

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)  
"A" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER**

**ITA NO. 393/MUM/2021 (A.Y: 2015-16)**

M/s. A & J Associates 404, Niranjan, 99 Marine Drive Mumbai – 400002  <b>PAN: AAQFA5256N</b>	v.	Pr. CIT – 19 Room No. 228, 2nd Floor Matru Mandir, Tardev Road Mumbai – 400 007
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Shri Jiten Jain</b>
<b>Department by</b>	<b>:</b>	<b>Ms. Shailja Rai</b>
<b>Date of Hearing</b>	<b>:</b>	<b>11.11.2021</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>11.01.2022</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

1. This appeal is filed by the assessee against order of the Learned Principal Commissioner of Income Tax–19, Mumbai [hereinafter in short "Pr.CIT"] dated 08.03.2021 for the A.Y.2015-16.

2. Brief facts relevant to the case are that, assessee had filed its return of income for the A.Y. 2015-16 on 30.09.2015 declaring total income of ₹.11,59,34,180/-. The assessment u/s. 143(3) of the Income-tax Act,

1961 [hereinafter referred to as "the Act"] was completed on 19.12.2017 determining total income at ₹.12,07,27,060/-. The assessee is a firm, engaged in the business of providing services in the nature of arranging corporate finance, syndication of funds, management consultancy and investment activities during the year under consideration. On examination of the Assessment Order, Ld. Pr.CIT observed as below: -

*"(i) It is seen that the office premises at Dev Plaza, Andheri (W), Mumbai shown to have been purchased as per the purchase agreement dated 31.03.2015 was registered with the office of the Registrar only on 04.04.2015 and the registration fee was also paid on the same date. Accordingly, the Assessing Officer had disallowed the claim of depreciation of Rs. 47,92,879/- on the said office premise by giving reference to the decision of Hon'ble Supreme Court in the case of R.B. Jodha Mal Kuthala V. CIT (1971) 82 ITR 570. The Apex Court held that the real test was to ascertain whether the assessee was entitled to the income from the property and, hence the owner must be the person who can exercise the rights of the owner not on behalf of the owner but in his own right. In other words, it is only the owner of the assets who is entitled to claim depreciation on them.*

*(ii) It is evident that the new premise purchased cannot be held as acquired during the previous year ended 31.03.2015. Therefore, the assessee ought to have declared the capital gain arising out of the sale transaction of the office premises sold at Pinnacle Corporate Panel (Rs. 14,00,00,000/-) exceeds the written down value of the block of assets at the beginning of the previous year (Rs. 29,37,690/-), such excess shall be deemed to be the capital gain arising from the transfer of short term capital asset as laid down u/s. 50 of the Act. Therefore, the sum of Rs. 13,70,62,310/- (Rs. 14,00,00,000 - Rs. 29,37,690/-) ought to have been held as short term capital gain taxable u/s. 50 of the Act. The Assessing Officer during the course of assessment proceedings failed to do so, which resulted underassessment to the tune of Rs. 13,70,62,310/- with tax effect of Rs.4,65,87,479/- (including surcharge and education cess).*

(iii) *The turnover of the assessee increased from Rs.1,50,00,000/- as on 31.03.2014 to Rs. 13,22,81,250/- as on 31.03.2015 and net profit increased from 39.69% to 88.10%. The professional receipts credit were to the tune of Rs. 13,22,81,250/-, out of which Rs. 1,72,50,000/was received from M/s. Alok Industries Ltd., and the balance of Rs. 11,50,31,250/- from export. Thought the case was converted to complete scrutiny, no details of these receipts have been called for or examined by the Assessing Officer.*

(iv) *No details in respect of business promotion expenses of Rs. 19,04,585/- has been called for or examined by the Assessing Officer in spite of the case being converted into complete scrutiny.*

(v) *Supporting evidence in respect of loan of Rs.12,00,00,000/- availed by the assessee from HDFC has been sought and placed on record by the Assessing Officer."*

**3.** Ld. Pr.CIT observed that the above informations were overlooked by the Assessing Officer during the assessment proceedings and therefore the assessment order passed u/s.143(3) of the Act according to him is not only erroneous but also prejudicial to the interest of the Revenue. Accordingly, he issued notice u/s. 263(1) of the Act on 19.03.2020. In response to the above notice assessee submitted the written submissions on 28.01.2021, for the sake of brevity it is reproduced below: -

*"We refer to your honour's show cause notice dt. 19.03.2020 issued to our above client proposing to invoke provision of section 263 of the Act for A.Y.2015-16.*

*In this connection we on behalf of our above client submit as under:*

*The assessee is a Partnership firm engaged in the business of providing Services in the nature of arranging corporate finance, syndication of funds, management consultancy and investment activities. The assessee's accounts are audited U/s 44AB of the income Tax Act. The assessee has filed its return of Income on*

*30.09.2015 declaring total income of Rs. 11,59,34,180/-. The case was selected for scrutiny and notices u/s. 143(2) and u/s. 142(1) of the I.T. Act, 1961 were issued. All the relevant details were filed during the course of assessment proceeding. Regular assessment U/s 143(3) of the I. T. Act was completed by the Assistant Commissioner of Income Tax - 18(1), Mumbai (AO) vide his order dt. 19.12.2017 determining total taxable income at Rs.12,07,27,060/-. Now your honour has issued above show cause notice to initiate the proceeding u/s 263 of the Act.*

*In this connection we at the outset submit that the proceedings u/s 263 of the Act can be invoked only if the order of the AO is "erroneous in so far as prejudicial to the interest of the Revenue It is respectfully submitted that all the details/evidences/supporting concerning the issues considered for initiating the proceedings u/s 263 were before the AO. The AO has deliberated and discussed the said issues in the light of the material available with him and has then reached at a finding for not making any additions/disallowances with regards to the issues considered by your Honour for invoking the provisions of sec. 263 of the Act. The Courts have time and again held that the supervisory jurisdiction u/s 263 of the Commissioner cannot be exercised if the Assessing Officer while making an assessment examines, the accounts and the material on record, makes inquires, applies his mind to the facts and circumstances of the case, and determines the income by accepting such accounts and material on record. We further submit that the provisions of sec. 263 of the Act cannot be invoked when the AO after due consideration has taken one of the possible views, when on the same set of facts two views could be possible, and the Commissioner is of the other view. We therefore respectfully submit that the initiation of the proceedings u/s 263 of the Act is not valid in law as the AO has applied his mind and considered the material on record while making the assessment u/s 143(3) of the Act and hence the order sought to be revised is neither erroneous so as to be prejudicial to the interest of the Revenue.*

*In support of the above submissions we strongly rely upon the following judgements*

*(1) CIT Vs. Max India Ltd. [295 ITR 282RSC)*

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(2) *CIT vs. Gabriel India Ltd. 1203 ITR 1081(Bom)*

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(3) *CIT Vs. Design and Automation Engineers (Bombay) P. Ltd. [323 ITR 6321 (Bombay):*

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*Similar view has also been taken by various courts/Tribunals in following judgments:*

- (i) *Malabar Industrial Co. Ltd. vs. CIT [243 ITR 83] (SC)*
- (ii) *Jewel of India Vs. ACIT [325 ITR 92](Bombay)*
- (iii) *CIT vs. Arvind Jewellers (Guj) [259 ITR 502}(Guj)*
- (iv) *CIT vs. Ganpat Ram Bishnoi (296 ITR 292)(Rai)*
- (v) *Zyma Laboratories Ltd, vs, Addl. CIT [2006][7 SOT 164](Mum)*
- (vi) *Indexco International vs. DCIT [88 ITD 293](Mum)*

*The issue-wise submissions are as under.*

(1) *Short Term Capital Gain u/s 50 of the IT Act on sale of office premises.*

*During the year under consideration, the assessee has opening balance of Written Down value of block of asset of office premises at Rs.29,37,690/- which includes office premises at Pinnacle Corporate Park, Mumbai. During the year, the assessee sold the above office premises for Rs. 14,00,00,000/-. Further, the assessee vide Agreement for Sale dt.31.03.2015 (registered on 04.04.2015 with the Registrar) acquired an office premises at Dev Plaza, S.V. Road, Andheri (West), Mumbai for an aggregate consideration of Rs.23,29,19,898/- (including stamp duty, registration and other charges) and same is included in block of asset of office premises. Thus, the assessee claimed the depreciation of Rs.47,92,879/- [i.e.(opening WDV of Rs.29,37,690 + Addition of Rs.23,29,19,898 - Sale of Rs. 14,00,00,000) X Depreciation at 10%/2] on block of asset of office premises. During the course of assessment proceedings the AO asked the assessee to show cause as to why the depreciation of Rs.47,92,879/- claimed on block of office premises shall not be disallowed as the agreement for purchase of office premises at Dev Plaza is registered with the Office of Registrar only on 04.04.2015 i.e. after the year ended 31.03.2015.*

*In response, the Appellant vide its Authorised Representative's letter dt.27.10.2017 filed its detailed submission before the AO and submitted that out of total purchase consideration of Rs.22,05,00,000/- consideration to the extent of Rs.20,72,05,000/- was paid on or before 27.03.2015, Stamp duty for purchase of Property was paid on 30.03.2015, possession of the office premises was taken on 27.03.2015, even the agreement for sale was made and dated 31.03.2015, however, only due to the rush and holiday at registration office the registration of the agreement were done on 04.04.2015 which is only a formality and same relates back to the date of agreement.*

*The assessee therefore submitted that it has actually acquired and put to use the office premises on 27.03.2015 and merely because the registration of agreement took place on 04.04.2015 cannot be a basis to disallow the depreciation on block of Office premises. However, the AO did not accept the contention of the assessee and disallowed depreciation of Rs.47,92,879/claimed on block of office premises.*

*Now your honour has issued a show cause to initiate the proceeding u/s 263 of the Act on the ground that the new premises purchased cannot be held as acquired during the previous year ended 31.03.2015 and therefore the assessee ought to have declared the capital gain of Rs.13,70,62,310/- [i.e. Sale consideration of Rs.14,00,00,000 - Op. WDV of Rs.29,37,690] u/s 50 of the IT Act on sale of office premises at Pinnacle Corporate Park, as the full value of consideration of officer premises sold exceeds the WDV of block of assets at the beginning of the year. In this connection, the assessee once again submits that it has purchased office premises at Dev Plaza, Andheri (West) vide Agreement for Sale dated 31.03.2015 and possession of same was obtained on 27.03.2015 although the letter of possession was dated 31.03.2015 which is the date of Agreement for Sale). The majority of purchase consideration of property i.e. Rs.20,72,05,000/- out of total consideration of Rs.22,05,00,000/- was paid on or before 27.03.2015. Even the stamp duty of Rs.1,10,55,000/- for purchase of property was paid on 30.03.2015. The assessee therefore respectfully submits that it has actually acquired on 27.03.2015 and merely because the registration of agreement took place on 04.04.2015 due to rush and holiday at the registration office cannot be a basis to hold that the asset has not entered into the block of assets. The assessee submits that since*

*it has actually purchased the property vide agreement for sale dt.31.03.2015 the registration of property is merely a formality and the registration relates back to the date of agreement.*

*The assessee respectfully submit that under various judicial pronouncements the court had held that u/s 54 of the Transfer of Property Act, although the title in immovable property is transferred to a person by execution and registration of a sale deed, however, the term "owned" in section 32(1) should be assigned a contextual meaning and keeping in view the underlying object of the provision vesting of a title in the assessee though short of absolute ownership should also entitle the assessee to the benefit of sub-section 32(1), and section 32 of the Income Tax Act confers a benefit on the assessee. The provision should be so interpreted and the word used therein should be assigned such meaning as would enable the assessee securing the benefit intended to be given by the Legislature to the assessee. It is also well settled that where there are two possible interpretations of a taxing provision the one which is favourable to the assessee should be preferred.*

*The assessee further submit that the term 'owned' as occurring in section 32(1) of the IT Act, must be assigned a wider meaning. Anyone in possession of property in his own title exercising such dominion over the property was would enable others being excluded there from and having the right to use an occupy the property and/or to enjoy its usufruct in his own right would be the owner of the property though a formal deed of title may not have been executed and registered as contemplated by the Transfer of Property Act, the Registration Act etc. "Building owned by the assessee" the expression as occurring in section 32(1) of the IT Act means the person who having acquired possession over the building in his own right uses the same for purposes; of the business or profession though a legal title has not been conveyed to him consistently with the requirements of laws such as the Transfer of Property Act and the Registration Act etc, but nevertheless is entitled to hold the property to the exclusion of all others. in this regard the assessee rely upon the following judicial pronouncements:*

*(1) CIT Vs. Poddar Cement Pvt. Ltd. 1226 ITR 6251 (Supreme Court):*

*"26. We are conscious of the settled position that under the common law 'owner' means a person who has got valid title legally*

*conveyed to him after complying with the requirements of law such as Transfer of Property Act, Registration Act, etc. But in the context of s. 22 of the IT Act having regard to the ground realities and further having regard to the object of the IT Act, namely, 'to tax the income', we are of the view, 'owner' is a person who is entitled to receive income from the property in his own right. "*

(2) *Mysore Minerals Pvt. Ltd Vs. CIT [239 ITR 7751(Supreme Court)*

*"10. In our opinion, the term 'owned' as occurring in s. 32(1) of the IT Act, 1961, must be assigned a wider meaning. Anyone in possession of property in his own title exercises such dominion over the property as would enable others being excluded therefrom and having right to use and occupy the property and/or to enjoy its usufruct in his own right would be the owner of the buildings though a formal deed of title may not have been executed and registered as contemplated by Transfer of Property Act, Registration Act, etc. 'Building owned by the assessee —the expression as occurring in s. 32(1) of the IT Act means the person who having acquired possession over the building in his own right uses the same for the purposes of the business or profession though a legal title has not been conveyed to him consistently with the requirements of laws such as Transfer of Property Act and Registration Act, etc. but nevertheless is entitled to hold the property to the exclusion of all others.*

*13. An overall view of the above said authorities show that the very concept of depreciation suggests that the tax benefit on account of depreciation legitimately belongs to one who has invested in the capital asset is utilizing the capital asset and thereby losing gradually investment caused by wear and tear, and would need to replace the same by having lost its value fully over a period of time.*

*It is well-settled that there cannot be two owners of the property simultaneously and in the same sense of the term. The intention of the legislature in enacting s. 32 of the Act would be best fulfilled by allowing deduction in respect of depreciation of the person in whom for the time being vests the dominion over the building and who is entitled to use it in his own right and is using the same for the purposes of his business or profession. Assigning any different meaning would not subserve the legislative intent. To take the case at hand it is the appellant assessee who having paid part of*

*the price, has been placed in possession of the houses as an owner and /s using the buildings for the purpose of its business in its own right. Still the assessee has been denied the benefit of S. 32. On the other hand, the Housing Board would be denied the benefit of 8, 32 because in spite of its being the legal owner it was not using the building for its business or profession. We do not think such a benefit-to-none situation could have been intended by the legislature. The finding of fact arrived at in the case at hand is that though a document of title was not executed by Housing Board in favour of the assessee, but the houses were allotted to the assessee by the Housing Board, part payment received and possession delivered so as to confer dominion over the property on the assessee where after the assessee had in its own right allotted the quarters to the staff and they were being actually used by the staff of the assessee. It is common knowledge, under the various schemes floated by bodies like housing boards, houses are constructed on large scale and allotted on part-payment to those who have booked. Possession is also delivered to the allottee so as to enable enjoyment of the property. Execution of document transferring title necessarily follows if the schedule of payment is observed by allottee. If only the allottee may default the property may revert back to the Board. That is a matter only between the Housing Board and the allottee. No third person intervenes. The part-payments made by allottee are with the intention of acquiring title. The delivery of possession by Housing Board to allottee is also a step towards conferring ownership. Documentation is delayed only with the idea of compelling the allottee to observe the schedule of payment. "(Emphasis Supplied)*

*Under the circumstances the assessee submits that it has actually acquired the property on 27.03.2015 although the agreement for sale is registered on 04.04.2015. The assessee therefore submit that neither the block of asset ceased to exist nor the full value of consideration received on transfer of asset exceeds the WDV and actual cost of assets acquired during the year under consideration; hence provision of section 50 is not applicable in the case of the assessee. It is respectfully submitted that the asset acquired during the year forms part of the block of asset and as a consequence thereof the written down value of the block is to be considered inclusive of addition to the block during the year. As evident from the facts on record even though the block became apy on sale of the asset, however, the same block became positive on*

*acquisition of another asset falling within the same block on its acquisition during the year under consideration. This position is amply clear and evident from section 50 r.w. section 2(11) and section 43(6) of the IT Act. On the combined reading of these sections it is once again submitted that the AO has rightly considered the block of asset at the end of the previous year as positive and hence he has rightly not invoked section 50 of the Act. The AO has taken a conscious decision after considering the facts and relevant provisions of the Act and therefore exercised his power in deciding the issue which has now been agitated by your honour u/s 263 of the Act. The assessee therefore submits that the order of the AO cannot be termed to be erroneous and prejudicial to the interest of revenue so as to attract the proceeding u/s 263 of the Act.*

*(2) Non examination of applicability of TDS on Export Revenue of Rs. 11,50,31,250/- by the AO*

*During the year under consideration, the assessee has earned and recognized Professional fees income of Rs. 13,22,81,250/- which comprises of professional fees received (Local) of Rs.1,72,50,000/- and Professional Fees Received (Export) of Rs.11,50,31,250/-. During the assessment proceedings, the AO has asked the assessee to give reconciliation of TDS as appearing in Form 26AS and income as shown in Profit & Loss A/c. The assessee vide its Authorised Representative's letter dated 22<sup>nd</sup> August, 2017 filed reconciliation of TDS as appearing in Form 26AS and income as shown in Profit & Loss A/c. The TDS appearing in Form 26AS is reconciled with the Professional Fees Received (Local) and shown in Profit & Loss A/c.*

*Now your honour has issued a show cause to initiate the proceeding u/s 263 of the Act by observing that the professional receipt credited were to the tune of Rs. 13,22,81,250/out of which Rs. 1,72,50,000/was received from M/s Alolc Industries Ltd and the balance of Rs. 11,50,31,250/from Export. Your honour further observed that though the case was converted to complete scrutiny no details of these receipts have been called for or examined by the AO specifically to identify whether TDS has been properly deducted/not deducted on such receipts.*

*In this regard, the assessee submit that it has duly filed the reconciliation of TDS Deducted as appearing in Form 26AS with income appearing in its Profit & Loss A/c Vide its Authorised Representatives letter dt. 22<sup>nd</sup> August, 2017. The entire Professional*

*Fees Received (Local) of Rs.1,72,50,000/- offered in Profit & Loss A/c is received from M/s Alok Industries Ltd and TDS of Rs.17,25,000/- deducted on same is exactly matches with Form 26AS. The assessee submits that the balance of Professional Fees of Rs.11,50,31,250/- is received from M/s Varuna Investments, Singapore. The assessee submits that, as stated in Schedule - 7 to the Accounts and also mentioned by your honour in your notice, professional fees of Rs. 11,50,31,250/is from Export. The assessee therefore submit that since the professional fees of Rs.11,50,31,250/- is received from Export, provisions of TDS are not applicable to the same. Furthermore, no TDS on professional fees (Export) is either claimed in return of income filed by the assessee or reflected in Form 26AS. In any view of the matter, the deduction of TDS is the responsibility of the payer and the assessee has nothing to do with the deduction of TDS. Hence, the assessee respectfully submits that it has duly filed the relevant details before the AO during the assessment proceeding which has duly been considered by the AO and hence the order passed by the AO cannot be termed as erroneous in s far as it is prejudicial to the interest of the revenue so as to attract provisions of section 263 of the Act.*

*(3). (a) Details in respect of business promotion expenses of Rs. 19,04,585/has not been called for or examined by the AO (b) Non availability on record of loan sanction and disbursement letter in respect of loan of Rs.12,00,00,000/- availed from HDFC Bank Ltd.*

*In show cause notice issued by your honour to initiate the proceeding u/s 263 of the Act, your honour has stated that no details in respect of business promotion expenses of Rs.19,04,585/- has been called for or examined by the AO. Your honour has further stated that copy of loan sanction and disbursement letter in respect of loan of Rs.12,00,00,000/- availed from HDFC Bank Ltd is not on record.*

*In this connection, we respectfully submit that vide Authorised Representative's letter dt. 24<sup>th</sup> October, 2017, the assessee duly filed the complete party-wise and nature of payment of all heads of expenses mentioned in Schedule - 9 to Audited Accounts, which interalia included details of business promotion expense of Rs.19,04,585/-. Further, vide Authorised Representative's letter dt. 27<sup>th</sup> October, 2017, the assessee filed a detailed note on allowability of depreciation which interalia mentions about the sanction of loan of Rs. 12,00,00,000/by the HDFC Bank Ltd. The assessee submits*

*that it has duly filed the copy of loan sanction and disbursement letters along-with the above letter. In view of the above, the assessee respectfully submit that it has duly filed the details of business promotion expenses of Rs. 19,04,585/and loan sanction and disbursement letter from HDFC Bank Ltd before the AO during the assessment proceeding and same has duly been considered by the AO and hence the order passed by the AO cannot be termed as erroneous in s far as it is prejudicial to the interest of the revenue so as to attract provisions of section 263 of the Act.*

*In view of above, it is respectfully submitted that all the details concerning the above issues were before the AO and the AO after due verification, deliberation and discussion has arrived at a finding that no addition/disallowance are required with regards to the above issues. Since the AO has arrived at a finding after considering all the all the facts and circumstances of the case and application of mind to the material available on record it cannot be said that the order passed by the AO u/s. 143(3) is erroneous so as to be prejudicial to the interest of the Revenue.*

*We therefore respectfully submit that the proceedings u/s 263 of the Acts shall be dropped and oblige.”*

**4.** After considering the detailed submissions and relying on various case law, Ld. Pr.CIT observed that these decisions postulate that when the Officer is expected to make an inquiry of a particular item of income and if he does not make an inquiry as expected, that would be a ground for the Commissioner to interfere with the order Passed by the Officer since such an order passed is erroneous and prejudicial to the interests of the Revenue. Further, he observed that he has gone through the assessment records and examined the submissions made by the assessee. After careful examination he has come to the conclusion, that the assessee has failed to discharge the onus as regards to disclose the short

term capital gain u/s. 50 of the Act on sale of office premises at Pinnacle Corporate Panel. He further observed that Assessing Officer has not examined the genuineness of business promotion expenses, professional receipts received during the year as no TDS was deducted by payer. The Assessing Officer failed to carry out necessary enquiries as warranted by the facts and circumstances of the case and apply the correct provision of Act. Therefore, he came to the conclusion that the assessment is found to be erroneous insofar as it is prejudicial to the interest of Revenue as envisaged in Section 263 of the Act. There is lack of enquiry by the Assessing Officer on the issues raised in the notice issued u/s. 263 of the Act. Accordingly, he set aside the order passed u/s. 143(3) of the Act for the A.Y. 2015-16 and directed the Assessing Officer to assess the same afresh after giving the assessee an opportunity of being heard and producing any evidences in this regard.

**5.** Aggrieved assessee is in appeal before us raising following grounds in its appeal: -

*"1. The Commissioner of Income Tax — 19, Mumbai (hereinafter referred to as CIT) erred in passing the order under section 263 of the Act, and directing the Assistant Commissioner of Income Tax, Mumbai (hereinafter referred to as the AO) to pass an afresh assessment order u/s 143(3) of the LT Act.*

*The Appellant submits that the order passed by the CIT u/s 263 of the Act is bad in law, illegal, ultra-virus, in excess of and/or in want of jurisdiction and otherwise void.*

2. *The CIT erred in holding that the assessment order passed s.143(3) is erroneous so as to be prejudicial to the interest of the revenue within the meaning of Section 263 of the Act and has directed the AO to make a fresh assessment after considering the issues raised in notice u/s 263 of the Act.*

*The Appellant submits that all the details and evidences were on record and the AO has applied his mind and considered all the material on record while passing the assessment u/s 143(3) of the I.T Act and hence the order sought to be revised cannot be termed as erroneous and prejudicial to the interest of the revenue.*

3. *The CIT erred in holding that the AO ought to have taxed short term capital gain of Rs.13,70,62,310/- u/s 50 of the Act on sale of office premises at Pinnacle Corporate Park, Mumbai as the new office premises purchased at Dev Plaza, Andheri(West), Mumbai cannot be held as acquired during the previous year ended 31.03.2015.*

*The Appellant submits that it has acquired the office premises at Dev Plaza on 27.03.2015 and hence neither the block of asset ceased to exist nor the full value of consideration received on transfer of asset exceeds the WDV and actual cost of assets acquired during the year under consideration; hence provision of section 50 has no application in its case.*

4. *The CIT erred in holding that the genuineness of business promotion expenses and professional receipts received during the year as no TDS was deducted by the payer were not examined by the AO during the assessment proceeding and thereby directing the AO to verify and examine the business promotion expenses and professional receipts received during the year and pass an afresh assessment order u/s 143(3) of the Act.*

*The Appellant submits that on the facts and circumstances of the case all the details, evidences and material were on 'record while making the assessment u/s 143(3) and the AO has considered the said issues in the light of the material available with him and has reached a finding for not making any additions/disallowances in the order; hence the order u/s 263 passed by the CIT shall be quashed.*

5. *The Appellant reserves the right to add, amend, alter or vary all or any of the above grounds of appeal as they or their representatives may think fit"*

**6.** At the time of hearing, Ld. AR submitted as below: -

"1. *The present appeal challenges the jurisdiction of the CIT in passing order dated 8<sup>th</sup> March 2021 u/s 263 of the Act revising the order of the AO dated 19<sup>th</sup> December 2017 passed u/s 143(3) of the Act.*

2. *The Ld. CIT at pg 16 of his impugned order has exercised his jurisdiction w/s 263 on the ground and by relying upon Explanation 2 to section 263 of the Act that inquiry has not been done on following issues:*

*a. Purchase of commercial property at Andheri vide agreement dated 31<sup>st</sup> March 2015 registered on 4<sup>th</sup> April 2015 cannot be added to the block of asset and therefore u/s 50, the sale of office premises at Bandra which forms part of the block would result into capital gain.*

*b. Income received on which no TDS is deducted.*

*c. Genuineness of business promotion expenses.*

3. *With respect to each of the above 3 items, the submissions are as under.*

4. **Section 50:**

4.1. *It is submitted that section 43(6)(c)(i) defines Written Down Value (WDV) to mean opening block of asset increased by the actual cost of any asset acquired during the previous year. It is submitted that in the course of the assessment proceedings the issue of year of acquisition and applicability of section 50 and further claim of depreciation u/s 32 w.r.t. this block was thoroughly examined and the AO accepted the non-applicability of section 50 but disallowed the claim of depreciation u/s 32 primarily on the ground of failure to satisfy the test of the asset having been used.*

4.2. *The relevant pages of the paper book, to demonstrate that the issue was raised by the AO, replied by the assessee and after detailed inquiry and verification the assessment order was passed disallowing the depreciation but accepting the contention of the assessee on non-applicability of section 50, are pgs 15, 17, 18, 20, 22, 23, 24, 27, 29, 31, 33, 40, 43, 45, 84, 85, 88, 90, 91, 93, 97, 110, 113, 114, 115 and 118.*

4.3. *It is submitted that in view of above inquiry and verification, it cannot be said that there has been no inquiry or inadequate inquiry on the issue of acquisition of property.*

4.4. *The acceptance of the AO on non-applicability of section 50 is supported by the following decisions which hold the view that the registration date relates back to the date of execution of the agreement. In the instant case, the execution of the agreement is dated 31<sup>st</sup> March 2015 and therefore the registration of the document on 4<sup>th</sup> April 2015 would relate back to 31<sup>st</sup> March 2015. On 31<sup>st</sup> March 2015, the assessee had acquired the property and therefore the acquisition cost would go on to increase the block of asset and therefore there would be no taxability u/s 50 of the Act since the block does not cease to exist nor does the block of asset become negative. Reliance is placed on Gurbax Singh v. Kartar Singh reported in 254 ITR 112 (SC), Ashwin C Jariwala v. ITO reported in 164 ITD 255 (Mum), Smt. Savita Bhasin v. ITO reported in 186 ITD 195 (Del) and Ayi Vaman Narasimha Acharya v. DCIT reported in 188 ITD 1 (Bgl).*

4.5. *It is submitted that in section 50 there is no condition that the asset should be put to use and therefore even if the asset is not put to use but acquired during the year then provisions of section 50 would not be applicable. This proposition is directly covered by the decision of the Mumbai Tribunal dated 24<sup>th</sup> August 2016 reported in Indogem v. ITO reported in 72 taxmann.com 315 and Fluroscnt Fixtures (P.) Ltd. v. ITO reported in 34 SOT 48. It is submitted that as on the date of passing the assessment order, i.e. 19<sup>th</sup> December 2017, the decision dated 24<sup>th</sup> August 2016 was available and binding on the AO. It is submitted that accepting a view by the AO which is in accordance with the binding decision cannot be termed as erroneous and prejudicial to the interest of the Revenue so as to invoke provisions of section 263 of the Act. Reliance is placed on CIT v, Paul Brothers reported in 216 ITR 548 (Bom) and JP Morgan Chase Bank N.A. v. DCIT reported in 183 ITD 190 (Mum).*

4.6. *It is submitted that the Hon'ble Bombay High Court in the case of Nirav Modi reported in 390 ITR 292 has held that if a query is raised, replied and accepted by the AO without discussion in the assessment order then it cannot be said that provisions of section 263 can be invoked merely because there is no discussion in the assessment order. In the instant case, the query is raised, replied, verified and examined as accepted by the Assessing Officer in para 2 of his assessment order and thereafter accepted the claim of the Petitioner insofar as provisions of section 50 are concerned but disallowed the claim of depreciation u/s 32 clearly shows that adequate inquiry and verification was made by the Assessing Officer and therefore it is not a case of no inquiry or inadequate inquiry.*

4.7. *The assessee did not contest the disallowance of section 32 because of the binding decision of the Mumbai Tribunal in the case of Indogem reported in 72 taxmann.com 315, which is reported hereinabove. In any case, the allowability of depreciation was only a*

*timing difference and therefore the assessee thought fit not to contest the disallowance of depreciation.*

*4.8. The assessee submits that the AO has examined the issue in-depth and as a prudent person and has taken a view in accordance with binding decisions of the Supreme Court and the Tribunal. It is submitted that in such a scenario the provisions of Explanation 2 to section 263 cannot be relied upon to justify assumption of jurisdiction. Reliance is placed on the decisions in the case of Sir Ratan Tata Trust v. DCIT reported in 188 ITD 151 (Mum), Rallis India Ltd. ITA 3564/M/2016 (Mum) and Nalco Co. v. CIT reported in 210 TTJ 369 (Pune).*

*4.9. In view of above, it is respectfully submitted that provisions of section 263 have been wrongly invoked and therefore the impugned order is without jurisdiction.*

**5. Income on which no TDS is deducted:**

*5.1. The assessee during the year received professional fees of Rs.13.22 cr. and after claiming various expenses computed income from business at Rs. 11.65 cr. The assessee has paid tax on the said Rs.11.65 cr. The professional receipts consisted on Rs. 1.72 cr. on which TDS was deducted by the payer and the balance Rs. 11.50 cr. was received from a foreign party to which the provisions of TDS are not applicable.*

*5.2. It is submitted that whether TDS has been withheld or not by the payer, the said issue has to be examined in the assessment of the payer and the assessee fails to understand as to how professional receipts on which tax has been paid by the assessee can result into order being erroneous and prejudicial to the interests of the Revenue. The assumption of jurisdiction on this issue is ex facie bad in law.*

*5.3. The issue of professional receipts and TDS was also examined in the course of the assessment proceedings as evident from pgs 2, 4, 5, 15, 18, 23, 25, 26, 28 and 29. It is submitted that based on these documents it cannot be said that there was no inquiry or examination on this issue.*

*5.4. The legal submissions made on the scope of section 263 in para 4 above would equally apply on this issue.*

*5.5. Therefore, it is respectfully submitted that the jurisdictional conditions of section 263 are not satisfied.*

6. **Business promotion expenses:**

6.1. *The assessee earned gross receipts of Rs. 13.22 cr. and incurred business promotion expenses of Rs. 19 lakhs which constitutes around 1.4% of the gross receipts. The nature of business of the assessee compels it to incur these expenses, which on the face of it is very reasonable.*

6.2. *The issue of business promotion expenses was examined in the course of the assessment proceedings as evident from pgs 91, 93 and 94 of the paper book.*

6.3. *There is no basis or reasoning as to why the CIT has invoked the revisional jurisdiction on the basis that genuineness of this expense has not been examined. The Petitioner submits that it had given details of various other expenses under the same cover of letter dated 24<sup>th</sup> October 2017, but the CIT without any basis has stated in his impugned order that genuineness has not been examined. There is no material on record to even doubt or suspect the genuineness of the expenses. It is respectfully submitted that such a fishing inquiry without any basis cannot satisfy the jurisdictional condition of section 263 of the Act. Reliance is placed on Milestone Real Estate Fund 172 ITD 370 (Mum), Sarvana Developers 387 ITR 239 (Kar), Vikas Polymers 341 ITR 537 (Delhi)*

6.4. *The legal submissions made on the scope of section 263 in para 4 above would equally apply for this issue also.*

7. *To conclude, the impugned order u/s 263 is without jurisdiction and therefore ought to be quashed."*

7. On the other hand, Ld. DR submitted that Ld. Pr.CIT during the verification of the assessment records found that Assessing Officer has not carried out any verification in the main issue. She submitted that assessee has claimed that it has purchased the property whereas the document clearly shows that assessee has not settled entire consideration during this year. Further, she submitted that Ld. AR brought to our notice three clauses of the agreement at Page No. 37, 41 and 42 of the Paper Book. She brought to our notice clause 10 and 11 at Page No. 46 of the

Paper Book to draw our attention to clause (11) wherein the clause (11) clearly indicates that the vendor only upon receipt of the entire amount out of the said total sale consideration from the purchaser as mentioned in the schedule of payment shall be deemed to have simultaneously hand over the quiet, vacant and peaceful physical possession of the said unit to the purchaser. She submitted that without the settlement of total consideration which is necessary for completion of the settlement procedure. Further she brought to our notice Page No. 88 of the Paper Book which is the letter issued by Shri Vijay Thakkar to the assessee which indicates that the letter was issued on a specific request made by the assessee and she brought to our notice that the letter was issued only to carrying out fitments and refurbishing the said unit so as to make it ready for use and enjoyment. She also submitted that this letter was issued only 31.03.2015. These informations clearly indicates that the seller never intended to handover the property without receiving the full consideration. She submitted that the revision proposed by the Ld. Pr.CIT is proper and in this regard she relied on CIT *v.* Emery Stone Mf. Co. (1995) 213 ITR 843 (Raj.). She further submitted that the case law relied on by the assessee are distinguishable to the facts of the present case. With reference to case law relied by the assessee Smt. Savita Bhasin *v.* ITO [84 ITR (T) 602 (Delhi)], Indogem *v.* ITO [72 taxmann.com 315

(Bom)], these case law are not relevant for the present case since the assessee has not paid full consideration whereas in the above case law relied in which full consideration was already paid.

**8.** With regard to second issue she supported the findings of the Ld.Pr.CIT and submitted that Ld. Pr.CIT has only directed the Assessing Officer to verify whether TDS were properly deducted.

**9.** With regard to third issue she submitted that this is a small issue and she relied on the order passed u/s. 263 of the Act.

**10.** In rejoinder Ld. AR submitted as below: -

*"The Learned DR relied on clause (c) at pg 37, clause 2 at pg 41, clause 4 at pg 42, clauses 10 and 11 at pg 46 of the paper book to contend that since full payment was not made, the possession could not have been given and therefore the property could not said to have been acquired. 'The assessee/Appellant submits that clause (c) at pg 37 only records the consideration agreed upon between the parties. Similarly clauses 2, 4, 10 and 11 at pgs 41, 42 and 46 respectively only state that possession Will be handed over on full payment of consideration. It is submitted that none of these clauses state that right, title, interest in the property Will not be transferred to the assessee unless full payment is made. Possession per se does not confer any ownership right under the Transfer of Property Act. It is submitted that on the contrary clause 6.7 at pg 43 and clauses 7 and 9 at pg 45 clearly show that the seller agreed to transfer the right, title, interest in the property from and on the date of execution of the agreement. Therefore, it is respectfully submitted that the clauses relied upon by the Learned DR are not relevant. Furthermore, the CIT has not given this reasoning for invoking section 263 and therefore the Department today cannot justify the jurisdiction on a totally new point which did not form part of the show cause notice u/s 263 of the Act.*

2. *The Learned DR relied on a letter at pg 88 which is a letter issued by the seller to the assessee and handed over personally for fit-out purpose. The case of the DR is that genuineness of this letter was not examined by the AO during the course of the assessment proceedings. It is submitted that at pg 116, the AO in his letter to the assessee records the proceedings initiated u/s 133(6) to inquire the subject transaction and at item 4 of the said letter the name of the seller is mentioned, notice u/s 133(6) has been served and reply has been received is also mentioned. On the contrary relying on this very letter the Officer has denied depreciation u/s 32 of the Act on the ground that it cannot be said that asset was not put to use which is a precondition for claiming depreciation.*

3. *The assessee has relied upon the decision in the case of Gurbax Singh, Ashwin Jariwala and Savita Bhasin for the proposition that by virtue of section 47 of the Registration Act, the document takes a retrospective effect from the date of execution even if registered subsequently. It is submitted that these decisions do not say that if full payment is not made then property cannot be said to have been acquired. In the case of the Appellant, as evident from pg 115, the assessee/Appellant had paid more than 95% of the consideration before the date of execution of the agreement. Therefore, even on this account the distinction sought to be made by the Learned DR is incorrect.*

4. *Insofar as section 263 proceedings on receipt of income are concerned on the ground that there has been unprecedented increase in the receipts and profit the jurisdiction is justified because the Officer has not examined this issue. It is submitted that the assessee has paid tax on full professional fees received during the year and therefore the assessee/Appellant fails to understand as to how when tax is paid on full receipts, the assessment order on this issue can be erroneous and prejudicial to the interests of the Revenue.*

5. *Insofar as business promotion expenses are concerned, the assessee repeats and reiterates its submissions made in para 6 of the Written Submissions which were handed over during the course of the hearing on 04-11-2021.*

6. *The Learned DR relied upon the decision of the Rajasthan High Court reported in 213 ITR 843 to justify the jurisdiction u/s 263 of the Act. It is submitted that this decision is distinguishable on facts and contrary to the decision of the jurisdictional High Court in the case of Nirav Modi reported in 390 ITR 292. The assessee submits that in the instant case as evident from the Written Submissions, the case was selected for examining the capital gain issue, details of acquisition of property were sought on more than one occasion, replies were filed on section 50 and section 32 by the assessee, the*

*AO after receiving the reply investigated the case by issuing 133(6) notice and by issuing a show cause notice to disallow depreciation and ultimately in the assessment order gave a detailed reasoning to deny the depreciation. Therefore, on these facts it cannot be said that the Officer has merely collected the details and not applied his mind. The Hon'ble Bombay High Court in the case of Nirav Modi (supra) has reiterated that once a query is raised and replied and it does not find its place in the assessment order then it cannot be said that for the purpose of section 263 of the Act, the officer has not applied his mind or examined the issue. The case of the assessee/Appellant is on a stronger footing as stated above.*

*7. In view of above and in view of the Written Submissions filed on 04.11-2021, it is respectfully submitted that the CIT was not justified in invoking the provisions of section 263 of the Act."*

**11.** Considered the rival submissions and material placed on record, we observed from the record that Ld. Pr.CIT set aside the Assessment Order by invoking three issues which are as under: -

- "i) Purchase of commercial property at Andheri vide agreement dated 31<sup>st</sup> March 2015 registered on 4<sup>th</sup> April 2015 cannot be added to the block of asset and therefore u/s 50, the sale of office premises at Bandra which forms part of the block would result into capital gain.*
- ii) Income received on which no TDS is deducted.*
- iii) Genuineness of business promotion expenses.*

**12.** With regard to capital Gain issue u/s. 50 of the Act, during assessment proceedings the Assessing Officer collected the information with regard to additions made on block of asset and verified the aspects relating to section 32 and 50 of the Act. After verifying the aspects relevant for addition and deletion in the block of asset and Assessing Officer denied the claim of depreciation u/s. 32 of the Act on the ground

of failure on the part of the assessee to satisfy the utilization of assets having been used during the previous year. No doubt Assessing Officer verified the additions made in the block of asset and not discussed anything on applicability of section 50 of the Act in the present case. From the records submitted before us clearly indicates that Assessing Officer has carried out verification on the aspect of additions/deletions and allowability of depreciation on the fixed assets scheduled. The issue raised by the Ld. Pr.CIT with regard to applicability of the section 50 considering the fact that Registration date as per document is on 04.04.2015 whereas execution of the agreement is dated 31.03.2015. From the records submitted before us shows that assessee has made substantial payments of sale consideration before 31.03.2015 and executed the agreement as on 31.03.2015. Only the registration was completed on 04.04.2015. We noticed that assessee has already paid substantial payments and the seller by written submission has already confirmed the passing of ownership to the assessee when the substantial payments were made. As per "Transfer of property Act, 1882" section 53A of the Act defines as under: --

*"1[53A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already*

*in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that 2[\*\*\*] where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.]”*

**13.** From the above definition, when there is reasonable certainty, and the transferee has performed part performance and taken possession in part performance, has done some Act in furtherance of the contract then the mere registration process in next few days does not alter the legal rights of the parties involved. We observe that assessee added the property in the block of asset and claimed depreciation as well. However, Assessing Officer denied the depreciation considering the fact that assets were not put to use. Coming to the main issue even if the assets not put to use, can the assessee still make the addition on acquisition of the assets during the year, we noticed that Coordinate Bench of this Tribunal in the case of *Indogem v. Income Tax Officer* [72 taxmann.com 315 (Mum)] held as under: -

*"13. When once the entire sale consideration was paid, the terms of agreement are reduced into writing by way of allotment letter and assessee proceeded to take over the building for outfits, all these facts clearly show the state of mind of the builder and the assessee that the rights of the parties are crystallized as on the date of*

*allotment letter itself, but for the legal formalities like execution of a proper covenant and issuance of Occupation Certificate by authorities. When once the proper covenant was executed with due compliance of stamp and registration requirement, it is a settled principle of law that the transaction relates back to the date of original agreement itself, as such, formal execution of the covenant would only evidence and reinforce the rights accrued under the allotment letter.*

14. *As rightly argued by the learned counsel for the assessee, Sec. 50 of the Act does not contemplate use of property to complete the process of acquisition of property. Acquisition is a process whereby the rights of the parties are crystallized in unequivocal terms and each party has complied with or is ready to comply with the mutual obligations. Here, in this case, all that has to be done by the assessee was done by parting with valuable consideration and starting the work of fit-outs well before the end of the financial year. Possession has both physical and psychological components and when once the assessee started with work of fit-outs, having discharged his obligation under the contract, his animus possidendi accompanies the act of corpus possidendi. The distinction between possession and occupation has to be kept in mind, which is relevant only for the purpose of determining the question of "use", but not for the purpose of acquisition contemplated in Sec. 50(1)(iii) of the Act. Occupation could be equated to the term "use" as contemplated u/s 32 of the Act whereas it cannot be equated to the concept of possession to understand the completion of the process of acquisition in terms of Sec. 53A of the Transfer of Property Act. Here, in this matter, assessee did all that he has to do under the contract, and his further act of taking over the property in furtherance of his animus of owning the property thereby excluding every other from dealing with or interfering with the property, is suffice to hold that the assessee acquired the property during the financial year for the purposes of Sec. 50(1)(iii) of the Act.*

15. *For these reasons, we are unable to accept the contentions of the Revenue that there was no property in existence before the end of the relevant financial year, that there was no agreement between the parties and there is no acquisition that took place during the relevant financial year. We hold that the assessee by his acts of parting with full sale consideration and gaining the ability to have every other person excluded from dealing with the property and by proceeding with the work of fit-outs has demonstrated that it acquired the property for the purposes of Sec. 50(1)(iii) of the Act. We hold the issue in favour of the assessee. Thus, assessee succeeds on Ground of Appeal no. 1."*

**14.** The above decision clearly addresses the issue in hand that when the entire sale consideration was paid, the terms of agreement reduced into to writing and purchaser proceeded to take over the building, the rights of both the parties are crystalized as on the date of allotment letter or taking over the possession of the property, for the legal formalities like execution of a proper covenant and issuance of occupation certificate by the authorities. It is only a regular formality, it is a settled principle of law that the transaction relates back to the date original agreement itself, as such, formal execution of the covenant would only evidence and reinforce the rights accrued. As discussed in the above Para that even the Section 53A of the Transfer of Property Act, comes into play and subsequent execution and registration of the property is merely a formality and the rights have already accrued to the assessee.

**15.** Respectfully following the above decision, in our considered view the facts in the above case applicable mutatis mutandis to the present case.

**16.** During hearing Ld. DR have argued that this case law is not applicable to the present case considering the fact that the entire sale consideration was paid whereas in the given case only substantial

consideration was paid. In our considered view what is relevant is the intentions of the parties and the assessee has occupied the property and there is no objection on the part of the seller with regard to full settlement of the sale consideration before it is being transferred. It is fact on record that the settlement of full consideration is not the proposition raised by the Ld. Pr.CIT while invoking the provision of section 263 of the Act in the present case. Further we observed that Ld. AR brought to our notice that the decision of the *Indogem v. ITO* (supra) was very much available before the Assessing Officer at the time of assessment and since it is submitted and available before him, it is not necessary that Assessing Officer should have discussed this issue in the Assessment Order as held in various decisions of the Hon'ble High Courts that once the Assessing Officer raises the query and receives the reply and accepts the same it is not necessary for Assessing Officer to discuss all the aspects in the Assessment Order. It is presumed that Assessing Officer has considered those aspects on which he has called the information and it is fact on record that he has taken one of the possible views. In our considered view, Assessing Officer has examined the issues of addition to the block of asset as well as deletion / depreciation and taken one of the possible view in accordance with binding provisions and decisions submitted before him. In such case provisions of section 263 cannot be invoked. Moreover

Ld. Pr.CIT has invoked the provision of Explanation 2 to section 263 of the Act, in our considered view and in various decisions of the various courts held that it can be invoked only when no verification or enquiry conducted by the Assessing Officer. In the given case that is not the case and Assessing Officer has verified and applied his mind therefore, the provisions of section 263 of the Act cannot be invoked in this aspect.

**17.** Coming to the second issues on applicability of TDS provision on professional fee received by the assessee, we observed from the record that assessee has received professional fee which consists of ₹.1.72 crores from domestic payer/customer who has deducted TDS. With regard to other portion of ₹.11.5 Crores, assessee has received professional fee from the foreign party to which no TDS is applicable. In the given case assessee has declared all the professional fee received by it and offered the same to tax. Ld. Pr.CIT has directed the Assessing Officer to verify the receipt from foreign source, which does not come under the provisions of withholding tax. Particularly where assessee has declared all the receipts for taxation and paid the applicable tax on its income. We further noticed that Ld. Pr.CIT has only given a direction to the Assessing Officer to verify the same. Even if the Assessing Officer finds that TDS is applicable, the consequence will be absolutely nothing. Therefore, mere

giving direction to the Assessing Officer without quantifying loss to the interest of the revenue the Ld. Pr.CIT cannot invoke provisions of section 263 of the Act.

**18.** With regard to third issue on business promotion expenses, we observe from the record that during the assessment proceedings Assessing Officer has collected all the information relating to business promotion expenses by issuing notice u/s. 142(1) of the Act. Assessee also submitted the detailed submissions in this regard before the Assessing Officer and it is brought to our notice at Page No. 94 of the Paper Book wherein assessee has submitted all the information relating to business promotions incurred by the assessee to the extent of ₹.19,04,585/-. Even in this case Ld. Pr.CIT has directed the Assessing Officer to verify the genuineness of the expenses claimed by the assessee without really quantifying what is the loss to the revenue.

**19.** From the above discussion, we observe from the record that Ld.Pr.CIT has invoked provisions of section 263 of the Act in the present case where he has differed from the view which Assessing Officer has taken which is one of the possible view and further he has directed the Assessing Officer to verify the professional fee received by the assessee

and business promotion expenses without really quantifying what is the loss to the revenue, it clearly indicates that he has invoked provisions of section 263 of the Act to redo the assessment or to implement his point of view in the assessment which is already completed. Therefore, we set aside the order passed u/s. 263 of the Act with the above observations.

**20.** In the result, appeal filed by the assessee is allowed.

Order pronounced on 11.01.2022 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai / Dated 11.01.2022  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**