed under Section 263 of the Act is illegal, bad in law and without jurisdiction.

4. That the order passed under Section 143(3) read with Section 254 of the Act by the AO is neither erroneous nor prejudicial to the interest of the Revenue and as such the impugned order passed by the PCIT under Section 263 of the Act dated 19.03.2022is illegal and bad in law.

5. That the PCIT failed to appreciate that issue was duly examined during the course of assessment proceedings and the same was, therefore, outside the scope of revisionary jurisdiction under Section 263 of the Act. The view taken by the AO after conducting necessary enquiries after considering detailed evidence as per direction of ITAT is a plausible view, hence the order passed under Section 263 is illegal and bad in law.

6. That this is not a case of lack of enquiry as the assessment order dated07.07.2020 passed under Section 143(3) read with Section 254 of the Act is after making the detailed enquiries and after due application of mind.

7. That, during the course of assessment proceedings, detailed questionnaires were issued from time-to-time which were duly responded to and enquiries were conducted and thereafter the assessment order was passed dated 07.07.2020. Hence, the assessment order is valid and correct in law.

8. That without prejudice, no independent enquiry has been done by the PCIT and in the absence of same the order passed u/s 263 is illegal, bad in law and without jurisdiction. PCIT has failed to appreciate that loan taken buy Assessee stands accepted in subsequent years (wherein the statements were

recorded under section 131 and summon were issued under section 133(6) to the same creditors for the subsequent assessment years) and that the loan received by Assessee during the year under consideration stands returned subsequently back to the creditors by account payee cheques.

9. That, in view of the facts and circumstances of the case and in law, the PCIT has incorrectly invoked Section 263 of the Act without appreciating that if two views are plausible and the AO takes one view, then no revisionary jurisdiction can be exercised.

10. That the impugned notice dated 23.02.2022 and impugned order dated 19.03.2022passed by the PCIT under Section 263 of the Act is clearly without application of mind. Hence, the impugned notice dated 23.02.2022 and impugned order dated 19.03.2022 passed under Section 263 of the Act is liable to be quashed.

11. That all the facts and circumstances of the case and the material available on record have not been properly considered by the PCIT while passing the impugned order dated 19.03.2022 under Section 263 of the Act. The impugned order is illegal, arbitrary and bad in law.

12. That, even otherwise, all necessary enquires/investigations /verification relating to the issue referred in the order of the PCIT under Section 263 of the Act were made by the AO while framing the assessment under 143(3) read with Section 254 of the Act and the AO accordingly took the view that no addition is called for.

13. That, in view of the facts and circumstances of the case and in law, the PCIT has erred in not appreciating the case of the Assessee. The evidences/documents/material filed and placed on record has not been judiciously interpreted and considered/appreciated by the PCIT.

14. That, in view of the facts and circumstances of the case and in law, the PCIT has erred in cancelling earlier assessment order dated 07.07.2020 and directing the AO to revise the assessment order in

view of findings of the PCIT. The said act of the PCIT is illegal and bad in law."

3. For the sake of completeness and ready reference, the entire order of the ld. PCIT is reproduced below:

"In this case, the ITR for A.Y. 2014-15 was e-filed on 10.09.2015 declaring total income of Rs. 6,24,260/-. Later on the case was selected for scrutiny under CASS. The AO completed assessment u/s 143(3) of the IT Act, 1961 dated 07.12.2016 on a total income of Rs. 1,72,58,260/-. Against the assessment order, the appeal filed before the CIT(A) was dismissed vide appellate order dated 03.07.2014. Further, the Hon'ble ITAT vide order dated27.05.2019sent the matter to the Assessing Officer. The Jt.CIT (OSD), Circle- 1(1)(1), Meerut completed the assessment order u/s 143(3)/254 of the IT Act, 1961 dated 07.07.2020 on a total returned income of Rs. 6,24,260/-.

2. Show Cause notice and opportunities of hearing provided:-

2.1 On examination of the case records, it appeared that the assessment order dated07.07.2020u/s 143(3)/254 in the present case is erroneous and prejudicial to the interest of revenue, and hence it was decided to invoke the revisionary jurisdiction under Section 263 of the Income-tax Act, 1961. Accordingly, a Show Cause Notice/Hearing notice u/s 263 of the Income Tax Act dated 23.02.2022 vide DIN ITBA/REV/F/REV1/2021-22/1040037186(1) was issued to the assessee which is reproduced below for ready reference:

"2. From perusal of assessment record, for the year under consideration, following discrepancies/ errors have been noticed:

(i) It is observed that in the case at hand vide order u/s 143(3) dated 07.12.2016, sole addition of Rs. 1,66,34,000/- was made on account of 'bogus unsecured loans' purported to be accepted ranging from 13 lacs to 2.5 lacs from 19 persons, stated to be family

members & close relatives & friends of the assessee concerned. The aforesaid addition was made by the then AO as all these persons after depositing cash in their bank accounts on the very same date or in next date issued cheque to the assessee. Furthermore, neither the said alleged lenders & nor the assessee himself were produced before the AO despite specific requirement & issuance of summons u/s 131.The Ld. CIT(A) taking into consideration provisions of sec. 68 & various case laws confirmed the addition of Rs.1,66,34,000/- in toto vide appellate, order dated 03.07.2017.

On appeal of the assessee before ITAT, the ITAT vide its order dated 27.05.2019, has remanded the entire issue to the file of the AO to decide the issue afresh after considering all the material & aspects. The AO while deciding the issue afresh, assessed the income at returned income vide order u/s 143(3)/254 dated 07.07.2020, thereby making no addition at all in r/o earlier additions aggregating to Rs. 1,66,34,000/- which was confirmed in its entirely by first appellate authority.

(ii) In this case, it has been shown that on 17.03.2020, statement on oath of as many as of 6 persons have been recorded u/s 131. Notably, no summons u/s 131were issued through DIN (as per norms) or otherwise. Needles to emphasize, before recording a statement on oath u/s 131 of the IT Act, 1961, there is a mandatory requirement of issuance of summons u/s 131 & as per norms the same were to be issued after generating the same through DIN. As already mentioned, no summons u/s 131 were issued as per records (read including ITBA & dispatch register). Notably, there is no entry on order sheet regarding recording of statement of six persons on 17.03.2020. Thus, the so-called statement on oaths u/s131 as shown to be recorded on 17.03.2020 without issuance of summons. Significantly, vide order sheet entry dated 25.02.2020, the counsel was asked to produce six persons namely Amit Bansal, Smt. Jagwati Devi, Kapil Garg Karta HUF, Smt. Santosh Devi, Sh. Subhash Chand Garg HUF & Sh. Sudhir Bansal on 17.03.2020. However, the said

order sheet entry (infra) is not signed by the counsel. As a matter of fact, during the set-aside proceedings, though in the order sheet, two entries have been made regarding appearance of counsel made but signatures of counsel are not there on the order sheets.

(iii) It is notable that during the original assessment proceedings u/s 143(3) for A.Y. 2014-15 during F.Y. 2015-16, no person out of 19 persons appeared before the AO for recording of his/her statement despite issuance of summons u/s 131. All these persons have shown their complete reluctance to appear by stating that they had already filed their affidavits & stated identically as "That it is my complete reply, no other words want to say about this and also consider my reply in your notice u/s 131 and it also consider in my personal appearance." Thus, it is evident by this sort of reply that in order to hide material facts, the alleged lenders, who are stated to be closely related to assessee, deliberately not presented themselves for recording of wrong footing. It is further pertinent to mention here that all these replies were received in identical manner at that time & identical envelopes were used and address & names of senders were written on the same by a single person. Moreover, these replies were dispatched from a same point office on same time.

It is evident that on both the envelopes, on which address was written by a same person in an identical manner & were also dispatched through same post office i.e. Meerut Cantt. RMS at the same time. Similar is the position regarding other replies received from other 17 persons. The same approach shows that it was not in normal course and in order to hide material facts, this sort of response has been resulted in.

As already mentioned, (supra) on 17.03.2020, statement of 6 persons were shown to be recorded. As mentioned elsewhere in this report there is no entry on order sheet regarding appearance of the said 6 persons on 17.03.2020. Further, inter-alia, attendance of two old ladies of 88 years (read Smt. Jagwati Devi, her age as written in

statement) & Smt. Santosh Devi (68 years) in the office is difficult to believe in view of significant observations as to signature & thumb impression as affix on their alleged statement.

(iv) At the time of confirmation of addition of Rs.1,66,34,000/- by CIT(A) vide his appellate order dated 03.07.2017, various case laws cited by his kind self as cited as under:

Hon'ble Apex Court Sumati Dayal Vs. CIT (1995) 125 CTR(SC) Suppl(2) SCC 453
Banarsi Prasad Vs. Commissioner of Income Tax 304 ITR 239 (Allahabad)
CIT V Mihir Kanti Hazar [2015] 61 Taxmann.com 315 (Calcutta)

In the above backdrop, it is pointed out that though the ITAT has resorted the issue to be decided afresh by AO considering all materials & aspects. In submission as filed during the set-aside proceedings by the assessee, not to speak of controverting of said case laws even no reference to the same mentioned in any manner. To my chagrin, detrimental to cause of revenue, the AO too has not considered at all the cited case laws.

(v) In this case, the most glaring fact & finding which is conspicuous is that all the said 19 persons have deposited cash in their bank accounts and then provided alleged loan to assessee individual on the same date or in very next date. This sort of trend in all the involved cases is not at all explicable by any stretch of imagination. In fact, this pervasive trend shows that an easy modus-operandi has been adopted by assessee to introduce his black money in the bank accounts of his family members & close relatives/ friends and then to take said money from the same immediately through cheque. Even while recording alleged statements on oaths during set-aside proceedings, questions were asked in a perfunctory manner & without questioning further, the replies of the persons were accepted. All the persons have stated in an identical manner that the cash deposited was their savings but have also not given any

plausible reply whatsoever as to justify why the said so called lifetime savings were not kept in bank account earlier despite having bank accounts in their names. All these persons have alleged to be stated in like manner that cash was kept at home for the help of family members. The similarity as to replies in words & contents of all six persons raises serious doubts about the recording of the said six statements in normal course.It has been noticed that all these persons have declared meager income in their ITRs for AY 2014-15 & in earlier years. In fact, to some of them PAN was allotted rather get allotted only just before or after the act of providing said alleged loans. In order to drive home the point for a few persons date of allotment is tabulated as under:

SI. NO.	***Name of alleged lender***	***PAN***	***Date of PAN allotment***	***Mobile No. provided at the time of allotment & as per present PAN database***
1	*Akash Gupta*	*BLQPG4899H*	*11.11.2013*	*9837060021*
2	*Santosh Devi*	*BVDPD0224Q*	*21.09.2013*	*9837060021*
3	*Jagwati Devi*	*BVDPD0134K*	*21.09.2013*	*9837060021*
4	*Ritu Garg*	*BKZPG6439H*	*21.09.2013*	*9837060021*
5	*Sanjay Garg HUF*	*AAYHS7793A*	*21.09.2013*	*9837060021*
6	*Kapil Garg HUF*	*AAKHK3320H*	*21.09.2013*	*9837060021*
7	*Pravesh Kr. Garg HUF*	*AANHP3997A*	*21.09.2013*	*9837060021*
8	*Subhash Chand Garg HUF*	*AAKHK3320H*	*24.09.2013*	*9837060021*
9	*Sanjay Garg*	*BLIPG1032N*	*14.10.2013*	*9837000751*
10	*Monika Garg*	*BLIPG0910K*	*14.10.2013*	*9837000751*

It is evident from above that out of 19 persons; PAN was allotted to as many as 10 persons/entities only in F.Y.2013-14 &that too in close dates. Most significantly, in as many as 8 PANs, in database mobile of assessee i.e. of Sh. Vinod Kumar Gupta has been mentioned. Thus, it is evident that Sh. Vinod Kumar Gupta as a part of his modus-operandi was instrumental in applying PAN for said

persons in order to launder his unaccounted money. Thus, many of the said 19 persons have filed ITR for the first time for AY 2014-15 & that that too at meager income without paying any tax. The ITRs have been filed in a perfunctory manner & showing income, which is required to be shown under the head 'Business Income' under the head 'Income from other sources'. A mere look at the ITRs depicting meager incomes in round figures in identical manner are not at all inspiring & amply indicates that the same were filed as part of the modus-operandi to lend credence to alleged loan transaction.

A particular mention to Sh. Akash Gupta S/o Sh. Vinod Kumar Gupta may be mentioned here. The date of birth of Sh. Akash Gupta is 25.09.1995. Thus, at the time of providing alleged loan of Rs.13lacs to his father, his age was barely of 18 years. It is also not a case, where Sh. Vinod Kumar Gupta has shown large sum of amounts in his ITRs in A.Y. 2014-15 or in earlier years to indicate that Sh. Akash Gupta has received sufficient pocket money or otherwise monetary gifts to accumulate sum of as much as of Rs.13lacs to lend his father. In this context, in order to drive home the point, the returned income of Sh. Vinod Kumar Gupta for A.Y. 2014-15 & for earlier years is tabulated as under:

Assessment Year	*Returned income*
2014-15	*624260*
2013-14	*410680*
2012-13	*418450*
2011-12	*259600*
2010-11	*344140*

Here it may be mentioned that the assessee concerned has also shown interest free loans from his married daughters & son-in-law. Here, it is pertinent to mention that in India society to take interest free loans from in-taws & married daughters is very difficult to believe.

(vi) No probing question has been asked in the six statements as allegedly in a pre-determined manner, questions have been written in blank page leaving space for answer the same was photocopied &

thereafter, answer have written in left over space. The questions & answer are almost identical. All persons whose statements have been recorded denied of taking any monetary help from Sh. Vinod Kumar Gupta in the past. It may be in which the said six statements were recorded any staff posted in erstwhile circle-2. Here, it may also be mentioned that handwriting in which the said six statements were recorded reportedly does not of any staff posted in erstwhile cirle-2. Here, it may also be mentioned that statements of 13 persons were not recorded for the reason that in the assessment proceedings for A.Y. 2015-16, their statements have already been recorded. It is pointed out that statement of one Smt. Swati Bansal was not recorded in A.Y.2015-16. Accordingly, recording of her statement was necessary during the set-aside 2015-16 were also recorded in a manner which were more prejudicial to the interest of revenue & identical questions & identical responses have been recorded & in normal course this cannot be possible.

The above statements amply proves that identical questions & answer written in a mechanical manner as if to go through a formality being done to further the cause of the assessee & therefore to rely on such so called support is untenable inter-alia for set-aside proceedings. The same sort of just going through a formality to further the cause of the assessee is also conspicuous while alleged recording of statements of six persons as on 17.03.2020.

Further, in respect of statements recorded all persons have stated that Sh. Vinod Kumar Gupta has also helped them monetarily in the past but as a contradiction, it is not the case as to statements recorded on 17.03.2020, as all persons denied of taking any help from Sh. Vinod Gupta in the past year.

No details regarding return back of money to alleged lenders brought on record in respect of any case. For instance, Sh. Ankit Gupta has stated that in response to one question that in succeeding years, he has received the money lent & the outstanding balance

has come to naught. But no details regarding the dates & modes of returning back of money brought on record. It is another matter even if such details are given in future, it would not further the cause of assessee & is not going to buttress creditworthiness of the alleged lenders & genuineness of transactions.

3. In view of the above, the assessment order u/s 143(3)/254 of the I.T. Act, 1961, dated 07.07.2020 passed by the Joint Commissioner of Income Tax(OSD), Circle-1 (1)(1), Meerut is erroneous and prejudicial to the interest of revenue and may be cancelled or modified by invoking the provisions of section 263 of the Income Tax Act, 1961."

3. Assessee's submission:

3.1 In response of Show Cause notice dated 23.02.2022 the assessee filed its written submission. The relevant portion of the reply is reproduced here-under:

"With reference to the captioned notice dated 23.02.2022, we on behalf of and under the instruction of the assessee humbly submit as under:

From the perusal of the said notice, it has been found that in the said notice your honor has pointed out the following issued in the order dated 07.07.2020, passed u/s 143(3)/254 of the Act, by the Ld. A.O.

1. That no addition was made by the ld. AO in the set aside proceedings.

2. That the recording of statement was done without issuing summons u/s 131 of the Act and only an order sheet query was raised to the assessee for production of six persons.

3. That no person appeared in the original assessment proceedings and thereafter they appeared for the statement in subsequent assessment proceedings and the present set aside proceedings.

4. The case laws cited by the Ld. CIT(A) in the first appeal proceedings have not been rebutted in the set side order.

5. That unsecured lenders were related and their PAN data had same phone numbers and there were cash deposits in their bank accounts before providing loans to the assessee.

6. That no probing questions were asked from the unsecured lenders when their statements were recorded during the set-aside proceedings.

Our point wise rebuttal to the issues as pointed by your honor are as under:

1) No addition being made.

The order passed by the Ld. AO cannot be said to be erroneous and prejudicial to the interest of the revenue only because no addition has been made in the set-aside proceedings. Mere non making of addition/additions in the assessment proceedings cannot be the basis of the issuance of notice u/s 263 of the Act.

2) Recording of statement without issuing summons under section 131 of the Act.

The recording of statements of any person during the course of reassessment proceedings can be made by issuing summons u/s 131 of the Act or by raising an order sheet query asking the assessee to produce the requisite persons. In the present case, the Id. AO has asked the assessee to produce the 6 persons whose statements were not recorded during the course of the assessment proceedings for succeeding years i.e. A.Y. 15-16 and 16-17. As far as the persons appeared before the AO and their statements were recorded, non-issuance of summons u/s 131 of the Act, cannot be said to be

erroneous or prejudicial to the interests of the, revenue. The purpose of examining the unsecured lenders by the Id. A.O., was duly served even when the persons appeared before him at the behest of the assessee instead of the summon u/s 131 of the Act. Hence, the order under consideration cannot be said to be erroneous or prejudicial to the interest of the revenue as all the requisite persons duly appeared before the ld. AO and their statements were recorded.

3) Non appearance of unsecured lenders during the course of original assessment proceedings.

The Hon'ble ITAT, sent the matter back to the file of the ld. AO, for the reason that the lenders appear before the AO during the course of the assessment proceedings for the subsequent years. Thus, the Hon'ble ITAT granted the assessee another opportunity to produce the lenders before the AO and confirm the unsecured loans taken by him. Further, the appearance of lenders in the set-aside proceedings is in the favor of the Department as if they were not genuine, the same would have been brought out while recording their statements.

Hence, the fact that unsecured lenders did not appear during the original assessment proceedings and appeared before the AO in the set-aside proceedings, does not make the assessment order erroneous and prejudicial to the interests of the revenue.

4) The case laws cited by the Ld. CIT(A) in the first appeal proceedings have not been rebutted in the set side order.

While confirming the additions so made in the original assessment proceedings, the Id. CIT(A), relied upon some judicial pronouncements. The same were there before the Hon'ble ITAT, still the Hon'ble ITAT sent the matter back to the file of the Ld. AO for reconsideration by setting aside the order of the Id. CIT(A). The earlier order of the Ld. CITA) do not remain in operation thereafter. Hence, observation of your good self that the order under

consideration is erroneous and prejudicial to the interests of the revenue because the case laws relied upon by the Id. CIT(A), in the first appeal proceedings were not discussed therein is completely incorrect.

5) The unsecured lenders were related and their PAN data had same phone numbers and there were cash deposits in their bank accounts before providing loans to the assessee.

The assessee at all the stages of the assessment and appellate proceedings has stated this fact that all the 19 unsecured lenders under consideration were close family members and relatives; hence this is an undisputed fact. With reference to the observations that the PAN data has the phone numbers of the assessee is explained by the fact that all the persons were close family members and the assessee used to look after the filling of ITR of all the persons and it is a common practice that the telephone numbers of the person who looks after the filing of ITR is used in the PAN data.

Further, the source of cash deposited in the bank accounts of the lenders has duly been explained by the lenders in their statements as recorded during the course of set-aside proceedings, which was accepted by the ld. AO after application of his mind. The AO has taken a legally possible view by accepting the genuineness of loans and there is no error in his order. Therefore, the order under consideration cannot be said to be erroneous and prejudicial to the interests of the revenue on this issue also.

6) The no probing questions were asked from the unsecured lenders when their statements were recorded during the set-aside proceedings.

The Id. AD, while recording the statements of the lenders during the course of the set-aside proceedings asked them the questions, which he felt fit as per his thought process. The Id. AO after due application of mind asked them the questions which were relevant as

per him. Since, the AD duly applied his mind to the issue at hand the same cannot be said erroneous. Section 263 does not provide the power to the Hon'ble CIT, to look again at the cases where the AO has duly applied his mind. Hence, the order under consideration cannot be said to be erroneous and prejudicial to the interests of the revenue.

From the above explanations, it is clear that, the Ld. AO after due application of his mind has taken a possible view permissible in law. Further, the power of revisions u/s 263 of the Act, is vested with the Hon'ble PCIT, only if the order is erroneous as well as prejudicial to the interest of the revenue. In the present case, the order of the ld. AO is neither prejudicial to the interest of the revenue, nor it is erroneous.

The Id. A.O. during the course of the set-aside proceedings, has taken a possible view after considering the facts of the case. The order of the Id. AO cannot be said to be erroneous only because he has taken a possible view, which is in opinion of your good self is prejudicial to the interest of revenue and there is another possible view on the matter. In this regard, reliance is placed on the following judicial pronouncements:

The Hon'ble Apex court in the case of CIT Vs. Amitab Bachchan (2016) (384 ITR 0200) has in para 21 of the order has observed as under:

"21. There can be no doubt that so long as the view taken by the Assessing Officer is a possible view the same ought not to be interfered with by the Commissioner under Section 263 of the Act, merely on the ground that there is another possible view of the matter. Permitting exercise of revisional power in a situation where two views are possible would really amount to conferring some kind of an appellate power in the revisional authority. This is a course of action that must be desisted from. However, the above is not the situation in the present case……..

The Hon'ble Apex Court in the case of Malabar Industries Co. Ltd. Vs. CIT (2000) (243 ITR 0083), in para 5 & 7 have observed as under:

A bare reading of this provision makes it clear that the prerequisite to exercise of jurisdiction by the CIT suo motu under it is that the order of the ITO is erroneous insofar as it is prejudicial to the interests of the Revenue. The CIT has to be satisfied of twin conditions, namely the order of the AO sought to be revised is erroneous and it is prejudicial to the interests of the Revenue, if one of them is absent if the order of the ITO is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue-recourse cannot be had to s. 2631) of the Act.

There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the AO. It is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind.

The phrase 'prejudicial to the interests of the Revenue' is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not conferred) to loss of tax.

6. Mr. Abraham relied on the judgment of the Division Bench of the High Court of Madras in Venkatakrishna Rice Company vs. CIT (1987) 62 CTR (Mad) 152 : (1987) 163 ITR 129 (Mad) :TC 57R.303 interpreting "prejudicial to the interests of the Revenue". The High Court held, "In this context, it must be regarded as involving a conception of acts or orders which are subversive of the administration of Revenue. There must be some grievous error in the order passed by the ITO, which might set a bad trend or pattern

for similar assessments, which on abroad reckoning, the CIT might think to be prejudicial to the interests of Revenue administration". In our view this interpretation is too narrow to merit acceptance. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the ITO, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue.

7. The phrase prejudicial to the interests of the Revenue' has to be read in conjunction with an erroneous order passed by the AQ. Every loss of revenue as a consequence of an order of AO cannot be treated as prejudicial to the interests of the Revenue for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue: or where two views are possible and the ITO has taken one view with which the CIT does not agree it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the ITO is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering the order passed by the AO accepting the same as such will be erroneous and prejudicial to the interest of the Revenue. Rampyari Devi Saraogi vs. CIT (1968) 67 ITR 84 (SC): TC 57R.202 and in Smt. Tara Devi Aggarwal Vs. CIT (SC) 107: (1973) 88 ITR 323 (SC) : TC 57R.206.

[Emphasis supplied by us]

Further, the Id. AO has taken the view only after due application of mind and there is no finding contrary to that in the aforesaid notice hence the initiation of the present 263 proceedings is bad in law. In this regard, reliance is placed on the judgment of the Jurisdictional Hon'ble Allahabad High Court in the case of Ms Meerut roller Flour Mills Pvt. Ltd. Vs. CIT (2020) (420 ITR 0216), wherein the Hon'ble in para 21 has held as under:

"21. It is clear that after the notice was issued by the Assessing Officer raising 28 queries from the assessee, which was also replied by him along with the documentary evidence in regard to each of the query, thus the assessment order passed under Section 143(3) of the Act would not render the same as erroneous and prejudicial to the interest of Revenue, unless the Commissioner exercising power under Section 263 brings on record to show that the order of the Assessing Officer is erroneous, as the same was passed without application of mind or the Assessing Officer had made an incorrect assessment of fact or incorrect application of law, but the same not being the case, and the CIT relying upon the reply and the documentary evidence submitted by the assessee granted partial relief, as such the order dated 09.02.2012 passed under Section 263 relegating back the matter to the Assessing Officer as regards unsecured loans and creditors is unsustainable."

[Emphasis supplied by us]

In view of above, it is prayed that the section 263 proceedings under reference deserves to be dropped.

Further, in case your good self requires any documents /information which was not placed before the Id. AO during the course of the set-aside proceedings, we request your honour to kindly give the assessee another opportunity for filing the same.

We hope that your good self will find the above in order.
4. Decision

4.1 Reply of the assessee has been carefully examined and considered. In reply, it has been submitted that the AO was directed by the Hon'ble ITAT to verify the matter afresh in regard to unsecured loan received by the assessee. The decision passed by the Hon'ble ITAT is re-produced hereunder-

"The aforesaid appeal has been filed by the assessee against the impugned order dated 03.07.2017, passed by the Commissioner of

Income Tax (Appeals), Meerut for the quantum of assessment passed u/s 143(3) for the assessment year 2014-15. In various grounds of appeal, the assessee has challenged the addition of Rs.1,66,34,000/- made u/s 68 of the Act.

1. The facts in brief are that the assessee is an individual and has filed its return of income on 29.09.2014 at an income of Rs.6,24,260. As against this, the assessment has been completed at an income of Rs. 1,72,85,260/- after making the addition on account of unsecured loan received from various persons aggregating to Rs. 1,66,34,000/-. The addition has been made by the AO on the ground that assessee has failed to submit proper evidences and could not substantiate the source of loan.

2. Ld. CIT (A) too has upheld the order of the AO on the ground that assessee has failed to establish the creditworthiness and genuineness of the creditors.

3. Before us, the Id. Counsel for the assessee submitted that assessee has taken unsecured loan from close family members relatives and friends amounting to Rs. 1,66,34,000/- and during the course of assessment proceedings, assessee has filed copies of income tax return and copies of bank accounts along with list of creditors. The AO has failed to consider these documents and went further to make the addition despite due compliance was made by the creditors. Not only that the assessee has submitted various documents including copy of confirmation of accounts, bank account statement, affidavits and replies along with computation of income, ITR acknowledgement etc. The Id. AO has not even acknowledged or given any finding on these evidences. In fact all the creditors have duly complied with the notices issued by the Assessing Officer u/s 133(6).

4. Before us, the assessee has also filed an application under Rule 29 for admission of additional evidences, wherein assessee has placed documents including assessment order for subsequent

assessment year wherein similar loan has been accepted. Following documents have been submitted along with application filed under Rule 29 of the Rules.

Affidavit by Shri. Vinod Kumar Gupta in support of application under Rule 29	*25.12.2018*
Affidavit of creditors from whom unsecured loan was taken by assessee in FY 2013-14 confirming the repayment of the part loan	*17.12.2018* *19.12.2018*
Copy of submissions made before the Assessing Officer during the assessment proceedings of AY 2015-16 of 24 creditors alongwith the copy of the capital account of the assessee in his proprietary concern, photocopies of all the bank statements maintained by the assessee, other relevant documents and with respect to the 23 unsecured lenders their confirmations, bank statements, return filing proofs and computation of total income alongwith capital accounts	*16.11.2017*
Copy of statement on oath u/s 131 of the IT Act, copy of Aadhar card, copy of 1TR, computation of income, confirmations and bank statement of Vinod Kumar Singhal, Akash Gupta, Vinod Kumar Gupta HUF, Amita Garg, Ankit Garg, Pravesh Kumar Garg, Ritu Garg, Sanjay Garg, Sanjay Garg (HUF), Swarana Lata, Usha Rani, Itika Gupta, Jayawati Devi, Kapil Garg, Pradeep Kumar Bansal, Naresh Singhal, Monika Garg, Manish Bansal and Kapil Garg HUF creditors of the assessee	*27.12.2017*
Assessment Order under section 143(3) of the Act	*01.11.2018*
Reply to notice u/s 142(1) of the Act dated 22.10.2018 containing the following documents *Copy of ledger account of assessee's capital in proprietary firm (Shiv Coal Traders)*	*24.10.2018*

1. Ld. Counsel further submitted that loan taken by the assesse has returned back to the creditors by account payee cheques and has also given .details of all the parties before us. Thus, in view of these evidences, the additions sustained by the authorities below should be set aside.

2. On the other hand, Id. DR has strongly relied upon the orders of the AO and Id. CIT(A) and submitted that assessee has failed to substantiate the genuineness and creditworthiness of all the creditors before the authorities below and ample opportunity was given by the AO and Id. CIT(A). He also placed strong reliance upon various decisions and mainly on the following;

1. *PCIT vs. NRA Iron & Steel (P.) Ltd. [2019] 103 taxmann.com 48 (SC)*
2. *PCIT vs. NDR Promoters Pvt. Ltd. (2019) 102 taxmann.com 182 (Delhi)/[2019] 261 Taxman 270 (Delhi)/[2019] 410 ITR 379 (Delhi)*
3. *ITO vs. Synergy Finlease Pvt. Ltd. (ITA No.4778/Del/2013)*
4. *Prem Castings (P.) Ltd. Vs. CIT[2017] 88 taxmann.com 189 (Allahabad)*
5. *CIT vs. MAF Academy (P.) Ltd. (361 ITR 258)*
6. *CIT vs. Navodaya Castle Pvt. Ltd. [2014] 367 ITR 306 (Del)*
7. *CIT vs. Nova Promoters & Finlease (P) Ltd. (18 taxmann.com 217, 206 Taxman 207, 342 ITR 169, 252 CTR 187)*
8. *CIT vs. N.R. Portfolio Pvt. Ltd. [2014] 42 taxmann.com 339 (Delhi)/[2014] 222 Taxman 157 (Delhi) (MAG)/[2014] 264 CTR 258 (Delhi)*

1. *After considering the rival submissions and on perusal of the material placed on record before us, we find that before the Assessing Officer. Assessee has filed income tax return and copies of bank account of the creditors. However, the AO noted that the creditors before advancing loan have credited cash in their account and once summons were issued to all of them but none appeared. Since no one appeared, he held that*

all the unsecured loan received from 19 parties aggregating to Rs.1,66,34,000/- are not genuine.

1. *Before us, it has been pointed out from the records that all these creditors have duly replied to the summons issued by the Assessing Officer u/s 133(6) and have filed their confirmations, their income tax returns, bank statement, etc. Apart from that, further additional evidences have been filed before us wherein same people had appeared before the AO in the subsequent assessment year and the statement was recorded u/s 131 along with other evidences and based on examination Assessing Officer has accepted the loan received from the same parties in the subsequent years. In view of the additional evidences filed before us and looking to the facts that inquiry was made by the Assessing Officer in the subsequent year and statement of these persons were recorded u/s. 131, therefore, in the interest of justice, we feel that the entire issue should be remanded back to the file of the Assessing Officer who shall decide this issue afresh not only in the light of material placed on record but also the additional evidences filed by the assessee before us. The Assessing Officer will provide sufficient opportunity to the assessee to substantiate his case. Since we are remanding the entire issue back to the file of the AO, therefore, we do not deem fit to deal with the judgment relied upon by the Id. CIT- DR as Assessing Officer has to decide the issue afresh after considering all the evidences and explanation in accordance with law.*
2. *In the result, the appeal of the assessee is allowed for statistical purposes. "*

4.2 As per the above order, the matter was remanded back by the Hon'ble ITAT to the file of the Assessing Officer who shall decide this issue afresh not only in the light of material placed on record but also the additional evidences filed by the assessee before us. Accordingly, the AO sent a notice u/s 142(1)/253 of the IT Act, 1961

Dated 23/01/2020 to the assessee. In response, the assessee filed adjournment application 25/02/2020, the date was adjourned to 17/03/2020.

On fixed date, the AO recorded statement u/s 131 of the IT Act, 1961 of all the sons. After going through the statements and inquiry made by the AO following point are required to be mentioned herein-

1. *From all the persons, the AO had asked similar 14 set of questions of irrespective of the saving pattern, expenditure pattern etc. which shows the AO did not verify the matter afresh rather he was preoccupied with assumption of confirming the lenders.*
2. *The AO ignored the fact that the matter was remanded back to verify the unsecured loan of Rs.1,66,34,000/- afresh in the light of facts available of record and additional evidences produced before the Hon'ble ITAT. The statements were recorded in a mechanical manner as if there is no inquisitive, investigative characteristic of questions asked to the lenders.*
3. *Moreover, the AO did not ask any query related to additional evidences from the lenders.*

4.4 All the above points are clearly indicating the lacuna in inquiry made by the AO. It has also been found that the AO did not follow the direction of Hon'ble ITAT in letter and spirit. Vide point no. 5 of the order, Hon'ble ITAT has said that additional evidences under rule 29 accepted by it on assessee's request. List or additional evidences accepted by the Hon'ble Court have been incorporated in tabulate format along with specific directions. However, the AO did not encounter the assessee or lenders by specifically mentioning the facts and additional evidences presented before the Hon'ble Court.

4.5 It is pertinent to mention here that as discussed in above para, the AO did not make inquiry to verify the lender, and rather he did only formality to record statement without any inquisitive nature of question. It is worth mentioning here that the out of 14 question

only 1-2 questions are related to loan other questions were of introductory nature. The AO did not follow the evidence act, 1872, which allows an investigator to ask questions from the answers of the person on oath, so as to reach to the truth. In the instant case, the AO did not fulfill the role of investigator.

4.6 It is important point that the AO is required to take statement on oath of the person to be verified, wherever he finds fit to satisfy him about the genuineness of amount credited in books of account. So, only presence of person on oath does not certificate of itself that the lenders are genuine. There is a provision made available by the Act to AO take statement on oath of the lender to verify the genuineness of the lender and it is inquisitiveness of the AO to reach to the conclusion in the case. But the AO did not use this carefully and took statement in perfunctory manner.

4.7 It is very important fact that PAN database of all the lenders are having assessee's mobile number. It is against human probability in the light of the fact that now a days mobile phone is very common and why a person who is capable of lending the money will use the mobile phone of the assessee in PAN database meaning thereby that pan was obtaining by these persons on the behest of the assessee. The AO should have raised this point during the statement recording and should have confronted this issue. It is also important that in reply dated 02/03/2022, it is submitted that the lenders are close relatives and family members. While in the statement nothing of this sort was asked from lenders before satisfying with the genuineness of loans. Therefore, relation of lenders (except Sh. Akash Gupta) with the assessee is not known from the record.

4.8 Moreover, this fact cannot be kept out of place that these persons were reluctant during original assessment proceedings by dodging in person presence to prove genuineness. They rather preferred to send reply through letter and not to counter any inquisitive queries. The AO did not encounter the lenders about not

appearance during original assessment proceedings. Further, it cannot be relied upon that all the lenders were not available to appear in person during November - December 2016. However, on the later dates they have appeared. This shows that the lenders may be instrument of crediting assesses own money in his bank account through these alleged lenders.

4.9 It has also been submitted by the assessee before Hon'ble ITAT that in other F.Y.s too, these lenders have given money to him. The same has been discussed in para 6 of the order passed by the Hon'ble ITAT. The AO during the set-aside proceedings did not cross examine the assessee and lenders in respect of this. No question was asked by the AO in the statement recorded. This shows that the AO did not follow the direction of the Hon'ble Tribunal in line to assessment proceedings.

4.10 In view of the above, the A.O. has passed the assessment order without making enquiries or verification in this regard also which should have been made by him before passing the assessment order. Therefore, it is beyond doubt that the assessment order is erroneous and prejudicial to the interest of the revenue.

4.11 The reliance is placed on the following judgments for treating the issue of unsecured loan where unsecured lenders were related and their PAN data had same phone numbers and there were cash deposits in their bank accounts before providing loans to the assessee.

1. Suman Gupta Vs CIT (2013-LL-0122-69) (Supreme Court)

where Hon'ble Supreme Court dismissed appeal of the assessee.

Suman Gupta Vs ITO (ITA No.680/12 vide judgment dated 07.08.2012) (Allahabad High Court)

where Hon'ble Allahabad High Court held that where identical amounts were found to have been deposited in accounts of half a

dozen lenders prior to lending, and assessee could only produce one lender for examination, 'addition is to be made as assessee failed to prove genuineness of loans

1. PCIT Vs Bikram Singh [ITA No.55/2017] (Delhi) (Copy Enclosed)

where Hon'ble Delhi High Court held that even if a transaction of loan is made through cheque, it cannot be presumed to be genuine in the absence of any agreement, security and interest payment. Mere submission of PAN Card of creditor does not establish the authenticity of a huge loan transaction particularly when the ITR does not inspire such confidence. Mere submission of ID proof and the fact that the loan transactions were through the banking channel, does not establish the genuineness of transactions. Loan entries are generally masked to pump in black money into banking channels and such practices continue to plague Indian economy.

1. Toby Consultants (P.) Ltd. Vs CIT [2010] 324 ITR 338 (Delhi)

where Hon'ble Delhi High Court held that where assessee-company had shown in books unsecured loans of Rs. 2.68 crores and Rs. 2.45 crores from its two directors and it was explained that money belonged to its own entity and was routed through directors and Tribunal found that directors who advanced loan were admittedly not at all men of means for advancing such huge amount of loan amounting to about Rs. 5 crores and secondly that assessee even for taking such huge amount of loan did not want to pay any interest for which creditors also agreed, Tribunal had rightly, arrived at a finding of fact, on analysis of all relevant material on record, that genuineness of transaction had not been established and assessee had failed to independently prove same application money, amount so received was liable to be taxed under section 68.

1. Sanraj Engineering Pvt. Ltd. Vs CIT (ITA 79/2016) (Delhi) (Copy Enclosed)

where Hon'ble Delhi High Court held that addition made u/s 68 on account of unsecured loans was justified, where initial onus of proving the creditworthiness of the lenders was not discharged by the assessee.

1. Naresh Chandra Jain Vs CIT (ITA No.335 of 2009) (Allahabad) (Copy enclosed)

Where Hon'ble Allahabad High Court held that tribunal was justified in holding that amount of loan received by assessee was unexplained income u/s 68 in as much as identity, genuineness, creditworthiness of the transaction is not proved.

1. Rick Lunsford Trade & Investment Ltd. Vs CIT [2016-TIOL-207-SC-IT] (Supreme Court) (Copy Enclosed)

Where Hon'ble Supreme Court dismissed SLP upholding that it is open to the Revenue Department to make addition on account of alleged share capital u/s 68, where the assessee company has filed to show genuineness of its shareholders.

1. CIT Vs Nipun Builders & Developers (P.) Ltd. (3- taxmann.com 292, 214 Taxman 429, 350 ITR 407, 256 CTR 34)

Where Hon'ble Delhi High Court held that where assessee failed to prove identity and capacity of subscriber companies to pay share application money, amount so received was liable to be taxed under section 68.

1. CIT Vs Empire Builtech (P.) Ltd (366 ITR 110)

where Hon'ble Delhi High Court held that u/s 68 it is not sufficient for assessee to merely disclose address and identities of shareholders; it has to show genuineness of such individuals or entities.

4.12 DECISIONS IN FAVOUR OF REVENUE ON THE ISSUE OF HUMAN PROBABILITY AS ALL THE LENDERS HAVE SHOWN THE SAME MOBILE NOS IN PAN DATA BASE

1-In the case of CIT vs. Durga Prasad More [1971] 82 ITR 540 Hon'ble Supreme Court has held as under: -

"………It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favor then the door will be left wide-open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the rehlity of the recitals made in those documents.

"………Science has not yet invented any instrument to test the reliability of the evidence placed bfore a Court or Tribunal. Therefore, the Courts and Tribunals have to judge the evidence before them by applying the rest of human probabilities. Human minds may differ as to the reliability of a piece of evidence. But, in that sphere, the decision of the final fact-finding authority is made conclusive by law." (P. 545)"

1. *In the case of Sumati Dayal 214 ITR 801 Hon'ble Supreme Court has again given the importance of human probability and held that "The majority opinion after considering surrounding circumstances and applying the test of human probabilities had rightly concluded that the appellant's claim about the amount being her winning from races, was not genuine. It could not be*

said that the explanation offered by the appellant in respect of the said amounts had been rejected unreasonably and that the finding that the said amounts were income of the appellant from other sources was not based on evidence."

2. *Further, in the case of Me Dowell & Co. 154 ITR 148 Hon'ble Supreme Court has held that Colourable devices cannot be a part of tax planning and observed that "So far as the contention that it is open to everyone to so arrange his affairs as to reduce the brunt of taxation to the minimum, was concerned, the tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by restoring to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges. Courts are now concerning themselves not merely with the genuineness of a transaction, but with the intended effect of it for fiscal purposes. No one can now get away with a tax avoidance project with the mere statement that there is nothing illegal about it."*
3. *The Hon'ble Punjab and Haryana High Court in the case of Som Nath Maini, 306 ITR 414 has held as under:-*

"……..That the burden of proving that income is subject to tax is on the Revenue but on the facts, to show that the transaction is genuine, burden is primarily on the assesses. The Assessing Officer is to apply the test of human probabilities for deciding genuineness or otherwise of a particular transaction. Mere leading of evidence that the transaction was genuine, cannot be conclusive. Such evidence is required to be assessed by the Assessing Officer in a reasonable way. Genuineness of the transaction can be rejected even if the assessee leads evidence which is not trust-worthy, even if the Department does not lead any evidence on such an issue".

1. *Further, Hon'ble Delhi Court in the case of Ashok Mahehdru & Sons (HUF) v CIT 173 TAXMANN 178 has held that even though the documentation may be in order, if there is enough material to raise a very strong suspicion that there is something not quite right with nature of transaction, the authority under the act may reject the document and require the assessee to show that the transaction is really one which is above board. Accordingly the explanation submitted by the assessee with regards to genuineness of the transactions is rejected.*
2. *Further, the findings of the Hon'ble ITAT Delhi in the case of Hersh Win Chadha Vs DCIT (I.T.A.Nos.3088 to 3098 & 3107/Del/2005) is also important where Hon'ble ITAT has held that "The admissibility of documents, evidence or material differs greatly in income tax proceedings and criminal proceedings respectively. In criminal proceedings, the charge is to be proved by the State against the accused, establishing it beyond doubt, whereas as per the settled proposition, of law, the income tax liability is ascertained on the basis of the material available on record, the surrounding circumstances, human conduct and preponderance of probabilities."*

4.13 As per Explanation 2 to section 263 of the Act which is reproduced as under:

"[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.]"

4.14 With respect to the fact of due enquiries having been made, allowing of claims without such enquiry, and the assessment order being erroneous and prejudicial to the interest of revenue on this account, following judicial pronouncements may be referred to:

- *The Hon'ble Supreme Court in Rampyari Devi Saraogi v CIT 67 ITR 84 while taking note of the fact that the AO had concluded the assessment in "undue hurry" by passing a short, stereotyped assessment order, without making any inquiries, upheld the revision done by the CIT.*
- *In the case of Deniel Merchants Pvt. Ltd. vs ITO dated 29.11.2017, the Hon'ble Supreme Court upheld the law as laid down by the High Courts in Subhlakshmi Vanijya Pvt. Ltd. Vs. CIT 155 ITD 171 (Kol.), Rajmandir Estates 386 ITR 162 (Cal) etc. and held that the CIT is entitiled to rrevise the assessment order u/s 263 on the ground that the AO did not make any proper inquiry while accepting the explanation of the assessee insofar as receipt of share application money is concerned.*
- *In the case of Malabar Industrial Co. Ltd. Vs CIT [2000] 109 Taxman 66 (SC)/[2000] 243 ITR 83 (SC)/[2000] 159 CTR 1 (SC) 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.*
- *The Hon'ble Delhi High Court in the case of CIT Vs. Shri Braham Dev Gupta in ITA no 907/2017 and 1162/2017 has*

clearly decided that Pr. Commissioner of Income tax can invoke the provision of section 263 of Income Tax Act where AO has not made adequate enquiry and verification. In this matter, SLP of the assessee has also been dismissed by Hon'ble Apex Court.

- *The Hon'ble ITAT Delhi in the case of Ankush Garg v CIT, Rohtak in ITA No 2287 & 2288/Del/2015 dated 21.05.2019, upheld the Pr. CITs action u/s 263 by holding that the order of the AO was cryptic, and was not passed after due examination and verification of certain issues and therefore, there was an error on the part of AO which led to a correct conclusion of the CIT that the order of the AO was not only erroneous but also prejudicial to the interest of Revenue.*
- *In the case of Pooja Gupta in ITA No 4057/Del/ 2018 dated 31.01.2019, the ITAT Delhi has discussed the validity of action under section 263 in respect of penny stock matters. The Tribunal has referred to the detailed SOP issued by the CBDT, CBDT Instruction dt 16.03.2016 on penny stock/LTCG, and other specified parameters in this order, and held that the order u/s 263 was justified since there was complete lack of inquiry with regard to the perspective for which the case was selected for scrutiny, and that the AO had merely relied on the assessee's submissions.*
- *The decision of the ITAT Delhi Bench in the case of Bhushan Steel Ltd., New Delhi vs ACIT dated 30 March, 2015 is relevant to note as it relates to the aspect of lack of inquiry at the end of the AO for valid initiation of proceedings under Section 263 of the Act.*
- *Hon'ble HIGH COURT OF KARNATAKA in the case of CIT vs. Infosys Technologies Ltd. 341 ITR 293 dated 04.01.2012 has held that 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. It is also 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.

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

  On-going 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 gauzed from the fact that the information available with the Assessing Officer has not been utilized during the assessment proceedings which makes the case fit for applying the provisions of explanation 2 (a) of section 263.

- *Further, Hon'ble ITAT Delhi Bench in the case of Shanker Tradex Pvt. Ltd. vs. PCIT, ITA No. 2999/Del/2017 for A.Y. 2007-08 order dated 16.04.2018 has rightly held that the Assessing Officer though reopened the assessment proceedings did not make 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 made by the Assessing Officer. Thus, it is prejudicial to the interest of the Revenue and there is loss of revenue.*
- *Similar view is taken by Hon'ble ITAT Delhi Bench in the case of Surya Financial Services Ltd. vs. PCIT[2018-TIOL-74-ITAT-DEL]order dated 08.01.2018, the relevant part of which is reproduced as under-*

  "6.5 In view of above, there is absolutely no dispute that the AO has not made any enquiry regarding the accommodation entry regarding to the assessee specifically which was found during the course of search and investigation in SK Jain Group

as highlighted by the Pr. CIT. Once adequate or proper enquiry has not been done, then in terms of Explanation 2 inserted in section 263 of the Act by the Finance Act, 2015, w.e.f. 1.6.2015, the assessment order is deemed to be erroneous in so far as it is prejudicial to the interest of Revenue ………"

- *Hon'ble Delhi High Court in the case of Gee Vee Enterprises vs Addl. CIT, 99 ITR 375 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.*
- *Further 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 has taken a similar view by observing that where the Assessing Officer has not properly adjudicated the issue of claim u/s 80IC before allowing the same to the assessee company, the Pr. CIT has rightly invoked Section 263 of the Act and passed the order.*

4.15 Accordingly, the assessment order u/s 143(3)/254 of the Act passed by the AO on 07/07/2020 is set aside with a direction to make the assessment afresh after taking into account the facts mentioned above and after allowing opportunity to the assessee of being heard."

4. The facts of the case are as under:

Date of filing of return - 10.09.2015
Date of Assessment Order u/s 143(3) – 07.12.2016
Order of the ld. CIT(A) – 03.07.2017
Date of ITAT order – 27.05.2019
Date of Assessment u/s 143(3)/254 – 07.07.2020
Date of order u/s 263 – 19.03.2022
Date of hearing before ITAT – 20.07.2022

5. We have gone through the orders of all the authorities.

6. The assessee filed return of income declaring total income at Rs.6,24,260/- which has been assessed at Rs.1,72,85,260/-. The matter travelled upto the ITAT which set aside the matter to the file of the Assessing Officer for examination of the loans received from the parties who are the relatives and family members of the assessee. During the assessment proceedings, the Assessing Officer has examined the details/additional evidences filed before the Tribunal and also recorded the statements u/s 131 of the loan parties, satisfied himself and held that the loans received were genuine and the returned income was accepted.

7. The ld. PCIT after issuing show cause notice to the assessee held that the Assessment Order passed by the JCIT, Meerut was erroneous and prejudicial to the interest of the revenue and set aside the matter back to the Assessing Officer in the order passed u/s 263.

8. Aggrieved, the assessee filed appeal before us.

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

10. On going through the entire factum, we find that the ld. PCIT has resorted to the provisions of Section 263 on the following grounds:

- the most glaring fact & finding which is conspicuous is that all the said 19 persons have deposited cash in their bank accounts and then provided alleged loan to assessee individual on the same date or in very next date.

- This sort of trend in all the involved cases is not at all explicable by any stretch of imagination. In fact, this pervasive trend shows that an easy modus-operandi has been adopted by assessee to introduce his black money in the bank accounts of his family members & close relatives/ friends and then to take said money from the same immediately through cheque.
- Even while recording alleged statements on oaths during set-aside proceedings, questions were asked in a perfunctory manner & without questioning further, the replies of the persons were accepted.
- All the persons have stated in an identical manner that the cash deposited was their savings but have also not given any plausible reply whatsoever as to justify why the said so called lifetime savings were not kept in bank account earlier despite having bank accounts in their names.
- All these persons have alleged to be stated in like manner that cash was kept at home for the help of family members. The similarity as to replies in words & contents of all six persons raises serious doubts about the recording of the said six statements in normal course.
- It has been noticed that all these persons have declared meager income in their ITRs for AY 2014-15 & in earlier years. In fact, to some of them PAN was allotted rather get allotted only just before or after the act of providing said alleged loans.
- Sh. Akash Gupta S/o Sh. Vinod Kumar Gupta was barely 18 years when he extended loan to his father. He could not have received sufficient pocket money or otherwise monetary gifts to accumulate sum of as much as Rs.13 lacs to lend his father.

- With regard to the statement recorded on 17.03.2020 by the AO u/s 131, the ld. PCIT held that no probing questions has been asked in the six statements and in fact questions have been asked in a pre-determined manner.
- The ld. PCIT held that the AO passed the Assessment Order without making enquiries which should have been made by him before passing the Assessment Order.

11. The ld. PCIT has examined the details of 19 lenders and with specific reference to 10 lenders before setting aside the order of the Assessing Officer. We have gone through the details of all the 19 lenders to examine whether the order of the Assessing Officer is erroneous so far it is prejudicial to the interest of the revenue. In the earlier proceedings, all the creditors have duly compiled with the notices issued by the Assessing Officer u/s 133(6) and during the set aside proceedings, the Assessing Officer has further recorded statement u/s 131 to examine the veracity of the loans given and accepted the loans as genuine. The lender consists of Akash Gupta, Amita Garg, Amit Bansal, Ankit Garg, Itika Gupta, Jagwati Devi, Jayawati, Kapil Garg, Kapil Garg HUF, Monika Garg, Pravesh Kumar Garg HUF, Ritu Garg, Sanjay Kumar Garg, Sanjay Kumar Garg HUF, Santosh Devi, Subhash Chand Garg HUF, Sudhir Bansal, Swaran Lata and Swati Bansalwho have filed all the details to prove the loans .

12. Akash Gupta is the S/o of Sh. Vinod Kumar Gupta who has lent an amount of Rs.13 lacs to his father. The ld. PCIT held that he is a person of 18 years old and could not have given loan to his father. We have gone through the return of income showing the returned income of Rs.4,10,510/-. It’s the father who managed the affairs of the son. The capital account has

sufficient funds. In case the amount of the loan given by and as confirmed is proved to be un accounted, then the amount has to be taxed in the hands of Mr.Akash Gupta who has confirmed that he is the owner of the money. We find Amita Garg has returned income of Rs.2,17,500/-. Amit Bansal has filed returned income of Rs.7,70,500/- and sold flat for Rs.13,50,000/- during the year. His capital account of Rs.29,83,075/- and earning a salary of Rs.10,01,444/-. Sh. Ankit Garg had returned income of Rs.4,45,000/- whereas Itika Gupta who lend loan of Rs.4,00,000/- had a returned of income 2,65,077/-. Jagwanti Devi aged about 80 years had returned income of Rs.4,85,500/. Kapil Garg had returned income 2,13,179/-, 2,81,226/-. Monika Garg has shown returned income of Rs.2,52,500/-. Pravesh Kumar Garg HUF had returned income of Rs.1,99,500/- and capital account of Rs.25,10,750/-. Ritu Garg had returned income of Rs.2,15,500/- and capital account of Rs.25,18,450/-. Sanjay Kumar Garg had opening capital account of Rs.19,86,892/-. Sanjay Kumar Garg HUF had returned income of Rs.1,95,500/- and capital opening balance of Rs.23,10,630/. We find that all the other lenders have duly filed their income tax returns and had opening capital balance of Rs.15 lacs to Rs.20 lacs. We have examined the capital accounts and returns of all the lenders and find that there has been sufficient opening balance in the capital account of all the lenders. We have also examined the affidavits and the replies given by the lender parties which are on record. The identity is not in question, the genuineness was not suspected and the creditworthiness has been proved by way of their capital accounts. Thus, all the three basic ingredients have been proved. The Assessing Officer has further gone step ahead and also recorded statement u/s 131. The query raised in the statement pertains to their Income Tax

details and the fact of lending the loan to the assessee. The AO has also inquired the source of the cash deposited in the bank before issuing the loan to the assessee. The Assessing Officer has also enquired into the fact that the loan has indeed been extended consciously by these lenders. The Tribunal after going through the details filed on earlier occasion remanded the entire issue back to the file of the AO who has also recorded the statement of sample of 6 persons u/s 131 and completed the assessment accepting the returned income.

13. The ld. PCIT's contention that Jagwati Devi (88 years old) and Santosh Devi (68 years)could not have attended the office for recording the statement cannot be accepted and cannot be reasoned primarily or secondarily to support revisionary proceedings. At the most they may call for internal departmental proceedings if found correct after due inquiry. The posting of replies from Meerut RMS office and the similarity of letters cannot overtake the tangible material of the returned income, capital account and statement of the lenders. It has not been proved that the statements have not been recorded by the AO and it is a make-believe exercise. The similarity in the handwriting of the 6 statements and the allegation that the statements of all the peoples have not been recorded by the incumbent Assessing Officer cannot give raise to revisionary proceedings. Statements are generally written in the handwriting of the person giving the statement or the officer recording the statement. It is more common that the Inspector or other officials of the assessment unit inscribe the statement in the presence of the officer recording the statement.

14. It is a fact on record that there have been cash deposits in the bank account and the bank account holders confirm the

loan given to the assessee, the loan parties clearly identifiable would be liable to tax u/s 68 for the unexplained cash deposits in their bank accounts. However, the taxability cannot be fastened to the assessee in the facts of the instant case. The lenders being an identifiable entity are liable to tax with regard to the deposits in their bank accounts. There is no proof that the lender parties have been used as conduit to channelize the assessee's unaccounted money. With regard to the uniformity of the statement as alleged by the ld. PCIT, the lenders have answered to the questions posed by the Assessing Officer. Questions pertaining to the loan given and the financial affairs of the lender parties need not be different to each lender. Since, all the lenders have given monies to the assessee, the AO is naturally bound to ask the more or less similar questions to each loan party. The purpose of recording of the statement of the parties is to examine in detail the factum of extending the loan and the ability of the loan parties to indulge in such an act. In the instant case, all the loan parties have confirmed about the fact of giving loan. With regard to having the same mobile number at the time of allotment of PAN, cannot be a conclusive prove that the assessee has utilized the names and bank accounts of the lender for his benefit. As we find that the lenders are the family members like son, mother, nephew, daughter-in-law, brother etc. Applying for the PAN for the family members with the mobile number of the assessee cannot be a reason supportive of inviting proceedings u/s 263. The core allegation of the ld. PCIT that the AO did not pose probing questions u/s 131 cannot be termed as "no enquiry" or "insufficient enquiry". The AO has posed the questions which he thought would be sufficient to examine the genuineness of the loan transactions. The ld. PCIT held that the AO had 14 sets of similar questions irrespective of age, gender, nature of

business activity, expenditure pattern. We hold that the observation of the ld. PCIT wouldn't make any tangible difference in proving the genuineness or non-genuineness of the loan given. The additional evidences filed before the Tribunal have been filed before the AO and the AO has duly taken cognizance of the same as mentioned at page 4 of the Assessment Order. The ld. PCIT's observation that the AO is required to take statement on oath of the person to be verified, wherever he finds fit to satisfy him about the genuineness of amount credited in books of account and only presence of person on oath does not certificate to itself that the lenders are genuine. The ld. PCIT also held that there is a provision made available by the Act to AO take statement on oath of the lender to verify the genuineness of the transactions. In the instant case, the AO has examined the parties on oath u/s 131, satisfied himself and passed Assessment Order. The ld. PCIT's observation that the AO should have raised the issue of having common mobile number while recording the statement, cannot be directive or conclusive proof that the entire transactions are bogus. The ld. PCIT held that the AO has passed Assessment Order without making enquiries or verifications which should have been made before passing of the Assessment Order which we find not acceptable as AO has duly recorded the statement of the loan parties and satisfied himself. The basic criteria of enquiry pertaining to loan transaction viz., identity, genuineness and creditworthiness has been examined to the satisfaction to the AO. We also find that the Hon'ble High Court in the case of PCIT Vs. Delhi Airport Metro Express Pvt. Ltd. in ITA NO. 705/2017 held that it is incumbent upon the ld. PCIT to undertake minimal enquiry to prove that the order of the AO is erroneous and prejudicial to the interest of the revenue. In the instant case, the assessee was specifically queried regarding

the nature and character of the loan and the loan parties and the loan parties have been examined independently. Hence, it cannot be said that this is a case of no enquiry or inadequate enquiry. Even the order u/s 263 did not point to anyone of the 19 loan parties as un-genuine. The order u/s 263 mainly revolves around not recording of statement by the AO in such a way as perceived by the ld. PCIT.to prove that the loans were bogus and were not genuine. We have gone through the case laws relied upon by the ld. PCIT and find that the facts are not applicable to the instant case. The depth of enquiry as determined by the ld. PCIT cannot be a reason to prove that the Assessing Officer has erred in duties and pass an order which is erroneous and prejudicial to the interest of the revenue. The proposition that the Assessing Officer has made inadequate enquiry, that would not *ipso facto* give occasion to the Commissioner to pass order u/s 263 merely because the ld. PCIT had different higher standard of examination of the loan parties. The instant case is not the one where in the Assessing Officer passed an order without making the inquiries or verifications which should have been done. It is only in case of lack of enquiry, no enquiry, irrelevant enquiry, vague enquiry, improper enquiry, inappropriate enquiry, inconclusive and hazy enquiry , that such course of action would be opened to the Pr. Commissioner to invoke the powers of revision vested by the Income Tax Act, 1961.Ergo,on going through the entire facts and the judicial pronouncements on this section, we hold that the order of the Assessing Officer cannot be considered as erroneous in so far as prejudicial to the interests of the revenue.

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

Order Pronounced in the Open Court on 30/08/2022.

Sd/-

(Anubhav Sharma)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 30/08/2022
Subodh Kumar, Sr. PS
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

		Date	Initial	
1.	Draft punched on computer	23.08.2022		PS
2.	Draft placed before author	24.08.2022		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Date of uploading			