

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

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER
AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No.839/Ahd/2015

&

आयकर अपील सं./ ITA No.3462/Ahd/2016

निर्धारण वर्ष/Assessment Year: 2010-11

Dipal Piyush Palkhiwala, 27, Rivera Greens, Gokuldham Sarkhej-Sanand Road, Sanathal, Ahmedabad-382210	Vs	ITO Ward-4(4) 1 st Floor, Navjeevan Trust Building Ahmedabad-380014
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Appellant by :	Shri Aseem Thakkar, AR
Revenue by :	Smt. Rita Dokania, CIT- DR

सुनवाई की तारीख/Date of Hearing : 16 /09/2019

घोषणा की तारीख /Date of Pronouncement: 18/09/2019

आदेश/O R D E R

PER SHRI MANISH BORAD, A.M.:

The above captioned appeals filed at the instance of assessee pertaining to Assessment Year 2010-11 are directed against the orders of Ld. Commissioner of Income Tax (Appeals)-2 (in short 'Ld.CIT(A)'], Ahmedabad dated 04.02.2015 & 10.10.2016 which are arising out of the order u/s 143(3) r.w.s 263 of the Act, 1961 dated 01.03.2013 & 21.07.2015 respectively framed by ITO, Ahmedabad.

2. The assessee has raised following grounds of appeal in ITA No.839/Ahd/2015.

“1. On the facts and in the circumstances of the case, the Ld. CIT erred in assuming his jurisdiction u/s 263 of the I.T. Act, whereas the mandatory conditions for assuming such jurisdiction are totally absent, with the result that the impugned order passed u/s 263 is bad in law.

2. On the facts and in the circumstances of the case, the Ld. CIT erred in arriving at a conclusion without any basis whatsoever to the effect that the assessment order passed by the Assessing Officer was erroneous as well as prejudicial to the interest of the revenue.

3. On the facts and in the circumstances of the case, the Ld. CIT erred in cancelling the assessment order passed by the Assessing Officer on officer to make a fresh assessment.

4. On the facts and in the circumstances of the case, the order passed by the Ld. CIT is bad in law since proper opportunity of being heard is not given to the appellant before passing the impugned order.

5. The appellant graves leave to add, alter, amend and/or withdraw any ground or ground of appeal either before or during the course of hearing of the appeal.

3. The assessee has raised following grounds of appeal in ITA No.3462/Ahd/2016

“1. In the facts and in the circumstances of the appellant’s case, the Ld. CIT(A) grossly erred in upholding the assessment order passed by the Ld. AO under section 143(3) r.w.s. 263 of the Act.

2. In law and in the facts and circumstances of the appellant’s case, the Ld. CIT(A) has grossly erred confirming the addition of Rs.23,00,000/- as capital gains in the hands of the appellant.

3. In law and in the facts and circumstances of the appellant's case, the Ld. CIT(A) has grossly erred in confirming the addition of Rs.13,60,000/- representing the amount of cash deposits made by the appellant during the AY under consideration in spite of the fact that the said deposits were made out of the withdrawals made by the appellant during the preceding previous years and hence the source of the deposits was duly explained.

4. In law and in facts and circumstances of the appellant's case, the Ld. CIT(A) grossly erred in holding that additional evidences in form of cash book cannot be admitted as same was not supported by the application under 46A whereas appellant has already submitted cash book along with letter date 31.03.2015 file on 13.04.2015 which was much before finalization of Assessment Order & no application under Rule 46A is called for as no new additional evidences was submitted before CIT(A).

5. The appellant crave leave to add, to alter, to amend and /or withdraw any of the grounds or ground of appeal either before or at the time of appeal hearing.

4. We will first take up ITANo.839/Ahd/2015 challenging the order u/s 263 of the Act framed by Ld. CIT.

5. Brief facts as culled out from the records are that the assessee is an individual having income from salary, share of profit and interest. Income of Rs.50,60,860/- declared in the income tax return filed on 31.10.2010. Case selected for scrutiny followed by serving of notices u/s 143(3) & 142(1) of the Act along with issuance of detailed questionnaire. After considering the submissions filed by the assessee assessment

completed u/s 143(3) of the Act on 01.03.2013, accepting the returned income filed by the assessee.

6. Subsequently, Ld. CIT invoked the provisions of section 263 of the Act and held that the order u/s 143(3) of the Act, dated 01.03.2013 is erroneous and prejudicial to the interest of the revenue, as the assessing officer failed to the following two issues:

- (i) The AO has not made enquiry or called for any explanation in respect of income capital gain alleged to have been earned from sale of jointly owned property situate at Ahmedabad for a sale consideration of Rs.23,00,000/-.
- (ii) Frequent cash deposit of Rs.13,60,000/- in assessee's personal bank account with bank of Baroda were not examined by the Ld. AO.

7. Aggrieved assessee is in appeal before the Tribunal challenging the order u/s 263 of the Act dated 04.02.2015 contending that the Ld. CIT wrongly assumed jurisdiction and impugned order passed u/s 263 is bad in law and liable to be quashed.

8. Ld. counsel for the assessee referring to the paper book running from pages no. 1 to 125 dated 30.11.2016 submitted that sale consideration of Rs.23,00,000/- was received in respect of sale of immovable property at Nandakunj Co-operative Housing Society at Ahmedabad. This property was

purchased during the F.Y. 2000-01 in joint name of assessee's father, assessee's mother, assessee's brother and assessee himself. During the year 2007 there were family dispute as a result assessee shifted to another house. There were no talking terms between the assessee and his father. In order to relinquish his rights in the investments made by his father in the joint names, an affidavit was executed on 25.11.20017, clearly stating on oath that the assessee relinquishes all his rights in favour of his parents and information about the alleged property was also mentioned in this affidavit. He also submitted that power of attorney was executed at the time when family was living together. The assessee had executed his power of attorney in favour of his father Shri Piyush Palkhiwala who undertakes all the transactions on behalf of assessee. The alleged transaction for sale of property was not in the knowledge of the assessee. The conveyance deed was not signed by the assessee. Total consideration was received by his father which was initially credited in the joint bank account held in the name of family members. It was immediately transferred to the individual bank account of assessee's father. Therefore, capital gain if any arising in this transaction from sale of property is taxable in the hands of his father and mother who were enjoying the rights in the property. The assessee is not liable for any capital gain tax.

9. Ld. counsel for the assessee further submitted that Ld. CIT grossly erred in observing that the conveyance deed was signed by the assessee which is not correct. It was also submitted that

during the course of assessment proceedings detailed questionnaire was issued by the Ld. AO calling various information including the capital gains. All the details were filed along with the bank statements and the copy of conveyance deed. Information was also given that the assessee has not received any sale consideration. On the basis of details filed by the assessee which were found to be satisfactory by the Ld. AO, assessment was completed. Therefore, it is not the case of no inquiry at the end of the assessing officer.

10. With regard to the observation of Ld. CIT that no inquiry was conducted about the cash deposits of Rs.13,60,000/- made in the bank account of the assessee, it was submitted that the assessee is salaried employee and he is regularly earning income from last many years. Copies of bank account were filed which shows withdrawal of cash on various dates in past which were sufficient to cover the alleged cash deposits and in these details were examined by the Ld. AO.

11. In support of his contention Ld. counsel for the assessee relied on the judgment of Hon'ble Jurisdictional High Court in the case of CIT vs. Kamal Galani (2018) 95 taxmann.com 261(Gujarat). Reliance was also placed on another judgment of Hon'ble Jurisdictional High Court in the case of Pr. CIT vs. Shree Gayatri Associates (2019) 105 taxmann.com 30 (Gujarat) which was decided in favour of the assessee and the revenue's Special Leave Petition against this order was dismissed by the

Hon'ble Supreme Court of India vide order dated 01.03.2019 reported at (2019)106 taxmann.com 31 (SC).

12. Per contra Ld. Departmental Representative (DR) vehemently argued supporting the order of Ld. CIT passed u/s 263 of the Act. She also submitted that the affidavit referred by the assessee was never placed before the Ld. AO. Copy of power of attorney executed by the assessee in favour of his father was also not placed before Ld. AO. The Ld. AO has also not conducted any inquiry about the capital gain offered by the assessee's father and has also not called for the complete chain of documents including the affidavit, proof of relinquishment of rights. Ld. DR also submitted that there was no mention about the alleged transactions of capital gain in the body of assessment order which shows that the Ld. AO has not conducted the inquiry of the alleged transactions. In support of this contention reliance was also placed on following judgments:

1. Glass Lines Equipments Co. Ltd. vs. CIT (2001) 119 taxman 813 (Guj) High Court of Gujarat
2. Babulal S. Solanki vs. ITO in ITANo.3493/Ahd/2016 ITAT, Ahmedabad
3. M/s Gayatri Enterprise vs. ITO in ITANo.825/Ahd/2016 ITAT, Ahmedabad
4. M/s Third Eye Enterprise vs. Pr. CIT-3 in ITA No.1214/Ahd/2017, ITAT, Ahmedabad

13. We have heard rival contentions and perused the record placed before us and carefully gone through judgments referred and relied by the both the parties. The sole grievance of the assessee in this appeal is challenging the order passed u/s 263 of the Act in which Ld. CIT has held that the order of the Ld. AO u/s 143(3) of the Act dated 01.03.2013 is erroneous and prejudicial to the interest of revenue as sufficient inquiry was not conducted with regard to the sale consideration of Rs.23,00,000/- received from sale of property held in joint name and about the cash deposits of Rs.13,60,000/- in the bank account held in the name of assessee.

14. Before proceeding to adjudicate the issue we will like to go through the provision of u/s 263 of the Act which reads as follows:

263. (1) *The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.*

Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

(a) *an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include—*

(i) *an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under [section 144A](#);*

(ii) *an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or*

directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under [section 120](#);

- (b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner;
- (c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or] Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

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 with 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.

(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to [section 129](#) and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

15. On a bare perusal of the sub section-1 of section 263 of the Act, would reveal that powers of revision granted to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned Commissioner was not required the assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show cause notice pointing out the reasons for the formation of his belief that action u/s 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the 4th compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order. He may set aside the order and direct the Assessing Officer to pass a fresh order. At this stage, before we deem it pertinent to take

note of the fundamental tests propounded in various judgments relevant for judging the action of the CIT taken u/s 263. The ITAT in the case of Mrs. Khatiza S. Oomerbhoy Vs. ITO, Mumbai, 101 TTJ 1095, analyzed in detail various authoritative pronouncements including the decision of Hon'ble Supreme Court in the case of Malabar Industries 243 ITR 83 and has propounded the following broader principle to judge the action of CIT taken under [section 263](#).

(i) The CIT must record satisfaction that the order of the AO is erroneous and prejudicial to the interest of the Revenue. Both the conditions must be fulfilled.

(ii) Sec. 263 cannot be invoked to correct each and every type of mistake or error committed by the AO and it was only when an order is erroneous that the section will be attracted.

(iii) An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.

(iv) If the order is passed without application of mind, such order will fall under the category of erroneous order.

(v) Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the AO has adopted one of the courses permissible under law or where two views are possible and the AO has taken one view with which the CIT does not agree. It cannot be treated as an erroneous order, unless the view taken by the AO is unsustainable under law

(vi) If while making the assessment, the AO examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determine the income, the CIT, while exercising his power under s 263 is not permitted to substitute his estimate of income in place of the income estimated by the AO.

(vii) The AO exercises quasi-judicial power vested in his and if he exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous simply because the CIT does not fee stratified with the conclusion.

(viii) The CIT, before exercising his jurisdiction under [s. 263](#) must have material on record to arrive at a satisfaction.

(ix) If the AO has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the AO allows the claim on being satisfied with the explanation of the assessee, the decision of the AO cannot be held to be erroneous simply because in his ITA No.47/Rjt/2011 and 701/Rjt/2014 order he does not make an elaborate discussion in that regard.

16. Apart from the above principles, we deem it appropriate to make reference to the decision of the Hon'ble Delhi High Court in the case of [CIT vs. Sun Beam Auto](#) reported in 227 CTR 113 and [Gee Vee Enterprises Ltd vs. Addl. Commissioner of Income](#)

Tax (99 ITR 375). In the case of Sun Beam Auto, the Hon'ble High Court has pointed out a distinction between lack of inquiry and inadequate inquiry. If there is a lack of enquiry, then the assessment order can be branded as erroneous. The following observations of the Hon'ble Delhi High Court are worth to note:

"12. We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income-tax under [section 263](#) of the Income-tax Act. As noted above, the submission of learned counsel for the revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under [section 263](#) of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry", that such a course of action would be open".

17. In the case of [Gee Vee Enterprise vs. Commissioner of Income Tax](#) reported in 99 ITR page 375, the Hon'ble court has expounded the approach of ld. Assessing Officer while passing assessment order. The observation of the Hon'ble court on pages 386 of journal read as under:-

"... it is not necessary for the Commissioner to make further inquiries before cancelling the assessment order of the Income-tax Officer. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the case the Income-tax Officer should have made further inquiries before accepting the statements made by the assessee in his return.

The reason is obvious. The position and function of the Income-tax Officer is very diffident from that of a civil court. The statement made in a pleading proved by the minimum amount of evidence may be adopted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of the return which is apparently in order but called for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry... It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word 'erroneous' in [section 263](#) includes the failure to make such an enquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct."

18. Hon'ble Supreme Court in the case of [Malabar Industrial Co. Ltd. vs. CIT \(2000\) 243 ITR 83](#) has laid down a principal

which is very irrelevant to adjudicate the issue relating to issue u/s 263 of the Act which reads that “*when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two view are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as a erroneous order prejudicial to the interest of the revenue unless the view taken by the ITO is unsustainable*”.

19. Now facts which needs to be examined are whether the alleged transaction referred by the Ld. CIT in his order u/s 263 of the Act had come for consideration before the Ld. AO or not.

20. As regards the first transaction for the sale consideration of Rs.23,00,000/- received from sale of immovable property jointly hold by the assessee’s family members including his father, mother, brother and assessee himself and the disclosure of capital gain arising there from, we find that after the selection of the assessee’s case for scrutiny proceedings notice u/s 142(1) of the Act was issued on 18.06.2012 placed in paper book pages 15 to 16. In this notices specific information has been asked at point no.4 which reads;

“Please give details of movable (including vehicles, fixed deposits, investments in shares/stock etc.) and immovable property held by you, either held jointly or in single name. Also give the details of any movable and/or immovable property were purchased during the year and also give the sources of such purchases.”

21. At point No.7 Ld. AO has asked to *“furnish the complete details of capital gain if any”*.

22. Now we have to see whether the assessee has given specific reply to the above question. We find that in reply dated 19.01.2013 placed at page 17 of the paper book.

23. At point No.4 the assessee has submitted that *“we did not have any immovable property during the F.Y.2009-10 and also did not purchased any immovable property during the F.Y.2009-10”*.

24. In point no.6 in the very same letter assessee gave information about the capital gain which reads: *“During the financial year 2009-10, my father has sold one property which was jointly held with my mother and me. I have some family dispute with my father and he sold this property without informing me and I have not received any consideration from sale of this property. Please find attached sale deed and copy of bank account with HDFC bank of my father and Bank of Baroda which is joint account of me, my father and my mother”*.

25. We find that against specific query raised by the Ld. AO assessee has duly replied with the documentary evidences about the alleged transaction and informing that he has not received any consideration from the sale of property. The fact that he has a dispute with his family is also mentioned.

26. Now on the basis of these informations Ld. AO was satisfied and find the reply of the assessee to be genuine and did not

raise further inquiry into the matter. Now root cause of this appeal lies on this point. That why the Ld. AO did not inquired further about the alleged transaction and its genuineness. It is not a case that no inquiry was done but it is a case that incomplete inquiry was done. Whether an inquiry was incomplete or complete depends on the person who is examining the transactions. It may be complete for one but may be incomplete for another. As per the Ld. counsel for the assessee sufficient inquiry was conducted and all the information relevant thereto was supplied. On the other hand, Ld DR has submitted that the Ld.AO has not inquired about various documents which could prove that the assessee has relinquished his rights in the property.

27. We observe that the Hon'ble Jurisdictional High Court in the case of Kamal Galani have adjudicated similar type of issue referring to various judgments. The relevant abstract of this judgment of Hon'ble jurisdictional High Court in our view is quite relevant to adjudicate the issue before us.

15. The scope of the Commissioner's power of revision under [section 263](#) has been a matter of judicial consideration on various occasions. In case of [Commissioner of Income Tax vs. Sunbeam Auto Ltd.](#) reported in 332 ITR 167 Division Bench of Delhi High Court observed as under:

"12. There are judgements galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction etc. Therefore, one has to see from the record as to whether there was application of mind

before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate, that would not be itself, give occasion to the Commissioner to pass orders under [section 263](#) of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry". that such a course of action would be open. In *Gabriel India Ltd's case (supra)*, law on this aspect was discussed in the following manner:... ..]

16. In case of [Income Tax Officer vs. DG Housing Projects Ltd.](#) reported in 343 ITR 329, Delhi High Court observed that a finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction under [section 263](#) of the Act. The matter cannot be remitted for a fresh decision to the Assessing Officer to conduct further enquiries without such a finding.

17. Full Bench of Gauhati High Court in case of [Commissioner of Income Tax vs. Jawahar Bhattacharjee C/TAXAP/1376/2007 JUDGMENT](#) reported in 341 ITR 434 held that not holding such inquiry as is normal and not applying mind to relevant material in making assessment by the Assessing Officer would be an erroneous assessment warranting exercise of revisional jurisdiction. It was held as under:

"23. Accordingly, we hold that *Daga Entrade P. Ltd [2010] 327 ITR 467 (Gauhati)* lays down correct law and the same is not in conflict with the earlier order of this court in *Rajendra Singh [1990] 79 STC 10 (Gauhati)*. Jurisdiction under [section 263](#) can be exercised whenever it is found that the order of assessment was erroneous and prejudicial to the interest of the Revenue. Cases of assessment order passed on wrong assumption of facts, or incorrect application of law, without due application of mind or without following the principles of natural justice are not beyond the scope of [section 263](#) of the Act. "

18. In case of *Commissioner of Income Tax vs. Arvind Jewellers* reported in 259 ITR 502 Division Bench of this Court referring to the judgement of Supreme Court in case of *Malabar Industrial Co. Ltd vs. CIT* reported in [243 ITR 83 observed as under:

"6. From the above observations made by the Supreme Court, it is clear that the provisions of *Section 263* cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted and incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. The Supreme Court has also made it clear that the phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing C/TAXAP/1376/2007 JUDGMENT Officer and that 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. It was further emphatically stated that when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."

19. In the context of present case, applying the ratio of the above noted decision, the scope of the Commissioner's power of revision u/s. 263 of the Act would be, when the Assessing Officer conducts no inquiry or proper inquiries or does not apply his mind to the legal issues arising out of the material on record, the revisional powers would be available. On the other hand, if the Assessing Officer has conducted proper inquiries and come to legal conclusions which are plausible, the Commissioner would not be justified in invoking revisional jurisdiction directing further inquiries or taking a different view.

20. In this context, we may recall, the Assessing Officer had examined two issues. With respect to introduction of the capital, the assessee had pointed out that he was an NRI for over two years and he had made foreign remittances over a period of time. With respect to the unsecured loan of Rs. 3.87 crores received from his brother also, the assessee had provided necessary details which were called upon by the C/TAXAP/1376/2007 JUDGMENT Assessing Officer. We have reproduced some of the responses of the assessee only to highlight the nature of inquiries carried out by the Assessing Officer and the detailed answers given by the assessee. With respect to his brother, the assessee pointed out that he was running a successful business of trading, was engaged in various commercial and non-commercial activities. He was man of standing and means. In fact, the Commissioner has gone on record to suggest that he neither disputes the identity nor the creditworthiness of the brother of assessee to loan such amount.

21. The Assessing Officer having carried out such detailed inquiries, it was not open for the Commissioner to thereafter reopen the issues on mere apprehension and surmises. His two fundamental objections were that the Assessing Officer did not verify whether the remittances were from the own income or sources of the assessee and his brother or were merely by way of hawala transactions. In the process, he was also critical of the Assessing Officer not insisting on collecting the details of the accounts from which the foreign remittances were made to the Indian account of the said two persons. Without any material without any basis, the CIT could not have remanded the proceedings to the Assessing Officer to carry out further inquiries in order to ascertain whether the remittances were genuine or were in the nature of hawala transactions. In the entire order of the Commissioner, we do not find any basis for him to carry such apprehension. His principle thrust was to the C/TAXAP/1376/2007 JUDGMENT effect that assessee did not produce the precise bank details of the foreign remittances even before him. There is nothing on the record to suggest that he called upon the assessee to do so and the assessee failed or refused to do so.

22. All in all, we find no error in the view of the Tribunal reversing view of the Commissioner. The question is thus answered against the Revenue and in favour of the assessee. Tax Appeal is dismissed

28. Similarly in another case of Pr. CIT vs. Shree Gayatri Associates (supra) Hon'ble Jurisdictional High Court dismissed the revenue's appeal observing that *"In particular , the Tribunal has in the impugned judgment referred to the detailed correspondence between Assessing Officer and the assessee during the course of assessment proceedings to come to a conclusion that the assessing officer had carried out detailed inquiries which includes assessee's on money transaction. It was on account of these findings that the Tribunal was prompted to reverse the order of revision."* Against the judgment of Hon'ble jurisdiction High Court in the case of Shree Gayatri Associates (supra), special leave petition filed by the Revenue before the Hon'ble Supreme Court was dismissed thereby confirming the judgment of Hon'ble High Court of Gujarat.

29. So on the basis of above judgment, we can infer that if detailed inquiry has been conducted by the Ld. AO and one of the legally permissible view is taken by the Ld. AO which may not be revenue favouring, cannot give power to the Ld. CIT to assume jurisdiction u/s 263 and to set aside the order of the Ld. AO. In the instant case the assessee had prepared an affidavit on 23.11.2007 duly notarized relinquishing his rights from all the properties jointly held with his father's family. Genuineness of this affidavit has not been doubted by the

revenue authorities. In the sale deed assessee has not signed as a seller as has been alleged by the Ld. CIT which itself shows that the Ld. CIT has not examined the documents properly. The total sale consideration which was primarily credited in the joint account held in the name of family members has been immediately withdrawn and deposited in the bank account of assessee's father. All the series of documents and transactions also come to conclusion that the assessee was not liable to pay any tax on the capital gain from sale of alleged property. The Ld. AO in this case on examining the sale deed came to a conclusion at the first stage which was well within his power as it is not mandatory that for each and every aspect the Ld. AO has to doubt the transaction and call for information again and again. It is on the discretion, wisdom and understanding of facts by the Ld. AO which may prompt him to call for more information if any required. In our considered view and in the given facts and circumstances of the case we observe that for the alleged transaction of capital gain sufficient inquiry was conducted by the Ld. AO before accepting the contention made by the assessee.

30. As regards the judgments referred and relied by the Ld. DR that in the body of assessment order there is no mention about the alleged transactions we are of a different view. In series of judgments by the Hon'ble Courts, it has been consistently held that discussion of each and every transaction inquired by the Ld. AO need not be incorporated in the body of assessment order. We agree to this view since the conducting of the

assessment proceedings requires calling for information about the statements of affairs of the assessee during the year which includes all the transactions carried out which leads to income or loss arising there from. After receiving the necessary details and documents the Ld. AO examines various transactions. He/she may be satisfied with some of them and not with the others. For the transactions which are found to be satisfactory by the Ld. AO may not be incorporated in the order. It is only the matter which requires addition in hands of assessee needs to be incorporated in detail in the assessment order so as to make it a speaking order. The proceedings are duly mentioned in the order sheet and the documents placed in the case file. They are the conclusive evidence about the correspondence between Ld. AO and the assessee.

31. As regards the alleged cash deposits in bank account held by the assessee and allegation of ld. CIT that the Ld. AO has not inquired with the assessee, we find that all the bank accounts in name of assessee were placed before the Ld. AO. There were certain cash withdrawals in the past which were claimed by the assessee as the source to cover up the alleged cash deposit. The same were found to be satisfactory by the Ld. AO.

32. We, therefore, in the given facts and circumstances of the case and detailed discussion hereinabove, are of the considered view that Ld. AO conducted sufficient inquiry of the impugned transaction and took one of the permissible view provided in the

law and therefore Ld. CIT erred in assuming jurisdiction u/s 263 of the Act. We accordingly quash the order of Ld. CIT u/s 263 of the Act and restore the finding of Ld. AO given in the order u/s 143(3) of the Act dated 01.03.2013. Thus, grounds raised by the assessee in ITANo.839/Ahd/2015 are allowed.

33. Now we take up ITA No.3462/Ahd/2016 through which the assessee has challenged the order of Ld. CIT(A) confirming the addition made by the Ld. AO in the set aside proceedings carried out u/s 143(3) r.w.s. 263 of the Act.

34. Since we have already quashed the order of Ld. CIT u/s 263 of the Act dated 04.02.2015, the proceedings carried thereafter by the Ld. Assessing Officer becomes infructuous, as the original order of assessment u/s 143(3) of the Act dated 01.03.2013 has been restored. Therefore since the assessment order u/s 143(3) r.w.s 263 of the Act becomes infructuous, the present appeal filed by the assessee deserves to be dismissed as infructuous.

35. In the result, appeals filed by the assessee i.e ITA No.839/Ahd/2015 is allowed and ITA No.3462/Ahd/2016 is dismissed as infructuous.

Order pronounced in the Court on 18.09.2019.

**Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER**

**Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 18/09/2019

Patel, PS

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)- XV, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR,
ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad