

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

[CONDUCTED THROUGH VIRTUAL COURT ]

**BEFORE: SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER  
And SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

<b>ITA No. 157/Ind/2020 Assessment Year 2015-16</b>
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Shri Hari Kishan Goyal, Indore PAN: ADVPG8753E (Appellant)	Vs	Pr. CIT-2, Indore (Respondent)
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**Assessee by: Shri Ashish Goyal, A.R.  
Revenue by: Shri P.K. Mishra, CIT-D.R.**

Date of hearing : 08-12-2022  
Date of pronouncement : 30-01-2023

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This assessee's appeal for A.Y. 2015-16, arises from order of the Principal Commissioner of Income Tax-2, Indore dated 30-08-2019, in proceedings under section 263 of the Income Tax Act, 1961; in short "the Act".

2. The assessee has taken the following grounds of appeal:-

*“On the facts and the circumstances of the case:-*

*1. The ld Pr.CIT-2, Indore was not justified in setting aside the assessment order u/s 143(3), alleging it to be erroneous and prejudicial to interest of revenue without considering the relevant records and facts and circumstances of the case.*

*2. That the ld Pr.CIT-2, Indore erred in directing the ld AO to compute the fresh assessment order on the basis of the fresh assessment and evidences, which is totally unwarranted and unjustified.*

*3. That the ld Pr.CIT-2, Indore was not justified in holding that "unsecured loans/advances received from various parties have not been used for giving loan/advances to the companies from whom interest is received, thus claim of interest expenses of Rs. 68,87,656/- should have been disallowed and added back to assessee's income, this factor was not examined by ld AO and no enquiry/investigation has been made" without considering the submissions, documentary evidences and facts and nature of appellant's business.*

*The appellant carves leave to add, amend or modify any of the grounds of appeal.”*

3. At the outset, we observed that the appeal is time barred by 189 days. In this respect, the counsel for the assessee filed an application for condonation of delay and gave a table stating that the appeal could not be filed in time since the assessee was suffering from multiple diseases. The tabular account given by the assessee describing his diseases which caused the delay is reproduced for reference.

Date	Particulars	Documents
25.10.2019	Diagnosed with dilated cardiomyopathy - heart disease. Prescribed rest for 1 month	Medical Prescription from Cardiologist Dr. Deepesh Kothari
23.11.2019	Follow up check up. Bed rest extended for two more months, home monitoring	Follow up prescription from Cardiologist Dr. Deepesh Kothari
23.01.2020	Pain in back and diagnosed with tachycardia disease Further rest for 1 month prescribed.	Medical Prescription from Cardiologist Dr. Deepesh Kothari
20.02.2020	Suffered with Back pain and diagnosed with Radiculopathy. The Orthopedic specialist adviced 1 month rest	Prescription and Medical Certificate from Dr. Rajesh Dashore

Further, the assessee also filed an affidavit and copies of medical prescriptions issued by the concerned doctors certifying that the treatment of the assessee was going on. Looking into the facts and circumstances causing the delay in filing the appeal, in the interest of justice, we hereby condone the delay in filing of appeal by the assessee since the same was caused due

to genuine hardship faced by the assessee. In the result, the delay in filing the appeal by the assessee is being condoned.

4. The brief facts of the case are that the Pr. CIT initiated proceedings u/s. 263 of the Act on the ground that the assessee has claimed interest expenses of Rs. 69,47,919/- out of interest income received from various companies. The deduction of interest is claimed on payment of interest to various individuals from whom the unsecured loan of Rs. 3,54,81,174/- was received. However, Pr. CIT observed that on perusal of the asset side of balance sheet, the companies to whom the loans have been claimed to have been given (i.e. companies from whom interest income has been received) are not appearing the balance sheet. Accordingly, interest bearing loans have not been utilized for giving loans to companies from whom interest is received. Accordingly, interest bearing loans have not been utilized to earn interest income and the Assessing Officer did not enquire into this aspect as to how the claim of interest expenses of Rs. 68,87,656/- is allowable. The Assessing Officer did not verify the nexus between the loans received and loans given. Therefore, Pr. CIT held that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue.

5. Before us, the counsel for the assessee submitted that the case of the assessee was taken up for "limited scrutiny" and one of the reasons for opening of assessment was to scrutinize "deduction from income from other sources". The counsel for the assessee drew our attention to notice dated 30-07-2016 issued by the Id. Assessing Officer in this regard. The counsel for the assessee drew our attention to response of the assessee at page 9-10 of

the paper book dated 10-08-2016 wherein the assessee gave details of interest expenses of Rs. 68,87,656/-. Thereafter, the counsel for the assessee drew our attention to notice issued by the Assessing Officer dated 16-08-2016 wherein the Assessing Officer again asked the assessee to justify reasons for selection of case of scrutiny as per the CASS with specific corroborative evidences. The assessee filed response to the same which is attached at page 14 of the paper book. Further, it has been brought to our notice that the Assessing Officer issued another notice dated 09-01-2017 in this regard and in response to the same assessee filed its response on 16-01-2017. Further, our attention was brought to notice dated 02-02-2017 issued by the Assessing Officer in which he made a specific query regarding the details of parties from whom interest income of Rs. 69,47,919/- along with the copy of account has been received and also to file complete details of parties to whom interest of Rs. 68,87,656/- has been paid. In response to the same, the assessee filed reply dated "nil" before the A.O. (annexed at page 22-23 of the paper book filed by the assessee) giving complete details of interest paid, interest received during the year under consideration along with rate of interest. The counsel for the assessee drew our attention to notice dated 17-04-2017 issued by the Id. Assessing Officer in which the assessee was asked to calculation of interest charged @ 12% in the case of M/s. Bluewell Promoters Pvt. Ltd. & Elan Pro-build Pvt. Ltd. The assessee filed response to the same vide letter dated "Nil" before the A.O. giving details called by the Assessing Officer (reproduced at pages 30-31 of the paper book filed before us). The counsel for the assessee submitted that the loans were taken in earlier years i.e. assessment year 2010-11. Further, the counsel for the assessee submitted that in the assessment for assessment year

2013-14, the details of the loans and genuineness of the transactions/parties have been verified by the Assessing Officer during the course of assessment proceedings. The counsel for the assessee then drew our attention to bank passbook of the assessee during the period from 1<sup>st</sup> April, 2010 to 31<sup>st</sup> March, 2011 and submitted that loans were taken from four to five parties and was given to M/s. Unique Durobuild Pvt. Ltd. and M/s. Bluewell Promoters Pvt. Ltd. and hence a perusal of the bank passbook clearly establish that there is a direct nexus between the interest bearing loans taken and advancing of such loans for the purpose of earning interest. The counsel for the assessee submitted that interest income earned from such loans advanced by the assessee have been offered to tax for all the years since the time the amounts were advanced and the case of the assessee was also subject to detailed scrutiny for assessment year 2013-14 where all these details of advance given by the assessee were enquired into by the Assessing Officer. Accordingly, the counsel for the assessee submitted that there is direct nexus between the interest bearing loans and the earning of interest income by the assessee. Further, the Assessing Officer had enquired into this aspect in detail during the course of assessment proceedings and the Ld. Pr. CIT has not been able to point any specific mistake in the assessment order.

6. In response to the Id. Departmental Representative drew our attention to para 3 of the 263 order and submitted that the assessment order is non-speaking order. Further, the Assessing Officer did not verify the fact of giving loans by carrying out the necessary verification from the parties to

whom loans have been provided. The Id. Departmental Representative placed reliance on the observations made by the PCIT in the 263 order.

7. We have heard the rival contentions and perused the material on record. In the instant facts, we observe that Ld. Pr. CIT has erred in facts while observing that the Assessing Officer did not make the necessary inquiry into the nexus between the interest bearing loans taken by the assessee and advancement of such loan to third parties for the purpose of earning interest as highlighted in the preceding paragraphs. The Id. Assessing Officer issued various notices dated 30-07-2016, 16-08-2016, 09-01-2017, 02-02-2017 and 17-04-2017 in which Id. Assessing Officer enquired on the issue of interest bearing fund for the purpose of earning interest income. Therefore, clearly, the Id. Assessing Officer had enquired into this aspect during the course of assessment proceedings.

7.1 The next issue for consideration is on the scope of enquiry under Explanation 2(a) to section 263, an inquiry made by the Assessing Officer, considered inadequate by the Commissioner of Income Tax, cannot make the order of the Assessing Officer erroneous. In our view, the order can be erroneous if the Assessing Officer fails to apply the law correctly on the facts of the case. As far as adequacy of inquiry is considered, there is no law which provides the extent of inquiries to be made by the Assessing Officer. It is Assessing Officer's prerogative to make inquiry to the extent he feels proper. The Commissioner of Income Tax by invoking revisionary powers under section 263 of the Act cannot impose his own understanding of the

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

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

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

*From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that*

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

***15. Thus, even the Commissioner conceded the position that the Assessing Officer made the inquiries, elicited replies and thereafter passed the assessment order. The grievance of the Commissioner was that the Assessing Officer should have made further inquiries rather than accepting the explanation. Therefore, it cannot be said that it is a case of 'lack of inquiry'.***

7.3 In **Gabriel India Ltd. [1993] 203 ITR 108 (Bom)**, law on this aspect was discussed in the following manner (page 113)

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

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

*“20. Further clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-à-vis its reasonableness in the facts and circumstances*

*of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquiries or verification that would have been carried out by a prudent officer. Hence, in our view, the question as to whether the amendment brought in by way of Explanation 2(a) shall have retrospective or prospective application shall not be relevant.*

7.5 Before deciding the issue, it would be useful to refer to some Supreme Court decisions on this subject which would throw useful light on the scope of enquiry under Explanation (a) to section 263 of the Act.

7.6 Recently the Supreme Court of India in the case of **Principal Commissioner of Income-tax, Surat-2 v. Shreeji Prints (P.) Ltd.[2021] 130 taxmann.com 294** (SC) dismissed SLP filed by the assessee against order passed by High Court holding that where assessee-company had received unsecured loans from two different companies and Assessing Officer had made inquiries in detail and accepted genuineness of same, such view of Assessing Officer being a plausible view could not be considered erroneous or prejudicial to interest of revenue. The facts of this case were that respondent assessee has filed its return of income showing total income of Rs. 62,55,900/- which was assessed under section 143(3) of the Act, 1961 by an assessment order dated 14th March 2016. The respondent company

received unsecured loans from M/s. Georgett Tradecom Pvt Ltd and M/s. Purba Agro Food Pvt Ltd amounting to Rs. 2.49 Crore and the Assessing Officer allowed these unsecured loans. The Principal Commissioner of Income-tax invoked section 263 of the Act, 1961 for revising the assessed income of the respondent assessee. It was noticed by the PCIT that the unsecured loans obtained by the respondent assessee are shown as investment in the name of the assessee in the share application as well as in the balance sheet of the respective companies. The PCIT passed an order under section 263 of the Act directing the Assessing Officer to pass fresh assessment order under section 143(3) of the Act, 1961 on the aspect of unsecured loans shown by the respondent assessee. The Hon'ble Supreme Court made the following observation while deciding in favour of the assessee:

*“Thus, the Tribunal has considered in detail the aspect of revisional power to be exercised by the PCIT in the facts of the case and has given a finding of facts that the Assessing Officer has made inquiries in detail and after applying mind, accepted the genuineness of loans received by the respondent assessee from the aforesaid two companies and such view of the Assessing Officer is a plausible view, and therefore, the same cannot be said to be erroneous or prejudicial to the interest of the Revenue.”*

7.7 The Supreme Court in another recent case of **Principal Commissioner of Income-tax 2 v. Shree Gayatri Associates [2019] 106 taxmann.com 31 (SC)**, held that where Pr. CIT passed a revisional order making addition to assessee's income under section 69A in respect of on-money receipts, however, said order was set aside by Tribunal holding that AO had made detailed enquiries in respect of on-money receipts and said view was also confirmed by High Court, SLP filed against decision of

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

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

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

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

7.9 The Supreme Court in the case of **Principal Commissioner of Income-tax- -8 Mumbai v. Sumatichand Tolamal Gouti [2019] 111 [taxmann.com](http://taxmann.com) 287 (SC)** held that where High Court upheld Tribunal's order holding that AO had made detailed enquiries while allowing assessee's claim for deduction of business expenditure and, thus, revisional order passed by Commissioner was not sustainable, SLP filed against High Court's order was liable to be dismissed. The facts of this case were that in course of assessment, Assessing Officer allowed assessee's claim for deduction of certain expenditure on purchase of CDs on Jain Religion by expending an amount of Rs. 10.4 crores, after due examination. The Commissioner passed revisional order holding that Assessing Officer had not carried out any enquiries as to nature of expenditure being capital or not. The Tribunal, however, allowed assessee's appeal holding that Assessing Officer had carried out detailed enquiries and taken a view which was a plausible view. Accordingly, Tribunal set aside revisional order passed by Commissioner. The High Court upheld order passed by Tribunal. The Supreme Court on consideration of above facts held that SLP filed against High Court's order

was to liable to be dismissed. The Supreme Court made the following observations, while passing the order:

*“It is by now well settled that, the Commissioner can exercise revisional powers under Section 263 of the Act only when it is found that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue. In the present case, the Tribunal noted the observations of the Assessing Officer in the order of remand to the effect that Jain munis do not advocate spread of religion through use of computers, source of electronic media is usually shunned, very small section of the community uses computer technology for religious purposes as plenty of printed literature is available in the market. All these factors led to the market value of the CDs declining dramatically. It was on account of these reasons, that the assessee had incurred substantial loss arising out of reduction in the value of stock lying at the end of the year. The Tribunal, therefore noted that the Assessing Officer had carried out detailed enquiries and taken a plausible view.”*

8 The third issue for consideration is that whether it cannot be stated that the view taken by the Assessing Officer is incorrect view in law and the assessee has not been able to establish the nexus between interest bearing loans and advancement of such loans to earn interest income. We observe that the aforesaid interest bearing loans taken by the assessee in financial year 2010-11 and on perusal of the passbook produced before us the assessee has also established that the interest bearing loans were advanced to third parties through banking channels itself for the purpose of earning interest. Further, this nexus was also explained during the 263 proceedings

by way of furnishing detailed tabular chart on this aspect. Further, we observe that the genuineness of the transaction and the parties was also examined by the Id. Assessing Officer during the course of assessment proceedings for assessment year 2013-14. Accordingly, in our considered view, the assessee has been able to establish nexus of interest bearing loans and advancement of such loans for the purpose of earning interest income.

8.1 Now on the issue that the Ld. AO passed a cryptic order and did not discuss in detail regarding assessee's submissions on various queries raised vide the various notices, in our view it is a well settled position of law that if from the assessment records, it is evident that the Ld. AO has made due enquiries in response to which assessee has filed its submissions, then even if the assessment order does not discuss all aspects in detail with regards to claim of the assessee, it cannot be held that the order is erroneous and prejudicial to the interests of the Revenue. The above proposition has been upheld in the case of **CIT v. Reliance Communication** 69 [taxmann.com](http://taxmann.com) 109 (Bombay), **Smt. Anupama Bharat Gupta v. ITO in ITA 1685/Ahd/ 2018**, **Goyal Private Family Specific Trust [1988] 171 ITR 698**, **CIT v. Mahendra Kumar Bansal [2008] 297 ITR 99 (All.) (para 10) etc.**

8.2 In view of the above observations, we are of the considered view that Id. Pr. CIT has erred in facts and in law in holding that the assessment order is erroneous and prejudicial to the interest of the Revenue. In the result, the grounds of appeal of the assessee are allowed.

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

Order pronounced as per Rule 34 of I.T.A.T Rules, 1963 on 30/01/2023
Order pronounced in the open court on ...../...../2023

**Sd/-**  
**(B.M. BIYANI)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 30 /01/2023**

**Sd/-**  
**(SIDHHARTHA NAUTIYAL)**  
**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,

Sr. Private Secretary,  
Income Tax Appellate Tribunal,  
Indore

Strengthened preparation & delivery of orders in the ITAT	
1) Date of dictation	25/01/2023
2) Date on which the typed draft is placed before the Dictating Member & Other Member	27/01/2023
3) Date on which the approved draft comes to the Sr. P.S./P.S.	/01/2023
4) Date on which the fair order is placed before the Dictating Member for pronouncement	/01/2023
5) Date on which the fair order comes back to the Sr. P.S./P.S.	/01/2023
6) Date on which the file goes to the Bench Clerk	/01/2023
7) Date on which the file goes the Head Clerk	
8) Date on which the file goes to the Assistant Registrar for signature on the order	
9) Date of Dispatch of the order	

a.k