IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH "C", MUMBAI
BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No.4601/Mum/2014 for Assessment Year: 2010-11

Chandan Magraj Parmar 801, 8th Floor, Glenridge, 16, Ridge Road, Malabar Hill, Mumbai -400006 **PAN: AABPP1116F**	V s.	CIT-16, R.No. 437, Aayakar Bhavan, M. K. Road, Mumbai-400020.
(Appellant)		(Respondent)

ITA No.2996/Mum/2016 for Assessment Year: 2011-12

Chandan Magraj Parmar 801, 8th Floor, Glenridge, 16, Ridge Road, Malabar Hill, Mumbai -400006 **PAN: AABPP1116F**	Vs.	CIT-16, R.No. 437, Aayakar Bhavan, M. K. Road, Mumbai-400020.
(Appellant)		(Respondent)

Assessee by : Shri Rajiv Khandelwal (AR)

Revenue by : Shri Subhlachan Ram & Ms. Beena Santosh (CIT-DR)

Date of hearing : 16.11.2016

Date of Pronouncement : 30.11.2016

O R D E R

PER PAWAN SINGH, JM:

1. These two appeals u/s 253 of the Income-tax Act (the Act) are directed by the assessee. In ITA No.2996/M/2016 the assessee has challenged the order u/s 263 dated 28.03.2016 passed by the Principal Commissioner of Income-tax-16, Mumbai for AYs-2011-12. In ITA No.4601/M/2014 the assessee has challenged the order of CIT (A) dated 15.05.2014 for AY 2010-11. As in

both the appeals are directed by assessee thus both the appeals were clubbed together, heard and are decided by consolidated order.

2. First we shall take ITA No. 2996/Mum/2016 for AY 2011-12. Though, the assessee has raised as many as four grounds of appeal. However, as per our considered opinion only substantial ground of appeal is;

"Whether the order passed by the Principal Commissioner u/s. 263, dated 28.03.2016 is erroneous and contrary to the provisions of law".

3. Brief facts of the case are that the assessee filed return of income for relevant AY on 29.07.2011 declaring total income of Rs. 2,21,880/-. The assessment was completed on26.02.2014 u/s 143(3) of the Act determining the income of assessee at Rs. 7,06,540/-. While framing the assessment, the Assessing Officer (AO) made the disallowance of Rs. 4.50 Lakh on account of interest paid to Smt. Manju Goel, and disallowance u/s. 14A of Rs. 34,660/- and granted deduction under Chapter VIA of the Act. The assessment order was revised by ld. Pr Commissioner holding that in the return of income, assessee has shown Long Term Capital Gain (LTCG) of Rs. 6,77,55,890/- in respect of sale of agricultural land which was claimed as exempted. The assessee purchased two piece of land admeasuring 8 hectare and 36 Gunta from Harish Patel and Raghavji Patel for a consideration of Rs. 54,87,320/- on 17.02.2010. On 15.04.2010 the assessee joined the Firm M/s Synergy Developer as a partner and the said land was given as an assessee's share of capital in said Firm on agreed value of Rs. 7,32,83,210/-. The remaining other partner of the said Firm are the seller of said land. The ld. Pr Commissioner further observed that during the course of assessment, the AO did not make any query nor any inquiry regarding circumstances in which the seller of land within two months of agreed evaluation which was 1335% higher than the purchase price. The AO simply accepted the transaction as genuine on the basis of paper filed in the course of assessment. Thus, the failure on the part of AO to examine the unusual transaction from the point of view, genuineness rendered

the order erroneous and prejudicial to the interest of Revenue. Thus, ld. CIT issued a show-cause notice dated 16.03.2016 asking as to why the order dated 26.02.2014 should not be revised and gain shown as exempt LTCG be taxed as unexplained cash credit u/s 68 of the Act. The assessee contested the revision proceeding by filing reply dated 23.03.2016. In the reply the assessee contended that the AO passed the order of assessment after making necessary enquiry and examining the necessary document. The unusual price in the valuation of the land was that assessee-firm also purchased other adjoining land to make it 260 Acre Plot on which a Township Project was feasible. It was further contended that as per section 43(5) the rate recorded in the books of accounts is to be treated as full value consideration. The provisions of section 68 are not applicable as there is no inflow of funds. The assessee also contended that the order passed by AO is neither prejudicial nor erroneous to the interest of Revenue. The ld Pr. Commissioner again issued as notice u/s 263 dated 20.11.2015. In this notice, the ld. Pr. Commissioner mentioned that the exemption is allowable to the assessee only if land is situated beyond 8 km from local limit of any Municipality or any Cantonment Board referred in the proviso to Section 2(1A) and Section 2(14) of the Act. The notice further mentioned that three lands are situated in village Chichawali, Nasarapur and Anjap which comes under Karjat Taluka. The notice further mentioned that the AO neither raised any specific query nor discussed the matter in the Assessment Order, thus, the assessment order is erroneous as well as prejudicial to the interest of revenue. The assessee filed his reply to the fresh show-cause notice vide reply dated 17.12.2015 and specifically contended that agricultural land sold (transferred) by him are not such asset which falls within the jurisdiction of Municipality of population of which is more than 10,000/-. The village Chinchawali, Nasarapur and Anjap are very small villages with a population of less than 1000. Moreover, the nearest Municipality is Karjat, which is not notified Municipality as per the

provisions of section 2(1A) and 2(14) of Income Tax Act. The assessee also filed the Notification No. SO10(E)[No.9447(F.No.164/3/87-I)] u/s (1A) r.w.s. 2(14) of Income-tax Act dated 06.01.1994 as a amended up to 18.12.1999 showing that Karjat is not the notified Municipal Area/Urban Area as per the provisions of Income-tax Act. The reply of the assessee was not accepted by ld Pr. Commissioner. The ld. Pr. Commissioner further concluded that AO has not made any enquiry nor any such evidence produced by assessee either in the course of assessment or in the proceeding u/s 263 to show that in February 2010, the land in that area being sold at Rs. 6.85 lakhs per hectare and in April 2010 it rose up to 91.6 per hectare, thus the order dated 26.02.2014 passed by AO u/s 143(3) was erroneous and prejudicial to the interest of Revenue. The assessment order dated 26.02.2014 was set-aside with the direction to make the assessment afresh. Thus, being aggrieved by the order of Pr Commissioner u/s 263, the assessee has filed this appeal.

4. We have heard the ld. Authorised Representative (AR) for the assessee and the ld. Departmental Representative (DR) for the Revenue and perused the material available on record. The ld. AR of the assessee argued that assessee in the return of income claimed Capital Gain of Rs. 7,30,30,890/- as exempt from tax which includes Gain of Rs. 6,77,95,890/- in respect of Rural Agricultural Land at village Anjap. The assessee has purchased two piece of land on 17.02.2010 admeasuring 8 hectare and 36 Gunta from Pratik Harish Patel and Raghavji P. Patel for a consideration of Rs. 54,87,320/-. On 15.04.2010, the assessee-firm joined the firm 'Synergy Developer' as a partner and the said land had been introduced by the assessee as his share of Capital as mutually aggrieved by the partner for a value of Rs. 7,32,83,210/-, the remaining other two partner were Pratik H. Patel and Raghavji P. Patel. It was further argued by the ld. AR for assessee that all these documents relating to the transaction of transfer of land as a share of partnership along with other details as well as supporting documents were filed before the AO. Similarly

all those documents were filed before ld Pr Commissioner in response to the show-cause notice of the revision proceeding. The ld. AR further argued that the said agricultural land is a Rural Agricultural Land and is not qualified as a Capital Asset within the meaning of section 2(14) of the Act. Accordingly, the gain arising on the transfer of said land is not chargeable to tax. The amount recorded in the capital account of the assessee in his books of account for capital contribution of the agricultural land is deemed to be full value of consideration as per section 45(3) of the Act. It was further argued that the direction of Pr. Commissioner to AO to look into the aspect of section 68 of the Act is incorrect. The assessee has not made the sale of agricultural land but a transfer to the firm as his share. The ld. AR for the assessee further argued that there was no inflow of cash in the books of accounts of the assessee which is a primary and necessary ingredient to invoke the provisions of section 68 of the Act. Thus, the provision of section 68 is not applicable. It was argued that the AO passed assesseement order after his complete satisfaction. The order of assessment is neither erroneous nor prejudice to the interest of revenue. The ld AR for assessee further argued that all documents which were placed before he AO as well as before ld Pr Commissioner is filed in the form of the paper book placed before Tribunal. The ld AR for the assessee relied upon the decision of Calcutta High Court in J.P. Investment Co. vs. CIT [206 ITR 718], decision of Cochin Tribunal in ACIT vs. Kerla Transport Company [51 ITD 405] and the decision of Allahabad High Court in Sundarlal Jain vs. CIT [117 ITR 316]. On the other hand, the ld. DR for the revenue supported the order of Pr. Commissioner and argued that the AO has not made any enquiry in respect of Capital gain claimed by the assessee. There is no reference in the assessment order about the Gain on agricultural land, thus the order passed by AO is not only erroneous but prejudicial to the interest of revenue. The ld. DR for Revenue relied upon the decision of Hon'ble Supreme Court in CIT vs. Amitabh Bachchan (2016) 384 ITR 200

(SC) and the decision of Mumbai Tribunal in Arvee International Vs ACIT (2006) 101 ITD 495(Mumbai).

5. We have considered the rival contention of ld. AR of the parties and perused the order of AO as well as the order passed by ld Pr. Commissioner u/s 263 of the Act. In the return of income, the assessee claimed Gain of Rs. 7,30,30,890/- on sale of agricultural land and claimed exemption from tax. The assessment order u/s 143(3) passed on 26.02.2014. In the assessment order, the AO observed "*during the year assessee has declared Income from House Property and Income from Other source along with Gains on sale of agricultural land at Karjat, District-Raigad*". The claim of the assessee was accepted by AO in the order u/s 143(3). The ld. Pr. Commissioner issued show-cause notice u/s 263, dated 16.03.2016. In the show-cause notice, the Pr. Commissioner show-caused the assessee and sought explanation and the details as to how the land purchased by assessee on 17.02.2010 for a consideration of Rs. 54,87,320/- and given as his share in capital in the Firm M/s Synergy Developers within two month on 15.04.2010 for Rs. 7,32,83,210/-. The assessee was further asked as to why the difference in Capital Account should not be treated as unexplained and be added as Income from Other Sources u/s 68 of the Act. The assessee filed his reply vide reply dated 23.03.2016. In the reply the assessee explained that during the assessment proceeding assessee furnished all details called from him and after considering all the material and information, the assessment u/s 143(3) was completed. The assessee further explained that there is no error in the assessment order. The issue raised in the notice (notice u/s 263) have already been properly considered by AO during the course of assessment proceeding. The assessee specifically contended that the difference between the cost of land and the amount credited in his Capital Account with M/s Synergy Developers should not be treated as unexplained. The issue was considered by AO while framing assessment. The assessee specifically contended that as the

agricultural land situated in Rural area in India are not Capital asset in accordance with the definition of Asset as defined u/s 2(14) of the Act, and the Gain on transfer of such agricultural land are not liable to tax. The assessee further contended with regard to the contribution of Capital Asset in the partnership Firm, that besides the land (Asset) in question, the other persons were holding 96 Acre and 33 Gunta in adjoining area. Further in order to make all pieces of land belonging to different persons into a single piece of land of 104 Hectare and 69 Gunta equivalent to 261 Acre were contributed at the agreed rate of Rs. 87,50,000/- per hectare to make it viable for commercial development. And as per rate recorded in the Accounts shall be deemed to be full value of consideration as permitted u/s 45(3). The ld. Pr. Commissioner after a gap of about six months again issued as notice u/s 263 dated 20.11.2015. In this notice, the ld. Pr. Commissioner mentioned that the exemption is allowable to the assessee only if land is situated beyond 8 km from local limit of any Municipality or any Cantonment Board referred in the proviso to Section 2(1A) and Section 2(14) of the Act. The notice further mentioned that three lands are situated in village Chichawali, Nasarapur and Anjap which comes under Karjat Taluka. The notice further mentioned that the AO neither raised any specific query nor discussed the matter in the Assessment Order, thus, the assessment order is erroneous as well as prejudicial to the interest of revenue. The assessee filed his reply to the fresh show-cause notice vide reply dated 17.12.2015 and specifically contended that agricultural land sold (transferred) by him are not such asset which falls within the jurisdiction of Municipality of population of which is more than 10,000/-. The village Chinchawali, Nasarapur and Anjap are very small villages with a population of less than 1000. Moreover, the nearest Municipality is Karjat, which is not notified Municipality as per the provisions of section 2(1A) and 2(14) of Income Tax Act. The assessee also filed the Notification No. SO10(E)[No.9447(F.No.164/3/87-I)] u/s (1A) r.w.s.

2(14) of Income-tax Act dated 06.01.1994 as a amended up to 18.12.1999 showing that Karjat is not the notified Municipal Area/Urban Area as per the provisions of Income-tax Act. The assessee also filed copy of various certificates issued by Village- Talathi of Chinchawali, Nasarapur, Karjat certifying that the impugned land is outside the area of Municipal Council. The contention of the assessee was not accepted by ld. CIT(A) holding that a sum of Rs. 7,32,83,210/- has been credited in the capital account of the assessee and there is inflow of fund. It was further concluded that the partnership-deed is a negotiable instrument which mentions that in the event of assessee's withdrawing from the partnership a sum of Rs. 7,32,83,210/-, capital contribution shall be payable to him. Further, this amount has been credited in the assessee's books as a capital in the Firm. Hence, this credit is squarely covered by the definition 'sum' as used in section 68 and is deemed to be income of the assessee. The ld. Pr. Commissioner hold that the AO instead of making necessary enquiry and examining the issue in correct perspective proceeded with the blinkers and accepted the transaction as LTCG. The ld. CIT further concluded that order dated 26.02.2014 u/s 143(3) is erroneous and prejudicial to the interest of revenue and directed the AO to pass order afresh after giving the opportunity to the assessee.

6. We have seen that during the assessment the AO raised queries with regard to the claim of Capital Gain on transfer of land. The assessee vide his reply dated 31.01.2014 furnished the details in respect of distance of agricultural land from municipal limits, record of population as per last census including certificate of Gram Panchayat, Chinchawali, Karjat and Anjap. The AO after considering the reply of assessee accepted the claim of assessee. We have further noticed that the claim of Capital Gain was accepted after making necessary enquiry. The order was made 143(3) of the Act. The clause (ii) of Sub Section (3) of Section 143 does not prescribed any specific condition that the order of AO must state the points of determination, decision thereon and

the reasons for such decision. Although, the AO has not passed/ written detailed order while accepting the Gain of assessee, yet the order passed by Assessing Officer is in accordance with law, passed after considering relevant replies duly supported by evidence. The order cannot be branded as erroneous, merely because ld Pr. Commissioner is of other view or in his opinion order passed is weak and not a detailed order. So far as cash credit in the account of firm is concerned no cash come into business or went out of the business by means of such entries. It can be treated when money is, in fact, introduced into the books by means of credits of some account. However, in the present case the land was given as share of partner in the firm. Thus section 68 has no application in the present case. Our view is further strengthen by the decision in case of ACIT Vs Kerala Transport Co.[1994] 51 ITD 405 (Coch) and CIT Vs Balchand Gandhi [1982] Taxman59(Bom). Hence, the order is not prejudicial to the interest of revenue.

7. The Hon'ble Bombay High Court in CIT vs. Gabriel India Ltd. (203 ITR 108) held:

> *" That the order of AO cannot be held to be erroneous on the mere ground that it should have been written more elaborately. It is further held that if enquiries made, but Commissioner hold that enquiry was insufficient or was not on proper lines, assessment was made in hurry, that re-examination would produce better results, that assessment is sought and cryptic, a better view could have been taken on the facts and evidence or that there was a suspicious, all facts are not revealed, the Commissioner interference would not be justified.*

Further, in case of CIT vs. Trustees of Anupam Charitable Trust 167 ITR 129 (Raj.) the Hon'ble Rajasthan High Court held:

> *"That the error envisage by section 263 is not one which depend on possibility of guess work, but should be actually an error either on fact or on law."*

The Hon'ble Delhi High Court in CIT v. Ashish Rajpal [2009] 320 ITR 674 (Delhi) (HC), and further CIT v. Vikash Polymers [2010] 194 Taxman 57 (Delhi) (HC) held :

> *"Where the assessing officer during the scrutiny assessment proceeding raised a query which was answered by the assessee to the satisfaction of the assessing officer but the same was not reflected in the assessment order by him, a conclusion cannot be drawn by the Commissioner that no proper enquiry with respect to the issue was made by the assessing officer, and enable him to assume jurisdiction under section 263 of the Act".*

8. The Hon'ble Apex Court in case of CIT Vs Max India Ltd.[295 ITR 282(SC)] relying upon its earlier decision in the case of Malabar Industrial Co. Ltd. Vs CIT 243 ITR 83 (SC) (supra) held as under:

> *"The phrase "prejudicial to the interests of the Revenue" in section 263 of the Income-tax Act, 1961, has to be read in conjunction with the expression "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 the Assessing Officer adopts one of two courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the Revenue, unless the view taken by the Assessing Officer is unsustainable in law".*

9. Hon'ble Gujarat High Court in the case of CIT Vs R. K. Construction Co. 313 ITR 65 held as under:

> *"As far as law is concerned, the Assessing Officer has taken a particular view on the basis of evidence produced before him. On the basis of the said material and materials which were collected by the CIT in revisional proceedings, the Commissioner has taken a different view. However, in the revisional proceedings under section 263, it is not open for the Commissioner to take such a different view in view of the decisions of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. There is nothing on record to suggest that the view taken by the Assessing Officer is unsustainable at law. This Court has also taken the same view in case of Arvind Jewellers whereby the order passed by the Commissioner under section 263 of the Act was quashed and set aside.".*

10. Hon'ble Gujrat High Court in the case of CIT v. Arvind Jewellers [2003] 259 ITR 502(Guj) , held

"That the finding of fact given by the Tribunal was that the assessee had produced relevant material and offered explanations in pursuance of the notices issued under section 142(1) as well as section 143(2) of the Act and after considering the material and explanations, the Income-tax Officer had come to a definite conclusion. Since the material was there on record and the said material was considered by the Income-tax Officer and a particular view was taken, the mere fact that a different view can be taken should not be the basis for an action under section 263. The Hon'ble jurisdictional High Court, therefore, took the view that the order of revision was not justified. In the words of the Hon'ble High Court it was held as under: "Coming to the facts of the present case, it is the finding of fact given by the Tribunal that the assessee has produced relevant material and offered explanations in pursuance of the notices issued under section 142(1) as well as section 143(2) of the Act and after considering the materials and explanation, the Income-tax Officer has come to a definite conclusion. The Commissioner of Income-tax did not agree with the conclusion reached by the Income-tax Officer. Section 263 of the Act does not empower him to take action on these facts to arrive at the conclusion that the order passed by the Income-tax Officer is erroneous and prejudicial to the interests of the Revenue. Since the material was there on record and the said material was considered by the Income-tax Officer and a particular view was taken, the mere fact that a different view can be taken, should not be the basis for an action under section 263 of the Act and it cannot be held to be justified."

10. The Madhya Pradesh High Court in CIT v. Mehrotra Brothers 270 ITR 157 (MP), approved the order of the Tribunal which, after relying on CIT v. Ratlam Coal Ash Co. [1988] 171 ITR 141, had held that when the AO considered the records before him and completed the assessment after ITAno.1646/Ahd/2010 considering the evidence filed and after his satisfaction about the genuineness of cash credits, the order of revision under Section 263 on the vague ground that the AO did not make proper enquiry was not valid.

11. The Hon'ble Punjab & Haryana High Court in the case of CIT Vs Deepak Mittal 324 ITR 411 held that change of opinion by reappraising the evidence is not within the parameters of revisional jurisdiction of the Commissioner under section 263 of the Act. Further Hon'ble Delhi High Court in CIT vs. International Travel House,194 Taxman 324(Del), while relying, inter alia, on the decision of Hon'ble Gujrat High Court in Arvind Jewellers (supra) observed that the Commissioner had really made an effort to cause a routine inquiry with regard to the matter that

had already been concluded and he thought that he had the authority to begin a fresh litigation because of the view entertained by him. Hon'ble High Court held that a mere change of opinion or view would not enable the Commissioner to exercise jurisdiction under section 263 of the Act, more so, when the Assessing Officer had considered the details and the explanation offered by the assessee.

12. The decision relied by ld DR for revenue are distinguishable on the facts of the present case. With utmost regards to the findings of the Hon'ble Apex Court in case of Amitabh Bachchan (supra), the Apex Court examined if the power can be exercise by ld Commissioner beyond the reasons (issues) mentioned in the notice u/s 263. Further, in case of Arvee international (supra) the order of assessment was passed mechanically.

13. Now, turning to the fact of the present case the AO made enquiry with regard to the claim of capital Gain the and passed order u/s 14(3). The order passed by Assessing Officer is in accordance with law passed and was passed after considering relevant replies duly supported by evidence. The order cannot be called as erroneous, merely because ld Pr. Commissioner is of the view that AO not made necessary enquiry or not examined the issue/ claim in correct perspective. Thus, the order of Ld Pr Commissioner does not satisfied with the twin condition i.e. erroneous as well as prejudice to the interest of revenue. Accordingly, the order passed by the ld Pr. Commissioner u/s 263, dated 28.03.2016 is set-aside and the appeal of the assessee is allowed.

14. In ITA No.4601/M/2014(AY 2010-11) the assessee the following grounds of appeals.

(i). The ld CIT(A) erred in confirming the addition of Rs. 21,680/- u/s 14A.

(ii). The ld CIT(A) erred in confirming the addition of Rs. 4,50,000/- paid on borrowed funds.

iii). The ld CIT(A) erred in holding the levy of interest u/s 234B and 234C.

(iv). The ld CIT(A) erred in holding that initiation of penalty u/s 271(1) (c) is consequential in nature.

15. The brief facts for the case for this year are that assessee filed return of income for relevant assessment year on 14 October 2010 declaring total income of Rs.21,26,130/-. The assessment was completed under section 143(3) on 30 January 2013. In the assessment order AO disallowed Rs 21,680/-under section 14A and Rs. 4,50,000/-on account of interest expenses. On appeal before Commissioner (Appeals) both the disallowance was sustained. Thus, further aggrieved by the order of Commissioner (Appeals) the assessee has filed this second appeal before Tribunal.

16. First ground of appeal relates to disallowance under section 14A of the Act. We have heard ld AR for the assessee and the ld DR for revenue and perused the material available on record. The ld AR of the assessee argued that during the year under consideration the assessee earned dividend income of Rs. 24,752 /-. The assessee has not incurred any expenses for earning the exempt income. The ld AR for the assessee further argued that the assessee had sufficient interest free funds available with him. The assessee has not borrowed any fund for making any investment. The ld AR of the assessee shown us the balance-sheet of assessee as on 31 March 2010 and the detail of investment made during the year under consideration. The Balance Sheet is available at page 13/14 and detail of investment at page 15 of the paper book. On the other hand the ld DR for revenue supported the order of authorities below and would argue that assessee himself offered the disallowance u/s 14A during the assessment which was accepted by AO. In the rejoinder argument the learned AR for the assessee disputed the contention of ld DR and the finding of AO.

17. We have considered the rival contention of the parties and perused the order of authorities below. While framing assessment the AO disallowed Rs 21,680/- u/s 14A holding that assessee voluntarily offered this amount. However, in the first appeal before Commissioner (Appeals) the assessee challenged the disallowance. The ld Commissioner (Appeals) while considering this ground of appeal observed that the

assessee has not made suo-moto disallowance under section 14A in the return of income. The assessee has not been able to show conclusively that the indirect expenses debited to the appellant account are not attributable to the earning of tax free income. On the basis of decision of Mumbai Tribunal in Sistens India P. Ltd 44 Taxman.com 340, the ld Commissioner (Appeals) held that the AO was well within its right to invoke provision of section 14A(3) rwr 8D and sustain the disallowance. We have seen that the disallowance sustained by ld Commissioner (Appeal is) is in accordance with section 14A read with rule 8D(iii). The disallowance is in accordance with law, thus, we do not consider it appropriate to interfere in the findings of ld Commissioner (Appeals). Therefore this ground of appeal is dismissed.

18. Ground No. 2 relates with the disallowance of interest expenses of Rs. 4,50,000/-. The ld AR for assessee argued that the assessee has availed loan from Smt. Manju Gupta. The loan was taken in earlier years for business purpose to meet out the financial commitment in a closely held Company in which assessee was having substantial interest. It was further argued that the similar disallowance was made in the subsequent Assessment Year (AY 2011-12) however, the same was allowed on appeal by Commissioner (Appeal). The ld AR argued that the Department must follow the Principle of consistency. The copy of order of Commissioner (Appeals) in appeal No.:IT-249/13-14/135/15-16 for AY 2011-12, dated 28 September 2015 is placed on record. On the other hand the learned DR for revenue supported the order of authorities. However the order of Commissioner (Appeals) in the subsequent year was not disputed by ld DR for revenue.

19. We have considered the rival contention of the parties and perused the order of authorities below. We have also perused the order dated 28 September 2015 for Assessment Year 2011-12 passed by Commissioner (Appeals) wherein the similar disallowance on account of interest expenses of Rs.4,50,000/- was deleted. Thus keeping in view the order of Commissioner (Appeal) in subsequent year in assessee's

own case the AO is directed to delete the disallowance. Thus this ground of appeal is allowed.

20. Ground No3 and 4 are consequential and needs no adjudication. In the result appeal of the assessee is partly allowed.

21. In the result, appeal of assessee for AY-2010-11 is allowed and for AY 2011-12 is partly allowed.

Order pronounced in the open court on this 30th November, 2016

Sd/-	**Sd/-**
(B.R.BASKARAN)	**(PAWAN SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated 30/11/2016
S.K.PS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि,आयकरअपीलीयअधिकरण,मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायकपंजीकार
(Asstt.Registrar)
आयकरअपीलीयअधिकरण,मुंबई / **ITAT, Mumbai**