

**आयकर अपीलीय अधिकरण सूरत न्यायपीठ, सूरत**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT**  
**BENCH, SURAT**

**श्री सी एम गर्ग, न्यायिक सदस्य एवं श्री ओ पी मीना, लेखा सदस्य के समक्ष**  
**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER AND**  
**SHRI O.P.MEENA, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No's.883 to 885/Ahd/2017/SRT**  
**निर्धारण वर्ष / Assessment Year: 2007-08 to 2009-10**

Gautam Ratilal Desai, A/9032, Sunflower Apartments, Tithal Road, Valsad – 396 001. <b>[PAN: AAGPL 9545 B]</b>	<b>Vs.</b>	Principal Commissioner of Income Tax, Valsad
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>
अपीलार्थी की ओर से/ Assessee by	:	Shri Rajesh M.Upadhyay – AR
प्रत्यर्थी की ओर से /Revenue by	:	Shri O.P.Singh –CIT-DR
सुनवाई की तारीख/Date of Hearing	:	12-12-2018
घोषणा की तारीख /Date of Pronouncement	:	12-12-2018

**आदेश /ORDER**

**PER C.M.GARG, JUDICIAL MEMBER:**

These three appeal filed by the Assessee against the order of Principal Commissioner of Income Tax, Valsad('CIT(A)' for short) all dated 27.03.2017 for the Assessment Years(A.Y) 2007-08, 2008-09 and 2009-10.

2. The Id.Assessee's Representative submitted that the assessee does not want to applications seeking admission of additional ground in

all three appeals, hence the same are dismissed as not pressed. Both the parties have also agreed to that the facts and circumstances and sole ground agitated by the assessee appellant in all three appeals are quite identical and similar. The Id.CIT-DR also agreed to the request of Id.AR that the appeal for A.Y. 2009-10 may be taken as lead case to decide the appeals. The grounds raised by the assessee in this appeal reads as follows:

*"Lr.CIT, Valsad has erred in law and on facts to set a side assessment order of the A.O. dtd. 31/3/2015 by invoking provisions of Section 263 of the Act on the ground that A.O. has passed order u/s 143(3) r.w.s. 147 of the Act, without making any inquiries."*

3. We have heard the arguments of both sides and carefully perused the relevant material placed on the record of the Tribunal. The Id.Assessee's Representative (AR) submitted that the original re-assessment order u/s.143(3) r.w.s. 147 was passed on 31.03.2015 and the CIT(A) allowed the appeal on legal ground vide order dated 19.05.2016 and thereafter the Id.PCIT issued notice u/s.263 of the Act on 10.03.2017 . Drawing our attention towards assessee's paper book spread over 64 pages the Id.AR submitted that during the re-assessment proceedings u/s.147 of the Act the AO recorded reasons by alleging that there are huge cash deposits of Rs.8,94,500/- i.e. Rs.7,94,500/- in Indus Ind Bank Rs.1,00,000/- in UCO Bank in the name of assessee. The Id.AR

further submitted that the AO, during re-assessment proceedings issued notice u/s.142(1) of the Act dated 02.01.2015 along with questionnaire wherein Question No.4 there was a specific query regarding bank statement of Indus Ind Bank Account deposits and in Question No.13 & 14 there was a specific query regarding two UCO Bank Accounts Deposits in the name of assessee and his firm M/s.S.G.Packaging and thus the AO made enquiries in this regard. The assessee submitted reply to this notice and submitted all three required bank statements which were verified and examined by the AO and after such exercise the same were accepted without making any addition in this regard. The Id.AR drew our attention towards pages 11 to 14 of assessee's paper book and other relevant papers which shows that there was a sufficient enquiry by the AO on the issue deposits in the said three bank accounts with Indus Ind Bank and UCO Bank.

4. Further drawing our attention towards copy of the notice u/s.263 of the Act dated 10.03.2017 placed at pages 39 & 40 of assessee's paper book submitted that the Id.PCIT has agitated the issue of said cash deposits showing his intention to invoke provisions of section 263 of the Act by wrongly alleging that the AO has not carried out any requisite enquiries in respect of the source of cash deposit of Rs.8,94,500/- which

is quite incorrect and perverse, therefore, impugned notice and order may kindly be quashed as the assessment order in question was neither erroneous nor prejudicial to the interest of Revenue.

5. Replying to the above, the Id.CIT-DR submitted that the provision section 263 of the Act may be invoked if the AO has not made any enquiry or the enquiry made by him is not sufficient and adequate as per requirement of adjudication of the issue or controversy. The Id.DR further submitted that there is no sufficient enquiry by the AO regarding cash deposits and its source, therefore, the order has to be held as erroneous and prejudicial to the interest of the Revenue.

6. On careful consideration of above rival submissions from the copy of the notice u/s.263 of the Act we observe that the Id.PCIT in para 4 of the notice has alleged that the AO has not carried any requisite inquiries in respect of the source of cash deposits of Rs.8,94,500/- in the bank accounts maintained with IndusInd Bank Valsad and UC O Bank, Valsad. He has accepted the assessee's explanation that the total cash inflows into the said account have come out of, among other things cash withdrawn during preceding months/years amounting to Rs.10,58,922/-. These allegations of the Id.PCIT are not correct and justified, keeping in

view the notice issued by the AO during re-assessment proceeding u/s.142(1) of the Act along with questionnaire notice dated 02.01.2015 which was replied by the assessee submitting the copies of the all three Bank Statements and in this situation it cannot be said that the AO has not made any enquiry on the issue of cash deposits and its source. As we observe from the notice u/s.263 of the Act itself that the Id.PCIT has noted the fact that the assessee explained that the total cash inflow in two said accounts have come out among other things and cash withdrawn during the preceding months / years amounting to Rs.,10,58,922/- which is higher than the amount of impugned cash deposits. Looking into these facts and circumstances along with explanation of the assessee the AO accepted the stand and framed the re-assessment order without making any addition on account of cash deposits to these Bank Accounts and conclusion arrived by him seems to be just and proper after reasonable and sufficient enquiry. Therefore, the very basis of the invoking provision of section 263 of the Act taken by the Id.PCIT that the AO has not made requisite enquiry in respect of source of cash deposit of Rs.8,94,500/- has no legs to stand and the same is not only perverse but contrary to record. Therefore, in our humble understanding of requirement of section

263 of the Act the revision of assessment order under this provision is not permissible.

7. At this juncture, we take respectful provisions of the decision of Hon'ble Jurisdictional High Court of Gujarat in the case of CIT vs. R.K.Construction & Co. 313 ITR 65 (Guj), as relied by the Id.AR, wherein their lordship held that when the view taken by the AO is possible view. Revision cannot be directed for taking different better view. Each and every mistake cannot be rectifiable u/s 263 in view of Apex Court decision on Malbar Industries Co. Ltd. Respectfully following the ratio of this decision we hold that the AO in the present case has made sufficient enquiry on account of cash deposits to the bank accounts Indus Ind Bank and UCO Bank which were replied by the assessee by submitting copies of the bank statement and other relevant documents and statement therefore, it is not a case of no enquiry or insufficient enquiry or inadequate enquiry and thus invoking of provision of section 263 of the Act is not permissible and thus we quash the notice and impugned order of Id.PCIT u/s. 263 of the Act. Accordingly, sole ground of assessee for A.Y. 2009-10 is allowed.

8. Since facts and circumstances of A.Y. 2009-10 are identical with the facts and circumstances of other two appeals pertaining to A.Y. 2007-08 and 2008-09, therefore, our conclusion drawn for A.Y. 2009-10 quashing the notice and impugned order u/s.263 of the Act would apply *mutatis-mutandis* to these two appeals also. Accordingly, sole ground of assessee in these two appeals is also allowed and notices and impugned orders u/s.263 of the Act for A.Y. 2007-08 and 2008-09 are also quashed.

9. In the result, all three appeals of the assessee are allowed.

*Order pronounced in the open court on this day of 12<sup>th</sup> December, 2018.*

Sd/-  
(ओ पी मीना)  
(O.P.MEENA)

**लेखा सदस्य/Accountant Member**

Sd/-  
) सी एम गर्ग)  
(C.M.GARG)

**न्यायिक सदस्य/Judicial Member**

सूरत / Surat; दिनांक Dated : 12<sup>th</sup> December, 2018 / S.Gangadhara Rao,Sr.PS

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

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

आदेशानुसार/ BY ORDER,  
सत्यापित प्रति //True Copy//

सहायक पन्जीकर / **Assistant Registrar**  
आयकर अपीलीय अधिकरण, सूरत / ITAT, Surat