

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

**I.T.A. No. 440/Kol/2023**  
**Assessment Year: 2018-19**

Jai Salasar Balaji Industries (P) Ltd. 5, Bentinck Street Kolkata - 700001 <b>[PAN : AAACJ6970D]</b>	Vs	ACIT, Central Circle - 4(1), Kolkata
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri A.K. Tulsiyan, FCA
Revenue by :	Shri Subhendu Datta, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 20/06/2023  
घोषणा की तारीख /Date of Pronouncement: 25/08/2023

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The present appeal is directed at the instance of the assessee against the order of the Learned Principal Commissioner of Income Tax (Central), Kolkata -2, (hereinafter the "ld. Pr. CIT") dt. 28/03/2023, passed u/s 263 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2018-19.

2. Brief facts of the case are that the assessee is a private limited company engaged in the business of manufacturing and trading of steel. E-return filed on 27/10/2018 declaring total income at NIL for the Assessment Year 2018-19. Case selected for through CASS followed by issuance of notice u/s 143(2) and 142(1) of the Act. Details were called for in respect of the reason of scrutiny selection. The assessee complied by filing all the relevant details and the same were duly examined by the Assessing Officer and he came to the conclusion that the assessee was entitled to the claim of carry forward of loss to

future years. Income assessed at 'Nil' in assessment order framed u/s 143(3) of the Act dt. 13/03/2021.

2.1. Subsequently, Id. Pr. CIT called for the assessment records and observed that certain issues have not been examined by Id. AO and issued a show cause notice u/s 263 of the Act, dt. 31/01/2023, which is placed at page 73 of the paperbook. The issue raised in the show-cause notice u/s 263 of the Act, reads as follows:-

*"2. It was observed from the assessment records particularly from the Note no. - 5 of the Balance Sheet as at 31st March, 2018 that the assessee company had outstanding unsecured loan to the tune of Rs. 1,15,94,58,180/- taken from body corporate and repayable on demand. On the other hand, it was observed from the Note No. 12 of the Balance Sheet as at 31st March, 2018 that the assessee company had given loans to the related parties amounting to Rs. 54,50,36,102/- and to others to the tune of Rs. 13,35,20,000/-, in aggregate to the tune of Rs. 67,85,56,102/-. The assessee company had advanced a sum of Rs. 53,12,96,102/- as interest free loan to related parties out of total loan of Rs. 54,50,36,102/- advanced to related parties.*

*Further, it was noticed from the "Details of Loan given to related party" as submitted by the assessee company itself that it had charged interest of Rs. 12,36,600/- on the loan amount of Rs. 1,37,40,000/- out of total unsecured loan of Rs. 54,50,36,102/- given to the related parties. **Thus, it was evident that no interest had been charged by the assessee company on the remaining unsecured loan of Rs. 53,12,96,102/- [Rs. 54,50,36,102/- Rs. 1,37,40,000/-] pertaining to the loan extended to the related parties/sister concerns.***

*The records also revealed that the assessee company had debited a sum of Rs. 12,38,36,835/- to its Profit & Loss Account for the year ended March 31, 2018 as interest expenses on the unsecured loan taken from the related party - Jai Balaji Jyoti Steels Ltd. (JBJSL) while the assessee had not charged any interest for this assessment year on unsecured loan of Rs. 53,12,96,102/- given to its related parties/sister concerns. As the assessee company had neither charged any interest on the instant interest free loan nor disclosed any such interest in its return of income filed by the department, the proportionate interest of Rs. 6,90,68,493/- @ 13% of Rs. 53,12,96,102/- [Considered the interest rate @13% keeping in view of rate of interest paid by the assessee on unsecured loan taken from related party i.e 12,38,36,835 x*

*100/94,88,61,050 = 13% approx] should have been disallowed by the A.O at the time of passing the order u/s 143(3) of the Act dated 13.03.2021.*

*In light of the above facts, It is apparent that there is excess claim of expenses to the tune of Rs. 6,90,68,493/- and thus resulting in undercharge of tax."*

3. In reply to the said showcause notice, the assessee stated that the ld. AO has examined the details about the loans taken and given during the year, which were called for by the AO in the assessment proceedings and complete details of loans given to the related parties were provided. The ld. AO after examining the details properly and making full examination of the facts took a plausible view that the interest charged on loan is allowable. It was also submitted that requisite details and submissions were called for by the AO and, therefore, it is not a case of lack of enquiry or inadequate enquiry. Before the ld. Pr. CIT it was submitted that the assessee company had mixed funds both interest bearing as well as interest free funds and the loan given to the related parties are less than the interest free fund available with the assessee company. However, the ld. Pr. CIT was not satisfied with the submission of the assessee. The ld. Pr. CIT observed that the concern of the AO behind calling for the details given to the related parties was only to the issue of non-deduction of TDS by the assessee on some expenses and brought the same to tax as per the provisions of Income Tax Act. The ld. Pr. CIT further observed that the ld. AO failed to examine/verify the above mentioned issue referred in the showcause notice referred under section 263 of the Act and, therefore, the order of the AO is erroneous insofar as prejudicial to the interest of the revenue. Directions were given to the AO to confine his enquiries and

verifications only to the issue mentioned in para 2 of the impugned order.

4. Aggrieved the assessee is now in appeal before this Tribunal challenging the assumption of jurisdiction u/s 263 of the Act by the Id. Pr. CIT as well as on merits contending that the Id. AO has examined the issue in detail and taken a plausible view and, therefore, the order of the Id. AO is neither erroneous nor prejudicial to the interest of the revenue.

5. The Id. Counsel for the assessee referred to the replies filed before the AO in response to notice under section 142(1) of the Act, statement of year -wise availability of interest free funds for AY 2018-19 and also statement of loan given to the related parties. Reference was also made to the assessment order under section 143(3) of the Act of the immediately preceding assessment year i.e. AY 2017-18 framed on 20/12/2019 placed at pages 76-82 of the paper book where also the assessee's claim of interest expenditure was allowed. The Id. Counsel for the assessee relied on the following judgements:-

- *PCIT vs. Shreeji Prints (P.) Ltd.* (2021) 130 taxmann.com 294
- *PCIT vs. Well Wisher Constructions P. Ltd.* (2019) 106 taxmann.com 260
- *ITO vs. Arambagh Co-operative Agriculture and Rural Bank Development Ltd.* [2022] 145 taxmann.com 107
- *Hill Queen Investment (P.) Ltd. vs. PCIT* [2021] 127 taxmann.com 682
- *PCIT vs. S N Tradelinck (P.) Ltd.* [2022] 145 taxmann.com 73
- *CIT vs. Meerut Roller Flour Mills (P.) Ltd.* [2019] 110 taxmann.com 170
- *CIT vs. Ansal Housing & Constructions Ltd.* [2014] 45 taxmann.com 223
- *DCIT vs. Texmaco Ltd.* [2017] 83 taxman.com 5
- *CIT vs. Beekons Industries Ltd.* [2023] 149 taxmann.com 383
- *PCIT vs. Basti Sugar Mills Co. Ltd.* [2018] 98 taxmann.com 401

6. On the other hand, the Id. D/R vehemently argued heavily relying on the detail finding of the Id. Pr. CIT stating that the assessee has claimed huge expenditure of interest and has applied the interest bearing funds for giving loans to related parties without charging any interest. Further he stated that had the AO carried out necessary enquiry, then the said claim of the assessee would not have been allowed.

7. We have heard rival contentions and perused the records placed before us and carefully gone through the decisions referred to by Id. Counsel for the assessee. The assessee is in appeal assailing the order of Id. Pr. CIT for wrongly assuming jurisdiction u/s 263 of the Act and further, erred in holding the assessment order dated 13/03/2021 u/s 143(3) of the Act as erroneous and prejudicial to the interests of the Revenue. The only issue referred to in the impugned order is regarding the allowability of interest expenditure claimed on the unsecured loans. The Id. Pr. CIT has observed that the assessee has taken huge unsecured loans and has claimed interest paid thereon as expenditure but has not applied those funds for the purpose of business but has given free loans to its related parties and since no interest has been charged by the assessee company on the major portion of the loans given to its related parties, the proportionate amount of interest expenditure deserves to be disallowed.

8. Before proceeding to examine the issues stated above, we find that the provision of Section 263 of the Act has direct bearing on the

issue raised before us, therefore, it is pertinent to take note of this section which reads as under:

*"263(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.*

*Explanation- For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,-*

*(a) an order passed on or before or after the 1<sup>st</sup> day of June, 1988 by the Assessing Officer shall include-*

*(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;*

*(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorized by the Board in this behalf under section 120;*

*(b) record shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner;*

*(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1<sup>st</sup> day of June, 1988, the powers of the Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.*

*(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.*

*(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.*

*Explanation- In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded."*

9. On a bare perusal of the sub section-1 would reveal that powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned Commissioner was not required the assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show cause notice pointing out the reasons for the formation of his belief that action u/s 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the 4<sup>th</sup> compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order. He may set aside the order and direct the Assessing Officer to pass a fresh order. At this stage, before considering the multi-fold contentions of the Id. Representatives, we deem it pertinent to take note of the fundamental tests propounded in

various judgments relevant for judging the action of the Id. Pr. CIT taken u/s 263.

10. Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC)* has laid down following ratio with regard to provisions of section 263 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 Assessing Officer; 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' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an 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 Commissioner 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 Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the revenue - Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 (SC) and in Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC)”. [Emphasis Supplied]*

11. Hon'ble Apex Court in the case of *CIT vs. Max India Limited* as reported in 295 ITR 0282 has held that:

*“2. At this stage we may clarify that under para 10 of the judgment in the case of Malabar Industrial Co. Ltd. (supra) this Court has taken the view that the phrase "prejudicial to the interest of the Revenue" under s. 263 has to be read in conjunction with the expression "erroneous" order passed by the AO. Every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interest of the Revenue. For example, when the 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 interest of the Revenue, unless the view taken by the ITO is unsustainable in law.”*

12. Hon'ble Madhya Pradesh High court in the case of *CIT vs. Associated Food Products (P) Ltd* as reported in 280 ITR 0377 has held that:

*"10. In view of the aforesaid pronouncement of law and taking into consideration the language employed under s. 263 of the Act, it is clear as crystal that before exercise of powers two requisites are imperative to be present. In the absence of such foundation exercise of a suomoto power is impermissible. It should not be presumed that initiation of power under suomoto revision is merely an administrative act. It is an act of a quasi-judicial authority and based on formation of an opinion with regard to existence of adequate material to satisfy that the decision taken by the AO is erroneous as well as prejudicial to the interests of the Revenue. The concept of "prejudicial to the interests of the Revenue" has to be correctly and soundly understood. It precisely means an order which has not been passed in consonance with the principles of law which has in ultimate eventuate affected realization of lawful revenue either by the State has not been realized or it has gone beyond realization. These two basic ingredients have to be satisfied as sine qua non for exercise of such power. On a perusal of the material brought on record and the order passed by the CIT it is perceptible that the said authority has not kept in view the requirement of s. 263 of the Act inasmuch as the order does not reflect any kind of satisfaction. As is manifest the said authority has been governed by a singular factor that the order of the AO is wrong. That may be so but that is not enough. What was the sequitur or consequence of such order qua prejudicial to the interest of the Revenue should have been focused upon. That having not been done, in our considered opinion, exercise of jurisdiction under s. 263 of the Act is totally erroneous and cannot withstand scrutiny. Hence, the Tribunal has correctly unsettled and dislodged the order of the CIT. [Emphasis supplied]"*

13. In the light of the provisions of section 263 of the Act and a settled position of law, powers u/s 263 of the Act can be exercised by the Pr. Commissioner/Commissioner on satisfaction of twin conditions, i.e., the assessment order should be erroneous and also prejudicial to the interest of the Revenue. By 'erroneous' is meant contrary to law. Thus, this power cannot be exercised unless the Commissioner is able to establish that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Thus, where there are two possible views and the Assessing Officer

has taken one of the possible views, no action to exercise powers of revision can arise, nor can revisional power be exercised for directing a fuller enquiry to find out if the view taken is erroneous. This power of revision can be exercised only where no enquiry, as required under the law, is done. It is not open to enquire in case of inadequate inquiry. Our view is fortified by the judgment of Hon'ble High Court of Bombay in the case of *CIT vs. Nirav Modi*, [2016] 71 taxmann.com 272 (Bombay).

10.6. This view is further supported by the decision of the Hon'ble Gujarat High Court in the case of *Shri Prakash Bhagchand Khatri in Tax Appeal No. 177 with Tax Appeal No.178 of 2016*, wherein the Hon'ble Gujarat High Court was seized with the following substantial question of law:

*"Whether the Tribunal is right in law and on facts in upholding the order passed by the CIT under section 263 of the Act on merits and still storing the issue of allowability of deduction under section 54 of the Act to the file of Assessing Officer even though the working of allowability of deduction under section 54F is available in the order under section 263 which is not disputed by the assessee before ITAT."*

14. We find that the Hon'ble Delhi High Court in the case of *CIT vs. Anil Kumar* reported in 335 ITR 83 has held that where it was discernible from record that the A.O has applied his mind to the issue in question, the Id. CIT cannot invoke section 263 of the Act merely because he has different opinion. Relevant observation of the High Court reads as under:

*"63. We find the Hon'ble Delhi High Court in the case of Vikas Polymer reported in 341 ITR 537 has held as under:*

*"We are thus of the opinion that the provisions of s. 263 of the Act, when read as a composite whole make it incumbent upon the CIT before exercising revisional powers to: (i) call for and examine the record, and (ii) give the assessee an opportunity of being heard and thereafter to make or cause to be made such enquiry as he deems necessary. It is only on fulfilment of these twin*

conditions that the CIT may pass an order exercising his power of revision. Minutely examined, the provisions of the section envisage that the CIT may call for the records and if he prima facie considers that any order passed therein by the AO is erroneous insofar as it is prejudicial to the interest of the Revenue, he may after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify. The twin requirements of the section are manifestly for a purpose. Merely because the CIT considers on examination of the record that the order has been erroneously passed so as to prejudice the interest of the Revenue will not suffice. The assessee must be called, his explanation sought for and examined by the CIT and thereafter if the CIT still feels that the order is erroneous and prejudicial to the interest of the Revenue, the CIT may pass revisional orders. If, on the other hand, the CIT is satisfied, after hearing the assessee, that the orders are not erroneous and prejudicial to the interest of the Revenue, he may choose not to exercise his power of revision. This is for the reason that if a query is raised during the course of scrutiny by the AO, which was answered to the satisfaction of the AO, but neither the query nor the answer were reflected in the assessment order, this would not by itself lead to the conclusion that the order of the AO called for interference and revision. In the instant case, for example, the CIT has observed in the order passed by him that the assessee has not filed certain documents on the record at the time of assessment. Assuming it to be so, in our opinion, this does not justify the conclusion arrived at by the CIT that the AO had shirked his responsibility of examining and investigating the case. More so, in view of the fact that the assessee explained that the capital investment made by the partners, which had been called into question by the CIT was duly reflected in the respective assessments of the partners who were I.T. assesseees and the unsecured loan taken from M/s Stutee Chit & Finance (P) Ltd. was duly reflected in the assessment order of the said chit fund which was also an assessee."

64. Since in the instant case the A.O. after considering the various submissions made by the assessee from time to time and has taken a possible view, therefore, merely because the DIT does not agree with the opinion of the A.O., he cannot invoke the provisions of section 263 to substitute his own opinion. It has further been held in several decisions that when the A.O. has made enquiry to his satisfaction and it is not a case of no enquiry and the DIT/CIT wants that the case could have been investigated/probed in a particular manner, he cannot assume jurisdiction u/s 263 of the Act. In view of the above discussion, we hold that the assumption of jurisdiction by the DIT u/s 263 of the Act is not in accordance with law. We, therefore, quash the same and grounds raised by the assessee are allowed."

15. The ITAT in the case of Mrs. Khatiza S. Omerbhoy vs. ITO, Mumbai, 101 TTJ 1095, analyzed in detail various authoritative pronouncements including the decision of Hon'ble Supreme Court in

the case of *Malabar Industries 243 ITR 83* and has propounded the following broader principle to judge the action of CIT taken under section 263:

- “(i) The CIT must record satisfaction that the order of the AO is erroneous and prejudicial to the interest of the Revenue. Both the conditions must be fulfilled.*
- (ii) Sec. 263 cannot be invoked to correct each and every type of mistake or error committed by the AO and it was only when an order is erroneous that the section will be attracted.*
- (iii) An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.*
- (iv) If the order is passed without application of mind, such order will fall under the category of erroneous order.*
- (v) Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the AO has adopted one of the courses permissible under law or where two views are possible and the AO has taken one view with which the CIT does not agree. It cannot be treated as an erroneous order, unless the view taken by the AO is unsustainable under law*
- (vi) If while making the assessment, the AO examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determine the income, the CIT, while exercising his power under s 263 is not permitted to substitute his estimate of income in place of the income estimated by the AO.*
- (vii) The AO exercises quasi-judicial power vested in his and if he exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous simply because the CIT does not see stratified with the conclusion.*
- (viii) The CIT, before exercising his jurisdiction under s. 263 must have material on record to arrive at a satisfaction.*
- (ix) If the AO has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the AO allows the claim on being satisfied with the explanation of the assessee, the decision of the AO cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard.”*

16. Apart from above stated broader principles, one more principle needs to be added in view of the judgment of Hon’ble Delhi High Court in the case of *ITO vs. D.G. Housing Projects Ltd. [2012] 343 ITR 329 (Delhi)* that the ld. CIT has to examine and verify the issue himself and give a finding on merits and form an opinion on merits that the

order passed by the AO is erroneous and prejudicial to the interest of the Revenue. Relevant extract is reproduced below:

*“In the present case, the findings recorded by the Tribunal are correct as the CIT has not gone into and has not given any reason for observing that the order passed by the Assessing Officer was erroneous. The finding recorded by the CIT is that "order passed by the Assessing Officer may be erroneous". The CIT had doubts about the valuation and sale consideration received but the CIT should have examined the said aspect himself and given a finding that the order passed by the Assessing Officer was erroneous. He came to the conclusion and finding that the Assessing Officer had examined the said aspect and accepted the respondent's computation figures but he had reservations. The CIT in the order has recorded that the consideration receivable was examined by the Assessing Officer but was not properly examined and therefore the assessment order is "erroneous". The said finding will be correct, if the CIT had examined and verified the said transaction himself and given a finding on merits. As held above, a distinction must be drawn in the cases where the Assessing Officer does not conduct an enquiry; as lack of enquiry by itself renders the order being erroneous and prejudicial to the interest of the Revenue and cases where the Assessing Officer conducts enquiry but finding recorded is erroneous and which is also prejudicial to the interest of the Revenue. In latter cases, the CIT has to examine the order of the Assessing Officer on merits or the decision taken by the Assessing Officer on merits and then hold and form an opinion on merits that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. In the second set of cases, CIT cannot direct the Assessing Officer to conduct further enquiry to verify and find out whether the order passed is erroneous or not.”*

17. Now, in light of the above judicial pronouncements and the provisions of u/s 263 of the Act let us examine the issue raised in order passed under section 263 of the Act, which relates to not charging interest on loans given to related parties. We observe that the assessee company has outstanding unsecured loans to the tune of Rs.115.94 Crores, taken from body corporate and as on 31/03/2018, loans were given to related parties amounting to Rs.54.50 Crores and to others at Rs.13.35 Crores. Assessee company has advanced a sum of Rs.53.13 Crores as interest free loan to related parties out of the total loan of Rs.54.50 Crores. Now, the first observation of the Id. Pr. CIT is

that the Id. Assessing Officer has not examined these transactions. It is stated by the Id. Pr. CIT in the impugned order that no enquiry has been conducted on this issue by the Id. Assessing Officer. Before us, the Id. Counsel for the assessee has referred to the reply filed in response to notice under section 142(1) of the Act, dt. 10/02/2021 placed at pages 13 to 15 of the paperbook. On perusal of the above reply, we note that the unsecured loan was taken from M/s. Jai Balaji Jyoti Steels Limited, in the earlier years and as on 31/03/2018, outstanding balance was Rs.94.88 Crores. Since the assessee did not deduct tax at source on the interest payment, the same was offered for disallowance u/s 40(a)(ia) of the Act. Further at para 2 of the above referred reply, the assessee has given the reason for not charging the interest during the year from the related parties on the loans given. It is submitted that in the earlier years assessee has been charging interest on such loans given to related parties. However, since the related parties were facing financial difficulties and were not in a position to pay even the principal amount, the assessee stopped charging interest on the loan advanced. It is not in dispute that the loans have been given to the related parties which are sister concern or part of the same group as that of the assessee company. The details of the loans given to the related parties for the year under appeal is as follows:-

Jai Salasar Balaji Industries Private Limited									
PAN:- AAACJ6970D									
Details of Loan Given to Related Party for the A/Y 2018-2019									
Sl.No.	Name of the Party	Complete Address of the Party	PAN	Opening Balance	Amount Given during the year	Repayment received during the year	Closing Balance	Interest on Loan earned during the year	TDS Receivable
1	Aditya Jajodia	5, Bentick Street, Kolkata 700001	ACYPJ5228P	6,75,56,622	-	55,10,000	6,20,46,622	-	-
2	Enfield Suppliers Ltd	5, Bentick Street, Kolkata 700001	AAACE5617N	29,84,05,000	13,00,607	72,00,000	29,25,05,607	-	-
3	Hari Management Ltd.	5, Bentick Street, Kolkata 700001	AABCH3030R	13,11,12,367	9,09,568	-	13,20,21,935	-	-
4	Jai Balaji Infotech Pvt. Ltd.	5, Bentick Street, Kolkata 700001	AABCI6019N	1,80,94,249	1,14,15,000	1,50,000	2,93,59,249	-	-
5	Jai Balaji Shakti Cement Ltd	5, Bentick Street, Kolkata 700001	AABCI9163H	4,80,410	-	-	4,80,410	-	-
6	Rina Jajodia	5, Bentick Street, Kolkata 700001	ADKPJ8433B	66,45,983	-	-	66,45,983	-	-
7	Kanchan Jajodia	5, Bentick Street, Kolkata 700001	ACEPJ0793M	66,86,025	-	66,86,025	-	-	-
8	Sangeeta Jajodia	5, Bentick Street, Kolkata 700001	AEIPJ5651A	61,85,446	-	-	61,85,446	-	-
9	Seema Jajodia	5, Bentick Street, Kolkata 700001	ACOPJ2570J	65,15,850	-	44,65,000	20,50,850	-	-
<b>Total</b>				<b>54,16,81,952</b>	<b>1,36,25,175</b>	<b>2,40,11,025</b>	<b>53,12,96,102</b>		
Details of Loan Given to Related Party LLP for the A/Y 2018-2019									
Sl.No.	Name of the Party	Complete Address of the Party	PAN	Opening Balance	Amount Given during the year	Repayment received during the year	Closing Balance	Interest on Loan earned during the year	TDS Receivable
1	Dhanabh Projects LLP	21/2, Ballygunge Place, Kolkata 700019	AAKFD8567B	12,70,000	-	-	12,70,000	1,14,300	11,430
2	Kalakirti Projects LLP	5, Bentick Street, Kolkata 700001	AAOFK7928B	7,70,000	-	-	7,70,000	69,300	6,930
3	Kingtrade Developers LLP	50B, Gariahat Road, Kolkata 700019	AAOFK7930M	12,70,000	-	-	12,70,000	1,14,300	11,430
4	Mangalgauri Projects LLP	5, Bentick Street, Kolkata 700001	AAZFM8185H	12,70,000	-	-	12,70,000	1,14,300	11,430
5	Maniratan Projects LLP	50B, Gariahat Road, Kolkata 700019	AAZFM8946Q	12,70,000	-	-	12,70,000	1,14,300	11,430
6	Rangamahala Projects LLP	5, Bentick Street, Kolkata 700001	AARFR8119G	7,70,000	-	-	7,70,000	69,300	6,930
7	Rudrakash Projects LLP	5, Bentick Street, Kolkata 700001	AARFR8121J	7,70,000	-	-	7,70,000	69,300	6,930
8	Sarvopriya Projects LLP	5, Bentick Street, Kolkata 700001	ACFS0344M	12,70,000	-	-	12,70,000	1,14,300	11,430
9	Shivdhan Projects LLP	P-2, CIT Road, Scheme VI M, Kolkata 700054	ACFS0347J	12,70,000	-	-	12,70,000	1,14,300	11,430
10	Sidhinav Projects LLP	P-2, CIT Road, Scheme VI M, Kolkata 700054	ACFS0341Q	12,70,000	-	-	12,70,000	1,14,300	11,430
11	Silvered Projects LLP	21/2, Ballygunge Place, Kolkata 700019	ACFS0338K	12,70,000	-	-	12,70,000	1,14,300	11,430
12	Smridhi Projects LLP	5, Bentick Street, Kolkata 700001	ACFS0340R	12,70,000	-	-	12,70,000	1,14,300	11,430
<b>Total</b>				<b>1,37,40,000</b>			<b>1,37,40,000</b>	<b>12,36,600</b>	<b>1,23,660</b>
<b>Grand Total</b>				<b>55,54,21,952</b>	<b>1,36,25,175</b>	<b>2,40,11,025</b>	<b>54,50,36,102</b>	<b>12,36,600</b>	<b>1,23,660</b>

18. From the above details, we notice that major loans have been advanced in the preceding year and during the year under consideration only a sum of Rs.1.36 Crores approx, have been advanced to related parties in other words almost 97% of the loans to related parties have also been advanced in the previous year. Further, we notice that in the immediately preceding year i.e., 2017-18 also, assessee's case was subjected to scrutiny proceedings under section 143(3) of the Act and vide order dt. 20/12/2019, the income for Assessment Year 2017-18 was assessed at 'Nil' and the Id. Assessing Officer made addition of Rs.16,24,647/- and the carry forward loss amounted to Rs.9,81,25,022/-. Thus, we notice that in the preceding are also these transactions have been scrutinised and have been accepted by the Assessing Officer and for the year under appeal since a very small amount of advance was given during the year and the

detailed reply was filed by the assessee, the Id. Assessing Officer after making proper application of mind had accepted the reasoning given by the assessee in the said reply and, therefore, it is not a case of no enquiry because the Id. Assessing Officer has raised specific questions about the issue of unsecured loans taken and given during the year and not charging of interest thereon on some loan advanced to which a specific reply has been given by the assessee and, therefore, since proper enquiries have been conducted by the Assessing Officer, the impugned revisionary proceedings carried out by the Id. Pr. CIT, is beyond its jurisdiction. Thus on this legal ground itself, the order under section 263 of the Act, deserves to be quashed.

19. Even on merits also, assessee has filed the statement of year - wise availability of interest free funds which is placed at page 30 of the paper book and the same is extracted below:-

## Jai Salasar Balaji industries Pvt Ltd

## Statement of year wise availability of interest free fund

Particulars	as on 31.03.2018	as on 31.03.2017	as on 31.03.2016	as on 31.03.2015	as on 31.03.2014
Advance from customer	76,39,04,826	80,91,75,391	63,58,48,931	56,82,96,105	56,30,96,105
Trade payable	1,05,62,84,379	49,09,76,128	41,16,83,501	43,52,86,810	35,50,61,799
Total (A)	1,82,01,89,205	130,01,51,519	1,04,75,32,432	1,00,35,82,915	91,81,57,904
Advance given	8,28,82,788	4,98,59,939	96,31,778	1,48,32,522	1,23,00,989
Trade Receivable	19,58,51,672	7,06,65,623	4,97,72,258	9,55,82,072	19,47,18,614
Total (B)	27,87,34,460	12,05,25,562	5,94,04,036	11,04,14,594	20,70,19,603
Interest free fund available {A-B}	1,54,14,54,745	1,17,96,25,957	98,81,28,396	89,31,68,321	71,11,38,301
Loan given to Related parties	53,12,96,102	54,16,81,952	55,08,10,486	61,30,27,454	56,25,79,297
Loan taken from Jai Balaji Jyoti Steel Pvt Ltd	94,88,61,050	1,38,97,88,843	1,28,59,76,405	1,12,32,08,715	1,01,35,18,560

20. From perusal of the above chart, the position of interest free funds available with the assessee as at the close of each year has been depicted right from FY 2013-14 till FY 2017-18. It has been contended by the ld. Counsel for the assessee that the interest free funds available for the year under appeal are much more than the loan given to the related parties. The figures mentioned in the above chart are stated to be as per the audited financial statements. It clearly indicates that as on 31/03/2018, assessee had Rs. 1,54,14,54,745/- of interest free fund available with it against which only Rs. 53,12,96,10/- has been given as loan to related parties. Therefore, on one hand the loans have been given to related parties in the normal course of business and on the other hand, assessee has also filed details to indicate that apart from the unsecured loans assessee has other funds available for giving loans to the related parties and, therefore, there is no prejudice caused to the revenue authorities and if such interest free available funds are available with the assessee then proportionate disallowance of interest expenditure on the loans given to related parties is not sustainable. For this proposition we find support from the following decisions:-

➤ *DCIT vs. Texmaco Ltd. [2017] 83 taxman.com 5*

*Held that the assessee had sufficient funds of its own to advance the loan to the sister concern. It is also a fact that the assessee had 50 per cent shares in NHL and later on it amalgamated with the assessee. The assessee has submitted during the appellate proceedings that there was deficiency of electricity and it has entered into an agreement to use the electricity to be produced by NHL electric project. Therefore, there was commercial interest of the assessee in NHL for advance of the money. Thus, disallowance of interest was to be deleted.*

➤ CIT vs. Beekons Industries Ltd. [2023] 149 taxmann.com 383

*“With respect to the loan given to the director's relative the Supreme Court in the case of Hero Cycles (P.) Ltd. v. CIT [2015] 63 taxmann.com 308/[2016] 236 Taxman 447/379 ITR 347 has considered a similar issue and held that as loan of Rs. 34 lacs was given to the directors when the credit balance with the company was of Rs. 15 crores, this amount did not effect the business transaction carried out by the company after taking loan from the bank. It further overruled the judgment passed in the case of Abhishek Industries Ltd. (supra).*

*The judgment of the Supreme Court in the case of Hero Cycles (P.) Ltd. (supra) has been followed by the Punjab and Haryana High Court in the case of Pr. CIT v. Holy Faith International (P.) Ltd. [IT Appeal No. 87 of 2017, dated 24-7-2017] and it was held that the impugned advance has been made out of interest free fund available with the company and there was no question of whatsoever for disallowance of interest pertaining to the loan given to the sister concern. [Para 9]*

*Keeping in view the aforesaid, the order passed by the Tribunal deserved to be set aside and the order passed by the Commissioner (Appeals) deserved to be restored. [Para 10]”*

➤ PCIT vs. Basti Sugar Mills Co. Ltd. [2018] 98 taxmann.com 401

*“Section 36(1)(iii) of the Income-tax Act, 1961 - Interest on borrowed capital (Interest free loans to subsidiaries) - Assessment year 1999-2000 - Assessee borrowed funds from bank and claimed deduction on interest paid - Assessee had advanced loan to its sister concern (a subsidiary) as interest free loan - Assessing Officer disallowed interest paid on grounds that advances to sister concern were out of borrowed funds and made additions accordingly - Commissioner (Appeals) observed that, during year, assessee had huge amounts by way of sales, paid up share capital and reserves - Accordingly, he concluded that assessee had furnished ample evidence to show that sufficient funds were available with assessee to give interest free loans to its subsidiary - Interest bearing loans taken by assessee were for specific purposes and were duly represented by value of stock - Accordingly, he deleted impugned addition made by Assessing Officer - Agreeing with above said factual finding and Not finding any justification to upset facts as found by Commissioner (Appeals), Tribunal had dismissed appeal filed by revenue - Whether Tribunal was justified - Held, yes [Paras 6, 7 and 8] [In favour of assessee]”*

21. Therefore, since Id. Pr. CIT erred in invoking the provisions of Section 263 of the Act on issues raised in the show cause notice on a wrong assumption and since Id. AO has carried out necessary investigation and examination of the issue raised in show cause notice

under section 263 of the Act and has made proper application of mind and took a view permissible under the law, the assessment order in question is neither erroneous nor prejudicial to the interests of the Revenue. We, therefore, quash the impugned order u/s 263 of the Act and restore the assessment order framed u/s 143(3) of the Act dated 13/03/2021.

22. Hence all the effective grounds of appeal raised by the assessee are allowed.

23. In the result, the appeal filed by the assessee is allowed as per the terms indicated above.

**Order pronounced in the Court on 25<sup>th</sup> August, 2023 at Kolkata.**

*Sd/-*

**(SONJOY SARMA)  
JUDICIAL MEMBER**

*Sd/-*

**(DR. MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 25/08/2023

*SJC S.P.*

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata