IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.A. No.258/DEL/2019
Assessment Year 2013-14

Ellora Infratech Pvt. Ltd., D-22/5, Okhla Industrial Area Ph-I, New Delhi-110020	Vs.	Principal Commissioner of Income Tax-03, New Delhi
TAN/PAN: AACCE6491J		
(Appellant)		(Respondent)

Appellant by:	Mrs. Prem Lata Bansal, Sr.Adv. Shri Shivang Bansal, Adv.		
Respondent by:	Shri T. James Singson, CIT-DR		
Date of hearing:	31	07	2023
Date of pronouncement:	12	10	2023

O R D E R

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed at the instance of the assessee against the revisional order of the Principal Commissioner of Income Tax-03, New Delhi ('Pr.CIT' in short) dated 28.03.2018 passed under Section 263 of the Income Tax Act, 1963 (the Act) whereby the assessment order passed by the Assessing Officer (AO) under Section 143(3) of the Act dated 21.06.2016 concerning AY 2013-14 was sought to be set aside for reframing the assessment afresh in exercise of supervisory jurisdiction.

2. The assessee has raised multiple grounds and has essentially challenged the assumption of jurisdiction by the Pr.CIT under Section 263 of the Act on the ground that the assessment order under revision is neither erroneous nor prejudicial to the interest of the

revenue. As a corollary, the assessee has sought to impugn the revisional order passed by the Pr.CIT under Section 263 of the Act. The Grounds raised by the assessee to challenge the revisional order are reproduced hereunder:

> *"1. That the Ld. Pr. CIT has erred in passing the order u/s. 263 of the Act on the ground that the order passed by the Assessing Officer u/s 143(3) of the Act was found to be erroneous and prejudicial to the interest of Revenue.*
>
> *2. That the Ld. Pr. CIT has erred in invoking the provisions of section 263 of the Act on the ground that the Assessing Officer had failed to make sufficient inquiries while passing the regular assessment order.*
>
> *3. That the Ld. Pr. CIT has erred in holding that the loan of Rs.4 crore received by the assessee from M/s Transnational Growth Ltd. and of Rs.2 crore from M/s RKG Finvest Ltd. was an accommodation entry and the Assessing Officer had not made any proper inquiry and had not taken cognizance of search material circulated by Investigation Wing in the case of Jain Bros. In fact, no material in respect of these loans could have been found during search in the case of Jain Bros and therefore, apprehension of Pr. CIT in invoking the provisions of section 263 of the Act is bad in law.*
>
> *4 That the Ld. Pr. CIT has not applied his mind while initiating proceeding u/s 263 of the Act as the search was conducted in the case of Jain Bros on 19.04.2010 whereas the loans in issue were raised by the assessee in the FY 2012-13.*
>
> *5. That the Ld. Pr. CIT has erred in invoking the provisions of section 263 of the Act on the ground that no proper inquiry was made by the Assessing Officer during the assessment proceeding whereas the extensive inquiry had been made by the Assessing Officer during the original assessment proceeding.*
>
> *6. That the Ld. Pr. CIT has not considered that inadequate / insufficient inquiry does not amount to lack of inquiry so as to attract the provisions of section 263 of the income Tax Act in view of even newly inserted provisions of Explanation 2 to section 263 of the Act.*
>
> *7. That the Ld. Pr.CIT himself had not examined as to whether loan of Rs.8 crore raised by the assessee were accommodation entry so as to make the order passed by the Assessing Officer erroneous within the ambit of section 263 of the Act; hence the directions given by the Pr. CIT to frame the fresh assessment is contrary to law.*
>
> *8. That the Ld. Pr. CIT has erred in invoking the powers u/s 263 of*

the Act on the basis of search conducted in the case of Jain Bros despite the fact that no material could have been found during the search in respect of loan of Rs.8 crore received by the assessee. Even otherwise, it was held by the various Courts that the material found during search cannot be admitted in evidence qua third party.

9. That the order passed by Ld. Pr.CIT u/s 263 of the Act is bad in law as no sufficient opportunity has been afforded to the assessee to defend his case particularly when the assessee had reserved its right to file reply on merits and had concluded the proceeding merely within 07 days. Hence principles of natural justice have been violated in this case.

10. That the Ld. Pr. CIT has passed the order u/s 263 of the Act on surmises and conjectures and therefore, is liable to be set aside."

3. Briefly stated, the case of the assessee was assessed under Section 143(3) of the Act vide order dated 21.01.2016 relevant to Assessment Year 2013-14. The assessee had filed the return at loss of Rs.3,44,964/- which was assessed at a loss of Rs.2,63,933/-. Subsequent to the assessment, the Pr.CIT received a proposal from the new incumbent AO [ITOWard (2) New Delhi] vide its communication dated 20.03.2018 seeking invocation of supervisory jurisdiction under Section 263 of the Act. Thereafter, in exercise of powers conferred under Section 263 of the Act, the Pr. CIT issued Show Cause Notice (SCN) to the Assessee on the next date i.e. dated 21.03.2018 under Section 263 of the Act alleging that the impugned assessment order is erroneous in so far as it is prejudicial to the interest of the Revenue for the reasons mentioned the SCN. As per the contents of the SCN, the Pr.CIT sought compliance of the SCN **on 26th March, 2018 at 3.30 a.m**. The hearing was thus allowed to be availed by a solitary notice in a gap of 1 effective working day from service. As per the SCN, the Pr. CIT made allegations to assail the assessment order. The Pr. CIT alleged that the AO

has failed to carry out necessary verification towards unsecured loans aggregating to Rs.8 crore received from certain parties. The SCN issued in this regard is reproduced hereunder:

"OFFICE OF THE

PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-03

ROOM NO.394A, C.R. BUILDING, IP ESTATE, NEW DELHI

(Email – delhi.cit3@incometax.gov.in) Tel – 23378750

----------F.No. Pr.CIT-3/Revision/DLF/2017-18 Dated: 21.03.2018

To

The Principal Officer,

M/s Ellora Infratech Private Limited,

D-22/5, Okhla Industrial Area, Phase-I, New Delhi - 110020.

Sub: Show Cause Notice w/s 263 of the Income Tax Act, 1961, AY. 2013- 14 - regarding.

Ref: Assessment Order u/s 143(3) of the IT Act, 1961 dated 21.01.2016 for AY. 2013-14

****

Kindly refer to the subject mentioned above.

2. The case of M/s. Ellora Infratech Put. Ltd. for the A.Y.2013-14 has been selected for complete scrutiny under CASS on the following reasons:

(i) Large increase of Unsecured Loans.

The case was completed u/s. 143(3) of the IT. Act, 1961 dated 21.01.2016 at a return loss of Rs.2,63,933/- without drawing any adverse inference.

During the year, the company had received unsecured loan of Rs.8 crore from the following companies:

S.No.	S. No. Name of the company	Amount
1	M/s Bailley Foods Pvt. Ltd	Rs.47,00,000/-
2	M/s LessureBuildcon Pvt. Ltd:	Rs.75,00,000/-
3	M/s Sandcep Credit Pvt. Ltd.	Rs.23,00,000/-
4	M/s Trans National Growth Fund Ltd.	Rs.4,00,00,000/-
5	M/s RKG Finvest Pvt. Ltd.	Rs.2,00,00,000/-
6	M/s White House Buildtech Pvt. Ltd.	Rs.55,00,000/
Total		Rs.8,00,00,000/-

During the assessment proceedings, the assessee company vide letter dated 16.10.2015 filed loan confirmation of the following investors:-

S.No.	S. No. Name of the company	Amount
1	M/s Bailley Foods Pvt. Ltd	Rs.47,00,000/-
2	M/s LessureBuildcon Pvt. Ltd:	Rs.75,00,000/-

3	M/s Sandeep Credit Pvt. Ltd.	Rs.23,00,000/-
4	M/s White House Buildtech Pvt. Ltd.	Rs.55,00,000/-
5.	M/s. vinsan Credit & Securities Pvt. Ltd.	Rs.20,00,000/-

In the confirmation, companies mentioned S. No. 1 to 4 were operating from different addresses. However, confirmation letter have been generated or the same date i.e. 09.09.2015. Language of the confirmation is also word to word same although no authorized signatory was common. These facts signifies that it was only a cover up exercise by the assessee company.

Notices u/s 133(6) of the IT Act, 1961 were issued on 18.10.2015 through speed post in the name of M/s Bailley Foods Pvt. Ltd., M/s Lessure Buildcon Pvt. Ltd., M/s. Sandeep Credits Pvt. Ltd. & M/s. White House Buildtech Pvt. Ltd. to furnish details of transaction held with the assessee company along with supporting documents in order to justify identity creditworthiness and genuineness of the transactions. The information was required to be furnished by 30.10.2015. In the following cases notices returned unserved with postal remark 'left':

S.No.	S. No. Name of the company	Amount
1	M/s Bailley Foods Pvt. Ltd	Rs.47,00,000/-
2	M/s LessureBuildcon Pvt. Ltd:	Rs.75,00,000/-
4	M/s White House Buildtech Pvt. Ltd.	Rs.55,00,000/-

Further, In case of M/s Sandeep Credits Pvt. Ltd, no information was furnished in compliance to notice issued u/s 133(6) of the IT Act, 1961. Confirmation was filed on 28.10.2015 by M/s Vinsan Credits & Securities Pvt. Ltd vide letter dated 21.10.2015 even though no notice u/s.133(6) of the I.T. Act, 1961 was issued to the company by the then AO. These facts further strengthen the fact that loan received from these companies was merely an accommodation entry.

In view of the above facts, notice u/s. 133(6) of the I.T. Act, 1961 was issued again on 10.12.2015 in the name of M/s RKG Finvest Pvt. Ltd., M/ Sandeep Credits Pvt. Ltd., M/s Bailley Foods Pvt. Ltd., M/s White House Buildtech Pvt. Ltd. & M/s Lessure Buildcon Pvt. Ltd. M/s Vinsan Credits & Securities Pvt. Ltd was also asked to clarify transactions held with the assesee company u/s. 133(6) of the I.T. Act, 1961.

M/s Sandeep Credits Pvt. Ltd., M/s Bailley Foods Pvt. Ltd., M/s White House Buildtech Pvt. Ltd. & M/s Lessure Buildcon Pvt. Ltd made compliances through post. All the post were made on the same date i.e. 15.12.2015 at the same time i.e. 14:43 PM and from the same post office i.e. Krishna Nagar. Further, all confirmation have same pattern such as date language etc.

Except from the above verification made u/s 133(6) of the I.T. Act, the then A.O. made no independent inquiry. The A.O. has not issued summons for personal deposition to the principal officer of these investor companies for verification of loan. Inspector of the ward was also not deputed make field inquiries to ascertain existence loan investor.

During the year, the assessee company has received loan of Rs. 6 crore from M/s RKG Finvest Pvt. Ltd. & M/s. Trans National Growth Fund Ltd. in which Sh. Surender Jain & Sh. Virender Jain, renowned accommodation entry operators were working as director of the company. It may be mentioned here that search/survey operation us 132/133A of the I.T. Act, 1961 was conducted by Investigation Wing of Income Tax Department Delhi on 19.04.2010 at the residential and business premises of Shri Surender Kumar Jain and his brother Shri Virender Jain. Various incriminating documents were seized and impounded. During post search/survey operation of the seized /impounded documents and spot inquiries conducted, it was revealed that Shri Surender Kumar Jain and Shri Virender Kumar Jain were engaged in the business of providing accommodation

entries-by making payments in form of RTGS/Cheques/PO DD in lieu of cash to a large number of beneficiary companies through more than 100 paper and dummy companies/ firms/proprietorship concerns floated and controlled by them through various persons by appointing them as directors / partners/ proprietors.

Post search, & seizure operation carried by the Department, both Jain brothers continued their old activity of accommodation entry provider in shape of share capital/premium, loan etc. and also formed new corporate entity so that nobody keep track on them.

Besides, in the assessment order for AY.2005-06 in the case of Sh. Virendra Kumar Jain, the AO confronted various materials impounded during the search & seizure operation, and held that Jain brothers are accommodation entry provider. During the assessment proceedings, both of them chose not, to explain the source of cash deposits, therefore, entire cash received was held as unaccounted income and further commission of 1.8% was also charged to tax as income earned from commission for providing accommodation entries.

In second appeal, the Jain Brothers admitted before the Hon'ble ITAT that they are engaged in the business of providing accommodation entries and charging commission at certain percentage from the beneficiaries. Accordingly, the Hon'ble ITA'T in their case in ITA Nos.6991 to 6997/Del/ 2014 & ITA Nos. 6998 to 7004/Del/2014 vide order dated 03.02.2016 decided to set aside the order to the A.O. asking him to assess Jain brothers in light of certain judicial pronouncements all of which pertain to assessing accommodation entry operators on the basis of their commission income. In the nutshell, ITAT has not interfered with the finding of the department that Jain brothers are accommodation entry providers.

In view of Companies Act, 2013, Serious Fraud Investigation Office (SFIO) has been established through the Government of India vide Notification No. S.0.2005(E) dated 21.07.2015. It is a multi-disciplinary organization under the Ministry of Corporate Affairs, consisting of experts in the field of accountancy, forensic auditing, banking, law, information technology, investigation, company law, capital market and taxation etc. for detecting and prosecuting or recommending for prosecution white collar crimes/ frauds. On the recommendation of the Government of India, SFIO has also investigated the companies controlled and managed by Shri Surendra Kumar Jain and Shri Virender Kumar Jain.

On the basis of SFIO report, in March, 2016, Enforcement Directorate arrested Surendra Kumar Jain and Virendra Jain in connection with its probe in a Rs.8,000/- crore money laundering and, black money racket. The Enforcement Directorate filed a criminal complaint under the Prevention of Money Laundering Act (PMLA) based on a charge sheet filed by the Serious Fraud Investigation Office against certain individuals and firms "for providing accommodation entries by accepting funds, from their beneficiaries through mediators and converting the same into share premium transactions in the beneficiary company" It suspects the entire racket to be worth about Rs.8,000/- crore of slush funds and has detected about half of it as per its latest probe. The Enforcement Directorate also confirmed that the modus operandi of Jain brothers was to launder the unaccounted money through the process of placement of funds, layering of transactions and the final integration of laundering money into the banking charnel camouflaged as legitimate share premium transactions. Funds were brought in by the mediators on behalf of the beneficiaries through the mediators. Jain Brothers were providing accommodation entries by accepting funds from their beneficiaries through mediators and converting the same into share premium transactions in the beneficiary company. In this process Jain Brothers earned money as a certain percentage of the unaccounted money converted into share capital &share premium. The Enforcement Directorate also arrested one of the mediators of this group Shri Rajesh Aggarwal who facilitate accommodation entry

for the end users.

In view of the above fact, loan of Rs.6 crore received from M/s RKG Finvest Ltd. and M/s Trans National Growth Ltd. is merely an accommodation entry and the A.O. has not made any proper enquiry and also not take cognizance of the search material circulated by the Investigation Wing of the Department in case of Jain Brothers. Further, loan of Rs.2 crore received from other companies also paper companies engaged in the business of providing accommodation entries as discussed above. You are, therefore; directed to show cause as to why an order In terms of provisions of section 263 may not be passed for AY 2013-14 setting aside the order passed u/s 143 (3) dated 21.1.2016 in your case.

*You are afforded ail opportunity of being heard to contest the charge made in this notice by appearing personally or through an authorised representative on the **26th March, 2018 at 3.30 AM** in Room No. 394A, C. R. Building, I.P. Estate, New Delhi-110002 or Me a written, submission by the appointed date, failing which it will be presumed that you have no submission to make in this regard and the matter will be decided without further notice.*

Pr. Commissioner of Income Tax-03
New Delhi"

[UNDERLINE IS OURS]

4. A proposal under Section 263 of the Act forwarded by the substituted AO which led the Pr.CIT to invoke revisional jurisdiction is also reproduced hereunder for easy reference:

"Office Of The

Income Tax Officer, Ward-8(2)

Room No.413A, C.R Building, IP Estate, New Delhi

(Email – delhi.ito8.2@gmail.com) Tel – 23705574

F.No. ITO/Ward-8(2)/2017-18 Dated: 20.03.2018

To

The Principal Officer
Delhi-3,
New Delhi.

Sub: Proposal u/s 263 of the IT Act, 1961 in the case of M/s. Ellora Infratech Pvt. Ltd. (AACCE6491J) for the A.Y. 2013-14 – reg.

Kindly refer to the subject mentioned above.

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During the year, the assessee company has received loan of Rs. 6 crore from M/s RKG Finvest Pvt. Ltd. & M/s. Trans National Growth Fund Ltd. in which Sh. Surender Jain & Sh. Virender Jain, renowned accommodation entry operators were working as director of the company. It may be mentioned here that search/survey operation us 132/133A of the I.T. Act, 1961 was conducted by Investigation Wing of Income Tax Department Delhi on 19.04.2010 at the residential and business premises of Shri Surender Kumar Jain and his brother Shri Virender Jain. Various incriminating documents were seized and impounded. During post search/survey operation of the seized /impounded documents and spot inquiries conducted, it was revealed that Shri Surender Kumar Jain and Shri Virender Kumar Jain were engaged in the business of providing accommodation entries-by making payments in form of RTGS/Cheques/PO DD in lieu of cash to a large number of beneficiary companies through more than 100 paper and dummy companies/ firms/proprietorship concerns floated and controlled by them through various persons by appointing them as directors / partners/ proprietors.

Post search, & seizure operation carried by the Department, both Jain brothers continued their old activity of accommodation entry provider in shape of share capital/premium, loan etc. and also formed new corporate entity so that nobody keep track on them.

Besides, in the assessment order for AY.2005-06 in the case of Sh. Virendra Kumar Jain, the AO confronted various materials impounded during the search & seizure operation, and held that Jain brothers are accommodation entry provider. During the assessment proceedings, both of them chose not, to explain the source of cash deposits, therefore, entire cash received was held as unaccounted income and further commission of 1.8% was also charged to tax as income earned from commission for providing accommodation entries.

In second appeal, the Jain Brothers admitted before the Hon'ble ITAT that they are engaged in the business of providing accommodation entries and charging commission at certain percentage from the beneficiaries. Accordingly, the Hon'ble ITA'T in their case in ITA Nos.6991 to 6997/Del/ 2014 & ITA Nos. 6998 to 7004/Del/2014 vide order dated 03.02.2016 decided to set aside the order to the A.O. asking him to assess Jain brothers in light of certain judicial pronouncements all of which pertain to assessing accommodation entry operators on the basis of their commission income. In the nutshell, ITAT has not interfered with the finding of the department that Jain brothers are accommodation entry providers.

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On the basis of SFIO report, in March, 2016, Enforcement Directorate arrested Surendra Kumar Jain and Virendra Jain in connection with its probe in a Rs.8,000/- crore money laundering and, black money racket. The Enforcement Directorate filed a criminal complaint under the Prevention of Money Laundering Act (PMLA) based on a charge sheet filed by the Serious Fraud Investigation Office against certain individuals and firms "for providing accommodation entries by accepting funds, from their beneficiaries through mediators and converting the same into share premium transactions in the beneficiary company" It suspects the entire racket to be worth about Rs.8,000/- crore of slush funds and has detected about half of it as per its latest probe. The Enforcement Directorate also confirmed that the modus operandi of Jain brothers was to launder the unaccounted money through the process of placement of funds, layering of transactions and the final integration of laundering money into the banking charnel camouflaged as legitimate share premium transactions. Funds were brought in by the mediators on behalf of the beneficiaries through the mediators. Jain Brothers were providing accommodation entries by accepting funds from their beneficiaries through mediators and converting the same

into share premium transactions in the beneficiary company. In this process Jain Brothers earned money as a certain percentage of the unaccounted money converted into share capital &share premium. The Enforcement Directorate also arrested one of the mediators of this group Shri Rajesh Aggarwal who facilitate accommodation entry for the end users.

In view of the above fact, loan of Rs.6 crore received from M/s RKG Finvest Ltd. and M/s Trans National Growth Ltd. is merely an accommodation entry and the A.O. has not made any proper enquiry and also not take cognizance of the search material circulated by the Investigation Wing of the Department in case of Jain Brothers. Further, loan of Rs.2 crore received from other companies also paper companies engaged in the business of providing accommodation entries as discussed above. Therefore, the order passed u/s.143(3) of the IT Act dated 21.01.2013 by the then A.O. is appears to be erroneous and prejudicial to the interest of revenue may kindly be annulled.

Submitted for kind consideration please.

Income Tax Officer,
Ward-8(2), New Delhi

5. In response to the SCN, the assessee filed a reply dated 26.03.2018 in the office of Pr.CIT. As per the aforesaid reply dated 26.03.2018, the assessee raised the contention of lack of jurisdiction under s. 263 owing to bar of limitation and further reserved its right to file reply on merits if needed, in case the objection on bar of limitation is treated as deficient and unfounded. The Pr.CIT disposed of the objection of the assessee as untenable and observed that the power has been exercised within statutory time limit. In tandem, the Pr. CIT also observed that the assessee has not filed any submissions on merits. The Pr. CIT relied upon the SCN which according to Pr. CIT is very elaborative and crystal clear. It was observed in the revisional order that the loans of Rs.2 crore received from RKG Finvest Pvt. Ltd. and Rs.4 crore received from Trans National Growth Fund Ltd. are merely an accommodation entry and the Assessing Officer has failed to make proper inquiry and has also not taken cognizance of search material circulated by Investigation Wing of the Department in case of Jain brothers. The Pr.CIT further

observed that loan of Rs.2 crores received from other companies are also not genuine inasmuch as these companies were paper companies engaged in the business of providing accommodation entries. The Pr.CIT concluded that *'the Assessing Officer has failed to make sufficient inquiry in this regard'* while framing the assessment. The Pr.CIT thus held that the order passed under Section 143(3) is erroneous and prejudicial to the interest of the revenue and consequently cancelled and set aside the assessment order with a direction to the Assessing Officer to pass a fresh reasoned assessment order based on facts and issues discussed in the revisional order.

6. At the time of hearing, the Ld. Counsel at the outset pointed that the present appeal is filed belatedly by about 230 days. An application for condonation of delay dated 14/09/2021 was adverted to in this regard to demonstrate existence of mitigating circumstances. It was essentially pointed out that the delay is attributable to lapse on the part of his legal advisors to communicate the order in time. Coupled with this, some time was spent to visualize as to whether to opt for remedy by way Writ before Hon'ble High Court or prefer appeal before ITAT. It was pointed out that the assessee has a *prima facie* case to dislodge the revisional order and thus no presumption of malafide can be imputed. It was further pointed out that the delay occurred is not intentional or deliberate and the aforesaid delay of 230 days occurred has not caused any serious prejudice to the Revenue The learned counsel referred to the decision rendered by the Hon'ble Supreme Court in the case *of Collector of Land Acquisition vs. Mst. Katiji & Ors. 167 ITR 471 (SC)* to contend that the substantial justice

deserves to be preferred over the technical glitch committed by the assessee in belated filing for plausible reasons. Having regard to the contents of the application and keeping in mind negligible prejudice that may have occurred to the revenue by such delay, we adopt justice oriented approach to weigh the plea of existence of 'sufficient cause' for delay. Hence, in exercise of powers conferred under S. 253(5) of the Act, the delay in presenting appeal before ITAT stands condoned and the appeal is admitted for adjudication.

7. The ld. counsel for the assessee made extensive submissions and assailed the revisional action of the Pr.CIT assertively. The ld. Counsel made wide ranging submissions on facts and law and cited judicial precedents to support its case. We shall deal with these arguments at appropriate place in the succeeding paragraphs. The ld. counsel essentially submitted; **(i)** that the revisional order passed by the Pr.CIT suffers from the vice of arbitrariness and non-application of mind in as much as search in Jain Group took place much prior to raising of loans in question and thus nothing incriminating qua the assessee could be plausible **(ii)** that the revisional action lacks jurisdiction for another reason that the revisional action was taken at the behest of the new incumbent AO; the proposal made under Section 263 by the AO dated 20.03.2018, the Pr.CIT hurriedly issued the SCN on 21.03.2018 by adopting the contents of the proposal of the AO *in verbatim* without incorporating any thoughts of his own whatsoever**(iii)** that the Pr.CIT exercised jurisdiction solely on the basis of the opinion of the AO and there is no reference anywhere as to whether the

Pr.CIT was privy to the assessment records himself before exercising the jurisdiction under Section 263 of the Act **(iv)** that the order of the Pr.CIT apparently grossly suffers from the intrinsic lack of opportunity in this regard as can be seen from the date of issue of SCN and time of one working day made available to the assessee for compliance thereon **(v)** that a solitary notice was issued effectively giving one clear working day to respond (excluding date of service presumably on 22/03/2018, Saturday & Sunday falling in between and the date of hearing). Nonetheless, the assessee swiftly responded on its part and raised preliminary challenge of bar of limitation **(vi)** the Pr. CIT has vaguely referred to some new material discovered post assessment in the SCN without any minimum enquiry thereon himself nor showing the contents thereof to the Assessee at any point of time despite the structured mandate of s. 263 and codified safeguard of opportunity.

7.1 As further submitted, while the Pr.CIT brushed aside the bar of limitation raised on behalf of the assessee but however did not care to provide any opportunity to meet the allegations of show-cause on merits.

7.2 The Ld. Counsel contends that the Pr.CIT has brushed aside the assessment order on flimsy grounds solely at the instance of the new incumbent in assessment without giving any opportunity to defend the assessment order and to bring the perspective of the assessee on the subject matter. As further quipped, the revisional action of such wide amplitude carrying adverse consequences has been exercised casually at the fag end of the limitation (despite time limit of 2 long years available

from the end of the financial year in which assessment order under review was passed) in total disregard to the canons of judicial propriety and thus has fastened civil consequences on the assessee by impinging upon the salutary rights of the assessee of being heard. The Pr.CIT proceeded to set aside the completed assessment without confronting fresh material giving rise to foundation for allegations referred in show cause.

7.3 The Ld. Counsel next contended that it is palpable from the sequence of events that the PCIT has summarily relied upon the recommendation of new AO to displace the assessment order passed by the then AO in discharge of quasi judicial function under statute. While doing so, the Pr. CIT has neither bothered to provide any effective opportunity to the Assessee nor cared to make any minimal enquiry himself even into newer aspects of the case purportedly came to light after passing the assessment order. The admitted fact that the then AO did make enquiry on the subject matter and accepted the credit entries after obtaining documentations and setting in motion enquiries under S. 133(6) of the Act, has been conveniently glossed over. From the records, it is evident that the Pr. CIT merely responded to the recommendation of new Assessing Officer as gospel truth and acted at once on dotted line by issuing show cause to Assessee. The contents of the SCN are identical to the reasons perceived in the proposal of AO without any indulgence of his own. Neither any enquiry were made by the Pr. CIT nor any time was given to the Assessee. The revisional order was passed on 28.03.2018 against a compliance date of 26-03-2018 midnight 3.30 am. It is thus self evident that the Pr. CIT sought to take

action at the fag end i.e. a week before the bar of limitation and hurriedly closed the proceedings of such adversarial nature and carrying civil consequences based on a token opportunity of one day to the tax payer.

7.4 The sequence of event also give rise to inference that assessment records were examined by the newer AO at the behest of the Pr. CIT and the Pr. CIT himself was not privy to such records. The verbatim reproduction of proposal into show-cause vouches for such impression.

7.5 Adverting to factual aspects, the ld. counsel vociferously pointed out that to the own admission of Pr. CIT in the show cause as well in the proposal of AO for revision, the assessee did file confirmations from various lenders vide letter dated 16.10.2015 to assuage the bonafides of loans in response to notice issued under s. 142(1) of the Act. The AO also launched independent enquiry by one of the statutory methods and issued notice under s. 133(6) to the lenders to enquire into the veracity of loans provided to the assessee. To obtain independent verifications of loans and collection of supporting documents in relation to credit entries, notices under Section 133(6) were issued on 10.12.2015 in the name of all lenders namely, RKG Finvest Pvt. Ltd., Sandeep Credit Pvt. Ltd., Bailley Foods Pvt. Ltd., White House Buildtech Pvt. Ltd., Lessure Buildcon Pvt. Ltd. and Vinsan Credit & Securities Pvt. Ltd. It can also be seen from the proposal of the AO addressed to the Pr. CIT that lenders have duly responded to such notices and furnished the desired information and confirmed the factum of lending to the assessee. The source of the loans were thus examined by the AO

to form a credible view on propriety of loans in question. The AO thus acted with degree of caution and circumspection. Hence, the allegation that adequate inquiry contemplated was not made on the point in issue is contradictory to the assessment records itself and does not hold any water. Also, the case of the Pr.CIT is nowhere about the 'lack of inquiry' *per se* but is built on 'inadequacy of inquiry' as is evident from the SCN as well as the revisional order. The ld. Counsel thus submitted that revision based on inadequacy or insufficiency of enquiry without making any enquiry himself to raise probabilities of any misdemeanor is contrary to the plethora of judicial precedents.

7.5 The ld. counsel adverted to the SCN and submitted that the SCN is marred with multiple defects which are squarely opposed to pre-condition for initiation of revisional proceedings. The ld. Counsel culled out the observations made in the SCN to advert that the primary grounds for such actions such as; summons under s. 131 should have been issued to lenders for personal deposition; Inspector of the Ward should have been deputed to make field inquiries to ascertain existence of loan investors; findings of search on 19.04.2010 at the premises of Jain brothers not taken into account; observations of assessment order for AY 2005-06 in the case of Jain brothers that they are entry providers which order was approved by ITAT not taken into account is devoid of any sound basis in as much any findings in relation to AY 2005-06 or in the search in April 2010 has no rational nexus with loans raised in FY 2012-13 under revision.

7.6 A reference to SFIO report of March 2016 and

consequence indulgence of ED thereafter, came in the possession of the deptt. after the completion of assessment. The contents of such report is neither mentioned in the show cause nor such report was made available to the assessee for nuanced understanding of observations.

8. Per contra, the Revenue supported the revisional action in the absence of adequate or sufficient inquiries on the point recorded by the Pr.CIT. The ld. CIT-DR submitted that no serious prejudice has been caused to the assessee as the Assessee would be entitled to counter all allegations and place all evidences in the course of assessment post revisional order. Besides, the SCN is self explanatory and the assessee ought to have availed the opportunity provided to rebut the observations of such notice. The Ld. CIT-DR thus submitted that no interference with the revisional action is called for.

9. We have carefully considered the rival submissions and perused the revisional order of the PCIT as well as the SCN issued for assumption of jurisdiction as well as the case laws cited. The assumption of jurisdiction under s.263 of the Act by the PCIT and revisional order passed as a sequel thereto seeking to set aside the completed assessment under s.143(3) of the Act is in controversy.

10. Supervisory jurisdiction vested under Section 263 of the Act enables the concerned Pr.CIT/CIT to review the records of any proceedings and order passed therein by the AO. It empowers the Revisional Commissioner concerned to call for and examine the records of another proceeding under the Act and if he considers that any order passed therein by the AO is erroneous in so far as it is

prejudicial to the interest of the Revenue, then he may (after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary), pass such order thereon as the circumstances of the case justify, including the order enhancing or modifying the assessment or canceling the assessment and directing afresh assessment. Thus, the revisional powers conferred on the Pr.CIT/CIT under s.263 of the Act are of very wide amplitude with a view to address the revenue risks which are objectively justifiable.

11. In the backdrop of factual matrix, subsisting in the case in hand, the substantive issue that emerges for adjudication is whether the Pr.CIT under the umbrella of revisonary powers is entitled to upset the finality of assessment proceedings completed before the AO on the ground that AO committed error in passing assessment order without proper verification of propriety of loans received. Implicit in the question is the scope of powers and attendant duty of Revisional Commissioner in the event of alleged inadequacy of enquiry into various aspects of an issue.

12. On perusal of the SCN dated 26.02.2020 issued by the Pr.CIT proposing to set aside the assessment order dated 20.04.2017 passed by AO under s.143(3) of the Act, we notice that the Pr.CIT is essentially dissatisfied with the degree of inquiry made in respect of issues raised therein.

13. As noted extensively, multi prong attack has been flagged on behalf of the assessee to assail the impugned revisional order. We shall thus delve into each of such point hitherto;

14. The assessee has *inter alia* challenged the revision on the grounds of lack of opportunity.

14.1 Pertinently, the supervisory jurisdiction conferred under s. 263 has been invoked by the Pr. CIT to set aside the assessment order passed by the AO under s. 143(3) of the Act for AY 2013-14 based on SCN dated 21.03.2018. No other opportunity other than SCN was provided to the assessee. The adequacy of opportunity to meet the SCN is one of the foremost bone of contention. As repeatedly contended, a solitary opportunity was given to the assessee for the proposed revision at a very fag end of limitation for closure of revisional proceedings. A SCN dated 21.03.2018(Wednesday) was served for compliance on 22.03.2018(Thursday). The working day thus available for retrieving the facts is only 23.03.2018. Intriguingly, the hearing for response to SCN was fixed on 26.03.2018 at 12 am i.e. Sunday midnight. Nevertheless, the assessee, however on its part, swung into action swiftly and responded to the SCN by filing its objection to initiations of proceedings on the point of bar of limitation. The Pr. CIT disposed the objection against the assessee but however no further opportunity was provided to respond on correctness of allegations in the SCN on facts.

14.2 It may be pertinent to take note of the relevant observations of the co-ordinate bench in the case of *Kamlesh Jain & Sons HUF vs. ITO* [ITA No. 26/RPR/2021 order dated 29/09/2021] wherein the overriding importance of effective and real opportunity to the assessee in the course of revisional proceedings was underscored:

14. We now also advert to the vehement opposition on behalf of the assessee on the ground of non-issuance of notice and on total lack of opportunity while concluding the proceedings under section 263 of the Act. It has been demonstrated on facts that only show cause notice issued to the assessee was for attendance on 15.03.2021 calling the assessee at earlier point of time i.e. 11.15 A.M on the same date, whereas the notice itself was issued at 1.49 PM. We are constraint to observe that such casual approach of a very senior functionary of the Department does not augur well in the eyes of the public. As stated in the bar, no such notice was served at all on the email id. as claimed. No other notice was served. Palpably, it is a case of total lack of opportunity to the assessee to defend its case. A question would arise as to whether a failure to give a reasonable opportunity to the assessee of being heard was only a

procedural irregularity in such gross circumstances and thus curable and did not render the order passed by the PCIT ab initio void and nonest in law per se ?

15. In the case of Tata Chemicals Limited vs. DCIT, ITA No.3127/Mum/, order dated 30.06.2011, the co-ordinate bench after making reference to the decision in the judgement in Maneka Gandhi vs. Union of India AIR 1978 SC 597 and other judgments observed that the order which infringes the fundamental principle, passed in violation of audi alteram partem rule, is a nullity. When a competent Court or authority holds such an order as invalid or sets it aside, the impugned order becomes null and void. Once it is concluded that the order in question is null and void, it is not for the adjudicating authority to advise the Commissioner as to what should he do. He is always at liberty to do whatever action he can take in accordance with the law, but a life to null and void order by remitting it back to the Commissioner for giving a fresh opportunity of passing the order after giving the assessee an opportunity of hearing cannot be given. In a case where it is possible for the Commissioner to pass a fresh order at this stage in accordance with the scheme of the Act, he can very well do so but in case the time limit for passing such order has already expired, such time limit cannot be extended by directing him to pass the order after giving an opportunity of hearing to the assessee. Otherwise, this would tantamount to give premium to the person committing default. The finality of the assessment cannot be disturbed for the failure of the PCIT to obdurately adhere to the explicitly prescribed requirement of opportunity to assessee. Hence, in the absence of any opportunity to the assessee for which the fault is attributable squarely to the PCIT, is fatal and such defect being incurable, the revisionary order passed under section 263 of the Act is also required to be quashed independently on this ground also.

14.3 The facts in the present case also resonate with the facts available in Kamlesh Jain's case (supra) and hence warrant a similar treatment. As noted in the preceeding paragraphs, the Pr. CIT in the instant case has resorted to an empty and illusory formality of opportunity of one working day to defend the SCN. We are indeed baffled by such ostensibly iniquitous approach. The impugned revisional order passed without giving any demonstrable opportunity is a nullity in view of express enactment embodied in s. 263 of the Act. The revisional order passed without opportunity deserves to merge in void. The lack of opportunity has vitiated the revisional order on a standalone basis without any thing more.

15. The assessee has also questioned the assumption of revisional jurisdiction under s. 263 alleging that such action is at the behest of the new incumbent AO.

15.1 As noted, the substituted incumbent of the office of the AO moved a proposal to Pr.CIT for exercise of powers under s. 263 vide

communication dated 20/03/2018. The Pr. CIT issued SCN on the very next day i.e. 21/03/2018. On reading the contents of the SCN in conjunction with aforesaid proposal, it is seen that the line of reasonings in the proposal is reproduced *in verbatim* in the SCN. Interestingly, the AO in its proposal made reference to 'then AO' twice to disown the alleged mistake of predecessor AO, which is quite understandable. What is not understandable is the use of similar expression of '*then AO*' copied in the SCN too. The action of the Pr. CIT is overtly on dotted line and a mere copy paste. The SCN ex-facie reflects gross lack of application of mind by the Pr. CIT. It can be safely inferred that the proposal was made by the AO at the behest of Pr. CIT indeed which was thus copied in the SCN without change of even a coma. As a result, the generalized and extraneous observations of AO [viz. summons under s.131 ought to have been issued in addition to enquiry carried out under s. 133(6); reliance on report of investigation wing of deptt. much prior to the FY 2012-13 and thus wholly irrelevant for subsequent loans in question; reference to findings vis a vis AY 2005-06; SFIO report in relation to period prior to transactional year FY 2012-13 etc.] has crept in the SCN. Adoption of such vague and irrelevant observations of AO by the Pr. CIT vindicates the contention of the Assessee that the powers have been exercised without any application of mind. It is also not known whether the Pr. CIT was privy to 'case records' at the time of hurried issuance of SCN at the instance of AO. The contents of proposal and in turn, that of SCN on allegations towards contents of investigation etc. are also delightfully vague and non descript. It is classic case of exercising the supervisory powers of drastic nature at the instance of AO without showing any independent indulgence.

15.2 The Hon'ble Calcutta High Court in the case of *Pr.CIT vs.*

Sinhotia Metals and Minerals Pvt. Ltd. (2023) 455 ITR 736 (Cal.) dismissed the appeal of the revenue and endorsed the findings of ITAT that powers under s. 263 cannot be exercised at the stance of the AO without showing independent application of mind on the material available to justify such action. Similar view has again been echoed in *Pr.CIT vs. Reeta Lakhmani & Ors. (2023) 457 ITR 603 (Cal.)*

15.3 As observed, it is apparently discernible that the exercise of powers under s. 263 to dislodge a completed assessment is founded on view expressed by the AO without any independent ascertainment of observations. Such act offends the basic principles governing exercise of powers under s. 263 and thus is not sustainable in law either. The revisional order fails on this count too.

16. There is another aspect to put challenge to supervisory jurisdiction. From the text and tenor of the revisional order, it is manifest that the transactions of loans from various lenders required proper and fuller inquiry and examination by the AO in the expectation of the Pr.CIT. In this regard, we notice that it is demonstrated on behalf of the assessee that requisite enquiries were made by Assessing Officer towards identity, capacity and genuineness of unsecured loans received during the year. The issue was very much present to the mind of the AO. The relevant documents were also shown to have been filed in the assessment proceedings. We simultaneously notice a pertinent fact that the lenders were subjected to enquiry under s. 133(6) too by the AO for this purpose and evidences were collected and collated to weigh the surrounding circumstances. On such facts, one cannot be heard to say that it is a case of 'no enquiry' into the subject matter but may at best be a case of 'inadequacy in the extent of enquiry'. On the

face of such enquiries conducted, the AO has not mechanically accepted the assessee's claim but has embarked upon an enquiry considered necessary to the wisdom of the AO *albeit* not matching from the idealistic point of view of the Revisional Commissioner. The records suggest that the AO cannot be blamed to have acted in a perfunctory manner merely because the expectations of Revisional Commissioner are purportedly not meet.

16.1 Noticeably, it is also not the case of Pr. CIT either that it is a case of 'lack of enquiry' *per se*. On a bare perusal of the SCN, it is seen that the Pr. CIT has alleged absence of 'proper enquiry'. In para 5 of the revisional order too, the Pr. CIT alleged absence of 'proper enquiry' or 'sufficient enquiry'. The Pr. CIT has repeatedly asserted his objection on the sufficiency and adequacy of enquiry as brought to him by the present AO. Thus, while forming opinion adverse to the assessee, the Pr.CIT has essentially challenged the void in extent of enquiry on the bonafides of the lenders.

16.2 The expression 'lack of enquiry' is quite distinct from the expression 'insufficient enquiry'. We pause here to note the position of law enunciated in the judicial dicta governing the field. It is evolved by judicial precedents that in the case of inadequacy in inquiry (unlike lack of inquiry) on a point in issue, the Pr.CIT is expected to make some preliminary inquiry himself to be able to establish and show the error or mistake which renders the order of the AO unsustainable in law. It may be possible for the Pr.CIT in some cases to show and establish that facts on record or inferences drawn from facts on record *per se* justified or mandated further inquiry or investigation which the AO has erroneously not undertaken. However, such finding must be clear, unambiguous and not debatable. The Pr.CIT must demonstrate that the order is both

erroneous as well as prejudicial to the interest of the Revenue by such lapse on the part of the AO. This is the position of law enunciated by the Hon'ble Delhi High Court in several cases including *CIT .v. Goetze (India) Ltd. (2014) 361 ITR 505 (Del); ITO vs. DG Housing Projects Ltd, 343 ITR 329; CIT vs. Sunbeam Auto Ltd., 332 ITR 167 (Del).* In this backdrop, a question would arise whether, firstly, the action of the AO is unsustainable in law or not, owing to such assertions on mere inadequacy and secondly, whether the mandate under s.68 of the Act for extent of inquiry by way of cross verification is absolute or left to the discretion to be reasonably exercised by the AO.

16.3 Pertinently, the law does not prescribe any quantitative test to find out whether the onus in a particular case has been discharged or not. It all depends on the facts and circumstances of each case. In some cases, the onus may be heavy whereas in others it may be nominal. There is nothing rigid about it as observed by the Hon'ble Supreme Court in the case of *CIT v. Durga Prasad More, [1971] 82 ITR 540 (SC).* Significantly, S. 68 of the Act uses the expression 'may' and thus enables the AO to exercise statutory discretion in a pragmatic and judicious manner, for or against, the assessee. The AO is thus not obliged to invoke the sphere of S.68 of the Act in all cases where the source is not proved to the last mile. This apart, it is well settled that while discharging the onus cast upon the assesse, it is not the stringent requirement of law that assessee needs also to prove the source of source i.e. money sourced by the lender to provide loan to the assessee. Once the assessee is able to establish that the money has been received from the source belonging to third party, he cannot be burdened with a further onus of establishing the source from which such third party has been able to obtain money. Useful reference in this regard can be made to the decision of

Hon'ble Gujarat High Court in case of *Rohini Builders (supra) and also Nemi Chand Kothari (supra); ITO vs. Diza Holdings (P) Ltd. 255 ITR 573 (Kerala)* and so on. Thus, when seen in the light of judicial precedents elucidating law pertaining to Section 68 of the Act, it appears that it is not obligatory on the part of the assessee to steadfastly vouch the source of the source and thus, onus in the present case was reasonably discharged on ascertaining the facts with reasonable degree of care expected of a statutory functionary. This also means that the AO is not called upon in law to obdurately adhere to extra vigil expected by a superior authority. The AO is thus entitled to draw satisfaction in favour of the assessee in exercise of its statutory discretion available under s.68 of the Act. Where the AO has exercised its quasi-judicial powers and arrived at a conclusion with reasonable application of mind, such action cannot be brushed aside as erroneous etc. simply because the Revisional Commissioner does not feel satisfied with extent of the inquiry and expects observance of higher standards in this regard. Where the assessee has furnished relevant material and offered explanation, the assessment cannot be ordinarily set aside on the counters of Section 263 for framing better assessment without showing any objective material available on record adverse to the assessee.

16.4 On facts, the Pr. CIT has referred to investigation report pursuant to search on 19.04.2010 on Jain brothers which was not allegedly taken cognizance of by the AO. Without going into merits, where the search itself occurred in the case of third party prior the loan transactions, it is difficult to visualize any lapse on the part of Assessing Officer with regard to transactions occurred after search. Same is the case for references made to the observations arising from assessment order of Jain brother relating to AY 2005-06. The SFIO report prepared in March 2016 was naturally not available to

AO at the time of passing assessment order. Be that as it may, the report was prepared based on observations in search proceedings carried in earlier point of time. Besides, the contents of report was never confronted to the Assessee. Being a fresh material, it was incumbent upon the Pr. CIT to confront the same to Assessee before taking any adverse view. No opportunity on this score has been provided either. We thus concur with the plea on behalf of the assessee that S.263 proceedings cannot be inflicted upon the assessee in these circumstances.

16.5 While holding so, we are alive to clause (a) of Explanation (2) to Section 263 of the Act inserted by Finance Act, 2015 w.e.f. 01.06.2015 which seeks to clarify that the order passed by the lower authorities to be erroneous in so far as prejudicial to the interest of the Revenue in the event of 'absence of inquiries or verifications which should have been made'. The aforesaid clause, to our mind, only provides for situation where inquiries or verifications should be made by reasonable and prudent officer in the context of the case. Such clause cannot be read to authorize or give unfettered powers to the Revisional Commissioner to revise each and every type of mistake in an order in a plannery manner. The applicability of the clause is thus essentially contextual. As observed in the preceding paras, even if inquiry with regard to source of source of loan in a particular manner as suggested by Pr. CIT is omitted to be carried out, the provisions of Section 68 of the Act cannot be automatically fastened on the assessee. To reiterate, no objective material is discernible from the SCN or from the revisioanal order to implicate the assessee *per se*.

16.6 Having regard to the prerogative vested with the AO towards the extent and manner of inquiry for drawing satisfaction, it is

difficult to hold that the action of the AO is unintelligible. In our view, the AO has not committed any error in not chasing *'will o the wisp'* in the absence of any brazen circumstances available. In the light of aforesaid discussion, the basis of issuance of show cause notice under s.263 of the Act does not appear to be tenable in law in the peculiar set of facts. Consequently, the assumption of jurisdiction under s.263 of the Act on this ground too, will have to be regarded as without authority of law.

17. Thus, seen from any angle, the assessment order passed under s.143(3) of the Act could not be frustrated in the circumstances. The impugned revisional order passed under Section 263 thus requires to be quashed and set aside.

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

Order pronounced in the open court on 12/10/2023

Sd/-	**Sd/-**
[CHANDRA MOHAN GARG]	**[PRADIP KUMAR KEDIA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: **/10/2023**

Prabhat