

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, ए.मुंबई ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "A", MUMBAI**

**श्री जी.एस. पन्नू, लेखा सदस्य एवं**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य, के समक्ष**

**Before, Shri G.S. Pannu, Accountant Member and  
Shri Joginder Singh, Judicial Member**

**ITA NO.2122/Mum/2015  
Assessment Year:2010-11**

M/s Estrela Batteries Ltd. C/o- Karnavat & Co. 2A Kitab Mahal, 1 <sup>st</sup> Floor, 192, Dr. D.N. Road, Mumbai-400001	<b>बनाम/</b> Vs.	The Principal Commissioner of Income Tax-2, Room No.384, 3 <sup>rd</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020
(निर्धारिती /Assessee)		(राजस्व /Revenue)
PAN. No.AABCE3092Q		

निर्धारिती की ओर से / Assessee by	Shri Sunil Hirawat
राजस्व की ओर से / Revenue by	Dr. Gulshan Raj

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>03/02/2016</b>
<b>आदेश की तारीख /Date of Order:</b>	<b>05/02/2016</b>

**आदेश / O R D E R**

Per Joginder Singh (Judicial Member)

The assessee is aggrieved by the impugned order dated 23/03/2015 of the ld. Principal Commissioner of Income Tax,

Mumbai, invoking revisions jurisdiction u/s 263 of the Income tax Act, 1961 (hereinafter the Act).

2. During hearing of this appeal, the crux of argument advanced by Shri Sunil Hirawat, ld. counsel for the assessee, is identical to the ground raised by contending that assessment was completed u/s 143(3) of the Act on 22/03/2013, considering the arguments of the assessee, therefore, invoking the revisional jurisdiction is not justified. It was contended that assessment was framed after due application of mind by the Assessing Officer, therefore, the assessment order is neither erroneous nor prejudicial to the interest of the Revenue.

2.1. On the other hand, Dr. Gulshan Raj, ld. CIT-DR, strongly defended the impugned order by contending that the ld. Commissioner justifiably invoked revisional jurisdiction u/s 263 of the Act, more specifically, when the Assessing Officer failed to examine the issue of computation of book profit u/s 115JB of the Act, for which our attention was invited to para 2 of the impugned order. It was pointed out that even the ld. Commissioner set aside the file to the file of the ld. Assessing Officer with a direction to examine the details and after conducting an appropriate enquiry finalize the assessment. Reliance was placed upon the decision in Malabar Industrial Corporation ltd. (243 ITR 83) (SC), Pt.

Lashkari Ram vs CIT 272 ITR 309 (All.) and Ashok Leyland vs CIT 260 ITR 599.

2.2. We have considered the rival submissions and perused the material available on record. We have also perused the assessment order, which is a subject matter of revisional jurisdiction u/s 263 and the impugned order passed by the Id. Commissioner. Admittedly, an incorrect assumption of fact or an incorrect application of law would satisfy the requirement of order being erroneous u/s. 263. The phrase “prejudicial to the interest of the Revenue” u/s. 263, has to be read in conjunction with the expression “erroneous” order by the Assessing Officer . Every loss of Revenue as a consequence of assessment order cannot be termed as prejudicial to the interest of Revenue . Meaning thereby “prejudice” must be prejudice to the Revenue administration. At the same time, if another view is possible revision is not permissible. Our view is fortified by the decision from Himachal Pradesh Financial Corpn. (186 Taxmann 105)(HP), Bismillah Trading Co. (248 ITR 292)(Ker.) and CIT vs. Green World Corpn. (314 ITR 81)(SC). For invoking revisional jurisdiction u/s. 263 the assessment order must contain grievous error which is subversive of the administration of Revenue. Further, exact error must be disclosed by the Commissioner as was held in CIT vs. G.K. Kabra (211 ITR 336)(AP). Section 263 of the Act enables the Commissioner to have a look at the orders or proceedings of

the lower authority to effect correction, if so needed, particularly, if the order is erroneous and prejudicial to the interest of the Revenue. The object of the provision is to raise revenue for the state and section 263 is enabling provision conferring jurisdiction upon the Commissioner to revise the order. The provision is intended to plug the leakage of the revenue by the erroneous and prejudicial order. Our view find support from the ratio laid down in following decisions:-

- i. CIT vs Infosys Technologies ltd. (2012) 341 ITR 293 (Karn.),
- ii. CIT vs Jawahar Bhattacharyaji (2012) 341 ITR 434 (Guwahati) (FB),
- iii. CIT vs Leisure wear Exports Ltd. (2012) 341 ITR 166 (Del.),
- iv. CIT vs Triveni Engineering Works Ltd. (2011) 336 ITR 366 (Del.),
- v. R.A. Himmatsinghka & Company vs CIT (2012) 340 ITR 253 (Pat.)
- vi. CIT vs Rajeev Agnihotri (2011) 332 ITR 608 (P & H),
- vii. CIT vs DLF Ltd. (2013) 350 ITR 555 (Del.),
- viii. CIT vs Gabreal India Ltd. (1993) 203 ITR 108, 114 (Bom.),
- ix. Malabar Industrial Company Ltd. vs CIT (2000) 243 ITR 83 (SC),
- x. Nabha Investments Pvt. ltd. vs UOI (2000) 246 ITR 41 (Del.),
- xi. Bismillah Trading Company Ltd. vs IO (2001) 248 ITR 292, 308 (Kerala),

- xii. Paul Mathews & Sons vs CIT (2003) 263 ITR 101, 113 (Kerala),
- xiii. CIT vs Seshasayee Paper & Boards Ltd. (2000) 242 ITR 490, 500 (Mad.),
- xiv. Rayon Silk Mills vs CIT 221 ITR 155 (Guj.)

2.3. However, if the ratio laid down in the aforesaid cases is analyzed with respect to the facts of the present appeal, it is noted that the assessee declared total loss of Rs.68,97,886/- in its return filed on 21/09/2010. The assessment was completed on 22/03/2013 u/s 143(3) of the Act, determining the total income at Nil. The ld. Principal Commissioner, found that for A.Y. 2010-11, the assessee claimed to have received a sum of Rs.3,56,84,917/-, towards dividends, as exempt and disallowed an amount of Rs.30,38,413/- u/s 14A of the Act being expenditure incurred for earning the said exempt income and further noted the disallowance u/s 14A was not added to the net profit, as per profit & loss account, in computation of books profit u/s 115JB of the Act. We are in agreement that even the ld. Assessing Officer ignored clause (f) of Explanation (1) of section 115JB and thus there was uncertainty in the assessment order with respect to the amount of Rs.30,38,413/-. In view of this factual matrix, we agree with the finding of the ld. Principal Commissioner that the assessment order is erroneous as well as prejudicial to the interest of Revenue. The Assessing Officer neither conducted proper enquiries nor applied his mind on the issue, thus, the

order is erroneous and prejudicial to the interest of the Revenue. Totality of facts, clearly indicates that even in the impugned order, the issues were set aside to the file of the Assessing Officer to decide afresh after conducting appropriate enquiries and on examining the details after providing due opportunity of being heard before finalizing the assessment, thus, no grievance is caused to the assessee, because the assessee is at liberty to contest the observation made by the Id. Principal Commissioner. Our view is fortified by the decision in Indian Textile vs CIT (157 ITR 112) (Mad.), Gee Vee Enterprises vs Addl. CIT (99 ITR 375)(Del.), Thalibai F Jain vs ITO 101 ITR 1 (Karn.) and CIT vs HPFC 186 Taxman 105 (HP), CIT vs Pushpa Devi 164 ITR 639 (Patna). We are aware that before the Commissioner invokes the revisional jurisdiction u/s 263 , he should get satisfied that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Hon'ble Gujarat High Court in CIT vs M. M.Khambatbala 198 ITR 144 (Guj.) even went to the extent that revisional powers can be exercised even if the issue is debatable. Totality of facts, clearly indicates that the Id. Principal Commissioner justifiably invoked revisional jurisdiction as is oozing out from the facts available on record. We affirm the stand of the Id. Principal Commissioner as we find no infirmity in the directions to the Assessing Officer contained in the revisional order. The appeal of the assessee is therefore having no merit, consequently, dismissed.

Finally, the appeal of the assessee is dismissed.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 03/02/2016.

Sd/-  
(G.S. Pannu)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-  
(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 05/02/2016

*Shekhar, P.S.* नि.स.

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai