

आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “A”, MUMBAI**

**BEFORE SHRI CN PRASAD, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA NO. 2446/MUM/2014 : (A.Y : 2009-10)

M/s Axcel Global Services
Prabhat Palace, Behind Laxmi Bhawan
Lajpatrai Road, Vile Parle West
Mumbai – 400 056
PAN : AAOFA1550D

Vs. The CIT 13
Aayakar Bhavan
M.K.Marg
New Marine Lines
Mumbai – 400 056

(अपीलार्थी / Appellant)

(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri AV Sonde
प्रत्यर्थी की ओर से Respondent by : Shri RP Meena

सुनवाई की तारीख / Date of Hearing : 01/12/2016
घोषणा की तारीख Date of Pronouncement : 28/02/2017

आदेश / ORDER

PER C.N.PRASAD (J.M.) :

This appeal is filed by the assessee against the order of the Ld. CIT - 13, Mumbai dated 12.03.2014 passed u/s 263 of the Act for the assessment year 2009-10. In the appeal, the assessee has raised the following grounds :

- “1. The Hon’ble CIT-13, Mumbai, seriously erred in law and on the facts and in the circumstances of the case in passing an Order u/s 263 and allegedly and arbitrarily holding the Assessment made on

12/12/2011 u/s u/s 143(3) by ITO Wd 13 (1)(4) Mumbai to be allegedly erroneous and prejudicial to the interest of revenue and setting aside the same with directions to make thorough enquiry and investigation whether the Assessee was eligible for any deduction u/s 10A/10AA of the Income Tax Act, 1961, ignoring detailed submissions by Your Appellant, both at the Assessment stage and during the alleged show cause proceedings u/s 263 and ignoring the fact that the facts and circumstances relating to deduction u/s 10A of the Income Tax Act, 1961, have been duly and elaborately considered by the ld. A.O. in the body of the Assessment Order itself, in as much as deduction u/s 10A at Rs.83,26,298/- has been specifically allowed in the computation of Assessed Income.

2. There being no new fact, information, finding or material the impugned order u/s 263 is illegal and bad in law and be annulled and quashed.”

2. The Ld. Counsel for the Assessee at the outset submits that the Ld. Commissioner set aside the assessment made u/s 143(3) by the Assessing Officer allowing exemption u/s 10A/10AA on the ground that Assessing Officer has never examined, the claim of the Assessee and allowed the claim without proper application of mind, without proper verification and investigation. The Ld. Counsel further submits that it is the finding of the Ld.CIT that the Assessing Officer has not made any inquiry or investigation to ascertain the genuineness of the claim of the Assessee and therefore the order passed u/s 143(3) was held to be erroneous and prejudicial to the interest of revenue.

3. The Ld. Counsel for the Assessee referring to the show cause notice issued by the Ld. Commissioner which is placed at page no.81 of paper book submits that the ld. CIT proposed to hold the assessment made u/s 143(3) of

the Act as erroneous and prejudicial to interest of revenue for the reason that the Assessing Officer allowed the claim of the Assessee without any verification. The Ld. Counsel for the Assessee referring to page 2 of the paper book which is the computation of income, submits that the Assessee has claimed deduction u/s 10AA of the Act. He submits that Assessee also reported in Form 3CD the nature of business of Assessee carried on during the year as 'services'. Referring to page 24 and 25 of the paper book, the ld. Counsel submits that in the course of assessment proceedings, the Assessing Officer issued notice u/s 142(1) along with annexure requiring the Assessee to file various details and especially referring to point 5 of the annexure submits that details of exempted income with sources of investments was called for and referring to page 26 and 27 of the paper book, especially point no.4, he submits that reply was furnished before the Assessing Officer as to how the Assessee claimed exemption u/s10AA of the Act on the net profit from the firm set up in SEZ. Referring to page 28 of the paper book, which is the second notice issued by the Assessing Officer u/s 142(1) calling for the details, the Ld. Counsel submits that reply dated 13.08.2011 along with annexures was submitted which is placed at page 29 of the paper book. Further details regarding setting up of the unit in SEZ and the nature of business carried on by the Assessee was explained.

4. The Ld. Counsel for the Assessee further submits that the Assessing Officer further called for details in respect of claim made u/s 10AA, brief note on business activities, copy of agreement etc. and the Assessee by letter dated 03.10.2011 submitted the details of lease rent paid during 2009-10, additions to various assets during the assessment year 2009-10, he further referring to

page 62 of the paper book submits that the Assessing Officer by letter dated 21.11.2011 issued a further show cause notice regarding the sale of scrap and interest accrued on FDR and required the Assessee to explain as to why these two amounts should not be considered as income from other sources which according to him not realized in convertible foreign exchange from out of the profit of Rs.85,10,003/- claimed as exempt from SEZ unit. Referring to page 65, Ld. Counsel submits that detailed reply was filed before the Assessing Officer with regard to the scrap sales and interest on FDR and the Ld. Counsel for the Assessee submits that considering all these details furnished by the Assessee in the course of assessment proceedings, the Assessing Officer completed the assessment on 12.12.2011 u/s 143(3) of the Act allowing deduction u/s 10A to the extent of Rs.83,26,298/-. The Ld. Counsel further submits that the Assessing Officer not satisfied with the replies of the Assessee furnished income from interest on FDR and scrap sales was treated as income from other sources. Therefore, the ld. Counsel for the Assessee submits that the Assessing Officer in the course of assessment proceedings called for various details regarding the claim of the Assessee u/s 10AA and the claim was examined thoroughly and was allowed on proper application of mind and therefore the order passed by the Assessing Officer is neither erroneous nor prejudicial to the interests of revenue.

5. The Ld. Counsel for the Assessee submits that the Ld. Commissioner is not clear as to the nature of verification carried out by the Assessing Officer. He submits that Assessing Officer made repeated inquiries and therefore, the Ld. Commissioner is completely erroneous in observing that the Assessing Officer

has never examined the claim. The Ld. Counsel for the Assessee places reliance on the following decisions in support of the proposition that when the details were furnished by Assessee and the Assessing Officer has examined the details and allowed the claim of the Assessee the assessment order cannot be said to be erroneous.

- (a) CIT Vs. Shri Govindram Seksariya Charity Trust [166 ITR 580] (M.P)
- (b) CIT Vs. Rathan Coal Ash Co. [171 ITR 141] (M.P)
- (c) CIT Vs. Mulchand Bagri [108 CTR 206] (Cal)

The Ld. Counsel for the Assessee submits that the Assessing Officer has made proper inquiries and therefore the Ld. CIT cannot revise the assessment order unless he comes to conclusion that there is an error in the assessment order. For this proposition he places reliance on the following decisions.

- (a) CIT Vs. Trustees Anupam Charitable Trust [167 ITR 129] (Raj.)
- (b) CIT Vs. Goyal Private Family Specific Trust [171 ITR 698] (All.)
- (c) CIT Vs. Gabriel India Ltd. [203 ITR 108] (Bom.)

6. The Ld. Counsel for the Assessee further placing reliance on the decision of the Hon'ble Bombay High Court in the case of Gabriel India Ltd Vs. CIT [203 ITR 108] submits that the Ld. Commissioner cannot initiate proceedings with a view to make fishing and roving inquiries in matters or orders which are already concluded based on the information called for by the Assessing Officer and submitted by the Assessee in the course of assessment proceedings. The Ld. Counsel for the Assessee further placing reliance on the decision of Calcutta High Court in the case of Jai Kumar Kankaria Vs. CIT [251 ITR 707] submits that

assessment cannot be revised u/s 263 of the Act based on subsequent events. Finally, the Ld. Counsel for the Assessee placing reliance on the decision of Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd Vs. CIT [243 ITR 83] submits that the Assessing Officer has taken one of the possible views and therefore when two views are possible and the Assessing Officer has taken one of the views possible and if the Commissioner does not agree with such view of the Assessing Officer, the assessment cannot be treated as erroneous and prejudicial to the interest of the revenue.

7. The Ld. DR vehemently submits that there was no proper enquiry by the Assessing Officer in respect of the claim made by the Assessee u/s 10A/10AA of the Act. The Ld. DR submits that there was inadequate enquiry by the Assessing Officer. He further submits that the claim of the Assessee was disallowed in the assessment year 2010-11 based on which the Ld. Commissioner of Income Tax revised the assessment of the Assessee for the Assessment Year under consideration to deny the claim of the Assessee as there was no adequate and proper inquiry and the assessment was made without proper application of mind. He places reliance on the following decision in support of his submissions.

- (a) Geosoft Technologies (Trivandrum) Ltd. Vs. CIT [41 taxmann.com 428 (Ker)]
- (b) PV Sreenijin Vs. CIT [47 taxmann.com 61 (Ker)]
- (c) Arvee International Vs. Addl. CIT [101 ITD 495 (Mum)]
- (d) Crompton Greaves Ltd., Vs. CIT [ITA No.1994/Mum/2013 and ITA No.2836/Mum/2014 dt.01.02.2015]

(e) Alka Rajesh Agarwal Vs. CIT [ITA No.5007/Mum/2009 dated 05.12.2012]

8. In the rejoinder, the Ld. Counsel for the Assessee submits that the case laws relied on by the Ld. DR have no application to the facts of the Assessee's case. He submits that in all these cases, there is a clear finding of fact that there is complete lack of inquiry or there was no inquiry at all. He submits that in all these cases, Assessing Officer failed to make any inquiries and therefore these cases are distinguishable from the facts of the Assessee's case and have no application.

9. We have heard the rival submissions, perused the orders of the authorities below, the information placed before us and the case laws relied on before us. On a careful perusal of the materials placed before us in the form of paper book, it is abundantly clear that the Assessee made a claim for deduction u/s 10AA in the return of income which is at page no.2 of paper book. The nature of services, nature of activities of business operations of the Assessee is also reported in Form 3CD at page no.9 of paper book. The Assessing Officer issued notice dated 11.03.2011 u/s 142(1) and an annexure to the notice placed at page nos. 24 and 25 of the paper book calling for the details of exempted income with sources of investments. The Assessee vide letter dated 22.03.2011 placed at page nos. 26 and 27 of the paper book furnished its reply stating that the Assessee had set up a unit in SEZ under the SEZ Act, 2005, warehousing/repair services of oil field equipment and chemicals during the year under assessment. It was submitted before Assessing Officer that the Assessee firm entered into contract

with an MNC namely M/s MI Overseas Ltd., and during the year, the Assessee has received remittances in US dollars against the service bills and therefore the net profit of the Assessee in Indian rupees at Rs.85,10,003/- was claimed as exempt u/s 10AA of the Act. A further notice was issued on 15.07.2011 to the Assessee and Assessee has replied by letter dated 13.08.2011 along with various enclosures which is placed at page nos.29-61 of paper book. The annexure to the letter dated 13.08.2011 contains various approvals given by the authorities of Ministry of Commerce and Industry, Govt. of India, the Development Commissioner, Visakhapatnam Special Economic Zone, certificate issued by the state authorities treating the Assessee as importer & exporter, copy of lease deed entered into by the Assessee with competent authority of SEZ for doing business in SEZ, copy of agreement for repairs and material management services from Visakhapatnam Special Economic Zone (VSEZ) entered into with MI Overseas Ltd. The Assessing Officer vide letter dated 21.11.2011 also proposed to disallow and treat the scrap sales and interest accrued on FDR under head income from other sources, out of the income of Rs.85,10,003/- claimed as exempt from SEZ on the ground that the Assessee has not received any convertible foreign exchange to which the Assessee has also submitted reply vide letter dated 29.11.2011 which is placed at page nos.64 to 66 of the paper book. We also find that the Assessment was completed allowing the claim of the Assessee u/s 10A of the Act except on scrap sales and interest on Fixed Deposits. The Assessing Officer, though not specifically mentioned in the assessment order regarding allowability of the claim of the Assessee u/s10A/10AA in the assessment order, it is very much apparent that the Assessing Officer after calling for various details in respect of

the claim of the Assessee and satisfying himself allowed the claim of deduction u/s 10A restricting it to Rs.83,26,298/- as against the claim of the Assessee at Rs.85,10,003/-. The Assessing Officer in the assessment order denied the claim for deduction u/s 10A on scrap sales and interest on FDR for which he has given reasoning as to why he is not allowing the claim. The Assessing Officer treated these two incomes i.e. income from sale of scrap and interest on FDR under the head income from other sources and therefore denied the claim of the Assessee.

