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

श्री शक्तिजीत दे,न्यायिक सदस्य **एवं**
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आकरअपील सं./ I.T.A. No.3159/Mum/2019
(**निर्धारण वर्ष /** Assessment Year:2014-15)

Afcons Infrastructure Limited 16, Afcons House Shah Industrial Estate Veera Desai Road, Andheri West Mumbai.	**बनाम**/ Vs.	**Pr. CIT-9** Room No.214, Aaykar Bhavan 2nd Floor, M.K. Road Mumbai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AAACA-9067-G**		
(पीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

पीलार्थी की ओर से/ **Appellant by**	:	S/Shri J.D. Mistry & Nitesh Joshi-Ld. Ars
प्रत्यर्थीकीओरसे/**Respondent by**	:	Shri Anadi Varma-Ld.CIT-DR

सनवाईकीतारीख/ **Date of Hearing**	:	05/09/2019 & 19/12/2019
घोषणाकीतारीख / **Date of Pronouncement**	:	17/03/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1.1 As per the provisions of Section 263 of Income Tax Act, 1961, the revenue authorities namely Pr. Commissioner of Income Tax / Commissioner of Income Tax is vested with the supervisory powers of suo-

moto revision of any order passed by the Assessing Officer [AO]. For the said purpose, the appropriate authority may call for and examine the record of any proceedings under the Act and may proceed to revise the same provided two conditions are satisfied-(i) the order of the assessing officer sought to be revised is erroneous; and (ii) it is prejudicial to the interest of the revenue. If one of the condition is absent i.e. if the order of the Income-tax Officer is erroneous but is not prejudicial to the revenue or if it is not erroneous but it is prejudicial to the revenue - recourse cannot be had to Section 263 of the Act as held by Hon'ble Supreme Court in **Malabar Industrial Co. Ltd. V/s CIT [243 ITR 83 10/02/2000]** & noted by Hon'ble Delhi High Court in **CIT V/s Vikas Polymers [194 Taxman 57 16/08/2010].** The Hon'ble Supreme Court in **Malabar Industrial Co. Ltd. V/s CIT (supra)** has held that the phrase 'prejudicial to the interests 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 Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law. The said principal has been reiterated by Hon'ble Court in its subsequent judgement titled as **CIT V/s Max India Ltd. (295 ITR 282).** Similar principal has been followed

by jurisdictional High Court in **Grasim Industries Ltd. V/s CIT (321 ITR 92).**

1.2 The Hon'ble Delhi High Court in **CIT V/s Vikas Polymers (supra),** further observed that as regards the scope and ambit of the expression "erroneous", Hon'ble Bombay High Court in **CIT vs. Gabriel India Ltd. [1993 203 ITR 108 (Bombay)]**, held with reference to Black's Law Dictionary that an "erroneous judgment" means "one rendered according to course and practice of Court, but contrary to law, upon mistaken view of law; or upon erroneous application of legal principles" and thus it is clear that an order cannot be termed as "erroneous" unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as "erroneous" by the Commissioner simply because, according to him, the order should have been written differently or more elaborately. The Section does not visualize the substitution of the judgment of the Commissioner for that of the Income-tax Officer who passed the order unless the decision is not in accordance with law.

1.3 Further, any and every erroneous order cannot be the subject matter of revision because the second requirement also must be fulfilled. There must be material on record to show that tax which was lawfully leviable has not been imposed as held in **Gabriel India Ltd.** However, the expression "prejudicial to the interest of the revenue", as held by the Supreme Court in the **Malabar Industrial Co. Ltd.'s** case, is not an expression of art and is not defined in the Act and, therefore, must be understood in its ordinary

meaning. It is of wide import and is not confined to the loss of tax as held in various judicial pronouncements. At the same time, the words "prejudicial to the interest of the revenue", as observed in Dawjee Dadabhoy and Co. vs. S.P. Jain, (1957) 311 ITR 872 (Calcutta), can only mean that "the orders of assessment challenged are such as are not in accordance with law, in consequence whereof the lawful revenue due to the State has not been realized or cannot be realized." Thus, the Commissioner's exercise of revisional jurisdiction under the provisions of Section 263 cannot be based on whims or caprice. It is trite law that it is a quasi-judicial power hedged in with limitation and not an unbridled and unchartered arbitrary power. The exercise of the power is limited to cases where the Commissioner on examining the records comes to the conclusion that the earlier finding of the Income-tax Officer was erroneous and prejudicial to the interest of the revenue and that fresh determination of the case is warranted. There must be material to justify the Commissioner's finding that the order of the assessment was erroneous insofar as it was prejudicial to the interest of the revenue.

1.4 The Hon'ble Delhi Court, in the cited decision, further observed that there is a fine though subtle distinction between "lack of inquiry" and "inadequate inquiry". It is only in cases of "lack of inquiry" that the Commissioner is empowered to exercise his revisional powers by calling for and examining the records of any proceedings under the Act and passing orders thereon. In Gabriel India Ltd. (supra), it was expressly observed: -

"The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that 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 [Parashuram Pottery Works Co. Ltd. vs. ITO, (1977) 106 ITR 1 (SC)].

It was further observed as under: -

"From the aforesaid definitions as it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualize a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualized where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concer ed was on the lower side and left to the commissioner he would have estimated the income at a figure higher than the one determined by the Income tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance w th law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion

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There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.

1.5 The Hon'ble Supreme Court in **CIT V/s Amitabh Bachchan (69 Taxmann.com 170 11/05/2016)** held that the power of appeal and revision is contained in Chapter XX of the Act which includes section 263 that confers *suo-motu* power of revision in the Commissioner. The different shades of power conferred on different authorities under the Act has to be

exercised within the areas specifically delineated by the Act and the exercise of power under one provision cannot trench upon the powers available under another provision of the Act. In this regard, it must be specifically noticed that against an order of assessment, so far as the revenue is concerned, the power conferred under the Act is to reopen the concluded assessment under section 147 and/or to revise the assessment order under section 263. The scope of the power/ju isdiction under the different provisions of the Act would naturally be different. The power and jurisdiction of the revenue to deal with a concluded assessment, therefore, must be understood in the context of the provisions of the relevant sections. While doing so, it must also be borne in mind that the legislature had not vested in the revenue any specific power to question an order of assessment by means of an appeal. Regarding applicability of Section 263, what has to be seen is that a satisfaction that an order passed by the Authority under the Act is erroneous and prejudicial to the interest of the revenue is the basic p e-condition for exercise of jurisdiction under section 263. Both are twin conditions that have to be conjointly present. Once such satisfaction is reached, jurisdiction to exercise the power would be available subject to observance of the principles of natural justice which is implicit in the requirement cast by the section to give the assessee an opportunity of being heard. Further, there could be no doubt that so long as the view taken by the Assessing Officer is a possible view, the same ought not to be interfered with by the Commissioner under Section 263 merely on the ground that there is another possible view of the matter. Permitting exercise

of revisional power in a situation where two views are possible would really amount to conferring some kind of an appellate power in the revisional authority. This is a course of action that must be desisted from.

1.6 The Hon'ble Bombay High Court in **Moil Ltd. Vs. CIT [81 Taxmann.com 420]** observed that if a query is raised during the assessment proceedings which was responded to by he assessee, the mere fact that the query was not dealt with in the assessment order then it would not lead to a conclusion that no mind has been applied to it and the Assessing Officer is not expected to raise more queries, if he was satisfied about the admissibility of claim on the basis of the material and the details supplied.

1.7 An Explanation-2 has been inserted by Finance Act 2015 in Section 263 with effect from 01/06/2015 to declare that order shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if in the opinion of appropriate authority-(1) the order was passed without making inquiries or verifications which should have been made; (ii) the order is passed allowing any relief without inquiring into the claim; (iii) the order is not in accordance with any direction or instructions etc. issued by the Board u/s 119; or (iv) the order was not in accordance with binding judicial precedent.

2.1 Keeping in mind aforesaid principle, we find that the assessee before us, is under appeal challenging the validity of revisional jurisdiction as exercised by Ld. Pr. Commissioner of Income Tax-9, Mumbai for

Assessment Year 2014-15 vide order dated 29/03/2019. The grounds raised by the assessee read as under: -

1. Re: Validity of order under section 263:

1.1. The learned CIT has erred in passing an order under section 263 of the Income-tax Act, 1961 based on surmises and conjectures without appreciating the facts and judicial precedents in the matter. Hence, such order is bad in law and ought to be quashed.

1.2. The learned CIT has erred in holding that the assessment order dated 30 December 2016 passed by the Assessing Officer is erroneous in so far as the same is prejudicial to the interests of revenue.

1.3. The learned CIT failed to appreciate that the conditions specified under Explanation 2 to section 263 are not satisfied in the appellant's case. Accordingly, the appellant prays that the impugned order passed by the learned CIT is ultra vires, invalid and ought to be struck down.

1.4. The learned CIT has erred in holding that the Assessing Officer failed to conduct adequate enquiries during the course of assessment proceedings in spite of the fact the Assessing Officer had recorded the deduction claimed by the appellant in the assessment order and has specifically disallowed the professional fees paid in connection with arbitration awards.

1.5. The learned CIT failed to appreciate that there is due application of mind by the learned AO during assessment proceedings and setting aside of the impugned order is erroneous, in excess of jurisdiction and bad in law.

1.6. The learned CIT ought to have followed the decision of the Jurisdictional Bombay High Court in Design & Automation Engineers (Bombay) (P) Ltd (323 ITR 632) which has been rendered in the context of section 263 of the Act.

1.7. The learned CIT erred in holding that the view taken by the appellant is unsustainable in law and hence change of opinion is permissible to invoke revision proceedings under section 263 of the Act.

1.8. The learned CIT ought to have appreciated that where the learned Assessing Officer adopted one view out of the two possible views the provisions of section 263 of the Act cannot be invoked merely because the Commissioner/ Principal Commissioner proposes to take another view.

Without prejudice to the aforesaid:

2. Re: Addition in respect of interest on arbitration awards granted to the appellant

2.1. The learned CIT erred in not following the principle of consistency applied by the Supreme Court in the case of Radhasoami Satsang v. CIT (193 ITR 321) in respect of the position adopted by the Hon'ble Dispute Resolution Panel and the learned Assessing Officers in the previous assessment years.

2.2. The learned CIT erred in holding that the amount of Rs.36,22,59,000 ought to be taxed in the year under consideration even though the matter has not reached finality and no right has accrued to the appellant to receive such interest on arbitration award.

2.3. The learned CIT erred in holding that recording of entries in the books of account under mercantile system of accounting are determinative for taxability of income under the provisions of the Act.

2.4. The learned CIT erred in relying on the Arbitration and conciliation (Amendment) Act, 2015 and the judicial pronouncement on enforceability of award under new statute to conclude that enforceability and finality of award are synonymous.

2.5. The learned CIT erred in relying on the decision of the Supreme Court in the case of BCCI Vs. Kochi Cricket Pvt. Ltd & Ors which has been rendered under the Arbitration and conciliation Act, 1996 and Arbitration and conciliation (Amendment) Act, 2015 which deals with the issue of enforceability of the arbitration award. Thus, the same cannot be followed for proposing taxation of income of Rs.36,22,59,000 in the current assessment year.

2.6. The learned CIT erred in disregarding the judicial precedents relied upon by the appellant under the Income-tax Act, 1961 to contend that arbitration awards and interest thereon should be taxable only once the matter has reached finality.
2.7. The learned CIT erred in relying on judicial precedents rendered under the Income-tax Act, 1961 which are distinguishable on facts as compared to facts in the appellant's case.
2.8. The learned CIT ought to have appreciated the appellant's submission that there is no permanent exclusion of the interest on arbitration awards from being taxed in the hands of appellant. The appellant offers the said income to tax in the year in which the arbitration awards reaches finality.

As evident, the assessee has contested the validity of order passed u/s 263 besides contesting the proposed addition on merits in respect of interest on arbitration awards granted in favor of the assessee.

2.2 The regular assessment for year under consideration was framed by Ld. AO on 30/12/2016 wherein the income, under normal provisions, was determined at Rs.37.44 Crores after sole disallowance of professional fees for arbitration award for Rs.4.57 Crores. However, Book Profits of Rs.103.62 Crores, as computed by the assessee u/s 115JB in its third revised return filed on 28/03/2016, were accepted without making any further adjustment. The assessee being resident corporate assessee was stated to be engaged in the business of civil construction like roads, bridges, pile foundation and marine works. The professional fees of Rs.4.57 Crores stated to be paid by the assessee for arbitration was disallowed while computing income under normal provisions since the assessee had not offered corresponding arbitration award income for taxation. Similar disallowance made in earlier years was deleted by Ld. first appellate authority, against which revenue's appeal was stated to be pending before Tribunal. Keeping in line with the stand taken in earlier years, similar disallowance was made in year under consideration. So far as the

assessment order is concerned, there is no other material discussion except for this disallowance.

2.3 Subsequently, Ld. Pr.CIT, after perusal of case records, noted that Ld. AO failed to assess income of Rs.36.22 Crores on account of *interest on arbitration award,* which led to issuance of show-cause notice u/s 263 dated 18/03/2019, the substantive portion of which has already been extracted in the impugned order. It was noted that although the assessee, as per computation of income submitted during the course of assessment proceedings, offered income of Rs.36.22 Crores as per Companies Act on account of *interest on arbitration award* while arriving at the Book Profits u/s 115JB. However, the said amount was reduced from the computation of income. It was stated that Ld. AO allowed the said expenditure without considering the said fact and erred in treating the amount of Rs.36.22 Crore as allowable expenditure which made the assessment order erroneous and prejudicial to the interest of the revenue within the meaning of Sec. 263.

The assessee assailed the proposed revisional jurisdiction vide submissions dated 25/03/2019, a copy of which has been placed on record. The attention was drawn to the fact that during the course of assessment proceedings, Ld. AO had specifically show-caused the assessee as to why interest on arbitration awards of Rs.36.22 Crores was reduced in the computations, against which detailed submissions were furnished by the assessee to Ld. AO. The copies of awards received during the year, stay petition filed by the clients before the High Courts and journal entries passed in the books of accounts were also furnished. It was submitted that

since Ld. AO had called for the requisite details of arbitration awards and even made disallowance for professional fees debited in the Profit & Loss Account in relation to arbitration awards, he had applied his mind to the issue and concluded that interest on arbitration awards was not to be taxed during the year under consideration.

2.4 On merits also, it was submitted that the assessee, following mercantile system of accounting was maintaining books as prescribed under the Companies Act, 2013. Accordingly, the assessee credited the interest on arbitration awards received during the current year as well as received in earlier years to the Profit & Loss Account but the said interest was not actually received and the awards were challenged by the clients before the High Courts. The matter had not attained finality and there was no actual receipt of funds and the interest was merely a book entry. The details of interest component would reveal that amount of Rs.32.17 Crores pertained to awards received during the year whereas the balance interest of Rs.4.05 Crores pertained to interest on awards received in earlier years. It was submitted that the awards given in earlier years were challenged by the clients before High Courts and the matters had not reached finality. The assessee accounted for such interest income in the books to keep the claims alive. Such interest income shall accrue to the assessee only when the matter reached finality in assessee's favor. Thus, the said interest could not be said to have accrued in terms of Sec.5 of the Act. The assessee was offering such awards for tax in the years in which the matter reaches finality. The arbitration awards were stated to be covered under the

Arbitration and Conciliation Act, 1996 wherein further appeal would put an automatic stay on the execution of the award. Since the awards were further appealed by the clients, the assessee had no absolute ownership of the awards and hence the same would not be taxable unless actually received.

2.5 The attention was also drawn to the fact that Lok Sabha passed a bill which clarified that the amended Arbitration and Conciliation Act, 2015 shall apply retrospectively i.e. from 23/10/2015 onwards The amendment bill, 2018 clarifies that awards passed under the earlier Arbitration Act and appeals filed pursuant to such orders shall continue to be governed by the erstwhile Arbitration and Conciliation Act, 1996.The assessee placed reliance on the decision of Hon'ble Apex Court rendered in **Shoorji Ballabhdas & Co. (46 ITR 144)** and also on the decision of **Excel Industries Ltd. (358 ITR 295)** fo the submissions that tax was to be levied only on real income. The interest on awards was hypothetical income and assessee did not have any right over such income and therefore, no real income accrued to the assessee on grant of arbitration award in favor of the assessee. The income would be offered to tax only when the matter reaches finality.

2.6 It was further submitted that the assessee offered the arbitration awards to tax in the year of actual receipt once the matter reached finality which was evident from the fact that the assessee offered to tax Arbitration Award of Rs.18.82 Crores received during the year. Thus, there would only

be timing difference in offering the said income to tax depending on when matter reaches finality.

2.7 The assessee also raised a plea of Rule of consistency by submitting that similar submissions were made before Ld. DRP for AY 2009-10 wherein Ld. DRP, after considering the same, did not issue any directions for enhancement of the proposed income of the assessee. Therefore, following the Rule of Consistency in terms of decision of Hon'ble Apex Court in **Radhasoami Satsang V/s CIT (193 ITR 321)**, no addition was to be made on account of interest on arbitration awards.

2.8 In the above background, the assessee, relying upon various judicial pronouncements, assailed the exercise of revisional jurisdiction u/s 263 and submitted that the order was neither erroneous nor prejudicial to the interest of the revenue which would require any interference u/s 263.

2.9 However, the said submissions could not find favor with Ld. Pr. CIT, who opined that the interest income would accrue to the assessee in the year in which the award was issued. Once award was granted, it is realizable with reasonable certainty even though the final award may vary after the High Court orders. Therefore, interest income was to be offered in the year in which the award was granted. The plea that a stand was already taken by Ld. AO during regular assessment proceedings was also rejected by observing that Ld. AO had failed to conduct adequate inquiries. A mere collection of documents could not be held as conducting inquiry and it would be equivalent to no inquiry by the officer. This was clear case of non-application of mind by Ld.AO and therefore, no opinion could be said to

have been formed by Ld. AO. Finally, relying upon various judicial pronouncements, the order was termed as erroneous as well as prejudicial to the interest of the revenue. Therefore, the order was set aside to be passed afresh as per law after conducting necessary enquiries and investigations.

Aggrieved, the assessee is under further appeal before us.

3. The Ld. Sr. Counsel, advanced arguments, assailing the revisional jurisdiction on legal grounds as well as on merits. The Ld. Sr. Counsel fortified the submissions with various case laws on the subjects, the copies of which have been placed on record. Subsequently, written submissions have also been filed summarizing the arguments put forward by Ld. Sr. Counsel.

4. *Au Contraire*, Ld. CIT-DR vehemently opposed any interference in the directions of Ld. Pr.CIT by submitting that the assessment was framed without considering the issues raised by Ld. Pr.CIT and mere collection of information without application of mind would make the order liable for revision u/s 263. The Ld. CIT-DR also relied upon various case laws to fortify its submissions. The written submissions have also been filed in due course which we have duly considered.

Subsequent to conclusion of hearing, the matter was put up for clarification in view of the subsequent decision rendered by Hon'ble Apex Court in the case of **Hindustan Construction Co. Ltd. & Anr. V/s Union of India [WP(C) Nos. 1074 of 2019 and ors. 27/11/2019]** which was in the context

of The Arbitration and Conciliation Act, 1996. The assessee filed written submissions against the same also, which has duly been considered.

5.1 We have carefully considered the factual matrix as well as arguments advances by both the representatives. Our adjudication to the issue, in the light of settled legal position as enumerated in opening paragraphs, would be as given in succeeding paragraphs.

5.2 From the perusal of documents on record, we find that during regular proceedings, notice u/s 142(1) was issued to the assessee on 31/05/2016 wherein the assessee was directed to file the copy of return of income, financial statements and copy of assessment orders for last 3 years. The notice was duly complied with by the assessee vide submissions dated 08/06/2016 wherein the assessee, *inter-alia,* filed its annual report, statement of total income and assessment orders for AYs 2011-12 & 2012-13. In the computation of income, the assessee has offered to tax money received on arbitration award for Rs.18.82 Crores and at the same time, claimed deduction of interest on arbitration award for Rs.36.22 Crores. Thereafter, the assessee has filed another submission vide letter no. PG/26138 which is stated to be as per oral inquiry raised by Ld. AO during the course of hearing. In this submission, the assessee has elaborately dealt with the issue as to why the arbitration award and interest on arbitration awards were reduced from computation of income. The assessee filed project-wise details of deduction so claimed and submitted that interest would not be liable to tax since the same was disputed by the clients and the matter had not reached finality. No right was stated to have

accrued to the assessee to receive any amount towards arbitration awards including interest on arbitration award as these awards were disputed by the clients before Hon'ble High Courts. For the said submissions, reliance was placed*, inter-alia,* on the decision of Hon'ble Apex Court in **Hindustan Housing and Land Development Trust Ltd. (1986 161 ITR 524), Godhra Electricity Co. Ltd. (1997 225 ITR 746),** decision of Hon'ble Bombay High Court in **CIT V/s Seksaria Biswan Sugar Factory Pvt. Ltd. (1992 195 ITR 778), CIT V/s Vimla D. Sonwane (1994 212 ITR 489), CIT V/s Sharda Sugar Industries Ltd. (1999 239 ITR 393)** and **CIT V/s Abdul Mannan Shah Mohammed (2001 248 ITR 614)** besides various other decision of Hon'ble High Courts. In the stated background, it was submitted that right to receive the interest was conditional and would entirely depend upon the final outcome of the decision of Hon'ble Courts. The assessee would receive right on such interest only in the year in which the dispute was finally settled. The copies of the relevant arbitration award along with details of petitions filed by the clients before Hon'ble High Court contesting the terms of the award was also placed on record along with the submissions.

5.3 Another submission was that accounting entries would not be determinative of taxability of income. The attention was drawn to the fact, that arbitration awards including interest, as actually received during the year, was already offered to tax. The copies of arbitration awards and the petition filed against the same before Hon'ble High Courts was also placed on record. The aforesaid facts were reiterated by the assessee in para-5 of

its submissions dated 25/03/2019 to Ld. Pr.CIT while opposing the revision proceedings u/s 263.

5.4 Thereafter, an assessment has been framed u/s 143(3) on 30/12/2016 wherein, Ld. AO has chosen to make disallowance of Rs.4.57 Crores, being professional fees for arbitration since corresponding arbitration award income was not offered for taxation. It was noted that similar disallowance was made in earlier years and the same was deleted by Ld. first appellate authority and consequently, the department was in appeal before Tribunal on the stated issue. However, to keep the issue alive, the said disallowance was made for the year under consideration.

5.5 First of all, we deal with the arguments advanced by Ld.CIT-DR that the submissions made by the assessee during the course of regular proceedings with respect to taxability of interest on arbitration awards were not called for by Ld. AO in notice u/s 142(1) and the submissions were purely suo-moto voluntary submissions which would clearly demonstrate that Ld. AO did not apply his mind to this aspect while framing the assessment. We find that assessee has duly certified the paper-book containing the said submission that the aforesaid submissions vide letter No. PG/26138 as well as supporting documents were duly submitted to Ld.AO during the course of regular hearing. The factum of making said submission during the course of regular assessment proceedings was reiterated by the assessee in para-5 of its submissions dated 25/03/2019 to Ld. Pr.CIT while opposing the revision proceedings u/s 263. Even Ld. CIT-DR has not disputed the fact that the said documents were not, at all,

available before Ld.AO during the course of regular assessment proceedings. The argument advanced is that the said documents were not called for by Ld. AO and the same were not considered by Ld.AO while framing the assessment.

5.6 However, in the background of factual matrix as enumerated by us, it is difficult to accept the fact that the said documents were not appreciated / considered by Ld. AO since a specific disallowance has been made, being conscious of the fact that certain arbitration income was not offered to taxation by the assessee. The assessment orders for earlier years were specifically called for vide notice u/s 142(1) and the same were also furnished by the assessee. Upon perusal of the same, Ld.AO specifically took note of the fact that similar disallowance was made in earlier years and therefore, he chose to make similar disallowance during the year under consideration. The computation of income filed by the assessee clearly demonstrated that arb tration awards received during the year were offered to tax whereas interes on arbitration award was reduced while computing the taxable income. The revenue recognition policy being followed by the assessee to recognize the interest income was fully disclosed in *Notes to the account.* In the light of all these facts, it could safely be concluded that the position taken by assessee to recognize the interest income was accepted by Ld.AO who was well conscious of the fact that certain arbitration income was not offered to tax. Hence, it could not be said that there was non-application of mind by Ld. AO on the sated issue. This being the case, a logical assumption would arise that Ld.AO has duly applied his

mind to the issue of interest on arbitration award and chose not to make any addition thereof. Therefore, it could not be said that there was non-application of mind and no view was taken by Ld. AO on the stated matter.

5.7 Another logical deduction would be that the accounting methodology being followed by the assessee to recognize the interest income as revenue, was accepted by the revenue is earlier years and similar deduction claimed in earlier years was not disturbed. The Notes to the accounts would, *prima-facie,* establish that the assessee was following consistent method of accounting for recognition of interest income and there was no change in accounting policy in this regard. This is in consonance with plea of Rule of consistency as raised by Ld. Sr. Counsel, who has submitted that there was no change in the accounting methodology being followed by the assessee for recognizing the interest income on arbitration awards. This is further evidenced by the submissions made by the assessee d ring the course of assessment proceedings with respect to taxability of interest income on arbitration awards during assessment proceedings for AYs 2009-10 to 2013-14 wherein similar pleas has been raised. The perusal of these submissions would reveal that the assessee has offered interest income on arbitration awards to tax only in the year of actual receipt thereof. Therefore, the principle of rule of consistency favor the assessee, on the issue raised by Ld. Pr.CIT.

5.8 Therefore, in the given facts and circumstances, we find that the subject matter of proposed revision was already deliberated upon by Ld. AO and a possible was taken in the matter. That view could not be said to

be contrary to law, perverse or unsustainable in law, in any manner and the same would be a possible view keeping in mind the rule of consistency. This being the case, the assessment order could not be termed as erroneous or prejudicial to the interest of the revenue u/s 263 as held by Ld. Pr. CIT. The action of Ld. AO, in our opinion, was in consonance with the position accepted by the revenue in earlier years and therefore, it could not be said that the order was not in accordance with law. In such a case, the action of Ld. Pr.CIT in invoking jurisdiction u/s 263 could not be sustained in the eyes of law. Therefore, we quash the same in terms of settled legal position as enumerated by us in opening paragraphs.

5.9 Having said so, keeping in view the fact that in the present appeal we are merely concerned with determining the validity of revisional jurisdiction u/s 263, the argument that whether the action of the assessee in recognizing the interest income, in such a manner, was in consonance with the provisions of The Arbitration and Conciliation Act, 1996 or not, is left open. The other arguments also, on merits, not delved into and left open.

6. The appeal stands allowed to the extent indicated in the order.

Order pronounced in the open court on 17th March, 2020.

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

मुंबई Mumbai; दिनांकDated : 17/03/2020
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

आदेशानुसार/ BY ORDER,

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