

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 405/JPR/2022  
निर्धारण वर्ष/Assessment Year : 2019-20

Gayatri Devi Rathunath Puri Daba Takhta Tonk Tonk 304 001	बनाम Vs.	Pr. CIT Central, Jaipur Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ALJPD 4796 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Mahendra Gargieya Advocate &  
Ms. Veshnawi Joshi, Advocate  
राजस्व की ओरसे / Revenue by: Shri Ajay Malik, CIT-DR

सुनवाई की तारीख / Date of Hearing : 09/08/2023  
उदघोषणा की तारीख / Date of Pronouncement: 20 /09/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This is an appeal filed by the assessee against order of the Id. Pr. CIT (Central), Jaipur dated 21-10-2022 for the assessment year 2019-20 in the matter of Section 263 of the Act wherein the assessee has raised the following grounds of appeal.

“1. The Id. Pr. CIT (Central), Jaipur seriously erred in law as well as on the facts of the case in invoking the provisions of Section 263 of the Act and, therefore, the impugned order dated 21-10-2022 u/s 263 of the Act kindly be quashed.

2. The Id. Pr. CIT (Central), Jaipur seriously erred in law as well as on the facts of the case in assuming jurisdiction u/s 263 of the Act by wrongly and incorrectly holding that the subjected assessment order passed u/s 143(3) dated 02-07-2021 is prejudicial to the interest of the revenue. The assumption of jurisdiction u/s 263 being contrary to the provisions of law and facts on record, hence, the proceedings initiated u/s 263 of the Act and impugned order dated 21-10-2022 deserved to be quashed.

3. The Id. Pr. CIT (Central), Jaipur seriously erred in law as well as on the facts of the case in wrongly setting the assessment order dated 02-07-2021 despite there being complete application of mind by the AO on the subjected issues being the loans received and duly verified by the AO, it was nothing but a case of change of opinion, based on which, assumption of jurisdiction u/s 263 is not permissible. The impugned order dated 21-10-2022, therefore, lacks valid jurisdiction u/s 263 of the Act and hence, the same kindly be quashed.’’

2.1 Brief facts of the case are that the assessee e-filed her return of income on 31-10-2019 declaring total income amounting to Rs.6,08,680/- for the assessment year under consideration. The return filed by the assessee was processed u/s 143(1) of the Act, 1961. A survey u/s 133A of the Act was carried out on the business premises of the assessee on 29-10-2018. Subsequently, the case of the assessee was manually selected for compulsory Scrutiny and a Notice u/s 143(2) of the Act dated 24-09-2020 issued to the assessee through ITBA vide No. ITBA/AST/S/143(2)/2020-21/10280452671(1) and duly served upon the assessee by e-mail. It is also noted from the assessment order that in pursuance of the order u/s 127 of the I.T. Act of the Pr. CIT-2, Jaipur vide order No.

ITBA/COM/F/17/2020-21/1029749001(1) dated 13-01-2021, this case is received on transfer from ITO, Ward-Tonk. The AO observed in the assessment order that the assessee is engaged in business of a dealership of Indian Oil Corporation Ltd. under the name and style of proprietorship concern M/s. Jagdish Petroleum and declared net profit of Rs.9,1,275/- @ 1.39% N.P. ratio on total turnover of Rs.6,63,99,428/- for the period under consideration. The assessee declared other sources income of Rs.39,153/- and also claimed deduction under Chapter VIA of Rs.1,51,758/- resulting into total income of Rs.6,07,675/- for the year under consideration. The AO also noted in his assessment order that the Id. AR of the assessee filed the relevant details/ documents online electronically through e-filing account on dates of hearing as per order sheet which were perused and examined by the AO. Hence, the AO being satisfied with the submissions/ replies of the Id.AR of the assessee completed the assessment vide order dated 07-02-2021 u/s 143(3) of the Act with following narration.

“5. Subject to the above discussion and on the basis of the data made available on record, the total income of the assessee for the year under consideration is computed as under:-

Total income as per return of income:	Rs.6,08,680/-
Assessed Total Income:	Rs.6,08,680/-

2.2 The Id. PCIT on examination of the details/ records available before him issued show cause notice dated 21-07-2022 to the assessee and thus proposed to invoke revisional proceedings u/s 263 of the Act on the ground that assessment order dated 02-07-2021 passed by the AO is erroneous insofar as it is prejudicial to the interest of Revenue because the AO did not verify / examine the issues which he ought to have made for which the crux of the allegations made by the Id. PCIT are as under:-

a) Liability of Rs. 9,81,205/- has been shown under head Sundry Creditors without any corresponding purchases or transaction. The complete details of the same were not furnished.

b) Books not maintained by the assessee, this fact has not been discussed or inquired or satisfactorily examined in the assessment proceedings.

c) The submission of a chart showing details of unsecured loans lacked satisfactory supporting documentary evidence, indicating a lack of documentary evidence. **However, the Id. CIT, has not repeated the above allegations in the impugned order.**

d) Confirmations of loan filled by creditors u/s 133(6) were without any documentary evidence and do not inspire confidence. The list of 22 creditors with their confirmations lacked necessary details, and the particulars did not match with the details provided in Schedule "E", indicating incomplete or inaccurate creditor details.

e) The appropriate inquiries / verifications of loans have not been made by the AO. This lack of inquiry and consequent non deriving of reasoned inference by the Assessing Officer has prima facie caused prejudice to the interests of the revenue.”

The assessee filed detailed submission in response dt. 24.08.2022 (**PB 60-67**). The

Id. PCIT didn't agree with the submissions and finally held as under: (Pg10 & 11

Para.11)

*“I have studied the facts at hand and the material available on record. From the matrix of facts and events, it is noted that the appropriate inquires/ verifications of loans*

*through which amounts have been introduced have not been examined by the AO (as detailed above) while passing the assessment order. Similarly, the issue of sundry creditors of Rs. 9,81,206/- remained unexamined. This lack of inquiry and consequent non-deriving of reasoned inference by the Assessing Officer, has prima facie caused prejudice to the interests of the revenue. Accordingly, I hereby set aside the assessment carried out u/s 143(3) of the Income Tax Act, 1961, vide assessment order dated 02.07.2021 for the A.Y. 2019-20 and direct a fresh assessment to be made in accordance with provisions of law. Adequate opportunity of being heard should be given to the assessee”.*

2.3 Being aggrieved by the order of the Id. PCIT, the assessee carried the matter before this Bench of ITAT praying therein that the Id. PCIT has erred in invoking the provisions of Section 263 of the Act upon the assessee which deserves to be quashed for which the Id. AR of the assessee filed the detailed written submission as under:-

“The impugned order passed u/s 263 is **completely beyond the scope of S. 263** of the Act on various grounds, as discussed herein below.

**1. Legal Position on S. 263 Judicial Guideline:** Before proceeding, we may submit as regards the judicial guideline, in the light of which, the facts of this case are to be appreciated.

**1.1 The pre-requisites** to the exercise of jurisdiction by the Commissioner u/s 263, is that the order of the Assessing Officer is established to be erroneous in so far as it is prejudicial to the interest of the Revenue. The Commissioner has to be satisfied of **two conditions**, namely **(i)** The order of the Assessing Officer sought to be revised is erroneous; and **(ii)** it is prejudicial to the interests of the Revenue. If any one of them is absent i.e. if the assessment order is not erroneous but it is prejudicial to the Revenue, S. 263 cannot be invoked. **This 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 as also prejudicial to revenue’s interest, that the provision will be attracted.** An incorrect assumption of the fact or an incorrect application of law will satisfy the requirement of the order being erroneous. The phrase 'prejudicial to the interest of the revenue' has to be read in conjunction with an erroneous order passed by the AO. **Every loss of Revenue as a consequence of the order of the AO cannot be treated as prejudicial** to the interest of the Revenue. For example, if the **AO has adopted one of the two or more courses permissible in law** and it has resulted in loss of revenue, or where **two views are possible** and AO has taken one view with which the

Commissioner does not agree, it **cannot be treated as an erroneous** order prejudicial to the interest of the Revenue, unless the view taken by the AO is totally unsustainable in law. Kindly refer **Malabar Industrial Co. Ltd. v/s CIT (2000) 243 ITR 83 (SC)**.

**1.2** Also kindly refer **CIT v/s Max India Ltd. (2007) 295 ITR 282 (SC)** wherein it is held that:

*"The phrase "prejudicial to the interests of the Revenue" in S. 263 of the Income Tax Act, 1961, has to be read in conjunction with the expression "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 the Assessing Officer adopts one of two courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the Revenue, unless the view taken by the Assessing Officer is unsustainable in law."*

Ratio of these cases fully apply on the facts of the present case in principle.

**2. Due verification and examination made:** At the outset, it is submitted that the **AO acting as a quasi-jurisdictional authority, after making a detailed enquiry and examination** of the relevant facts and material available on record to the extent the AO was supposed to make in law, keeping in mind the principles and guidelines settled by the Hon'ble Courts for application of S.68 , has taken a **possible view** and completed the subjected assessment.

**2.1** In the present case jurisdiction u/s 263 of the Act is on the ground that the while completing assessment proceedings the AO did not verify/examine the sundry creditors balances appearing in the audited financials of the assessee for the year under consideration. The observation and allegation made in the show cause notice u/s 263 that there is lack of supporting evidences and no proper inquiry was made, **is not correct in as much as the AO raised specific queries** vide notice u/s 142 dt. 24.02.2021 (PB 4A-4E Para 8 and Para 12) w.r.t. the issue as under:

“8.Kindly furnish confirmations of unsecured loans/creditors/squared up accounts along evidence of identity, genuineness and creditworthiness of the creditors, raised during the year. Kindly furnish the copy of the concern bank account, balance sheet, capital account, and ITR of the concerned persons as evidences. Kindly note that in absence of evidences, those amounts shall be treated your income u/s 68 of the Act

9.Kindly furnish the details of all immovable properties held by you in the following format

10.Please furnish the details purchased and sold of immovable properties during the considering year and explain the source of purchase o immovable property with evidences.

11.Furnish the details of any construction made in residential and business premises considering year, please explain the source of investment.

12.If there are creditors or unsecured loans or any other liabilities pending/outstanding during he considering year, kindly furnish their details in the following format”

vide notice dated 15.04.2021 u/s 142(1) of the IT Act (**PB 33-34**) w.r.t. the issue as under:

*“2. On perusal of details available on records, it is noticed that sundry creditor amount of Rs. 9,81,205/- and Unsecured Loan of Rs. 1,00,78,817/- were claimed in Balance Sheet of A.Y. 2019-20. In this regard, various opportunities were given to you by issuing notice dated 24.02.2021 u/s 142(1) of the IT Act dated, 12.04.2021 but you have not furnished required details/information.”*

The assessee in response to the above notices, filed detailed written submissions dated 19.04.2021 (PB 35-40), 09.06.2021, 29.06.2021 & 01.07.2021. He also filed complete documents w.r.t. queries raised along with affidavits, ITRs, Computation, bank account details etc in six new cases (and confirmations in old cases) which was required by the AO time to time through the A/R, and the same were duly verified and examined by the AO. The identity and capacity of creditor and genuineness of transaction were fully proved in six cases where amount was received during the year vide letter dt. 19.04.2021 (PB 35- 44, Pr. 2 to 4), wherein the source in all the six cases were explained as under:

*“2. Out of 24 creditors, the unsecured loans were taken from 6 creditors only during the year and remaining all the balances of loans continued as opening balances from earlier years. Confirmation in almost all the 24 cases has already been filed along with letter dated 13.03.2021 (except in case of one Shri Ashok Jain whose confirmation is also enclosed herewith now with this reply PB-1). Hence a partial compliance had already been made to the statutory notices.*

*3. As regards the creditworthiness/source from which the 6 creditors had advanced the amount to the assessee has been explained creditor wise as under.*

**3.1 Shri Ajay Vijayvergiya- Rs.4,00,000/-**

*He advanced Rs.4,00,000/- to the assessee ie. Rs.3,00,000/- on dated 06.09.2018 and Rs.1,00,000/- on dated 11/09/2018. He was in receipt of personal loan of Rs.3,91,028/- on dated 04/09/2018, as evident from his Bank account statement Copy of ITR and Bank Account are enclosed herewith (PB2-4). Thus, there is a direct source of receipt of Rs.4,00,000/-*

**3.2 Shri Dinesh Kumar Bairwa- Rs.17,96,000/-**

*He is government employee at PHED department Tonk and retired during the year under consideration itself, whereupon he received statutory benefits of Rs.18,93,637/- on dated 16.10.2018. After this only, he transferred Rs.9,96,000/- and Rs.8,00,000/- on 06/11/2018 and 05/02/2019 respectively, as evident from his Bank account statements. Copy of ITR, computation and Bank Account are enclosed herewith (PB 5-9). Thus here also, there is a direct source of receipt of Rs.17,96,000/-*

**3.3 Shri Jitendra Singh Solanki- Rs.2,00,000/-**

*He had sufficient bank balances prior to transfer the amount of Rs.2,00,000/- on dated 10/09/2018, as evident from his Bank account statement. Copy of ITR, and Bank Account are enclosed herewith (PB 10-11). Thus here also, there is a direct source of receipt of Rs.2,00,000/-*

**3.4 Shri Neeraj Gurjar- Rs. 3,00,000/-**

*He had sufficient bank balances prior to transfer the amount of Rs.2,00,000 and Rs.1,00,000/- on dated 11/01/2019 and 25/01/2019 respectively as evident from his Bank account statement. Copy*

of ITR, and Bank Account are enclosed herewith (PB-12-13). Thus here also, there is a direct source of receipt of Rs.3.00.000/-

### 3.5 Shri Nikit Jain- Rs.40,000/-

He had sufficient bank balances prior to transfer the amount of Rs.40,000/- on dated 21/07/2018. Thus here also, there is a direct source of receipt of Rs.40,000/-

### 3.6 Shri Shiv Kumar Chourasiya- Rs.10,000/-

He had sufficient bank balances prior to transfer the amount of Rs.10,000/- dated 07/06/2018. Thus here also, there is a direct source of receipt of Rs.10,000/-

**2.2** Selection of the case under compulsory scrutiny being a survey case: Moreover, the very fact of selection of the case under compulsory scrutiny based documents and material found during survey, followed by the issuance of various notices u/s 142(1) along with questionnaire which were duly replied by the assessee time to time, as stated above. This has fully established **that the AO was fully alive to the issue in hand from all angles, whether factual or legal aspect involved.**

**2.3** That very pertinently, **all the creditors except six cases are coming since preceding year/s** as evident from the confirmative affidavits (PB 9-30) and also from the earlier year/s balance sheets uploaded in the ROI as on 31.03.2018 (PB 69-72) showing the figure of Current liabilities – Sundry Creditors (Net Amt.) at Rs. 69,92,663 /- and the ledger a/c (PB 73). A chart was given in reply dt. 19.04.2021 to the AO (PB 35-36) showing gross amt. Rs. 73,32,817 /- (PB 73) including Sundry Misc. Debtors of Rs. 3,40,154.47 and explaining in Para 2 to 4. **Even confirmation from almost all the old creditors** totaling to Rs. 94,78,817/- were filed on 13.03.2021 as under:

*“4. Confirmation from almost all the creditors whether the old creditors or the creditors totaling to Rs.94,78,817/- were filed on dated 13.03.2021, except two parties i.e. one Shri Ashok Jain of Rs.5,00,000/- and Neetu Khandelwal of Rs.1,00,000/-. Copy of confirmation of Shri Ashok Jain of Rs.5,00,000/- attached with this reply at PB-1. old Although the subjected amount received from these parties in earlier years and their balances are continuing from last so many years. Therefore, it doesn't require further confirmation from the side of this creditor yet however, we are still trying to obtain a confirmation from Smt. Neetu Khandelwal.*

*There apart, your goodself may kindly direct enquiries from all the creditors. We have already supplied their PAN No. and complete addresses. The department may ascertain all the relevant information with reference to the respective PAN No's.*

*Still however, if some more clarifications are required we shall have to submit the same (Sufficient opportunity is provided)”*

This implies that the identity, genuineness and creditworthiness of such subjected creditors already stood established but even was **accepted by the department** in the assessment of preceding year /s. Pertinently, those assessments have **not been disturbed so far** by the time of the passing of the subjected Assessment Order nor before passing impugned order u/s 263. Hence, those assessments held good and has all the binding

value upon the parties. Once, the same creditors (except a few cases) are continuing in the subjected year, there is no reason of finding fault in the approach of the AO. In fact, the AO even could have relied upon this fact alone and no further inquiry is normally felt necessary in such cases, yet in this case AO proceeded one step ahead and asked the assessee to file confirmations etc. The Ld. CIT by expecting the AO to doubt the existence of the debtors this year, **wanted the AO to revisit/review the correctness of the earlier assessments** orders, whereas the AO was estopped.

**2.4 Admittedly, there were other relevant and crucial facts** available on the assessment record of the current year and the preceding year, in the light of which the subjected assessment was passed as stated below:

**That**, all the amounts were **received through bank transfers** only. There are no cash receipts. (PB 36 Para 1)

**That**, the **date/year of receipt is duly mentioned** in the affidavits.

**That**, most of the **creditors are regular IT assessee** and their respective PAN are available in the affidavits (and in the chart PB 35-36) Neetu Khandelwal despite request, refused to provide PAN (PB 36 Para 1).

**That**, the identity and capacity of creditor and genuineness of transaction were fully proved in six cases where amount was received during the year vide letter dt. 19.04.2021 (PB 35- 44, Pr. 2-4 ), wherein the source in all the six cases have been explained .

**That** ,the Sundry Creditors and the Unsecured Loans are appearing in the balance sheet as on 31.03.2019 (PB 1-3) and the list of Sundry Creditors (PB 4 ).

**2.5** Further it is wrong to say that the sundry creditors of Rs. 9,81,205/- in the balance sheet is **without any corresponding purchase/transaction** because the details of Sundry Creditors were also submitted vide letter dated 19.04.2021 (PB 39 Para B)

### **3.1 AO acted as per Judicial Guidelines- Initial Onus Fully Discharged:**

This all the more holds good when binding decisions of the Hon'ble jurisdictional High Court in various cases (infra) have propounded the principle in the context of S. 68 of the Act being only the examination of the **identity** of the shareholder concerned his/her the **confirmation** of the fact of providing/ transferring subjected amount to the assessee but the **AO is not legally bound to examine source of source, once the immediate source is available**. His duty is confined **only to discharge the initial burden** lay upon him. In absence of any contrary evidence available on record, the AO also was not supposed nor he could have visualized anything wrong to disturb his conclusion.

**3.2** Following **decisions of Hon'ble Rajasthan High Court which are directly relevant** for the purpose.

**3.2.1** Kindly refer **Labhchand Bohra V/s ITO (2008) 8 DTR 44 (Raj.) (DPB 1-4)** held that:

*“Cash credit- burden of proof- identity of the creditors established and the confirmed the credit. This discharged the burden of appellant to prove genuineness. However, capacity of the lender to advancement money to appellant was not a matter which the appellant could be required to establish and that would amount to calling upon him to establish the source of source. Hence addition cannot be sustained.”*

**3.2.2** In **Aravalli Trading Co. v/s ITO (2008) 8 DTR 199 (Raj) .) (DPB 12-16)** held that:

*“Once the existence of the creditors is proved and such persons own the credits which are found in the books of the appellant, the appellant’s onus stand discharged and the latter is not further required to prove the sources from which the creditors could have acquired the money deposited with him and, therefore the addition u/s 68 cannot be sustained in the absence of anything to establish that the sources of the creditors deposits flew from the appellant itself.”*

Thus, in view of the above binding judicial guideline, the AO was not obliged still to ask the assessee to provide source of source under the pretense of examination of the creditworthiness of the creditor and to make addition. There is nothing in record to show that such discretion was not properly exercised.

**3.3 Discretion conferred- Judiciously exercised:** The provisions of S.68 of the Act use the word ‘*may*’ which indicate that the AO is not always obliged to make addition in each and every case even though there are no sufficient grounds or may be against the human probabilities. Hence, discretion conferred upon the AO has to be exercised judiciously as held in **CIT vs Smt. P.K. Noorjahan (1999) 237 ITR 0570 (SC)**:

*“As pointed out by the Tribunal, in the corresponding clause in the Bill which was introduced in Parliament, the word "shall" had been used but during the course of consideration of the Bill and on the recommendation of the Select Committee, the said word was substituted by the word "may". This clearly indicates that the intention of Parliament in enacting s. 69 was to confer a discretion on the ITO in the matter of treating the source of investment which has not been satisfactorily explained by the assessee as the income of the assessee and the ITO is not obliged to treat such source of investment as income in every case where the explanation offered by the assessee is found to be not satisfactory. The question whether the source of the investment should be treated as income or not under s. 69 has to be considered in the light of the facts of each case. In other words, a discretion has been conferred on the ITO under s. 69 to treat the source of investment as the income of the assessee if the explanation offered by the assessee is not found satisfactory and the said discretion has to be exercised keeping in view the facts a circumstances of the particular case. In the instant case, the Tribunal has held that the discretion had not been properly exercised by the ITO and the AAC in taking into account the circumstances in which the assessee was placed and the Tribunal has found that the sources of investments could not be treated as income of the assessee. The High Court has agreed with the said view of the Tribunal. There is no error in the said finding recorded by the Tribunal. There is thus no merit in these appeals and the same are accordingly dismissed. — CIT vs. Smt. P.K. Noorjahan (1980) 15 CTR (Ker) 138: (1980) 123 ITR 3 (Ker):42R.1622, affirmed.”*

**Thus, these facts being admittedly available on record before the AO** showing his complete application of mind and a reasonable basis of reaching satisfaction by a quasi-judicial authority. Thus, **the AO did all what he was supposed to do under law and took a possible view.**

**4. Not a case of complete/total lack of inquiry:** The CIT himself **admits in the Impugned Order that the AO did make enquiry** on the issue in hand. The law is well settled that the Assessment order cannot be held to be erroneous simply on the allegation of **inadequate enquiry** unless there is an established case of **total lack of enquiry**. Kindly refer **CIT vs. Sunbeam Auto Ltd.** (2011) 332 ITR 167 (Del)(**DPB 18-32**) (wherein Delhi High Court was considering the aspect, when there is no proper or full verification, and it was held that:

*“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 CIT to pass orders under section 263 of the Act, merely because he has a different opinion in the matter. It is only in cases of “lack of inquiry” that such a course of action would be open.”*

In another case of **Narain Singla v. PCIT** [2015] 62 taxmann.com 255 (Chandigarh - Trib.) it was held that when AO was **fully aware of matter**, he had appraised evidences filed by assessee and then had formed a view to accept same, Commissioner was unjustified in invoking jurisdiction under section 263. **Whether if there was an enquiry, even inadequate, that would not, by itself, give occasion to Commissioner to pass order under section 263, merely because he has a different opinion** in matter; it is only in case of 'lack of inquiry' that such a cause of action can be open. However, the Id. CIT is completely silent on this aspect.

**5. S.263 Explanation not invoked:** Interestingly, the Id. CIT did not invoke Explanation to S.263 which is normally interpreted / taken support by the invoking of S.263 **in absence of which, the Id. CIT could not have at all complained of lack of inquiry** or not making proper inquiries. Otherwise also he has not suggested what further inquiries could and should have been made in the admitted facts and circumstances of the present case.

**6.** Normally, in absence of any contrary material the averments made in the affidavits should be accepted. **Ref: Mehta Parikh & Co. v. CIT (1956) 30 ITR 181 (SC). In this case no such material is referred even by the CIT.**

**7.** A pertinent fact having a direct bearing cannot be lost sight off / ignored that a **survey** was carried out during the course of which some papers were impounded and that the AO made detailed inquiries seeking clarifications on each aspect, duly submitted by the assessee. Thus, there could not have been a further possibility in absence of any contrary evidence but not referred by the CIT.

**8. No Total lack of inquiry :** Thus, a circumspect view of all the above submissions on factual and legal aspects and the judicial guideline has fully established that the AO has

acted completely in accordance with the law and what he was supposed to do i.r.t. the issue in hand.

### **Supporting Case laws:**

**8.1 In CIT v/s Rajasthan Financial Corporation (1996) 134 CTR 145 (Raj)** held that: *“Once Assessing Officer 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 Assessing Officer allowed the claim being satisfied with the explanation of assessee, the decision of the Assessing Officer cannot be held to be erroneous simply because in his order not make an elaborate discussion in that regard.”*

### **8.2 In ANNU AGROTECH ( P) LTD. Vs PCIT,(2021) 214 TTJ (Jp)1118 (DPB 5-11 )**

*Revision—Erroneous and prejudicial order—Lack of proper enquiry—Case of the assessee was selected for scrutiny under limited scrutiny for enquiry as to whether the funds received in the form of share premium are from disclosed sources—Assessee's Authorised Representative produced books of account including cash book, ledger, subsidiary records and various other details as required, which were duly examined—AO made all the inquiries, sought clarifications on **all the relevant aspects to the extent he was supposed** looking to the nature of the issue involved, the past accepted history of the case and the evidences and material already available together with the material provided during the assessment proceedings—**Entire details of each shareholder i.e., balance sheet, income declared, transactions done with the assessee-company as also his creditworthiness/financial capacity was duly verified by the AO—CIT has not doubted the ownership of the respective shareholdings by the three shareholders—Thus, the level of the proof required in a normal case of cash credit under s. 68 could not have been applied though the AO did whatever he was supposed in the law to satisfy the requirement of s. 68—There was no evidence, information or anything else indicating that more enquiries were warranted—It was not the case of the CIT that there was a complete/total lack of inquiry—Law is well settled that the assessment order cannot be held to be erroneous simply on the allegation of inadequate enquiry—Reason for selection of the case for scrutiny does not speak of s. 56(2)(viib)—Therefore, the AO could not have made enquiries on this aspect—Even otherwise, the assessee also submitted a report of the expert under r. 11UA which fully justified charging premium @ Rs. 50 per share—Hence, the AO was justified in not applying s. 56(2)(viib)—Moreover, once all the details were made available before the CIT, he should have decided the issues instead of setting aside to the AO—Therefore, the order passed by the Principal CIT under s. 263 is quashed.***

**8.3 In [2016] 76 taxmann.com 226 (SC) CIT v. Reliance Communication Ltd (DPB 17 ) Held: IT : SLP dismissed against High Court's ruling that where assessee raised funds by way of FCCBs and Assessing Officer made detailed enquiries about genuineness and creditworthiness of actual subscribers to such FCCBs in terms of section 68, mere fact that AO did not make any reference to said issue in assessment order, would not entitle Commissioner to pass a revisional order**

**9.1 Adverse Observations and Objections by the Ld. CIT:** The other objections are nothing more than a suspicion, particularly when the CIT did not deny that these were old creditors (except in six cases )and no fresh /new amount was taken this year. The revisionary power can be exercised only when there is an error of law or of facts in the subjected order, which must be “prejudicial to the revenue. However, in this case neither

there was an error nor any prejudice caused to the revenue, hence, the CIT cannot invoke jurisdiction under S. 263 of the Act. In view of the above legal and factual position, the proposed action is completely beyond the scope of S.263 of the Act and therefore, deserves to be dropped.

## 9.2 SOP u/s 68 not binding and not a valid ground for S 263:

The Id. CIT in Para 8 at Page 10 of his Order, has alleged that the CBDT had issued Standard Operating Procedures (SOP dt. 10.07.2018). However, the AO did not follow the guidelines detailed therein which was binding upon AO. However the same is not a valid ground for the reasons that:

**1. Firstly, this was never made a ground in the Show Cause Notice issued u/s 263 and therefore, the CIT could not have adopted such reasoning in the impugned order for the first time which was not earlier confronted to the assessee. Reliance is placed on PCIT vs. ShreejiPrints (P.) Ltd. 2021] 130 taxmann.com 294 (SC) Surat-2 (DPB 47-51) held "SLP dismissed against impugned order passed by High Court holding that where assessee-company had received unsecured loans from two different companies and Assessing Officer had made inquires 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 Gujarat High Court affirmed the ITAT Order as under:

*15 The Pr.CIT had observed that Explanation 2 of section 263 of the Act is clearly applicable and it is clear that the Assessing Officer has passed the assessment order after making enquiries for verification which ought to have been made in this case. However, we find that the Pr. CIT has not mentioned in the show-cause notice issued under section 263 that he is going to invoke the Explanation 2 to 263 hence, invocation of Explanation in the order without confronting the assessee is not appropriate and sustainable in law in support of this contention, the Id. Counsel has placed reliance on the following decision:*

*CIT v. Amir Corporation 81 CCH 0069 (Guj.), CIT Mehrotra Brothem -270 ITR 0157 (MP, CIT v. Ganpet Ram Bishnoi - 296 ITR 0292 (Raj.), Cadila healthcare Ltd. v. CI 7, Ahmedabadh-1 [ITA no. 1096/Ahd/2013 & 910/Ahd/2014], Sri Sai Contractors v. ITO [ITO no. 109Nizag/2002] and Pyare lal Jaiswal v. CIT, Vamnesi [(2014) 41 taxmann.com 27 & (AII Trib.)].*

*It was contended by the Learned Counsel that clause -(a) & (b) of Explanation 2 of Section 263 are not applicable as the Assessing Officer has made enquiry and verification which should have been made. Further, in the show cause notice, the Explanation-2 of section 263 was not invoked by the PCIT and it was referred in the order u/s.263 of the Act. Therefore, in the light of decision of the Co-ordinate Bench of Mumbai ga in the case of Narayan Tatu Rane - 70 taxmann.com 227 (Mum. Trt.) [PB 153-1561 wherein held that explanation cannot laid to have over ridden the law as interpreted/the various High Courts where the High Courts have held that before reaching the conclusion that the order of the Assessing Officer is erroneous prejudicial to the interest of Revenue. The CIT himself has to undertake some enquiry to establish that the assessment order is erroneous and prejudicial to the interest of Revenue. The Id. Counsel relied on the decision of M/s. Amira Pure Foods Pvt. Ltd., v. PCIT in ITA No.3205/Del/2017 and Ahmedabad Tribunal in the case of Torrent Pharmaceuticals Ltd. v. DCIT [2018] 97 taxmann.com 671 (Ahd. - Trib.). it is clear from the enquiries made by the Assessing Officer and submissions made by the assessee that the Assessing Officer has taken the plausible view which is valid in the eyes of law. The Assessing Officer was satisfied consequent to making enquiry and after examining the evidences produced by the assessee, he accepted the assessee's claim of loan similar vi ew were also expressed by the Hon'ble Delhi High Court in the case of CIT v. Vodafone Essar South Ltd. [2013] 212 taxman 0184. We observe the Pr.CIT has drawn support from newly inserted Explanation 2 below section 263(1) of the Act introduced by Finance Act, 2015 w.e.f. 1-6-2015 for his action. The Explanation 2 inter alia provides that the order passed without making inquiries or verification 'which should have been made' will be deemed to be erroneous insofar as it is prejudicial to the interest of the Revenue. It is on this basis, the assessment order passed by the AO under section 143(3) of the Act has been set aside with a direction to the AO to pass a fresh assessment order. It will be therefore imperative to dwell upon the impact of Explanation 2 for the purposes of section 263 of the Act. XXX.*

*"17 We thus find merit in the plea of the assessee that the Revisional Commissioner is expected show that the view taken by the AO is wholly unsustainable in law before embarking upon exercise of revisionary powers. The revisional*

## SMT. GAYATRI DEVI VS PR.CIT (CENTRAL), JAIPUR

*powers cannot be exercised for directing a fuller inquiry to merely find out if the earlier view taken is erroneous particularly when a view was already taken after inquiry. If such course of action as interpreted by the Revisional Commissioner in the light of the Explanation 2 is permitted, Revisional Commissioner can possibly find fault with each and every assessment order without himself making any inquiry or verification and without establishing that assessment order is not sustainable in law. This would inevitably mean that every order of the lower authority would thus become susceptible to section 263 of the Act and, in turn, will cause serious unintended hardship to the tax payer concerned for no fault on his part. Apparently, this is not intended by the Explanation. Howsoever wide the scope of Explanation 2(a) may be, its limits are implicit in it. It is only in a very gross case of inadequacy in inquiry or where inquiry is per se mandated on the basis of record available before the AO and such inquiry was not conducted, the revisional power so conferred can be exercised to invalidate the action of AO. The AO in the present case has not accepted the submissions of the assessee on various issues summarily but has shown appetite for inquiry and verifications. The AO has passed after making due enquiries issues involved impliedly after due application of mind. Therefore, the Explanation 2 to section 263 of the Act do not, in our view, thwart the assessment process in the facts and the context of the case. Consequently, we find that the foundation for exercise of revisional jurisdiction is sorely missing in the present case.*

*18 In the light of above facts and legal position, we are of the considered view that the AO had made detailed enquiries and after applying his mind and accepted the genuineness of loans received from GTPL and PAFPL, which is also plausible view. Therefore, we find that twin conditions were not satisfied for invoking the jurisdiction under section 263 of the Act. The case laws relied by the ld. CIT(D.R.) are distinguishable on facts and in law hence, by the ld. Counsel as well and we concur the same hence not applicable to present facts of the case. Therefore, in absence of the same, the ld. CIT ought to have not exercised his jurisdiction under section 263 of the Act. Therefore, we cancel the impugned order under section 263 of the Act, allowing all grounds of appeal of the Assessee."*

**2.**Secondly, it is **wrong to say that SOP is binding** in as much as it is not a case of Instruction issued u/s 119 and the CIT himself stated the same to be a guideline.

**3.**Thirdly in the **alternate**, in the said SOP II (PB 88) the ld. CIT did not point out with reference to a particular creditor as to how the AO did not follow the guideline in as much as **all the three necessary elements stands satisfied** in this case (though the AO could not have been asked for source of source as per the law of the land). More particularly, when almost 70% amount were coming from the preceding year and where credit amounts was received during the year, the assessee had already furnished copies of ITR, bank statement, etc. apart from confirmatory affidavits.

**4.**Lastly, the SOP do not indicate that non following the guidelines maybe based for invoking revisionary jurisdiction u/s 263.

**9.3** With regard to **Para 6 Page 8- 10** The ld. CIT has given the instances showing alleged cases of missing information or non-reconciliation of details (kindly refer the following chart), , **it is submitted as under:**

**1.** Para 6.1 ld. CIT made a comparison between column no.31 (a) form 3CD (PB II 74-87) speaks of any loan deposit taken in cash exceeding the limit u/s 269 SS which has been shown as nil because no such loan in cash was taken exceeding the limit. In Schedule E (unsecured loans from others) (PB II 74-87) has been shown , partly taken this year and partly carried forward preceding year but all were recieved **through cheque. When both the issues are entirely different** then how a comparison could be there. **Obvisiously the conclusion drawn is based on misreading of law and facts** hence the resultant conclusion is also erroneous.

2.Para 6.2 and 6.3 Both the objections that the conformations are in the **same font** without detail of mode of payment, is a **mere suspicion** .The supporting documents in all six cases where amount received this year were filed (PB 4). So called alledged difference found by the CIT in the list shown in reply dt.12.3.2021(PB 6-7) viz a vis Schedule E (PB 4) is nothing but **an attempt to examine the issue with the microscope**. The major reason for difference in the name is that the accountant of the assessee has prepared the ledger account by the popular name or what has been told by the other side however, while giving the affidavit or mentioning the name in the reply the assessee based the AADHAR or PAN so as to provide correct details to the AO. Therefore:

- i. The creditor Shri Niket Jain is the correct name however his nick name is Amit Chamuniya and therefore the accountant mentioned same name in the ledger account as told .Otherwise he is the old creditor.
- ii. The creditors Smt. Priyanka Goyal and Smt. Meenakishi Goyal are sisters of Anand Goyal and has been named accordingly in the Schedule E.
- iii. Further ,Gothwal and Bairwa are of the same gotra/caste and has been used as such at serial no. 4.
- iv. Shri Raghuvendra jagdamba tractor is the propriety of Raghu veer Singh
- v. Similar is the case with Shri Neeraj Gurjar in which Rs. 2 lakhs was received from his property Samridhi Enterprises whereas Rs. 8 lakh was received from him directly therefore the accountant of the assessee opened two accounts and one single affidavit has been given because Neeraj Gurjar is the same person.
- vi. In case of Sunitri Jain the figure of Rs.5,35,000/- has been wrongly typed which is correctly Rs.3,50,000/- and this account is also coming since last and in the list at serial no. 20 of letter dated 19.04.2021 (PB 35-36), the amount of the preceding year has been shown as Rs.3,50,000/- only.

Thus ,all **the instances cited are surprisingly not material** but are rather based on misconception of law and facts and on the part of the ld. CIT himself and does not show any seriousness/ serious mistake or error committed by the AO so as to call for action u/s 263.There is no end for suspicion and it is held that suspicion cannot be a ground for invoking S 263 in the case of **Commissioner of Income-tax v.Trustees of Anupam Charitable Trust [1987] 31 Taxman 335 /167 ITR 129 (Raj )**wherein it was held as under:

*“The error envisaged by section 263 was not one which depended on possibility or the guess work but it should be actually an error either of fact or law. Unless the Commissioner categorically says that there was some income from speculative business which could not qualify for deduction much less exemption under section 11, it cannot be said that there was any error in the order of the ITO relating to the assessment year 1971-72. This error was not relevant to the assessment year 1975-76.*

Hence, the impugned Order deserves to be quashed.”

2.4 On the other hand, the Id. CIT-DR relied upon the order of the Id. PCIT and submitted that Id. PCIT was justified in invoking section 263 of the Act for which the Id. CIT-DR filed the written submission as under:-

“ The copy of audited Balance sheet, Trading P & L account and Schedule of unsecured loans from others of Rs. 1,00,78,816/- for AY 2019-20 has names mentioned as Amit Chamuniya, Anand Goyal Sister, Dinesh Gothwal, Jagdamba Tractors etc. at page Nos 13 and 14 of the written submission dated 01.08.2023 the assessee has claimed them to be nick names. If there are nick names then how did the auditor verify them? So, in the light of the absence of due verification in finalising audit report, the facts are at variance in themselves and accepted by the Ld. A/R and also clearly as highlighted by the Ld. PCIT in his order u/s 263.

02. In Para 9.3 of the written submission dated 01.08.2023, the Ld. A/R has stated-

"9.3 With regard to Para 6 Page 8-10 The Id. CIT has given the instances showing alleged cases of missing information or non-reconciliation of details(kindly refer the following chart), it is submitted as under:-

1. Para 6.1 Id. CIT made a comparison between column no. 31(a) form 3CD (PB II 74-87) speaks of any loan deposit taken in cash exceeding the limit u/s 269 SS which has been shown as nil because no such loan in cash was taken exceeding the limit. In Schedule E (unsecured loans from others) (PB II 74-87) has been shown, partly taken this year and partly carried forward preceding year but all were received through cheque. When both the issues are

entirely different then how a comparison could be there. Obviously the conclusion drawn is based on misreading of law and facts hence the resultant conclusion is also erroneous."

03. The very facts highlighted by the Ld. A/R above clearly point out to the same. discrepancies as highlighted by the Ld. PCIT in his order u/s 263 and give strength to Ld. PCIT's finding and order u/s 263. The submission of the Ld. A/R in para 9.3 of the written submission is misleading and contrary to the facts as pointed out by the Ld. PCIT. Regarding column No. 31(a) of Form 3CD and Schedule E of the audit report, the Ld. A/R has submitted that these two issues described in Column No. 31(a) and Schedule E are entirely different. Though the actual position is that the both are supposed to describe the position of the loans received during the year. In Column No. 31(a) the auditor has reported Nil and in Schedule E the auditor has not segregated that whether there are old loans carried forward or new loans have been received and the Ld. A/R submits that new loans are mentioned in Schedule E. When auditor is certifying in Form 3CD that no new loans are given and then in audit report Schedule E includes new loans then the issue calls for verification and merits PCIT's order u/s 263. Hence, it is clear misleading of facts and law and submission of incomplete and improper facts by the assessee.

04. So, the facts of the case are summarized as:

The Ld. PCIT at S.No. 3 of his showcause clearly mentions that on the examination of the responses of the assessee, confirmations were found to be filed without any documentary evidence towards establishing the identity, genuineness and creditworthiness of the loan given and thus did not inspire confidence and at S.No. 5 clearly stated that the fact of not having maintained books of accounts by the assessee as also owned up in the statement recorded on oath, has not been discussed in the assessment order or in the order sheet. In support of genuineness of these loan transactions, supporting evidences/documents such as bank statements, PANS, ITRS, confirmation of accounts and individual accounts of all lenders were not provided.

Now this is coupled with fact mentioned at examples quoted by the Ld. PCIT at Page No. 9 at S.No. 1 to 3.

05. And this issues is further coupled with the fact of different reporting done by the auditor in form no. 3CD and in the schedule E(Schedule for unsecured loans from others) of the audit report.

06. Furthermore, as highlighted by the Ld. PCIT in the order u/s 263 that the names of the persons who have given loans also do not match as highlighted in Point No. 2 at Page 9 of order u/s 263 and the same is also substantiated from the Ld. A/RS reply dated 01.08.2023 wherein he has stated that the names mentioned in the audit report are nicknames or popularly known names, or grouped together in the name of relative or a business concern etc, again leading to the admission by the Ld. A/R that the conclusion at para 7 at page 10 by the Ld. PCIT that "The above facts came on sample basis make it clear that the details of creditors provided by the assessee are either incomplete or inaccurate or without satisfactory supporting documents. In summary it is evident that the assessee has furnished details of creditors which are different from Schedule E of audit report and are not matching with her own previous submissions furnished before the assessing officer. It is noted that the assessing officer has not satisfactorily examined the main issue of the case."

07.In the end of point no. 11 at page 10, the Ld. PCIT has pointed out on the basis of the facts of the case that the issue of sundry creditors of Rs. 9,81,206/- remained explained.

08 Hence, from the above facts it is clear that the Ld. PCIT was justified in invoking section 263 and then on the basis of the facts mentioned therein and discussion thereon was totally justified in passing order u/s 263. So it is humbly prayed the order u/s 263 passed by the Ld. PCIT is totally justified and necessitated and the appeal filed by the assessee strongly deserves to be rejected.”

2.5 With a view to countering the submissions of the Id. DR, the Id. AR of the assessee has filed the following rejoinder before the Bench on 09-08-2023 further praying therein to quash the impugned order passed u/s 263 of the Act.

**‘REJOINDER (w.r.t WS dated 02.08.2023 submitted by The Id. CIT DR)**

**1. In Para 2 & 3 w.r.t. Para 6.1 Page 8 -10 of the Impugned Order:**

**1.1** The contention of Id. CIT DR are without appreciating the true objection raised by the CIT and the submission made there against in Para 9.3. As a matter of fact, there is no substantive incorrectness so far as the AO is concerned in the context of S. 263 of the Act as wrongly alleged in as much as the mention of S. 269SS of the Act in the Tax audit report shows the reporting of the Cash receipts of loans exceeding Rs. 20,000 and hence, the Id. Tax Auditor finding the fact that there was no loan taken in cash so as to attract S. 269SS mentioned *nil*. The Id. Tax Auditor has taken a possible and plausible interpretation of the reported *nil* because there was no amount taken exceeding the limit. At the same the requisite details were available before the AO as admitted by the Id. CIT and CIT DR in Annexure E of the Audit report. Thus, in any case, **it can't be said that there was a contradiction of showing nil on one hand and showing details of the Unsecured Loans, on the other.**

The AO therefore correctly considered these facts as they were before him and did not entertain any sort of confusion which now appears to have been created just to justify the invoking of S. 263 of the Act. In any case, issue to be decided is the correctness of the assumption of the jurisdiction u/s 263 based on the facts available on record and not on what the auditor did or could/should have done. (Which is not commented even otherwise by the CIT in his order).

**1.2** Further, in Para 31(a) of the Tax Audit Report, the Tax Auditor was not supposed to report the old loans carry forward this year which is a misleading objection raised by the Id. DR. In any case, the substantive fact that except six parties all the remaining parties were carried forward from preceding year. Pertinently the AO had the access to the assessment record of the current as well as the preceding year of the assessee and various other creditors through the PAN which were available before him. It can't be said that the AO must not have examined the relevant facts taking help of PAN.

Furthermore, even the SOP issued by the CBDT dated 10.01.2018 (PB 88) at Step1 itself required the AO to examine only those credits found during the year in the books of accounts and it does not say that the credit of the preceding year should be examined.

**1.3** In Para 4 of the written submission submitted by the Id. DR the contents of Para 3 of SCN issued by CIT u/s 263 of the Act has been virtually reproduced. In our submission made to Id. CIT and the Hon'ble ITAT, detailed submission and various supporting evidences are relied upon. The AO having made detailed queries by way of various notices was fully conscious of the issue.

**1.4** There is no different reporting done by the auditor as alleged in para 5 of the written submission. In reference to Para 6 of the written submission submitted by the Id. DR the contents of Para 7 by CIT u/s 263 of the Act have been reproduced in which the assessee already made detailed submission before the CIT and the Hon'ble ITAT which remains un rebutted.

**1.5** A Reference has been made to Pg.no 13 &14 of our earlier written submission dated 01.08.2023 and it is stated if the nicknames of the creditors how the auditor could verify them. The Id. Tax Auditor prepared the final accounts and the Schedule(E) based on the books of accounts which consisted the ledger account of all these creditors. Moreover, the Id.AO was fully conscious of the issue of Unsecured Creditors in as much as on various occasions he repeatedly raised queries vide letter dated 24.02.2021 Q.No.8 & 12 (PB 4C) replied vide letter dated 12.03.2021 (PB 5-8) along with confirmatory affidavits of 22 creditors. Further vide letter dated 12.04.2021 (PB 31-32) he again raised specific query only with regards to the cash creditors which was replied and through another Show Cause Notice dated 15.04.2021 (PB 33-34) again asked for the unsecured creditors to which was replied by the assessee vide letter dated 19.04.2021 (PB 35-40) in which copies of the remaining conformity affidavits were also filed. This was followed by another reply dated 29.06.2021 (PB 55-57). Further, the Annexure-E (PB 4) shows 25 names out of which in as many as 20 cases, there is no difference noticed as alleged. Out of the remaining also, two are old cases i.e. Anand Goyal Sister & Jagdamba Tractors. Thus, the material reconciliation was already available. Moreover, in the scrutiny cases like the one where verification of creditors involved it is a usual practice of verifying the confirmation/affidavit with the list of the creditors by the AO manually however there is no practice that he notes down each and every communication exchanged by the parties on record which is humanly not possible.

**2. No Legal Requirement to pass a very detailed or thesis type order/ Supporting Case Laws** : Where admittedly, the AO has made a detailed inquiry by issuing notices and replies have also been filed thereto However, feeling satisfied the AO chose not to make any addition but at the same time he has not made any reference to the Assessment Order. This fact by itself cannot be made a ground for invoking S. 263 as held in various cases. Kindly refer:

**2.1** In the case of **CIT Mumbai Vs Reliance Communication Ltd. [2016] 76 taxmann.com 226 (SC)** it was held that:

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

**2.2** In the case of **CIT v. Vijay Kumar Koganti [2020] 120 taxmann.com 430 (Mad.)** where it was held that:

*“Section 69, read with section 263, of the Income-tax Act, 1961 - Unexplained investment (Share application money) - Assessment year 2014-15 - Assessee filed its return for relevant assessment year - Case was selected for scrutiny to consider (i) substantial increase in capital investment and, (ii) mismatch in sale consideration of property in return of income and AIR - Assessing Officer after perusal of documents, verification of income tax returns of assessee and making enquiries with company where assessee held shares, passed assessment order - Principal Commissioner invoked revisionary jurisdiction under section 263 and set aside assessment order mainly on ground that substantial increase in capital investment reflected by assessee in his balance sheet as compared to preceding year was not examined by Assessing Officer - Tribunal set aside revisional order observing that these issues were raised by Assessing Officer in scrutiny assessment and that assessee had given proper explanation, which was taken note of by Assessing Officer while completing assessment under section 143(3) - Whether since Pr. Commissioner did not point out anything specifically as to how assessment order was erroneous, no question of law arose out of impugned order of Tribunal - Held, yes [Paras 10 and 13] [In favour of assessee]”*

**2.3** In the case of **Hill Queen Investment (P.) Ltd. Vs PCIT, Kolkata [2021] 127 taxmann.com 682 (Kol - Trib.)** it was held that:

*“Section 68, read with section 263, of the Income-tax Act, 1961 - Cash credit (Bogus sales) - Assessment year 2015-16 - Assessee company filed its return of income for relevant year - Case was selected for limited scrutiny on ground of mismatch in sales turnover and suspicious sale transaction in shares - Assessment was completed under section 143(3) - Thereafter, Commissioner issued a show cause notice to assessee under section 263 proposing to revise assessment order passed under section 143(3) - Assessee stated that Assessing Officer had already verified issue of shares at time of assessment proceedings before finalizing assessment order, therefore, proceedings under section 263 could not be invoked - It was found that Assessing Officer during course of assessment proceedings had issued notice under section 142(1), along with a questionnaire and directed assessee to furnish documents and evidences of sale transactions of shares and assessee had given point wise reply and transactions were supported by documentary evidences notes, bills, bank transactions and transactions were done on platform of stock exchange - **Whether since Assessing Officer had called for and verified all details and documents in connection with purchase and sale of shares in question and after examining same, had taken a possible view that transactions were genuine, revision of assessment order under section 263 by Commissioner being bad in law was to be quashed and set aside - Held, yes [Paras 9, 11 and 12][In favour of assessee]”***

**2.4** In the case of **Nilkanth Stone Industries Vs PCIT, Valsad [2021] 128 taxmann.com 416 (Surat-Trib.)** it was held that:

*“Section 69A, read with section 263, of the Income-tax Act, 1961 - Unexplained moneys (Revision) - Assessment year 2014-15 - Assessee-firm, engaged in business of stone crushing and selling of crushed stones, filed its return of income - Case was selected for scrutiny and an assessment order was passed under section 143(3) making certain addition - Subsequently, Pr. Commissioner invoked revision under section 263 on ground that Assessing Officer had not examined issue related to advance of certain amount given by assessee to one AIP and also had not examined issue related to payments of commission to two persons - Thus, impugned assessment order was erroneous and prejudicial to interest of assessee - It was noted that assessee had furnished all relevant details regarding loan and advances given to AIP and explained that said advance was returned back in next year and also furnished copy of ledger account - Further, assessee had also submitted all evidence and explained services in relation to sales provided by such two persons to whom it paid commission along with copy of sales register, profit and loss account and confirmation of parties before Assessing Officer - It was again furnished in revision proceedings and that nothing was found wrong against those documents by Pr. Commissioner - During scrutiny assessment assessee filed reply to all queries raised by Assessing Officer and produced all relevant evidences and*

*after considering those materials and explanation, Assessing Officer came to a conclusion regarding advances and commission payments in question **though it was not mentioned explicitly in assessment order - Whether, on facts, impugned invocation of revision under section 263 was unjustified - Held, yes [Paras 10, 11, 16 and 17] [In favour of assessee]***

**2.5 In the case of Meerut Roller Flour Mills (P.) Ltd. Vs CIT [2019] 110 taxmann.com 170 (Allahabad) it was held that:**

*“Section 69A, read with section 263, of the Income-tax Act, 1961 - Unexplained money (Loan) - Assessment year 2007-08 - For relevant year, assessee filed its return declaring certain taxable income - Assessee's case was selected for scrutiny and a notice was issued under section 143(2) to which assessee replied along with documentary evidence - Assessing Officer being satisfied, passed assessment order under section 143(3) - Commissioner subsequently passed a revisional order directing Assessing Officer to examine matter relating to unsecured loans obtained by assessee - Tribunal confirmed said revisional order - It was noted that in course of assessment, Assessing Officer had raised various queries from assessee in respect of unsecured loan which were duly replied by assessee along with documentary evidence in regard to each of query - Whether in aforesaid circumstances, unless Commissioner exercising power under section 263 brought on record any evidence showing that order of Assessing Officer was erroneous, as same was passed without application of mind or Assessing Officer had made an incorrect assessment of fact or incorrect application of law, revisional order passed by him was not sustainable - Held, yes - Whether since Commissioner failed to do so, impugned revisional order was to be set aside - Held, yes [Paras 21 and 22] [In favour of assessee].”*

**2.6 In the case of PCIT, Bikaner vs Dilip Kumar Swami [2019] 106 taxmann.com 59 (Raj.) it was held that:**

*“Section 68, read with section 263 of the Income-tax Act, 1961 - Cash credits (Bank deposits) - Assessment year 2009-10 - Assessee filed his return declaring certain taxable income - In course of assessment, Assessing Officer noted that assessee had deposited certain amount in his bank account - On being enquired about source of said deposit, assessee explained that it represented amount received from various purchasers against sale of goods i.e., tractors and accessories thereof - Assessing Officer accepted assessee's explanation and completed assessment - Commissioner taking a view that cash deposits not being satisfactorily explained, passed a revisional order setting aside assessment - Tribunal, however, set aside revisional order so passed - It was noted that order passed by Assessing Officer that deposits stood reconciled was preceded by a proper inquiry - It was also found that assessee had produced statement of bank account, copies of bills issued to purchasers of tractors as also books of account showing entries of deposits made in bank - Moreover, Assessing Officer had recorded a categorical finding that entries in bank account were verifiable from cash book and also bills produced by assessee - Whether in view of aforesaid, Tribunal was justified in setting aside revisional order passed by Commissioner - Held, yes [Para 11] [In favour of assessee]”*

**2.7 In the case of CIT, Central-III vs. Nirav Modi [2017] 77 taxmann.com 78 (SC) it was held that:**

*“Section 68, read with section 263 of the Income-tax Act, 1961 - Cash credit (Gift) - Assessment years 2007-08 and 2008-09 - During relevant years, assessee received certain amount as gifts from his father and sister who were non-residents in India - **Assessing Officer after making detailed enquiries, took a view that assessee had duly proved identity, source and creditworthiness of donors - He thus accepted transaction of gift declared by assessee - Commissioner, however, passed a revisional order under section 263 directing Assessing Officer to enquire into capacity of donors and to decide about genuineness of gifts afresh - Tribunal set aside revisional order - It was noted that Commissioner in his order of revision, did not indicate any doubt in respect of genuineness of evidence produced by assessee - Moreover, satisfaction of Assessing Officer on basis of documents produced was not shown to be erroneous - Whether on facts, it was a case where a view had been taken by Assessing Officer after making proper***

*enquiry and, thus, Tribunal was justified in setting aside impugned revisional order - Held, yes [Paras 9 and 12] [In favour of assessee]"*

**2.8** In the case **CIT vs Kamal Galani [2019] 110 taxmann.com 213 (SC)** it was held that:

*"Section 69A, read with section 263, of the Income-tax Act, 1961 - Unexplained money (Revision) - Block period 1-4-1996 to 25-7-2002 - Assessee was subjected to block assessment proceedings - During such proceedings, Assessing Officer found that there was introduction of amount in capital account of assessee - Further, assessee had received loan from his brother - With respect to introduction of capital, assessee had pointed out that he was an NRI for over two years and he had made foreign remittances over a period of time - As regards unsecured loan received from his brother, assessee pointed out that he was running a successful business of trading, was engaged in various commercial and non-commercial activities and he was man of standing and means - Assessing Officer accepted explanation of assessee and did not make any addition in respect of those amounts - **Whether once Assessing Officer carried out detailed inquiries, it was not open for Commissioner to reopen issues on mere apprehension and surmises - Held, yes - Whether, therefore, Tribunal was justified in setting aside impugned revisional order - Held, yes [Para 20] [In favour of assessee]"***

**2.9** In this case the Hon'ble ITAT in **Shri Keshoripatan Sahkari Sugar Mills ltd. vs. PCIT (2023) 223 TTJ (Jp) 922** as held as under:

*"11. Clearly, therefore, so long as the action of the AO cannot be said to be lacking bona fides, his action in accepting an explanation of the assessee cannot be faulted merely because it could have been lawful to make more detailed inquiries or because he did not write specific reasons of accepting the explanation. The fact remains that the specific issue mentioned has been examined and the contention of the assessee accepted by the AO. Merely because the AO did not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under s. 263, and non-mentioning of these reasons do not render the assessment order "erroneous and prejudicial to the interest of the Revenue"*

**2.10** The Tribunal Mumbai Bench in **Mrs. Khatiza S. Oomerbhoy vs. ITO [reported at (2006) 101 TTJ (Mumbai) 1095—Ed.]** addressed this issue elaborately after referring to number of cases on revisionary powers vested in the CIT under s. 263 of the Act and summed up the fundamental principles emerging from several cases as under—

*"(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 of the Act 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 determines the income, the CIT of IT, while exercising his power under s. 263 of the Act 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 him and if he exercises such power in accordance with law and arrives at a conclusion, such conclusion cannot be termed to be erroneous simply because the CIT does not feel satisfied with the conclusion.*

*(viii) The CIT, before exercising his jurisdiction under s. 263 of the Act must have material on record to arrive at a satisfaction, and*

*(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.”*

**Hence the Impugned Order u/s 263 may kindly be quashed.**

The above submissions are based on the information supplied and as instructed by the client.”

2.6 We have heard the learned counsel of both the parties and have carefully perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the impugned order passed u/s 263. The assessee has dealership of Indian Oils Corporation Limited under the name M/s Jagdish Petroleum and declared total income of Rs. 6,08,675/- income under the head business and profession and other sources. A survey was conducted u/s 133A at the business Premises of the assessee on 29.10.2018 and the case was selected for manual scrutiny. Notices were issued and were replied time to time. During the assessment proceedings the AO issued query letter regarding confirmation of

unsecured loan and sundry creditors balances appearing in the balance sheet. The assessee duly replied to all the queries of the AO along with information and supporting documents. Being satisfied, the AO completed the assessment vide order dated 02.07.2021 u/s 143(3). Later on, through the show cause notice (“SCN”) dated 21.07.2022, it was proposed to invoke revisional proceedings u/s 263 of the Act on the ground that captioned assessment order dated 24.09.2022 passed by the AO is erroneous in so far as prejudicial to the interest of Revenue because the AO did not verify/examine the issues which he ought to have made.

The crux of the allegation made are:

- a) Liability of Rs. 9,81,205/- has been shown under head Sundry Creditors without any corresponding purchases or transaction. The complete details of the same were not furnished.
- b) Books not maintained by the assessee, this fact has not been discussed or inquired or satisfactorily examined in the assessment proceedings.
- c) The submission of a chart showing details of unsecured loans lacked satisfactory supporting documentary evidence, indicating a lack of documentary evidence.
- d) Confirmations of loan filled by creditors u/s 133(6) were without any documentary evidence and do not inspire confidence. The list of 22 creditors with their confirmations lacked necessary details, and the particulars did not match with the details provided in Schedule "E", indicating incomplete or inaccurate creditor details. The appropriate inquiries / verifications of loans have not been made by the AO. This lack of inquiry and consequent non-deriving of reasoned inference by the Assessing Officer has prima facie caused prejudice to the interests of the revenue. (However, the Id PCIT, has not repeated all the above allegations while passing impugned order.)

It is well settled that the prerequisites to exercise of jurisdiction by the Id PCIT under s. 263 of the Act is that to establish order of the AO is to be erroneous

insofar as it is prejudicial to the interest of the Revenue, the PCIT has to satisfy of twin conditions simultaneously, namely (i) the order of the AO sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If any one of them is absent, s. 263 cannot be invoked. This 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 as also prejudicial to Revenue's interest, that the provision will be attracted. An incorrect assumption of the fact or an incorrect application of law will satisfy the requirement of the order being erroneous. The phrase 'prejudicial to the interest of the Revenue' has to be read in conjunction with an erroneous order passed by the AO. However, every loss of revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. For example, if the AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with which the PCIT does not agree, it cannot be treated as an erroneous order and it is prejudicial to the interest of the Revenue, unless the view taken by the AO is totally unsustainable in law. We draw strength from case of Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC) and also from the case of CIT vs. Max India Ltd. (2007) 295 ITR 282 (SC). In the light of judicial precedents, we now proceed to examine the facts of the case. We find that the AO had raised very specific and directly relevant

queries/called for explanation and evidences w.r.t. the identities creditworthiness and genuineness of the cash credits found during the year u/s 68; to the extent he was supposed to act in law. Firstly, the relevant para of the assessment order, wherein the AO has examined each any every documents submitted by assessee during scrutiny proceedings, is reproduced below:

*“The assessee filed her e- return of income on 31.10.2019 declaring total income amounting Rs. 608680/- for the assessment year under consideration. The return filed by the assessee was processed u/s 143(1) of the income tax act, 1961. A survey u/s 133A of the income tax act, 1961 was carried out on the business premises of the assessee on 29.10.2018. Subsequently the case of the assessee was manually selected for compulsory scrutiny and a notice u/s 143(2) of the income tax act, 1961 dated 24.09.2020 issued to the assessee. \*\*\*\*\* 4. “During the assessment proceeding considering the facts of the cases and details/ explanation filed by the assessee and it’s A/R on time to time.”*

The main ground on which impugned order u/s 263 was passed by the Id. PCIT was that the AO did not verify/examine the loan creditors as there is a lack of supporting evidences and no appropriate inquiry was made. However, after a careful perusal of the material placed on record it is noticed that such observations are not legally & factually correct. The AO raised directly relevant and very specific queries on the issue in hand from time to time by issuing various notices issued u/s 142, which were dully replied by the Assessee from time to time along with supporting evidences, as discussed hereinafter.

2.7 Firstly, notice u/s 142(1) dated 24.02.2021 copy at (PB 4A-4E) was issue as under:

*In connection with the assessment for the assessment year 2019-20 you are required to: \*\*\*\*\*  
During the course of survey operation conducted at your business premises on 29.10.2018 certain incriminating documents/loose papers & other valuables were found and impounded by the Department.*

In this connection, you are hereby required to furnish the following information/ details/ documents/ confirmations/ explanation, etc. as under: -

1. Please give **brief note on business activities** carried out by you.
2. Please produce for verification your **complete books of account with audit report, bills voucher etc.** maintained by you which, may support your claims made in the return under scrutiny. \*\*\*\*
5. Kindly furnish **details of all bank Accounts** in the following format. Kindly also **furnish copies of all bank accounts** from 01.04.2018 to 31.03.2019 with narration debit and credit entries.

S.no.	Name and Address of Account Holder	Name and Address of the Branch	Account number	Nature of the account

7. In case you have taken **any secured loan**, kindly furnish the details of securities/assets / mortgaged/furnished for obtaining such loans, also explain the use of that loan.
8. Kindly furnish confirmations of unsecured loans/creditors/squared up accounts along evidence of identity, genuineness and creditworthiness of the creditors, raised during the year. Kindly furnish the copy of the concern bank account, balance sheet, capital account, and ITR of the concerned persons as evidences. Kindly note that in absence of evidences, those amounts shall be treated your income u/s 68 of the Act. \*\*\*\*
- 12.If there are **(creditors or unsecured loans) or any other liabilities pending/outstanding** during the considering year, kindly (furnish their details) in the following format”.

Sr. no.	Name and address of creditor/ loaner	Nature of outstanding entry	Total amount involved	Rate of interest	Date/s on which payment is made	Whether that person covered u/s 40A(2)(b)

In response, vide reply at 12.03.2021 (PB 5-8) it was submitted as under:

Date: 12.03.2021

“8. **Confirmations of creditors as affidavit** on 50/- non judicial stamp paper named below is being submitted. \*\*\*\*\*

12. Detail given in para no.8”

**5.3** Again vide notice dated 15.04.2021 u/s 142(1) copy at **(PB 33-34)**, he asked the Assessee to reply on the issues as under:

“2. On perusal of details available on records, it is noticed that sundry creditor amount of Rs. 9,81,205/- and Unsecured Loan of Rs. 1,00,78,817/- were claimed in Balance Sheet of A.Y. 2019-20. In this regard, various opportunities were given to you by issuing notice dated 24.02.2021 u/s 142(1) of the I T Act dated, 12.04.2021 but you have not furnished required details/information.”

This was **duly replied in a great detail** vide letter dated 19.04.2022 (Copy at PB 35-40) as under:

**A. “Cash Creditors of Rs.1,00,78,817/-**

The assessee had taken unsecured loans of Rs.1,00,78,817/-. The entire amount was not taken afresh during the year but, their already existed opening balances in the account of respective creditors of Rs.73,82,817/- and it is only Rs.27,46,000/-, which is taken afresh during the year. For better appreciation refer the following chart.

**Chart showing unsecured loans in the earlier years and the Current year**

S. No.	Name of Parties	PAN No.	Opening Balance as on 01.04.2018 (Rs.)	Taken during the Year (In FY 2018-19) (Rs.)	Total amount as on 31.03.2019 (Rs.)	PB No.
1	Ajay Vijayvergiya	AGDPV3368F		400000	400000	9,42-44
2	Nikit Jain (alias Amit Chamuniya)	BCBPJ3200K		40000	40000	28
3	Priyanka Goyal	ADXPA9974B	500000		500000	29
4	Minakshi Goyal	AIIPG4037D	500000		500000	30
5	Damyanti Devi	BANPC2746K	260000		260000	10
6	Dinesh Kumar Bairwa	ALXPB7578A		1796000	1796000	11,45-49
7	Ghnashyam Chourasiya	ABCPC3097Q	50000		50000	12
8	Raghuveer Singh	AZVPS7052E	500000		500000	13
9	Jitendra Singh Solanki	BLDPS9400B		200000	200000	14, 50,51
10	Manish Chourasiya	AIYPC6240L	1363804		1363804	15
11	Manorma Devi	CFCPD9444Q	250028		250028	16
12	Nawal Chourasiya	ABQPC2283E	100000		100000	17
13	Rajendra Kumar Gupta	ABVPG8047M	250000		250000	18
14	Neeraj Gurjar	ANUPG1698R	700000	300000	1000000	19,52
15	Poornima Chourasiya	BJLPC4538G	150000		150000	20
16	Ishwar Chand Chourasiya	ABGPC7609C	584000		584000	21
17	Shiv Kumar Chourasiya	DAJPK7250Q		10000	10000	22
18	Om Prakash Chourasiya	AKAPC8128K	499985		499985	23
19	Pratibha Chourasiya	BPPPC7572G	40000		40000	24
20	Sunita Jain	ANEP11102F	350000		350000	25
21	Vishnu Kumar Gupta	ABRPG7274N	535000		535000	26
22	Yashwant Tak	ACIPT5135B	100000		100000	27
23	Neetu Khandelwal	-	100000		100000	
24	Ashok Jain	AFETJ4639R	500000		500000	41

<b>Total</b>		<b>7332817</b>	<b>2746000</b>	<b>10078817</b>	
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(PAPERBOOK PAGES MENTIONED LATER ON)

From the perusal of the above chart it emerges as under:

1. All the creditors are Income Tax assessee and their PAN No. have been given. The amounts have been received through account payee cheque only in all the cases.

**Thus, the identities of creditors as also the genuineness of the transactions are stand established.**

2. Out of 24 creditors, the unsecured loans were taken from 6 creditors only during the year and remaining all the balances of loans continued as opening balances from earlier years. Confirmation in almost all the 24 cases has already been filed along with letter dated 13.03.2021 (except in case of one **Shri Ashok Jain whose confirmation is also enclosed herewith now with this reply PB-1**). Hence a partial compliance had already been made to the statutory notices.

3. As regards the creditworthiness/source from which the 6 creditors had advanced the amount to the assessee has been explained creditor wise as under.

**3.1 Shri Ajay Vijayvergiya- Rs.4,00,000/-**

He advanced Rs.4,00,000/- to the assessee i.e. Rs.3,00,000/- on dated 06.09.2018 and Rs.1,00,000/- on dated 11/09/2018. He was in receipt of personal loan of Rs.3,91,028/- on dated 04/09/2018, as evident from his Bank account statement. Copy of IT and Bank Account are enclosed herewith (PB2-4). Thus, there is a direct source of receipt of Rs.4,00,000/-.

**3.2 Shri Dinesh Kumar Bairwa- Rs.17,96,000/-**

He is government employee at PHED department Tonk and retired during the year under consideration itself, whereupon he received statutory benefits of Rs.18,93,637/- on dated 16.10.2018. After this only, he transferred Rs.9,96,000/- and Rs.8,00,000/- on 06.11.2018 and 05.02.2019 respectively, as evident from his Bank account statements. Copy of IT, computation and Bank Account are enclosed herewith (PB 5-9). Thus here also, there is a direct source of receipt of Rs. 17,96,000/-.

**3.3 Shri Jitendra Singh Solanki- Rs.2,00,000/-**

He had sufficient bank balances prior to transfer the amount of Rs.2,00,000/- on dated 10.09.2018, as evident from his Bank account statement. Copy of IT, and bank account are enclosed herewith (PB 10-11). Thus, here also, there is a direct source of receipt of Rs. 2,00,000/-

**3.4 Shri Neeraj Gurjar- Rs. 3,00,000/-**

He had sufficient bank balances prior to transfer the amount of Rs. 2,00,000/- and Rs. 1,00,000/- on dated 11/01/2019 and 25/01/2019 respectively as evident from his bank account statement. Copy of ITR and Bank account are enclosed herewith (PB 12-13). Thus here also, there is direct source of receipt of Rs. 3,00,000/-.

**3.5 Shri Nikit Jain- Rs.40,000/-**

He had sufficient bank balances prior to transfer the amount of Re 40,007/- on date, 21.07.2018. Thus here also, there is a direct source of receipt of Rs. 40,000/-.

**3.6 Shri Shiv Kumar Chourasiya- Rs. 10,000/-**

He had sufficient bank balances prior to transfer the amount of Rs. 10,000/- on date 07/06/2018. Thus here also, there is a direct source of receipt of Rs. 10,000/-.

4. Confirmation from almost all the creditors whether the old creditors or the new creditors totaling to Rs.94,78,817/- were filed on dated 13.03.2021, except two parties, i.e, one Shri Ashok Jain of Rs.5,00,000/- and Neetu Khandelwal of Rs. 1,00,000/-. Copy of confirmation of Shri Ashok Jain of Rs.5,00,000/- attached with this reply at **PB-1**. Although the subjected amount received from these parties in earlier years and their balances are continuing from last so many years. Therefore, it doesn't require further confirmation from the side of this creditor yet however, we are still trying to obtain a confirmation from Smt. Neetu Khandelwal.

There apart, your good self may kindly direct enquiries from all the creditors. We have already supplied their PAN No. and complete addresses. The department may ascertain all the relevant information with reference to the respective PAN No's.

*Sill however, if some more clarifications are required we shall have to submit the same (Sufficient opportunity is provided) \*\*\*\*\**

**B. Sundry Creditors of Rs. 9,81,205/-**

*Firstly, these are the outstanding balances from 48 parties were the trade creditors, out of which 47 parties the balance totaled to Rs, 6,98,105/, in whose cases the individual balances were less than Rs. 1,00,000/- only. It is only one party Shri Sachin Chourasiya whose credit balance of Rs. 2,83,100/- for which confirmation is attached with the reply at **PB-14**. In the cases of sundry creditors where the credit balance is below Rs. 1 Lakh only, the AO himself did not require the confirmations of vide his notice dated 12.04.2021.*

*Relevant para of the Notice is reproduced:*

*“You are requested to furnish the confirmation of sundry creditors, unsecured loans above Rs. 1 lakh in prescribed performa with enclose IT and Bank Statements and should reach in this office on or before 15.04.2021 at 11.30AM.”*

*C. Thereafter, in the subsequent SC dated 15.04.2021, the assessee was asked about the details required in Sundry Creditors of Rs.9,81,205/- and Unsecured Loan of Rs.1,00,78,817/- and requested to show cause as why the said amount totaling to Rs.1,10,60,022/- did not treated as unexplained credits. It is also alleged that why best judgment assessment u/s 144 is not made as many opportunities were given.*

*In this connection we may submit that firstly it is not a case of total noncompliance as evident from the assessment record itself. The assessee, has been submitting replies to the statutory notices to the extent it was practicable and possible in as much as the assessee was hardly dependent upon the third parties i.e. the Cash creditors and the trade creditors, who were not bound to immediately act upon the request of the assessee. After making efforts, it will be observed that in almost all cases the compliances have been made. Still if your goodself finds that some detail from cash creditors and trade creditors is lacking, your good self may make direct enquiries as per the provision of the act. The complete addresses are already available in the confirmation cum affidavits along with their respective PAN no.*

*Therefore, there is hardly any question of invoking sec. 144 in the facts of the present case.” \*\*\*\*\**

2.8 From a perusal of the communication exchanged between the AO and the Assessee, the undisputed and vital facts emerging are that all the creditors are regular income tax Assessee's and their PAN were available before the AO through the affidavits and submissions made before him. The list showing the details of the creditors and submitted along with reply dt. 19.04.2021 to the Assessing Officer, a copy of which is placed at Assessee PB 35-36, shows total 24 creditors towards total amount of Rs. 1,00,78,817/- out of which, in 6 cases only the credits have been received during the year total to Rs. 73.32 lakhs. In other words, it is only in 6 cases in relation to Rs. 27.46 lacs, credits have been received

during the year in the context of S. 68 of the Act. The very fact of old credits coming from earlier years, is duly supported by the averment made in the affidavits filed in almost all the cases, whether new or old creditors, copies of which are placed at Assessee's PB pg. 9 to 30 and also from the Balance Sheet of the preceding year A.Y. 2018-19 (copy placed at PB 69 to 72) showing the figure of the Current liabilities – Sundry Creditors (Net Amt.) at Rs. 69,92,663 /- and from the ledger a/c at PB-73. After adjusting the figure of Sundry Misc. Debtors of Rs. 3,40,154.47/- the outstanding debtors of the preceding year was carry forward this year and the reconciled with Rs. 73,32,817/-. The ld. PCIT has nowhere alleged nor referred to any material controverting the fact that the 19 cash creditors were old and their closing credit balances were carried forward this year. Needless to say that in the context of S. 68, it is only the amount received during the year, has to be examined and therefore, the AO was not supposed to have looked into the past assessment records. The cash credits of Rs. 73.32 lacs relating to 19 creditors, was already established by completing the assessment of the preceding year, the department dully accepted their identity, creditworthiness of the Sundry Creditors and their genuineness. Finding fault by the ld. PCIT in the Assessment Order for this year in the context of S. 68 would imply that the ld. PCIT expected the AO to make inquiries even in the preceding years where assessment have already been completed. No action u/s 263 was taken in those years but after the expiry of the

limitation provided u/s 263(2) the Ld PCIT wanted the AO to review/revise those earlier assessments which he himself was not empowered to do u/s 263 of the Act. Thus, “what cannot be done directly cannot be done indirectly”.

2.9 Further, with regard to examination of the loans received this year in the cases of 6 Cash Creditors, the notable facts are that the subjected amounts (of Rs. 27,46,000/-) was received through bank transfers only. The Assessee filled copies of Computation of Total Income, ITRs, Bank A/c and confirmation through dully sworn affidavits (copy of which are available in the assessee's paper book pages 41-54). The affidavits also explained the immediate source from where loans were given to the Assessee. A detailed submission was made by the assessee vide its letter of 19th April, 2021 placed at assessee's paper book pages 35 to 40 and reproduced herein above wherein detailed explanation was given in para 3 with reference to each and every creditor and thus, all the three conditions i.e. identity, the credit worthiness of the creditor and genuineness of the transactions were fully established and in our opinion, the AO was not required to make any further enquiry, acting as a quasi-judicial authority. No significant facts, evidence or circumstance have been shown by the Id. PCIT to justify interfere and to substitute his opinion under the grab of finding error, except a few minor discrepancies, which are being dealt with separately.

2.10 While finding errors u/s 263 in the assessment/other orders, the Revisionary Authority must also know the legal boundaries within which, the Assessing Officer was supposed to act. The Law is well established that it is only the initial onus upon the Assessee and once that onus has been discharged, the Assessee is under no obligation to prove the source of source. The Hon'ble Rajasthan HC in the case of **Labhchand Bohra V/s ITO (2008) 8 DTR 44 (Raj.) (DPB 1-4)** held that:

*“Cash credit- burden of proof- identity of the creditors established and the confirmed the credit. This discharged the burden of appellant to prove genuineness. However, capacity of the lender to advancement money to appellant was not a matter which the appellant could be required to establish and that would amount to calling upon him to establish the source of source. Hence addition cannot be sustained.”*

And in **Aravalli Trading Co. v/s ITO (2008) 8 DTR 199 (Raj) (DPB 12-16)** held that:

*“Once the existence of the creditors is proved and such persons own the credits which are found in the books of the appellant, the appellant's onus stand discharged and the latter is not further required to prove the sources from which the creditors could have acquired the money deposited with him and, therefore the addition u/s 68 cannot be sustained in the absence of anything to establish that the sources of the creditors deposits flew from the appellant itself.”*

Thus, in view of the above binding judicial guideline, the AO was not obliged to ask the Assessee to provide source of source under the pretense of proper examination of the creditworthiness of the creditor and absence of further evidence showing the source of source was not an error. In the present case, the material show that the AO has made all possible enquires acting u/s 68 with reference to all the creditors. There is nothing in record to show that discretion conferred u/s 68 was not properly exercised. Therefore, the finding of the ld. PCIT that appropriate

enquires/verifications of loans have not been made by the AO w.r.t cash Creditors is legally & factually incorrect.

2.11 We find that it was not the case of Id. PCIT that there was a complete/total lack of inquiry. He himself admits in the impugned order that the AO did make enquiry on the issues involved. The law is well settled that the assessment order cannot be held to be erroneous simply on the allegation of inadequate enquiry, unless there is an established case of total lack of enquiry. In this regard, we draw strength from the decisions in the cases of Sunbeam Auto Ltd. (supra) and Narain Singla (supra) and Chemsworth P Ltd. (supra), all followed in Annu Agrotech (supra) by this bench.

2.12. Now we shall deal with the other grounds raised in the impugned order.

2.13 The Id. PCIT in the impugned order has also given some examples alleging missing information or non-reconciliation of the details filed by the assessee to justify its conclusion. We have carefully gone through the examples cited by the Id. PCIT, vis-à-vis the detailed explanation, clarifying the cases of so-called missing and non-reconciliation details, and found that the same are of trivial natures, not very material significant, so as to justify invoking of S. 263. They are more of the nature of suspicion than substance. It was submitted that Raghuvendra Singh, S. No. 5, is the proprietor of Jagdamba Tractor hence are the same person. Names of Smt. Priyanka Goyal and Smt. Meenakshi Goyal being the sisters of Sh.

Anand Goyal, have been named accordingly in the Schedule E by the accountant as told to him. In case of Nikit Jain, his nickname Amit Chamunia has been mentioned in the Schedule. It's a common practice that the accountant used to note the name as is loosely told to them which sometime continues in the accounts and there is nothing abnormal therein. We find that out of 25 cash creditors, the Id. PCIT did not point out any difference in 20 cases and except only 4 cases out of which even, 3 cash traders namely Priyanka, Meenakshi and Raghuveer Singh are old creditors already accepted. Moreover, both Goyals are females and the total amount Rs. 10 lakhs duly reconciled with the entry Anand Goyal sister in Schedule E. The Creditor Amit Chamunia though shown as Nikit Jain in the list writes letter dated 12.03.2021 was also shown as Amit Chamunia in letter dated 19.04.2021 and thus reconciled with the entry in the Schedule E. The Id. PCIT did not appreciate that that it was a case of physical assessment through personal hearing after discussion between the AO and the assessee. We agree the Ld.AR that during personal hearings lot of discussions are made, but it is not possible to note down each and every word communicated.

**2.14** Another ground raised is that the binding Standard Operating Procedure (SOP) dated 10.07.2021, issued by CBDT was not followed. We have carefully gone through the relevant extract copied in the order under challenge and a full copy thereof is available at page PB 88. However, we are not in agreement with the

Ld.PCIT. Firstly, such guidelines are not in the nature of binding instructions issued u/s 119 of the Act. But even otherwise on merits, we find that the AO has fulfilled all the requirements made in the guidelines. On the contrary, the SOP speaks of only to examine the credits of a sum found during the year but not the old one. In that view of the matter, not only in six cases but also evidently, the AO made all the inquiries required under law exhaustively and to the extent legally possible. Queries raised were very specific and relevant and were duly replied with supporting evidences. Ld. PCIT did not find any major fault in such supporting evidences.

**2.15** By making a reference to the reply dated 12.03.2021 the ld. PCIT observed that the confirmations so filed were in the same font without having details such as mode of payment i.e. in cash or in cheque without date or without relevant supporting evidences establishing creditworthiness of the lenders. We have carefully gone through those confirmations affidavits (PB 9-30) and notified that the lender has given his name, parental address, PAN, the amount given to the assessee and the year or the date when given. Otherwise also it was not relevant for old creditors. The allegation of same font is of no significance. It is not the case of the ld. PCIT that he made inquiries from the Oath Commissioner before whom, sworn statements were made. In fact, the ld. PCIT even did not challenge the

veracity or the genuineness of the affidavits. Therefore, simply saying that they were of the same font does not lead anywhere, being a mere suspicion.

2.16 The Id. PCIT made a comparison between Para 31(a) of the Form 3CD, (PB pages 74 to 87) showing Nil, which speaks of any loan/deposit taken in cash exceeding the prescribed limit u/s 269SS of the Act, and Schedule E (unsecured loans from others) with TAR showing loans taken alleged and contradiction was considered as an error. However, on a careful consideration, we are of the strong opinion that there is no substantive incorrectness nor contradiction for the simple reason that the Id. Tax Auditor remarked Nil as he did not find any loans/deposit taken in cash exceeding the limit in violation of S. 269SS but that do not mean that no loan was taken this year because in Schedule E, which is also a part of audited balance sheet and hence part of the TAR, the details of all 25 entries of outstanding loans has been given. Hence we don't see any contradiction as alleged. In fact, the Id. PCIT has misquoted or overstressed the issue to justify his action. We don't find anything misleading or contrary submission made by the Id. AR on this issue. We also do not agree with the contention of Id. CIT DR that the Tax Auditor did not show the segregation of the old loan and current loans in as much as a careful perusal of Para 31(a) of TAR do not require the Tax Auditor to make this type of presentation. These minor issues cannot justify action u/s 263 of the Act. More particularly, the Id. PCIT completely failed to bring any strong material to justify

his allegation of the assessment order being erroneous. He more proceeded on suspicions and we have no hesitation to say that he was attempting to explore the errors which did not exist. The law u/s 263 of the Act contemplates existence of some real genuine errors in the subjected order but not to invent or explore errors. We thus find no substance in such reasoning by the Id. PCIT and in the contention of the Id. CIT DR.

2.17 It will be relevant to mention here that it was a survey case and various documents were impounded, with reference to which the AO made detailed enquiries, on which replies were given by the assessee time to time, as evident from the submissions placed at paper book pages 55 to 59. But the Id. PCIT could not find any fault/error therein. Hence, he is merely justifying his action by citing examples/grounds which are of no significance. In such a scenario, we are of the considered view that the necessary enquiries and examination as reasonably expected have been carried out by the AO in discharge of his quasi-judicial function and he has taken a prudent, judicious and reasonable view in accepting the explanation of the assessee in support of the cash deposits after considering the entire material available on record and the order so passed under s. 143(3) of the Act cannot be held as erroneous insofar as prejudicial to the interest of Revenue. The impugned order passed by the learned PCIT under s. 263 is accordingly set aside and the order of the AO is sustained.

3.0 In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 20 /09/2023.

Sd/-

(राठोड कमलेशजयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-

(डॉ.एस.सीतालक्ष्मी)  
(Dr. S. Seethalakshmi)  
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 20 /09/2023

\*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Smt. Gayatri Devi, Jaipur.
2. प्रत्यर्था / The Respondent- The Pr. CIT, Central, Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 405/JPR/2022)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar