

**आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH, CHENNAI**

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं  
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।  
**BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**  
**AND HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER**

आयकरअपील सं./ ITA No.2013/Chny/2024  
(निर्धारणवर्ष / Assessment Year: 2018-2019)

Sunitha,  
No.30, Sivaji Colony,  
Thadagam Road,  
Edayarpalayam,  
Coimbatore 641 025.

**Vs.** The Principal Commissioner of  
Income Tax -1,  
Coimbatore

**[PAN: BHQPS 4789G]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri N.V. Balaji, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri R. Clement Ramesh Kumar, IRS, CIT.

सुनवाई की तारीख/Date of Hearing

: 26.11.2024

घोषणा की तारीख /Date of Pronouncement

: 10.12.2024

**आदेश / ORDER**

**PER MANU KUMAR GIRI (Judicial Member)**

This appeal by the assessee is arising out of the order of the Principal Commissioner of Income Tax, Coimbatore-1('PCIT' in short) in order No. ITBA/REV/F/REV5/2023-24/1058951923(1), dated 21.12.2023 for assessment year 2018-2019.

2. Brief facts of the case are that the assessee filed return of income on 28/02/2019 for the AY.2018-19 declaring a total income of Rs.43,48,860/-. The case

was selected for complete scrutiny under E-assessment scheme, 2019 on the following issue: i) Source of Loan Advanced. The case has been selected for complete scrutiny through 'CASS' citing reasons for selection as "The assessee has given large amount of loans as per Form 3CD of debtors in comparison to Gross Total Income shown in the ITR". The assessment order was passed by faceless assessing officer ('FAO' in short) on 20/04/2021 accepting the income returned.

3. The solitary issue may be formulated as under:-

*'Whether the Id. PCIT u/s.263 of the Act erred in directing the Id. Assessing Officer (FAO) to re-do the assessment denovo under the Income Tax Act, 1961 (in short "the Act") after adequate opportunity of being heard to the assessee?'*

4. The Id. Assessing Officer framed reassessment u/s.143(3) r.w.s. 144B of the Act vide order dated 20.04.2021 as under:-

*1. The case was selected for Complete Scrutiny assessment under the E-assessment Scheme, 2019 on the following issues:-*

<i>S. No</i>	<i>Issues</i>
<i>1.</i>	<i>Source of Loan Advanced</i>

*The assessee has e-filed its Return of Income in Form-3 on 28.02.2019 declaring total income at Rs.43,48,860/-.*

*The case been selected for complete scrutiny through "CASS" citing reason for selection as "The assessee has given large amount of loans as per Form 3CD of debtors in comparison to Gross Total Income shown in the ITR."*

*Statutory notice u/s 143(2) & 142(1) of the I.T.Act,61 were generated and served upon the assessee through electronic mode. The assessee has submitted the details as asked for which were examined.*

*In response to show cause notice dated 16.04.2021, assessee submitted a letter along with P&L account, Balance sheet, bank statement, cash book, computation of income etc.*

*After taking into account all relevant materials available on record, the assessment is made as per return of income without any*

*modification/adjustment to the return of income and sum payable or refundable of any amount due on the basis of assessment is determined as per notice of demand.*

*Appreciate the co-operation extended in the faceless e-assessment proceedings under e-assessment scheme, 2019.*

*This order is being passed u/s 143(3) read with section 144B.*

5. Subsequently, the PCIT on examination of the assessment records for the relevant assessment year 2018-19, issued show cause notice u/s.263 of the Act dated 20.04.2023 proposed to set aside the assessment by revising the assessment as under:-

*'a) 'On perusing the records for the AY 2018-19, it is noticed that the total funds available for carrying out your business of Financial Intermediation was Rs.14,37,84,003/-, However, the submission made by you shows that the loans advanced to others amounts to Rs.43,26,46,526/-. Hence the source for unexplained amount of Rs.28,88,62,523/- [Rs.43,26,46,526 - Rs.14,37,84,003] for which the source is not explained requires to brought to tax as unexplained investment u/s 69 of the IT Act and taxed u/s 115BBE.*

*b) On further verification it is noticed that you have advanced an amount of Rs.43,26,46,526/- during the financial year2017-18 and have offered an interest income of Rs.51,71,704/- However, from your submissions it is noticed that an amount of Rs.6,16,18,018/- is advanced and received back without any interest. Considering the nature of your business, advancing such a huge amount without any interest is highly improbable. Hence it is concluded that you have not offered the interest income earned on the loan amount of Rs.6,16,48,018/- to tax".*

6. The assessee replied to the above show-cause notice dated 20.04.2023, stating that the assessment order by Id. Assessing Officer in original assessment proceedings did not suffer any error for the reason that the Id.AO has duly examined the issue of 'source of Loan Advanced'. The reply of the assessee to the aforesaid notice is as under:

*^In the first reasoning given in the show cause notice, it is stated that there is shortfall in source (for loans given) amounting to Rs.28,88,62,523/- It is noticed that the alleged shortfall has been computed as under,*

- a) Amount of loans & advances given Rs.43,26,46,526/-  
b) Total funds available;*

<i>Particulars</i>	<i>Rs.</i>
<i>Source of funds as per SL.No.4 of Part A-BS of ITR Filed</i>	<i>3,49,80,909</i>
<i>(+) Loans received as per chart filed during assessment</i>	<i>10,88,03,094</i>
<i>Total Source available for giving loans</i>	<i>14,37,84,003</i>

*c) Shortfall in source => Rs.43,26,46,526/- minus Rs.14,37,84,003/- = Rs.28.88.62.523/-.*

*It is understood that the above number was calculated based on the information available in the ITR and the chart showing details of loans given, filed during assessment proceedings. Summary of the chart is as under;*

<i>Debit</i>	<i>Rs.</i>	<i>Credit</i>	<i>Rs.</i>
<i>Opening Balance</i>	<i>92,92,510</i>	<i>Loans recovered back</i>	
		<i>Bank</i>	<i>34,24,38,555</i>
<i>Additional loans given Through bank</i>	<i>36,79,53,016</i>	<i>B) Cash</i>	<i>6,32,25,391</i>
<i>B) In Cash</i>	<i>5,54,01,000</i>	<i>Interest allocation</i>	<i>(46,78,370)</i>
		<i>Closing Balance</i>	<i>3,16,609,50</i>
	<i>-----</i>		<i>-----</i>
	<i>43,26,46,526</i>		<i>43,26,46,526</i>
	<i>-----</i>		<i>-----</i>

*Form the above table, it could be gathered that Rs.43,26,46,526/- represents the summation of opening balance of loans given and cumulative total of all the loans given during the year.*

*It is submitted that, the outstanding loans given by me at a given point of time would be only around Rs.3 crores.*

*I used to give loans to various parties which are repayable within a period of 2 to 6 months. Exceptional cases may have larger repayment periods as well, The interest and principal recovered from an existing loan debtor would be the source for giving new loans to new debtors. Unless a debtor repays his debt, I would not have funds for giving loan to another debtor.*

*For example, I would have given Rs.15 lakhs to Mr A on 01.05.2017 and Rs.10 lakhs to Mr B on 05.05.2017. Mr A would have paid back Rs.15.15 on 30.05.2017 and Mr B would have paid Rs.10.10 lakhs on 04.06.2017. Using this money, I would have given fresh loan of Rs.25 lakhs to Mr C on 08.06.2017. In other words, source for loan given to Mr C is the amount recovered from Mr A and Mr B. In this case, it cannot be stated that one has to explain source for Rs.50 lakhs (Rs.15 Rs.10+ Rs.25) without taking into account the amount recovered from Mr A & Mr B.*

*In my case, from the table given above, it could be seen that I had recovered Rs.40,56,63,946/- from the debtors (i.e. Rs.34,24,38,555/- in bank and Rs.6,32,25,391/- in bank). This must be taken into account before arriving at the shortfall in source. If the amount recovered from loan debtors are taken into account, the cumulative source available in my hands and shortfall would be worked out as under:*

<i>Particulars</i>	<i>Rs.</i>
<i>Source of funds as per SL.No.4 of Part A-BS of ITR filed</i>	<i>3,49,80,909</i>
<i>(+) loans received as per chart filed during assessment</i>	<i>10,88,03,094</i>
	<i>-----</i>
<i>Total Source as computed in show cause notice</i>	<i>14,37,84,003</i>
<i>(+) Amount recovered back from loan debtors</i>	<i>40,56,63,946</i>
	<i>-----</i>
<i>Total cumulative source available for loans given</i>	<i>54,94,47,949</i>
<i>(-)Cumulative loans given</i>	<i>43,26,46,526</i>
	<i>-----</i>
<i>Excess/(Shortfall)</i>	<i>11,68,01,423</i>

*In view of the above, it is humbly submitted that there is NO shortfall in so as to invoke the provisions of 69 of the Act. Sources*

### *III. Submissions w.r.t. loans given without interest:*

*I would like to submit that, I have number of close friends and relatives who have helped me by all means whenever I was facing difficult situations, Since I am in*

*the field of finance, some of the friends and relatives used to ask for some financial assistance.*

*Considering their urgent needs and closeness I have with them, I used to give hand loans to them. It would be given for very shorter period and without charging any interest. Some of them would be paid-back in one or two days and some would be in fifteen days.*

*During the year under consideration, I would have used total capital of around Rs.10 to Rs.15 lakhs for giving such interest free loans to different persons on different dates. It needs mention here that, Rs.6 crores is not the outstanding balance of interest free loans at a given point of time. It is the cumulative total of all interest free loans given during the year”.*

However, the Id. PCIT was not convinced with the reply of assessee and noted as

under: -

*‘The reason for selection of the assessee's case for scrutiny assessment proceedings is to examine the issue of "Source of Loan Advanced". With this underlying information on hand with the Faceless Assessing Officer who handled the scrutiny assessment proceedings, it is expected of the FAO to examine the issue in detail and in accordance with law. After examination of the details filed, it is incumbent upon the FAO to marshal all the facts produced before him by the assessee, collate the same with the information available with the FAO, gather additional evidences if required and then come to a logical conclusion in accordance with law. While arriving at the conclusion, the FAO ought to have discussed the happenings during the course of assessment proceedings and brought out all the facts in the assessment order and if found to be in order, then proceed to accept the income returned. In the instant case, the assessment order is barely a half a page order, with no discussion whatsoever, by the FAO on the issue for which the assessment was made nor on the details of submissions made, proof submitted by the assessee so on and so forth.*

*.....*  
*Perusal of the records and the submissions made by the assessee during scrutiny assessment proceedings indicate that assessee is a money lender (Financial intermediation) and for the purpose of her business, the available funds were Rs.14.37 crores, whereas, the loans advanced to various parties was shown at Rs.43,26,46,526. Prima facie perusal of the submissions reveal that there is shortfall/unexplained amount of Rs.28,88,62,523 (Rs.43,26,46,526 - 14,37,84,003) in advancing the loans and also from the assessee's own submission during assessment proceedings, there existed a loan of Rs.6,16,18,018 for which no interest income is admitted. This yet again is quite unusual in the line of business activity of the assessee. These two issues require reinvestigation as the impugned assessment order is very cryptic and silent on the issue on which the case is selected for scrutiny. The assessee's submissions now in the course of revisionary proceedings u/s 263 of the Act has submitted details about the sources for*

*advancing Rs.43.26 crores and also for not collecting the interest on monies advanced to the tune of Rs.6,16,18,018, the fact remains that the impugned assessment order failed to examine the core issue on which the case was selected for scrutiny in the right perspective and passing such a cryptic order bereft of any discussion on the issue or the correctness or veracity of the claims/submissions of the assessee renders the same as erroneous and as a result of such an erroneous order, the impugned assessment order is prejudicial to the interest of revenue and accordingly. I hold that the aforesaid assessment order is erroneous and prejudicial to the interest of revenue”.*

Aggrieved, assessee is in appeal before us.

7. Before us, the Id. Counsel for the assessee referred Page 50 of the paper book whereby a show cause notice dated 16.04.2021 was issued to the assessee as to why assessment should not be completed as per draft Assessment Order. The show cause notice dated 16.04.2021 is reproduced as under:

*Show cause notice as to why assessment should not be completed as per Draft Assessment Order  
Ms/Mr/M/s.*

- 1. We appreciate the anxiety and uncertainty that is facing all of us in the times of Covid-19. This communication is to assist you in ending one uncertainty, which is pending e-Assessment in your case for the assessment year 2018-19.*
- 2. A draft assessment order proposing to modify your returned income and/or sum payable is reproduced as under:-*

*The assessee has e-filed its Return of Income in Form-3 on 28.02.2019 declaring income at Rs. 43,48,860/-*

*The case been selected for complete scrutiny through "CASS" citing reason for selection as "The assessee has given large amount of loans as per Form 3CD of debtors in comparison to Gross Total Income shown in the ITR."*

*Statutory notice u/s 143(2) & 142(1) of the I.T.Act,61 were generated and served upon the assessee through electronic mode. The assessee has submitted the details as asked for which were examined.*

*It is reported from Insight portal of system that the assessee has given loan to various parties/entities and there was a balance totalling to 6,84,52,500/- but the assessee did not filed anything in respect of loan given and also failed to*

*disclosed in balance sheet and ITR Therefore, the entire amount of Rs.6,84,52,500/- will be treated as undisclosed investment and accordingly added to the total income of the assessee. Also I am in the opinion that the assessee has no explanation and documents in support of his claim.*

*Therefore, the entire amount of Rs. 6,84,52,500/- will be added back as undisclosed investment to the total income of the assessee with modification/adjustment to the return income and sum payable or refundable of any amount due on the basis of assessments determined as per notice of demand.*

*The proposed assessed income will be as follows:*

<i>Income as per return</i>	<i>Rs. 43,48,860/-</i>
<i>Add: Undisclosed investment</i>	<i>Rs. 6,84,52,500/-</i>
<i>Assessed income</i>	<i>Rs. 7,28,01,360/-</i>

*This order is being passed u/s 143(3) read with section 144B.*

*For misreporting the income penalty u/s 270A is also initiated separately.*

*You are hereby given an opportunity to show cause why the assessment should not be completed as per the draft assessment order.*

*3 Kindly submit your response through your registered e-filing account at [www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in) by 23:59 hours of 18/04/2021, whereby you may either.-*

*a. accept the proposed modification; or  
b. file your written reply objecting to the proposed modification, or  
c if required, you may request for personal hearing so as to make oral submissions or present your case after filing of written reply. On approval of the request, personal hearing shall be conducted exclusively through video conference.*

*4. In case no response is received by the given time and date, the assessment shall be finalized as per the draft assessment order.*

*Yours faithfully,  
Additional/Joint/Deputy/Assistant Commissioner of Income Tax/  
Income-tax Officer.*

8. The Id. Counsel for the assessee furthered referred Pages 53-60 of the paper book wherein the assessee on 18.04.2021 duly replied to the show cause notice

dated 16.04.2021 and furnished the details and documents asked for. The reply of the assessee dated 18.04.2021 is reproduced herein under:

*Date: 18th April, 2021*

*The Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer, National e-Assessment Centre, Delhi*

*Sir,*

*Ref.: Show cause notice-DIN:ITBA/AST/F/143(3)(SCN)/2021-22/1032460142(1) dtd 16/04/2021*

*Sub.: Reply to Show cause notice [SCN) and details submission of notice dated 10/08/2020.*

*With reference to the above mentioned notices, I would like to submit my reply as follows:*

**1. Non-submission of details:**

*I am being an housewife and entrepreneur in this new regime of filing reply for e-assessment I have to rely on professionals. And to comply with your earlier notice DIN:ITBA/AST/F/142(1)/2020-21/1027683944(1) dated 10th August, 2020 the details was submitted to tax consultant for uploading and same being submitted which was acknowledged vide number 22112013542672 from your e-assessment portal. I was under rude shock after receiving your SCN since I was under presumption that all details required was submitted subsequently after receipt of SCN on enquiry I came to know that only partial response was given. Hence, I would like to submit the omitted details as required in the earlier notice dated 10th August, 2020 and they are as follows:*

- a. *Financial statement for the year ended 31 March, 2018*  
***Form 3CD is not applicable since the turnover is below the threshold limit of Rs.1 crore for applicability of Section 44AB of the Income Tax Act, 1961.***
- b. *Name, current address & phone number of the persons to whom loans given along with the relationship with such persons, purpose of loan and rate of interest received on such loans and the financial year in which they were advanced.*  
***Details required and loan movement details enclosed as Annexure-A***
- c. *Source of funds from which such loans were advanced, substantiate the reply with documentary evidence.*  
***Source is thru borrowals from friends, relatives and others- Annexure-B cash and bank book.***
- d. *Mode by which such loans were advanced.*

**Also refer Annexure - A**

d. Details of loans taken and rate at which interest has been paid on such loans.

**Unsecured loan details given as Annexure - C**

f. Documents in support of claim under Chapter VIA

**Evidence furnished as Annexure-D**

g. Details of House property income with supporting evidences and the copy of the Municipal bills.

- **Details of house property Income-Annexure E (Computation of total income)**
- **Copy of Municipal bills-Annexure F**

h. Whether any TDS made? if not made reason thereof with supporting evidence.

**No, The house property being residential accommodation the tenant had not deducted TDS on rent paid by them.**

If any communication had bought to my notice earlier i would have taken necessary steps to submit at that relevant point of time.

**2. Non-disclosure of loan given in the Income Tax Return (ITR)**

In ITR-3 of AY 2018-19 the disclosure in Part ABS Sources of Funds 2. Loan funds (b ii) Unsecured loan (including deposits) mentioned an amount of Rs.1,77,45,425 which is net of loan and advances given of Rs.3,16,27,413 and hence your opinion that no amount disclosed is not factually true.

The disclosure of unsecured loan is as arrived below:

<i>Item</i>	<i>Nature of loan</i>	<i>Amount</i>
<i>a</i>	<i>Loan from friends, relatives and others</i>	<i>Rs.2,55,50,075.09</i>
<i>B</i>	<i>Loan from husband</i>	<i>Rs.2,38,22,762.65</i>
	<i>Less:</i>	<i>Rs.4,93,72,837.74</i>
<i>c</i>	<i>Advance to others</i>	<i>Rs.3,16,27,413.00</i>
	<i>Net balance disclosed in Part A BS USL (bii)</i>	<i>Rs.1,77,45,424.74</i>

*And the details of loans given in annexure A and loan borrowed as Annexure C to this letter.*

**3. Addition of Rs.6,84,52,500 as undisclosed investment since no details were given.**

*The above figure which had mentioned in your SCN is based on insight portal of system that I had given loan to various parties/entities and there was a balance totaling of Rs.6,84,52,500. This addition cannot be added for the following reasons:*

- I had submitted the details required along with this letter and hence your contention of details of loan not given is not valid.*
- The amount of Rs.6,84,52,500 which is figure arrived by you and has not given the specific details and I am not in position to give reply and hence to be considered that not given proper opportunity to reply the allegation which is not specific and on the contrary vague and lack of details.*

*Considering the above facts, I am objecting to the proposed addition of Rs.6,84,52,500 and hence, I request you to drop the proposed addition.*

*Thanking you,  
Yours faithfully  
B. Sunitha*

9. Per contra, the Id.DR, Mr. R. Clement Ramesh Kumar, CIT vehemently supported the order of the Id. PCIT and argued that the AO failed to verify the source for unexplained amount of Rs.28,88,62,523/- being loans advanced to others. The Id.DR further argued that the AO also failed to raise query and verify the amount of Rs.6,16,18,018/- which is advanced and received back without any interest. Therefore, he argued that the Id. PCIT rightly directed the AO to re-do the assessment denovo.

10. We have heard rival contentions and gone through the facts and circumstances of the case and paper book containing pages (1-70). Before us, the Id. Counsel for the assessee drew our attention to the paper book at page 50 filed

by the assessee whereby a show cause notice dated 16.04.2021 the AO specifically questioned the large amount of loans given as per Form 3CD of debtors. The Id. AO vide show cause notice dated 16.04.2021 raised the issue of loans given to various parties/entities which is reproduced as under:

*"The case been selected for complete scrutiny through "CASS" citing reason for selection as 'The assessee has given large amount of loans as per Form 3CD of debtors in comparison to Gross Total Income shown in the ITR.'*

*Statutory notice u/s 143(2) & 142(1) of the I.T.Act,61 were generated and served upon the assessee through electronic mode. The assessee has submitted the details as asked for which were examined.*

*It is reported from Insight portal of system that the assessee has given loan to various parties/entities and there was a balance totalling to 6,84,52,500/- but the assessee did not filed anything in respect of loan given and also failed to disclosed in balance sheet and ITR Therefore, the entire amount of Rs.6,84,52,500/- will be treated as undisclosed investment and accordingly added to the total income of the assessee. Also I am in the opinion that the assessee has no explanation and documents in support of his claim.*

*Therefore, the entire amount of Rs. 6,84,52,500/- will be added back as undisclosed investment to the total income of the assessee with modification/adjustment to the return income and sum payable or refundable of any amount due on the basis of assessments determined as per notice of demand."*

11. We have also seen from the referred Pages 53-60 of the paper book which contains reply, loan given to parties, loan received from others, profit & loss account and balance Sheet etc by which the assessee on 18.04.2021 duly replied to the show cause notice dated 16.04.2021 and explained the query raised.

12. We find that as mandated by the Hon'ble Supreme Court in the case of Max India Ltd case (2008) 166 Taxman 188 SC; 295 ITR 282 (SC), the Id.Assessing Officer has adopted one of the courses permissible in law after perusing the reply and documents submitted.

13. The Hon'ble Bombay High Court in the case of *Commissioner of Income-tax, Design & Automation Engineers (Bombay) (P.) Ltd [2009] 177 Taxman 9 (Bombay) / [2010] 323 ITR 632 (Bombay)* held as under:

*'6. We have considered the arguments advanced by the Advocates appearing for the revenue as well as assessee. In the instant case as recorded earlier, the ITO had by his order dated 30-10-1996 sought details/explanation from the assessee which the assessee had given by his letter dated 5-11-1996. It is evident from the order of the Assessing Officer that he has considered all detailed particulars filed before him and after discussion allowed the deduction of the entire profit earned by the assessee pertaining to his export business. We are in complete agreement with the decision of this Court in the case of Gabriel India Ltd. (supra) and we reject the submission of the revenue that the order of the Assessing Officer is erroneous or is passed without application of mind because in his order he has not made elaborate discussion in that regard. In any event the revenue has admittedly not argued before the CIT or before the Tribunal that the order passed by the Assessing Officer was without application of mind. CIT(A) has set aside the order of the Assessing Officer only on the ground that the CIT did not agree with the view taken by the Assessing Officer and took a view different than that taken by the Assessing Officer. In our view it cannot be said that the Assessing Officer has not applied his mind while granting deduction to the assessee under section 80HHC as regards net profit earned by the assessee pertaining to their export business. In our view, the Tribunal is correct in its view that the view taken by the Assessing Officer was a possible view and that the condition precedent for invoking jurisdiction under section 263 by the CIT did not exist'.*

14. We may refer recent judgment of the Hon'ble Delhi High Court dated 01.03.2024 passed in *ITA No.1428/2018 in the case of Pr. Commissioner of Income Tax -2, Delhi Vs M/s Clix Finance India Pvt. Ltd.* which after considering section 263 of the Act and various settled judgments of the Hon'ble Supreme Court and Hon'ble High Courts held as under:

*'15. We have heard the learned counsel appearing on behalf of the parties and perused the record.*

*16. Vide order dated 06.11.2019, this Court framed the following question of law:- A. Whether, in the facts and circumstances of the case, the Hon'ble ITAT was justified in quashing the order under Section 263 of the Income Tax Act?*

17. *The brief controversy involved in the present appeal pertains to the invocation of revisional jurisdiction under Section 263 of the Act by the CIT to set aside the original assessment order dated 30.03.2005.*

18. *Before adverting to the merits of the case, it is apposite to refer to the power of the revisional authority of the CIT envisaged as per Section 263 of the Act. For the sake of clarity, the relevant extract of Section 263 of the Act is reproduced as under: '263. Revision of orders prejudicial to revenue (1) The [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or Commissioner] may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] is erroneous in so far as it is prejudicial to the interest of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify,' [including, (i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or (ii) an order modifying the order under Section 92- CA; or (iii) an order cancelling the order under Section 92-CA and directing a fresh order under the said section.] \*\*\**

*[Explanation 2. 'For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner, (a) the order is passed without making inquiries or verification which should have been made; (b) the order is passed allowing any relief without inquiring into the claim; (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under Section 119; or (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.] \*\*\*'*

19. *A bare reading of sub-Section (1) of Section 263 of the Act makes it abundantly clear that the said provision lays down a two-pronged test to exercise the revisional authority i.e., firstly, the assessment order must be erroneous and secondly, it must be prejudicial to the interests of the Revenue. Further, Explanation 2 to Section 263 of the Act delineates certain conditions and circumstances when the order passed by the AO can be said to be erroneous and prejudicial to the Revenue.*

20. *Clause (a) of Explanation 2 to Section 263 of the Act further stipulates that if an order is passed without making an enquiry or verification which should have been made, the same would bestow a revisional power upon the Commissioner. However, the said Clause or any other condition laid down in*

*Explanation 2 does not warrant recording of the said enquiry or verification in its entirety in the assessment order.*

*21. Admittedly, in the instant case, the questionnaire dated 02.11.2004, which has been annexed and brought on record in the present appeal, would manifest that the AO had asked for the allowability of the claims with respect to the issues in question. Consequently, the respondent-assessee duly furnished explanations thereof vide replies dated 09.12.2004, 20.12.2004 and 06.01.2005. Thus, it is not a case where no enquiry whatsoever has been conducted by the AO with respect to the claims under consideration. However, this leads us to an ancillary question? whether the mandate of law for invoking the powers under Section 263 of the Act includes the cases where either an adequate enquiry has not been made and the same has not been recorded in the order of assessment or the said authority is circumscribed to only consider the cases where no enquiry has been conducted at all.*

*22. Reliance can be placed on the decision of this Court in the case of CIT v. Sunbeam Auto Ltd. [2009 SCC OnLine Del 4237], wherein, it was held that if the AO has not provided detailed reasons with respect to each and every item of deduction etc. in the assessment order, that by itself would not reflect a non-application of mind by the AO. It was further held that merely inadequacy of enquiry would not confer the power of revision under Section 263 of the Act on the Commissioner. The relevant paragraph of the said decision reads as under:-*

*We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income-tax under section 263 of the Income-tax Act. As noted above, the submission of learned counsel for the Revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order, which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has 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 Gabriel India Ltd. (1993) 203 ITR 108 (Bom), law on this aspect was discussed in the following manner (page 113) \*\**

*23. A similar view was taken by this Court in the case of CIT v. Anil Kumar Sharma [2010 SCC OnLine Del 838], wherein, it was held that once it is inferred from the record of assessment that AO has applied its mind, the proceedings under Section 263 of the Act would fall in the category of Commissioner having a different opinion. Paragraph 8 of the said decision reads as under:-*

*8. In view of the above discussion, it is apparent that the Tribunal arrived at a conclusive finding that, though the assessment order does not patently indicate that the issue in question had been considered by the Assessing Officer, the record showed that the Assessing Officer had applied his mind. Once such application of mind is discernible from the record, the proceedings under section 263 would fall into the area of the Commissioner having a different opinion. We are of the view that the findings of facts arrived at by the Tribunal do not warrant interference of this court. That being the position, the present case would not be one of "lack of inquiry" and, even if the inquiry was termed inadequate, following the decision in Sunbeam Auto Ltd. (2011) 332 ITR 167 (Delhi) (page 180) : "that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter." No substantial question of law arises for our consideration.*

*24. In Ashish Rajpal as well, this Court was of the view that the fact that a query was raised during the course of scrutiny which was satisfactorily answered by the assessee but did not get reflected in the assessment order, would not by itself lead to a conclusion that there was no enquiry with respect to transactions carried out by the assessee.*

*25. Further, the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd., enunciates the meaning and intent of the phrase 'prejudicial to the interests of the Revenue', in the following words:- '8. The phrase 'prejudicial to the interests of the Revenue' is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The High Court of Calcutta in 'Dawjee Dadabhoy & Co.v.S.P. Jain[(1957) 31 ITR 872(Cal)], the High Court of Karnataka in CITv.T. Narayana Pai[(1975) 98 ITR 422(Kant)], the High Court of Bombay in CITv.Gabriel India Ltd.[(1993) 203 ITR 108(Bom)] and the High Court of Gujarat in CITv.Minalben S. Parikh[(1995) 215 ITR 81(Guj)] treated loss of tax as prejudicial to the interests of the Revenue. 9. Mr. Abraham relied on the judgment of the Division Bench of the High Court of Madras in Venkatakrishna Rice Co.v.CIT[(1987) 163 ITR 129(Mad)] interpreting 'prejudicial to the interests of the Revenue'. The High Court held:*

*"In this context, (it must) be regarded as involving a conception of acts or orders which are subversive of the administration of revenue.*

*There must be some grievous error in the order passed by the Income Tax Officer, which might set a bad trend or pattern for similar assessments, which on a broad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue Administration”.*

*In our view this interpretation is too narrow to merit acceptance. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue. 10. 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. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue. (See 'Rampyari Devi Saraogiv CIT[(1968) 67 ITR 84(SC)] and in 'Tara Devi Aggarwalv.CIT[(1973) 3 SCC 482:1973 SCC (Tax) 318:(1973) 88 ITR 323].) [Emphasis supplied]*

*26. Recently, the Hon’ble Supreme Court in the case of CIT v. Paville Projects (P) Ltd. [2023 SCC OnLine SC 371], while relying upon Malabar Industrial Co. Ltd., has discussed the sanctity of two-fold conditions for the purpose of invoking jurisdiction under Section 263 of the Act. The relevant paragraph of the said decision reads as under:-*

*Learned counsel appearing on behalf of the assessee has heavily relied upon the decision of this Court in the case of Malabar Industrial Co. Ltd.(supra). It is true that in the said decision and on interpretation of Section 263of the Income Tax Act, it is observed and held that in order to exercise the jurisdiction under Section 263(1) of the Income tax Act, the Commissioner has to be satisfied of twin 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. It is further observed that if one of them is absent, recourse cannot be had to Section 263(1) of the Act. \*\*\*’.*

*27. Considering the aforesaid judicial pronouncements, it can be safely concluded that inadequacy of enquiry by the AO with respect to certain claims would not in itself be a reason to invoke the powers enshrined in Section 263 of the Act. The Revenue in the instant case has not been able to*

*make out a sufficient case that the CIT has exercised the power in accordance with law. Rather, in our considered opinion, the facts of the case do not indicate that the twin conditions contained in Section 263 of the Act are fulfilled in its letter and spirit.*

*28. Notably, the ITAT, while making a categorical finding that the CIT had failed to point out any definite or specific error in the assessment order, has satisfactorily explained both the claims in question in Paragraph 8.2 of its order, which reads as under:-*

*"8.2 In the Impugned Order, the Ld. Commissioner of Income Tax-IV, Delhi held that the AO had not examined the aforesaid two issues properly and, therefore, set aside the issues for further inquiries to be conducted by the AO. As regards the first issue is concerned, we note that out of total provision of Rs. 1114.68 lacs, a sum of Rs. 7,60,76,105/- was suo moto added back in the computation of income and a further sum of Rs. 73,46,160- was disallowed by the AO in the original assessment order dated 30.3.2005. Therefore, out of Rs. 1114.68 lacs, Rs. 834.22 lacs already stood disallowed in the original assessment order. The balance amount represented actual write off which was palpably clear from page 2 of the impugned order itself. No deduction on account of any such provision was, therefore, allowed to the assessee. Hence, there is no error or prejudice to the interest of revenue. As regards second issue it was noted that interest rate swap was an actual loss and only the net loss of Rs. 114.05 lacs after setting of gain of interest rate swap was claimed as deduction. However, we find that both these issues were duly examined by the AO vide Questionnaire dated 2.11.2004 (Page 1-2 of the Paper Book) to which replies dated 9.12.2004, 20.12.2004 and 6.1.2005 (Page No. 3-39 of Paper Book-1) were furnished and, therefore, the finding of the Ld. CIT that the issues were not examined properly was not correct. Even the Ld. CIT has not pointed out the definite and specific error in the original assessment order and observed that the inquiry made by the AO was inadequate or improper without first pointing out the error in the original assessment order passed by the AO, particularly because both the aforesaid issues were duly examined at the stage of the original assessment proceedings, hence, the impugned order is beyond jurisdiction, bad in law and void-ab-initio".*

*29. It is discernible from the aforementioned findings of the ITAT that both the claims were duly examined during the original assessment proceedings itself and neither there was any error nor the same was prejudicial to the interests of the Revenue. Thus, the findings of fact arrived at by the ITAT do not warrant any interference of this Court.*

*30. So far as the reliance placed by the CIT on Umashankar Rice Mill is concerned, the same is misplaced, particularly in light of the insertion of Explanation 2 to Section 263 of the Act, brought in place by the Finance Act, 2015. The said amendment markedly specifies various conditions to exercise*

*the authority vested in the Commissioner under Section 263 of the Act, leaving no ambiguity in the interpretation of the said provision.*

*31. In view of the aforesaid, the appeal preferred by the Revenue is dismissed alongwith the pending application(s), if any”.*

15. We also take judicial notice of the judgment of the Hon'ble Supreme Court in the case of *CIT vs. M.Chandra Sekhar [151 ITR 433 (SC)]* wherein the Hon'ble Supreme Court has held that the presumption that A.O. has considered the details filed by the assessee was "founded" on the principle that an officer entrusted with a judicial or quasi- judicial duty must be presumed to have discharged his duties in a proper and bonafide manner. This view is confirmed by the full bench decision of the Delhi high court in *CIT Vs. Kelvinator of India Ltd (256 ITR 1) (Delhi FB)*, was upheld by the Supreme court in *Commissioner of Income Tax Vs. Kelvinator Of India Ltd ( 320 ITR 561)(SC)*.

16. The Hon'ble High Court of Bombay in the case of *Marico Ltd., vs. ACIT in writ petition No.1917 of 2019 dated 21.08.2019*, wherein the Hon'ble High Court has clearly pointed out once a query has been raised by the AO during the assessment proceedings and the assessee has responded to that query, it would necessarily follow that the AO has accepted the assessee's submission, so as to not deal with that issue in the assessment order.

17. The Hon'ble High Court of Bombay considering another decision of the same High Court in the case of *GKN Sinter Metals Ltd., vs. ACIT reported in 371 ITR 225* has categorically pointed out that an assessment order passed u/s.143(3) of the Act does not reflect any consideration of the issue, it must follow that no opinion was

formed by the AO in the regular assessment proceedings. This submission was negated by the Hon'ble Bombay High Court and the relevant paras 10 & 11 reads as under:-

*'Another aspect argued by Id.counsel that in term of clause (a) to Explanation 2 to section 263 of the Act, reassessment order is deemed to be erroneous insofar as prejudicial to the interest of revenue. The Id.counsel for the assessee drew our attention to the decision of Hon'ble High Court of Delhi in the case of PCIT vs. Clix Finance India Pvt. Ltd., ITA No.1428/2018, order dated 01.03.2024 and drew our attention to paras 19 & 20 explaining the provisions and particularly Explanation 2(a) as under:-*

*19. A bare reading of sub-Section (1) of Section 263 of the Act makes it abundantly clear that the said provision lays down a two- pronged test to exercise the revisional authority i.e., firstly, the assessment order must be erroneous and secondly, it must be prejudicial to the interests of the Revenue. Further, Explanation 2 to Section 263 of the Act delineates certain conditions and circumstances when the order passed by the AO can be said to be erroneous and prejudicial to the Revenue.*

*20. Clause (a) of Explanation 2 to Section 263 of the Act further stipulates that if an order is passed without making an enquiry or verification which should have been made, the same would bestow a revisional power upon the Commissioner. However, the said Clause or any other condition laid down in Explanation 2 does not warrant recording of the said enquiry or verification in its entirety in the assessment order".*

18. Even the Hon'ble High Court of Bombay in the case of *PCIT vs. Shivshahi Punarvasan Prkalp Ltd., in ITA No.397 of 2018, order dated 05.08.2022* has considered the issue of no enquiry case or inadequate enquiry even after the insertion of Explanation 2 in para 32 as under:-

*"32. In this appeal, we are concerned with the assessment year 2006-07. Prior to the insertion of Explanation 2, it was the prerogative of the Assessing Officer to determine what enquiry he wants to make while completing the assessment. We have already observed that an enquiry was made by the Assessing Officer and the assessment order passed. Therefore, the CIT could not invoke jurisdiction under Section 263 as the view taken by the Assessing Officer was a possible/plausible view. It was only if the Assessing Officer had not made any enquiry then it could be said that the order passed was erroneous. This is not a case of lack of enquiry though it may be a case of inadequate enquiry. Inadequacy of enquiry as elucidated above does not give*

*jurisdiction to the CIT to invoke provisions of Section 263 prior to the insertion of Explanation 2. In our view, the Explanation 2 does not help the revenue in as much as the same is prospective and applicable with effect from 1st June, 2015."*

19. Taking guidance from the ratio of the above judgments, cases cited at bar and facts and circumstances narrated above, we are of the considered view that during the course of assessment proceedings, the AO had made detailed inquiries with respect to source of loan advanced and loans given without interest. In this case, as seen from the particulars, contents and reply referred supra, the Assessing Officer has duly conducted inquiries more specifically in connection with the source of loan advanced and interest not charged on loan advanced vide notice dated 16.04.2021 and assessee vide letter dated 18.04.2021 had submitted submissions as mentioned supra. In fact, assessee before the Id. Assessing Officer demonstrated disclosure of unsecured loan. In fact loan given without interest is intricably linked to the source of loan advanced. We find that the Id. Assessing Officer thereafter, upon consideration of the submissions of the Appellant and the relevant facts and materials and after applying his mind upon the relevant documents completed the assessment vide order dated 20.04.2021. The Id. PCIT could not invoke jurisdiction under Section 263 as the view taken by the Assessing Officer was a possible/plausible view. The recent judgment of the Hon'ble Delhi High Court dated 01.03.2024 passed in ITA No.1428/2018 in the case of Pr. Commissioner of Income Tax -2, Delhi Vs M/s Clix Finance India Pvt. Ltd. is aptly apply in this case. The presumption that A.O. has considered the details filed by the assessee was "founded" on the principle that an officer entrusted with a judicial or quasi-judicial

duty must be presumed to have discharged his duties in a proper and bonafide manner. We also find that this is not a case of lack of inquiry by the Id. Assessing Officer while passing original assessment order. Hence, we find no reason to hold that the original assessment order dated 20.04.2021 u/s 143(3) r.w. section 144(B) of the Act as erroneous insofar as prejudicial to the interest of revenue. Hence, we quash the revision order passed by PCIT dated 21.12.2023 and allow this appeal of assessee.

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

Order pronounced in the open court on 10th day of December, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

**लेखा सदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai:

दिनांक Dated :10-12-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

Sd/-

(मनु कुमार गिरि)

**(MANU KUMAR GIRI)**

**न्यायिक सदस्य / JUDICIAL MEMBER**