IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.946/AHD/2017

(निर्धारणवर्ष / Assessment Years: (2012-13)

(Virtual Court Hearing)

Ramji V. Joyshar, Kalpvruksh, Palli Hill-3, 'E' Road, Tithal Road, Valsad.	**Vs.**	The PCIT, Valsad.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AAACY1854F**		
(Assessee)		**(Respondent)**

Assessee by : Shri Surji Chheda, AR
Revenue by : Shri O.P. Vaishnav, CIT(DR)

सुनवाईकीतारीख/ Date of Hearing : 10/05/2021

घोषणाकीतारीख/Date of Pronouncement: 24/05/2021

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

By way of this appeal, the assessee has challenged the correctness of the order dated 23.03.2017, passed by the Learned Principal Commissioner of Income Tax, Valsad [in short " ld. PCIT"] under section 263 r.w.s.143(3) of the Income Tax Act, 1961, (hereinafter referred to as 'the Act'), for the assessment year (AY) 2012-13.

2. Revised grounds of appeal raised by the assessee, which, being interconnected, will be taken up together, are as follows:

1. In the facts and in the circumstances of the case, the learned CIT has erred in initiation of proceedings u/s 263 of the Income Tax Act, 1961 on all issues and which was without jurisdiction and the CIT erred in holding that the assessment order was erroneous and prejudicial to the interest of revenue and has erred in setting it aside for fresh assessment on all issues including issues which are not part of revision order.

2. The learned CIT has also erred treating the assessment order as erroneous and prejudicial to revenue on account of issue of booking advances from

Shamco of Rs. 10.00 Lakh and to hold that provision of 68 do apply to advances with the same force & the learned CIT has also erred in setting aside order for all advances which are not part of show cause notice.

3. The learned CIT has also erred treating the assessment order as erroneous and prejudicial to revenue on account of issue of loan from Shri Pratapchandra Naik and has also not given in specific finding after submission of documents to treat as erroneous and prejudicial to revenue.

4. The learned CIT has erred to treat the order as erroneous and prejudicial to revenue on the issue of all unsecured loans generally without differentiating in all cases and to hold that in the absence of cheque no., bank account no., bank branch address makes the confirmations invalid in eyes of law and the learned CIT has also erred to substitute his own view when the AO himself had conducted an inquiry.

5. The learned CIT has erred to treat the orders as erroneous and prejudicial to revenue on issue of expenses & sundry creditors generally without specifying name and circumstances of each and the learned CIT has erred to held that there was no inquiry for correctness of claim regarding expenses and sundry creditors.

6. The learned CIT has erred to treat the orders as erroneous and prejudicial to revenue on issue of agriculture income on the ground that the land holding and previous assessment records is not sufficient and the absence of detail of cultivation of crops, sale of agriculture produce and expenses incurred in connection therewith make the order erroneous and prejudicial to revenue and failed to appreciate that the agriculturist is not required to keep books of account for agricultural income.

7. The learned CIT has erred to held that there was no inquiry on all issues. The learned CIT failed to appreciate the fact that even 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 Income-tax Act, 1961, merely because he had a different opinion. The learned CIT failed to appreciate the fact that where the assessment order has been passed by the AO after taking into account the assessee' submissions and documents furnished by him and no material what so ever has been brought on record by the CIT which showed that there was any discrepancy or falsity in evidences furnished by the assessee, the order of the AO cannot be set aside for making deep inquiry only on the presumption and assumption that something new may come out.

8. Your appellant prays that the order of CIT u/s 263 may be set aside for all issues or issues which are not treated as erroneous and prejudicial to the interest of revenue.

9. The Appellant craves leave to add, amend, alter or delete any or all the above grounds of appeal at the time of regular hearing and all grounds are without prejudice to each other.

3. Although, this appeal filed by the assessee, for Assessment Year 2012-13, contains multiple ground of appeals. However, at the time of hearing we have carefully perused all the grounds raised by the assessee. We find that most of the grounds raised by the Assessee, are either academic in nature or contentious in nature. However, to meet the end of justice, we confine ourselves to the core of the controversy and main grievances of the assessee. With this background, we summarize and concise the grounds raised by the assessee, as follows:

" *The learned PCIT has erred treating the assessment order as erroneous and prejudicial to revenue on account of the following issues:*

(i) Issue of booking advances from Shamco of Rs. 10.00 Lakh.
(ii) Issue of loan from Shri Pratapchandra Naik.
(iii) Issue of all unsecured loans.
(iv) Issue of expenses & sundry creditors
(v) Issue of agriculture income"

4. The relevant material facts, as culled out from the material on record, are as follows. The assessee before us is an individual and filed his return of income on 08.10.2013 declaring total income of Rs.1,39,930/-. The assessee`s case was selected for Scrutiny and the assessment under section 143(3) of the Act was framed by assessing officer on 19.12.2014, determining total income of Rs.2,59,930/-.

