

**आयकर अपीलीय अधिकरण “के” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“K” BENCH, MUMBAI**

**माननीय श्री पवन कुमार गडाले, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI PAVAN KUMAR GADALE, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)**

1. आयकरअपील सं./ I.T.A. No.533/Mum/2021
(निर्धारण वर्ष / Assessment Year: 2014-15)
&
2. आयकरअपील सं./ I.T.A. No.534/Mum/2021
(निर्धारण वर्ष / Assessment Year: 2015-16)

Reliance Life Sciences Pvt. Ltd. Dhirubhai Ambani Life Sciences Centre, R-282, TTC Area of MIDC Thane Belapur Road, Rabale, Navi Mumbai-400 701	बनाम/ Vs.	Pr. CIT - 8 Aaykar Bhavan, M. K. Road, Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./ PAN/GIR No. AABCR-7594-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Nimesh Vora-Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Anand Mohan-Ld. CIT-DR

सुनवाईकीतारीख/ Date of Hearing	:	07/09/2021
घोषणाकीतारीख / Date of Pronouncement	:	05/10/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 As per the provisions of Section 263 of Income Tax Act, 1961, the revenue authorities namely Pr. Commissioner of Income Tax / Commissioner of Income Tax is vested with the supervisory powers of suo-moto revision of any order passed by the Assessing Officer [AO]. For the said purpose, the appropriate authority may call for and examine

the record of any proceedings under the Act and may proceed to revise the same provided two conditions are satisfied-(i) the order of the assessing officer sought to be revised is erroneous; and (ii) it is prejudicial to the interest of the revenue. If one of the condition is absent i.e. if the order of the Income-tax Officer is erroneous but is not prejudicial to the revenue or if it is not erroneous but it is prejudicial to the revenue - recourse cannot be had to Section 263 of the Act as held by Hon'ble Supreme Court in **Malabar Industrial Co. Ltd. V/s CIT [243 ITR 83 10/02/2000]** & noted by Hon'ble Delhi High Court in **CIT V/s Vikas Polymers [194 Taxman 57 16/08/2010]**. The Hon'ble Supreme Court in **Malabar Industrial Co. Ltd. V/s CIT (supra)** has held that the phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. For example, 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 interest of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law. The said principal has been reiterated by Hon'ble Court in its subsequent judgment titled as **CIT V/s Max India Ltd. (295 ITR 282)**. Similar principal has been followed by jurisdictional High Court in **Grasim Industries Ltd. V/s CIT (321 ITR 92)**.

1.2 The Hon'ble Delhi High Court in **CIT V/s Vikas Polymers (supra)**, further observed that as regards the scope and ambit of the expression

"erroneous", Hon'ble Bombay High Court in **CIT vs. Gabriel India Ltd. [1993 203 ITR 108 (Bombay)]**, held with reference to Black's Law Dictionary that an "erroneous judgment" means "one rendered according to course and practice of Court, but contrary to law, upon mistaken view of law; or upon erroneous application of legal principles" and thus it is clear that an order cannot be termed as "erroneous" unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as "erroneous" by the Commissioner simply because, according to him, the order should have been written differently or more elaborately. The Section does not visualize the substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is not in accordance with law.

1.3 Further, any and every erroneous order cannot be the subject matter of revision because the second requirement also must be fulfilled. There must be material on record to show that tax which was lawfully leviable has not been imposed as held in **Gabriel India Ltd.(supra)**. However, the expression "prejudicial to the interest of the revenue", as held by the Supreme Court in the **Malabar Industrial Co. Ltd.** case, is not an expression of art and is not defined in the Act and, therefore, must be understood in its ordinary meaning. It is of wide import and is not confined to the loss of tax as held in various judicial pronouncements. At the same time, the words "prejudicial to the interest of the revenue", as observed in *Dawjee Dadabhoy and Co. vs. S.P. Jain*, (1957) 311 ITR 872 (Calcutta), can only mean that "the orders of assessment challenged are such as are not in accordance with law, in consequence whereof the lawful revenue due to the State has not been realized or cannot be

realized." Thus, the Commissioner's exercise of revisional jurisdiction under the provisions of Section 263 cannot be based on whims or caprice. It is trite law that it is a quasi-judicial power hedged in with limitation and not an unbridled and unchartered arbitrary power. The exercise of the power is limited to cases where the Commissioner on examining the records comes to the conclusion that the earlier finding of the Income-tax Officer was erroneous and prejudicial to the interest of the revenue and that fresh determination of the case is warranted. There must be material to justify the Commissioner's finding that the order of the assessment was erroneous insofar as it was prejudicial to the interest of the revenue.

1.4 The Hon'ble Delhi Court, in the cited decision, further observed that there is a fine though subtle distinction between "lack of inquiry" and "inadequate inquiry". It is only in cases of "lack of inquiry" that the Commissioner is empowered to exercise his revisional powers by calling for and examining the records of any proceedings under the Act and passing orders thereon. In *Gabriel India Ltd. (supra)*, it was expressly observed: -

"The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity [Parashuram Pottery Works Co. Ltd. vs. ITO, (1977) 106 ITR 1 (SC)].

It was further observed as under: -

"From the aforesaid definitions as it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualize a case of

substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualized where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion.

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There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.

1.5 The Hon'ble Supreme Court in **CIT V/s Amitabh Bachchan (69 Taxmann.com 170 11/05/2016)** held that the power of appeal and revision is contained in Chapter XX of the Act which includes section 263 that confers *suo-motu* power of revision in the Commissioner. The different shades of power conferred on different authorities under the Act has to be exercised within the areas specifically delineated by the Act and the exercise of power under one provision cannot trench upon the powers available under another provision of the Act. In this regard, it must be specifically noticed that against an order of assessment, so far as the revenue is concerned, the power conferred under the Act is to reopen the concluded assessment under section 147 and/or to revise the assessment order under section 263. The scope of the power/jurisdiction under the different provisions of the Act would naturally be different. The power and jurisdiction of the revenue to deal with a concluded assessment, therefore, must be understood in the context of the provisions of the relevant sections. While doing so, it must also be borne

in mind that the legislature had not vested in the revenue any specific power to question an order of assessment by means of an appeal. Regarding applicability of Section 263, what has to be seen is that a satisfaction that an order passed by the Authority under the Act is erroneous and prejudicial to the interest of the revenue is the basic pre-condition for exercise of jurisdiction under section 263. Both are twin conditions that have to be conjointly present. Once such satisfaction is reached, jurisdiction to exercise the power would be available subject to observance of the principles of natural justice which is implicit in the requirement cast by the section to give the assessee an opportunity of being heard. Further, there could be no doubt that so long as the view taken by the Assessing Officer is a possible view, the same ought not to be interfered with by the Commissioner under Section 263 merely on the ground that there is another possible view of the matter. Permitting exercise of revisional power in a situation where two views are possible would really amount to conferring some kind of an appellate power in the revisional authority. This is a course of action that must be desisted from.

1.6 The Hon'ble Bombay High Court in **Moil Ltd. Vs. CIT [81 Taxmann.com 420]** observed that if a query is raised during the assessment proceedings which was responded to by the assessee, the mere fact that the query was not dealt with in the assessment order then it would not lead to a conclusion that no mind has been applied to it and the Assessing Officer is not expected to raise more queries, if he was satisfied about the admissibility of claim on the basis of the material and the details supplied.

1.7 An Explanation-2 has been inserted by Finance Act 2015 in Section 263 with effect from 01/06/2015 to declare that order shall be

deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if in the opinion of appropriate authority-(1) the order was passed without making inquiries or verifications which should have been made; (ii) the order is passed allowing any relief without inquiring into the claim; (iii) the order is not in accordance with any direction or instructions etc. issued by the Board u/s 119; or (iv) the order was not in accordance with binding judicial precedent.

2.1 Keeping in mind aforesaid principles, we proceed to adjudicate the captioned appeals. In this appeal, the assessee has challenged the validity of revisional jurisdiction u/s 263 as exercised by Ld. Pr. Commissioner of Income Tax-8, Mumbai (Pr. CIT) for Assessment Years 2014-15 & 2015-16 vide separate orders both dated 22/03/2021. First we take up appeal for AY 2014-15 wherein the grounds raised by the assessee read as under: -

On the facts and circumstances of the case and in law, the learned Principal Commissioner of Income Tax-8 (hereinafter referred to as CIT)

Order u/s.263 of the Act is bad in law, illegal, ultra-virus

1. erred in passing the order under section 263 of the Income-tax Act, 1961 (the Act), by holding that the Assessment Order passed by the Deputy Commissioner of Income Tax-8(1)(1), Mumbai (hereinafter referred to as AO) u/s.143(3) r.w.s. 144C(3) of the Act dated 24.01.2018 is erroneous and prejudicial to the interest of the revenue;

2. erred in holding that AO has failed to make necessary enquiry and bring on record all facts without appreciating that specific query was raised in the assessment proceedings on issue under consideration of claim of Long Term Capital Loss of Rs.73,45,76,474/- and all relevant details in response thereof was filed;

3. failed to appreciate that the assessment order was neither erroneous nor prejudicial to the interest of the revenue and thus order u/s 263 is bad in law, illegal, ultra-virus, in excess of and/or in want of jurisdiction and otherwise void;

Claim of long term capital loss on transfer of shares of RLS Inc

4. erred in doubting claim of long term capital loss on transfer of shares of Reliance Life Sciences Inc (RLS Inc) and directing AO to re-verify the same;

5. failed to appreciate that the loans were already converted into equity as on 31-03-2011 and same cannot be doubted in the year under consideration i.e. year ending on 31-03-2014;

6. failed to appreciate that the very same issue of grant of loan to RLS Inc and its subsequent conversion into equity share capital was examined Hon'ble ITAT right

from AY 2009-10 till AY 2013-14 and has not approved the re-characterization of capital into loan.

7. without prejudice to the above, failed to appreciate that even if the allegation of CIT is accepted, loan being capital asset, transfer of the same would result into long term capital losses;

Short term capital loss and No indexation benefit

8. without prejudice to above, erred in holding that loss allowable should be short term capital loss and no indexation benefit should be allowed;

The appellant craves leave to add, to amend, vary or alter including by substitution any of the grounds of appeal as they or their representatives may think fit. It further craves leave to treat all the above ground as without prejudice to each other.

As evident, the assessee has contested the validity of revisional jurisdiction u/s 263 as exercised by Ld. Pr. CIT on the ground that specific queries were raised by Ld. AO during assessment proceedings and a view was taken with due application of mind qua the issue which form the very subject matter of revisional jurisdiction u/s 263. Therefore, the order was neither erroneous nor prejudicial to the interest of the revenue. The assessee has also pleaded that issue on merits stood covered in assessee's favor. The assessee being resident corporate assessee is stated to be engaged in scientific research & development in biotechnology etc.

2.2 The Ld. AR, drawing attention to the factual paper-book, assailed the revision of order u/s 263 and submitted that the revision was bad in law. The Ld. CIT-DR, on the other hand, submitted that as per Explanation-2 to Sec.263, Ld. AO failed to carry out proper enquires and therefore, the revision was validly exercised by revisional authority.

2.3 We have carefully considered the factual matrix as well as arguments advances by both the representatives. We have also gone through the queries raised by Ld. AO during the course of original assessment proceeding and the assessee's response thereto. Our adjudication to the issue, in the light of settled legal position as

enumerated in opening paragraphs, would be as given in succeeding paragraphs.

Assessment Proceedings

3.1 The material facts are that an assessment for the year under consideration was framed by Ld. AO u/s 143(3) r.w.s. 144C(3) of the Act on 24/01/2018. While framing the assessment, the assessee has been saddled with certain Transfer Pricing (TP) Adjustment as well as disallowance u/s 14A.

3.2 In the computation of income, the assessee reflected Long-Term Capital Losses of Rs.73.45 Crores which have been carried forward to subsequent years. This loss has arisen on shares of wholly owned subsidiary namely M/s Reliance Life Sciences Inc. USA (RLS Inc.) held by the assessee. These were reflected as trade investments in the Balance Sheet. The value of the investment as on 31/03/2013 was Rs.5559.68 Lacs which has ultimately been reduced to 'Nil' as on 31/03/2014. In computation of income, the consideration of the shares has been shown as 39.97 Lacs as against purchase cost of Rs.7385.74 Lacs and capital loss has been computed at Rs.7345.76 Lacs. As per assessee's financial statements, M/s RLS Inc. USA has been dissolved w.e.f. 17/12/2013. The fact that the investments have been written-off on account of investment in this subsidiary, has separately been disclosed in the financial statements.

3.3 Since the assessee carried out certain international transactions with its Associated Enterprises (AE) including RLS Inc., the same were referred to Ld. Transfer Pricing Officer-3(3)-2, Mumbai (TPO) for determination of Arm's Length Price (ALP). These transactions were reported in Form No.3CEB. One of the transactions reported in Form

No.3CEB was proceeds received from liquidation of investment on winding up of M/s RLS Inc. This transaction was also subjected to determination of Arm's Length Price before Ld. TPO wherein, at para 6.1 of Ld. TPO's order dated 27/09/2017, it was noted that the assessee had paid share-application money as well as loans to RLS Inc. in earlier years. However, no further amount was paid by the assessee during the year. The combined closing balance of share application money as well as loan as on 31/03/2011 stood at USD 121,21,437.36 and the same was converted into capital surplus of RLS Inc. as on 31/03/2011. The entire amount was treated as deemed loan by Ld. TPO in earlier year and ALP interest was determined accordingly. The assessee opposed the benchmarking of the same, inter-alia, on the ground that the share application money as well as loan already stood converted into capital surplus. The capital surplus forms part of shareholders equity and could not be classified / re-characterized as debt / loan. However, rejecting the same, Ld. TPO computed ALP interest of Rs.418.52 Lacs and proposed the same in its order dated 27/09/2017. This adjustment was incorporated by Ld. AO in assessment order dated 24/01/2018.

3.4 Post determination of ALP by Ld. TPO vide order dated 27/09/2017, a notice u/s 142(1) was issued by Ld. AO to assessee on 18/12/2017 calling for details of Long-Term Capital Loss of Rs.7345.76 Lacs as shown by the assessee in its computation of income. In this regard, following details were requisitioned from the assessee: -

Provide the following details for Long Term Capital Loss of Rs.73,45,76474/- incurred during the year.

- (1) Proof for cost of acquisition of equity shares in foreign subsidiary company along with documentary evidence.
- (2) Please provide complete details of the addition/movement in investment in foreign subsidiary from the initial year of purchase along with documentary evidence.

- (3) Please provide complete details of the conversion of any other security into investment in foreign subsidiary along with documentary evidence.
- (4) Please provide complete details with documentary evidence for sale of equity in foreign subsidiary.
- (5) In your submission, it has been mentioned that capital gain is arising from dissolution of foreign subsidiary. Please provide complete details of such dissolution along with documentary evidence.
- (6) Please provide the valuation report for the equity shares transferred.

3.5 Vide reply dated 25/12/2017, the assessee furnished explanation and supplied the following information as well as documentary evidences in support of the claim: -

We wish to inform that the company after taking into account its expansion and diversification programme in the field of Clinical development and in research service such as Pre-clinical Studies, Bio Equivalence / Bio-Availability Studies (BA/BE), Early Phase Clinical Studies / Phase-1 Studies across the globe and more specifically in United States of America (USA) decided to invest in Reliance Life Sciences Inc ('RLS Inc') (a company incorporated in USA). RLS Inc. had considerable knowledge and expertise to provide necessary assistance to the company in identifying new business development opportunities in USA and other developed markets.

Accordingly we made an investment of USD 12396437/- (INR 55,59,68,358/-) in RLS Inc, details enclosed as Annexure 8(i). We are attaching herewith the balance sheet of Reliance Life Sciences Inc from FY 2007-08 to FY 2010-11 showing all the investments made as Annexure 8(i), 8(iii), 8(iv) and 8(v) respectively.

We are also providing herewith the samples of form ODI/ODA submitted to the bank which is the authorized dealer of RBI for the outward remittance as per the RBI requirements. (*Annexure 8(i)(1 to 7)*).

We are also attaching the extract of the balance sheet of our company for FY 2007-08 and FY 2010-11 as Annexure 8(vi) and Annexure 8(vii) respectively duly reflecting the said investments in our books.

Despite substantial efforts to garner business in relation to clinical trials and clinical research trials from USA, RLS Inc was unable to bring the expected quantum of business. Also due to global meltdown and US economy's situation prevalent at relevant point of time the business and financial performance of RLS Inc was not at expected levels., but at the same time it was kept incurring expenses for its operations primarily comprising of the salaries of US employees, lease rent, other operation expenses etc. As it continued to incur losses it was decided to close operations and dissolve the company, in FY 2013-14 the company was dissolved and the winding up procedure was initiated, we are submitting herewith following documents in this regard:

- a) The board resolution passed by Board of Directors of Reliance Life Sciences Inc, for dissolution and winding up of the company is attached as Annexure 8(viii)
- b) The certificate of termination of Reliance Life Sciences inc. received from the authorities of USA is attached as Annexure 8(ix)

We wish to inform that after the winding up procedure was completed whatever balance remained in the bank account of Reliance Life Sciences Inc was transferred

to our bank account which amounted to Rs.2486962/- (USD 405171-).The balance sheet of Reliance Life Sciences Inc as on 14.03.2014 is attached as Annexure 8(x) wherein in the cash flow statement under the head 'cash flow from financing activities' USD 40518/- is shown as paid to shareholders.

Also a sum of Rs. 1510706/- (USD 24579/-) was outstanding as amount payable in the vendor account of Reliance Life Sciences Inc in our books of accounts which was on account of write back of liabilities. This sum was also considered part of the sale consideration. Accordingly the total sale consideration for these investment was considered at Rs.39,97,668/-(24,86,962+15,10,706). We are attaching herewith the bank statement of Reliance Life Sciences Inc showing the transfer of USD 40517/- as Annexure 8(xi) and the copy of ledger account in our books of Reliance Life Sciences Inc showing the adjustment of the outstanding sum of Rs. 1510706/- as Annexure 8(xii)

In view of the above facts and provisions of section 46 of the Income Tax Act, the assessee company has accordingly claimed long term capital loss computed by reducing the amount received on dissolution and winding up of RLS Inc from the cost of investment in equity made by the assessee. Also since the balance sheet on dissolution date did not possess any accumulated profits but in fact had accumulated losses provisions of section 2(22)(c) are not applicable in our case.

On the basis of above, the assessee justified the claim. It could, thus, be seen that elaborate queries were raised by Ld. AO with respect to Long-Term Capital Loss arising on shares of RLS inc. which was comprehensively responded to by the assessee along with requisite information and documentary evidences. The background and the circumstances which resulted into Long-Term Capital Losses was elaborately explained along with requisite computations. The copy of reply filed by the assessee has been placed on record. Upon perusal of all these documents, it could be seen that the claim made by the assessee was fully explained which was supported by documentary evidences attached as various annexure with the reply. The capital loss computation on dissolution of foreign subsidiary was also provided which has been placed on page no. 167 of the paper book. The details filed by the assessee, include the following: -

- (i) Note on investment made in RLS Inc.
- (ii) Details of investment made in RLS Inc.
- (iii) Balance Sheet of RLS Inc. for FY 2007-08 to 2010-11
- (iv) Form ODI/ODA submitted to RBI for outward remittance

- (v) Extract of assessee's Balance Sheet for FY 2007-08 to FY 2010-11
- (vi) The board resolution passed by Board of Directors of RLS Inc. for dissolution and winding up of the company
- (vii) The certificate of termination of RLS Inc. received from USA Authorities
- (viii) Balance Sheet of RLS Inc. as on 14.03.2014

3.6 After going through assessee's reply, it could be seen that no further query was raised by Ld. AO on this issue and apparently, satisfied with assessee's explanation, he chose to accept the claim made by the assessee. For the same reason, no material discussion has been made by Ld. AO, on this issue, in the assessment order. However, upon perusal of all the aforesaid facts, it could be concluded that this issue of investment made by the assessee in M/s RLS Inc. and computation of ALP of these transactions as well as Long-Term capital losses arising there-from, were under due consideration of Ld. TPO as well as Ld. AO during the course of original assessment proceedings.

Revisional Proceedings

4.1 Subsequently, upon perusal of assessment record, Ld. Pr. CIT invoked revisional jurisdiction u/s 263 vide order dated 22/03/2021 on the allegation that the assessee, in the garb of conversion from loan to equity, was irregularly allowed Long-Term Capital losses of Rs.7345.76 Lacs. The application for winding up of foreign subsidiary was filed with US authorities on 23/12/2013. The termination document was to become effective from the date when it was filed with Secretary of State. Since the documents was filed with that authority on 03/01/2014, the cut-off date should have been taken as 03/01/2014 and therefore the transaction was not to be regarded as long-term in nature and no indexation benefit would be allowable to the assessee. The aforesaid aspects, which prima facie warranted inquiry on facts, were not inquired into while completing the assessment and therefore, the order suffers

from error within the meaning of Section 263. The error has prejudiced the revenue in as much as the claim of the assessee has been allowed in excess and / or income has been under-assessed. Accordingly, a show cause notice was issued to the assessee on 10/03/2021.

4.2 In response thereof, it was submitted by the assessee that due inquiries were made by Ld. AO during the course of assessment proceedings and the matter was duly examined. The attention was drawn to the information and documents furnished by the assessee during the course of assessment proceedings. It was also submitted that Ld. AO had all the relevant details available on record and was convinced with assessee's claim. If the query was raised by Ld. AO which was answered to the satisfaction of Ld. AO but neither the query nor the reply was reflected in the assessment order, then it would not by itself lead to a conclusion that the order of Ld. AO called for interference and revision. Thus the conditions of Sec.263 were not fulfilled and the revision was bad in law. The assessee also supported the claim on merits by submitting that the investment was a capital asset and losses arising there-from were allowable as capital losses, inter-alia, in terms of the decision of Hon'ble Bombay High Court in **CIT V/s Siemens Nixdorf Information Systems GmbH (114 Taxmann.com 531)**.

4.3 However, disregarding the same, Ld. Pr. CIT concluded that Ld. AO had failed to make necessary enquiry and bring on record all facts necessary for determining the true character and nature of income. Omission to do so has made the order erroneous and prejudicial within the meaning of Sec.263 read with explanation 2(a). Therefore, the assessment order was revised and set aside to the file of Ld. AO to redo

the assessment as per observation made in the revisional order. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

5. After going through the assessment proceedings, it could be seen that the assessee had made strategic investment in RLS Inc. in earlier years. The investment was in the shape of share application as well as loans. As per the agreement, the loan was convertible into share capital. Accordingly, entire share application money as well as loan was converted into share capital / capital surplus as on 31/03/2011. During FY 2013-14, RLS Inc. was dissolved and after winding up procedure was completed, the balance lying in the bank account was transferred to assessee's account. Another sum of USD 24579 was payable by the assessee to RLS Inc. and the same was also considered as part of sale consideration. The Long-Term Capital losses have been computed by the assessee as per the provisions of Sec.46 by deducting the indexed cost of acquisition from sale consideration. These transactions were duly reflected in the computation of income and necessary disclosures were made at appropriate places in the financial statements. These transactions were also reflected in Form No.3CEB which has been subjected to benchmarking before Ld. TPO. Not only this, specific enquiries were made by Ld. AO by issuance of notice u/s 142(1) wherein elaborate information was sought from the assessee with respect to this claim. The assessee responded to the queries comprehensively along with requisite information and documentary evidences. All these facts have already been noted by us in preceding paras 3.4 to 3.6. After verifying the details and having satisfied with assessee's submissions, Ld. AO accepted the claim and chose not to disturb the assessee's

computations. The claim was accepted with due application of mind and the claim made by the assessee was in accordance with law. There is nothing on record which would suggest that the claim was inadmissible claim or the same was not in accordance with law.

6. On the basis of the above, we would hold that the allegation of Ld. Pr. CIT that the assessment order was passed without making requisite enquiries do not have any sound basis rather the same is based more on surmises and conjectures without appreciating material facts on record and without considering detailed response filed by the assessee during assessment proceedings as well as during revisional proceedings. As per settled legal position, the revisionary proceedings could not be held to be valid where Ld. AO had made enquiries and adopted the claim with due application of mind. Merely because the issue has not been discussed in the assessment order, the same would not lead to a conclusion that assessment was made without application of mind (**CIT Vs. Gabriel India Ltd 1993; 203 ITR 108; Hon'ble Bombay High Court**). Further, Explanation-2 would apply only when the order was passed without making inquiries or verifications which should have been made. The same is not the case here.

7. The Ld. CIT-DR has referred to the case law of Hon'ble Bombay High Court in **Pr. CIT V/s Zuari Maroc Phosphates Ltd. (126 taxmann.com 170)**. However, it is a case law where the view of Ld. AO was found to be not a plausible view. The same is not the case here since the only allegation leveled by Ld. Pr. CIT is that the claim has been allowed without necessary enquiries. It is not the case that the claim was not admissible. The case law of Hon'ble Punjab & Haryana Court in **Pr. CIT V/s Venus Woollen Mills Ludhiana (105 taxmann.com 287)** deal

with a case wherein the surrender made by the assessee during survey was not properly reflected in the return of income and it was found that Ld. AO made very small addition and did not apply mind to the correctness of books of accounts. The case law of Hon'ble High Court of Madhya Pradesh in **Nagal Garment Industries (P) Ltd. V/s CIT (113 taxmann.com 4)** is a case where the assessee filed the reply but AO recorded in the note-sheet that reply was not satisfactory and the assessee did not explain all the facts, but still the claim was accepted. Under these circumstances, the revision was held to be justified. In the case law of Hon'ble High Court of Allahabad in **Jagdish Kumar Gulati V/s CIT (139 Taxman 369)**, the admitted fact was that Ld. AO could not make proper enquiries as the assessment was becoming time barred. The same is not the case here. Therefore, all these case laws as cited by Ld. CIT-DR are factually distinguishable and do not apply to the facts of the present case before us.

8. Finally, on the facts and circumstances of the case, we are of the opinion that revisional jurisdiction as exercised by Ld. Pr. CIT u/s 263 is bad in law and is liable to be quashed in terms of settled legal position as enumerated by us in opening paragraphs. Ground nos. 1 to 3 stands allowed. Consequently, delving into the merits of the case has become merely academic in nature and therefore, not gone into. Ground Nos. 4 to 8 has been rendered infructuous. The appeal stand allowed in terms of our above order.

ITA No.534/Mum/2021, AY 2015-16

9.1 In this year, an assessment was framed against the assessee u/s 143(3) r.w.s. 144C(3) on 04/01/2019. However, the order was subjected to revision u/s 263 vide order dated 22/03/2021. The same stem from the

observation of Ld. Pr. CIT that the assessee advanced certain loan to its AE namely Reliance Life science BV (RLS BV) during the period 01/04/2009 to 31/03/2013. The assessee accounted interest of Rs.2451.44 Lacs on accrual basis. The Ld. TPO made adjustments to the amount of interest for FYs 2009-10 to 2010-11 but accepted the benchmarking done for FYs 2011-12 to FY 2013-14. In AY 2015-16, an adjustment of Rs.513.74 Lacs was proposed for interest not accounted and not offered to tax. The assessee wrote-off amount of Rs.2451.44 Lacs as bad debts and claimed it under the provisions of Section 36(2). As the interest was taxable u/s 56 to 59 as 'Income from Other Sources', the claim made u/s 36(2) could not be made and therefore, incorrect grant of the deduction has made the assessment order erroneous. Accordingly, a show-cause notice was issued to the assessee on 10/03/2021 proposing revision of the assessment order.

9.2 The assessee defended the assessment vide reply dated 17/03/2021, inter-alia, by submitting that the assessee had made strategic investment in RLS BV which was disclosed as international transactions in Form No.3CEB. These transactions were subjected to determination of ALP before Ld. TPO. Pursuant to query raised by Ld. TPO, the assessee had filed submissions dated 12/04/2018 before Ld. TPO explaining the international transaction and Ld. TPO, upon examining the same, accepted the same. Regarding observations of Ld. Pr. CIT that if such write-off was allowed then it would make the TP provisions ineffective, it was submitted that the provisions of secondary adjustment u/s 92CE could not be triggered since the amended provisions were applicable only from AY 2017-18. Therefore, the aforesaid conclusion was not tenable.

9.3 It was further submitted that Ld. AO had raised specific query vide notice dated 05/12/2018 requiring assessee to explain the deduction claimed for write-off of interest. The same was comprehensively responded to by the assessee along with a brief note on write-off of the accrued interest and details of interest income offered to tax in earlier year as business income and also a copy of ledger account of RLS BV. Reliance was placed on the decision of Hon'ble Supreme Court in **TRF Ltd. V/s CIT (323 ITR 397)** in support of the claim. After verifying above details and having satisfied with documents filed, Ld. AO accepted the bad-debt claim and passed the assessment order. Since, Ld. AO verified the claim and allowed the deduction, the order could not be held to be erroneous. The assessee also made submissions that the claim on merits was allowable to the assessee in terms of cited decision of Hon'ble Supreme Court.

9.4 However, disregarding the same, the assessment order was held to be erroneous and prejudicial u/s 263 and Ld. AO was directed to redo the assessment as per observation made in the revision order. Aggrieved, the assessee is in further appeal before us with following grounds of appeal: -

Order u/s.263 of the Act is bad in law, illegal, ultra-virus

1. erred in passing the order under section 263 of the Income-tax Act, 1961 (the Act), by holding that the Assessment Order passed by the Deputy Commissioner of Income Tax -8(1)(1), Mumbai (hereinafter referred to as AO) u/s. 143(3) r.w.s. 144C(3) of the Act dated 04.01.2019 is erroneous and prejudicial to the interest of the revenue;
2. erred in holding that AO has failed to make necessary enquiry and bring on record all facts without appreciating that specific query was raised in the assessment proceedings on issue under consideration of claim of bad debts on account of write off of unrecoverable interest income of Rs.24,51,44,873/- and all relevant details in response thereof was filed;
3. failed to appreciate that the learned Transfer Pricing Officer has also verified the claim of write off of unrecoverable interest income and being satisfied had accepted the same;

4. failed to appreciate that the assessment order was neither erroneous nor prejudicial to the interest of the revenue and thus order u/s 263 is bad in law, illegal, ultra-virus, in excess of and/or in want of jurisdiction and otherwise void;
Claim of Bad debts on account of write off of non recoverable interest income

5. failed to appreciate that claim of Bad debts was in compliance of provisions of Section 36(1)(vii) read with section 36(2) of the Act when interest income was taxed as income from business in year of accrual and same were written off during the year under consideration;

6. erred in directing the TPO to verify the applicability of section 92CE of the Act without appreciating the fact that the provisions of section 92CE are not applicable for the year under consideration.

Our findings and Adjudication

10. After going through relevant material on record, we find that the assessee, in its Profit & Loss Account, has written-off accrued interest for Rs.2451.44 Lacs. The interest was accrued in earlier years on loan given by the assessee to its AE i.e. RLS BV which was written-off in this year. The aforesaid write-off was reflected by the assessee in Form No.3CEB. The international transactions as reported in Form No.3CEB were subjected to determination of ALP by Ld. TPO wherein it was seen that the assessee charged interest on loan given to RLS BV only up-to 31/03/2014 and no interest was charged thereafter. It was explained that RLS BV suffered huge losses and requested for waiver of interest. Accordingly, no interest was charged. However, rejecting the same, Ld. TPO computed ALP interest of Rs.513.74 Lacs and proposed an adjustment thereof in its order dated 31/05/2018.

11. It could further be seen that subsequently a notice u/s 142(1) was issued to the assessee by Ld. AO on 05/12/2018 calling for certain information from the assessee (page nos. 171-172 of paper-book). One of the queries raised was as follows: -

2. It is observed from the P & L that you have debited an amount of Rs.24.51 Crores under the head-accrued interest written off. Please provide details of the item and documentary evidence to prove the genuineness of this write off.

The assessee vide reply dated 10/12/2018, submitted a detailed note as Annexure 6(4) (page 184 of the paper-book). In the note, it was explained that the assessee had advanced loan to RLS BV in parts during the period from 01/04/2009 to 31/03/2013 and charged interest of 6.75% up-to 31/03/2014. The interest so accrued up-to 31/03/2014 amounted to Rs.2451.44 Lacs. The detail of interest income offered to tax in earlier years was also attached. Since RLS BV was unable to pay interest, the amount was written-off as bad debts in terms of the provisions of Sec.36(1)(vii) as supported by the decision of Hon'ble Supreme Court in **TRF Ltd. V/s CIT (323 ITR 397)**. It is discernible from the assessment order and other material on record that Ld. AO did not raise any further enquiry and accepted the claim of the assessee. Therefore, it could be concluded that after verifying the details and having satisfied with assessee's submissions, Ld. AO accepted the claim and chose not to disturb the same. The claim was accepted with due application of mind and the claim made by the assessee was in accordance with law. There is nothing on record which would suggest that the claim was inadmissible claim or the same was not in accordance with law. It is nowhere in dispute that the interest on loan was offered as well as accepted as 'Business Income' of the assessee.

12. Later on, the assessment order has been subjected to revision by Ld. Pr. CIT on the ground that interest was taxable u/s 56 to 59 as 'Income from Other Sources' and therefore, the claim made u/s 36(2) could not be allowed to the assessee. We find that the allegations made by Ld. Pr. CIT are without any sound basis. The interest income was offered as well as accepted as 'Business Income' which is evident from

the assessment order framed by Ld. AO. Not only this, the assessment orders for AYs 2009-10 to 2014-15 has been placed by the assessee on record, the perusal of which would show that interest income has always been accepted as 'Business Income' only. The opinion that interest would be taxable as 'Income from Other sources' is nothing more than an opinion of Ld. Pr. CIT and is one of the possible views. However, it is a fact on record that Ld. AO has chosen to accept the interest income as 'business income' in all the earlier years as well as in this year and accordingly, the write-off would be allowable business expenditure to the assessee as claimed in the Profit & Loss Account. This view is an equally possible view keeping in mind the fact that the investments were strategic investments in subsidiary and out of commercial expediency. This stand of the assessee was always accepted by the revenue in earlier years as well as in this year. The rule of consistency would debar the revenue to take different stand on similar factual matrix which is supported by the decision of Hon'ble Bombay High Court in the case of **Pr.CIT V/s Quest Investment Advisors Pvt. Ltd. [(2018) 409 ITR 545]**.

13. Proceeding further, after going through the assessment proceedings, it could be seen that the claim was well examined by Ld. AO and specific queries were raised with respect to the claim. The same were duly responded to by the assessee along with requisite documentary evidences. After considering the same, the claim was allowed with due application of mind. The view taken by Ld.AO could not be said to be contrary to the law. Therefore, the assessment order could not be held to be erroneous and prejudicial to the interest of the revenue.

14. Finally, on the facts and circumstances of the case, the revision of the assessment order as proposed by Ld. Pr. CIT is not sustainable in

law. Therefore, we quash the same and allow ground nos.1 to 4 of the appeal which render other grounds academic in nature.

Conclusion

15. Both the appeals stand allowed in terms of our above order.

Order pronounced on 5th October, 2021.

Sd/-

(Pavan Kumar Gadale)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated :05/10/2021
Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.