आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
MISS SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER

ITA No.783/Ahd/2019
Assessment Year :2014-15

Shree Ganesh Intermediary P.Ltd. D-1004, 10th Floor Ganesh Meridian Opp: Gujarat High Court S.G. Highway Ahmedabad 380 060. PAN : AAQCS 6988 E	Vs.	Pr.CIT-4 Ahmedabad.

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/**(Respondent)

Assessee by :	None
Revenue by :	Shri Durga Dutt, CIT-DR

सुनवाई की तारीख/**Date of Hearing : 06/02/2023**
घोषणा की तारीख /**Date of Pronouncement: 21/04/2023**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order passed by the ld. Pr.Commissioner of Income Tax-4, Ahmedabad [hereinafter referred to as "Ld.Pr.CIT"] by exercising revisionary power under section 263 of the Income Tax Act, 1961 ("the Act" for short) dated 6.3.2019 pertaining to the Asst.Year 2014-15.

2. None has appeared consistently on behalf of the assessee since the appeal was filed for hearing on 2.5.2019, and thereafter fixed for the first time on 21.4.2021. We have noticed that the appeal came up for hearing six times beginning from 29.10.2021 upto 18.10.2022 and despite notices repeatedly being sent by Registered Post, none

came present on behalf of the assessee. It is clear therefore that sufficient opportunity has been given to the assessee to argue its appeal, and it seems that the assessee is no longer interested in pursuing the appeal. Therefore, the matter was taken up for adjudication *ex parte*.

3. The assessee as challenged the order passed by the ld.Pr.CIT raising the following grounds:

> *"1. The Ld. PCIT erred on facts and in law in invoking provisions of section 263 of the Act for the impugned assessment year.*
>
> *2. The Ld. PCIT erred on facts and in law in holding that the Assessing Officer made assessment u/s 143(3) without making any inquiries on the issues referred in the revision order.*
>
> *3/ The Ld PCIT erred on facts and in law in setting aside the order of the Assessing Officer without justifiable reasons."*

4. A perusal of the order passed by the Ld.Pr.CIT reveals that power to revise order of the AO was assumed by the Ld.Pr.CIT as per the provisions of section 263 of the Act on noting from the record of the assessee before him that the issues for which the assessee's case was selected for scrutiny had not been inquired into by the AO at all. Para-2 of the order of the Ld.Pr.CIT reveals that such issues for which the scrutiny was directed in the assessment of the assessee's case and which the AO had not inquired into as noted by the Ld.Pr.CIT were as under:

> *i) Low net profit or loss shown from large gross receipt*
> *ii) Large specified domestic transaction(s) (form 3CEB)*
> *iii) Low income in comparison to high loans/advances/investment in shares.*
> *iv) Mismatch in sales turnover reported in Audit Report and ITR.*
> *v) Mismatch in amount paid to related person u/s. 40A(2)(b) reported in Audit Report and ITR.*

5. During revisionary proceedings, the assessee was confronted with the same, and the Ld.Pr.CIT has noted in his order that three

replies in all were filed by the assessee dated 21.1.2019, 22.2.2019 and 1.3.2019, all of which are reproduced from page nos.2 to 14 of Ld.Pr.CIT's order. A perusal of the same reveals that the assessee had furnished his reply with respect to each issue found by the Ld.Pr.CIT to have not been inquired by the AO while framing assessment under section143(3) of the Act contending that -

- With respect to the issue of specified domestic transactions not being referred to the TPO by the AO, thematter had been examined by the AO himself, and AO being satisfied, there was no requirement in law for him having compulsorily to refer the same to the TPO; that the AO being satisfied with the details submitted by the assessee with regard to specified domestic transactions there was, in no case error in the order of the AO with regard to the same.
- With respect to the issue of low net profit or loss shown by the assessee, it was explained in detail that the same was on account of loss incurred by the assessee in commodity exchange transactions to the tune of Rs.21.51 lakhs and the assessee substantiated the same with documents also.

- With regard to the mismatch in sales turnover reported in audit report and ITR, the assessee pointed out that there was no mismatch as such.

- As regards low income in comparison to high loan & advances/investment in shares ,detailed explanation was filed by the assessee in its letter dated 1.3.2019.

The ld.Pr.CIT after considering the explanation of the assessee held that -

- with respect to the issue of specified domestic transactions, the AO was compulsorily required to make reference to the TPO as per CBDT Instructions in this regard also, and having failed to do so, the AO's order clearly was in error. He referred to *Expalantion*-2 to section 263(1) which mentioned orders passed without making inquiry or verification to be considered as erroneous orders.

- With respect to the issue of mismatch in sales turnover, he agreed with the assessee's contentions that there was no mismatch in the same.

- As for the low net profit or loss shown by the assessee, as against large gross receipts, the ld.Pr.CIT held that assessee's explanation for the same hasbeen on account of loss incurred in commodity exchange transactions, evidences and explanation did not clearly reveal that the assessee's transaction qualified as not being speculative transactions in terms of amended section 43(5) of the Act, and noting that the AO failed to conduct requisite inquiries with regard to the same, he found the assessment to be erroneous on this count also.

Accordingly, considering the contentions of the assessee, the ld.Pr.CIT held the assessment to be erroneous causing prejudice to the Revenue and directed the AO tomake fresh assessment after

making all necessary inquiries and verification in respect of relevant aspects including those identified in his order.

6. The ld.DR relied on the finding of the ld.Pr.CIT and heavily supported the same.

7. We have gone through the order of the Ld.Pr.CIT. Taking up the first issue of the specified domestic transactions of the assessee amounting to Rs.30.45 crores not being referred by the AO to the TPO in terms of CBDT Instruction No.3 of 2016 dated 10.3.2016, the Ld.Pr.CIT has noted that the assesee's case was selected for scrutiny for one of the reasons for examining the specific domestic transactions. This fact has remained uncontroverted. Further, we find that the CBDT Instruction no.3 of 2016 reproduced at page no.4 of the Ld.Pr.CIT's order clearly requires the AO to make referenceto the TPO in the case of scrutiny on the basis of TP risk parameters. The said CBDT Instructions find mention in the assssee's letter/ submission dated 2.12019 filed to Ld.Pr.CIT during revisionary proceedings. The assessee's contention before the ld.CIT(A) against this error noted was that the issue on the related party transactions in terms of section 40A(2)(b) of the Act had been examined by the AO during the assessment; that necessary query had been raised by the AO by raising specific question regarding purchase and sale ledgers and also requiring the discussion on related party transactions covered under section 40A(2)(b) of the Act; that in respect to the same, the assessee had submitted reply about the sales and purchase ledger and also discussedthe related party transactions covered under section 40A(2)(b) of the Act; that the AO had found the transactions to be in order, and accordingly, made no adjustment; that not making reference to the TPO is only procedural

lapse on the part of the AO and the assessee could not be made to suffer on such procedural lapse.

8. The Ld.Pr.CIT, we find has dealt with the above contentions of the assessee at para 3.0 to 3.4 of his order stating that the failure of the AO to make reference to the TPO for examining the issue in respect of specified domestic transactions for which the case was selected for scrutiny as one of the reasons, was clearly an error in the order of the AO. He has referred to the provision of *Explanation*-2 inserted below section 263(1) of the Act providing for order passed without making inquiries or verification, which should have been made to be erroneous order causing prejudice to the Revenue. The ld.Pr.CIT further has referred to the decision of Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. Vs. CIT (2012) 345 ITR 0193 (Delhi) pointing out that in the said case, Hon'ble High Court had clearly held that not referring to the matter to the TPO by the AO in accordance with CBDT Instruction in this regard made the assessment order erroneous and prejudicial to the interest of Revenue. His findings in this regard are as under:

> *"3. I have considered the facts of die case and submissions of the assessee. Regarding the failure of the A.O. to make reference to the TPO for examination of T.P. issues in respect of Specified Domestic Transactions, for which the case was selected for scrutiny as one of the reasons u/s.92CA(4), the ld.AR has submitted that the A.O. has examined the related party transactions during the course of assessment proceedings and therefore, the order is neither erroneous nor prejudicial to the interests of the revenue, on this count. In support, the Ld. A.R. has referred to various judicial pronouncements and drawn attention of the undersigned towards the same.*
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> *3.1 The Ld. A.R. has relied extensively on the Hon'ble Supreme Court's decision of (i) M/s. The Malabar Industrial Co. vs. CIT - 243 ITR 83, (ii) Max India Ltd. -295 ITR 282 and agrued that the twin conditions of the order being erroneous and also prejudicial to the interests of the revenue must be satisfied to enable the PCIT to assume the jurisdiction u/s. 263. However, the Ld. A.R. in the process has inadvertently lost sight of Explanation-2 inserted below sub-section (1) of Section 263 inserted in the statute with effect from 01/06/2015, which reads as under:-*
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> *"Explanation 2.-For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer 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 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 zvith 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.".

3.2 As per Clause(a) of the Explanation above, if an order is passed without making necessary enquiries or verification, which should have been made by tike A.O., the order shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue. It may be mentioned that this explanation was not on a statute w ien the Hon'ble Supreme Court's decision in die case of M/s. The Malabar Industrial Co. vs. CIT - 243 ITR 83 and Max India Ltd. - 295 ITR 282 or the other decisions relied on by the A.O. were passed.

3.3 Further, the Ld. A.R. has discussed the judgement of the Hon'ble – Delhi High Court in the case of Ranbaxy Laboratories Ltd. vs. CIT [(2012) 345 ITR 0193] and submitted that even after considering the said decision of Hon'ble Delhi High Court, his case does not become erroneous and also prejudicial to the interests of revenue on the ground of non-reference by the A.O, to TPO u/s. 92CA(4) for determination of Arm's Length Price of Specified Domestic Transactions. The Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. [(2012) 345 ITR 0193] has held as under:-

> *"11. It is not in dispute that under s. 92CA of the Act enables the AO to refer computer of ALP m relation the an international transaction, under s. 92C of the Act, when the AO consider? it 'necessary or expedient' to do so. Thus, discretion with the AO. Having regard to the circumstances of a particular case and reference to the TPO is not mandatory. In Maniti Suzuki India Ltd. (supra) this Court observed that ordinarily the AO would make reference to the TPOs in those cases where he is not in agreement until the particular price disclosed by the assessee or where, on account of complex nature of the transaction, he feels that the ALP needs to be determined by the TPO. So far so good. However, further question that has arisen [for consideration is as to whether it becomes mandatory on the part of the AO to make reference wherever the aggregate value of international transaction exceeds Rs. 5 crores ? Instruction No. 3 of the CBDT dt. 25th May, 2003 makes a stipulation to this effect. The CBDT, therefore, have decided that wherever the aggregate value of international transaction exceeds Ms. 5 crores, the case should be picked up for scrutiny and reference under s. 92CA be made to the TPO.*
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> *12 . It was a common case that the CBDT has issued this circular in exercise of its powers under s. 119 of the Act. Special Bench of the Tribunal in the case of Aztec Software 6- Technology vs. Asstt. CJT 2009 TIOL 170 has upheld the validity of this circular. While doing so, the Special Bench has relied upon the judgment of this Court in Sony India (supra). The contention of the appellant before the Tribunal, which was repeated before us was that the aforesaid view of the Special Bench is erroneous and rather contrary to the decision of this Court in Sony India (supra). Dismissing this contention of the appellant, the Tribunal had stated as under:*

"on careful consideration of decision of Sony India (P) Ltd. (supra) and that of Special Bench 1 the case of Aztec Software (supra), we do not find any good reason to accept the argument ofShri Vohra and interpretation he has put on the decision in the case of Sony India (P) Ltd. leading to his inference that it is not necessary for AO to make a reference to TPO even the value of international transaction exceeds Rs. 6 crores. Tlie constitutional validity of above instructions dt. 20th May, 2003 was challenged under Art. 226/227 of the constitution and contentions of the petitioner are recorded ut p. 59 of the report. It was claimed that classification of international transaction into taw categories, those of value exceeding Rs. 5 crore and others less than Rs. 5 crores was not based on any intelligible differentia and, therefore, such instructions were violative o f Art. 14 of the Constitution. Instructions issued under s. 119 of the IT Act were ultra vires of the statutory provision. The. quasi-judicial discretion of the AO has been taken away.

69. Their Lordships considered relevant scheme of the Act relating to transfer pricing under Indian regulation, its purposes and the legal validity of above instructions. The matter for consideration was taken in too parts : Firstly, statutory provisions were considered in detail without going into the question of validity of the instruction; and secondly, the question of validity of instructions was considered in the light of Art. 14 of the Constitution. It is quite clear from what is stated above in paras 12, 29 and 31 of the judgment. Shri Vohra has referred to that part of the decision where discretion of AO to determine arm's length price in respect of transaction of value of less than Rs. 5 crore remaining unaffected is discussed. While maintaining the validity of the instructions, their lordships made pertinent observations in para 32 and 37. Para 37 has already been quoted. Para 32 is as under:

32. Applying the above test, the impugned instruction cannot be held to violate art. 14. The classification brought about by the impugned instruction is based on a straightforward recognizable basis giving no room for confusion. Transactions of a high value require a careful examination to determine if the declared price is in fact an acceptable ALP. It may not be expedient for the AO to efficiently deal with the assessment involving such an exercise. In that sense it achieves the expeditious disposal of the assessment by the AO if the exercise is referred for a specialized determination by the TRo. The classification certainly bears a nexus to this objective:. We are of the considered view that the challenge to the impugned instruction on the ground of 'suspect classification' must fail."

13. On the basis of aforesaid reasoning, the Tribunal concluded that once validity of CBDT circular was upheld, as per the said circular the AO was duty bound to refer the matter to the TPO having regard to the purpose of Specialized Cell created by the Revenue Department to deal with complicated and complex issues and since this channel was not resorted to by the AO in the instant case, the CIT was right in passing the order under s. 263 of the Act.

14. No doubt, the validity of the said instruction was upheld on the touch stone of Art. 14 of the Constitution holding that it was based on reasonable classification and there was rationale nexus with the objectives sought to be achieved. At the same time, we feel that while doing so this Court had also

laid down the rigors of the said Circular. No doubt, this Court observed, in the process that the said circular acted as a guideline to the AO. However, much mileage cannot be drawn by the appellant from those observations as these observations were made while dealing with the contention of the petitioner in the said petition. That instruction completely takes away the discretion of the AO in relation to an international transaction if the aggregate value thereof exceeded Rs. 5 crores. This contention was turned down in the following words:

> *"37. The otter ground on which the instruction is challenged is that it completely takes away the discretion of the AO in relation to an international transaction of the value exceeding Rs. 5 crores. A reading of the impugned instruction indicates that it acts as a guideline to the AO in the exercise of the discretion conferred under s, 92CA(1). This instruction is in fact helpful in ensuring that the discretion of the AO will not be abused. It correctly interprets the law as requiring only a formation of a prima facie opinion by the AO at the stage of the reference. Therefore, the question of the CBDT supplanting the judicial discretion of the AO does not arise. It is perfectly possible that, independent of the circular, the AO might still 'consider it necessary or expedient' to refer an international transaction of such value to the TPO for determination of the ALP. At the same time it is not as if the transactions of the value of less than Rs. 5 crores cannot be referred to the TPO by the AO. Ultimately, any exercise of discretion by the AO is bound to be judicially reviewed by the statutory appellate authorities as well as by Courts. Therefore, it is not as if there is no check on the exercise of discretion by the AO.*
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> *39. For these reasons, we hold that the impugned Instruction No. 3 dt. 20th May, 2003 issued by the CBDT is consistent with the statutory objective underlying s. 92CA(1) and acts as a guidance to the AO in the exercise of discretion in referring an international transaction to the TPO for determination of its ALP. It is neither arbitrary nor unreasonable, and is not ultra vires the Act."*

15. It is clear from the above that this Court held that referring of the matter to the TPO for determination of ALP acts as a guide to the AO and is, in fact helpful in ensuring that the discretion of the AO will not be abused.

16. We thus agree with the view taken by the Tribunal that the judgment of Special Bench in Aztec Software (supra) is not in conflict with Sony India (supra) once the validity of said instruction is upheld by this Court. The follow-up thereof is that the AO was supposed I refer the to the TPO having regard to the fact that Specialized Cell was created by the Revenue to deal with the complicated and complex issues arising out of the transfer mechanism. The Tribunal was right in holding that even the instant case itself provides a good example for need to refer the matter to TPO in such cases. When circular is issued under s. 119 of the Act and its validity is upheld it is binding on the AO. Not taking recourse thereto and passing the order amounted to making assessment without conducting proper inquiry and investigation as enjoyed by law which was also warranted in the facts of this case and, therefore, the CIT was right in holding that such assessment was erroneous and prejudicial to the interest of the Revenue in the light of law laid down by the apex Court in Malabar Industrial Co. Ltd. (supra)."

3.4 In view of the above, it was mandatory for the A.O. to make reference to the TPO u/s. 92CA(4) for necessary determination of Arm's Length Price of the Specified Domestic Transactions, which was one of the reasons of scrutiny selection."

9. We find no infirmity in the findings of the ld.PCIT with regard to the assessment order being erroneous on account of having not referred the specified domestic transactions of the assessee to the tune of Rs.30.45 crores to the TPO during the assessment proceedings. The CBDT Circular No.3 of 2016 directs the AO to make reference to the TPO where one of the reasons for scrutiny assessment is the involvement of transfer pricing issues. Also, we have noted that the Hon'ble Delhi High Court in the case of Ranbaxy Laboratries(supra) has in very clear terms held that not makingreference by the AO to the TPO in such circumstances tantamount to the assessment order being erroneous causing prejudice to the Revenue. We have noted that the assessee has attempted to distinguish this decision of the Hon'ble Delhi High Court before the ld.Pr.CIT in its letter dated 21.1.2019. The relevant portion of which is reproduced at page no.9 of his order. But, we find that there is no merit in the distinction made by the assessee with regard to the said case. The assessee has merely pointed out that in the facts of the case before the Hon'ble Delhi High Court, the assessee has failed to disclose all the material facts truly and fully necessary for assessment, and therefore such judgment was not applicable to the facts of the present case. But as we have noted above, the Hon'ble Delhi High Court has in clear terms held that where the reference to the TPO was necessary to be made by the AO in terms of CBDT Instructions in this regard, the failure to do so by the AO tantamounted to error in his order causing prejudice to the Revenue. Moreover, the contentions of the assessee that this was mere procedural lapse merits no consideration in view of the Hon'ble

Delhi High Court judgment as above Therefore, as far the issue of the assessment order being erroneous on account of no reference being made by the AO to the TPO of the specified domestic transactions, we do not find any infirmity in the order of the ld.Pr.CIT holding the assessment order to be erroneous causing prejudice to the Revenue on this count.

10. With regard to the issue low net profit or loss showed from large receipts, we find that the assessee has explained to the ld.Pr.CIT vide letter dated 21.3.2019 as being on account of commodity exchange loss on NCX & NCDEX of Rs.21,51,111/- which as per the amended provision of section 43(5) did not qualify as speculative loss and the assessee had rightly set off the same against the income for the year. The ld.Pr.CIT however has noted that the assessee has not substantiated its plea that the transaction did not qualify as speculative transactions in terms of section 43(5) of the Act with necessary evidence; that nothing was filed by the assessee to prove that the transaction was done on the recognized exchange and commodity transaction tax was paid in respect of such transactions as provided in the provisions of section 43(5) of the Act. His findings on this aspect at para-6 are as under:

> *"6. Secondly, regarding low net profit one of the reasons for scrutiny selection of the case, the assessee has submitted vide submission dated 01/03/2019 that it made huge loss of Rs.21.51 lakhs in commodity transactions. The assessee has further submitted that as per amended section 43(5) any trading in commodity derivatives on a recognized stock exchange is not a speculative transaction. However, the assessee has not placed anything on record to support that all the transactions leading to loss of Rs.21.5 lakhs were done on a recognized stock exchange and commodity transaction tax has been paid in respect of all such transactions, as provided in the provision to section 43(5) and whether all such transactions are eligible transactions as defined in clause (a) of Explanation-2 and carried out on a recognized association as in clause(d) of Explanation 2 below section 43(5) of the Act Neither from assessment records any evidence is discernible nor the assessee has furnished any evidence during the*

current proceedings to demonstrate that the transactions leading to the said loss of Rs.21.51 lakhs is an eligible transactions carried out on the recognized association and commodity transaction tax has been paid on all such transactions. Hence, the A.O. failed to conduct requisite enquiry in respect of the said loss.

11. We have perused order of the ld.Pr.CIT and have also gone through the submission filed by the assessee before him, and we do not see any reasons to interfere in the finding of the ld.Pr.CIT on this issue. The finding of the ld. PCIT that the assessee had failed to substantiate its explanation that the transactions did not qualify as speculative transactions in terms of section 43(5) of the Act, was not duly substantiated by the assessee with evidence and that the transaction was done on recognized commodity exchange, and commodity transaction tax paid thereon., Before us, there is nothing to controvert the finding of the ld.Pr.CIT. In view of the above, we concur with the ld.Pr.CIT that allowance of assessee's claim of huge loss on commodity transactions to the tune of Rs.21.51 lakhs by the AO has been done without conducting proper inquiries. Therefore, the assessment order is erroneous on this count also.

12. Coming to theissue of mismatch in sales turnover revealed in the audit report and ITR, we find that even ld.Pr.CIT agreed with the assessee that there was no mismatch and figures are matched. His findings in this regard are produced at para-5. Therefore, with respect to the mismatch in sale turnover, there is no error in the order of the AO.

13. With respect to the issue oflow income in comparison to high loan/advances and investment in shares, we find that the assessee has submitted a detailed explanation on account of the same vide his letter dated 1.3.2019 as under:

2) Low Income in comparison to high investment & Loans & Advances:

A) Assesse has total investment is Rs.1,40,99,960/-.

a) Out of the above investment assesse has made investment in office premises at Ganesh Meridian for Rs.40,00,000/- office no. 1005 & 1006 for Rs.41,00,000/- on 18/04/2012 out of the loan taken from on 16/04/2012 from KotakMahendra Bank.

b) Map Limited Share of Rs.59,99,960/- During the year 2012-13 assessee has business transaction with Map Limited. Out of the transaction assesse company has purchased the share of Rs.59,99,960/- on 03/12/2012. Assesee has not made any investment during the year under reference.. For your ready reference we are submitting herewith the following details:

a) The copy of bank book of the period from 01/12/2012 to 31/12/2012 is enclosed for your verification.

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b) Copy of Account MAP Limited showing the Business transactions

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B) Total Loans & Advances:5,40,19.408/-. Out of the total loans and advances Rs.31,798/- is of TDS, Rs.14,169/- is of Prepaid Insurance. Rs.25000/- given advance to Procreate & Rs.10000/- is Roman Art. The Remaining advance are as follows:

a) Khushboo MPatel Rs. 14,55,978/-: Assesse company has given loan to Khushboo M. Patel and company has charged the interest @15%. To the tune of Rs.2,01,650/-, For your reference we are submitting herewith the copy of interest account and copy of account of Khshboo Patel.

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b) Mehul A. Patel Rs.64,65,890/-: Assesse company has given loan to Mehul A. Patel and company has charged the interest @15%. To the tune of Rs.8,34,288/-. For your reference we are submitting herewith the copy of interest account and copy of account of Mehul A. Patel.

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c) Map Resources Pvt. Ltd. Rs.50,08,427/- During the year under reference assesse company has not given advance to the party. The company has received the share application money on 30/03/2013 of Rs.1,00,00,000/- and out of the said fund assesse company has given advance of Rs.50,00,000/-to Map Resources Pvt. Ltd. on same date 30/03/2013. Copy of account of Map Resources Pvt. Ltd. for the year 01/04/2012 to 31/03/2013 and 01/04/2013 to 31/03/2014 is enclosed. And we are also submitting herewith the copy of bank book for the period from 30/03/2013 to 31/03/2013 is enclosed.

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d) Map Ventures Pvt, Ltd. Rs.3,50,08,146/~ During the year under reference assesse company has not given advance to the party. The company has received the share application money on 30/03/2013 of Rs.1,00,00,000/- and out of the said fund assesse company has given advance of Rs, 50,00,000/-to Map VenturesPvt. Ltd. on same date 30/03/2013. Copy of account of Map VenturesPvt. Ltd. for the year 01/04/2012 to 31/03/2013.

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Assesses company received the payment of Rs,3,00,00,000/- on 30/03/2013 from Map Limited towards the business receipt and out of the said fund assesse company has given advance ofRs.2,50,00,000/-on 02/04/2013 to Map VenturesPvt. Ltd. Copy of bank book for the period from 30/03/2013 to 30/04/2013 is enclosed.

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Moreoverassesse company would like to stat that assesse company has no interest bearing funds. Assessee company has total share capital and reserve surplus to the tune of Rs.3,12,00,000/-, All the fund has been interest free. The company has only one loan from KotakMahendra Bank Limited against the office premises.

In light of the above you are requested to drop the proceeding u/s section 263 of the income tax act."

14. However, we find that the ld.Pr.CIT has not dealt with this explanation of the assessee at all. Therefore, with regard to this issue, we hold that there isno finding of error in the order of the AO by the ld.Pr.CIT.

15. In view of the above, we uphold the order of the ld.Pr.CIT on the assessment order being found to be erroneous on account of specified domestic transactions not being referred to the TPO by the AO and on the huge loss incurred by the assessee on the commodity transactions of Rs.21.5 lakhs, not being inquired into by theAO.

16. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Court on 21st April, 2023 at Ahmedabad.

Sd/- *Sd/-*

(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, dated 21/04/2023

vk*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजोकट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad