आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "डी", मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL BENCH "D" MUMBAI

BEFORE SHRI D.T.GARASIA, JM AND SHRI RAJESH KUMAR, AM

I.T.A. No.3259/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

Reliance Money Infrastructure Ltd., 7th floor, B Wing Trade World, Kamala Mills Compound, S B Marg, Lower Parel, Mumbai-400013	बनाम/ Vs.	Principal Commissioner of Income Tax-Room No.330, Aayakar Bhavan, M K Road, Mumbai-400020.

स्थायी लेखा सं./PAN : **AADCR2730G**		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Assessee by	:	Shri Arvind Sonde
प्रत्यर्थी की ओर से/ Revenue by	:	Shri B Puresh

सुनवाई की तारीख /Date of Hearing	:	25.7.2017
घोषणा की ता ate of Pronouncement	:	6.10.2017

आदेश / O R D E R

PER RAJESH KUMAR, A. M:

The captioned is appeal by the assessee pertaining to assessment year 2012-13 directed against the order of ld Principal Commissioner of Income Tax-(1) (hereinafter called ld. Pr.CIT) dated 31.3.2017 passed u/s 263 of the Income Tax Act(hereinafter called the Act).

2. The various grounds of appeal raised by the assessee which are reproduced as under :

GROUND NO. I: ORDER PASSED UNDER SECTION 263 OF THE INCOME-TAX ACT, 1961 ("the Act") IS BAD IN LAW:

1. On the facts and circumstances of the case and in law, the learned Principal Commissioner of Income-Tax - 1, Mumbai ("the PCIT") erred in passing the order under section 263 of the Act and setting aside of the assessment order passed under section 143(3) of the Act by the Deputy Commissioner of Income Tax, Circle -1 (3)(1), Mumbai ("the Assessing Officer") dated 24.03.2015 on the alleged ground that the said assessment order was erroneous and prejudicial to the interest of the revenue.

2. On the facts and circumstances of the case and in law, the learned PC IT erred in holding that the order of AO is erroneous and prejudicial to the interest of the revenue without pointing out how the same is so erroneous and prejudicial and therefore the said order is illegal, bad in law and void.

3. On the facts and circumstances of the case and in law, the learned PC IT erred in invoking the provisions of section 263 of the Act by holding that the Assessing Officer accepted all the claims of the Appellant without further enquires of the matters referred in the directions issued under section 144A of the Act.

The Appellant submits that the Assessing Officer had conducted proper and adequate inquires and therefore the order of the Assessing Officer is neither erroneous nor prejudicial to the interest of the revenue and the efore the order of learned PCIT under section 263 of the Act may be cancelled.

WITHOUT PREJUDICE TO GROUND NO. I:

GROUND NO. 11: CLAIM OF DEPRECIATION OF Rs. 80,25,356/-
:

4. On the facts and circumstances of the case and in law, the learned PCIT erred in setting aside the assessment order passed under section 143(3) of the Act by the revised claim of lower amount of depreciation made during the course of assessment
proceedings.

The Appellant submits that, in the facts and in the circumstances of the case, the order of the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue as the allowance of deprecation is less than the claim made in the return.

WITHOUT PREJUDICE TO GROUND NO. I:

GROUND NO. Ill: DEDUCTION OF Rs. 34,86,256 ON ACCOUNT OF INCENTIVE PAID:

5. On the facts and circumstances of the case and in law, the learned PCIT erred in setting aside the assessment order passed under section 143(3) of the Act by the Assessing Officer in respect of addition of the incentive during the course of the assessment proceedings of Rs.34,86,256 which was allowed as deduction in AY 2011-12.

The Appellant submits that, in the facts and in the circumstances of the case, the order of the Assessing Officer is neither erroneous nor prejudicial to the interest 01 the Revenue as the income for the year was increased by the above amount 01 incentive.

WITHOUT PREJUDICE TO GROUND NO. I:

GROUND NO. IV: PROFIT ON SALE OF ASSETS OF Rs. 5,17,82,414:

6. On the facts and circumstances of the case and in law, the learned PCIT erred in setting aside the assessment order passed under section 143(3) of the Act by the Assessing Officer in respect of reduction of profit on sale of assets of Rs. 5,17,82,414 in the updated computation of income submitted during the course of assessment proceedings.

The Appellant submits that, in the facts and in the circumstances of the case, the order of the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue as the action of AO is in accordance with the provisions of section 50 of Without prejudice to ground No.1

GROUND NO.V CLAIM OF HEDGING AND TRANSPORTATION COST:

7. On the facts and circumstances of the case and in law, the learned PCIT erred in setting aside the assessment order passed under section 143(3) of the Act by the Assessing Officer in respect of allowance of the hedging and transportation cost without examining nexus with business and applicability of Instruction No. 03 of 2010 dated 23.03.2010 and provisions of section 43(5) of the Act

The Appellant submits that, in the facts and in the circumstances of the case, the order of the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue as the market to market losses is allowable as per the decision of Hon ble Supreme Court in the case of CIT Vs. Woodward Governor India (P.) Ltd. (2009) (312 ITR 254) (SC)

WITHOUT PREJUDICE TO GROUND NO. I:

GROUND NO. VI: PURCHASE OF EQUITY SHARE. CAPITAL OF RELIANCE INFRASTRUCTURE FINANCE PVT. LTD. ((RIFPL)):

8. On the facts and circumstances of the case and in law, the learned PCIT erred in setting aside the assessment order passed under section 143(3) of the Act by the Assessing Officer on the alleged ground that the Assessing Officer ought to have verified the purchase of entire equity share capital of Reliance Infrastructure Finance Private Limited at par for Rs. 5.25 Cr. from Emerging Money Mall Ltd.

The Appellant submits that, in the facts and in the circumstances of the case, the order of the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue and therefore the order directing the Assessing Officer to pass a fresh assessment order is illegal, bad in law and void.

WITHOUT PREJUDICE TO GROUND NO. I:

GROUND NO. VII: CLAIM OF DEDUCTION FOR DEMERGER EXPESES UNDER SECTION 35DD of the Act:

9. On the facts and circumstances of the case and in law, the learned PCIT erred in setting aside the assessment order passed under section

143(3) of the Act by the Assessing Officer in respect of demerger expense under section 35DD of the Act on the alleged ground that claim of deduction for demerger expenses under section 35DD of the Act is accepted by the Assessing Officer without verification.

The Appellant submits that, in the facts and in the circumstances of the case, the order of the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue and therefore the order directing to the Assessing Officer to pass a fresh assessment order is illegal, bad in law and void.

WITHOUT PREJUDICE TO GROUND NO. I:

GROUND NO. VIII: CLAIM OF DEDUCTION FOR EXCESS PAYMENT OF INCENTIVE OVER PROVISION AMOUNTING TO Rs. 1,40,72,956:

10. On the facts and circumstances of the case and in law, the learned PCIT erred in setting aside the assessment order passed under section 143(3) of the Act by the Assessing Officer by holding that the Assessing Officer ought to have verified the Appellant's claim of deduction for excess payment of incentive over provision of Rs.1,40,72,956.

The Appellant submits that, in the facts and in the circumstances of the case, the order of the Assessing Officer is neither erroneous nor prejudicial to the interest of the Revenue and therefore the order directing the Assessing Officer to pass a fresh assessment order is illegal, bad in law and void.

WITHOUT PREJUDICE TO GROUND NO. I:

GROUND NO. IX : ANY OTHER ISSUE

11. On the facts and circumstances of the case and in law, the learned PCIT erred in setting aside the assessment order passed under section 143(3) of the Act by the Assessing Officer and holding that the Assessing Officer is entitled to frame assessment on any other issue that may arise during the course of fresh assessment proceedings.

The Appellant submits that, in the facts and in the circumstances of the case, the directions of PCIT in his order are beyond the show cause notice issued by him and therefore the order directing the Assessing

Officer to consider any other issue in the course of fresh assessment is illegal, bad in law and void. "

3. The issue raised in ground no.1 of the appeal is against the wrong exercising the revisionary jurisdiction u/s 263 of the Income Tax Act, 1961 by the PCIT, whereas the issues raised in grounds no.2 to 9 are without prejudice to the grounds of appeal no.1 challenging assumption of jurisdiction on merits u/s 263 of the Act.

4. We shall first deal with the issue raised against the assumption of jurisdiction exercising revisionary powers u/s 263 of the Act by the Ld. Pr. CIT by issuing the notice u/s 263 of the Act dated 13.7.2015 proposing to set aside the assessment order dated 24.03.2015 passed by the Dy. Commissioner of Income Tax for the reasons that the assessment was framed in undue haste without application of mind and without carrying out meaningful and proper inquiries by the AO on various issues raised under section 263 of the Act.

5. Facts in brief are that the assessee is in the business of marketing, distribution of insurance and mutual funds product, trading in bullions, real estate and brokerage services, trading in commodities and marketing and providing infrastructure facilities. The assessee filed return of income on 29.9.2012 declaring total loss at Rs.11,93,01,363/- under the normal provisions of Act and book loss of Rs.27,14,13,980/-under the special

provisions of section 115JB of the Act. The assessee revised its return of income on 29.3.2014 declaring the same income under the normal provisions as well as under section 115JB of the Act as the original return with only making higher claim of TDS in the revised return. The case of the assessee was selected for scrutiny and during the course of assessment proceedings , the assessee filed a revised computation of income in which the assessee declared a total loss of Rs.8,89,70,396/- under the normal provisions of Act and book profit of Rs.2,14,13,980 claiming therein several additions and deductions which as per the provisions of the Act inadvertently not claimed either in original or revised return of income. The AO after considering the revised computation during the assessment proceedings and after calling the various details information and explanations as to various items contributing to the reduction of loss and after taking into consideration the said details/information, framed the assessment vide order dated 24.3.2015 passed u/s 143(3) of the Act accepting the loss at Rs.8,89,70,396/- as per the revised computation. However, accordingly to Pr. CIT, the AO failed to carryout any meaningful and relevant inquiries on the various items/issues which were erroneous and have caused prejudice to the revenue and accordingly issued notice u/s 263 exercising the revisionary jurisdiction on the ground that AO has committed mistakes in accepting the claims of the assessee in allowing all the expenses without proper verification and also not

properly examining the directions issued u/s 144A of the Act on 10.3.2015 by the Addl. Commissioner of Income Tax qua the issues as mentioned in para 8 hereinafter.

6. The aforesaid issues were specifically raised by the AO during the assessment proceedings and after considering the contentions of the assessee accepted them as it is without any addition/disallowance and also without initiating any penalty proceedings under the Act. According to the Pr. CIT all the aforesaid allowances were erroneous and prejudicial to the interest of the Revenue and thus he justified the assumption of revisionary jurisdiction u/s 263 of the Act by issuing notice listing therein the various points on which the assessment was proposed to be set aside. The said show cause notice was replied by the assessee vide letter dated 29.7.2015 requesting the Pr. CIT to give a copy of direction issued u/s 144A dated 10.3.2015 by the Addl. CIT range 1(3), Mumbai. It was also pointed out that the Addl. CIT had never issued directions to the assessee and thus no opportunity was provided by the Addl. CIT to the assessee.

7. Thereafter, the assessee filed detailed reply dated 28.2.2017 raising various objections both legal and on merit against invoking the jurisdiction by the Pr.CIT u/s 263 of the Act by filing necessary and comprehensive details on each and every point raised in the notice u/s 263 of the Act . The Pr. CIT supplied a copy of direction issued u/s 144A of the Act on 29.3.2017 by Add.

CIT by observing that the said direction were general in nature and were covered under explanation to section144A of the Act and as such there was no requirement to give any opportunity to the assessee. The assessee, thereafter filed another reply dated 30.3.2017 before the PCIT. Thereafter the PCIT, after taking into consideration the contentions and submissions of the assessee , passed order u/s 263 of the Act setting aside the assessment order passed u/s 143(3) of the Act by holding that the AO has committed an error by allowing various erroneous claims which were prejudicial to the interest of the revenue and directed the AO to reframe the assessment after giving opportunity to the appellant and decide the following issues:

> *"(a) Claim of depreciation of Rs. 8,66,55,484/- - as per IT Act as against Rs. 80,25,356/- in original computation;*
>
> *(b) Deduction of Rs.34,86,256/- on account of incentive paid in F.Y.2011-12, offered for taxation in revised computation for A.Y.2012-13.*
>
> *(c) Profit on sale of assets Rs.5,17,82,414/- reduced from Computation of Total Income*
>
> *(d) Claim of Hedging and Transportation Cost of Rs.76.89 crores.*
>
> *(e) Purchase of entire equity share capital of M/s.Reliance Infrastructure Finance P. Ltd (RIFPL) at par for Rs.5.25 crores from M/s. Emerging Money Mall Ltd., which was itself purchased from Reliance Capital Ltd. for short period only after borrowing funds and claiming expenditure in respect of interest liability.*
>
> *(f) Claim of deduction for demerger expenses u/s.35DD*
>
> *(g) Claim of deduction for excess payment of incentive over provisions amounting to Rs.1,40,72,956*

h) Any other issue that may arise during fresh assessment proceedings"

While passing order u/s 263 of the Act, the ld. PCIT noted and observed that the AO has not gone into and examined the various directions given u/s 144A of the Act by the Addl. CIT on 10.3.2015 and also accepted the various claims as per the revised computation of income filed by the assessee during the assessment proceedings without making any meaningful and adequate enquiry. The PCIT also observed that the AO has erred in not initiating penalty proceedings u/s 271(1)(c) of the Act qua the reduction of claim qua depreciation from Rs.8,66,52,484 to Rs.80,25,356/- . The Pr. CIT also relied on the certain case laws to set aside the order of the AO:

i) CIT V/s Infosys Techlologies Ltd (2012) 341 ITR 293(Kar);
ii) CIT V/s Shree Manjunatheshware Packing Products and Camphor works (1998 231 ITR 53(SC) and
iii) Tara Devi Agrawal V CIT (1973)88 ITR 323 (SC)

Ultimately, the ld. Pr. CIT has held that the assessment made by the AO is erroneous and prejudicial to the interest of the revenue on all the accounts for the reasons that the deductions were allowed without making necessary inquires. As per Pr. CIT, the AO collected the details from the assessee in respect of the points raised in the directions issued u/s 144A of the Act but has not bothered to scrutinize the same in a logical and proper manner.

8. The ld.AR vehemently submitted that the Pr. CIT has completely erred in assuming revisionary jurisdiction u/s 263 of the Act and consequently setting aside the already completed assessment u/s 143(3) of the Act as framed after considering all the issues/allowances. The ld. AR stated that the AO called for explanations/clarifications/justification on various items of claim including the ones raised by the Pr. CIT in the revisionary proceedings from the assessee and only after considering the same the assessment was framed u/s 143(3) of the Act. The ld. AR submitted that the AO had issued notices on 26.8.2013, 6.8.2014 and 11.12.2014 which were complied with by the assessee by filing the detailed submissions on all the points as raised in these specific and respective notices The ld. AR submitted that the Addl. CIT issued direction to the AO u/s 144A of the Act vide letter dated 10.3.2015 for verification of four items viz

i) Revision of claim of depreciation from Rs.8,66,52,484 to Rs.80,25,356/-
ii) Mark to market los on hedging cost included in the cost of goods sold;
iii) Referral fees of Rs.918.71 lacs;
iv) Provision for doubtful debts of Rs.16,22,45,358/-

The ld Counsel for the assessee submitted that after receiving the above letter dated 10.03.2015, the AO issued notice u/s 142(1) of the Act on 11.3.2015 to the assessee calling for details/explanation qua the above issues which was replied and supplied by the assessee vide letter dated 19.3.2015 and it is only after examining these issues, the assessment was framed by

the AO u/s 143(3) on 24.3.2015 by taking a possible view on each and every item. Till 24.3.2015 various notices were issued to the assessee which were complied with by the assessee by filing details as called for by the assessing officer. Thus, issue raised by the Addl. CIT u/s 144A of the Act also stands duly replied and complied with and considered by the AO before framing the assessment. The ld. AR submitted that the allegations of Pr. CIT that the assessment was framed in undue haste was wrong and without any basis since the AO passed the assessment 7 days before the last date on which the case would have become time barred .e. 31.3.2015. Thus, the ground taken by the Pr. CIT that the assessment was framed without verification of various directions issued by the Addl.CIT to the AO was wrong and contrary to the facts on records. The Pr.CIT was also wrong in observing that the Addl. CIT raised seven issues whereas as a matter of fact only four issues were raised by the Add.CIT in the direction issued u/s 144A of the Act vide letter dated 10.03.2015 as stated hereinabove. The ld counsel submitted that in the notice issued u/s 263, the ld. Pr. CIT referred only to two out of the said four items viz (a) and (d) which are mentioned at page 2 of the Pr. CIT's order and the items no.(b), (c), (e),(f) and (g) did not find any place in the direction issued u/s 144A of the Act. Thus the proceedings u/s 263 of the Act and consequent order passed by the Pr. CIT were based factually incorrect facts, information and presumptions. The ld. AR further argued that the Pr.

CIT has not specified as to how the AO committed error by allowing deductions on various issues for which the assessment was set aside. The ld. AR argued that in order to invoke the provisions of section 263, the Pr. CIT has to point out that the said assessment is erroneous and prejudicial to the interest of the revenue as there has to be concurrent satisfaction of these twin conditions which is a settled law as on date otherwise the jurisdiction u/s 263 of the Act would be bad and void ab-initio. The ld counsel for the assessee also argued that it is no necessary for the AO to discuss or elaborate on each of the issues examined during the course of scrutiny proceedings and it is enough if the AO has sought clarification/details/reply from the assesseeand assessee has duly complied with the same by filing the information called for unless the issues accepted by the AO are factually incorrect or not in accordance with the law or settled legal position. The ld AR in defense of his arguments placed reliance on the decision of the Hon'ble jurisdictional High Court in the case of CIT V/s Gabriel India Ltd (203 ITR 108)(Bom). The ld counsel stated that the P. CIT has not stated as to how the AO has not dealt with the Addl.CIT directions by observing that there was no inquiry on those issues. Besides ,the ld. AR relied on the decision of jurisdictional High Court in the case of CIT V/s Reliance Communication Ltd 69 Taxmann.com 103 (Bom) submitting that the AO was not liable to make any reference to each and every item/issue

dealt with during the course of assessment proceedings. The mere fact that AO did not make any reference/discussion in the assessment order would not render an assessment order erroneous. The said decision stands approved by the Hon'ble Supreme Court in the case of Reliance Communication reported in 76 taxman.com 226(SC). The ld. AR also relied upon the decision of the Hon'ble Allahabad High Court in the case of CIT V/s Goyal Private Family Specific Trust (171 ITR 698). Ld counsel contended that in order to render an assessment order erroneous , it is not sufficient on the part of Pr. CIT to mention that there was an error in the assessment order but it has to be state as to how the same is not in accordance with law. Thus, the ld. Pr. CIT has failed to point out as to how the order of Assessing officer is incorrect or is not in accordance with law. The ld. AR also referred to the issue of reduction in the depreciation which has resulted into the decrease in loss(increasing income) which could not be considered as prejudicial to the interest of revenue as the loss has fallen and income has been increased. The ld. AR contended that the AO made sufficient inquiries and elicited details/informations all the points raised by the Pr. CIT from the assessee and only thereafter came to possible conclusion and therefore the order cannot be considered to be erroneous and prejudicial to the interest of the revenue. The reliance placed by the ld Counsel on the decision of the jurisdictional High Court in the case of CIT V/s Development Credit Bank

Ltd reported in 323 ITR 206 Bom. As regards the issues raised by the Pr. CIT , the counsel submitted that the AO called for the details vide notice dated 11.3.2015 which were submitted vide written submissions dated 19.3.2015 and the assessment was framed after considering the said submissions of the assessee. The ld. AR also referred to and relied upon the decision of the Tribunal in the case of Vardhman Industries V/s DCIT reported in 181 TTJ (Chd) 17 in which the Tribunal held that if there is an error in the order, the CIT should give categorical findings after making inquiries and investigations himself. When the Pr. CIT himself has not conducted any complete inquiry and has not given any findings as to the merits of the case then invoking the jurisdiction u/s 263 of the Act would be bad in law. Finally, the ld.AR submitted that in view of the facts and circumstances of the case, and position of law, the order passed by the PCIT u/s 263 is without any lawful authority and jurisdiction under the provisions of the Act and should be quashed on the ground of invalid assumption of jurisdiction u/s 263 of the Act without fulfilling the necessary pre-conditions.

9. Even on merits, the ld. AR submitted that the allowances/deductions as claimed by the assessee and allowed by the AO as mentioned in para no 7 supra were admissible under the Act and none of them was erroneous or not in accordance with the law. The ld counsel touched upon the merit of each of the points raised by the Pr. CIT as under:-

(a) As regards the revision and reduction of claim of depreciation of Rs.8,66,52,484 to Rs.80,25,356/-, the ld. AR submitted that the reduction in the claim of the assessee has not caused any prejudice to the interest of the revenue as loss has been reduced meaning thereby that the income stands increased to the extent of reduction in the depreciation. The ld. Counsel explained as to how the mistake in opening the Written Down Value due to wrong linkage of excel formulae has occurred . Secondly the assessee has not reduced profit on sale of fixed assets from the WDV while computing depreciation for income tax purposes as the sale proceeds of the assets have to be reduced from the WDV in the light of the provisions of section 50 of the Act. Hence in the revised computation, the assessee reduced the profit on sale of assets from WDV which resulted into reduction of depreciation. The fact was further confirmed by the Tax Auditor who certified that due to mistake in the linkage of excel file the opening balance of WDV in form No. 3CD was inadvertently taken wrong which has resulted into an advertent and genuine mistake in the calculation of depreciation further resulting into the higher claim of depreciation. The ld. AR also stated that the said profit on sale of fixed assets of Rs.5,17,82,414/- was wrongly shown in the income of the assessee. Thus, the reduction in the claim of the depreciation has resulted due to

two reasons viz (1) error in taking the opening WDV of the assets and (2) non deduction of profit on sale of assets from the block of assets while calculating the depreciation under the Act. The assessee further submitted there was no malafide intention in claiming higher deprecation as there was no tax in the hands of the assessee. The ld. AR pointed out that the Ld.PCIT in the order u/s 263 of the Act stated that the excess claim of depreciation would have attracted the provisions of section 271(1)(C) and the AO has not initiated penalty proceedings u/s 271(1)(C) of the Act, whereas the ld. PCIT has not concluded as to how the non initiation of penalty proceedings is prejudicial to the interest of the revenue. In defense of his arguments, the ld. AR relied on the decision in the case of CIT V/s Bennett Coleman and Co Ltd (33 taxmann.com 227). In this case, there were two inadvertent and bonafdie mistakes have occurred resulting into higher claim as have been stated hereinabove and therefore the penalty proceedings were not exigible. The ld. AR also relied on the following decisions :

i) DIT(IT) V/s Asia Attractive Dividend stock-fund -35 taxmann.com 265
ii) CIT V/s Ask Enterprises 230 ITR 48 (Bom);
ii) CIT V/s Somany Evergreen Knits Ltd 352 ITR 592 (Bom);
iii) CIT V/s Brahmaputra Consortium Ltd 348 ITR 339 (Del).

Further the ld.AR argued that non initiation of penalty proceedings us/ 271(1) (c) of the Act by the AO cannot be a subject matter of the revisionary proceedings as has been held in the case of N Jamnadas and Co in ITA No.2930/Mum/2012 dated 27.1.2017. Therefore the revisionary proceedings u/s 263 of the Act initiated by the ld. PCIT was wrong and against the provisions of Income Tax Act. As the question of levy of penalty u/s 271(1)© of the Act is a debatable issue which is to be decided by the AO on the basis of nature of additions made in the assessment order depending on the facts of the case whether the same amounted to concealment of income or furnishing inaccurate particulars of income. Thu , there is no tailor made formula to levy of penalty u/s 271(1)(c) of the Act. The ld. AR referred to the case of Addl. CIT V/s Achal Kumar Jain 142 ITR 606 (Bom) in which the Hon'ble High Court held that the penalty proceedings do not form part of the assessment proceedings and will not make the assessment order erroneous and prejudicial to the interest of the revenue. Therefore, the ld. AR prayed that exercise of revisionary jurisdiction on the ground that wrong claim of depreciation and non initiation of penalty proceedings was incorrect as the order of the AO is not prejudicial to the interest of the Revenue.

(b) The ld.AR, in respect of incentive paid amounting to Rs.34,86,253/-, submitted that the assessee makes the payment of incentives to its employees on year to year basis. Liability to pay incentives arises on accrual system of accounting in the year to which it pertains though the same may be paid after the end of the year. As per the method of accounting followed the appellant claimed the deduction of incentive paid in the year to which it pertains and disallows the same in the year in which the same is paid. There is a possibility that the provisions made n the year to which they pertain may be more or less than the actual disbursement in the next year. The ld. AR submitted that the assessee had debited in the books of accounts in the previous year relevant to assessment year 2012-13 (year under appeal) an amount of Rs.34,86,253. This amount was debited to profit and loss account of FY 2011-12. However the same was pertaining to F.Y.2010-11 i.e. AY.2011-12. The appellant had claimed the said amount as deduction in the computation of income of AY.2011-12. However the same was inadvertently not added back in the computation of income of F. Y .2011-12 i.e AY.2012-13 (year under appeal). In the revised computation of income filed with the Assessing Officer vide letter dated 19.3.2015 on 20.3.2015, the appellant added back the said amount. The same is evident from page 107 of paper

book. Thus the appellant has reduced the loss (increased the income) by RS.34,86,253 which was already allowed to appellant in AY. 2011-12. While computing the income for AY.2012-13, the Assessing Officer accepted the above effect given by the appellant. The Objection of the CIT in this regard is that the Assessing Officer's action in accepting the revised computation is without jurisdiction as the assessee cannot revise the return after expiry of specific time prescribed u/s.139(5) of the Act. The appellant submits that the action of the assessee to increase the income (reduce the loss) and the same cannot be said to be prejudicial to the interest of revenue. In normal course whether the appellant would have submitted the revised computation beyond the due date of filing the revised return or not, if the income is to be increased (loss is to be reduced) the Assessing Officer is not bound by whether the time limit for filing revised return is expired or not. The appellant submits that the action of the Assessing Officer is not erroneous as there cannot be double allowance of the same expenditure in two different years and also that the same is not prejudicial to the interest of revenue as the loss is decreased (income is increased). The appellant submits that the action of the CIT in this regard is incorrect as no prejudice is caused to the revenue.

(c) In respect of Profit on sale of assets - RS.5.17,82,414 ,the ld. AR submitted that the revised computation of income filed on 20.3.2015, the appellant had reduced profit on sale of fixed assets credited to profit and loss account under the head "miscellaneous receipts" as not liable to tax and correspondingly reduced sale proceeds thereof amounting to RS.5,86, 19,4 72 from block of assets for the purpose of depreciation and reduced the depreciation claim accordingly. The Assessing Officer accepted the above work ng during the course of assessment proceedings. The CIT has observed that the asset sold being computers, office equipments and vehicles, the sale of such assets does not generate profit and such unusual transaction should have been probed when specifically directed u/s. 144A of the Act. The appellant submits that the directions of the Add!. CIT in this regard are reproduced hereunder:-

"1. I is seen that assessee has claimed Depreciation as per I. T. Act at Rs. 8, 65, 52, 484/- as against Depreciation as per Companies Act of just Rs.18,17,815/-. While perusing the Depreciation Schedule as per I. T. Act, it appears that assessee has shown opening WDV of Computer & Software Data Processing Equipments at Rs. 15,31,25, 790/-, assessee has claimed high depreciation. The figure of such magnitude is nowhere reflected in the Fixed Asset Schedule, as per books as it shows gross block of Data Processing Equipments at just Rs.1,22,26,5401-, the WDV of which would be even lower as per I. T. Act. This issue may be examined to ascertain the correct allowability of depreciation. "

10. The ld. AR submitted that from the above, it can be seen that the directions of the Addl. CIT were with respect to WDV of certain assets as per books and as per the income tax depreciation statement. The appellant in reply to this has submitted that there was sale of fixed assets and such sale has resulted in profit. The appellant therefore reduced the sale proceeds from the block of assets and revised the depreciation claim. As stated earlier, there was a mistake in taking amounts of opening WDV. Thus, the issue now raised by the PCIT in the 263 order regarding there being unusual transaction or there cannot be huge profits on the assets is without any evidence. The appellant alongwith the reply to 263 notice has submitted complete details of sale of fixed assets on which the profi s are generated. The said details are on page 207 to 214 of the paper book. It can be seen that the appellant has sold data processing equipments for Rs.5,75,00,000 on which profit of Rs.5,17,82,414 was earned. The appellant had also sold vehicles and furniture and fixtures fo an amount of Rs.11, 19,472 on which there was loss of Rs.8,30,491. The appellant had disallowed the loss on sale of assets of Rs.8,30,491 in the original and revised returns of income as well as in the revised computation of income but inadvertently omitted to reduce the profit of Rs.5,17,82,414 from the computation of income. The appellant therefore in the revised computation of income has corrected the said mistake. CIT has not controverted the evidence and details produced in this regard. The

appellant submits that Assessing Officer has followed the provisions of law as regards computation of depreciation under block of assets theory. The Assessing Officer has applied provisions of section 50 of the Act. Therefore the order of the Assessing Officer is not erroneous in law. The appellant further submits that the observation of the CIT is that how can the computers etc. can generate profit. The appellant submits that the assets have been sold to third party who is unrelated party and the assets sold were by way of servers and load balancers and not computers. The same were in good condition and accordingly the sale price was realized. The appellant submits that sale of fixed assets has two components, one profit or loss with reference to WDV (as per books or as per section 32 of the Act) and reduction of sale price from block of assets u/s 50 of the Act. In the appellant's case, the sale price is Rs. 5,75,00,000 and profit is Rs. 5,17,82,414. Profit is not liable to tax and sale price is to be reduced from block of assets. The appellant submits that the Assessing Officer has correctly accepted the working as per the provisions of section 50 of the Act and therefore the order of Assessing Officer is not erroneous in law. The CIT's observations tantamount to roving or fishing inquiries and the assessment order cannot be revised to conduct such inquiries. The appellant in this regard relies upon the decision of Bombay High Court in case of CIT v Gabriel India Ltd. 203 ITR 108 (Bom). The appellant further submits that the Assessing Officer is duty bound to compute

the income in accordance with law. The CBOT in Circular No.14(XL-35) of 1955 dated 11.4.1955 has directed their officers not to take advantage of ignorance of an assessee as to his rights. Accordingly, the CBDT advised their officers to draw attention to tax payer of reliefs which they appear to be clearly entitled but which they omitted to claim for some reason or other. The appellant also relies upon the decision of Bombay High Court in the case of CIT v V.M. Salgaonkar & Brothers Ltd. 253 CTR 59 (Bom). In view of the above, the appellant submits that the Assessing Officer was duty bound to reduce the income (increase the loss) by the amount of profit on sale of assets and the Assessing Officer has rightly done so. The appellant submits that there is no error in law and therefore the order of the Assessing Officer is not erroneous and prejudicial to the interest of revenue. The ld. AR submitted that the CIT (DR) pointed out that in the revised computation of income the appellant has increased the loss (reduced the income) by an amount of RS.5,17,82,414 being the profit on sale of assets. He submitted that the Assessing Officer cannot reduce the income (increase loss) as returned otherwise than by filing the revised return. The CIT(OR) submitted that the assessee has submitted the revised computation of income in course of assessment proceedings which was beyond the time limit for filing the revised return. CIT(OR) therefore submitted that the action of the Assessing Officer in accepting the revised computation in which the reduction of

RS.5,17,82,414 was made by the appellant was clearly not in accordance with the decision of Supreme Court in case of Goetz India Ltd. 284 ITR 323. The appellant had made three adjustments in the revised computation of income filed in course of assessment proceedings, two of them reducing the loss and one increasing the loss. The same are summarized as under:-

Item	Amount (Rs.)	Impact on Total
Incentive claimed but was already allowed in A.Y.2011-12 and therefore offered for addition	(-) 34,86,253	Loss reduced
Withdrawal of depreciation on account of mistake in opening WOV and crediting the sale proceeds against the WOV of block of assets	(-) 7,86,27,128	Loss reduced
Profit on sale of fixed assets	(+) 5,17,82,414	Loss increased
Final impact	(-) 2,68,44,714	Loss reduced

The ld. AR submitted that from the above it can be seen that the impact of above three adjustments taken together was reduction in loss (increase in income) and thus the Assessing Officer while accepting the revised computation has not assessed the loss at a figure which is higher than the loss returned. The appellant submits that the Assessing Officer cannot pick up one item of adjustment and apply the decision of Goetz India Ltd. The appellant submits that the applicability of decision of Goetz India Ltd. has to be considered with reference to the total income or loss computed and not segment thereof. The appellant therefore submits that the Assessing Officer

was not wrong in accepting the computation where the loss ultimately assessed was less than the loss returned. CIT(OR) further omitted to consider the fact that the impact of the profit on sale of fixed assets is two fold, one in non taxability of the profit and second reduction of depreciation on account of reduction of WDV of block of assets by an amount of sale proceeds of fixed assets. CIT(DR) failed to appreciate that while computing the revised depreciation at RS.80,25,356, the appellant had reduced the WOV of the fixed assets by RS.5,75,00,000 which gave rise to the profit of RS.5,17,82,414. CIT(DR) has not objected to the reduction n the WOV of block of assets by RS.5,75,00,000 which is the other side of the same coin. The appellant submits that the action of the Assessing Officer was in accordance with the provisions of section 50 and the Assessing Officer was duty bound to apply the provisions of the Act and cannot take advantage of the mistakes of the tax payer. The ld. AR therefore submits that there is no error on part of the Assessing Officer in reducing the profit on sale of assets from total income and therefore the order of the Assessing Officer is not erroneous in law and therefore not prejudicial to the interest of the revenue.

(d) Hedging and Transportation Cost - Mark to Market loss

The ld. AR submits that the appellant is engaged in the business of trading in gold and silver coins/ bars. The appellant enters into Gold Future Contracts in respect of the stock of gold to hedge against the fluctuation in price. The

appellant in the profit and loss account has debited cost of goods sold amounting to RS.765,25,74,754 which included purchase cost, difference in adjustment cost and hedging cost (Page 21 of Paperbook - Note 18). The Assessing Officer vide his notice u/s.142 dated 11.3.2015 requested the appellant to examine with respect to hedging cost whether mark to market loss is included therein and if yes, how it is allowable (Page 70 of Paperbook). The appellant replied to the said query vide letter dated 19.3.2015 filed on 20.3.2015 (Page 72 to 75 of the Paperbook). The appellant pointed out that the hedging cost included mark to market loss of Rs.17,00,287 in respect of gold forward contracts which expired on 5.4.2012 i.e. outstanding as on balance sheet date. It was further pointed out that the said contracts were finally settled on 5.4.2012 when the actual loss realized was Rs.49,325. The appellant also pointed out to various decisions as per which the said loss was allowable as business loss as not being notional. The decision replied upon included the decision of Supreme Court in case of Woodword Governor India Pvt. Ltd. 312 ITR 254. The ld. AR submitted that the CIT in order u/s.263 has observed that the Assessing Officer has allowed the appellant's claim of hedging and transportation cost of RS.76.89 crs. without examining whether mark to market loss were included in the hedging cost. As stated earlier, the Assessing Officer has made specific inquiry in this regard vide notice dated 11.3.2015 and the necessary details were submitted by the appellant vide

letter dated 19.3.2015 and accepted. The ld. AR submitted that the CIT also observed that hedging and transportation cost is roughly 10.72% of the cost of goods sold and therefore the Assessing Officer should have inquired about such unusually high expenditure and its nexus with the business of the appellant in view of Instruction No.3 of 2010 dated 23.3.2010 and provisions of section 43(5) of the Act. The appellant submits that the break-up of the expenditure of RS.76.82 crs. (Page Nos. 20 to 22 of the Paperbook) was as under:-

		Rupees
Discount on sale		57,22,72,888
Forward booking trade settlement		12,52,23,946
Movement of stock - Opening stock - Closing stock	 - 35,12 01,031 - 28,05,07,115 --- ----------	7,06,93,916
Total		76,81,90,750

11. The ld. AR submitted that from the above it can be seen that the forward booking trade settlement i.e. Hedging cost included in the above is RS.12,52,23,946. This again comprises of realized loss and unrealized loss. Realized loss was RS.12,35,23,659 and unrealized loss was Rs.17,00,287 (Page No.223 of the Paperbook). The above amount of unrealized loss i.e. mark to market loss as on 31.3.2012 was also communicated to Assessing Officer in letter dated 19.3.2015. Complete details including the contact notes

in respect of the future contract are also at pages 225 to 329 of the Paperbook. The appellant submits that the same issue was also raised by CIT in 263 proceedings for A.Y.2011-12. Tribunal vide their order dated 23.12.2016 (Page Nos.329 to 360 of the Paperbook) at page No.355 has held that the order of Assessing Officer on the issue was not erroneous so as to be prejudicial to the interest of revenue. Tribunal has considered the Instruction NO.3 of 2010 and also provisions of section 43(5) of the Act and the decision of Supreme Court in case of Woodword Governor India Pvt. Ltd. and thereafter has held that the assessment order cannot be said to be erroneous. The appellant submits that when the Assessing Officer has raised the query and the details and explanation thereof has been submitted, it is presumed that the Assessing Officer has applied his mind to the facts of his case. Also the appellant has pointed out various decisions in support of the claim and Assessing Officer has accepted the said explanation. The appellant submits that the action of the Assessing Officer is supported by decision of Supreme Court and various High Courts and Tribunals. The Assessing Officer has taken a possible view and the proceedings u/s.263 cannot be invoked. For the above proposition, the appellant relies upon the following decisions:-

i. CIT v Max India Ltd. [2007] 295 ITR 282 (SC)
ii. CIT v Fine Jewellery (India) Ltd. [2015] 372 ITR 303 (Bom)
iii. CIT v Honda Siel Power Products Ltd. [2011] 333 ITR 547 (Del)

12. The ld.AR therefore submits that the order of the Assessing Officer allowing the mark to market loss is not erroneous.

(e) Purchase of equity share capital of Reliance Infrastructure Finance Pvt. Ltd. (RIFPL)

13. The ld. AR submits that during the year the appellant had purchased 52,50,000 equity shares of Reliance Infrastructure Finance Pvt. Ltd. for an amount of RS.5,25,00,000. The said investment is reflected in the Investment Schedule in the balance sheet (Page No.19 of the Paperbook). CIT in his notice u/s.263 has stated that the appellant has purchased the above shares on 4.7.2011 from Emerging Money Mall Ltd. (EMML) which had purchased the same from Reliance Capital Ltd. CIT further states that EMML has held the same for short period after borrowing funds and claiming interest expenditure. CIT further obse ves that the Assessing Officer did not apply his mind despite that n revised computation of income expenditure for stamp duty was added back. The appellant submits that the observation of CIT that stamp duty was added back in revised computation is not correct. The attention is invited to page 107 of Paperbook in which the computation of income as per original return, revised return and revised computation of income were tabulated. It can be seen that stamp duty on purchase of shares was added back in the original return, revised return and therefore in the revised computation of income also. As regards the observation of CIT that

EMML has borrowed the funds and claimed interest expenditure is not a matter which is required to be considered and looked into by the Assessing Officer of EMML and the Assessing Officer of the appellant has nothing to do with it. The appellant therefore submits that the observations of the CIT only point out to fishing and roving inquiries without specifying as to how prejudice is caused to the revenue. CIT has not pointed out how this matter affects the computation of income of the appellant. The appellant submits that the Assessing Officer in case of EMML has made disallowance u/s.14A in which the interest paid by them has been included. The appellant therefore submits that the observations of the CIT are wild guesses and made only with view to create bias against the appellant. The appellant submits that the revision order cannot be sustained.

(f) Demerger expenses u/s.35DD

14. The ld. AR submits that the appellant in the original return as well as in the revised return and in the revised computation of income claimed expenses on demerger u/s.3500 amounting to Rs.2,40,648. The break of the said expenditure claimed was also submitted alongwith return of income (Page No. 52 of the Paperbook). Summary of the same was as under:-

	Amount of expenditure (Rs.)	1/5th claimed u/s 3500
Expenses incurred on demerger in F.Y.2010-11 (AY.2011-12)	11,46,000	2,29,200
Expenses incurred in F.Y.2011-12(AY.2012-13) related to demerger carried out in AY. 2011-12	57240	11448
Total		2,40,648

15. The ld. AR submits that the CIT in his notice u/s.263 has observed that Assessing Officer did not make any inquiry as to what division has been de merged and whether the remainder assets ensu e the payment of the liability towards preference shares or whether the demerger was in the interest of the company or was a tax avoidance major. The appellant submits that the assessment order for AY. 2011-12 in which the demerger took place was also a subject matter of revision proceedings and the CIT had passed the order u/s.263 on 28.3.2016 setting aside the assessment order. In the said order CIT had made observations about the demerger of infrastructure division. The said order was subject matter of appeal before Tribunal. Tribunal vide their order dated 23.12.2016 (Page Nos. 329 to 360 of the Paperbook) has quashed the order u/s.263 as not being erroneous or prejudicial to the interest of the revenue. The appellant submits that the deduction claimed u/s.35DD is in respect of demerger which was carried out in AY.2011-12. The expenditure incurred on demerger are allowed as deduction in five years. During the year under consideration the appellant had paid certain additional

expenses on the demerger carried out in AY.2011-12. Thus the claim for expenditure during the year was 1/5th of the expenditure incurred in AY.2011-12 and in AY.2012-13. However there was no demerger during the year under consideration. The appellant therefore submits that the observations of the CIT as regards the demerger scheme are incorrect as there is no demerger during the year. The Assessing Officer has allowed demerger expenses u/s.35DD amounting to RS.2,29,200 in AY.2011-12. Claim of RS.2,29,200 during AY.2012-13 was a second year. Deduction u/s.35DD is therefore rightly claimed by the appellant and was rightly allowed by the Assessing Officer. The order of the Assessing Officer is not erroneous. CIT has not been able to point out as to how the order of Assessing Officer is erroneous. The appellant therefore submits that the order u/s.263 on this matter cannot be sustained.

(g) Excess payment of incentive over provision - Rs.1,40,72,956

16. The ld. AR submits that the appellant in the computation of income as per original return, revised return and in the revised computation had claimed excess payment of incentive over provision amounting to RS.1 ,40,72,956. The appellant had claimed the above expenditure which was paid after 31.3.2012 i.e. year end but before the date of filing return. This claim was made in AY.2012-13 as the same pertained to F.Y.2011-12 i.e. AY. 2012-13 and paid after the year end. The appellant has claimed the above considering

the provisions of section 438(c). The said sub-section provides that any sum refers to section 36(1)(ii) being the sum paid to an employee as bonus or commission for services rendered. As per the provisions of section 438 the same is allowable only in the year in which such sum is actually paid. However Proviso to section 438 permits deduction in the year in which the liability was incurred where such sum is actually paid on or before the due date for furnishing return of income in respect of the previous year the liability to pay such sum was incurred. The appellant submits that the above payment pertains to the year under considerat on and the same was paid after the end of the year but before filing the return of income. Thus the same was correctly allowed in the year under consideration. The ld. AR submitted that the CIT has observed that it was necessary to verify whether the above amount of RS 1 ,40,72,956 included the incentive of RS.34,86,253 paid in the year under consideration but claimed as a deduction in A Y.2011-12. The appellant submits that the amount of RS.34,86,253 was added back in the revised computation of income submitted in course of assessment proceedings. The amount of RS.1,40,72,956 was paid in the subsequent year and therefore the question of RS.34,86,253 being included in RS.1,40,72,956 does not arise. The appellant submits that just as the amount of RS.1,40,72,956 pertaining to this year was paid in the next year, the amount of Rs.34,86,253 pertaining to last year was paid during the year and formed

part of employee cost. The same was claimed in A.Y. 2011-12 and was therefore disallowed in A.Y. 2012-13. The ld. AT submits that the ld.CIT in his notice in para 12 (page 120 of the Paperbook) further observes that Assessing Officer accepted the income shown in the revised computation without application of mind and without bothering whether this power of accepting revision after time given in section 139(5) of the Act was over, was within his jurisdiction or not. It is not known as to whether CIT is referring to incentive payment or whether he is referring o computation of revised computation as a whole. Assuming that he is referring to incentive payment, the appellant submits that claim of excess payment of incentive was made in original return, revised return and thereafter reflected in revised computation of income. Thus provision of section 139(5) are wrongly referred as the claim for deduction was made in the original return itself. If the CIT is referring to revised computation of income as a whole the appellant has already made submission in this regard in para 12.3 above.

(h) Any other issue that may arise during fresh assessment proceedings

17. The ld. AR submits that the CIT in para 7 of his order directed the Assessing Officer to consider any other issue that may arise during the fresh assessment proceedings. The appellant submits that the above directions of the Assessing Officer are extra jurisdictional. The appellant submits that CIT has to come to conclusion that the order of the assessment erroneous and

prejudicial to the interest of revenue. This twin conditions can be satisfied only with respect to the specific matter for which the Commissioner is of the view that the order of the Assessing Officer is erroneous. CIT cannot revise an order to make fishing or roving inquiries. In this regard reliance is once again place on decision of Bombay High Court in case of CIT v Gabriel India Ltd. 203 ITR 108 Reference is also made to the decision of Allahabad High Court in case of CIT V/s Goyal Private Family Specific Trust 171 ITR 698. In this case the High Court came to conclusion that it was for the Commissioner to point out as to what error was committed by the ITO. If the Commissioner fails to point out any error, no error can be inferred in the order of ITO. The appellant also relies upon the de ision of Gujarat High Court in case of CIT v D N. Dosani 280 ITR 275 (Guj). In this case the High Court held that the powers of revision can be exercised only the Commissioner and therefore the AO under guise of faming fresh assessment cannot exercise the said powers in relation to other items forming part of assessment. In case of CIT v Ashish Rajpal 320 ITR 674 Delhi High Court held that it is the requirement of section 263 that the assessee must have an opportunity of being heard in respect of those errors which the Commissioner proposes to revise. To accord an opportunity after set aside the assessment order would not meet the mandate of section 263. The appellant therefore submits that the order of the CIT for directing the Assessing Officer to consider any other matter without pointing

out what is the error and how the order is erroneous and prejudicial to the revenue, the said direction cannot be sustained."

18. The ld. DR on the other had opposed the contentions and submissions of the ld.AR by submitting that the revisionary jurisdiction u/s 163 of the Act was rightly exercised by the ld. PCIT as the AO has passed the order without making proper and requisite inquiries on the various issues as has been set out in the notice issued u/s 263 of the Act on which the assessment framed u/s 143(3) of the Act was proposed to be set aside The ld DR submitted that even the directions issued by the Addl. CIT were not looked into and considered before framing the assessment. The ld DR contended that even after filing the revised return of income by the assessee , a revised computation was filed making several claims which has the effect of increasing/decreasing the loss returned by the assessee. The ld DR submitted that the AO accepted all those claims despite the fact that the AO did not have any authority under the Act to entertain any such claims in the assessment proceedings. The ld. DR also contended that the directions issued by the Addl. CIT u/s 144A of the Act were ignored by the AO completely as the issues pointed out by the Addl. CIT were not examined properly by the AO. The ld DR further stated that the passing of order in undue haste and non making proper enquiries before accepting claims in the revised computation of income has rendered the assessment order erroneous

as well as prejudicial to the interest of the revenue. The ld DR also submitted that the PCIT has shown candidly on each of the issues as to how the allowance of each of the issues was erroneous and has caused prejudice to the interest of the revenue. In support of his contention the ld.DR relied on the serious of decisions which are as under :

i) CIT V/s Infosys Technologies Ltd. (2007) 293 ITR 146 (Karn)
ii) CIT V/s Shree Manjunathesware, Packing products and Camphor Works (1998) 231 ITR 53 (SC)
iii) Rampyari Devi Saraogi V/s CIT (1968) 67 ITR 84(SC0
iv) Smt Tara Devi Agarwal V/s CIT (1973) 88 ITR 323 (SC)

19. The ld. DR during the course of hearing also contended that the amendment in section 263 of the Act as brought by the Finance Act. 2015 is clarificatory in nature and therefore has retrospective application and is applicable to the case of the assessee also. The ld. DR also took us through the various decisions referred by the ld AR in his defense of his arguments and submitted that they not applicable to the present case as being distinguishable on facts and hence not applicable to the present case. Finally the ld DR relying heavily on the order passed u/s 263 of the Act by PCIT prayed that the same may kindly be upheld by dismissing the appeal of the assessee.

20. In rebuttal, the ld. AR submitted that the case laws as referred to and relied upon by the ld. DR namely Infosys Technologies Ltd (supra),Rampyari Devi Saraogi (supra) and Smt Tara Devi Agarwal(supra) were clearly

distinguishable on facts and are not applicable in the instant case. In the case of CIT V/s Infosys Technologies Ltd (supra) the issue involved is allowability of deduction under double Taxation Avoidance Agreement(DTAA) with Cananda and Thailand which were not examined by the AO while passing the assessment order thus resulting into excess tax credit to the assessee. The High Court has held that the tax authorities have to calculate the tax as per DTAA and the order by the assessing is not only erroneous but also prejudicial to the interest of the revenue. The ld AR also submitted that the decision of Infosys Technologies Ltd (Supra) has been considered in the case of Elder IT Solutions (P) Ltd Vs CIT 2015 37 ITR(T) 443 Mumbai and was distinguished. The ld.AR also submitted that in the case of Shree Manjunathesware Packing products and Camphor Works (supra), the issue was with regard to the cost of construction of Rs.20,28,498/- which was referred to DVO by the AO who did not submit the report before the expiry of time limit fo completion of assessment and the AO passed the order accepting the tax offered by the assessee. In the said the said case the commissioner exercised the revisionary jurisdiction u/s 263 of the Act on the ground that DVO report was not before the AO at the time of passing the assessment order and the records have to be seen at the time of examination of records which was upheld by the ITAT and also by the High Court. Further the Supreme Court held that it was open to commissioner to

take into consideration all the records available at the time of examination by him and thus to consider the valuation report submitted by the DVO after assessment is over , the order u/s 263 is legal. This case is also distinguishable on facts. In the other two cases relied by the revenue namely RamPyari Devi Sarogi(Supra) and Smt Tara Devi Aggarwal(Supra) , the ld AR submitted that the position has been settled by the Hon'ble apex court in the case of Malabar Industrial Co Ltd Vs. CIT (2000) 243 ITR 83 after considering both the above decisions by holding that each and every error or mistake committed by the AO can not be rectified by invoking jurisdiction u/s 263 of the Act. It is only when the order is erroneous and prejudicial , the provisions of section 263 are attracted. Incorrect assumption of facts or incorrect application of law will satisfy the requirement of being erroneous and the orders passed without principles of natural justice or without application of mind will fall under this category. The hon'ble court also held that every loss of revenue can not be treated as prejudicial to the interest of the revenue. For example when the AO has adopted the one of the courses possible under law and it has resulted in loss to the reveneue or where two views are possible and the AO has taken one of the possible views with which the commissioner does not are. It can not be treated as erroneous order prejudicial to the interest of the revenue unless the view is unsustainable in law. All the above decisions as relied by the ld DR are not applicable to the instant case as the

AO has framed the assessment after calling for information from the assessee on each and every point raised by the commissioner and taking a possible view which is neither erroneous because of wrong assumption of facts or wrong application of law.

21**.** We have carefully considered the rival submissions and perused the relevant materials placed before us including the impugned orders and case laws as relied upon by the rival parties. The ld. Pr CIT in the present case exercised the revisionary jurisdiction u/s 263 of the Act on the ground that the assessment u/s 143(3) of the Act was framed by the AO in undue haste ,without considering the details and information filed by the assessee with regard to claim of the depreciation, the additions of Rs.34,86,256 on account of incentive paid for the financial year 2011-12, profit on sale of assets Rs.5,17,82,422/- reduced from the income in the revised computation, the claim of Hedging and Transportation Cost of Rs.76.89 crores, purchases of equity shares of M/s Reliance Infrastructures Finance Private Limited after borrowing funds and claiming the interest as expenditure, deduction of demerger expenses u/s 35DD of the Act and lastly the claim of deduction for excess payment of incentive over provisions amounting to Rs. 1,40,72,956. The Pr.CIT has exercised the revisionary powers u/s 263 of the Act despite the fact that all these issues were examined by the AO in the assessment proceedings and framed the assessment accordingly evidently

after being satisfied. During the course of revisionary proceedings, the PCIT accepted the revised claim of depreciation of the assessee to the tune of Rs.80,25,256/- as against the claim of Rs.8,66,55,484/- claimed in the original return of income and addition on account of incentives of Rs. 34,86,256/- relating to A.Y. 2011-12 despite the facts that the time limit for filing the original and revised return of income has elapsed and the said claim was made by the assessee in the course of original assessment proceedings by way of revised computation of income in contrast and contradiction to PCIT own stand that such can not be a cepted on the basis of revised computation in the assessment proceedings. The ld. PCIT was of the opinion that there was an excess claim of depreciation to the tune of Rs.7,86,30,128/- and penalty proceedings u/s 271(1)(c) were not initiated by the AO. In our considered view the claiming higher depreciation was due inadvertent, genuine and bonafide reasons as it has happened due to two reasons one due to wrong linkage of excel sheet and two due to non reduction of profit on sale of fixed assets from WDV as per the provisions of section 50 of the Act and no penalty u/s 271(1)© of the Act is leviable in such scenario . The case of the assessee also supported by the decisions of the jurisdictional high court in the cases of DIT(IT) V/s Asia Attractive Dividend stock-fund(supra), (ii)CIT V/s Ask Enterprises (Supra), (iii)CIT V/s Somany Evergreen Knits Ltd (supra) and (iv) CIT V/s Brahmaputra

Consortium Ltd(supra). The initiation of penalty proceedings u/s 271(1)© of the Act is not something which has to be decided mechanically but on consideration of the facts of the case. In the case CIT V/s Bennett Coleman and Co Ltd (supra) in which the Hon'ble jurisdictional High Court has held that in case of bonafide and inadvertent mistake, no penalty can be levied u/s 271(1) (c) of the Act. Beside the reduction in the depreciation has not caused any prejudice to the revenue as it has resulted in reduction of loss(increase in income) of the assessee. Thus order of AO is neither erroneous nor prejudicial to the interest of the revenue and the assumption of jurisdiction u/s 263 of the Act can not be justified on this issue. As regards the framing assessment in undue haste , we find from the record that the assessment was completed on 24.3.2015 vide order passed u/s 143(3) of the Act and prior to that various notices were issue calling for various details and explanation on each of the points from the assessee on the basis of which the Pr.CIT assumed jurisdiction u/s 263 of the Act and the assessee has duly replied all the queries during the course of assessment proceedings. Particularly the AO issued notice on 11.3.2015 to the assessee calling for all the details on the four issues as enumerated in the directions u/s 144A of the Act by the Addl. CIT in his letter dated 10.3.2015 which was replied by the assessee vide written submissions dated 19.3.2015 filed on 20.3.2015 placed in the paper book at pages 72 to 76. Thus, we find that the issues as raised

by the Addl.CIT in the direction issued u/s 144A of the Act stand replied before the AO vide written submissions dated 19.3.2015. The Addl. CIT issued direction u/s 144A of the Act only in respect of four items viz;

(1) revision of claim of depreciation from Rs..8,66,55,484/- to Rs.80,25,256/-;

(2) mark to mark loss of hedging cost;

(3) Referral fees of Rs.918.71 lacs; and

(4) Provision for doubtful debts of Rs.16,22,45,358/-

Whereas the ld. Pr. CIT set aside the assessment order by giving directions to decide the seven issues namely;

> *(a) Claim of depreciation of Rs. 8,66,55,484/- - as per IT Act as against Rs. 18,17,815/- under Company's Act.*
>
> *(b) Deduction of Rs.34,86,256/- on account of incentive paid in F.Y.2011-12, offered for taxation in revised computation for A.Y.2012-13.*
>
> *(c) Profit on sale of assets Rs.5,17,82,414/- reduced from Computation of Total Income*
>
> *(d) Claim of Hedging and Transportation Cost of Rs.76.89 crores.*
>
> *(e) Purchase of entire equity share capital of M/s. Reliance Infrastructure Finance P. Ltd (RIFPL) at par for Rs.5.25 crores from M/s. Emerging Money Mall Ltd., which was itself purchased from Reliance Capital Ltd. for short period only after borrowing funds and claiming expenditure in respect of interest liability.*
>
> *(f) Claim of deduction for demerger expenses u/s.35DD*
> *(g) Claim of deduction for excess payment of incentive over provisions amounting to Rs.1,40,72,956"*
> *h) Any other issue that may arise during fresh assessment proceedings"*

22. A perusal of the above reveals that only two issues raised by the Additional CIT u/s 144A of the Act found place in the notice issued u/s 263 of the Act i.e. items no. (a) and (d) above, whereas the items No.b,c,e,f, and g were not appearing in the direction given u/s 144A of the Act and thus, the ld. Pr. CIT was factually wrong by holding that directions issued by the Addl. CIT were not considered by the AO at the time of framing of the assessment. In order to invoke the revisionary jurisdiction, the ld.PCIT has to mention and state as to how the order of assessment is erroneous so far as prejudicial to the interest of the revenue but in none of the cases as mentioned in the order u/s 263 of the Act, the Pr CIT has mentioned as to how the order of the assessing officer is erroneous and prejudicial to the interest of the revenue. It is a settled position of law that both the conditions has to be satisfied concurrently and simultaneously. If one of the conditions is satisfied, the jurisdiction u/s 263 of the Act can not be invoked. If the order of the AO is erroneous and not prejudicial to the interest of the revenue, resort to the revisionary jurisdiction cannot be made u/s 263 of the Act. In this case, we notice that all the issues on the basis of which the assessment is set aside by the Pr. CIT u/s 263 of the Act has been examined by the AO after calling for the details from the assessee. The assessee replied all these queries specifically by filing the necessary details and explanation upon query

being raised by the AO on each and every point, which has been placed in the paper book filed by the assessee. The Pr.CIT has also stated in the revisionary order that AO may examine any other issue which may come to his notice in the set aside proceedings meaning thereby that Pr. CIT was too casual in issuing direction to the AO on the points on which he himself was not aware of at the time of exercising the jurisdiction u/s 263 of the Act and thus directing the AO to make roving inquiries. In our opinion it is not permissible for the Pr.CIT to disturb a concluded assessment on the ground that the AO has not dealt with or discussed in the assessment order the issues examined by him during the assessment proceedings. It is enough if the AO has elicited information/explanations from the assessee and the assessee has filed the same before the AO so long as there is no incorrect appreciation of facts or the assessment is not contrary to or not in accordance with law. The Hon ble Jurisdictional High Court in the case of Gabriel India Ltd (supra) has held that the assessment cannot be said to be erroneous and prejudicial simply because the assessment order did not make elaborate discussion on certain points and the court held that the Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters which are already concluded. The Hon'ble High Court also held that:

> *"14. 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 o 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. Our aforesaid conclusion gets full support from a decision of Sabyasachi Mukharji J. (as his Lordship then was) in Russell Properties Pvt. Ltd. v. A. Chowdhury, Addl. CIT . In our opinion, any other view in the matter will amount to giving unbridled and arbitrary power to the revising authority to initiate proceedings for revision in every case and start re-examination and fresh enquiries in matters which have already been concluded under the law. As already stated it is a quasi judicial power hedged in with limitation and has to be exercised subject to the same and within its scope and ambit. So far as calling for the records and examining the same is concerned, undoubtedly, it is an administrative act, but on examination "to consider" or in other words, to form an opinion that the particular order is erroneous in so tar as it is prejudicial to the interests of the Revenue, is a quasi-judicial act because on this consideration or opinion the whole machinery of re-examination and reconsideration of an order of assessment, which has already been concluded and controversy which has been set at rest, is set again in motion. It is an important decision and the same cannot be based on the whims or caprice of the revising authority. There must be materials available from the records called for by the Commissioner.

15. We may now examine the facts of the present case in the light of the powers of the Commissioner set out above. The Income-tax Officer in this case had made enquiries in regard to the nature of the

expenditure incurred by the assessee. The assessee had given detailed explanation in that regard by a letter in writing. All these are part of the record of the case. Evidently, the claim was allowed by the Income-tax Officer on being satisfied with the explanation of the assessee. Such decision of the Income-tax Officer cannot be held to be "erroneous" simply because in his order he did not make an elaborate discussion in that regard. Moreover, in the instant case, the Commissioner himself, even after initiating proceedings for revision and hearing the assessee, could not say that the allowance of the claim of the assessee was erroneous and that the expenditure was not revenue expenditure but an expenditure of capital nature. He simply asked the Income-tax Officer to re-examine the matter. That, in our opinion, is not permissible. Further inquiry and/or fresh determination can be directed by the Commissioner only after coming to the conclusion that the earlier finding of the Income-tax Officer was erroneous and prejudicial to the interests of the Revenue. Without doing so, he does not get the power to set aside the assessment. In the instant case, the Commissioner did so and it is for that reason that the Tribunal did not approve his action and set aside his order. We do not find any infirmity in the above conclusion of the Tribunal.

16. In the light of the forego ng discussion, we answer the question referred to us in the affirmative, that is, in favour of the assessee and against the Revenue.

17. Under the facts and circumstances of the case, we make no order as to costs."

23. In the present case before us, the ld. Pr. CIT has not specified in the notice issued u/s 263 the Act as well as the consequent order as to how the order of the AO is erroneous and prejudicial to the interest of revenue on the seven issues raised but has simply observed that the assessment order does not reveal manner in which the AO has dealt with the directions of the ld. Addl.CIT. The case of the assessee also find support of the decision of the another jurisdictional High Court in the case of Reliance Communication Ltd

(supra), wherein the court held that mere fact that the AO did not make any reference to issue in the assessment order cannot make any order erroneous and prejudicial to the interest of the revenue when the issues were looked into by the AO after calling information from the assessee. The said decision of the Jurisdictional High Court has now been approved by the Hon'ble Supreme Court in the case of Commissioner of Income-tax-10, Mumbai v.Reliance Communication Ltd. [2016] 76 taxmann.com 226 (SC). In the present case, the ld.PCIT has simply stated that the AO has committed error in the assessment order which, in our opinion, is not sufficient to invoke the jurisdictional revision u/s 263 of the Act In our opinion, the ld. PCIT has to point out the error committed by the AO and also state as to how the same is not in accordance with law and how it has caused prejudice to the revenue. During the course of assessment proceedings, the AO called for the various details from the assessee and the AO, after considering all the details as furnished and supplied by the assessee in reply, framed the assessment u/s 143(3) of the Act. In the such scenario the said order cannot be termed as erroneous and prejudicial to the interest of the revenue. In the case of Development Credit Bank Ltd (supra), the Hon'ble Jurisdictional High Court has held as under :

> ***"7.*** *A reading of the order passed by the Commissioner of Income-tax would show that the principal objection which the Revisional Authority expressed against the order of the Assessing Officer was an alleged failure of the Assessing Officer to examine; firstly whether the capital*

gain of Rs. 1.26 crores has been earned by the assessee on transactions relating to investments 'held to maturity', and secondly whether the depreciation of Rs. 622.39 lakhs was claimed on investments which were held as stock-in-trade. Now from the material on record before the Court it is evident that the assessee, in response to a specific query of the Assessing Officer dated 20-9-2004 supplied details of the long-term investments held for a period in excess of one year which the assessee treated as investments held to maturity. The profit on these investments was computed at Rs. 1.26 crores. Insofar as the aspect of depreciation of Rs. 622.39 lakhs on investments held as stock-in-trade was concerned, the assessee had similarly supplied to the Assessing Officer details of the current investments in response to the query of the Assessing Officer. In addition, it would also have to be noted that, in pursuance of the order passed by the Commissioner of Income-tax under section 263, an assessment order came to be passed on 28-12-2007. During the course of the assessment order, the Assessing Officer noted that the assessee has explained depreciation claimed against the investments held and classified as stock-in-trade. The explanation of the assessee in this connection was accepted and the Assessing Officer came to the conclusion that depreciation of Rs. 622.39 lakhs has been claimed towards investments held and classified as stock-in-trade. We have indicated this only as and by way of an illustration in aid of our finding that there was no basis or justification for the Commissioner of Income-tax to invoke the provisions of section 263. In the order of assessment, the Assessing Officer had after making an enquiry and eliciting a response from the assessee come to the conclusion that the assessee was entitled to depreciation to the extent of Rs. 622.39 lakhs on the value of securities held on the trading account. In the absence of any tangible material to the contrary, the Commissioner of Income-tax could not have treated this finding to be erroneous or to be prejudicial to the interest of the revenue. The observation of the Commissioner of Income-tax that the Assessing Officer had arrived at his finding without conducting an enquiry was erroneous, since an enquiry was specifically held with reference to which a disclosure of details was called for by the Assessing Officer and made by the assessee. We have adverted earlier to the directions which have been issued by the Commissioner of Income-tax to the Assessing Officer with regard to the holding of a fresh enquiry. Before us it is common ground between counsel that the first and the second issues therein relating to the capital gain of Rs. 1.26 crores and depreciation of Rs. 622.39 lakhs constitute the basis of the view of the Revisional Authority and the others follow in

consequence. Once we come to the conclusion that the Revisional Authority was not justified in exercising the jurisdiction under section 263 with reference to the aforesaid issues [(i) and (ii) in the directions of the Commissioner of Income-tax noted earlier], the other issues are consequential to the enquiry which was directed in respect of the first and second issues. This has not been disputed.

8. *In these circumstances, for the reasons which we have set out herein above, we are of the view that the Tribunal was justified in coming to the conclusion that recourse to the powers under section 263 was not warranted in the facts and circumstances of the case. The question of law which has been formulated shall stand answered in the aforesaid terms. The appeal shall, accordingly, stand dismissed. There shall be no order as to costs".*

24. We also find that in the present case, the AO has made the inquiry from the assessee during the course of assessment proceedings, which were duly replied by the assessee by filing the necessary details and the Commissioner has not pointed out or stated that the AO has not made any inquiry on the various issue as referred in the notice u/s 263. Thus, it is clear from the facts before us that there was no lack of inquiry or non application of mind on the part of the AO or the case of the assessee decided in a hurried manner by the AO. The assessment so framed by the AO can be erroneous because of being against the provisions of law due to non consideration of certain facts or failure on the part of the AO to consider crucial facts, the provisions of law or settled legal precedents on the points which would render the assessment being erroneous and prejudicial to the interest of revenue. However, in the present case, the AO has conducted the inquiries which may be inadequate and allowed the claimed by taking a possible view. In this case

the exercise of revisionary jurisdiction u/s 263 of the Act is not maintainable. This position has been settled by the Hon'ble Supreme Court in the case of **Malabar Industrial Co. Ltd. CIT [2000] 243 ITR 83 (SC) after considering the decisions of Rampyari Devi Saraogi (supra) and Smt. Tara Devi Aggarwal (supra) :**

> *"There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer; it is only when an order is erroneous that the section will be attracted. 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 inte ests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offe ing, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the revenue – Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 (SC) and in Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC)".*

25. Further the issue of amendment in the section 263 by the Finance Act, 2015 , whether retrospective or not, has been considered in the decision of the Mumbai Bench of the Tribunal in the case of **Narayan Tatu Rane *V/s***

Income-tax Officer, Ward 27(1)(1), Mumbai reported in (2016) 70 taxmann.com 227 (Mum), wherein the Tribunal has held as under :

"19. *The law interpreted by the High Courts makes it clear that the Ld Pr. CIT, before holding an order to be erroneous, should have conducted necessary enquiries or verification in order to show that the finding given by the assessing officer is erroneous, the Ld Pr. CIT should have shown that the view taken by the AO is unsustainable in law. In the instant case, the Ld Pr. CIT has failed to do so and has simply expressed the view that the assessing officer should have conducted enquiry in a particular manner as desired by him. Such a course of action of the Ld Pr. CIT is not in accordance with the mandate of the provisions of sec. 263 of the Act. The Ld Pr. CIT has taken support of the newly inserted Explanation 2(a) to sec. 263 of the Act. Even though there is a doubt as to whether the said explanation, which was inserted by Finance Act 2015 w.e.f. 1.4.2015, would be applicable to the year under consideration, yet we are of the view that the said Explanation cannot be said to have over ridden the law interpreted by Hon'ble Delhi High Court, referred above. If that be the case, then the Ld Pr. CIT can find fault with each and every assessment order, without conducting any enquiry or verification in order to establish that the assessment order is not sustainable in law and order for revision. He can also force the AO to conduct the enquiries in the manner preferred by Ld Pr. CIT, thus prejudicing the independent application of mind of the AO. Definitely, that could not be the intention of the legislature in inserting Explanation 2 to sec. 263 of the Act, since it would lead to unending litigations and there would not be any point of finality in the legal proceedings. The Hon'ble Supreme Court has held in the case of Parashuram Pottery Works Co. Ltd. v. ITO [1977] 106 ITR 1 that there must be a point of finality in all legal proceedings and the stale issues should not be reactivated beyond a particular stage and the lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity.*

20. *Further clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and*

prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-à-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquries or verification that would have been carried out by a prudent officer. Hence, in our view, the question as to whether the amendment brought in by way of Explanation 2(a) shall have etrospective or prospective application shall not be relevant"

26. In view of the foregoing discussions , we note that the AO has passed the assessment order after obtaining and calling for details/clarifications of all the seven issues raised by the Pr CIT in the revisionary proceedings and thereafter framed the assessment whereas the ld Pr.CIT has not specified in his order as to how the order of the AO is erroneous so as to prejudicial to the interest of the revenue. The Pr. CIT has even made roving direction that the AO may examine any other issue which may come to his notice in the set aside proceedings. Thus evidently it is not a case of no inquiry or wrong application of law or wrong assumption of facts and therefore the revisionary jurisdiction exercised by the PCIT is not proper and as per the provisions of the section itself. We are of the considered opinion that in the present case the AO has specifically called for explanation from the assessee on all points

during the course of assessment proceeding and thereafter has taken a possible view. Moreover, it is not necessary for the AO to give detailed findings or elaborate in the assessment order on each and every issue which has been examined during the course of scrutiny proceedings. Besides, the case of the assessee is squarely covered by the ratio laid down in the various case laws referred to by the ld AR discussed briefly hereinabove while a series of cases relied upon by the revenue have been carefully perused and are found to be distinguishable on facts and are not applicable. The amendment to section 263 is also prospective. Thus, the reversionary proceedings u/s 263 of the Act are not validly initiated in view of the facts that the issues raked up by the Pr.CIT stand examined by the AO in the assessment proceedings and the ld Pr CIT has failed to state as to how the order of AO is erroneous and not in accordance with law or settled legal position. Even on merit, the assessee is entitled to all the deductions/claims as per the provisions of the Act. Considering all these facts in totality and respectfully following the ratio laid down in the various decisions of the Jurisdictional and other High Courts ,we are of the considered view that the jurisdiction by the Pr.CIT u/s 263 of the Act was invalidly assumed. Accordingly we set aside the proceedings u/s 263 of the Act as being invalid and also consequent order of PCIT u/s 263 of the Act.

27. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 6th Oct, 2017.

Sd	**sd**
(D.T.GARASIA)	**(RAJESH KUMAR)**
Judicial Member	**Accountant Member**

मुंबई Mumbai; दिनांक Dated :.6.10.2017

Sr.PS:SRL:

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)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai