आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

श्री शक्तिजीत दे,न्यायिक सदस्य **एवं**
श्री मनोज कुमर अग्रवल, लेख सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आ करअपील सं./ I.T.A. No.4050/Mum/2018
(**निर्धारण वर्ष** / Assessment Year: 2013 14)

Amit Agarwal C-607, Palm Beach Residency Sector-04, Nerul Navi Mumbai-400 706.	**बनाम**/ Vs.	**Pr. CIT-28** Tower No.06, Vashi Navi Mumbai-400 703.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AABPA 3472-H**		
(पीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

Assessee by	:	Shri Manish Shah and Ms. Niyanta Mehta-Ld. Ars
Revenue by	:	Shri Anadi Varma-Ld.CIT-DR

सुनवाईकीतारीख/ **Date of Hearing**	:	08/04/2019
घोषणाकीतारीख / **Date of Pronouncement**	:	06/06/2019

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member):-

1. By way of this appeal for Assessment Year [AY] 2013-14, the assessee has contested the validity of revisional jurisdiction u/s 263 exercised by Ld. Principal Commissioner of Income-Tax-28 [Pr.CIT],

Mumbai vide order dated 26/03/2018. For the same, the following grounds have been raised before us: -

GROUND NO. I: ORDER U/S 263 OF THE ACT IS VOID AB INITIO AND BAD IN LAW:

1. On the facts and circumstances of the case and in law, the ld. Pr. CIT erred in invoking the provisions of section 263 of the Act and setting aside the order u/s 143(3) of the Act passed by the Asst. Commissioner of Income Tax -28(1), Mumbai ("the AO") and directing the AO to pass a fresh order after examination of the facts of the case.
2. Ld. Pr. CIT failed to appreciate that:
   i. both the pre-requisites i.e. (a) the assessment order being erroneous and (b) the assessment order being prejudicial to the interest of the revenue, are not satisfied in the facts of the present case;
   ii. the amendment in section 54 by Finance (No. 2) Act, 2014 limiting the exemption to one residential house was effective only from April 1, 2015 relevant to Assessment Year 15-16;
   iii. The AO has made adequate enquiries on issues in respect of which impugned order has been passed and the plans as well as layouts were part of the Agreements which were submitted to the AO;
   iv. In any case, mere inadequate enquiry is not a sufficient ground for revision u/s. 263 of the Act; and
   v. where the view of the AO is a possible view, revision u/s. 263 is bad in law.
3. The Appellant prays that it be held that the assessment order passed by the AO is neither erroneous nor prejudicial to the intere t of revenue and accordingly the action of the ld. Pr. CIT of invoking provisions of section 263 of the Act and directing the AO to verify and examine the facts of the case and to pass a fresh assessment order be held void and bad in law.

WITHOUT PREJUDICE TO GROUND NO. I:
GROUND NO. II: Directing the AO to verify as to whether the "new acquired flats are independent units" and re examining the claim of the Appellant under section 54 of the Act:

1. On the facts and circumstances of the case and in law, the ld. Pr. CIT erred in exercising jurisdiction u/s 263 of the Act and directing the AO to re-examine/freshly examine as to whether the new flats purchased were independent units and thereafter, pass order in accordance with law in respect of the Appellant's claim under section 54 of the Act.
2. The Ld. Pr. CIT failed to appreciate that section 54, prior to its amendment by Finance (No.2) Act, 2014 w.e.f. April 1, 2015, did not limit the number of units to be purchased out of the long-term capital gains arising from the sale a residential house for claim of the said exemption and therefore, whether the flats were independent units or not has no bearing on the claim under section 54 of the Act.
3. The Appellant prays that the direction to AO to examine claim under section 54 after verifying whether the newly acquired units were independent units be quashed.

WITHOUT PREJUDICE TO GROUND NO. I AND II:
GROUND NO. Ill: Claim under section 54 was valid as adjacent units were purchased to be used as single dwelling unit

1. On the facts and circumstances of the case and in law, the ld. Pr. CIT erred in exercising jurisdiction u/s 263 of the Act and directing the AO to examine the building plans to determine whether the units were independent units.
2. Ld. Pr. CIT failed to appreciate and ought to have held that the AO has duly examined the said issue during the course of assessment proceedings.
3. Ld. Pr. CIT erred in not appreciating that the layout and plans were part of the Agreements submitted to the AO and the units being adjacent units were intended to be used as a single dwelling unit.
4. Ld. Pr. CIT failed to appreciate that the AO after examining the Agreements and the layout and plan contained therein had rightly allowed the claim of the Appellant.
5. The Appellant prays that the direction to re-examine the claim under section 54 after verification of the layout and building plans be quashed."

2.1 Facts as emanating from the record are that the assessee being *resident individual* was assessed for impugned AY in scrutiny assessment u/s 143(3) on 02/02/2016 accepting the returned income of Rs.50.21 Lacs e-filed by the assessee on 28/09/2013.

2.2 Subsequently, this order was subjected to revisional jurisdiction u/s 263 by Ld. Pr.CIT vide *show-cause* notice dated 12/09/2017, the relevant extract of which is as under: -

2. The assessment in your case has been completed u/s. 143(3) of the I.T. Act, 1961 on 02.02.2016, accepting the returned income at Rs.50,21,020/-.
3. On perusal of records, the following issues are noticed in the aforesaid order u/s. 143(3) of the Income Tax Act, 1961 dated 02.02.2016.

3.1 It is seen from the records that you have sold two flats Nos. 501 & 502 in Sun Palm View Bldg, Sanpada on 18/10/2012 & 16/10/2012 respectively for sale consideration of Rs.1,12,50,000/- each. Whereas you have sold Flat No.501 and purchased two flats 401 & 402 in Monarch Imperial, Kalamboli amounting to Rs.40 lacs each. Against the sale of Flat No.502 you have purchased two more flats 302 & 303, Monarch Imperial, Kalamboli amounting to Rs.28 lacs plus Rs.5 lacs (additional amenities) each. It is observed that you have claimed exemption u/s. 54 of the I.T. Act on purchase of 4 flats against the sale of 2 flats which is not permissible as per section 54 of the I.T. Act, 1961.

4. In view of the above, it is evident that the Assessing Officer has not examined the aforesaid issues at all and allowed the claims made by you without inquiring, verification, resulting in excess claims being allowed. Therefore, it is considered that the order dated 02.02.2016 u/s. 143(3) of the Income-tax Act, 1961 is

erroneous in so far as it is prejudicial to the interest of revenue within the meaning of Sec. 263 of the Income-tax Act, 1961.

5. You are, therefore, allowed an opportunity of being heard and show cause as to why an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment within the meaning of Section 263 of the Income Tax Act, 1961 may not be passed in your case.

2.3 In response, the assessee vide letter dated 04/10/2017, submitted that the assessee sold two residential house property and against sale of each of the house property, the assessee had purchased two adjacent flats intended to be used as single dwelling unit and he deduction u/s 54 was claimed on purchase of new flats. It was submitted that the details of computation of the capital gains of the said transactions was called for by Ld. AO during scrutiny assessment proceedings vide question No. 26 of notice dated 23/12/2015 and after considering the assessee's reply, the assessee's claim was accepted u/s 54.

2.4 In reply, the attention was also drawn to the judgment of Hon'ble Delhi High Court rendered *in* **Gita Duggal 257 CTR 208** to submit that a residential house should be understood in the sense that the building should be a residential one and that the words 'a' would not mean to indicate a singular number. It was further submitted that the words 'a residential house' were replaced with 'one residential house' only with effect from 01/04/2015 and accordingly, the amendment would not apply to assessment year under dispute. Reliance was placed on the decision of Hon'ble Madras High Court rendered in **CIT Vs V.R.Karpagam [373 ITR 127].** It was also submitted that as per the decision of this Tribunal rendered in Rajesh Keshav Pillai Vs ITO [44 SOT 617], there was no bar on

claiming exemption on sale of multiple houses, provide the requisite conditions were satisfied. In the above background, it was submitted that deduction was permissible under law and the decision of Ld. AO was in line with binding judicial precedents and therefore no revision was warranted. The submissions were also made that the twin conditions to invoke Section 263 viz. erroneous as well as prejudicial to the interest of the revenue were not fulfilled in the present case. Reliance was placed on the decision of Hon'ble Bombay High Court rendered in CIT Vs Gabr el India Ltd. [203 ITR 108]. The submissions were also made that Ld. AO had already applied his mind on the stated issue by asking and scrutinizing various details and accepted assessee's claim with due application of mind.

2.5 However, not satisfied with assessee s submissions, the order was set aside after making following observations: -

> 6. The submission of the assessee is duly considered and found not tenable. The Assessing Officer has not examined whether the new Residential Flats purchased by the assessee are 2 separate independent units & sold to the assessee by the developer by separate agreement. The AO should have examined the Sanctioned approved Building plan to ascertain whether the new acquired flats are independent units. During the assessment proceedings, the Assessing Officer has not examined the aforesaid issues at all and allowed the claims made without verification, resulting in excess claims being allowed.
>
> 7. Therefore, it is held that the order dated 02.02.2016 u/s. 143(3) of the Income tax Act, 1961 is erroneous in so far as it is prejudicial to the interests of the revenue within the meaning of sec.263 of the Income-tax Act, 1961 and, as the Assessing Officer failed to conduct proper inquiries, investigation and enquiries, the assessment order is set aside to the Assessing Officer with the direction to verify the claim of the assessee after conducting proper inquiries, investigation and examination and pass a fresh assessment order in accordance with law after affording an opportunity of being heard to the assessee . The order shall be passed under the supervision and guidance of the Jt.CIT-28(1), Mumbai.

Aggrieved, the assessee is in further appeal before us.

3. The Ld. Authorized Representative for Assessee reiterating the submissions advanced arguments that the stated issue was duly scrutinized by Ld. AO during original assessment proceedings and accepted the claim with due application of mind and therefore, the same would not warrant revisional jurisdiction u/s 263. Per *Contra,* Ld. CIT-DR submitted that the failure on the part of Ld. AO to carry out investigations as observed by Ld.Pr.CIT would justify revision u/s 263. The Ld. AR has also advanced argument on merits of the case also and submitted that the assessee was eligible to claim aforesaid deduction u/s 54.

4.1 We have carefully heard the rival submissions and perused relevant material on record including question put to assessee in notice u/s 142(1) during original assessment framed u/s143(3).

4.2 Upon perusal of notice u/s 142(1) dated 23/12/2015 issued at the time of scrutiny assessment, it is noted that a specific question was put to assessee which read as follows: -

> 26. Give copy of Sale Deed of all property related with exempt LTCG. Also give detailed working of the same. Also give proof of LTCG calculation given by you.

In response, the assessee, provided details of the same and provided separate computation of capital gains earned on Flat No. A-501 and Flat No. A-502. Separate details of house property purchased to claim exemption u/s 54 on account of purchase of Flat Nos. 302 & 303 and Flat Nos 401 & 402 was also provided to Ld. AO. Along with the same, the copies of sale deeds as well as purchase deeds executed by the assessee were submitted in support of the computations. It is observed that the properties have been sold as well as acquired by the assessee by way of

separate deeds. The Ld.AO, after appreciating the same, accepted the claim made by the assessee.

4.3 The perusal of these submissions and documents would establish that specific queries were raised by Ld.AO regarding assessee's eligibility to claim exemption u/s 54 and the documents / information were duly supplied by the assessee. Therefore, we form an opinion that Ld. AO with due application of mind, after making requisite inquiries, accepted assessee's claim. This being so, the action of Ld. Pr.CIT could not be justified. Nothing on record would suggest that the action of Ld.AO was not in conformity with statutory provisions or not in line with the binding judicial precedents prevailing at the time of framing assessment u/s 143(3). As per extant provisions of Section 54 of the Act as interpreted by various judicial authorities, the expressions 'a residential house' would not mean to indicate a singular number. The same is also evident from the fact that the words 'a residential house' were replaced with 'one residential house' only with effect from 01/04/2015 and accordingly, the amendment was not applicable to impugned AY. Simply because, Ld. Pr.CIT hold adverse view in the matter, in our opinion, would not be a ground to invoke jurisdiction u/s 263 unless any perversity is established in the order of Ld. AO. Once a plausible & legally sustainable view has been taken by Ld. AO in the matter, the revisional jurisdiction u/s 263 would not be warranted.

4.4 We draw support from the decision of Hon'ble Bombay High Court rendered in **Moil Ltd. Vs. CIT [81 Taxmann.com 420]** wherein Hon'ble court has held as under: -

5. *On a perusal of the orders passed by the Authorities, it appears that before the assessment order was passed, a notice was served on the assessee under Section 142 (1) of the Act and 20 queries pertaining to different heads were made therein. The ninth query in the notice under Section 142 (1) of the Act pertains to the expenditure for the Corporate Social Responsibility. By the said query, the assessee was directed to give a detailed note of expenditure for the Corporate Social Responsibility along with bifurcation of the expenses under different heads. An exhaustive reply was submitted by the assessee to the notice under Section 142 (1) of the Act. In paragraph 8 of the reply, the assessee gave the detailed note pertaining to the expenditure for the Corporate Social Responsibility under different heads that runs into several pages. The heads under which the expenses were made towards the Corporate Social Responsibility were specifically mentioned as health, environment, sports, education etc. and for each of the different heads, particulars were given in respect of every minor or major expenses. A detailed note on the expenditure on the Corporate Social Responsibility claim was given in paragraph 8 which runs into more than five pages. It is not disputed that the appellant - assessee is a Government of India undertaking and the Government has a control over the expenses of the undertaking. It is pertinent to note that during the previous assessment years, similar claims were made by the assessee - Company and the assessment orders allowing the claims have attained finality. We have minutely perused the assessment order. The claims for deductions were made by the assessee at least under 20 heads and queries were made in the notice under Section 142 (1) of the Act to the assessee in respect of nearly all of them. We, however, find from the assessment order that the Assessing Officer has dealt with nearly nine claims of deductions. These claims have been specifically men ioned in the assessment order and they have been discussed therein because the Assessing Officer appears to have disallowed those claims either partially or totally. In respect of the claim for the Corporate Social Responsibility and some other claims that were allowed by the Assessing Officer, the Assessing Officer has not made a specific reference in the assessment order. It is apparent from the assessment order that the Assessing Officer has expressed in detail about the claims that were disallowable. Where the claims were allowable, as we find from the reading of the assessment order, the Assessing Officer has not referred to those claims. The Corporate Social Responsibility claim is one of them. It is apparent from the notice under Section 142 (1) of the Act that a specific query in regard to the claim pertaining to the Corporate Social Responsibility was made and a detailed note after giving bifurcation of the expenses under different heads was sought. We have perused the response in respect of this query which is exhaustive. We find that the assessee has given the details, as are sought under query no.9 in the notice under Section 142 (1) of the Act. If that is so, the judgments, reported in Fine Jewellery (India) Ltd. (supra) and Nirav Modi (supra) and on which the learned Counsel for the assessee has placed great reliance would come into play. It is held in the judgments referred to herein above by relying on the judgment in the case of Idea Cellular Ltd. (supra) that if a query is raised during the assessment proceedings and the query is responded to by the assessee, the mere fact that the query is not dealt with in the assessment order would not lead to a conclusion that no mind has been applied to it. In the case of Fine Jewellery (India) Ltd. (supra) this Court found that from the nature of the expenditure as*

explained by the assessee in that case the Assessing Officer took a possible view and therefore, it was not a case where the provisions of Section 263 of the Act could have been resorted to. Considering the explanation of the assessee in this case, we are also of the view that the Assessing Officer had taken a possible view. In the case of Nirav Modi (supra) this Court held that the Tribunal was justified in that case in cancelling the order under Section 263 of the Act as the assessee had responded to the query made to it during the assessment proceedings and merely because the assessment order did not mention the same, it would not lead to a conclusion that the Assessing Officer had not applied his mind to the case. In the instant case, we find that the Assessing Officer has applied his mind to the claims made by the assessee and wherever the claims were disallowable they have been discussed in that assessment order and there is no discussion or reference in respect of the claims that were allowed. In view of the law laid down in the judgments in the case of Fine Jewellery (India) Ltd. (supra) and Nirav Modi (supra) it would be necessary to hold that in the circumstances of the case, it cannot be said that merely because the Assessing Officer had not specifically mentioned about the claim in respect of the Corporate Social Responsibility, the Assessing Officer had passed the assessment order without making any enquiry in respect of the allowability of the claim of Corporate Social Responsibility. In our view, the provisions of Section 263 of the Act could not have been invoked by the Commissioner of Income Tax in the circumstances of this case. The Tribunal was not justified in holding that the query under Section 142 (1) of the Act was very general in nature and the reply of the assessee was also very general in nature. In our considered view, the query pertaining to Corporate Social Responsibility was exhaustively answered and the appellant - assessee had provided the data pertaining to the expenditure under each head of the claim in respect of Corporate Social Responsibility, in detail. The Tribunal was not justified in holding that the reply/explanation of the assessee was not elaborate enough to decide whether the expenditure claim was admissible under the provisions of the Income Tax Act. The Assessing Officer is not expected to raise more queries, if the Assessing Officer is satisfied about the admissibility of claim on the basis of the material and the details supplied. In the facts and circumstances of the case, we answer the question of law in the negative and against the Revenue.

The Hon'ble Bombay High Court in **CIT Vs. Hindustan Lever Ltd. 19 Taxman.com 56]** following the judgment in **CIT Vs. Gabriel India Ltd. [203 ITR 108]** observed as under: -

9. Before we deal with the grounds on which the Commissioner sought to exercise his jurisdiction under Section 263 and the decision of the Tribunal in appeal, it would, at the outset, be necessary to advert to the parameters for the exercise of the jurisdiction under Section 263 of the Act. Section 263 empowers the Commissioner to call for and examine the record of any proceeding "if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue". The language of Section 263 imposes two requirements, the first being that the order of the Assessing Officer must be regarded as being erroneous and the second

that the order must be prejudicial to the interests of the Revenue. Similarly, the Commissioner cannot exercise his jurisdiction under Section 263 merely on the ground that the interests of the Revenue are prejudiced without coming to the conclusion, in addition, that the order in respect of which he exercises his revisional jurisdiction is erroneous. Both the requirement of the order being erroneous and being prejudicial to the interests of the Revenue, must be fulfilled.

10. Several judgments of the High Courts had considered the ambit of the jurisdiction under Section 263 before the issue was comprehensively determined by the Supreme Court in *Malabar Industrial Co. Ltd.* (*supra*). A judgment of a Division Bench of this Court in *CIT* v. *Gabriel India Ltd.* [1993] 203 ITR 108 / 71 Taxman 585 , held that an order cannot be termed as erroneous unless it is not in accordance with law. Moreover, the Division Bench held that if the Assessing Officer acting in accordance with the law has made a certain assessment, it cannot be branded as erroneous by the Commissioner simply because the order should have been written more elaborately or because the Commissioner in substitution of his own judgment for that of the Assessing Officer holds that the decision is erroneous. The Division Bench held that an order of the Assessing Officer to be erroneous must be one which is not in accordance with law or an order which has been passed without making an enquiry in undue haste. Similarly, an order cannot be said to be prejudicial to the interests of the Revenue, if it is not in accordance with law in consequence whereof, the lawful revenue due to the Government has not been realised or cannot be realised. The judgment of the Division Bench has been followed by the Delhi High Court in *CIT* v. *Vikas Polymers* [2010] 194 Taxman 57 .

11. Now, it must be noted that subsequent to the judgment of the Division Bench of this Court in *Gabriel India Ltd.* (*supra*), the provisions of Section 263 were interpreted by the Supreme Court in the decision in *Malabar Industrial Co. Ltd.* (*supra*). In the case before the Supreme Court, the assessee had entered into an agreement for sale of a plantation. The purchaser not having adhered to the Schedule prescribed for payment by instalments, parties agreed to the extension of time on condition of payment of compensation/damages. In the return filed by the assessee, the amount was noted as compensation and damages for loss of agricultural income. The Assessing Officer accepted this and endorsed a nil assessment for the assessment year. The Commissioner in the exercise of his jurisdiction under Section 263 concluded that the amount was unconnected with any agricultural operation and was liable to be taxed under the head "income from other sources". Both, the Tribunal in appeal and the High Court held against the assessee. The Supreme Court while dismissing the appeal came to the conclusion that the order of nil assessment by the Income Tax Officer was passed without application of mind. There was no material to support the claim of the assessee that the amount paid represented compensation for loss of agricultural income. The Assessing Officer, noted the Supreme Court, had accepted the entry in the statement of account filed by the assessee in the absence of any supporting material and without making any enquiry. On these facts, the conclusion that the order of the Income Tax Officer was erroneous was held to be irresistible and the jurisdiction under Section 263 was held to be a justifiable exercise.

12. The judgment of the Division Bench of this Court in *Gabriel India Ltd.* (*supra*) had confined the categories within which the jurisdiction under Section 263 could be exercised, to a situation in which the order of the Assessing Officer could be regarded as not being in accordance with law or which had been passed without making an enquiry in undue haste. The exposition of law in the judgment of the Division Bench, to the extent to which it confined the jurisdiction under Section 263 only to these categories stands modified by the law laid down by the Supreme Court in *Malabar Industrial Co. Ltd.* (*supra*). The judgment of the Supreme Court clearly does not warrant a restriction of the jurisdiction under Section 263 only to a situation where the judgment of the Assessing Officer is contrary to law or where the Assessing Officer has not made any enquiry in undue haste. The Supreme Court has in *Malabar Industrial Co. Ltd.* (*supra*) observed that the Commissioner has to be satisfied of the existence of two conditions, namely, (i) The order of the Assessing Officer sought to be revised is erroneous; and (ii) The order of the Assessing Officer is prejudicial to the interests of the revenue. If one of those requirements is absent, recourse cannot be had to Section 263. Moreover, it has been held that every kind of mistake or error of the Assessing Officer cannot warrant the exercise of jurisdiction under Section 263 and it is only when an order is erroneous that the section would be attracted. The Supreme Court held that "an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous." In the same category, according to the Supreme Court, would fall orders "passed without applying the principles of natural justice or without application of mind". Consequently, in view of the affirmative principle of law laid down by the Supreme Court, the exercise of the jurisdiction under Section 263 cannot be confined only to those cases where it can be held that the order of the Assessing Officer is not in accordance with law in the restricted sense in which that expression has been used in *Gabriel India Ltd.* (*supra*). As regards the order being prejudicial to the interests of the Revenue, the judgment in *Malabar Industrial Co. Ltd.* (*supra*) adverts to the decisions of the Karnataka and Gujarat High Courts and of the view of the Division Bench in *Gabriel India Ltd.* (*supra*), according to which, a loss of tax has been regarded as prejudicial to the interests of the Revenue. The Supreme Court has held that if due to an erroneous order of the Income Tax Officer, the Revenue is losing tax lawfully payable by a person, it would certainly be prejudicial to the interests of the Revenue. 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 instance, where the Assessing Officer adopted one of several courses permissible in law or where two views are possible and the Assessing Officer has adopted one view with which the Commissioner does not agree, it has been held that it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken is unsustainable in law.

We find the ratio of above decisions applicable to the facts of present case.

4.5 The revenue has placed reliance on the decision of Hon'ble Bombay High Court rendered in **Shoreline Hotels (P) Ltd. Vs CIT [ITA No. 332 of 2016 dated 11/09/2018].** However, upon study, we find the same to be inapplicable in view of the fact that in that case, there was clear failure on the part of Ld. AO to abide by the statutory mandate and Ld. AO accepted vague and general explanation of the assessee, which made the order erroneous as well as prejudicial to the interest of the revenue. However, in the present case, the action of Ld. AO was in line with the binding judicial precedents and there was no failure on the part of Ld. AO to abide by the statutory mandate which is evident from the fact that suitable amendments were made by the legislatures in Section 54 w.e.f. 01/04/2015.

Similar is the case law of Hon'ble Bombay High Court rendered **in CIT Vs Ballarpur Industries Ltd. [85 Taxmann.com 10]** wherein it was found that the claim of deduction was allowed by Ld. AO without due verification as against the fact of the present case wherein we find that the claim was duly examined by Ld. AO during assessment proceedings.

Similarly, in the decision of Hon'ble Delhi High Court rendered in **CIT Vs. Ashoka Logani [ITA No. 553 of 2010 & others dated 11/05/2011],** there was no proper consideration of the issue by Ld. AO and the issues were not properly adjudicated. Similar are the facts in other case laws being relied upon by the revenue.

4.6 Keeping in view the entirety of facts and circumstances, we are of the considered opinion that revisional jurisdiction u/s 263 as exercised by Ld. Pr.CIT could not be held as sustainable under law. By quashing the same,

we restore the original order framed by Ld. AO u/s 143(3). Ground No. 1 stands allowed.

4.7 The Ld. AR has also contested the issue on merits. However, in the present appeal we are concerned only with determining the validity of proceedings u/s 263 and therefore, refrain from delving into the same. Ground Nos. 2 & 3 stands dismissed in *limine.*

5. The appeal stands partly allowed in terms of our above order.

Order pronounced in the open court on 06th June, 2019.

Sd/-	**Sd/-**
(Saktijit Dey)	**(Manoj Kumar Aggarwal)**
न्यायिक सदस्य / **Judicial Member**	लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांकDated : 06/06/2019
Sr.PS:-Jaisy Varghese

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

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

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उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / **ITAT, Mumbai.**