10. The Commissioner by letter dated 22.10.2013 required the Assessee to show cause as to why the assessment order should not be revised for the reason that claim for exemption u/s 10A/10AA was allowed by the Assessing Officer without any verification and therefore assessment order passed by the Assessing Officer was erroneous in so far as it is prejudicial to the interest of the revenue. The Assessee furnished reply to the show cause notice explaining why the assessment order passed by Assessing Officer allowing the claim of the assessee is not erroneous and prejudicial to the interest of revenue. However not convinced with the reply of the assessee the Ld. Commissioner by order dated 12.03.2014 set aside the assessment order passed u/s 143(3) with a direction to the Assessing Officer to make a fresh assessment after making thorough inquiries and investigation on the issue after allowing reasonable opportunity of being heard to the Assessee observing as under :

“5. I have carefully considered the assessee's contentions. It is seen from the assessment order that the Assessing Officer has never examined the genuineness of the claim of deduction made u/s. 10A/10AA of the Income Tax Act. The Assessing Officer has referred to the audit report where there were some discrepancies

regarding the amount claimed as deduction. But whether the assessee was eligible for any deduction u/s. 10A/10AA of the Income Tax Act was never examined by the Assessing Officer and thus the claim of the assessee was allowed application of mind and without proper verification and investigation. Similar claim of the assessee in A.Yr.2010-11 was thoroughly examined by the A.O. and claim of the assessee was not admitted. Prima facie it is seen that the assessee is rendering services in India and received such payment in convertible foreign exchange and thus has not made any export of services out of India. In the circumstances, the claim of the assessee should have been examined by the Assessing Officer properly. Since the Assessing Officer has not made any enquiry or investigation to ascertain the genuineness of the claim of the assessee, the order passed u/s. 143(3) of the Income Tax is erroneous in so far as it is prejudicial to the interests of revenue. In this view, the impugned order is set aside to this extent with a direction to the Assessing Officer to make a fresh assessment on this issue after making thorough enquiry and investigation and after allowing reasonable opportunity of being heard to the assessee.”

11. On reading of the above Ld. Commissioner’s order, it is apparent that the Ld. Commissioner came to the conclusion that the assessment order is erroneous only for the reason that according to the Ld. CIT the Assessing Officer never examined and without proper verification and investigation allowed the claim of the Assessee and therefore assessment order is erroneous. As we have already explained in earlier paragraphs, the Assessing Officer in the course of assessment proceedings, called for the details and the Assessee has furnished various details and explanation as to why the claim should be allowable to the Assessee u/s 10A/10AA and therefore the observation of the Ld.Commissioner that the Assessing Officer has never examined claim and claim was allowed without application of mind, without proper verification and investigation is

baseless and contrary to record. The Ld. Commissioner completely overlooked the queries raised by the Assessing Officer and replies submitted by the Assessee in coming to the conclusion that the Assessing Officer has never examined and no proper investigation was made. The Commissioner has not brought out in its order as to how the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue.

12. In the case if CIT Vs. Shri Govindram Seksaria Charity Trust (supra), the Ld. Commissioner was of the view that the Assessing Officer allowed exemption u/s 11 to the Assessee without examining in detail the applicability of the provisions of section 13(1)(c)(ii) of the Act. Therefore, after giving a show cause notice, the Ld. Commissioner held that assessments made by the Assessing Officer were perfunctory and set aside the assessment orders with a direction to assess afresh. On these facts, the Hon'ble High Court held as under :

“Learned counsel for the Revenue contended that the Tribunal was not justified in coming to the conclusion that the Income-tax Officer had granted exemption to the assessee-trust after applying his mind to the question as to whether the assessee was entitled to claim exemption under section 11 of the Act read with the provisions of section 13 of the Act. The contention cannot be upheld. The Tribunal, after examining the record, found that to the audit objections that the assessee was not entitled to the benefit of exemption by virtue of the provisions of section 13(1) of the Act, the Income-tax Officer had given detailed replies showing that the Income-tax Officer was alive to the relevant provisions of law and the facts before passing orders of assessment. The Commissioner had not found that the order -passed by the Income-tax Officer, was erroneous inasmuch as the assessee was not entitled to claim exemption under section 11 of the Act. The finding of the

Commissioner was that the Income-tax Officer had not applied his mind to the question as to whether the assessee was or was not entitled to exemption in the light of the provisions of section 13(1) of the Act. This finding, according to the Tribunal, was not justified in view of the material on record. Learned counsel for the Revenue contended that the order of assessment passed by the Income-tax Officer did not disclose application of mind. However, if from the entire record, the Tribunal found that the Income-tax Officer was alive to the relevant facts and provisions of law before proceeding to frame the assessment, it cannot be held that the Tribunal was not right in holding that the Income-tax Officer had granted exemption after making thorough enquiries about the applicability of section 13(1) of the Act.”

13. In the case of CIT Vs. Rathan Coal Ash Co. (supra), the Ld. Commissioner passed order u/s 263 on the ground that the Assessing Officer failed to make proper inquiry both as regards to income and expenses shown by the Assessee. On these facts, the Hon’ble High Court held as under :

“Having heard learned counsel for the parties, we have come to the conclusion that this reference must be answered in the affirmative and in favour of the assessee. It is well settled that where the Income-tax Officer made the assessment in undue hurry, accepting what the assessee stated in return without making any enquiries, in the circumstances of the case, the Commissioner would be justified in holding the order of the Income-tax Officer to be erroneous. In the instant case, however, the Tribunal has found that the assessee had furnished all the requisite information and that the Income-tax Officer, considering all the facts, had completed the assessment. The Tribunal further held that in the circumstances of the case, it could not be held that the Income-tax Officer had made the assessment without making proper enquiries. In view of these findings, the Tribunal, in our opinion, was justified in law in reversing the order passed by the Commissioner of Income-tax.”

14. In the case of CIT Vs. Mulchand Bagri (supra), the Assessee sold some silver utensils and earned profit of Rs.16,237/-. This was claimed as exempt on the ground that the profit was on the sale of silver utensils and constitute 'personal effects' of the Assessee. The Ld. Commissioner on a perusal of the record came to the conclusion that no inquiry was made in the course of assessment by the Assessing Officer and therefore, he passed order u/s 263 holding that the assessment was erroneous and prejudicial to the interest of revenue because of the reason that the Assessing Officer has nto made inquiry which ought to have been made by him. On these facts, the Hon'ble High Court held as under :

"14. There can be no doubt that if the ITO accepted the assessee's case without any enquiry about the sale of silver utensils, the CIT was entitled to come to the conclusion that the assessment order was erroneous and prejudicial to the interest of the Revenue. Even if similar utensils were sold in the earlier years and some enquiries were made in the earlier years, that will not be of any relevance in the current assessment year because every sale has to be examined separately and independently by the ITO. But unfortunately, for the Revenue in this case, the finding of the Tribunal is that "..... but in the present case before us, the ITO appears to have made enquiry from the assessee as can be seen from his letter dt. 29th December, 1980 which is a page 23 of the Paper Book placed us to which the assessee sent a reply, which is at page 21.

Having regard to the facts of the case, we are of opinion that even on merits the provisions of s. 263 cannot be invoked on the facts of the present case before us."

15. This finding has not been challenged by the Commissioner as perverse in this case. There is no allegation of any misdirection of law. In other words, the finding of the Tribunal was that the ITO had actually made an enquiry into the sale of silver utensils. Therefore, the Commissioner was not right in his conclusion that the case of the assessee had been accepted by the ITO without any enquiry. Since this finding of fact of the Tribunal has not been challenged, it will be academic to give any answer to the question of law posed by the Revenue. The Tribunal might have wrongly decided the question of the Commissioners jurisdiction under s. 263 of the IT Act and the nature of the assessment order made by the ITO pursuant to a directions given by the IAC. But the Tribunal has come to a conclusion that the ITO had made enquiries about the sale of the silver utensils. Therefore, the Commissioner was not right in coming to the conclusion that the order passed by the ITO was prejudicial to the interest of the Revenue because he had not made the necessary enquiry in this regard. So long as this finding of fact stands, it has to be held that the Commissioners decision to revise the order of the ITO under s. 263 was erroneous.”

15. In the case of CIT Vs. Trustees Anupam Charitable Trust (supra), the Hon'ble High Court held as under :

“As regards the other mistake pointed out by the Commissioner of Income-tax, the Tribunal held that from a meticulous perusal of the observations of the Commissioner of Income-tax, it is obvious that he himself could not categorically say that the income of Rs. 4,96,790 represented income from speculative business. The Commissioner of Income-tax simply observed that the expression "sugar rate difference" occurring in the return of the assessee relating to the assessment year 1971-72 indicated that it was income from speculative business. The Tribunal held that a given expression may indicate something which may not be conclusive proof of anything. The error envisaged by Section 263 was not one which depended on possibility or guesswork but it should be actually an error either of fact or of law.

Unless the Commissioner of Income-tax categorically says that there was some income from speculative business which could not qualify for deduction, much less exemption under Section 11, it cannot be said that there was any error in the order of the Income-tax Officer relating to the assessment year 1971-72. This error was not relevant to the assessment year 1975-76.”

16. In the case of CIT Vs. Goyal Private Family Specific Trust (supra), the Assessee, a private Trust filed its return and the assessment was made assessing the beneficiaries of the Trust and it was held that the Trust was not assessable. The Ld. Commissioner passing order u/s 263 of the Act set aside the assessment order. The Tribunal found that necessary books of account had been produced, the Assessing Officer had examined them and also discussed the case with the representative of the Assessee before passing the assessment order. On these facts, the Hon'ble High Court held that in the absence of a finding by the Ld. Commissioner that the assessment order passed as erroneous, the cancellation of assessment was not justified. While holding so, the Hon'ble High Court held as under :

“There is no finding by the Commissioner that the Income-tax Officer reached an erroneous conclusion and that, on the facts and circumstances of the case, the conclusion would have been different. The orders of the Income-tax Officer may be brief and cryptic, but that by itself is not sufficient reason to brand the assessment orders as erroneous and prejudicial to the interest of the Revenue. Writing an order in detail may be a legal requirement, but the order not fulfilling this requirement, cannot be said to be erroneous and prejudicial to the interest of the Revenue. It was for the Commissioner to point out as to what error was committed by the Income-tax Officer in having reached the conclusion that the income of the trust was exempt in its hands and was assessable

only in the hands of the beneficiaries. The Commissioner having failed to point out any error, no error can be inferred from the orders of the Income-tax Officer for the simple reason that they are bereft of details. If the order is not erroneous, then it cannot be prejudicial to the interest of the Revenue. There is nothing to show in the order of the Commissioner that the Income-tax Officer would have reached a different conclusion had he passed a detailed order. So, the conclusion of the Commissioner that the orders of the Income-tax Officer are erroneous and prejudicial to the interest of the Revenue are based merely on suspicion and surmises in the absence of any enquiry having been made by him.

7. In the income-tax assessments, all questions boil down to this, whether income has been properly determined and whether the correct rate of tax has been applied. The Commissioner does not say that the income was higher or that it was assessed on a wrong entity or at a low rate or that any exemption was wrongly allowed. In the absence of such a finding, the assessment orders cannot be said to be erroneous and prejudicial to the interest of the Revenue.”

17. In the case of CIT Vs. Gabriel India Ltd. (supra), the Hon’ble jurisdictional High Court while considering the exercising of power of Ld. CIT to make revision u/s 263 held as under:

“We, therefore, hold that in order to exercise power under sub-section (1) of section 263 of the Act there must be material before the Commissioner to consider that the order passed by the Income-tax Officer was erroneous in so far as it is prejudicial to the interests of the Revenue. We have already held what is erroneous. It must be an order which is not in accordance with the law or which has been passed by the Income-tax Officer without making any enquiry in undue haste. We have also held as to what is prejudicial to the interests of the Revenue. An order can be said to be prejudicial to the interests of the Revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. There must be

material available on the record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision. Exercise of power of suo motu revision under such circumstances will amount to arbitrary exercise of power. It is well-settled that when exercise of statutory power is dependent upon the existence of certain objective facts, the authority before exercising such power must have materials on record to satisfy it in that regard. If the action of the authority is challenged before the court it would be open to the courts to examine whether the relevant objective factors were available from the records called for and examined by such authority.”

18. In the case of CIT Vs. Malabar Industrial Co. Ltd, the Hon’ble Supreme Court explained the scope of Section 263 of the Act and held as under :

“A bare reading of this provision makes it clear that the prerequisite to exercise of jurisdiction by the CIT suo motu under it, is that the order of the ITO is erroneous insofar as it is prejudicial to the interests of the Revenue. The CIT has to be satisfied of twin conditions, namely, (i) the order of the AO sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent—if the order of the ITO is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue—recourse cannot be had to s. 263(1) of the Act.

There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the AO; it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind.

The phrase ‘prejudicial to the interests of the Revenue’ is not an expression of art and is not defined in the Act. Understood in its

ordinary meaning it is of wide import and is not (conferred) to loss of tax.”

19. On analyzing the above, decisions, it is emerging that when the Assessing Officer called for the details and the details were furnished by the Assessee in the course of assessment proceedings and passed the assessment order allowing the claims of the Assessee the Ld. CIT (Appeals) cannot invoke revisional jurisdiction u/s 263 on the ground that the order passed by the Assessing Officer is without making inquiries. In the case on hand, the Assessing Officer called for the details in respect of the deduction claimed by the Assessee, u/s 10A/10AA, the details were furnished by the Assessee, these were examined by the Assessing Officer allowed the claim of the Assessee. Therefore, the observations of the Ld. CIT that the Assessing Officer never examined or there was no proper verification and investigation appears to be not correct. We also noticed from the order of the Ld. Commissioner that except saying that the order was passed by the Assessing Officer without making inquiries, he has not stated how the claim made by the Assessee is unsustainable in law and therefore is erroneous. As held by the Hon'ble Supreme Court, if the Assessing Officer has taken one view with which the Ld. CIT does not agree, the order cannot be treated as erroneous order, prejudicial to the interest of revenue unless the view taken by the Assessing Officer is unsustainable in law. There is no such finding by the Ld. CIT that the claim of the Assessee allowed by the Assessing Officer is unsustainable in law, the only finding of the Ld. CIT to invoke the provisions of section 263 is there was no proper inquiry by Assessing Officer. We do not agree with this finding as the Assessing Officer conduct inquiries and allowed the claim of the Assessee. The

case laws relied on by the Ld. DR are distinguishable on facts since in all these cases, the Assessing Officer has not made any inquiries at all. Therefore, the case laws relied on by the Ld. DR are of no help to him. Thus in view of what is stated above, we quash the Order of the Ld. CIT passed u/s 263 of the Act.

20. In the result, Appeal of the assessee is allowed.

Order pronounced in the open court on the 28th day of February 2017.

Sd/-

MANOJ KUMAR AGGARWAL
लेखा सदस्य /
ACCOUNTANT MEMBER

मुंबई / Mumbai; दिनांक / Dated 28/02/2017

LR, SPS

Sd/-

C.N.PRASAD
न्यायिक सदस्य /
JUDICIAL MEMBER

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mum