

आयकर अपीलीय अधिकरण "H" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI
BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.3475/Mum/2017

(निर्धारण वर्ष / Assessment Year : 2012-13)

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| Hunumesh Realtors P. Ltd, Avadh Avadhesh Parisar Shri Ram Mills Premises, Ganpatrao Kadam Marg, Worli, Mumbai 400018 | बनाम/ v. | PR CIT 10 482 Aayakar Bhavan, Mumbai |
| स्थायी लेखा सं./ PAN :AABCH5774L | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| Assessee by: | | Shri. Pradeep Sharma |
| Revenue by : | | Shri. Rahul Raman,CIT DR |
| | | |

सुनवाई की तारीख /Date of Hearing : 28.09.2017

घोषणा की तारीख /Date of Pronouncement : 04.12.2017

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the Assessee, being ITA No. 3475/Mum/2017, is directed against the order dated 30.03.2017 passed by learned Principal Commissioner of Income Tax-10, Mumbai (hereinafter called "the Pr.CIT), for assessment year(A.Y.) 2012-13 u/s 263 of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal raised by the Assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

"1. The Hon'ble Pr. CIT - 10 (herein after referred as CIT) has erred in invoking Provisions of Section 263 of the Income Tax Act, 1961 by issuing the Notice inspite of the fact that Scrutiny assessment has been completed by the ITO - 10(1)(2), Mumbai U/s 143 (3) of the Income Tax Act, 1961 after duly examined and considering facts while framing the assessment order U /s 143(3) of Income Tax Act, 1961. The Hon'ble CIT has erred in raising the issues and making rowing enquiries in the Proceedings u/s 263 of the Income Tax Act, 1961. Further Order u/s

263 is also passed without any conclusion merely setting aside the assessment to the file of the learned assessing officer which is unjustified. It is therefore submitted that the order passed u/s 263 should be cancelled.

*2. **Without prejudice to ground No. 1** The CIT has erred in directing the Assessing officer to verify the details relating to training expenses incurred on the director of the Appellant company, Mr. Arnav Kasliwal of Rs. 29,80,200/- . The Pr. CIT failed to appreciate that the Assessment order u/s 143(3) of the Income Tax Act, 1961 dated 27.03.2015 was passed by the A.O.. after considering the entire material on record and applied his mind during the course of Assessment proceeding u/ s 143(3). The issue raised with regard to Training Expenses was duly examined and the same cannot be considered in the Order U/s 263 of the Income Tax Act, 1961. In conclusion, CIT has set aside the order without examining the documents and explanation filed during the 263 proceedings and mere set aside of the order to such extent is unjustified. Accordingly, the necessary direction should be given in this regard.*

3. Your appellant craves to add, alter, or amend any of the grounds of appeal on or before the date of hearing of appeal.”

3. The Brief facts of the case are that the assessee is Builder & Developer. The assessee filed its return of income for A.Y. 2012-13 on 25.09.2012 declaring income of Rs. 13,37,679/- , wherein the assessment was framed u/s. 143(3) by learned assessing officer (hereinafter called “the AO”) vide assessment order dated 27th March 2015 , wherein income assessed was Rs.52,60,730/- . There were two additions made by the AO in the assessment framed u/s 143(3), firstly w.r.t. disallowance u/s 14A and secondly due to mismatch in information contained in AIR Report . Since the tax on book profit of Rs. 94,74,556/- u/s 115JB was more than the tax on the assessed income under normal provisions, the assessee was assessed by the AO u/s 115JB.

On perusal of the record , the learned Pr. CIT noticed that assessee has paid an amount of Rs. 29,80,200/- as training expenses to University of Pennsylvania, USA and on verification it was observed by ld. Pr. CIT that these are expenses incurred towards tuition fees , rent , clinical fee, health insurance and recreation fee for undergraduate studies of Shri Arnav Kasliwal , Director of the assessee company. The Pr. CIT observed that the assessment framed by the AO u/s.143(3) vide orders dated 27.03.2015 for AY 2012-13 was erroneous and prejudicial to the interest of the revenue as

the said expenses under the head 'training expenses' of Rs.29,80,200/- were allowed as business expenses which were not properly verified by the AO to bring correct facts on record to examine the allowability of these expenses during the impugned assessment year and accordingly show cause notice dated 29-10-2015 was issued by ld. Pr. CIT u/s. 263 . During proceedings u/s 263 , the assessee was asked by learned Pr. CIT to explain course details , directorship details in years involved . The assessee in reply submitted details but no course details were submitted by the assessee . However, it was submitted by the assessee that it was a graduation course and no other documents are available .

The learned Pr. CIT observed that these training expenses were related to undergraduate programmes being undergone by Shri. Arnav Kasliwal in USA. The learned Pr. CIT observed from his PAN details observed that Date of Birth(D.O.B.) of Sh. Arnav Kasliwal is 11.04.1992 . The learned Pr. CIT asked the assessee to furnish the date as to when Sh. Arnav Kasliwal was inducted as Director into Board of Directors and the documentary evidences submitted before Registrar of Companies(ROC) w.r.t. appointment of Sh. Arnav Kasliwal as Director of the assessee company. On verification of records for A.Y 2010-11, 2011-12 and 2012-13 , the learned Pr. CIT observed that it did not reflect that said Sh. Arnav Kasliwal was the Director of the assessee company. It was observed by learned Pr. CIT that it was only because of non verification of records and lack of proper enquiry by the A.O that resulted in allowing such expenditure which could not have been allowed. The learned Pr. CIT observed that the A.O. has clearly failed to make proper enquiries on this specific claim made by the assessee . The learned Pr. CIT held that the assessment order dated 27-03-2015 passed by the AO u/s 143(3) is erroneous and prejudicial to the interest of the Revenue. The learned Pr. CIT held that the AO has not applied his mind to the relevant material before allowing the claim of the assessee. It was also observed that no enquiry was made by the AO as well there is no discussion in the assessment order dated 27-03-2015 passed by the AO u/s 143(3). The learned Pr. CIT also invoked newly inserted Explanation 2 to Section 263 which was inserted by the Finance Act , 2015 w.e.f. 1st June, 2015. It was observed by learned Pr. CIT that the AO has failed to make any verification or enquiry on the claim made by the assessee and hence the assessment

order dated 27-03-2015 passed by the AO u/s 143(3) was held to be erroneous as also prejudicial to the interest of Revenue. It was observed by the learned Pr. CIT that the AO has stated in his report that it is only because of lack of time, the A.O could not make any enquiry subsequent to the date of filling of the details regarding the expenses incurred for remittance of fees to the University of Pennsylvania, USA.

The learned Pr. CIT observed that on enquiry made by him during the course of proceedings u/s 263 revealed that the said Sh. Arnav Kasliwal had just completed his 18 years of age (D.O.B 11.04.1992) and he has been allotted PAN only on 18.05.2010. The learned Pr. CIT observed that he was inducted as Director into the company on 05.05.2010 just on completion of 18 years with an intention of claiming education expenses as business expenses of the assessee company. Thus, learned Pr. CIT in exercise of power conferred on him u/s 263 set aside the assessment to the file of the AO and directed A.O. to verify the details with regard to the Director's Training expenditure amounting to Rs.29,80,200/- keeping in view provisions of Section 37(1) and AO was directed by learned Pr. CIT vide orders u/s 263 to frame fresh assessment de-novo, keeping in view aforesaid directions/observations, vide orders dated 30-03-2017 passed by learned Pr. CIT u/s 263.

4. Aggrieved by the orders dated 30-03-2017 passed by learned Pr. CIT u/s 263, the assessee has filed an appeal before the tribunal.

It was submitted by Ld. Counsel for the assessee that Section 263 was invoked by learned Pr. CIT vide orders dated 30.03.2017 on the allegation that A.O did not make proper enquiry during assessment proceedings u/s 143(3) r.w.s. 143(2) and training expenses of Rs. 29,80,200/- were erroneously allowed as business expenses by the AO vide assessment order dated 27-03-2015 passed u/s 143(3). It was submitted that there is no discussion in the A.O.'s assessment order w.r.t. this claim of the assessee towards training expenses. Our attention was drawn to paper book / page no. 12B /12C wherein the notice u/s 142(1) along with questionnaire dated 09-01-2015 issued by the AO are placed. It was submitted that details of all the Directors with their PAN, addresses, email contact details as were

asked for by the AO during the assessment proceedings were submitted before the AO. Our attention was also drawn to page no. 13 of the paper book wherein the assessee has duly submitted desired details of the Directors to the AO vide letter dated 22-1-2015 . Our attention was also drawn to page no. 15 where in the list of Directors filed before the AO is placed which included name of Sh. Arnav Vikas Kasliwal who was appointed as Director of the assessee company on 05-05-2010 . Our attention was also drawn to page no. 16/paper book wherein the reply dated 10.02.2015 to the A.O. is enclosed wherein all the details being ledger account of training expenses incurred by the assessee were given to the AO. , which is at page no. 18 being ledger account for incurring of training expenses of Rs. 29,80,200/- . Our attention was also drawn to page no. 28 of the paper book wherein all the details of training expenses to be paid to the University of Pennsylvania, USA are placed. Our attention was also drawn to the order dated 30-03-2017 passed u/s 263 by the learned Pr. CIT / para 11 wherein directions were issued by learned Pr. CIT to verify training expenses and it was submitted that these expenses were incurred for training of Director which is to get the graduation from University of Pennsylvania . It was submitted that Sh. Arnav Kasliwal was 18 years of age (DOB 11.04.1992) when he was inducted as Director in the assessee company on 05.05.2010 . On being asked by the Bench, It was submitted that there was no business conducted by the assessee during the year as revenue from operations are 'NIL' while there was other income earned from interest on fixed deposits during the year (paper book/page 5 contains the audited profit and loss account) and it was also submitted that these were educational expenses leading to graduation of Arnav Kasliwal from University of Pennsylvania , USA rather than training expenses of the assessee. The learned counsel for the assessee relied upon the decision of Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. 243 ITR 83(SC) and also decision in the case of CIT v. Gabriel India Ltd. 203 ITR 108(SC). It was submitted that A.O has duly examined this issue while framing assessment u/s 143(3) and learned Pr. CIT has no jurisdiction after the A.O has examined the issue . It was submitted that vide order dated 30.03.2017 passed u/s. 263 , learned Pr. CIT has invoked Explanation 2 to section 263 which has come into effect w.e.f. 01-06 2015 and cannot be invoked retrospectively. It was submitted that learned Pr. CIT is asking A.O to make further inquiry. It was submitted

that no prejudice is caused as income is still assessed u/s. 115JB and there is no loss to Revenue . It was submitted that assessment on which tax was payable was computed u/s 115JB , while framing assessment order u/s 143(3). It was submitted that department has invoked Section 201(1)/201(1A) for default in deduction of taxes at source by the assessee on such payments towards training expenses for AY 2011-12 as the said training expenses were held to be fees for technical services covered for deduction of tax u/s 195, which is placed in file. It is claimed that now department cannot take different stand as consistency is to be maintained.

The Ld. CIT-DR on the other hand submitted that the assessee has accepted on merit that he has concealed the particulars as the said expenses were not towards training expenses but were education expenses of Sh. Arnav Kasliwal leading to award of graduation from University of Pennsylvania, USA . The attention of the Bench was drawn to the Resolution passed by the assessee company on 07-05-2010 which is placed in paper book/page 24 wherein the Board of Directors approved incurring of education expenses of Sh. Arnav Vikas Kasliwal being paid to University of Pennsylvania,USA . It was submitted that the assessee is claiming that the A.O had made enquiries but the A.O did not make any enquiry as to the training expenses . It is submitted that said Sh Arnav Kasliwal is pursuing regular course being education pursued by Sh. Arnav Kasliwal at USA which leads to the award of graduation degree. It is submitted that the assessee is builder and there are no revenue from operations during the impugned year under consideration. It is also submitted by learned CIT-DR that what benefit will accrue to the assessee by this education of Sh. Arnav Kasliwal is not known as details of course content is not on records. The learned CIT-DR submitted that said Sh Arnav Kasliwal was born on 11-04-1992 and he was inducted as Director of the assessee company on 05-05-2010 when he was of 18 years of age . It was submitted that he was sent to USA for studies at the age of 18 years immediately after being inducted as Director. It was submitted that had it been training it would not have run for several years rather these are educational expenses incurred for pursuing regular graduation course. It was submitted that smoke screen is created to claim these education expenses as business expenses on education of Sh. Arnav Kasliwal which were personal expenses towards regular education of Sh. Arnav Kasliwal.

The learned CIT-DR relied upon the decision of Hon'ble Madhya Pradesh High Court in the case of Simran Farms Limited v. CIT reported in (2008) 300 ITR 270(MP HC) . The learned CIT-DR also relied upon decision of Hon'ble Supreme Court in the case of CIT v. Shree Manjunathesware Packing Products & Camphor Works (1998) 231 ITR 53(SC).

The Ld. AR in rejoinder submitted that the assessment order passed by the AO is a quasi judicial order and the learned Pr. CIT can not sit on the judgment of the AO. The ld Pr. CIT can not substitute his opinion over the view taken by the AO , if the view of the AO is permissible in law. It was submitted that the A.O had sufficient time to frame assessment u/s. 143(3) . Our attention was also drawn to page no. 21 of the paper book wherein details of training expenses as were sought by the A.O vide questionnaire enclosed with notice dated 27-01-2015 issued by the AO u/s. 142(1) . Our attention was also drawn to page no. 36 of the paper book wherein further details were called by the A.O w.r.t. there training expenses vide notices issued under section 142(1) dated 02.03.2015 which was duly replied by the assessee vide reply dated 05.03.2015 which is placed in paper book /page no. 37 , wherein it is stated at para 3 as under :

“3. With regard to point no. B of notice dated 02.03.2015 , with regard to your honour query regarding the training expenses incurred on the Mr. Arnav Kasliwal of Rs. 29,80,200/- , it is submitted that Mr. Arnav Kasliwal is the director of the assessee company. It is further submitted that copy of board resolution authorising the payment of training expenses is already submitted to your honour vide our submission date 18.02.2015 . It is submitted that Mr. Arnav Kasliwal had gone for training and completing the internal baccalaureate from the University of Pennsylvania. It is submitted that all the supporting documents relating to the training is submitted to your honour vide submission dated 18.02.2015 .It is submitted that this activity of providing training to the directors is well within the objects of the assessee company. It is also submitted that Directors Training expenses is an allowable expenditure U/s 37(1) of the Income Tax Act,1961.”

It was at this stage submitted by learned counsel for the assessee that Mr. Arnav Kasliwal was pursuing MBA course with University of Pennsylvania, USA for which education expenses were borne by the assessee company which were claimed as business expenses since May , 2010 . Our attention was also drawn to page 24/paper book wherein Resolution passed by the Board of Directors of the assessee company on 07.05.2010 is placed

wherein the education expenses of Shri Arnav Kasliwal to be incurred was being approved to be paid to University of Pennsylvania , USA by the assessee company is placed. Our attention was also drawn to page no. 5 of paper book wherein audited Profit and loss account of the assessee is placed wherein the income from operation is reflected as NIL.

5. We have considered rival contentions and perused material on record including orders of authorities below and cited case laws by rival parties. We have observed that the assessee is Builder & Developer. The assessee filed its return of income for A.Y. 2012-13 on 25.09.2012 declaring income of Rs. 13,37,679/-, the assessment u/s 143(3) was framed by learned assessing officer (hereinafter called "the AO") vide assessment order dated 27th March 2015 , wherein income assessed was Rs.52,60,730/- . Since the tax on book profit of Rs. 94,74,556/- u/s 115JB was more than the tax on the assessed income under normal provisions, the assessee was assessed by the AO u/s 115JB. The learned Pr. CIT on perusal of records as defined u/s. 263 , issued show cause notice dated 29.10.2015 u/s 263 to the assessee, as under:-

" Perusal of records shows that assessment for AY 2012-13 was completed u/s. 143(3) on 27.03.2015.

Records show that during the assessment proceedings A.O has not correctly verified the claimed expenses under the head "training expenses" so as to bring correct facts on record to examine the allowability of these expenses appointed for the period falling in the financial year relevant to the assessment year 2012-13 renders the orders passed by the A.O is erroneous and prejudicial to the interest of revenue."

The assessee was asked to explain by learned Pr. CIT as to why provisions of Section 263 be not invoked as due to improper verification of the expenses towards 'training expenses' by the AO has rendered the impugned assessment order u/s 143(3) dated 27-03-2015 as erroneous and prejudicial to the interest of Revenue which made it amenable to revisionary jurisdiction of learned Pr. CIT u/s. 263. Further notices were also issued by learned Pr. CIT u/s 263 on 17.11.2015 , 25-01-2017 and 20-03-2017 to the assessee. The assessee in reply to show cause notices submitted that proper enquiry was conducted by A.O wherein the AO has specifically called for the details of training expenses incurred by the assessee vide notice u/s 142(1) dated

27.01.2015(pb/19) and notice u/s 142(1) dated 02.03.2015 , which were duly replied for by the assessee vide letters dated 18.02.2015 and 05-03-2015 wherein complete details of training expenses along with Board Resolution dated 07-05-2010 approving such expenses , along with supporting bills issued by University of Pennsylvania, USA were submitted before the AO in the course of assessment proceedings u/s 143(3) r.w.s. 143(2), which are placed in paper book filed with the tribunal. It was claimed by the assessee that A.O has duly verified all the training expenses and allowed the same after making necessary enquires during the course of assessment proceedings u/s 143(3) r.w.s 143(2) . It was also claimed that assessee has incurred these training expenses during the AY 2012-13 for training of Director of assessee company Mr Arnav Kasliwal at University of Pennsylvania, USA and completing internal baccalaureate for University of Pennsylvania, USA . It was claimed that said expenses were business expenses allowable u/s. 37(1) of the Act as the said expenses were incurred for objects of the assessee company wholly and exclusively for the purposes of business of the assessee and hence the same should be allowed as business expenses. It was submitted that the assessment order u/s 143(3) was passed by the AO after making due enquiries, thus the same cannot be called as erroneous or prejudicial to the interest of revenue and hence the same could not be interfered by learned Pr. CIT by invoking revisionary powers u/s. 263 of the Act. The assessee had also submitted that during the course of proceedings u/s. 263 complete list of Directors including details of Sh. Arnav Kasliwal was also submitted. It was claimed that complete details were submitted before the A.O and since A.O has taken a view that these training expenses are related to the business of assessee and was allowed u/s. 37(1) as business expenses incurred wholly and purposes of the business of the assessee, the same cannot be interfered by learned Pr. CIT by invoking his extraordinary revisionary powers by initiating proceedings u/s. 263 . It is also claimed that it is not necessary that the AO shall mention everything in the assessment order passed u/s 143(3) as it is only when the AO does not agree with the contentions of the assessee and come to adverse findings leading to addition to the income , necessity arises to give detailed reasoning for adverse finding but where after enquiry AO is satisfied and proceeds not to make any additions to income, there arises no need to give reasons for acceptance of the assessee contentions and claims. We have

observed from the audited financial statements of the assessee company which are placed in paper book/page 1-12A that the assessee's income from operation during the previous year relevant to the impugned assessment year was 'NIL'. The assessee has only earned other income on account of interest on fixed deposit to the tune of Rs.1.47 crores during the previous year relevant to the impugned assessment year. The assessee company is holding investments to the tune of Rs.113.57 crores . The assessee is merely an investment company mainly holding securities of group companies . There are no employees employed by the assessee company and it has three Directors on the Board of which one is Sh Arnav Kasliwal . The said Shri Arnav Kasliwal was inducted as Director of the assessee company on 05.05.2010. On 07.05.2010 i.e. just two days post his induction as Director of the assessee company, Resolution was passed by Board of Directors of the assessee company approving education expenses of Shri Arnav Kasliwal , Director of the assessee company to be incurred by the assessee for his education at University of Pennsylvania, USA. The said Board Resolution passed by Board of Directors of the assessee company on 07-05-2010 is reproduced hereunder :

“ CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF HANUMESH REALTORS PVT. LTD HELD AT ITS REGISTERED OFFICE ON 7TH DAY OF MAY 2010 AT 10.00 AM

“RESOLVED that consent of the Board be and is given to the company to incur education expenses of Shri Arnav Vikas Kasliwal Director of the Company being paid to University of Pennysylvania by the company.

“RESOLVED FURTHER that copy of the resolution duly certified as True by the any one of the Directors is given to the Bank”

*CERTIFIED TRUE COPY
BY ORDER OF THE BOARD*

*SD/-
Director “*

On the strength of the above Board Resolution and invoices issued by University of Pennsylvania, USA , it is claimed by the assessee that the said expenses incurred on education of said newly appointed Director namely Sh. Arnav Kasliwal at University of Pennsylvania, USA are business expenses of the assessee company which are wholly and exclusively incurred for business of the assessee company satisfying the mandate of Section 37(1).

No appointment letter issued by assessee company in favour of said Mr Arnav Kasliwal is filed nor any agreement entered into by the assessee company with said Mr Arnav Kasliwal to reflect terms and conditions including job profile of his appointment are filed by the assessee . No document is placed on record to reflect what are the roles ,responsibilities and job profile of the said Director , Sh. Arnav Kasliwal. The period of appointment of said Sh. Arnav Kasliwal is also not on record whether it will extend beyond his period of education at University of Pennsylvania, USA is also not on record . It is also not on record as to the commitment/bond executed by said Mr Arnav Kasliwal, Director to serve the assessee company exclusively post his education for certain period of time so that the assessee company can recoup its expenses on his education and reap the benefits of his education for companies business post completion of his education with University of Pennsylvania, USA for certain number of years. Even business plans to develop the assessee company and role which Sh Arnav Kasliwal, Director after completion of his education in USA can play in developing the assessee company's business were submitted. No Vision statements/ projections of the future plans of the assessee company's business were placed. Even what happened post completion of education of said Sh. Arnav Kasliwal in USA was not on record as to whether he came back to India and joined the assessee company to play a larger role to enhance business of the assessee company was not put on record by the assessee. On perusal of the audited financial statements, it could not be found that any remuneration was paid to the said Director , Sh Arnav Kasliwal during the year under consideration as no salary is found debited in the audited P&L account even Directors fee paid for attending board meetings also did not found mentioned in the Profit and Loss Account. It is also not on record as to what reimbursements/damages which the assessee will be entitled to recover from said Mr Arnav Kasliwal in case he breaches his continuation to serve the assessee company post completion of his education with University of Pennsylvania, USA . No agreement entered into by the assessee company with Mr Arnav Kasliwal regarding his term of appointment as well likely benefit to arise to the assessee from these education expenses paid by the assessee company to University of Pennsylvania, USA for education of Sh Arnav Kasliwal are brought on record. It is not shown by the assessee what are the roles , responsibility and job profile of Sh Arnav Kasliwal being

performed for the assessee company and on what terms and conditions he was brought in as Director of the assessee company .Even course content of the course being studied by said Mr Arnav Kasliwal with University of Pennsylvania , USA and its correlation with the assessee's business was not brought on record by the assessee before the AO. It is only before the Bench at the fag-end of the hearing , it is brought on record by ld counsel for the assessee that said Mr Arnav Kasliwal was persuing MBA course and that too through the statement made by learned counsel for the assessee. The said expenses of Rs. 29,80,200/- were reflected by the assessee under the head 'training expenses' in the audited financial statements as also before the AO it was claimed that these expenses are towards training of the said Director , but these expenses are pertaining to the formal education of Shri Arnav Kasliwal, Director which will lead to the award of MBA degree from USA in favour of Sh. Arnav Kasliwal on the successful completion of education programme . The assessee has used the nomenclature of these head of expenses as 'training expenses' in the books of accounts and audited financial statements which in our opinion based on material on record is not a correct description of these expenses used by the assessee , rather these are the education expenses incurred by the assessee company which will lead to award of formal MBA degree in favour of Shri Arnav Kasliwal by University of Pennsylvania, USA. The dictionary meaning of both the words viz. Education and training are different, wherein 'Education' is defined as the system of teaching people, usually at a school or college , while dictionary meaning of training is the process of learning the skills that is needed for a particular job or activity. Thus, as could be seen there is a vast difference in the meaning of both , while education is more concerned with formal education at school or college leading to award of degree etc in favour of pupil which permanently enhances the intellectual trait of a person , while training is for improving skills related to a job. In this case , the expenses were incurred for formal education leading to formal degree being MBA awarded in favour of Mr Arnav Kasliwal, the expenses were incurred by the assessee which definitely required greater scrutiny by the AO before allowing the same as business expenses of the assessee and to see that mandate of Section 37(1) is satisfied . Since, relevant and tangible material was not placed before the AO by the assessee during the course of assessment proceedings u/s 143(3) r.w.s. 143(2), the opinion formed by the AO could not

have been proper in the absence of relevant material on record as the AO could not have made proper verifications. Even , the course content of the said course was not produced before the AO despite being asked by the AO during the course of assessment proceedings u/s 143(3) r.w.s. 143(2). Thus, in the absence of relevant and vital information as detailed above , the AO could not have made proper verifications which ought to have been made to have come to the conclusion that these are business expenses allowable u/s 37(1) being incurred wholly and exclusively for the purposes of business of the assessee, which has certainly rendered AO assessment order as erroneous as well prejudicial to the interest of Revenue amenable to interference by learned Pr. CIT by invocation of revisionary powers u/s 263 as the said expenses stood allowed as business expenses despite being absence of relevant and tangible material on record before the AO. The enquiry conducted by the A.O was clearly vitiated due to absence of such crucial and vital information on record in the absence of which and based on material which was on record , the AO could not have formed an opinion and have come to the conclusion that these are business expenses incurred wholly and exclusively for the purposes of business satisfying the mandate of Section 37(1) , making assessment order being erroneous and prejudicial to the interest of Revenue liable to revisionary powers u/s 263 by learned Pr. CIT. In our considered view, the learned Pr. CIT has rightly invoked the provision of Section 263 of the Act vide orders dated 30-03-2017 by setting aside the assessment order dated 27-03-2015 passed by the AO u/s 143(3) and directing AO to pass denovo assessment order after verifications as per directions of learned Pr. CIT u/s 263.

We will now deal with remaining contentions of the assessee . The assessee has claimed that in the AY 2011-12 , the Revenue has allowed these expenses as business expenses however, orders were passed u/s 201(1) and 201(1A) for AY 2011-12 declaring assessee to be an assessee in default for non deduction of tax at source u/s 195 on these payments towards training expenses being sent to University of Pennsylvania, USA as the payments were considered to be fees for technical services rendered by a foreign entity. Every assessment year is an independent assessment year and principles of Res judicata is not applicable to the income-tax proceedings although principles of consistency has to be followed. In the impugned year, the

proceedings u/s 263 are invoked by learned Pr.CIT on the grounds that the AO has not done proper verification before allowing these expenses paid to University of Pennsylvania, USA as business expenses during assessment proceedings u/s 143(3) r.w.s. 143(2). The proceedings u/s 143(3) r.w.s. 143(2) are proceedings to compute income of the assessee as per scheme of the 1961 Act, while proceedings u/s 201(1) and 201(1A) are proceedings to determine default w.r.t. deduction and payment of tax at source and hence both are independent proceedings and not mutually exclusive. Merely because in one year proceedings were initiated u/s 201(1) and 201(1A) does not debar scrutiny proceedings u/s 143(3) r.w.s. 143(2) for other years as these are not mutually exclusive proceedings.

The contention is also raised by learned counsel for the assessee that since assessee became liable to pay tax u/s 115JB as book profit was higher as per scheme of the 1961 Act, there is no loss to Revenue and hence proceedings u/s 263 cannot be invoked in the absence of any loss to Revenue. This argument of the learned counsel is fallacious as in case the assessee becomes liable to pay tax u/s 115JB rather than on the income computed under normal provisions of the 1961 Act, then the assessee becomes eligible for carry forward and set off of tax credit against future taxes as per scheme and mandate of provisions of Section 115JAA of the 1961 Act. Thus, to contend that no loss of Revenue has occurred to the Department as the assessee got taxed u/s 115JB is not correct in view of eligibility to carry forward tax credit to be knocked off against future taxes as per scheme of the 1961 Act which will certainly cause loss of Revenue to the Department in years to come if the said education expenses are not disallowed and brought to tax, which of course the AO will now decide after due verifications as is mandated by learned Pr. CIT vide orders dated 30-03-2017 u/s 263.

The assessee has relied upon the decision of Hon'ble Supreme Court in the case of Malabar Industrial Company Limited v. CIT (supra), in this case Hon'ble Supreme Court has held that in order to invoke provisions of Section 263, the assessment order of the AO ought to be erroneous so far as it is prejudicial to the interest of Revenue. The twin conditions have to be satisfied simultaneously before invoking powers u/s 263. If the AO has duly applied his mind and adopted one of the permissible views, learned CIT

cannot invoke powers u/s 263 to substitute his views unless the view of the AO is unsustainable in law. In the instant case before us, the material placed by the assessee before the AO was not sufficient to come to the conclusion that the expenses incurred by the assessee on education of newly inducted Director were for the business purposes allowable u/s 37(1). The view which was adopted by the AO based on material available on record could not have been adopted by the AO as material was not sufficient to come to such conclusion as no proper enquiry / verifications were conducted by the AO making assessment order erroneous so far as prejudicial to the interest of Revenue amenable to exercise of revisionary powers by learned Pr. CIT u/s 263. Similar is the case relied upon by the assessee of Hon'ble Bombay High Court in the case of Gabriel India Limited(supra), wherein Lordships have held that there must be material before the learned CIT to come to conclusion that the assessment order passed by the AO was erroneous in so far as it is prejudicial to the interest of the Revenue. It must be an order which is not in accordance with the law or which has been passed by the AO without making any enquiry in undue haste. We are of the view in the instant case circumstances exists for invocation of revisionary powers by the learned Pr. CIT u/s 263 as the AO could not have reached to the conclusion based on the material on record during assessment proceedings that these expenses incurred by the assessee were business expenses incurred wholly and exclusively for the purposes of business of the assessee company satisfying the mandate of Section 37(1) as unfortunately there are large number of unanswered question which are absolutely necessary to arrive at decision that these expenses satisfy the mandate of Section 37(1), which are listed by us above. The AO even did not have course content with him before arriving at the conclusion that these are business expenses. Thus, there was complete lack of application of mind by the AO before allowing these education expenses as business expenses of the assessee u/s 37(1). In any case, the assessee has also used wrong description of these expenses being training expenses in its audited financial statements as well in the replies submitted before the AO, while these were education expenses incurred for doing MBA at University of Pennsylvania, USA leading to award of formal degree of MBA and we have already seen that there is a vast difference between the two. Moreover, explanation 2 to Section 263 is in place now with the amendment brought in

the Statute by Finance Act, 2015 w.e.f. 01-06-2015 . We have also carefully gone through other case laws cited before us as well written submissions filed by the assessee in response to the learned CIT-DR relying on certain case laws. We have also carefully gone through case laws cited by learned CIT-DR before arriving at the decision.

Thus, based on our above detailed discussions and reasoning in preceding para's , we hold that we have not find any infirmity in the order dated 30-03-2017 passed by learned Pr. CIT u/s 263, which we sustain/affirm. We order accordingly.

6. In the result, appeal of the assessee in ITA no. 3475/Mum/2017 for the AY 2012-13 is dismissed

Order pronounced in the open court on 04.12.2017

आदेश की घोषणा खुले न्यायालय में दिनांक: 04.12.2017 को की गई ।

Sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 04.12.2017

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench, E
6. Master File

// Tue copy//

BY ORDER
DY/ASSTT. REGISTRAR
ITAT, MUMBAI