5. Thereafter, Learned Principal Commissioner of Income Tax, Valsad [in short " ld. PCIT"] has exercised his jurisdiction under section 263 of the Income Tax Act. The ld PCIT observed that assessment order framed in the assessee`s case under section 143(3) of the Act, dated 19.12.2014, is erroneous as well prejudicial to the interest of revenue and therefore, a show notice under section 263 of the Act, dated 16.02.2017 was issued to the assessee, which is reproduced below:

> *"Sub:- Notice u/s. 263 of the I.T. Act, 1961 in your case i.e. Shri Ramjibhai Virji Joyshar (PAN:- AFOPJ2504H) for A. Y. 2012-13-reg.*
> *Please refer to the above.*
>
> *2. In this case, the assessee filed its return of income on 08.10.2013 declaring total income of Rs. 1,39,9301-. The case was selected for Scrutiny and the assessment u/s. 143(3) was passed on 19.12.2014 determining total income of Rs.2,59,930/-.*

3. The AO i.e. ITO, Ward-3, Valsad and the Range head i.e. Joint CIT, Valsad Range, Valsad vide their letters dated & respectively, have proposed that the assessment order in this case is erroneous as well prejudicial to the interest of revenue and therefore, the same should be revised u/s. 263 of the I.T. Act, 1961.

4. After going through the report of the AO, the Range head and examination of the assessment record of the AO, it is seen that the assessment framed by the ITO, Wd-3, Valsad suffers from following errors/mistakes which make it not only erroneous but also prejudicial to the interest of revenue. The order is erroneous as well as prejudicial to the interest of revenue on account of the following:-

(i) The AO has not examined the veracity of the claim made by the assessee [I regarding the booking advance of Rs. 10 lacs received from Shamco Plastics Pvt. / Ltd. Since, the money has been received by the assessee, it was the duty of the AO to inquire into/verify the source of advance claimed to have been received and all other requirements of section 68 would apply. However, the AO has not bothered to carry out any verification. Further, Shamco Plastic Pvt. Ltd. have confirmed to have given advance of Rs.3,25,000/- only including advance paid of Rs.2,50,000/-given in the earlier financial year. Therefore, the assessee has shown excess advance received to the extent of Rs.7,50,000/-. Even after having obtained and placed on record the documents, the AO has not bothered to go through the same. This is a serious lapse and a grave mistake which makes the order erroneous as well as prejudicial to the interest of revenue on this issue.

(ii) The loan confirmation in respect of the unsecured loans claimed to have been taken from Shri Pratapchandra P. Naik, when examined shows that the said confirmation has no PAN mentioned on it. Therefore, the first requirement of section 68 i.e. the identity of the cash creditor itself is not fulfilled. The other requirements of creditworthiness of the lender/cash creditor and genuineness of the transaction, needless to say, remain unexamined by the AO.

(iii) Similarly, in respect of other loan confirmations, there are following defects which make the loan confirmations invalid in the eyes of law. None of the loan confirmations have the details of cheque no., bank account no., bank branch address mentioned which makes the loan confirmation, a useless piece of paper which cannot be verified with respect to its correctness in the absence of the relevant particulars of payment received from such creditors. Further, the AO has not bothered to obtain any documents in support of source of funds in respect of these unsecured loans. The third requirement of section 68 i.e. the genuineness of the transaction has not been and could never have been verified in the absence of relevant particulars in respect of the unsecured loans. Therefore, this makes the order erroneous as well as prejudicial to the interest of revenue on this issue.

(iv) The AO has not made any inquiries about the correctness of the claim made by the assessee about the agricultural income of Rs.94700/- claimed to have received during the year. The details of land holding, quantum thereof, cultivation of crops, sale of agricultural produce and expenses incurred in carrying out the agricultural operations, if at all have not been examined by the AO. The complete absence of inquiry about this issue makes the order erroneous as well as prejudicial to the interest of revenue on this issue.

(v) The AO has not verified the correctness of the claim regarding the expenses debited to P&L and the sundry creditors for expenses and contract. Apart from being totally negligent, the AO has been callous in his approach by not looking into and making even bare minimum inquiries about the important items of the balance sheet and P&L account which have a direct bearing on the correctness of the claim made by the assessee.

5. You are, therefore, required to show-cause as to why the said assessment order be not revised by invoking the provisions of 263 of I.T. Act, 1961. The hearing in your case is being fixed on 27.12.2016 at 10.00 A.M. Please note that the required details should be submitted after numbering the documents enclosed and indexing the same in the forwarding/covering letter.

6. Please note that the required details should be submitted after numbering the documents enclosed and indexing the same in the forwarding/covering letter. You can attend the hearing either personally or through your duly authorized representative or can file written submissions on or before the stipulated date and time of hearing.
[Satbir Singh]
Pr. Commissioner of Income tax,
Valsad"

6. In response to the above show cause notice assessee appeared before ld PCIT and sought adjournment. On 06.03.2017, the assessee submitted details before the ld PCIT. The contentions raised by the assessee in this letter were rebutted in the form of a separate letter dated 06.03.2017 itself and assessee was asked to submit the documents/details which were found deficient at the assessment stage which have made the order of the AO erroneous as well as prejudicial to the interest of revenue. Since, this letter is important from the point of view of the contentions raised by the assessee and rebuttal thereof by the department, the contents of the letter is reproduced below:

"No. Pr. CIT/VLS/H./263/2016-17 Date:- 06.03.2017

To,
Shri Ramjibhai Virji Joyshar,
Kalpvrukh, Pali Hill,
E-Road, Tithal Road,
Valsad-396001

Sub:-Proceedings u/s. 263 of the I. T. Act, 1961 in your case for A. Y. 2012-13-reg.

Ref:- Your letter No. Nil dated 06.03.2017.
Please refer to above.

2. The contentions raised vide above referred to letter submitted by your AR Shri Bipin R. Shah, CA, and submitted during the course of hearing on 06.03.2017 are being replied to rebutted as follows: -

(a) copy of ledger account is not the same thing as confirmation in respect of advance claimed to have been received from M/s. Shamco. Legally speaking the AO has no authority to consider and accept the copy of ledger account as confirmation and the provisions of 68 do apply to the advance under consideration with the same force as in the case of an unsecured loan.

(b) The loan confirmation from Shri Pratapchandra P. Maik without containing the PAN particulars remains a deficient document and does not qualify to be treated as a loan confirmation to meet the requirements of section 68 unless it is specifically mentioned/explained that the said cash creditor is not assessed to tax. In that situation, the requirements of section 68 would have to be verified by taking the recourse to further verification. In any case, in the absence of PAN, the loan confirmations remain a deficient document and it is outside the disconnection of the AO to treat a deficient document as a complete document.

(c) The other loan confirmations with specific deficiencies therein do not meet the requirements of section 68 and mere submission of name, address, PAN and mode of payment do not make the said loan confirmations complete. Section 68 requires the details of cheque no., bank account no. and bank branch address to be made available in the form of loan confirmation along with other particulars so that, if need be, the AO is in a position to make further verification to verify the veracity of the claim as made in the said loan confirmation. The absence of these relevant particulars makes the loan confirmation defective and incomplete and hence not proper loan confirmations in the eyes of law (section 68 of I.T. Act). Your further contention that the particulars of cheque no., account no., bank branch address are not necessary to discharge the primary burden on the assessee is, I am afraid, without any support as far as the law on this issue is concerned. Section 68 requires all relevant particulars including the cheque no., account no. and bank branch address to be supplied to the AO along with or as a part of the loan confirmation and then only it can be presumed that the assessee has discharged his primary burden of proof.

(d) The non-verification of the claim of the agricultural income by the AO is an error and accepting the same on the basis of last year's ROI (as claimed by you) is not a valid ground for not carrying out the requisite verification which is mandated by the facts and circumstances of the case during current year.

(e) The non-verification of expenses and creditors for expenses is another issue on which the assessment order of the AO is erroneous. The failure of the AO to make the necessary verifications cannot be overlooked in view of his discretion. The requirement of law mandates that some reasonable inquiry is required to be made in respect of all material issues which have a bearing on v the income returned by the assessee.

3. Therefore, in view of the above, the contention raised by you are without any basis and you are required to submit the documents in respect of which the assessment order of the AO has been found to be erroneous and which has been

mentioned in para-4(i) to (v) of this office notice u/s. 263 dated 16.02.2017; The next date of hearing in your case is being fixed on 10.03.2017 at 3.00 P.M. at the request of Shri Bipin R. Shah, CA and your AR.

[Satbir Singh]
Pr. Commissioner of Income Tax
Valsad"

7. In response to the above show cause notice, the assessee filed some details before PCIT, vide letter dated 10.03.2017. However, the assessee did not file the entire details and documents asked by ld PCIT, therefore, ld PCIT asked the assessee to submit remaining documents and details. The assessee submitted remaining details and documents on 22.03.2017 enclosing the loan confirmations and copies of bank statement in respect of two parties namely Purushottam D. Bhanushali and Shambhuram Hariram Ratda. No bank statement in respect of the other two parties whose confirmations were filed namely, Chagbai G. Joyshar and Jyotiben B. Bhaunshali, were filed. In these cases, only the loan confirmations have been filed by assessee.

8. The ld PCIT has gone through the details and documents submitted by the assessee and the following specific/issue wise observations were made by ld PCIT in respect of the specific issues which emerged after perusal of the documents filed by the assessee:

(i) Unsecured loans:- The bank statement filed with the loans confirmations in respect of the unsecured loans should be examined and the sources of preceding credit entries (just before the date of loan given to the assessee) should be examined with relevant documentary evidence in support of the sources of funds in the hands of the lender/cash creditor. In the case of unsecured loans from Swan Tripaulin Industry, it is seen that there are cash deposits on the dates preceding the advance/loan given to the assessee and similar cash deposits also appear in the bank statement almost on monthly basis. Therefore, the AO should ask the assessee to produce these parties along with relevant documentary evidence in support of sources of cash deposited in the said bank account so that the creditworthiness of the lender should be inquired into/verified.

(ii).Another cash creditor in respect of which the part bank statement has been filed is Shri Parshottam D. Bhanushali from whom the loan of Rs.5 lacs have been claimed to have been taken is found to have made cash deposit on the same day i.e. 03.11.2010 (the amount has got obliterated because of xeroxing/punching of documents.

(iii).Similarly, in the case of Shamburam Hariram Ratda, there is a cash deposit of Rs.3 lacs on 23.11.2010 and one transfer entry of Rs.2 lac before the unsecured loan of Rs.5 lac is given to the assessee on 29.11.2010. Since, no bank statement have been furnished in support of source of funds for other loans/cash creditors, the AO is directed to call for the bank statement and examine the same for the sources of funds and wherever necessary, the assessee should be ask to produce the lender/cash creditors for examination.

(iii) Similar exercise should also be done in respect of the advances claimed to have been received by the assessee from various parties. While verifying the creditworthiness of the lenders/cash creditors and the parties who have given advances the provisions of section 68 should be properly investigated.

Since, in the present case, besides availability of only part details, the assessee did not furnish the documents in support of sources of funds, and the AO also did not ask for further details/question about the sources of funds, the order of the AO became defective/erroneous on account of absence of any inquiry by the AO which was mandated in the facts and circumstances of this case.

(iv) Except that the amount of agricultural income is small, no documents have been filed which could support the factum of assessee having received the agricultural income of Rs.94,700/-. The AO should verify the fact. While doing so, it must be kept in mind that the mere ownership of land does not mean that the assessee has actually carried out the agricultural operations. Therefore, the AO should look into the purchase of agricultural inputs, carrying out of tilling and other agricultural operations and sale of agricultural etc. so that the claim of the assessee can be verified for acceptance/rejection.

(v). The expenses debited to Profit and Loss accounts and sundry creditors for expenses and contract should be examined by the AO after obtaining relevant details from the assessee.

9. Therefore, in view of the above issues, which were not examined by the assessing officer, the ld PCIT held that assessment order dated 26.12.2014 under section 143(3) has been passed by the AO without making any inquiries whatsoever in respect of the issues as mentioned above. Therefore, ld PCIT set-aside the order of the assessing officer, dated 26.12.2014 and directed the assessing officer to frame fresh assessment order.

10. Aggrieved by the order of the ld. PCIT, the assessee is in appeal before us.

11. The Learned Counsel for the assessee submitted that during the assessment stage, assessee has submitted each and every document before assessing officer. The ld. Counsel further submitted that ld. PCIT has issued the notice only for loans not for the advances, therefore, the ld. PCIT has concluded the issue which was not the subject matter of the show cause notice, therefore, the order passed by the ld. PCIT is not in accordance with law and may be quashed.

12. On the other hand, Learned Departmental Representative (in short "the ld. DR") for the Revenue submitted that ld. PCIT has passed a valid and reasoned order. The ld DR relied on para nos. 6, 7 and 8 of the ld. PCIT order. The ld. DR drew our attention towards page no.76 of the assessee's paper book wherein the assessee has submitted the summary of bank statement. In the said bank statement, the sum of Rs.2,50,000/- has been deposited and withdrawn frequently, these are kind of an accommodation entries, therefore each and every documents submitted before assessing officer, during the assessment stage, by assessee, is a false and an untrue documents. Thus, ld DR submitted that assessee, has not submitted proper documents and evidences before the assessing officer therefore Assessing Officer has not examined the issues which were raised by assessing officer, by way of notice under section 142(1) of the Act. Thus, ld. DR prayed the Bench that order of the ld. PCIT may be upheld.

13. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. PCIT and other material brought on record. The law with regard to exercise of jurisdiction u/s 263 of the Act on the ground that the AO failed to make enquiries which he ought to have made in the given circumstances of a case is well settled. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the case the Income-tax Officer should have made further inquiries before accepting the statements made by the assessee in his return. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an enquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct. We derive support for the proposition as stated above from the decision of the Hon'ble Delhi High Court in the case of Gee Vee Enterprises 99 ITR 375 (Del).

14. Since in the present case ld PCIT has exercised jurisdiction u/s 263 of the Act on the ground that the assessing officer (AO) while completing the assessment proceeding did not make enquiries which he ought to have made. Therefore, it is necessary to look into what enquiries the AO made on the issues raised in the order under section 263 of the Act. First of all, we should examine whether the issues raised in the order under section 263 of the Act by the ld PCIT, have been examined and discussed by the assessing officer in the assessment order. We note that Assessing Officer has passed under section 143(3) of the Income Tax Act dated 19.12.2014 which is reproduced below:

"In this case, the assessee has filed the return of income on 08.10.2013 declaring total income of Rs. 1,39,930/- and agriculture income of Rs.94,700/-. The case was selected for scrutiny under CASS. The notice u/s 143(2) of the I.T. Act was issued on 23.09.2013 by speed post and served upon the assessee on 24.09.2013. Thereafter, another notice u/s. 142(1) of the I.T. Act alongwith questionnaire was issued on 10.09.2014 and served upon the assessee.

2. In response to the above said notices, Shri Bipin R. Shah, CA and authorised representative of the assessee attended from time to time and furnished details called for. The case was discussed with him. The details furnished during the course of assessment proceedings by the assessee are verified and placed on record.

3. The assessee is prop, of M/s. Drashti Developer and engaged in the business of Builder and Developer.

4. A perusal of the details filed during the course of assessment proceedings shows that the assessee has not withdrawn any amount for house hold expenses. The assessee was asked to explain the reason for not household expenses. Looking to the status of the assessee, area of his residence, standard of living and also other aspects, vide order sheet entry dated 10.12.2014, the A.R. of the assessee was required to state as to why his monthly expenses for his family should not be estimated at Rs.10,000/- per month looking to the various parameters involving house hold expenses and addition of Rs. 1,20,000/- is made to the total income of the assessee but the assessee has not filed any reply to this also. Under such circumstances, I hold that the assessee has not shown any withdrawal to meet the requirements of him and his family members. I, therefore, estimate the household expenditure at Rs.10,000/- per month for the whole family. The total household expenses as per the estimate comes to Rs.1,20,000/-. As such, an addition of Rs.1,20,000/- is made on account of low household withdrawal to the total income of the assessee.

5. Subject to the above remarks and after discussion, the total income is computed as under:-

Total Income as per computation of Income.	*Rs.1,39,930/-*
Add: Addition on account of low house hold withdrawal	*Rs.1.20.000/-*
Total Income	*Rs.2,59,930/-*
Agriculture Income (for rate purpose)	*Rs. 94,700/-*

15. We note that there is no whisper in the above assessment order, to discuss and examine the issues raised by the ld PCIT in his 263 order. The ld PCIT has raised the following issues in his 263 order, which are again reproduced below for ready reference:

(i) Issue of booking advances from Shamco of Rs. 10.00 Lakh.
(ii) Issue of loan from Shri Pratapchandra Naik.
(iii) Issue of all unsecured loans.
(iv) Issue of expenses & sundry creditors
(v) Issue of agriculture income"

Thus, it is abundantly clear that assessing officer did not discuss and verify the above issues, in his assessment order framed under section 143(3) of the Act. The assessing officer has examined only household expenses in his order framed under section 143(3) of the Act dated 19.12.2014 (supra). The issues raised by the ld PCIT in his 263 order such as, issue of booking advances from Shamco of Rs. 10.00 Lakh, issue of loan from Shri Pratapchandra Naik, issue of all unsecured loans, issue of expenses and sundry creditors and issue of agriculture income, were never verified and examined by the assessing officer, therefore, order framed by him under section 143(3) of the Act dated 19.12.2014 is erroneous and prejudicial to the interest of Revenue.

16. We note that Assessing Officer has issued notice under section 142(1) of the Act, dated 10.09.2014, in response to the said notice under section 142(1) of the Act, the assessee has not submitted the documents and evidences before the assessing officer in respect of all the issues raised by the ld PCIT in his order under section 263 of the Act. Hence, the assessee has not submitted the entire details which were asked by the Assessing Officer by way of issue of notice under section 142(1) of the Act, therefore it is evidently clear that the Assessing Officer has not examined the issues which were raised by the ld. PCIT in his order under section 263 of the Act, therefore, order framed by the assessing officer is erroneous and prejudicial to the interest of Revenue.

17. Learned Counsel for the assessee has submitted before the Bench a brief chart showing the addition in the summary fashion, which is reproduced below:

ISSUE ADDITION MADE BY AO	WHETHER PART OF SHOW CAUSE	FINAL DIRECTION BY PCIT	AMOUNT RS.	REMARK
Advances from Shamco group company -Swan Tripaulin industry	No	yes	75000	Even final ground for direction is to find out source of source of which is different than shown in show cause for difference of 7.5 lakh in balances with opposite party and that too in not following in current A.Y.
Booking advances from kishore	NO	NO	444700	The issue in show cause was only regarding advances from

				Shamco Plastic group companies.The PCIT has given direction in general for all advances without specifying any specific name,difference between all advances and reason for treating as Erroneous and prejudicial.
Booking advances from Taslim	NO	NO	444700	The issue in show cause was only regarding advances from Shamco Plastic group companies. The PCIT has given direction in general for all advances without specifying any specific name,difference between all advances and reason for treating as Erroneous and prejudicial.
LOAN FROM PRATAP NAIK	YES	NO	250000	Though specific show cause notice issued for above party but in direction no specific name is mentioned & reason for treating as Erroneous and prejudicial is also not mentioned.
LOAN FROM JAYABEN	NO	NO	230000	The issue in show cause was only regarding loan from four loan parties namely 1) PARSOTAM BHANUSHALI ,2)SHABHURAM,3)CHAGB AI, 4)JYOTIBEN (in para 7 of AO) The PCIT has given direction in general for all loans without specifying any specific name in final direction but at para 7 name of loan parties are mentioned which does not contain the name of Jayaben anywhere in the revision order and reason for treating as Erroneous and prejudicial is not mentioned anywhere in the Revision Order.
AGRICULTURE INOCME	YES	YES	94,700	

By way of the above chart, ld Counsel wants to demonstrate that some of the issues shown in above table, were not part of the notice of the ld PCIT under section 263 of the Act, therefore, ld PCIT ought not to have given direction to the

assessing officer to examine and verify these issues. In other words, ld PCIT can give direction to the assessing officer in respect of only those issues which were part of his show cause notice under section 263 of the Act and he cannot give direction to the assessing officer in respect of those issues which are not part of his show cause notice under section 263 of the Act.

18. We do not agree with the contention of the ld Counsel to the effect that ld PCIT can give direction to the assessing officer in respect of those issues which are part of his show cause notice under section 263 of the Act. In fact, there is no requirement to issue notice under section 263 of the Act. The requirement under section 263 of the Act, is to give an opportunity of hearing only. At this juncture, it is appropriate to discuss the provisions of section 263 of the Act, which is reproduced below:

"Section 263: Revision of orders prejudicial to revenue.

263. *(1) The 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 is erroneous in so far as it is prejudicial to the interests of the revenue,* ***he may, after giving the assessee an opportunity of being heard*** *and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."*

Having gone through the above provisions of section 263 of the Act, we noticed that there is no requirement to issue show cause notice under section 263 of the Act, the requirement is to give an opportunity of being heard.

19. We have also gone through the order ld PCIT passed by him under section 263 of the Act, dated 23.03.2017 and noted that assessee has been given enough opportunity of being heard on the issues raised by ld PCIT. The ld PCIT has issued a show cause notice under section 263 of the Act on 16.02.2017 (vide para no.4 of PCIT order). In response to this notice, AR of the assessee, Shri B.R. Shah, CA attended the office of ld PCIT on 27.02.2017 (vide para no.5 of PCIT order). Thereafter, ld PCIT has issued another show cause notice dated 06.03.2017. In response to this notice, AR of the assessee, Shri Bipin R. Shah, CA attended the

office of ld PCIT on 10.03.2017 (vide para no.6 of PCIT order). Then after, ld PCIT issued other notice to assessee on 20.03.2017, In response to this notice, AR of the assessee, Shri Bipin R. Shah, CA attended the office of ld PCIT on 23.03.2017 (vide para no.7 of PCIT order). We note that these all notices issued by the ld PCIT covered all the issues raised by the ld PCIT under section 263 of the Act and AR of the assessee was aware about all these issues and in fact submitted reply to the ld PCIT during 263 proceedings in respect of these impugned issues. Hence, the contention of the ld Counsel for the assessee that these issues were not part of the show cause notice under section 263 of the Act, is not acceptable, in the light of the bare facts narrated above.

20. The contention of the ld Counsel that Ld PCIT has issued notice only for "Loans" and not for "Advances", is not tenable. We note that ld PCIT has found out specific mistakes in the assessment order framed by the assessing officer. The ld PCIT has used the terminology "advance received" which is nothing but "unsecured loans", vide para 4(i) of PCIT order. Therefore, to use the different terminology to address an issue in the order, (which gives the same meaning), does not vitiate the order of ld. PCIT.

21. We note that that unlike the power of reopening an assessment under Section 147 of the Act, the power of revision under Section 263 is not contingent on the giving of a notice to show cause. In fact, Section 263 has been understood not to require any specific show cause notice to be served on the assessee. Rather, what is required under the said provision is an opportunity of hearing to the assessee. The two requirements are different; the first would comprehend a prior notice detailing the specific grounds on which revision of the assessment order is tentatively being proposed. Such a notice is not required. What is contemplated by Section 263, is an opportunity of hearing to be afforded to the assessee. Failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice.

We derive support for the proposition as stated above from the judgment of the Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. Amitabh Bachchan,Supreme Court of India, (2016) 384 ITR 0200 (SC), wherein it was held as follows:

"10. Reverting to the specific provisions of Section 263 of the Act what has to be seen is that a satisfaction that an order passed by the Authority under the Act is erroneous and prejudicial to the interest of the Revenue is the basic pre- condition for exercise of jurisdiction under Section 263 of the Act. Both are twin conditions that have to be conjointly present. Once such satisfaction is reached, jurisdiction to exercise the power would be available subject to observance of the principles of natural justice which is implicit in the requirement cast by the Section to give the assessee an opportunity of being heard. It is in the context of the above position that this Court has repeatedly held that unlike the power of reopening an assessment under Section 147 of the Act, the power of revision under Section 263 is not contingent on the giving of a notice to show cause. In fact, Section 263 has been understood not to require any specific show cause notice to be served on the assessee. Rather, what is required under the said provision is an opportunity of hearing to the assessee. The two requirements are different; the first would comprehend a prior notice detailing the specific grounds on which revision of the assessment order is tentatively being proposed. Such a notice is not required. What is contemplated by Section 263, is an opportunity of hearing to be afforded to the assessee. Failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice. Reference in this regard may be illustratively made to the decisions of this Court in Gita Devi Aggarwal vs. Commissioner of Income Tax, West Bengal and others1 and in The C.I.T., West Bengal, II, Calcutta vs. M/s Electro House2. Paragraph 4 of the decision in The C.I.T., West Bengal, II, Calcutta vs. M/s Electro House (supra) being illumination of the issue indicated above may be usefully reproduced hereunder:

> *"This section unlike Section 34 does not pre- scribe any notice to be given. It only requires the Commissioner to give an opportunity to the assessee of being heard. The section does not speak of any notice. It is unfortunate that the High Court failed to notice the difference in language between Sections 33-B and 34. For the assumption of jurisdiction to proceed under Section 34, the notice as prescribed in that section is a condition precedent. But no such notice is contemplated by Section 33-B. The jurisdiction of the Commissioner to proceed under Section 33-B is not dependent on the fulfilment of any condition precedent. All that he is required to do before reaching his decision and not before commencing the enquiry, he must give the assessee an opportunity of being heard and make or cause to make such enquiry as he deems necessary. Those requirements have nothing to do with the jurisdiction of the Commissioner. They pertain to the region of natural justice. Breach of the principles of natural justice may affect the legality of the order made but that does not affect the juris- diction of the Commissioner. At present we are not called upon to consider whether the order made by the Commissioner is vitiated because of the contravention of any of the principles of natural justice. The scope of these appeals is very narrow. All that we have to see is whether before assuming jurisdiction the Commissioner was required to issue a notice and if he was so required what that notice should have*

> *contained? Our answer to that question has al- ready been made clear. In our judgment no notice was required to be issued by the Commissioner before assuming jurisdiction to proceed under Section 33-B. Therefore the question what that notice should contain does not arise for consideration. It is not necessary nor proper for us in this case to consider as to the nature of the enquiry to be held under Section 33-B. Therefore, we refrain from spelling out what principles of natural justice should be observed in an enquiry under Section 33-B. This Court in Gita Devi Aggarwal v. CIT, West Bengal ruled that Section 33-B does not in ex- press terms require a notice to be served on the assessee as in the case of Section 34. Section 33-B merely requires that an opportunity of being heard should be given to the assessee and the stringent requirement of service of no- tice under Section 34 cannot, therefore, be applied to a proceeding under Section 33-B." (Page 827-828).*

[Note: Section 33-B and Section 34 of the Income Tax Act, 1922 corresponds to Section 263 and Section 147 of the Income Tax Act, 1961]

11. It may be that in a given case and in most cases it is so done a notice proposing the revisional exercise is given to the assessee indicating therein broadly or even specifically the grounds on which the exercise is felt necessary. But there is nothing in the section (Section 263) to raise the said notice to the status of a mandatory show cause notice affecting the initiation of the exercise in the absence thereof or to require the C.I.T. to confine himself to the terms of the notice and foreclosing consideration of any other issue or question of fact. This is not the purport of Section 263. Of course, there can be no dispute that while the C.I.T. is free to exercise his jurisdiction on consideration of all relevant facts, a full opportunity to controvert the same and to explain the circumstances surrounding such facts, as may be considered relevant by the assessee, must be afforded to him by the C.I.T. prior to the finalization of the decision.

12. In the present case, there is no dispute that in the order dated 20th March, 2006 passed by the learned C.I.T. under Section 263 of the Act findings have been recorded on issues that are not specifically mentioned in the show cause notice dated 7th November, 2005 though there are three (03) issues mentioned in the show cause notice dated 7th November, 2005 which had specifically been dealt with in the order dated 20th March, 2006. The learned Tribunal in its order dated 28th August, 2007 put the aforesaid two features of the case into two different compartments. Insofar as the first question i.e. findings contained in the order of the learned C.I.T. dated 20th March, 2006 beyond the issues mentioned in the show cause notice is concerned the learned Tribunal taking note of the aforesaid admitted position held as follows:

> *"In the case on hand, the CIT has assumed jurisdiction by issuing show cause notice u/s 263 but while passing the final order he relied on various other grounds for coming to the final conclusion. This itself makes the revision order bad in law and also violative of principles of natural justice and thus not maintainable. If, during the course of revision proceedings the CIT was of the opinion that the order of the AO was erroneous on some other grounds also or on any additional grounds not mentioned in the show cause notice, he ought to have given another show cause notice to the assessee on those grounds and given him a reasonable opportunity of hearing before coming to the conclusion and passing the final revision order. In the case on hand, the CIT has not done so. Thus, the*

order u/s 263 is violative of principles of natural justice as far as the reasons, which formed the basis for the revision but were not part of the show cause notice issued u/s 263 are concerned. The order of the CIT passed u/s 263 is therefore liable to be quashed in so far as those grounds are concerned."

13. The above ground which had led the learned Tribunal to interfere with the order of the learned C.I.T. seems to be contrary to the settled position in law, as indicated above and the two decisions of this Court in ***Gita Devi Aggarwal*** *(supra) and* ***M/s Electro House*** *(supra). The learned Tribunal in its order dated 28th August, 2007 had not recorded any finding that in course of the suo motu revisional proceedings, hearing of which was spread over many days and attended to by the authorized representative of the assessee, opportunity of hearing was not afforded to the assessee and that the assessee was denied an opportunity to contest the facts on the basis of which the learned C.I.T. had come to his conclusions as recorded in the order dated 20th March, 2006. Despite the absence of any such finding in the order of the learned Tribunal, before holding the same to be legally unsustainable the Court will have to be satisfied that in the course of the revisional proceeding the assessee, actually and really, did not have the opportunity to contest the facts on the basis of which the learned C.I.T. had concluded that the order of the Assessing Officer is erroneous and prejudicial to the interests of the Revenue. The above is the question to which the Court, therefore, will have to turn to."*

22. Since the order of the Assessing Officer has been held by us to be erroneous as well as prejudicial to the interest of the revenue, in the facts and circumstances narrated above, therefore, the exercising of revisional jurisdiction by the ld Principal CIT is ''vaild'' in the eyes of law and, therefore, we are inclined to uphold the order of ld PCIT to invoke revisional jurisdiction u/s 263 of the Act, dated 23.03.2017.

23. In the result, the appeal of the assessee is dismissed.

Order is pronounced on 24/05/2021 by placing result on Notice Board.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

सूरत /Surat
दिनांक/ Date: 24/05/2021
SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat