

IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, AHMEDABAD

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 463/Ahd/2023  
(निर्धारण वर्ष / Assessment Years: 2018-19)

<b>Mafatbhai Bhikhabhai Parmar</b> C/O J N Goyal & Company, C-162, Ranjeet Nagar, Bharatpur, Rajasthan 321001	<b>बनाम/</b> Vs.	<b>The PCIT, Vadodara-1, Baroda</b>
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AVUPP0615R		
(Appellant)	..	(Respondent)

आयकर अपील सं./I.T.A. No. 464/Ahd/2023  
(निर्धारण वर्ष / Assessment Years: 2018-19)

<b>Jitendra Kumar Shimpi</b> C/O J N Goyal & Company, C-162, Ranjeet Nagar, Bharatpur, Rajasthan 321001	<b>बनाम/</b> Vs.	<b>The PCIT, Vadodara-1, Baroda</b>
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BRSPS0325Q		
(Appellant)	..	(Respondent)

आयकर अपील सं./I.T.A. No. 465/Ahd/2023  
(निर्धारण वर्ष / Assessment Years: 2018-19)

<b>Mahendra Ambalal Patel</b> C/O J N Goyal & Company, C-162, Ranjeet Nagar, Bharatpur, Rajasthan 321001	<b>बनाम/</b> Vs.	<b>The PCIT, Vadodara-1, Baroda</b>
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AODPR2336H		
(Appellant)	..	(Respondent)

आयकर अपील सं./I.T.A. No. 466/Ahd/2023  
(निर्धारण वर्ष / Assessment Years: 2018-19)

<b>Imtiyaz Karimbhai Vhora, C/O J N Goyal &amp; Company, C-162, Ranjeet Nagar, Bharatpur, Rajasthan 321001</b>	<b>बनाम/ Vs.</b>	<b>The PCIT, Vadodara-1, Baroda</b>
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGFPV1687H		
(Appellant)	..	(Respondent)

आयकर अपील सं./I.T.A. No. 467/Ahd/2023  
(निर्धारण वर्ष / Assessment Years: 2018-19)

<b>Bharatsingh Amarsingh Rajput C/O J N Goyal &amp; Company, C-162, Ranjeet Nagar, Bharatpur, Rajasthan 321001</b>	<b>बनाम/ Vs.</b>	<b>The PCIT, Vadodara-1, Baroda</b>
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ASTPR3292G		
(Appellant)	..	(Respondent)

आयकर अपील सं./I.T.A. No. 468/Ahd/2023  
(निर्धारण वर्ष / Assessment Years: 2018-19)

<b>Wilson Mikhael Topno C/O J N Goyal &amp; Company, C-162, Ranjeet Nagar, Bharatpur, Rajasthan 321001</b>	<b>बनाम/ Vs.</b>	<b>The PCIT, Vadodara-1, Baroda</b>
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AFHPT0755P		
(Appellant)	..	(Respondent)

आयकर अपील सं./I.T.A. No. 469/Ahd/2023  
(निर्धारण वर्ष / Assessment Years: 2018-19)

<b>Shrikant Singh Ramdayal Shakya C/O J N Goyal &amp; Company, C-162, Ranjeet</b>	<b>बनाम/ Vs.</b>	<b>The PCIT, Vadodara-1, Baroda</b>
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<b>Nagar, Bharatpur, Rajasthan 321001</b>		
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BGFPS9704P		
(Appellant)	..	(Respondent)

आयकर अपील सं./I.T.A. No. 470/Ahd/2023  
(निर्धारण वर्ष / Assessment Years: 2018-19)

<b>Ankit Pranal Patel C/O J N Goyal &amp; Company, C-162, Ranjeet Nagar, Bharatpur, Rajasthan 321001</b>	<b>बनाम/ Vs.</b>	<b>The PCIT, Vadodara-1, Baroda</b>
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ARRPP2674H		
(Appellant)	..	(Respondent)

आयकर अपील सं./I.T.A. No. 471/Ahd/2023  
(निर्धारण वर्ष / Assessment Years: 2018-19)

<b>Arbinda Kumar Singh C/O J N Goyal &amp; Company, C-162, Ranjeet Nagar, Bharatpur, Rajasthan 321001</b>	<b>बनाम/ Vs.</b>	<b>The PCIT, Vadodara-1, Baroda</b>
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BTRPS1687J		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Rajiv Goyal, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Sameer Tekrewal, CIT-DR

<b>Date of Hearing</b>	08/05/2024
<b>Date of Pronouncement</b>	27/05/2024

**ORDER**

**PER BENCH:**

These nine appeals are filed by nine different assessees against separate order of the Principal Commissioner of Income

Tax, Vadodara-1 (in short 'the PCIT') passed under section 263 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') for the Assessment Year 2018-19. All the nine assesses are erstwhile employees of GE Power India Ltd and the issue involved in all these cases is identical. These cases were heard together and represented by Shri Rajiv Goyal, the common A.R. on behalf of all the nine assesseees. On the request of the Ld. AR, the case of Shri Arbinda Kumar Singh (I.T.A. No. 471/Ahd/2023) was taken as the lead case and facts of the case are discussed in detail hereunder. All the nine cases are being disposed off vide this common order for the sake of convenience.

**ITA No. 471/AHD/2023:**

2. The assessee has e-filed his return of income for A.Y. 2018-19 on 22.08.2018 declaring total income of Rs.10,91,730/-. The assessment was completed u/s 143(3) of the Act on 24.02.2021 and the returned income was accepted. Thereafter, the Ld. PCIT examined the case records and found that the order of the A.O. was erroneous and pre-judicial to the interest of Revenue, as certain exemptions were wrongly allowed, contrary to the provisions of law, in respect of salary income. The reason for which the order of the A.O. was found to be erroneous, as

recorded in Para 3 of the PCIT's order u/s 263 of the Act, was as under:

*3. As per details of salary, the employer has shown payment under Voluntary Retirement Scheme amounting to Rs.2180652/- and it forms part of salary u/s 17(1) in form 16. It is noticed that against this payment Rs.2180652/-, the Assessing Officer has allowed following exemption over on basis of assessee's submission dated 08.04.2020:*

- Rs. 15,00,000/- as amount paid by the employer directly to LIC for purchasing the annuity policy*
- Rs. 4,50,000/ claimed u/s 10(10CC) of the Act.*
- Rs. 4,51,900/- as Retrenchment Compensation received by Workmen u/s 10(10B) of the Act.*

*Thus against VRS benefits of Rs.2180652/- the assessee has claimed deductions of Rs.24,01,900/- which A.O. has allowed without any application of mind and contrary to provisions of law. The fact that the employer has duly deducted tax on the VRS benefits, has been ignored by A.O. and not only have inadmissible exemptions been allowed but in fact more exemption has been allowed than the amount received.*

*3.1. The employer has treated the VRS compensation as salary income under section 17(1) of the Income Tax Act, 1961. The employer has not identified the VRS benefits as eligible for any kind of deduction or exemption under the Income Tax Act, 1961. The assessee has spun a web of self-proclaimed exemptions u/s 10(10CC) on a VRS amount treating the amount as received under section 17(2) of Act. A.O. has failed to verify the assessee's claim with the detailed salary sheet and therefore has allowed exemptions on basis of case laws and provisions of law that are not relevant to the fact of this case. In the assessment order, while allowing the exemptions, the Assessing Officer has merely mentioned that*

*"After taking account all relevant material on record, an assessment is hereby made without making any modification to the returned income."*

*It is pertinent to note that these exemptions were not recorded or allowed by the employer in the Form 16, however the A.O. did not bother to examine the same or conduct any inquiry in this regard with respect to material on record, and has allowed exemptions which are more than the VRS amount received by the assessee. Therefore the order is erroneous in so far as prejudicial to the interest of revenue as exemptions have wrongly been allowed in respect of salary income contrary to provisions of income tax law.*

3. The Ld. PCIT, therefore, initiated proceeding u/s 263 of the Act and after allowing an opportunity of being heard to the assessee passed the order u/s 263 of the Act dated 29.03.2023 whereby the assessment was set aside to the file of the Assessing Officer with a direction to pass fresh assessment order de novo after taking into consideration, the issues as discussed in the order u/s 263 of the Act. Aggrieved with the order of the Ld. PCIT, the assessee has filed this appeal and has raised the following Grounds of Appeal:

*1. The ld. Pr. CIT, seriously erred in law as well as on the facts of the case in invoking the provisions of Sec. 263 of the Act and therefore, the impugned order dated 29.03.2023 u/s 263 of the Act kindly be quashed.*

*2. The ld. Pr. CIT seriously erred in law as well as on the facts of the case in assuming jurisdiction u/s 263 of the Act by wrongly and incorrectly holding that this renders the order erroneous in so far as prejudicial to the interest of revenue as exemptions have wrongly been allowed in respect of salary income contrary to provisions of income tax law and without conducting any inquiry in the matter.*

*3. The ld. Pr. CIT erred in law as well as on the facts of the case in wrongly setting aside the assessment order dated 24.02.2021 despite there being complete application of mind by the AO on the subjected issues and it was nothing but a case of change of opinion, based on which, assumption of jurisdiction u/s 263 is not permissible. The*

*impugned order dt. 29.03.2023 therefore, lacks valid jurisdiction u/s 263 of the Act and hence, the same kindly be quashed.*

*4. The ld. Pr. CIT erred in law as well as on the facts of the case in wrongly setting aside the assessment order dated 24.02.2021 relying on the various judgments that are not subject matter of assessment.*

4. Shri Rajiv Goyal, Ld. A.R. of the assessee submitted that the assessee was an employee of GE Power India Ltd. and his services were terminated by the employer. As part of the retirement benefits, the employer company had procured an Annuity policy from LIC in favour of the retiring employees. A sum of Rs. 15 lac was directly paid by the employer to LIC for the allotment of the Annuity policy in assessee's favour. However, this amount was erroneously added by the employer to the assessee's salary income. Additionally, the employer company had paid Income Tax of Rs.4,50,000/- on behalf of the employee which was exempt from tax as a non-monetary perquisite u/s 10(10CC) of the Act. The assessee had also claimed retrenchment compensation of Rs.4,51,900/- as exempt u/s 10(10B) of the Act. The Ld. A.R submitted that the A.O. had meticulously examined these matters and conducted thorough inquiries before approving the assessee's claim and exemptions. He pointed out that six notices u/s 142(1) of the Act were issued which clearly demonstrated that the matter was deeply and

comprehensively examined by the A.O. before approving the assessee's claims. As it was not a case of "no inquiry", the order of the A.O. can't be held as erroneous. He contended that where two views are possible and if the A.O. had taken one of the views, the order cannot be held as erroneous and pre-judicial to the interest of Revenue. In this regard, he placed reliance on the decision of Hon'ble Supreme Court in the case of *Malabar Industrial Company Ltd. Vs. CIT 243 ITR 83 (SC)*. The Ld. A.R. contended that the basic condition of the order of the A.O. being erroneous and prejudicial to the interest of Revenue was not satisfied in this case. Therefore, the assumption of jurisdiction by the Ld. PCIT u/s 263 of the Act was not correct. According to the Ld. AR, it was not a case where the A.O. had failed to make any inquiry rather the A.O. had made extensive inquiries and had taken a plausible view in accordance with law. He, therefore, requested to cancel the order of the Ld. PCIT.

5. Per contra, Shri Sameer Tekriwal, Ld. CIT-DR appearing for the Revenue strongly supported the order of the Ld. PCIT. He submitted that when the salary disclosed as per Form No. 16 was Rs.36,95,179/-, the A.O. should have critically examined why the salary disclosed in the IT return was much lesser. He further

submitted that the A.O. did not make any inquiry with the employer to verify the genuineness of the exemptions as claimed in the return. In the absence of any such enquiry the order of the AO was certainly erroneous and prejudicial to the interest of revenue. As regarding sum of Rs. 15 lac paid by the employer directly to LIC for purchasing the Annuity policy, the Ld. CIT-DR submitted that this issue was covered by the decision of the Hon'ble Supreme Court in the case of *CIT Vs. Navnit Lal Sakar Lal 113 taxmann.com 692 (SC)*, and there was no two opinion in respect of this issue. He also placed reliance on the decision of the Hon'ble Delhi High Court in the case of *Yoshio Kubo Vs. CIT 36 taxmann.com 1 (Delhi)* and the decision of coordinate bench of this tribunal in the case of *Sanghi Infrastructure Ltd. in ITA No. 1285/AHD/2018*.

6. We have carefully considered the submissions made by the rival parties and the materials brought on record. The moot question to be decided in this case is whether the order of the A.O. was erroneous and prejudicial to the interest of revenue and whether the assumption of jurisdiction by the Ld. PCIT u/s 263 of the Act was correct. In this context it will be relevant to

examine the provisions of Section 263 of the Act, which is reproduced below:

***Revision of orders prejudicial to revenue.***

**263.** (1) The <sup>99</sup>[Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer <sup>1</sup>[or the Transfer Pricing Officer, as the case may be,] is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, <sup>2</sup>[including,—

- (i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or
- (ii) an order modifying the order under [section 92CA](#); or
- (iii) an order cancelling the order under [section 92CA](#) and directing a fresh order under the said section].

As per provision of this section the PCIT is empowered to call for and examine the record of any proceeding under the Act. Accordingly, he had called for the record of this case, examined the assessment order and after such examination he formed an opinion that the order of the AO was erroneous and prejudicial to the interest of revenue. The circumstances under which an order can be held as erroneous and prejudicial to the interest of revenue is specified in Explanation 2 to section 263 of the Act, which is found as under:

*Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer <sup>3</sup>[or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—*

- (a) the order is passed without making inquiries or verification which should have been made;
- (b) the order is passed allowing any relief without inquiring into the claim;

- (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under [section 119](#); or
- (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

7. As per the *Explanation 2*, the order passed by the A.O. shall be deemed to be erroneous and pre-judicial to the interest of revenue if the order is passed without making inquiries or verifications which should have been made or where the order is passed allowing any relief without enquiring into the claim. Further as per clause (d) of the *Explanation*, if the order is not passed in accordance with any decision rendered by the Supreme Court in any case and which is pre-judicial to the assessee, then in such instance also the order will be held as erroneous and pre-judicial to the interest of revenue. We have to, therefore, examine as to whether these conditions were fulfilled in this case and whether the assumption of jurisdiction by the Ld. PCIT u/s 263 of the Act was correct.

8. There is no dispute to the fact that gross salary shown in Form No. 16 was Rs.40,50,274/- and after allowing exemption in respect of conveyance, gratuity, leave encashment and tax on employment, the net salary as certified by the employer was Rs.36,95,179/-. On the other hand the assessee had shown salary

of Rs.13,80,639/- only in the return of income and after adjustment of house property loss and deduction under chapter-VIA, net income of Rs.10,914,725/- was shown in the return. It was, therefore, incumbent upon the Assessing Officer to verify the huge difference in the salary as per Form No. 16 and the salary as disclosed in the ITR. The assessee has contended that deep enquiry was conducted by the AO in the course of assessment proceeding by issue of notice u/s 142(1) on multiple occasions and that it was not a case of 'no enquiry'. From the copy of evidences brought on record by the assessee, it is found that the matter was indeed enquired by the AO. However, the questions raised by the AO in various notices were identical and the reply of the assessee was also the same. The relevant questions raised by the AO and the response of the assessee to those queries are found to be as under:

**(Questions)**

- 1. It is seen that in the pay slip for December, 2017 and assessee's reply dated 08.04.2020, it is mentioned as Voluntary Retirement Scheme. However, in the reply dated 10.10.2020, the assessee has stated that he has received retrenchment compensation. Please explain the same.*
- 2. Please furnish confirmation letter from the Employer whether assessee has taken voluntary retirement or retrenched from service.*
- 3. Please furnish the total break-up of compensation received.*

4. Please furnish detail under which section you had claimed deduction of Rs. 15,00,000/- from salary income towards annuity paid to LIC by employer. It is seen that the same is a taxable perquisite u/s 17(2)(v) of the I.T. Act, 1961. please explain the same.

3. Please furnish details from employer as to whether non-monetary perquisite of Rs.4,51,000/- has been disallowed u/s 40(a)(v) in his hands with documentary evidence.

4. It is seen that as per pay slip of assessee for December, 2017, the basic salary is Rs.27,700/- and dearness allowance is Rs.6,810/-. However, for the purpose of claiming deduction u/s 10(10B), the assessee has taken average salary at Rs.90,380/-. Please furnish break- up & working of average salary, gratuity, leave salary and retrenchment compensation.

**(Answer)**

1. The assessee received retrenchment compensation on premature termination of his employment.

2. Pursuant to your notice the assessee visited the office of the employer company several times to seek relevant material to be furnished to you but due to covid-19 pandemic he was handicapped and not allowed to access into the office and his efforts could not materialize. His services were terminated he is entitled to retrenchment compensation under the provisions of law. It is self evident from Form 16 in which a huge amount has been shown as payment to the assessee and it represents compensation. His age is around 34 years at the time of termination of his employment and he has not completed with full tenure of service which proves that he received big amount of compensation for loss of employment.

3. A copy of the income tax computation statement showing break-up of compensation issued by the employer is enclosed is A\_1.

4. You have misinterpreted the true implication and real import of the provisions of section 17(2)(v) of IT Act, 1961 corresponding to section 7(1) of IT Act 1922 and ignored the landmark verdicts of the Hon'ble Apex Court and the Hon'ble High Courts resulting in gross miscarriage of justice.

The sum of Rs. 15 lac paid to LIC by the employer company and not to the assessee employee (as per the letter issued by the LIC and the Master policy constituting a contract between the employer company and the LIC) does not form part of the assessee's total income as per the verdict of the Hon'ble Apex Court in CIT v L W Russel u/s 17(2)(v) of IT Act, 1961 and is not

*taxable in the assessee's hands in the AY 2018-19 but in the future years on receipt of Annuity installments by the assessee from the LIC. The installments of annuity Rs. 87360 received by the assessee during the FY 2017-18 has been included in his ITR under the head "Income from Salary chargeable to tax under section 17(2)(v) by the assessee as an honest law abiding tax payer.*

*The Master Policy No. GFIP/714001659 issued by the LIC to effect a contract of Annuity contemplated by Section 17(2)(v) in its SCHEDULE includes the terms of the contract entered into between the GE Power India Ltd. and the LIC stating that the Annuity is effected on the life of the member/beneficiary (Assessee employee ARBINDA KUMAR SINGH in the instant case), term of Annuity is 4 years during which the annuity shall be payable to the member/beneficiary and mode of payment of the Annuity shall be monthly (Copy is annexed as A\_2)*

9. The explanation of the assessee was that the sum of Rs.15 lac was paid to the LIC by the employer and not by the assessee. The assessee had submitted that a group policy was taken by the employer and the premium amount was also paid by the employer and that the assessee had no nexus with this payment. Further that this amount was wrongly shown by the employer as salary of the assessee in Form-16. It was contended that the contribution made by the employer to provide pensionary or deferred annuity benefit to its employees cannot be taxed in the hands of the employee u/s 17 of the Act. However, the assessee had not produced any confirmatory evidence from the employer and stated that due to Covid-19 Pandemic, he was not allowed access to the office of the employer company. A similar explanation was given in respect of non-monetary perquisite of Rs.4.5 lakh claimed exempt

u/s 10(10CC) of the Act. The A.O. accepted the submissions of the assessee on its face value and did not examine as to why the payment of Rs. 15 lac paid to LIC as well as the amount of exemptions claimed u/s 10(10B) and u/s 10(10CC) of the Act were shown as part of gross salary in Form No. 16 issued by the employer. No follow up inquiry was made by the A.O. with the employer to find out whether the payment of Rs. 15 lac to LIC was made by the employer or whether this payment was on behalf of the employee. When the assessee had failed to furnish any confirmatory evidence from the employer the AO should have made direct enquiry from the employer to find out of reason for the difference between salary as per Form No. 16 and the salary as disclosed in the ITR. Such enquiry was mandatorily required when the assessee had contended that the employer had wrongly shown the salary in Form-16. It is thus evident from these facts that the AO did not make the enquiries and verifications which was required to be made before allowing the claim of the assessee and, therefore, the order of the AO was erroneous. In the absence of any follow up inquiry by the A.O., the contention of the assessee that the A.O. has applied his mind and taken one of the plausible views, cannot be accepted.

10. In the course of proceeding u/s 263 of the Act, Ld. PCIT had made inquiry from the employer M/s. GE Power India Ltd. in order to confirm the nature of payments made to the assessee. The relevant query made by the ld. PCIT and the reply of the employer as reproduced in the impugned order is found to be as under:

*Query 2: Vide para 3.1. Kindly clarify:*

**• Whether the LIC Annuity Policy payment and income-tax liability are both taken as perquisite in form No. 16 of these employees for tax purpose.**

**• Whether the income-tax liability in respect of LIC Annuity Policy payment has been treated as exempt u/s 10(10CC) of Income Tax Act, 1961 in the form No. 16. If so, whether disallowance u/s 40(a)(v) of the Income-tax Act, 1961 has been made by you in your return of income in respect of Income-tax liability of these employees relating to LIC Annuity Policy payment borne by you as an employer.**

*Response: In this regard, please our response as follows:*

*No, the LIC Annuity Policy payment and income-tax liability are not taken as perquisite in form No. 16 of these employees. Also, neither the Income- tax liability in respect of such LIC Annuity Policy payment has been treated as exempt u/s 10(10CC) of the Income Tax Act, 1961 in form 16. Nor any disallowance u/s 40(a)(v) of the Income-tax Act, 1961 has been made in our return of income.*

*The said LIC Annuity amount was paid to LIC on the request of these employees and hence such income paid under Voluntary Retirement Scheme (VRS) is taxable in the hands of these employees. Further the company has also provided an exemption of Rs. 5,00,000/- against VRS u/s 10(10CC) of the Income-tax Act, 1961. The copies of LIC Annuity authorization letter alongwith LIC annuity letter on sample basis as proof are enclosed as Annexure-3.*

11. The provision of section 263 of the Act stipulates that the PCIT can make or cause enquiry before passing the order. The Ld. PCIT had exercised this power to make enquiry from the employer. It is crystal clear from the reply of the employer that the annuity amount paid to LIC was not made by the employer rather this payment was made on the request of the employees out of the VRS amount and was part of their taxable income. Therefore, this was shown as part of salary in Form No. 16. It also revealed from the enquiry made by the Ld. PCIT that the exemption of Rs.4,50,000/- claimed u/s 10(10CC) of the Act and of Rs.4,51,900/- u/s 10(10B) of the Act was not correct and not in accordance with the provisions of law. The deduction u/s 10(10CC) of the Act is available in respect of tax paid by employer for a non-monetary perquisite derived u/s 17(2) of the Act. The employer can't claim any deduction for such perquisite and the same is liable to be disallowed u/s 40(a)(v) of the Act. The AO didn't make any enquiry from the employer about payment of perquisite of Rs.4,50,000/- which was claimed exempt u/s 10(10CC) of the Act and had allowed the claim of the assessee. The enquiry made by the PCIT from the employer revealed that neither any perquisite was paid to the assessee nor

the employer had made any disallowance u/s 40(a)(v) of the Act. Therefore, the claim of exemption u/s 10(10CC) of the Act made by the assessee was wrong and incorrect. Similarly, the claim for exemption u/s 10(10BB) of the Act was also allowed by the AO without making any enquiry from the employer.

**12.** It is thus evident from the above facts, that the AO had not conducted proper inquiries in respect of the claims as made in the return of income and, therefore, the order was rightly treated as erroneous and pre-judicial to the interest of revenue by the Ld. PCIT. As pointed out by the Ld. CIT-DR, it was held by the Hon'ble Supreme Court in the case of *Navnit Lal Sakar Lal (supra)* that the amount utilized by the employer for obtaining deferred annuity policy would form part of remuneration payable to the assessee and was chargeable under the head "salaries". Therefore, the annuity amount of Rs. 15 lakh paid to LIC by the employer was remuneration of the assessee and taxable as salary. As the order of the AO was not in accordance with the decision of the Apex Court the order of the AO was erroneous and pre-judicial to the interest of revenue for this reason as well.

**13.** The decisions relied upon by the Ld. AR are all found different on facts and not applicable to the peculiar facts of this case. It is a trite law and a well settled position that non application of mind or wrong assumption of facts or incorrect application of law by the A.O. will make the order erroneous and pre-judicial to the interest of Revenue. Therefore, we do not find anything wrong with the assumption of jurisdiction u/s 263 of the Act by the Ld. PCIT as the order of the AO was erroneous and pre-judicial to the interest of Revenue for the reasons as already discussed above. We, therefore, upheld the order of the Ld. PCIT. The grounds of appeals taken by the assessee are dismissed.

**14.** In the result, the appeal filed by the assessee is dismissed.

**ITA No. 463/AHD/2023 to ITA No. 470/AHD/2023:**

**15.** The fact involved in all these appeals is identical to the fact of ITA No. 471/Ahd/2023. In these cases also the order of the Assessing Officer was found to be erroneous and prejudicial to the interest of revenue and the Ld. PCIT had passed order u/s 263 of the Act on different dates. The order challenged in these appeals and the issues on which the order of the AO was held as erroneous and prejudicial to the interest of revenue in these cases is summarized in the table below:

Sr. No.	ITA No.	Name of Assessee	PCIT order dated	AO's order held as erroneous for following wrong claims:
1.	463/Ahd/2023	Mafatbhai Bhikhabhai Parmar	25.03.2023	(i) Exemption U/s 10(10CC) of Rs.4,50,000/-
2.	464/Ahd/2023	Jitendra Kumar Shimpi	28.03.2023	(i) LIC Payment of Rs. 15 lac (ii) Exemption U/s 10(10CC) of Rs.4,50,000/- (iii) Exemption U/s 10(10B) of Rs.4,07,667/-
3.	465/Ahd/2023	Mahendra Ambalal Patel	28.03.2023	(i) LIC Payment of Rs. 15 lac (ii) Exemption U/s 10(10CC) of Rs.4,50,000/-
4.	466/Ahd/2023	Imtiyaz Karimbhai Vhora	27.03.2023	(i) LIC Payment of Rs. 25 lac (ii) Exemption U/s 10(10CC) of Rs.7,50,000/-
5.	467/Ahd/2023	Bharatsingh Amarsingh Rajput	29.03.2023	i) LIC Payment of Rs. 15 lac (ii) Exemption U/s 10(10CC) of Rs.4,50,000/-
6.	468/Ahd/2023	Wilson Mikhael Topno	28.03.2023	i) LIC Payment of Rs. 15 lac (ii) Exemption U/s 10(10CC) of Rs.4,50,000/-
7.	469/Ahd/2023	Shrikant Singh Ramdayal Shakya	28.03.2023	i) LIC Payment of Rs. 15 lac (ii) Exemption U/s 10(10CC) of Rs.4,50,000/-
8.	470/Ahd/2023	Ankit Pranlal Patel	29.03.2023	(i) LIC Payment of Rs. 20 lac

16. In all these eight cases as well, huge difference was found in the salary as per Form No. 16 and the salary as disclosed in their respective ITR. The facts of the cases on the issues of payment to LIC in respect of annuity scheme, exemption claimed u/s 10(10CC) of the Act and the exemption u/s 10(10B) of the Act is identical to the facts as discussed in ITA No. 471/Ahd/2023. The AOs had completed the assessments without making any enquiry from the employer and without examining whether these claims were admissible. The enquiry made by the Ld. PCIT from the employer had revealed that the annuity amount

paid to LIC by the employer was remuneration of the assessee and taxable as salary. Similarly, the claim of exemption u/s 10(10CC) and u/s 10(10BB) of the Act made by the assesseees and as allowed by the AOs were wrong and incorrect. As the order of the AO was erroneous and pre-judicial to the interest of revenue in these cases as well, the revisionary order passed by the Ld. PCIT u/s 263 of the Act in all these eight cases is upheld and their respective appeal is dismissed.

17. In the result, the appeal filed by all the nine assesseees is dismissed.

**This Order pronounced on 27/05/2024**

Sd/-  
(T.R. SENTHIL KUMAR)  
**JUDICIAL MEMBER True Copy**  
Ahmedabad; Dated 27/05/2024  
Rajesh

Sd/-  
(NARENDRA PRASAD SINHA)  
**ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अर्पित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

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