

IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.1208/Mum/2023

(A.Y: 2018-19)

Edisons Infrapower & Multiventures Pvt Ltd 18 th Floor, A-Wing, Marathon Futurex, NM Joshi Marg, Lower Parel, Mumbai-400013.	Vs.	Pr. CIT, Range – 6, Room No.501, 5 th Floor, Aayakar Bhavan, M.K.Road, Mumbai-400020.
PAN/GIR No. : AAACE1633J		
Appellant	..	Respondent

ITA No. 1207/Mum/2023

(A.Y: 2018-19)

Essel Corporate Resources Pvt Ltd 18 th Floor, A-Wing, Marathon Futurex, NM Joshi Marg, Lower Parel, Mumbai-400013.	Vs.	Pr.CIT, Range – 6, Room No. 501, 5 th Floor, Aayakar Bhavan, M.K.Road, Mumbai-400020.
PAN/GIR No. : AABCE0473D		
Appellant	..	Respondent

Appellant by :	Shri.Jay Bhansali.AR
Respondent by :	Shri Jogendra Singh.Sr.DR.

Date of Hearing	17.11.2023
Date of Pronouncement	31.01.2024

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

These two appeals are filed by the two different assesses under the same group of companies against the separate orders of the Principal Commissioner of Income Tax(Pr.CIT)-6 Mumbai passed u/sec 263 of the Act.

2. Since issues involved in these appeals are common and identical, hence they are clubbed, heard and a consolidated order is passed. For the sake of convenience, we shall take up ITA No.1208/Mum/2023.A.Y 2018-19 as lead case and facts narrated. The assessee has raised the following grounds of appeal:

- 1. On the facts and circumstances of the case and in law, the Principal Commissioner Income-tax 6, Mumbai ("the Pr.CIT") erred in assuming jurisdiction under section 263 and holding the assessment order, under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") dated 15.02.2021 (hereinafter referred to as "the assessment order"), as erroneous and prejudicial to the interest of the revenue. The reasons given by him for doing so are wrong, contrary to the facts of the case and against the provisions of law;*
- 2. The Pr. CIT failed to appreciate that the Assessing Officer after due application of mind as regard allowability of deduction claimed u/s 36(1)(ii) framed the assessment order without making any disallowance on the said count;*
- 3. Assuming without admitting that the present case was a case of inadequate enquiry, the Pr. CIT failed to appreciate that the power of revision envisaged under section 263 of the Act and the Explanation 2 thereto can be exercised only where no*

enquiry as required under the law is done and that it is not open to invoke the said provisions in cases of inadequate enquiry,

4. The Pr. CIT erred in holding that the interest expense of Rs 37,10,63,373/- is disallowable without appreciating that the corresponding borrowed funds have been utilized for business purpose and therefore the same is allowable under section 36(1)(iii) of the Act. The conclusion drawn by the Pr. CIT is based on incorrect appreciation of facts and circumstances of the case and provision of law;

5. The above grounds/sub-grounds are without prejudice to each other;

6. The Appellant craves leave to add, amend or alter all or any of the grounds of appeal

3. The Brief facts of the case are that, the assessee company is engaged in the business of infrastructure activities. The assessee has filed the return of income for the A.Y 2018-19 on 25.09.2018 disclosing a total loss of Rs. 37,22,61,114/- and the return of income was processed u/sec143(1) of the Act. Subsequently, the case was selected for complete scrutiny under e-assessment scheme 2019 on the following issues (i) investments, advances and loans (ii) business loss (iii) unsecured loans (iv) expenses earned for earning exempt income. Whereas the Assessing Officer (AO) has issued notice u/sec143(2) and u/sec142(1) of the Act along with the questionnaire. In compliance to the notice, the assessee has furnished the information in

support of the return of income. The AO on perusal of the financial statements has called for the details and the assessee has filed the reply with respect to the facts through ITBA portal on 12.10.2020. Further the AO having verified the facts and documents and has called for the additional information and issued notice u/sec142(1) of the Act and the assessee has submitted the details along with the supporting evidences on 22.01.2021. Finally the AO on verification of the financial statements, information and tax audit report has accepted the loss as per the return of income filed and passed the order u/sec 143(3) r.w.s 143(3A) & 143(3B) of the Act dated 15.02.2021.

4. Subsequently, the Pr. CIT on perusal of the records and information found that the order passed by the AO under section 143(3) of the Act is erroneous and prejudicial to the interest of the revenue and issued revision notice U/sec 263 of the Act as under:

Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the THE INCOME TAX ACT, 1961-Assessment Year 2018-19

In this regard, a hearing in the matter is fixed on 20/01/2023 at 12:30 PM. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below)If you wish that the

Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: Incometaxindiaefiling.gov.in

You have filed the return of income for AY 2018-19 on 25.09.2018 declaring total income of Rs. (-) 37,22,61,114/- under normal provisions of the Act. The assessment was completed u/s 143(3) on 15.02.2021 accepting the returned income as such.

2. On perusal of assessment order u/s 143(3) dated 15.02.2021, it is observed that the order is erroneous and prejudicial to the interest of revenue for the following reasons:

2.1 On verification of the records, it is seen that an amount of Rs. 9369.28 lakh has been debited as "interest expenses" in the Profit & Loss Account. It is also observed that only an amount of Rs. 5.52 lakh has been credited to the P & L A/c against which an amount of Rs. 5658.64 lakh has been disallowed u/s.36(1) (iii) in the computation of income suo-moto as the borrowed capital was used for non business purposes.

2.2 It has been further observed that the loss from business is mainly on account of payment of interest of Rs.9369.28 lakh on borrowed capital. Since the borrowed capital has not been used for earning any taxable income, the entire amount of Rs. 9369.28 lakh ought to have been disallowed in the order passed u/s143(3) dated 15.02.2021 as against the suo moto disallowance of Rs. 5658.64 lakh. Hence, the assessment order suffers from an under assessment of Rs.3710.64 lakh.

3. As per the provisions of section 263 of the Act, if any assessment order passed by the Assessing Officer is found erroneous and prejudicial to the interests of revenue, the same can be revised under u/s 263 of the Act, to protect the interest

of the Revenue. In the instant case, order dated 15.02.2021 passed u/s.143(3) is erroneous in so far as it is prejudicial to the interest of the revenue. Therefore, the same is required to be set-aside on the above issue by invoking the provisions of section 263 of the Act. Hence, it is requested to show- cause as to why the said order should not be quashed/set-aside for fresh adjudication after considering the facts as discussed above.

4. In this connection, you are hereby given an opportunity of being heard and your case is fixed for hearing/making submission online on or before 20.01.2023 at 12.30 PM. In case of non-compliance, it will be presumed that you have no objection to the proposed revision u/s 263 of the Act, of the assessment order passed by the Assessing Officer u/s. 143(3) of the Act on 15.02.20216

5. Further the Pr. CIT has also issued another notice under revisionary powers to justify the claim of disallowance u/sec 36(1)(iii) of the Act referred at Para 5 of the Pr. CIT order as under:

“5. Accordingly, For further examination, invoking revisionary powers, notices u/s.263 were issued to the assessee on 05.01.2023 & 09.03.2023, providing an opportunity to the assessee to justify its claim of disallowance u/s.36(1) (iii). In the notice, it was specifically noted as under:

“..... 2.1 on verification of the records, it is seen that an amount of Rs. 9369.28 lakh has been debited as "interest expenses" in the Profit & Loss Account It is also observed that only an amount of Rs. 5.52 lakh has been credited to the P & L A/c against which an amount of Rs. 5658.64 lakh has been disallowed u/s36(1)(iii) in the computation of income suo-moto as the borrowed capital was used for non business purposes.

2.2 It has been further observed that the loss from business is mainly on account of payment of interest of Rs9369.28 lakh on borrowed capital. Since the borrowed capital has not been used for earning any taxable income, the entire amount of Rs. 9369.28 lakh ought to have been disallowed in the order passed u/s. 143(3) dated 15.02.2021 as against the suo moto disallowance of Rs5658.64 lakh. Hence, the assessment order suffers from an under assessment of Rs3710.64 lakh..."

6. Whereas in compliance to notices, the assessee has filed the information referred at Para 6 of the revision order as under:

"6. In response, Shri. Jay Bhansali, CA & A/R of the assessee attended and furnished written submissions which have been perused carefully and placed on record. The submissions of the assessee are briefly summarized as under;

1. The assessee company is in the business of infrastructure activities

2. During the year under consideration, the assessee has debited interest expenses of Rs. 93,69,28,205/-

3 The assessee has credited Rs. 3,00,000/- as "Revenue from Operations" and Rs. 2,51,507/- as "Other Income" aggregating to Rs.5,51,507/-,

4 The assessee in its computation of income has suo moto disallowance an amount of Rs.56,58,64,832/- u/s.36(1)(iii) of the IT Act

5 The assessee has given interest free loans and deposits of Rs. 7,16,05,000/- and holds investments of Rs. 935,56,66,708/-

7. Whereas the Pr.CIT was not satisfied with the explanations, submissions and is of the opinion that the order passed by the AO is erroneous and prejudicial to the interest of the revenue, and accordingly issued directions to the AO observing at Page 3 Para 6.1 to 8 of the order as under:

“6.1 The submissions of the assessee have been carefully considered, and found to be bereft of any merits. The assessee has been found to be making contradictory and self-defeating submissions. At one point it states that it as utilized the interest bearing funds for the purpose of it business, and on the other hand, the assessee submits that it has itself made a suo moto disallowance u/s.36(1)(iii) of Rs.5658.64 lakhs. In case the borrowed funds were utilized for exclusive purposes of business, there was no need to have made any suo-moto disallowance of interest expenses. On the contrary, in the event the borrowed funds were utilized for non-business purposes, then the disallowance should have been made in the entirety. Thus seen the twin statements are self contradictory.

6.2 The AO ought to have disallowed the entire amount of Rs. 93,69,28,205/- and ought to have added the amount of Rs. 37,10,63,373/- also in the total income of the assessee. Therefore, from the facts above, it is clear that the AO has not made any enquiry on the issue of allowability of deduction u/s 36(1)(iii) and hence the case clearly falls under the purview of clause (a) of Explanation 2 to section 263 of the IT Act. Accordingly, the order passed u/s143(3) is held to be erroneous and prejudicial to the interests of revenue.

7. In view of the above, I am of the considered opinion that the assessment order passed by the Assessing Officer u/s.143(3) dated 15.02.2021, is erroneous in so far as it is prejudicial to

the interest of the revenue. Accordingly, the said order passed by the Assessing Officer is set-aside on the issue of allowability of 37,10,63,373/- u/s.36(1) (iii) and the AO is directed to make an enquiry in this matter and re-assess the income after giving an opportunity of being heard to the assessee.

8. The order u/s 263 of the Income Tax Act, 1961 is passed accordingly.”

8. Finally the Pr.CIT has passed order u/sec 263 of the Act dated 30.03.2023. Aggrieved by the order of the Pr.CIT, the assessee has filed an appeal before the Honble Tribunal.

9. At the time of hearing, the Ld. AR submitted that the Pr.CIT has erred in considering the order passed by the AO is erroneous and prejudicial to the interest of the revenue, irrespective of the fact that the assessee has complied with the information and the notices and the A.O. having verified and examined the facts has accepted the same. The Ld.AR submitted that the assessee has obtained loans and has justified the deduction u/s 36(1)(iii) of the Act and these facts were also brought on record. The assessee has submitted voluminous details in compliance to notice U/sec142(1) of the Act and were examined and verified. The observations of the Pr.CIT is without merits and whereas the AO has applied the mind and taken the view. The Ld.AR has substantiated the submissions with the

paper book and judicial decisions and prayed for allowing the assessee appeal.

10. Per Contra, the Ld.DR Submitted that the AO has not considered and verified the facts on the claim of deduction u/sec 36(1)(iii) of the Act and the Ld.DR relied on the Pr. CIT order.

11. We heard the rival submissions and perused the material available on record. The Ld.AR envisaged that the order passed by the Pr.CIT is bad in law as the order revised under revision proceedings passed by the Pr. CIT is not erroneous and prejudicial to the interest of the revenue. The contentions of the Ld. AR that the assessee has substantiated the claim before the assessing officer. The Ld. AR has made reference to notices issued U/sec 142(1) of the Act at page 5 to 8 of the paper book, where the A.O. has called for the detailed information on the financial statements and activities and in particular at page 7 at s.no 3 has called for the details of the secured loans, unsecured loans, party wise details of loans and advances in the format prescribed. The assessee has filed a detailed reply by letter dated 07-02-2020 online at page 10 explaining point wise details and enclosures and further on 12-10-2020 the assessee has submitted the details of

investments and disallowance U/sec36(1(iii) of the Act claimed in the return of income placed at page 41 to 55 of the paper book. Subsequent to the filing of the information, the assessing officer has issued notice U/sec142(1) of the Act dated 29-12-2020 along with the annexure and in compliance, the assessee has submitted the details of loans obtained and interest payments along with the ledger accounts and bank account statements reflecting the transactions placed at page 61 to 71 of the paper book. The AO on verification of the financial statements, information and tax audit report has accepted the loss as per the return of income filed and passed the order u/sec 143(3) r.w.s 143(3A) & 143(3B) of the Act dated 15.02.2021. Further the Ld.AR referred to the submissions made before the Pr.CIT in the revision proceedings and highlighting on the suo moto disallowance made by the assessee u/sec36(1)(iii) of the Act. At this juncture, the submissions of the assessee on investments, loans and advances provided and borrowed along with the evidences filed on 27.01.2023 before Pr.CIT are referred as under:

“The assessee has given interest free loans of Rs. 7,16,05,000/- and holds investments of Rs. 935,56,66,708/- break-up of which is as under:

<i>Particulars</i>	<i>Amount</i>	<i>Amount</i>
<i>A. Interest free advances</i>		<i>7,16,05,000</i>
<i>B. Investments</i>		<i>935,56,66,708</i>
<i>Investments in unquoted equity shares</i>	<i>195,85,37,419</i>	
<i>Investments in LLP as parter</i>	<i>66,71,29,289</i>	
<i>Investments in compulsory convertible debentures (CCDs)</i>	<i>673,00,00,000</i>	
<i>Total (A+B)</i>		<i>942,72,71,708</i>

1.3 Break-up of interest bearing and interest free funds are as under:

<i>Particulars</i>	<i>Amount</i>	<i>Amount</i>	<i>Amount</i>
<i>Share capital</i>		<i>5,07,088</i>	
<i>Reserve & surplus</i>		<i>286,59,35,489</i>	
<i>Optionally convertible debentures</i>		<i>379,11,00,000</i>	
<i>Arrow Media & Broadband Pvt Ltd</i>	<i>170,21,00,000</i>		
<i>Pan India Network Ltd</i>	<i>208,90,00,000</i>		
<i>Inter corporate deposits</i>		<i>96,31,39,553</i>	
<i>Pan India Infraprojects</i>			

<i>Pvt ltd</i>		96,37,85,553		
<i>Pan India Utilities Distribution</i>		6,46,000		
<i>Current account with limited liability Partnership</i>			96,15,11,319	
<i>Essel Properties LLP</i>		27,09,111		
<i>Mod Silica LLP</i>		18,266		
<i>Churu Enterprises</i>		95,87,83,942		
<i>Other current liabilities</i>			88,08,44,573	
<i>Other noncurrent liabilities</i>			1,05,000	
<i>Total interest free funds</i>			373,12,72,044	
<i>Interest bearing funds</i>				
<i>Borrowing from financial institutions</i>			170,12,53,423	15,50,43,424
<i>Axis Finance Ltd</i>		120,00,00,000		
<i>Religare Finvest Ltd</i>		50,12,53,423		
<i>Non convertible debentures</i>			400,00,00,000	78,18,43,896
<i>Total interest bearing funds</i>			570,12,53,423	93,68,87,320
<i>Grand total (interest free+interest bearing)</i>			943,24,20,20,4 67	93,67,87,320

For OCDs, ICDs and balances with LLPs, we enclose the copy of ledger confirmations at page No. 5 to 18

For borrowings from financial institutions, we enclose the following documents at Page No. 19 to 31:

a) Axis Finance Ltd., Sanction letter and ledger account

b) Religare Finvest Ltd Term Sheet and ledger account

For NCDs, we enclose copy of information memorandum at page No. 31 to 105

Detailed movement of borrowings enclosed at page No. 106.

1.4. Therefore, the assessee has interest free funds of Rs. 373,56,25,909/- and interest bearing funds of Rs. 570,12,53,423/- This shows that the assessee has sufficient interest free funds available for giving loans and advances of Rs.7,16,05,000/-. The balance interest free fund and interest bearing fund have mainly been utilized for making investments of Rs.935,56,66,708/-.

1.5. Further, the assessee has incurred interest expenditure of Rs. 93,67,87,320/-. As mentioned above, loans given are out of interest free fund and mixed funds are used for making investments. Hence, no interest can be disallowed. Also, no disallowance u/s 14A of the Act can be made as there is no exempt income. Yet, the assessee has suo-moto disallowed 56.58.64,832/- u/s 36(1) (iii) of the Act although no interest is required to be disallowed.

1.6. Hence, in view of the above facts of the case, your proposal to exercise jurisdiction u/s 263 of the Act for

additional disallowance of interest of Rs. 37,10,63,372/- is required to be dropped.”

12. The Ld. AR emphasized that the assessee has been following the consistency from the earlier years and was being accepted by the revenue and it cannot be disturbed. When the Pr.CIT observes that the order passed by the A.O. is erroneous, he should make necessary inquiries or verification. Whereas the AO has applied the mind and accepted the possible view. We rely on the decision of the Honble High Court of Bombay in the case of M/S Grasim Industries Ltd Vs CIT (321 ITR 92) considered the law laid down by the Honble Supreme Court on the scope of the revisionary proceedings initiated under sec 263 of the Act and the observations are read as under:

“Section 263 of the Income-tax Act, 1961 empowers the Commissioner to call for and examine the record of any proceedings under the Act and, if he considers that any order passed therein, by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue, to pass an order upon hearing the assessee and after an enquiry as is necessary, enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. The key words that are used by section 263 are that the order must be considered by the Commissioner to be “erroneous in so far as it is prejudicial to the interests of the Revenue”. This provision has been interpreted by the Supreme Court in several judgments to which it is now necessary to turn. In Malabar Industrial Co. Ltd.

v. CIT [2000] 243 ITR 83, the Supreme Court held that the provision “cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer” and “it is only when an order is erroneous that the section will be attracted”. The Supreme Court held that an incorrect assumption of fact or an incorrect application of law, will satisfy the requirement of the order being erroneous. An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in that category. The expression “prejudicial to the interests of the Revenue”, the Supreme Court held, it is of wide import and is not confined to a loss of tax. What is prejudicial to the interest of the Revenue is explained in the judgment of the Supreme Court (headnote) :

“The phrase ‘prejudicial to the interests of the Revenue’ has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law.”

The principle which has been laid down in Malabar Industrial Co. Ltd. [2000] 243 ITR 83 (SC) has been followed and explained in a subsequent judgment of the Supreme Court in CIT v. Max India Ltd. [2007] 295 ITR 282.”

13. Further In the case of Nagesh Knitwears P Ltd (2012)(345 ITR 135), the Hon’ble Delhi High Court has elucidated and explained the scope of the provisions of sec. 263 of the Act and the same has been extracted by the

Delhi High court in the case of CIT Vs. Goetze (India) Ltd (361 ITR 505) as under:-

“Thus, in cases of wrong opinion or finding on merits, the Commissioner of Income tax has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under section 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order is not sustainable in law and the said finding must be recorded. The Commissioner of Income tax cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, again the Commissioner of Income tax must give and record a finding that the order/inquiry made is erroneous. This can happen if an enquiry and verification is conducted by the Commissioner of Income tax and he is able to establish and show the error or mistake made by the Assessing officer, making the order unstainable in law. In some cases possibly though rarely, the Commissioner of Income tax can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the Assessing officer had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the Assessing Officer to conduct further enquiries without a finding that the order is erroneous. Finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction under section 263 of the Act. In such matters, to remand the matter/ssie to the Assessing Officer would imply and mean the Commissioner of Income tax has not examined and decided whether or not the order is erroneous but has directed the Assessing Officer to decide the aspect/question....” Similar view has been expressed by Hon’ble Madras High Court in the case of CIT Vs. Amalgamations Ltd (238 ITR 963).

Considering the ratio of decisions of the Honble High courts, it is clear the Pr.CIT before holding the order of the A.O. is erroneous should conduct necessary inquiries. The Ld.AR submitted that the Pr.CIT has not considered the facts that the A.O has called for the information on the interest expenses, loans and advances and the method of accounting followed and there cannot be any non application of mind by the A.O. We find that the A.O has considered one of the possible views based on the information and it is not necessary that the A.O should put all the discussions/observations in the assessment order, as per explanations (2) to sec 263 of the Act the authority has to invoke provisions only when there is no verification and enquiry conducted by the A.O. Whereas the A.O has applied his mind and verified the facts. The Ld. AR referred to the submissions, financial statements, judicial decisions and explanations filed before the A.O. We find the Hon'ble High Court of Bombay in CIT Vs. Gabriel India Ltd.(203 ITR 108) has observed as under:

Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interests of revenue - Assessment year 1973-74 - Assessee claimed a sum of Rs. 99,326 described 'as plant relay out expenses' as revenue expenditure and ITO, after making enquiries in regard to nature of said expenditure and considering explanation furnished by assessee in that regard, allowed assessee's claim -

Subsequently, Commissioner, exercising powers under section 263, cancelled order of ITO observing that order of ITO did not contain discussion in regard to allow ability of claim for deduction which indicated non-application of mind and that claim of assessee required examination as to whether expenditure in question was a revenue or capital expenditure and directed ITO to make a fresh assessment on lines indicated by him - Whether under section 263 substitution of judgment of Commissioner for that of ITO is permissible - Held, no - Whether ITO's conclusion can be termed as erroneous simply because Commissioner does not agree with his conclusion - Held, no - Whether ITO's order could be held to be 'erroneous' simply because in his order he did not make an elaborate discussion - Held, no - Whether provisions of section 263 were applicable to instant case and Commissioner was justified in setting aside assessment order - Held, no

14. We Considering the overall facts, circumstances, ratio of the judicial decision and the details submitted in the course of hearing are of the view that the if any query is raised in the assessment proceedings and it was responded by the assessee, mere fact that it is not dealt within by the A.O. in the order cannot implied that there is no application of mind and the A.O. has applied one of the possible view. Hence, the action of the Pr.CIT cannot be acceptable as the order passed by the A.O. does not satisfy the twin conditions of erroneous and prejudicial to the interest of the revenue. Accordingly, we set aside the order of the Pr.CIT and allow the grounds of appeal in favour of the assessee.

15. In the result, the appeal filed by the assessee is allowed.

ITA No. 1207/Mum/2023, A.Y 2018-19

16. The assessee has raised following grounds of appeal:

1 On the facts and circumstances of the case and in law, the Principal Commissioner Income-tax - 6, Mumbai ("the PrCIT") erred in assuming jurisdiction under section 263 and holding the assessment order, under section 143(3) of the Income-tax Act, 1961 ("hereinafter referred to as "the Act") dated 04.03.2021 (hereinafter referred to as "the assessment order"), as erroneous and prejudicial to the interest of the revenue The reasons given by him for doing so are wrong, contrary to the facts of the case and against the provisions of law;

2. The PrCIT failed to appreciate that the Assessing Officer after due application of mind as regard allowability of deduction claimed u/s 36(1)(iii) framed the assessment order without making any disallowance on the said count;

3 Assuming without admitting that the present case was a case of inadequate enquiry, the Pr CIT failed to appreciate that the power of revision envisaged under section 263 of the Act and the Explanation 2 thereto can be exercised only where no enquiry as required under the law is done and that it is not open to invoke the said provisions in cases of inadequate enquiry;

4. The Pr. CIT erred in holding that the finance cost of Rs. 6,58,36,357 is disallowable without appreciating that (a) the appellant has claimed only Rs. 2,48,58,883 as expenditure and (b) the corresponding borrowed funds have been utilized for business purpose and therefore the same is allowable under section 36(1)(iii) of the Act The conclusion drawn by the Pr CIT

is based on incorrect appreciation of facts and circumstances of the case and provision of law;

5. The above grounds / sub-grounds are without prejudice to each other;

6. The Appellant craves leave to add, amend or alter all or any of the grounds of appeal.

17. As the facts and circumstances in this appeal is identical to ITA No 1208/Mum/2023, for the A.Y 2018-19 (except variance in figures) and the decision rendered in above paragraphs would apply mutatis mutandis for the appeal also. Accordingly, we allow the grounds of appeal of the assessee.

18. In the result, the appeals filed by the assessee are allowed.

Order pronounced in the open court on 31.01.2024.

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 31.01.2024

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)

4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai