HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

D.B. Income Tax Appeal No. 20 / 2016

Shri Laxmi Narayan, Near Khor Darwaja Mori Walon Ki Dhani, Amer Road, Jaipur.

----Appellant

Versus

Commissioner of Income Tax, Jaipur II, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur-302001.

----Respondent

Connected With

D.B. Income Tax Appeal No. 118 / 2017

Through : H/H Shravan Lal Meena Late Sh. Bhagwanta Meena, S/o Shri Dungar, Village Bhankrota, Tehsil, Sanganer, Jaipur.

----Appellant

Versus

The Income Tax Officer, Ward 7(2), Jaipur

----Respondent

D.B. Income Tax Appeal No. 136 / 2017

Sh. Mahadev Balai, Village-Narrottampura, Tehsil-Sanganer, District-Jaipur.

----Appellant

Versus

The Income Tax Officer, Ward 7(2), Behind Vidhan Sabha, Lal Kothi, Jaipur.

----Respondent

For Appellant(s) : Mr. Gunjan Pathak with Ms Ishita Rawat

For Respondent(s) : Mr. Prateek Kedawat and K.D. Mathur for Mr. R.B. Mathur

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HON'BLE MR. JUSTICE K.S. JHAVERI

HON'BLE MR. JUSTICE VIJAY KUMAR VYAS

Judgment

07/11/2017

1. In all these appeals common question of law and facts are involved hence they are decided by this common judgment.

2. By way of appeal no.20/2016, the appellant has assailed the judgment and order of the tribunal whereby tribunal has dismissed the appeal of the assessee. In appeal No.118/2017, the tribunal has partly allowed the appeal filed by the assessee and in appeal no.136/2017, the tribunal has partly allowed the appeal of the assessee.

3. This court while admitting the appeals framed following substantial questions of law:-

Appeal no.20/2016 admitted on 25.03.2017

> "Whether the Income Tax Appellate Tribunal, Jaipur was justified in law in upholding the order passed by the respondent under Section 263, when the original assessment order was passed by the Assessing Officer under Section 143(3) of the Income Tax Act, 1961, after due verification of all the documents on record which is merely change of opinion and nothing else?

Appeal No.118/2016 admitted on 17.05.2017

> "Whether the Ld. ITAT was justified in disallowing the exemption under Section 54B of the act without appreciating that the funds utilized for the investment for purchase of the property eligible under Section 54B belonged to the Appellant only and merely the registered document was executed in the name of the wife and further, the wife had no separate source of income?

Appeal No.136/2017 admitted on 19.5.2017

> "Whether the Ld. ITAT was justified in disallowing the exemption under Section 54B of the act without appreciating that the funds utilized for the investment for purchase of the property eligible

> under Section 54B belonged to the Appellant only and merely the registered document was executed in the name of the wife and further, the wife had no separate source of income? "

4. The facts of the case are that the assessee filed its return of income on 24.08.2009 declaring total income of Rs.2,18,610/- which includes income from long term capital gain on sale of agricultural land at Rs.31,500/-. The assessment was completed u/s 143(3) dated 05.10.2011 at total income of Rs.3,87,830/- by assessing the income from long term capital gain at Rs.2,00,219/-. For enhancing the income under the head long term capital gain, the AO observed that (i) sales consideration of the land as per the provision of section 50C is Rs.55,13,599/- as against Rs.55.00 lacs claimed by the assessee (ii) the assessee has claimed brokerage expenses of Rs.1 lacs but has failed to prove the source of it (iii) the assessee has claimed deduction u/s 54B at Rs.43,50,000/- which includes Rs.11 lacs incurred on construction of boring & pipe, rooms, boundary walls and stamp duty but has proved the source of Rs.10,44,880/- only. The AO finally assessed total income at Rs. 3,87,330/- which includes salary income of Rs. 2,12,340, capital gain of Rs. 2,00,219/- and income from other sources at Rs.47,817/-. The ld. CIT-II, Jaipur had examined the assessment and found that the order of the AO dated 5-10-2011 is erroneous and prejudicial to the interest of Revenue.

5. Counsel for the appellant has taken us to the provisions of Section 54B & 54F which reads as under:-

54B. (1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee being an individual or his parent, or a Hindu undivided family for agricultural purposes (hereinafter referred to as the original asset), and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(*i*) if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be *nil*; or

(*ii*) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced, by the amount of the capital gain.

(2) The amount of the capital gain which is not utilised by the assessee for the purchase of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already

utilised by the assessee for the purchase of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,—

(*i*) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires; and

(*ii*) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

'54F. *Capital gain on transfer of certain. capital assets not to be charged in case of investment in residential house.*—(*1*) Where, in the case of an assessee being an individual, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say, —

(*a*) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;

(*b*) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:

Provided that nothing contained in this sub-section shall apply where the assessee owns on the date of the transfer of the original asset, or purchases, within the period of one year after such date, or constructs, within the period of

three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset.

Explanation.—For the purposes of this section,—

(*i*) "long-term capital asset" means a capital asset which is not a short-term capital asset;

(*ii*) "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(*2*) Where the assessee purchases, within the period of one year after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not changed under section 45 on the basis of the cost of such new asset as provided in clause (*a*), or, as the case may be, clause (*b*), of sub-section (*1*), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

(*3*) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause, (*a*) or, as the case may be, clause (*b*), of sub-section (*I*) shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.'.

5.1 He contended that in view of the decisions of different High Courts:-

1. MALABAR INDUSTRIAL CO. LTD. vs. COMMISSIONER OF INCOME TAX (SC) (2000) 243 ITR 0083

5. To consider the first contention, it will be apt to quote section 263(1) which is relevant for our purpose :

"263. Revision of orders prejudicial to revenue - (1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the assessing officer is erroneous insofar as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Explanation - * * *"

A bare reading of this provision makes it clear that the prerequisite to exercise of jurisdiction by the Commissioner suo moto under it, is that the order of the Income Tax Officer is erroneous insofar as it is prejudicial to the interests of the revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the assessing officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue. If one of them is absent - if the order of the Income Tax Officer is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue - recourse cannot be had to section 263(1) of the Act.

There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the 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 interests of the revenue' is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not conferred

to loss of tax. The High Court of Calcutta in Dawjee Dadabhoy & Co. v. S.P. Jain & Anr. : [1957] 31 ITR 872 (Cal) , the High Court of Karnataka in CIT v. T. Narayana Pai : [1975] 98 ITR 422 (KAR) , the High Court of Bombay in CIT v. Gabriel India Ltd. : [1993] 203 ITR 108 (Bom) and the High Court of Gujarat in CIT v. Smt. Minalben S. Parikh : [1995] 215 ITR 81 (Guj) treated loss of tax as prejudicial to the interests of the revenue.

2. Commissioner of Income Tax vs. Ganpat Ram Bishnoi (RAJHC) (2008) 296 ITR 0292

11. Undoubtedly, the jurisdiction under Section 263 is wide and is meant to ensure that due revenue ought to reach the public treasury and if it does not reach on account of some mistake of law or fact committed by the AO, the CIT can cancel that order and require the concerned AO to pass a fresh order in accordance with law after holding a detailed enquiry. But when enquiry in fact has been conducted and the AO has reached a particular conclusion, though reference to such enquiries has not been made in the order of the assessment, but the same is apparent from the record of the proceedings, in the present case, without anything to say how and why the enquiry conducted by the AO was not in accordance with law, the invocation of jurisdiction by the CIT was unsustainable. As the exercise of jurisdiction by the CIT is founded on no material, it was liable to be set aside. Jurisdiction under Section 263 cannot be invoked for making short enquiries or to go into the process of assessment again and again merely on the basis that more enquiry ought to have been conducted to find something.

3. Commissioner of Income Tax vs. Sunbeam Auto Ltd. (DELHC) : (2011) 332 ITR 0167

12. We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income Tax under Section 263 of the Income Tax Act. As noted above, the submission of learned Counsel for the Revenue was that while passing the assessment order, the AO did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order, which apparently does

not give any reasons while allowing the entire expenditure as Revenue expenditure. However, that by itself would not be indicative of the fact that the AO had not applied his mind on the issue. There are judgments galore laying down the principle that the AO in the assessing order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned Counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders under Section 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry" that such a course of action would be open. In Gabriel India Ltd. (Supra), law on this aspect was discussed in the following manner:

xxx.... From a reading of Sub-section (1) of section, it is clear that the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the Income Tax Officer is "erroneous in so far as it is prejudicial to the interests of the Revenue". It is not an arbitrary or unchartered power. It can be exercised only on fulfilment of the requirements laid down in Sub-section (1). The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. 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. (See Parashuram Pottery Works Co. Ltd. v. ITO : [1977] 106 ITR 1 (SC) at page 10).

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From the aforesaid definitions 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 visualise 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 visualised 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 concerned 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 with 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.

x x x

There must be some prima facie material on record to show that tax which was lawfully eligible 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.

x x x

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.…

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13. When we examine the matter in the light of the aforesaid principle, we find that the AO had called for explanation on this very item, from the assessee and the assessee had furnished his explanation vide letter dated 26.09.2002. This fact is even taken note of by the Commissioner himself in Para 3 of his order dated 03.11.2004. This order also reproduces the reply of the respondent in Para 3 of the order in the following manner:

The tools and dies have a very short life and can produce upto maximum 1 lakh permissible shorts and have to be replaced thereafter to retain the accuracy. Most of the parts manufactured are for the automobile industries which have to work on complete accuracy at high speed for a longer period. Since it is an ongoing procedure, a company had produced 10,75,000 sets whose selling rates is inclusive of the reimbursement of the dies cost. The purchase orders indicating the costing includes the reimbursement of dies cost are being produced before your honour. Since the sale rate includes the reimbursement of die cost and to have the matching effect, the cost of the dies has been claimed as a Revenue Expenditure.

14. This clearly shows that the AO had undertaken the exercise of examining as to whether the expenditure incurred by the assessee in the replacement of dyes and tools is to be treated as revenue expenditure or not. It appears that since the AO was satisfied with the aforesaid explanation, he accepted the same. The CIT in his impugned order even accepts this in the following word:

AO accepted the explanation without raising any further questions, and as stated earlier, completed the assessment at the returned income.

15. Thus, even the Commissioner conceded the position that the AO made the inquiries, elicited replies and thereafter passed the assessment order. The grievance of the Commissioner was that the AO should have made further inquiries rather than accepting the explanation. Therefore, it cannot be said that it is a case of 'lack of inquiry'.

16. Having put the records straight on this aspect, let us proceed further. Is it a case where the Commissioner has concluded that the opinion of the AO was clearly erroneous and not warranted on the facts before him and, viz., the expenditure incurred was not the revenue expenditure but should have been treated as capital expenditure? Obviously not. Even the Commissioner in his order, passed under Section 263 of the Act, is not clear as to whether the expenditure can be treated as capital expenditure or it is revenue in nature. No doubt, in certain cases, it may not be possible to come to a definite finding and therefore, it is not necessary that in all cases the Commissioner is bound to express final view, as held by this Court in Geevee Enterprise [supra]. But, the least that was expected was to record a finding that order sought to be revised was erroneous and prejudicial to the interest of the revenue. [see Sashayee Paper(supra)]. No basis for this is disclosed. In sum and substance, accounting practice of the assessee is questioned. However, that basis of the order vanishes in thin air when we find that this very accounting practice, followed for number of years, had the approval of the income tax authorities. Interestingly, even for future assessment years, the same very accounting practice is accepted.

18. Let us look into the matter from another angel. What was the material/information available with the AO on the basis of which he allowed the expenditure as revenue? It was disclosed to him that the assessee is a manufacturer of car parts. In the manufacturing process, dyes are fitted in machines by which the car parts are manufactured. These dyes are thus the components of the machines. These dyes need constant replacement, as their life is not more than a year. The assessee had also explained that since these parts are manufactured for the automobile industry, which have to work on complete accuracy at high speed for a longer period, replacement of these parts at short

intervals becomes imperative to retain accuracy. Because of these reasons, these tools and dyes have a very short span of life and it could produce maximum one lakh permissible shorts. Thereafter, they have to be replaced. With the replacement of such tools and dyes, which are the components of a machine, no new assets comes into existence, nor is their benefit of enduring nature. It does not even enhance the life of existing machine of which these tools and dyes are only parts. No production capacity of the existing machines is increased either. The Tribunal, in these circumstances, relied upon the judgment of Mysore Spun Concrete Pipe Pvt. Ltd. (supra), wherein Karnataka High Court held that the replacement of moulds was not in the nature of replacement of a capital machinery, but in the nature of replacement a part of the machinery which in turn was in the nature of maintenance of machinery installed in the factory. Such an expenditure was treated as revenue expenditure. With this position in law, it is clear that view taken by the AO was one of the possible views and therefore, the assessment order passed by the AO could not be held to be prejudicial to the revenue. Such an order thus has rightly been set aside by the Tribunal.

21. Thus, from whatever the matter is to be looked into, the conclusion would be that the order of the Tribunal does not call for any interference as the question of law has rightly been decided. We, thus, answer this question in favour of the assessee and against the Revenue, consequence whereof this appeal is dismissed with cost.

4. Commissioner of Income Tax vs. Associated Food Products P. Ltd. and Popular Bread Factory (MPHC) (2006) 280 ITR 0377

8. On a scanning of the anatomy of the said provision, it is demonstrable that certain statutory satisfactions are to be arrived at on acceptable parameters before exercise of the said jurisdiction. As the provision stipulates the order passed by the Assessing Officer should appear to be grossly erroneous and at the same time prejudicial to the interests of the Revenue, both the things should exist together and they should not be considered in an isolated manner; and that the time gap between the act and invocation of jurisdiction and passing of the order has to be taken into consideration. The said provision has

been considered on many occasions. In the case of CIT v. Gabriel India Ltd. : [1993]203ITR108(Bom) a Division Bench of the Bombay High Court has expressed the view as under (page 113) :

From a reading of Sub-section (1) of Section 263, it is clear that the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the Income Tax Officer is 'erroneous in so far as it is prejudicial to the interests of the Revenue'. It is not an arbitrary or unchartered power. It can be exercised only on fulfilment of the requirements laid down in sub-section (1). The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. 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, (see Parashuram Pottery Works Co. Ltd. v. ITO : [1977]106ITR1(SC)).

As observed in Sirpur Paper Mills Ltd. v. ITO : [1978]114ITR404(AP) by Raghuveer J. (as his Lordship then was), the Department cannot be permitted to begin fresh litigation because of new views they entertain on facts or new versions which they present as to what should be the inference or proper inference either of the facts disclosed or the weight of the circumstances. If this is permitted, litigation would have no end, 'except when legal ingenuity is exhausted'. To do so, is '. . . to divide one argument into two and to multiply the litigation '.

The power of suo motu revision under Sub-section (1) is in the nature of supervisory

jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision under this Sub-section, viz., (i) the order is erroneous ; (ii) by virtue of the order being erroneous prejudice has been caused to the interests of the Revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous. We find that the expressions 'erroneous', 'erroneous assessment' and 'erroneous judgment' have been defined in Black's Law Dictionary. According to the definition, 'erroneous' means 'involving error ; deviating from the law'. 'Erroneous assessment' refers to an assessment that deviates from the law and is, therefore, invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, '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'.

The Division Bench proceeded further to state as under (page 116) :

We, therefore, hold that in order to exercise power under Sub-section (1) of Section 263 of the Act there must be material before the Commissioner to consider that the order passed by the Income Tax Officer was erroneous in so far as it is prejudicial to the interests of the Revenue. We have already held what is erroneous. It must be an order which is not in accordance with the law or which has been passed by the Income Tax Officer without making any enquiry in undue haste. We have also held as to what is prejudicial to the interests of the Revenue. An order can be said to be prejudicial to the interests of the Revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. There must be material available on the record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision. Exercise of power of suo motu revision under such circumstances will amount to arbitrary exercise of power. It is well-settled that when exercise of statutory power is dependent upon the existence of certain objective

facts, the authority before exercising such power must have materials on record to satisfy it in that regard. If the action of the authority is challenged before the court it would be open to the courts to examine whether the relevant objective factors were available from the records called for and examined by such authority. 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 : [1977]109ITR229(Cal) . 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 far 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.

9. In view of the aforesaid pronouncement of law and taking into consideration the language employed under Section 263 of the Act, it is clear as crystal that before exercise of powers two requisites are imperative to be present. In the absence of such foundation exercise of a suo motu power is impermissible. It should not be presumed that initiation of power under suo motu revision is merely an administrative act. It is an act of a quasi-judicial authority and based on formation of an opinion with regard to existence of adequate material to satisfy that the decision taken by the Assessing Officer is erroneous as well as prejudicial to the interests of the Revenue. The concept of "prejudicial to the interests of the Revenue" has to be correctly and soundly understood. It precisely means an order which

has not been passed in consonance with the principles of law which has in ultimate eventuate affected realisation of lawful revenue either by the State has not been realised or it has gone beyond realisation. These two basic ingredients have to be satisfied as sine qua non for exercise of such power. On a perusal of the material brought on record and the order passed by the Commissioner it is perceptible that the said authority has not kept in view the requirement of Section 263 of the Act inasmuch as the order does not reflect any kind of satisfaction. As is manifest the said authority has been governed by a singular factor that the order of the Assessing Officer is wrong. That may be so but that is not enough. What was the sequitur or consequence of such order qua prejudicial to the interest of the Revenue should have been focussed upon. That having not been done, in our considered opinion, exercise of jurisdiction under Section 263 of the Act is totally erroneous and cannot withstand scrutiny. Hence, the Tribunal has correctly unsettled and dislodged the order of the Commissioner.

5. Commissioner of Income Tax vs. Deepak Mittal (PHHC) (2010) 324 ITR 0411

3. The Assessing Officer has given a categorical finding that the assessee is engaged in the process of manufacturing of products and accordingly he has granted concession under Section 80-IB of the Act. The Tribunal has placed reliance on a Judgment of the hon'ble the Supreme Court in the case of Textile Machinery Corporation Ltd. v. CIT : (1977) 107 ITR 195. In that case the assessee was engaged in the machining of raw-casting, heat treatment of raw-crank shaft and polishing of raw casting etc. and is therefore it has been held that the assessee is engaged in manufacturing or production of articles. Similar view was taken by the Madras High Court in the case of CIT v. Perfect Liners : (1983) 142 ITR 654. The claim of the asses-see has been found to be genuine as the assessee has explained the various processes after the components are received from M/s. Auto Components Indl. Corporation, Baddi (Solan). It shows that after the receipt of components, the first operation undertaken by the assessee-respondent is the vertical machining centre on CNC machine which has been explained as under:

One this CNC machine drilling, reaming, chamfering, pad milling operation are being done, with respect to dowel hole on next machine boring machine/and tapping.

After the above operation, rear cover will be ready for further assembly.

In assembly, few important parts like ram cylinder, response ball, rock shaft etc. are fitted to complete the sub assembly. It is in respect of two type of rear covers received after receiving machine from Baddi.

In respect of differential housing and reduction unit, different sets of machines are there for further operation to make the component ready for assembly. As at present, these two components are not in stock, as such the working of the same cannot be shown.

4. Likewise major process is completed by the assessee-respondent and the same has been explained in answer to various questions.

All critical machinery operation of chassis parts i.e., rear cover, differential housing and reduction unit are being done at M/s ITL, Hoshiarpur on precision sophisticated CNC and other special purpose machines.

5. The Assessing Officer has also examined the various workers of the assessee and have then recorded the finding which answer the provisions of Section 80-IB(4) of the Act.

6. Having heard the Learned Counsel at a considerable length, we are of the view that the order of the Tribunal does not suffer from any legal infirmity or give rise to any such substantive question of law which may warrant admission of the appeal. The exercise of revisional jurisdiction by the Commissioner of Income Tax is wholly without any justification. It has rightly been held that change of opinion by reappraising the evidence is not within the parameter of revisional jurisdiction of the Commissioner of Income Tax under Section 263 of the Act. Therefore, the appeal fails and the same is dismissed.

6. CIT vs. International Travel House Ltd., (2012) 344 ITR 0554 (Del)

13. It has to be kept in mind that while exercising power under Section 263 of the Act, the Commissioner has to be satisfied that the order is prejudicial to the interest of the revenue and

there are materials available on record which require the Commissioner to satisfy him in a prima facie manner that the order is not only prejudicial to the interest of the revenue but also erroneous in nature. In the absence of any of the factors being satisfied, he does not assume jurisdiction to initiate a suo motu power of revision. The exercise of such a power is dependent on the conditions precedent being satisfied. The Commissioner does not have unfettered power to initiate proceeding by revision, re-examining the matter and directing fresh on his own whim for change or having a different view. He has been conferred with a quasi-judicial power and the same is hedged with limitation and, therefore, it has to be exercised within the parameters of the provision. When the Commissioner is himself not able to form an opinion, he cannot direct another inquiry by the assessing officer under Section 263 of the Act. In this regard, we may profitably reproduce a passage from Associated Food Products P. Ltd. (supra):

"10. In view of the aforesaid pronouncement of law and taking into consideration the language employed under section 263 of the Act, it is clear as crystal that before exercise of powers two requisites are imperative to be present. In the absence of such foundation exercise of a suo motu power is impermissible. It should not be presumed that initiation of power under suo motu revision is merely an administrative act. It is an act of a quasi-judicial authority and based on formation of an opinion with regard to existence of adequate material to satisfy that the decision taken by the Assessing Officer is erroneous as well as prejudicial to the interests of the Revenue. The concept of "prejudicial to the interests of the Revenue" has to be correctly and soundly understood. It precisely means an order which has not been passed in consonance with the principles of law which has in ultimate eventuate affected realisation of lawful revenue either by the State has not been realised or it has gone beyond realisation. These two basic ingredients have to be satisfied as sine qua non for exercise of such power. On a perusal of the material brought on record and the order passed by the Commissioner it is perceptible that the said authority has not kept in view the requirement of section 263 of the Act inasmuch as the order does not reflect any kind of satisfaction. As is manifest the said

authority has been governed by a singular factor that the order of the Assessing Officer is wrong. That may be so but that is not enough. What was the sequitur or consequence of such order qua prejudicial to the interest of the Revenue should have been focussed upon. That having not been done, in our considered opinion, exercise of jurisdiction under section 263 of the Act is totally erroneous and cannot withstand scrutiny. Hence, the Tribunal has correctly unsettled and dislodged the order of the Commissioner."

14. In Commissioner of Income-tax v. Arvind Jewellers [2003] 259 ITR 502 (Guj.), it has been held thus:

"Coming to the facts of the present case, it is the finding of fact given by the Tribunal that the assessee has produced relevant material and offered explanations in pursuance of the notices issued under section 142(1) as well as section 143(2) of the Act and after considering the materials and explanation, the Income-tax Officer has come to a definite conclusion. The Commissioner of Income-tax did not agree with the conclusion reached by the Income-tax Officer. Section 263 of the Act does not empower him to take action on these facts to arrive at the conclusion that the order passed by the Income-tax Officer is erroneous and prejudicial to the interests of the Revenue. Since the material was there on record and the said material was considered by the Income-tax Officer and a particular view was taken, the mere fact that a different view can be taken, should not be the basis for an action under section 263 of the Act and it cannot be held to be justified."

7. Commissioner of Income Tax vs. Mehrotra Brothers (MPHC) (2004) 270 ITR 0157

2. To appreciate the aforesaid questions of law which are urged to be substantial questions of law, we have perused the order passed by the Commissioner of Income Tax (Appeals) as well as that of the Income Tax Appellate Tribunal. The Tribunal in paragraph 10 of the order dwelt upon the facts and came to hold as under :

"10. We have considered the citations relied on by both the parties and concluded that when the assessee has furnished requisite information and the Income Tax Officer has .considered the records before him and completed the assessment

after considering the evidence filed and after his satisfaction about the genuineness of cash credits, the order of revision under Section 263 on vague ground that the Assessing Officer did not make proper enquiry is not valid (CIT v. Ratlam Coal Ash Co. [1988] 171 ITR 141). The assessee furnished GIR/PAN number, address, confirmation from the creditors, the assessee has discharged the burden to prove the genuineness of parties and transaction in addition to the capacity satisfactorily as such there is no ground for addition (Addl. CIT v. Hanuman Agarwal: [1985]151ITR150(Patna)). In this regard the Department also has not brought any material to disprove the genuineness of the parties, capacity of the lenders and transactions on the basis of cogent facts on record. The hon'ble Supreme Court in the case of CIT v. Orissa Corporation P. Ltd. : [1986]159ITR78(SC) : 'Held, that in this case the respondent had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were Income Tax assessees. Their index numbers were in the file of the Revenue. The Revenue apart from issuing notices under Section 131 at the instance of the respondent, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were credit worthy. There was no effort made to pursue the so called alleged creditors. In those circumstances, the respondent could not do anything further. In the premises, if the Tribunal came to the conclusion that the respondent had discharged the burden that lay on it, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence.'

3. The decisions of the Patna High Court in the case of CIT v. Ram Prasad Ram Bhagat : [1987]163ITR202(Patna) ; Addl. CIT v. Bahri Brothers (P.) Ltd. : [1985]154ITR244(Patna) , the Allahabad High Court in the case of Sundar Lal Jain v. CIT : [1979]117ITR316(All) ; Shankar Industries v. CIT : [1978]114ITR689(Cal) and the Madhya Pradesh High Court in the case of CIT v. Shiv Shakti Timbers : [1998]229ITR505(MP) ; CIT v. Shanti Swarup ; CIT v. Ram Narain Goel ; Instrumed (India) International v. ITO [1999] 63 TTJ(Delhi) 191 assist the claim of the assessee. The assessee has explained satisfactorily the cash credits in the books of account of the firm and discharged the burden. The Department has not

brought out material or evidence to rebut the same. As such the cash credits are not the income of the firm."

4. In view of the aforesaid finding of fact we are of the considered view that no substantial question of law is involved in this appeal.

8. Commissioner of Income Tax vs. Ratlam Coal Ash Company (MPHC) (1988) 171 ITR 0141

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

9. Commissioner of Income Tax vs. DLF Power Ltd. (DELHC) (2010) 329 ITR 02889

17. In fact, having regard to the law on the point, as clarified by the Supreme Court in HCL Comnet (supra), it seems that only one view is possible. In a situation like this, under no circumstance, order under Section 263 could be passed to revise the order passed by the AO, as observed by this Court in Vimgi Investment (P) Ltd. (supra) in the following words:

We find that in so far as the present case is concerned, only one view is possible and that was taken by the Assessing Officer and that view was valid with reference to the assessment year 2001-02. Therefore, there was no occasion for the Commissioner to exercise his powers under Section 263 of the Act to revise the order passed by the Assessing Officer and tax the assessed on

the ground that the transaction was an attempt to avoid tax. The purchase and sale of units by the assessed was undoubtedly bona fide and this was accepted by the Assessing Officer. Under these circumstances, the question of the Commissioner invoking his powers under Section 263 of the Act would not arise. Following the decision of this Court in Vikram Aditya and Associates P. Ltd. case : [2006] 287 ITR 268 (Delhi), we find no substance on the merits of the case.

In any event, in view of the decision of the Supreme Court in Malabar Industrial Co. Ltd. case [2000] 243 ITR 83 the exercise of power by the Commissioner under Section 263 of the Act is not warranted, if it is assumed that two views are possible on the issue.

18. Further, even if two views were possible, and the view taken by the AO was plausible one, it by the CIT, that would not provide sufficient ground for the CIT to assume jurisdiction under Section 263 of the Act merely because he had a different view in Malabar Industrial Co. (supra), the Supreme Court gave the following interpretation to this provision:

A bare reading of this provision makes it clear that the prerequisite to exercise of jurisdiction by the Commissioner suo moto under it, is that the order of the Income Tax Officer is erroneous insofar as it is prejudicial to the interests of the revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the assessing officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue. If one of them is absent - if the order of the Income Tax Officer is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue - recourse cannot be had to Section 263(1) of the Act. 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 interests of the revenue' is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not

conferred to loss of tax. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the revenue. If due to an erroneous order of the Income Tax Officer, the revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the revenue. 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 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 interests of the revenue unless the view taken by the Income Tax Officer is unsustainable in law.

19. Question of law Nos. (1) and (3), thus, stand answered in favour of the assessee and against the Revenue, which would result in dismissal of the present appeal. We, accordingly, dismiss the appeal with costs quantified at Rs. 25,000/-.

10. Commissioner of Income Tax vs. Honda Siel Power Products Ltd. (DELHC) (2011) 333 ITR 0547

18. From the aforesaid discussion, it is apparent that the expression prejudicial to the interest of revenue appearing in Section 263 has to be read in conjunction with the expression 'erroneous' and that every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. In cases where the Assessing Officer adopts one of the courses permissible in law or where two views are possible and the Income Tax Officer has taken one view, the Commissioner of Income Tax cannot exercise his powers under Section 263 to differ with the view of the Assessing Officer even if there has been a loss of revenue. Of course, if the Assessing Officer takes a view which is patently unsustainable in law, the Commissioner of Income Tax can exercise his powers under Section 263 where a loss of revenue results as a consequence of the view adopted by the Assessing Officer. It is also clear that while passing an order under Section 263, the Commissioner of Income Tax has

to examine not only the assessment order, but the entire record of the profits. Since the assessee has no control over the way an assessment order is drafted and since, generally, the issues which are accepted by the Assessing Officer do not find mention in the assessment order and only those points are taken note of on which the assessee's explanations are rejected and additions / disallowances are made, the mere absence of the discussion of the provisions of Section 80IB(13) read with Section 80IA(9) would not mean that the Assessing Officer had not applied his mind to the said provisions. As pointed out in Kelvinator of India (supra), when a regular assessment is made under Section 143(3), a presumption can be raised that the order has been passed upon an application of mind. No doubt, this presumption is rebuttable, but there must be some material to indicate that the Assessing Officer had not applied his mind.

23. In the facts of the present case, we find that there is no material to indicate that the Assessing Officer had not applied his mind to the provisions of Section 80IB(13) read with Section 80IA(9). The presumption that the assessment orders passed under Section 143(3) passed by the Assessing Officer had been passed upon an application of mind, has not been rebutted by the revenue. No additional facts were necessary before the Assessing Officer for the purpose of construing the provisions of Section 80IB(13) read with Section 80IA(9). It was only a legal consideration as to whether the deduction under Section 80HHC was to be computed after reducing the amount of deduction under Section 80IB from the profits and gains. There is no doubt that the Assessing Officer had allowed the deduction under Section 80HHC without reducing the amount of deduction allowed under Section 80IB from the profits and gains. He did not say so in so many words, but that was the end result of his assessment order. Since he was holding in favour of the assessee, as has been observed in Hari Iron Trading Company (supra) and Eicher Limited (supra), generally, the issues which are accepted by the Assessing Officer, do not find mention in the assessment order, it cannot be said that the Assessing Officer had not applied his mind. It cannot also be said that the Assessing Officer had failed to make any enquiry because no further enquiry was necessary and all the facts were before the Assessing Officer. Consequently, we are

of the view that the decisions cited by the learned Counsel for the revenue, wherein assessment orders were found to be erroneous for want of an enquiry or proper enquiry, would have no application to the present appeals. It is also true that the validity of an order under Section 263 has to be tested with regard to the position of law as it exists on the date on which such an order is made by the Commissioner of Income Tax. From the narration of facts in the Tribunals order, it is clear that on the date when the Commissioner of Income Tax passed his orders under Section 263, the view taken by the Assessing Officer was in consonance with the views taken by several benches of the Income Tax Appellate Tribunal. Therefore, the conclusion of the Tribunal that the Commissioner of Income Tax could not have invoked his jurisdiction under Section 263 of the said Act was correct. As a result, we answer the question against the revenue and in favour of the assessee by holding that the Income Tax Appellate Tribunal was correct in law in cancelling the order passed by the Commissioner of Income Tax under Section 263 and in restoring the order of the Assessing Officer by holding that the Assessing Officer had taken a possible view at the relevant point of time. The appeals are accordingly dismissed. There shall be no order as to costs.

11. The Commissioner of Income Tax-XIII vs. Shri Ashish Rajpal (DELHC) (2010) 320 ITR 0674

17. This brings us to another aspect of the matter, which is that even though the notice dated 11.05.2006 issued by the Commissioner before commencing the proceedings under Section 263 of the Act referred to four issues, the final order dated 18/19.01.2007 passed referred to nine issues, some of which obviously did not find mention in the earlier notice and hence resulted in the proceedings being vitiated as a result of the breach of the principles of natural justice.

17.1 As observed by us above, there is no requirement under Section 263 of the Act to issue a notice before embarking upon a revisionary proceedings. To that extent the submission of the learned Counsel for the Revenue Mr. Sanjeev Sabharwal has to be accepted. What is mandated under Section 263 of the Act is that once the Commissioner calls for and examines the record,

pertaining to the assessee, and forms a prima facie view that the order passed by the Assessing Officer is both erroneous and prejudicial to the interest of the Revenue, he is obliged to afford an opportunity to the assessee before passing an order, to the prejudice of the assessee. In the instant case, the Commissioner sought to accord such an opportunity to the assessee by putting him to notice as regards aspects which the Assessing Officer had failed to scrutinize. During the course of the revisionary proceedings this was conveyed to the assessee by way of a notice dated 11.05.2006. It is not disputed that in the order dated 18/19.01.2007 the Commissioner has referred to certain other issues which did not form part of the initial notice dated 11.05.2006. To our minds it was always open to the Commissioner to put such issues/discrepancies, found by him based on material on record, to the assessee. It is to be noted, however, that the learned Counsel for the assessee vehemently denied that the assessee had been given any opportunity to meet issues other than those to which reference has been made in the Commissioner's notice dated 11.05.2006. For this purpose, the learned Counsel for the assessee sought to place reliance on the impugned judgment passed by the Tribunal, wherein this aspect of the matter has been discussed elaborately. In order to satisfy ourselves we called upon learned Counsel for the Revenue Mr. Sanjeev Sabharwal to place on record any communication, order or any other document which would show that the assessee had been given an opportunity to deal with those aspects which did not form part of the initial notice dated 11.05.2006, but were taken into account by the Commissioner while passing his order dated 18/19.01.2007. In this regard, the learned Counsel for the Revenue placed on record order sheet entries of the proceedings conducted by the Commissioner. We have already extracted the order sheet entries commencing from 15.06.2005 to 28.06.2006. A perusal of those entries would clearly demonstrate that there is nothing on record which would show that the assessee was given an opportunity to respond to these discrepancies which formed part of the order-in-Revision dated 18/19.01.2007 but were not part of notice dated 11.05.2006. This was put to the learned Counsel for the Revenue, who in response fairly conceded that there was nothing on record which would establish the contrary. It

was, however, urged by the learned Counsel for the Revenue Mr. Sanjeev Sabharwal that the assessee would have his opportunity to give satisfactory replies to the discrepancies raised in the Revisional Order before the Assessing Officer and that such an opportunity would meet the requirements of the provision. We are afraid that that is not the position envisaged in law. If one were to permit correction of such a grievous error in the manner suggested it would tantamount to, in a manner of speaking, closing the stable doors after the horse has bolted. The assessments, unless reopened by paying faithful obeisance to statutory provisions and conditionalities provided therein, attain finality on their conclusion. The provisions of Section 263 mandate that an order for enhancing, or modifying the assessment, or cancelling the assessment and directing a fresh assessment can only be passed after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as is deemed necessary. The threshold condition for reopening the assessment is that before passing an order an opportunity has to be granted to the assessee and, such an opportunity granted to the assessee is a necessary concomitant of the enquiry the Commissioner is required to conduct to come to a conclusion that an order for either an enhancement or modification of the assessment or, as in the present case, an order for cancellation of the assessment is called for, with a direction to Assessing Officer to make a fresh assessment. This defect cannot be cured by first reopening the assessment and then granting an opportunity to the assessee to respond to the issues raised before Assessing Officer during the course of fresh assessment proceedings. To buttress his submission the learned Counsel for the Revenue has relied upon the judgment of the Supreme Court in the case of Rampyari Devi Saraogi v. CIT, West Bengal and Ors. : [1968]67ITR84(SC) . This is a case in which, the order issued by the Commissioner, itself revealed that the assessment was being reopened based on an additional supporting material. The Supreme Court in such fact situation thus ruled that non supply of additional supporting material would not effect the basic issue of assessment being carried out without adequate investigation. In the instant case the Order-in-Revision refers to issues and discrepancies which did not find mention in the initial notice dated 11.05.2006 and

not to additional or supporting material as in the case of Rampyari Devi (supra). Therefore, to suggest that it would be sufficient compliance of the provisions of Section 263 of the Act, if an opportunity to respond to the discrepancies mentioned in the Order-in-Revision is given to the assessee in reassessment proceedings before the Assessing Officer, is according to us is completely untenable. It is the requirement of Section 263 of the Act 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 setting aside the assessment order, would in our view not meet the mandate the Section 263 of the Act. If such an interpretation is accepted it would make light of the finality accorded to an assessment order which cannot be reopened unless due adherence is made to the conditionalities incorporated in the provisions of the Act in respect of such powers vested in the Revenue.

12. CIT vs. Chambal Fertilizers & Chemicals Ltd., (2014) 360 ITR 0225 (RAJHC)

19. Revisional powers conferred on the Commissioner under Section 263 of the Act is wide, it enables the CIT to call for and examine the record of the case or pass any order under the Act and also empowers him to make or cause to be made such an inquiry as he deems fit and necessary in order to find out, if the order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of Revenue, however, he has to have certain material to come to the conclusion. Once, he comes to the above conclusion that there is material, the CIT is empowered to pass an order as per the circumstances of the case which may warrant as he is empowered to take recourse to any of the three courses indicated in Section 263 only. Therefore, it is clear that CIT does not have un-fattered and un-chequered discretion/power to reverse the order. He can do so within the bounds of the law and has to satisfy the need of fairness in action and fair play with due respect to the principle of Audi Alteram Partem as envisaged in the Constitution. The law is well settled that the CIT cannot invoke the powers to correct each and every mistake or error committed by the Assessing Officer. Every loss to the Revenue, cannot be treated as prejudicial to the interest of

the Revenue and if the Assessing Officer has adopted one of the course permissible under the law or where two views are possible and the Assessing Officer has taken one view which the CIT does not agree, it cannot be treated as an order erroneous and prejudicial to the interest of the Revenue, the Assessing Officer exercises quasi judicial power vested in him and if he exercises such powers in accordance with law, arrives at a just conclusion such conclusion cannot be termed to be erroneous only because the CIT does not feel satisfied with the conclusion.

13. Commissioner of Income Tax vs. Jain Construction Co. (RAJHC) (2013) 257 CTR 0336

10. The settled legal position for limitation on the revisional powers of CIT under s. 263 of the Act is that, firstly, they are limited in nature, and secondly, such revisional powers are not to be invoked merely for reviewing the order passed by the assessing authority on a mere change of opinion. The safeguard provided to the assessee in the said provision is that mere erroneous orders are not revisable but the revisional authority has to further establish with the material on record that such erroneous order is also prejudicial to the interest of Revenue. The twin conditions of assessment order being erroneous and it also being prejudicial to the interest of Revenue, keeps the initial burden on the Revenue itself, namely, the CIT, who invokes such jurisdiction. From the following legal precedents, it would be clear that such powers are not allowed likely to be invoked for the fall of hat as it were, and merely because the revisional authority is of different opinion on the given set of facts or on the ground that assessing authority did not hold a sufficient enquiry during the course of assessment proceedings unless the aforesaid twin conditions for invoking the said jurisdiction under s. 263 are satisfied.

6. He further relied upon the following decisions:-

1. In Commissioner of Income Tax vs. Gita Duggal (DELHC) (2013) 357 ITR 0153, it has been held as under :-

There could also be another angle. Section 54/54F uses the expression "a residential house". The expression used is not "a residential unit". This is a new concept introduced by the assessing officer into the section. Section 54/54F requires the assessee to acquire a "residential house" and so long as the assessee acquires a building, which may be constructed, for the sake of convenience, in such a manner as to consist of several units which can, if the need arises, be conveniently and independently used as an independent residence, the requirement of the Section should be taken to have been satisfied. There is nothing in these sections which require the residential house to be constructed in a particular manner. The only requirement is that it should be for the residential use and not for commercial use. If there is nothing in the section which requires that the residential house should be built in a particular manner, it seems to us that the income tax authorities cannot insist upon that requirement. A person may construct a house according to his plans and requirements. Most of the houses are constructed according to the needs and requirements and even compulsions. For instance, a person may construct a residential house in such a manner that he may use the ground floor for his own residence and let out the first floor having an independent entry so that his income is augmented. It is quite common to find such arrangements, particularly post-retirement. One may build a house consisting of four bedrooms (all in the same or different floors) in such a manner that an independent residential unit consisting of two or three bedrooms may be carved out with an independent entrance so that it can be let out. He may even arrange for his children and family to stay there, so that they are nearby, an arrangement which can be mutually supportive. He may construct his residence in such a manner that in case of a future need he may be able to dispose of a part thereof as an independent house. There may be several such considerations for a person while constructing a residential house. We are therefore, unable to see how

or why the physical structuring of the new residential house, whether it is lateral or vertical, should come in the way of considering the building as a residential house. We do not think that the fact that the residential house consists of several independent units can be permitted to act as an impediment to the allowance of the deduction under Section 54/54F. It is neither expressly nor by necessary implication prohibited.

For the above reasons we are of the view that the Tribunal took the correct view. No substantial question of law arises for our consideration. The appeal is accordingly dismissed with no order as to costs.

2. In Commissioner of Income Tax and Anr. vs. D. Ananda Basappa (KARHC) (2009) 309 ITR 0329, it has been held as under :-

5. A plain reading of the provision of Section 54(1) of the Income Tax Act discloses that when an individual-assesses or Hindu undivided family-assesses sells a residential building or lands appurtenant thereto, he can invest capital gains for purchase of residential building to seek exemption of the capital gains tax. Section 13 of the General Clauses Act declares that whenever the singular is used for a word, it is permissible to include the plural.

6. The contention of the Revenue is that the phrase "a" residential house would mean one residential house and it does not appear to the correct understanding. The expression "a" residential house should be understood in a sense that building should be of residential in nature and "a" should not be understood to indicate a singular number. The combined reading of Sections 54(1) and 54F of the Income Tax Act discloses that, a non residential building can be sold, the capital gain of which can be invested in a residential building to seek exemption of capital gain tax. However, the proviso to Section 54 of the Income Tax

Act, lays down that if the assessee has already one residential building, he is not entitled to exemption of capital gains tax, when he invests the capital gain in purchase of additional residential building.

7. When a Hindu undivided family's residential house is sold, the capital gain should be invested for the purchase of only one residential house is an incorrect proposition. After all, the Hindu undivided family property is held by the members as joint tenants. The members keeping in view the future needs in event of separation, purchase more than one residential building;, it cannot be said that the benefit of exemption is to be denied under Section 54(1) of the Income Tax Act.

8. On facts, it is shown by the assessee that the apartments are situated side by side. The builder has also stated that he has effected modification of the flats to make it as one unit by opening the door in between two apartments. The fact that at the time when the inspector inspected the premises, the flats were occupied by two different tenants is not the ground to hold that the apartment is not a one residential unit. The fact that the assessee could have purchased both the flats in one single sale deed or could have narrated the purchase of two premises as one unit in the sale deed is not the ground to hold that the assessee had no intention to purchase the two flats as one unit.

3. In The Commissioner of Income Tax-III, IT Towers vs. Sri Syed Ali Adil (APHC) (2013) 352 ITR 0418, it has been held as under :-

9. We see no force in the said contention. As held in D. Ananda Basappa's case (1 supra) by the Karnataka High Court, the expression "a residential house" in Section 54 (1) of the Act has to be understood in a sense that the building should be of residential nature and "a" should not be understood to indicate a singular number

and where an assessee had purchased two residential flats, he is entitled to exemption under Section 54 in respect of capital gains on sale of its property on purchase of both the flats, more so, when the flats are situated side by side and the builder has effected modification of the flats to make it as one unit, despite the fact that the flats were purchased by separate sale deeds. This decision was followed by the Karnataka High Court in CIT Vs. Smt. K.G. Rukminiamma : (2011) 331 ITR 211 (Karnataka) where a residential house was transferred and four flats in a single residential complex were purchased by the assessee, it was held that all four residential flats constituted "a residential house" for the purpose of Section 54 and that the four residential flats cannot be construed as four residential houses for the purpose of Section 54. Admittedly the two flats purchased by the assessee are adjacent to one another and have a common meeting point. In the impugned order, the Tribunal has also relied upon the decisions in K.G. Vyas's case (2 supra), P.C. Ramakrishna, HUF's case (3 supra) and Prakash Bhutani's case (4 supra) wherein it was held that exemption under Section 54 only requires that the property should be of residential nature and the fact that the residential house consists of several independent units cannot be an impediment to grant relief under Section 54 even if such independent units were on different floors. The decision in Suseela M. Jhaveri's case (5 supra) holding that only one residential house should be given the relief under Section 54 does not appear to be correct and we disapprove of it. We agree with the interpretation placed on Section 54 by the High Court of Karnataka in D. Ananda Basappa's case (1 supra) and Smt. K.G. Rukminiamma's case (6 supra) and the decisions of the Mumbai, Chennai and Delhi Benches of the Tribunal in K.G. Vyas (2 supra), P.C. Ramakrishna, HUF (3 supra) and Prakash Bhutani (4 supra). We therefore hold that the CIT (Appeals) was correct in setting aside the order of the assessing officer and the Tribunal rightly confirmed the decision of the CIT (Appeals).

We hold that no substantial question of law arises for consideration in this appeal and the same is accordingly dismissed. No costs.

4. In Commissioner of Income Tax-XII vs. Shri Kamal Wahal (DELHC) (2013) 351 ITR 0004, it has been held as under :-

7. We have no hesitation in agreeing with the view taken by the Tribunal. Apart from the fact that the judgments of the Madras and Karnataka High Courts (supra) are in favour of the assessee, the revenue fairly brought to our notice a similar view of this Court in CIT Vs. Ravinder Kumar Arora : (2012) 342 ITR 38 (Del.). That was also a case which arose under Section 54F of the Act. The new residential property was acquired in the joint names of the assessee and his wife. The income tax authorities restricted the deduction under Section 54F to 50% on the footing that the deduction was not available on the portion of the investment which stands in the name of the assessee's wife. This view was disapproved by this Court. It noted that the entire purchase consideration was paid only by the assessee and not a single penny was contributed by the assessee's wife. It also noted that a purposive construction is to be preferred as against a literal construction, more so when even applying the literal construction, there is nothing in the section to show that the house should be purchased in the name of the assessee only. As a matter of fact, Section 54F in terms does not require that the new residential property shall be purchased in the name of the assessee; it merely says that the assessee should have purchased/constructed "a residential house".

9. It thus appears to us that the predominant judicial view, including that of this Court, is that for the purposes of Section 54F, the new residential house need not be purchased by the assessee in his

own name nor is it necessary that it should be purchased exclusively in his name. It is moreover to be noted that the assessee in the present case has not purchased the new house in the name of a stranger or somebody who is unconnected with him. He has purchased it only in the name of his wife. There is also no dispute that the entire investment has come out of the sale proceeds and that there was no contribution from the assessee's wife.

10. Having regard to the rule of purposive construction and the object which Section 54F seeks to achieve and respectfully agreeing with the judgment of this Court, we answer the substantial question of law framed by us in the affirmative, in favour of the assessee and against the revenue.

5. In CIT vs. Natarajan, (2007) 287 ITR 0271, it has been held as under:-

4.5 In the instant case, the assessee purchased a house at Anna Nagar in the name of his wife Smt. Meera after selling the property at Bangalore. But the same was assessed in the hands of the assessee. Hence, as correctly held by the CIT(A) as well as by the Tribunal that the assessee is entitled for exemption under Section 54of the Act.

4.6 The assessee sold a property at Bangalore and purchased a property at Anna Nagar in the name of his wife is only a question of fact. It is a settled law that the factual findings of the Tribunal cannot be disturbed in exercise of the powers under Section 260Aof the Act vide M. Janardhana Rao v. Jt. CIT (2005) 193 CTR (SC) 585 : (2005) 273 ITR 50 (SC). Hence, we do not see any question of law much less, substantial question of law arises for consideration. Accordingly, the first question fails and the same is rejected.

5.4 On the other hand, the Tribunal accepted the explanation offered by the assessee that the jewellery in question were

gifted to his two wives on various ceremonies including the marriage and reversed the findings of the AO as well as the CIT(A) that suspicion itself cannot be a ground to reject the explanation offered by the assessee particularly in the context that the assessee had two wives and their father was a landlord and the jewels in question, namely, 60 sovereigns, were gifted to them during the marriage and on various ceremonies.

5.6 In the instant case also, the Revenue authorities have not placed any convincing materials to disallow the claim of the assessee. The assessee disclosed the purchase of jewellery weighing five sovereigns in each of the assessment years viz., 1987-88, 1988-89 and 1989-90 and also the purchase of diamond jewellery. Hence, accepting the explanation offered by the assessee, the Tribunal correctly allowed the claim of the assessee.

6. In Director of Income Tax (International Taxation) and Another vs. Mrs. Jennifer Bhide (KARHC) (2012) 349 ITR 0080, it has been held as under :-

6. On a careful reading of section 54 as well as section 54EC on which reliance is placed makes it clear that when capital gains arise from the transfer of long-term capital asset to an assessee and the assessee has within the period of one year before or two years after the date on which the transfer took place purchases or has within a period of three years after the date of construction of residential house then instead of capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the provision made under the section which grants exemption from payment of capital gains as set out thereunder. Therefore, in the entire section 54, the purchase to be made or the construction to be put up by the assessee, should be there in the name of the assessee, in not expressly stated. Similarly, even in respect of section 54EC, the assessee has at any time within a period of

six months after the date of such transfer invested the whole or any part of the capital gains in the long-term specified asset then she would be entitled to the benefit mentioned in the said section. There also it is not expressly stated that the investment should be in the name of the assessee. Therefore, to attract section 54 and section 54EC of the Act, what is material is the investment of the sale consideration in acquiring the residential premises or constructing a residential premises or investing the amounts in bonds set out in section 54EC. Once the sale consideration is invested in any of these manner the assessee would be entitled to the benefit conferred under this provisions. In the absence of an express provision contained in these sections that the investment should be in the name of the assessee only any such interpretation were to be placed, it amounts to the court introducing the said word in the provision which is not there. It amounts the court legislating when Parliament has deliberately not used those words in the said section. That is the view taken by the hon'ble Madras High Court and the hon'ble Punjab and Haryana High Court and we respectfully agree with the view expressed in the aforesaid judgments.

7. In the instant case the assessee has purchased the property jointly with her husband. She has invested the money in rural bonds jointly with her husband. It is nobody's case that her husband contributed any portion of the consideration for acquisition of the property as well as bonds. The source for acquisition of the property and the bonds is the sale consideration. It is not in dispute. Once the sale consideration is utilized for the purpose mentioned under sections 54 and 54EC, the assessee is entitled to the benefit of those provision. As the entire consideration has flown from the assessee and no consideration has flown from her husband, merely because either in the sale deed or in the bond her husband's name is also mentioned, in law he would not have any right. In that view of the matter, the assessee cannot be denied the benefit of

deduction of the aforesaid amount. The Tribunal on proper appreciation of the material on record has rightly allowed the appeal and set aside the order passed by the assessing authority as well as the Appellate Commissioner. We do not see any infirmity in the order which calls for interference. Accordingly, the appeal is dismissed.

7. In Commissioner of Income Tax vs. Ravinder Kumar Arora (DELHC) (2012) 342 ITR 0038, it has been held as under:-

3. The assessee's submission was considered by the AO. The AO noted that though all the payments were made by the assessee, the residential house was purchased jointly in the names of the assessee and his wife. The AO then referred to Section 54F of the Act only to the extent of his right in the new residential house purchased jointly with his wife. The AO, therefore, allowed 50% of the exemption claimed under Section 54F of the Act as against total claim of `3,18,59,276/- made by the assessee. The AO allowed claim only to the extent of `1,59,29,638/- and the balance 50% being `1,59,29,638/- was disallowed.

8. At the outset, important factual findings recorded by the Tribunal in this case are that it was the assessee who independently invested in the purchase of new residential house though in his own name but along with the name of his wife also and that it was the assessee who paid stamp duty and corporation tax at the time of the registration of the sale deed of the house so purchased and has also paid commission and legal expenses in connection with the purchase of the house. The Tribunal further records that whole of the purchase consideration has been paid by the assessee and not even a single penny has been contributed by the wife in the purchase of the house. The Tribunal also noted the argument that the property was

purchased by the assessee in the joint name with his wife for "shagun" purpose and because of the fact that the assessee was physically handicapped. The Tribunal further concludes that as a matter of fact, the assessee was the real owner of the residential house in question.

9. On the aforesaid facts, we are of the view that the conditions stipulated in Section 54F stand fulfilled. It would be treated as the property purchased by the assessee in his name and merely because he has included the name of his wife and the property purchased in the joint names would not make any difference. Such a conduct has to be, rather, encouraged which gives empowerment to women. There are various schemes floated by the Government itself permitting joint ownership with wife. If the view of the Assessing Officer (AO) or the contention of the Revenue is accepted, it would be a derogatory step.

8. In Kalya vs. Commissioner of Income Tax & Ors. (RAJHC) (2012) 251 CTR 0174

7. A bare reading of s. 54B of the IT Act does not suggest that assessee would be entitled to get exemption for the land purchased by him in the name of his son and daughter-in-law. In the facts and circumstances of the case also aforesaid inference has not been drawn. Same is question of fact. No substantial question of law arises in appeal. Question whether purchase was by assessee or by son, is a question of fact.

8. Secondly, the word "assessee" used in the IT Act needs to be given a 'legal interpretation' and not a 'liberal interpretation', as contended by the Learned Counsel for the appellant. If the word 'assessee' is given a liberal interpretation, it would tantamount to giving a free hand to the assessee and his legal heirs and it shall curtail the revenue of

the Government, which the law does not permit.

9. The Tribunal, having considered all the facts and circumstances of the case, is found to have rightly disallowed the exemption under s. 54B of the Act.

10. The impugned order passed by the learned Tribunal is just and apposite, based on cogent findings, with which we fully concur and thus, the same warrants no intervention.

11. For the reasons stated above, the income-tax appeal fails and the same being bereft of any merit deserves to be dismissed, which stands dismissed accordingly.

12. Consequent upon the dismissal of income-tax appeal, the stay application, filed herewith, does not survive and the same also stands dismissed

9. In Commissioner of Income Tax vs. Gurnam Singh (PHHC) (2010) 327 ITR 0278 it has been held as under :-

4. We have heard the counsel for the Revenue and gone through the aforesaid impugned order. In our opinion, from the impugned order, no substantial question of law is arising for consideration of this Court as the Tribunal while recording a pure finding of fact has dismissed the appeal of the Revenue. Undisputedly, in this case the assessee had sold the agricultural land which was being used by him for agricultural purposes. Out of sale proceeds of the said sale, the assessee has purchased other piece of land (land in question) in his name and in the name of his only son, who was bachelor and dependent upon him, for being used for agricultural purposes within the stipulated time. Further, it is not the case of the Revenue that from the sale proceeds of the

agricultural land earlier owned by the assessee, the land in question was purchased for any other purpose than the agricultural purpose. Undisputedly, the purchased land is being used by the assessee only for agricultural purpose and merely because in the sale deed his only son was also shown as co-owner, the Tribunal has rightly come to the conclusion that it does not make any difference because the purchased land is being used by the assessee for agricultural purposes. It is not the case of the Revenue that the said land is being used exclusively by his son. In our view, a pure finding of fact has been recorded by the Tribunal which does not require any interference in this appeal.

5. No substantial question of law is involved in this appeal. Dismissed.

10. In Late Gulam Ali Khan vs. Commissioner of Income Tax (APHC) (1987) 165 ITR 0228, it has been held as under :-

3. Learned counsel for the assessee, Mr. Ranganatham, contended that this is a case where exemption ought to have been allowed under section 54 of the Act. Section 54 of the Act is as follows :

"54. Profit on sale of property used for residence - (1) Where, in the case of an assessee, being an individual, the capital gain arises from the transfer of a long-term capital asset to which the provisions of section 53 are not applicable, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head 'Income from house property' (hereafter in this section referred to as the original asset) and the assessee has within a period of one year before or after the date on which the transfer took place purchased, or has within a period of three years after that date constructed a residential house, then, instead of the capital gain being charged to Income Tax as income of the previous year in which the transfer took place, it shall be

dealt with in accordance with the following provisions of this section, that is to say, -

(i) if the amount of the capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

Explanation. - For the purposes of this sub-section, 'long-term capital asset' means a capital asset which is not a short-term capital asset."

Relying upon the expression "assessee" occurring in section 54 of the Act, it is contended for the Department that in order to claim the exemption, the person who sold the house must be the same as the person who purchased the house, that is, the assessee must be one and the same person. The identity must be the same. We are unable to accept this contention. The object of granting exemption under section 54 of the Act is that a person who sells a residential house for the purpose of purchasing another convenient house must be given exemption so far as capital gains are concerned. As long as the sale of the house and purchase of another house are part of the same scheme, the lapse of some

time between the sale and purchase makes no difference. The word "assessee" must be given a wide and liberal interpretation so as to include his legal heirs also. There is no warrant for giving too strict an interpretation the word "assessee" as that would frustrate the object of granting the exemption and what is more, in the instant case, the very same assessee immediately after the sale of the house, entered into an agreement for purchasing another house and paid a sum of Rs. 1,000 as earnest money and subsequently the legal representative completed the transaction within a period of one year from the date of the death of the deceased. The sale and purchase are two links in the same chain. We are fortified in this view by a decision of the Madras High Court in C. V. Ramanathan v. CIT : [1980]125ITR191(Mad) .

We accordingly answer the question in the negative, that is, in favour of the assessee and against the Revenue. No costs.

11. In M.J. Kanakabai and Ors. vs. Union of India and Ors. (SC) (1968) 68 ITR 0192, it has been held as under :-

22. Coming to the plaintiff's appeal, we are of the view that the High Court erred in holding that the demand notices P-23, P. 24 and P-25 were valid to the extent of Rs. 21,884.81. This sum was arrived at by revising the assessment orders, not under any provision of the Income- tax Act, but by the counsel for the revenue. The assessment orders stand as they were before. We are unable to appreciate how the assessment orders can be revised except under the provisions of the Income-tax Act. Neither the counsel for the defendant nor the High Court has power to revise any assessment order. Indeed, section 111 of the Cochin Income-tax Act interdicts the High Court. It is true the High Court has not done it directly, but indirectly it has done so. Consequently, we set aside the findings of the High Court that the demand notices, P-23, P-24 and P-25, were valid to the extent of Rs. 21,884.81.

12. Commissioner of Income Tax, Mumbai vs. Amitabh Bachchan (SC) [2016] 3 Supreme 384, it has been held as under :-

10. Reverting to the specific provisions of Section 263 of the Act 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 precondition for exercise of jurisdiction Under Section 263 of the Act. 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. It is in the context of the above position that this Court has repeatedly held that unlike the power of reopening an assessment Under Section 147 of the Act, the power of revision Under Section 263 is not contingent on the giving of a notice to show cause. In fact, Section 263 has been understood not to require any specific show cause notice to be served on the Assessee. Rather, what is required under the said provision is an opportunity of hearing to the Assessee. The two requirements are different; the first would comprehend a prior notice detailing the specific grounds on which revision of the assessment order is tentatively being proposed. Such a notice is not required. What is contemplated by Section 263, is an opportunity of hearing to be afforded to the Assessee. Failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice. Reference in this regard may be illustratively made to the decisions of this Court in Gita Devi Aggarwal v. Commissioner of Income Tax, West Bengal and Ors. : (1970) 76 ITR 496 and in The C.I.T., West Bengal, II, Calcutta v. Electro House : (1971) 82 ITR 824. Paragraph 4 of

the decision in The C.I.T., West Bengal, II, Calcutta v. Electro House (supra) being illumination of the issue indicated above may be usefully reproduced hereunder:

This Section unlike Section 34 does not prescribe any notice to be given. It only requires the Commissioner to give an opportunity to the Assessee of being heard. The Section does not speak of any notice. It is unfortunate that the High Court failed to notice the difference in language between Sections 33-B and 34. For the assumption of jurisdiction to proceed Under Section 34, the notice as prescribed in that Section is a condition precedent. But no such notice is contemplated by Section 33-B. The jurisdiction of the Commissioner to proceed Under Section 33-B is not dependent on the fulfilment of any condition precedent. All that he is required to do before reaching his decision and not before commencing the enquiry, he must give the Assessee an opportunity of being heard and make or cause to make such enquiry as he deems necessary. Those requirements have nothing to do with the jurisdiction of the Commissioner. They pertain to the region of natural justice. Breach of the principles of natural justice may affect the legality of the order made but that does not affect the jurisdiction of the Commissioner. At present we are not called upon to consider whether the order made by the Commissioner is vitiated because of the contravention of any of the principles of natural justice. The scope of these appeals is very narrow. All that we have to see is whether before assuming jurisdiction the Commissioner was required to issue a notice and if he was so required what that notice should have contained? Our answer to that question has already been made clear. In our judgment no notice was required to be issued by the Commissioner before assuming jurisdiction to proceed Under Section 33-B. Therefore the question what that notice should contain does not arise for consideration. It is not necessary nor proper for us in this case to consider as to the nature of the enquiry to be held Under Section 33-B. Therefore, we refrain from spelling out what

principles of natural justice should be observed in an enquiry Under Section 33-B. This Court in Gita Devi Aggarwal v. CIT, West Bengal ruled that Section 33-B does not in express terms require a notice to be served on the Assessee as in the case of Section 34. Section 33-B merely requires that an opportunity of being heard should be given to the Assessee and the stringent requirement of service of notice Under Section 34 cannot, therefore, be applied to a proceeding Under Section 33-B. (Page 827-828).

[Note: Section 33-B and Section 34 of the Income Tax Act, 1922 corresponds to Section 263 and Section 147 of the Income Tax Act, 1961]

11. It may be that in a given case and in most cases it is so done a notice proposing the revisional exercise is given to the Assessee indicating therein broadly or even specifically the grounds on which the exercise is felt necessary. But there is nothing in the Section (Section 263) to raise the said notice to the status of a mandatory show cause notice affecting the initiation of the exercise in the absence thereof or to require the C.I.T. to confine himself to the terms of the notice and foreclosing consideration of any other issue or question of fact. This is not the purport of Section 263. of course, there can be no dispute that while the C.I.T. is free to exercise his jurisdiction on consideration of all relevant facts, a full opportunity to controvert the same and to explain the circumstances surrounding such facts, as may be considered relevant by the Assessee, must be afforded to him by the C.I.T. prior to the finalization of the decision.

20. An argument has been made on behalf of the Assessee that notice Under Section 69-C was issued by the Assessing Officer and thereafter on withdrawal of the claim by the Assessee the Assessing Officer thought that the matter ought not to be investigated any further. This, according to the learned Counsel for the Assessee, is a

possible view and when two views are possible on an issue, exercise of revisional power Under Section 263 would not be justified. Reliance in this regard has been placed on a judgment of this Court in Malabar Industrial Co. Ltd. v. CIT : (2000) 243 ITR 83 (SC) which has been approved in Commissioner of Income-tax v. Max India Ltd.: (2007) 295 ITR 282 (SC).

21. There can 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 of the Act 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. However, the above is not the situation in the present case in view of the reasons stated by the learned C.I.T. on the basis of which the said authority felt that the matter needed further investigation, a view with which we wholly agree. Making a claim which would prima facie disclose that the expenses in respect of which deduction has been claimed has been incurred and thereafter abandoning/withdrawing the same gives rise to the necessity of further enquiry in the interest of the Revenue. The notice issued Under Section 69-C of the Act could not have been simply dropped on the ground that the claim has been withdrawn. We, therefore, are of the opinion that the learned C.I.T. was perfectly justified in coming to his conclusions insofar as the issue No. (iii) is concerned and in passing the impugned order on that basis. The learned Tribunal as well as the High Court, therefore, ought not to have interfered with the said conclusion.

22. In the light of the discussions that have preceded and for the reasons alluded we are of the opinion that the present is a fit case for exercise of the suo motu revisional powers of the learned C.I.T. Under Section 263 of the Act. The order of the learned

> C.I.T., therefore, is restored and those of the learned Tribunal dated 28th August, 2007 and the High Court dated 7th August, 2008 are set aside. The appeal of the Revenue is allowed.

6.1 He further relied upon the decision of this court in Tax appeal No.140/2014 (CIT Vs. Shri Prabhati Lal Saini decided on 19.9.2017) wherein this court has taken a view in favour of the department.

7. We have heard counsel for the parties.

7.1 On the first issue of sec.263 in view of the decision of Malabar Industrial company Ltd. (supra) Sec.263 provisions are taken only on the ground of prejudicial and interest loss of the revenue to the Government. Merely change of opinion will not give any right u/s 263 hence, the issue regarding Sec. 263 is required to be answered in favour of the assessee and against the department.

7.2 On the ground of investment made by the assessee in the name of his wife, in view of the decision of Delhi High Court in Sunbeam Auto Ltd. and other judgments of different High Courts, the word used is assessee has to invest it is not specified that it is to be in the name of assessee.

7.3 It is true that the contentions which have been raised by the department is that the investment is made by the assessee in his own name but the legislature while using language has not used specific language with precision and the second reason is that view has also been taken by the Delhi High Court that it can be in

the name of wife. In that view of the matter, the contention raised by the assessee is required to be accepted with regard to Section 54B regarding investment in tubewell and others. In our considered opinion, for the purpose of carrying on the agricultural activity, tubewell and other expenses are for betterment of land and therefore, it will be considered a part of investment in the land and same is required to be accepted.

7.4 In view of the above, all the issues are answered in favour of the assessee and against the department.

8. The appeals stand allowed.

(VIJAY KUMAR VYAS)J. (K.S. JHAVERI)J.

Bmg 41-43.

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 139/JP/2016
निर्धारण वर्ष/Assessment Years : 2012-13

Shri Vivek Jain, Jaipur	बनाम Vs.	DCIT, Circle-7, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACNPJ3952H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Ms. Shivangi Samadhani (CA)
& Shri Rajeev Sogani (CA)
राजस्व की ओर से/ Revenue by : Shri Rajendra Jha (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 27/11/2017
उदघोषणा की तारीख/Date of Pronouncement : 08/12/2017

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of ld. CIT(A)-III, Jaipur dated 16.12.2015 for Assessment Year 2012-13 wherein the assessee has challenged the action of ld. CIT(A) in confirming the disallowance of exemption of Rs. 30,00,000/- claimed u/s 54F of the Act.

2. Briefly stated, the facts of the case are that during the year under consideration, the assessee has sold three agriculture lands belonging

to him for a sale consideration of Rs. 99,25,000. The assessee has purchased another agricultural land at a consideration of Rs. 32,00,000/- for which deduction u/s 54F has been claimed and same was allowed by the Assessing Officer and is not in dispute before us. The assessee has also purchased a residential property on 23.05.2011 for a purchase consideration of Rs. 30,00,000/- in the name of his wife, Smt. Nikita Jain, and claimed deduction u/s 54F of the Act and which is in dispute before us.

3. During the course of assessment proceedings, the assessee was asked to show cause as to why the claimed u/s 54F of the Act, 1961 may not be disallowed, as the property was not owned in the name of assessee. In response, the assessee submitted that the consideration for such property was paid out of repayment of advance belonging to the assessee received from Narvik Nirman & Financiars Pvt. Ltd. and it was further submitted that the new residential house need not be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name. It was submitted that the assessee has not purchased the new house in the name of a stranger and entire investment has come out of the source of the assessee and there was no contribution from the assessee's wife. The submission of the assessee was considered but not found acceptable to the Assessing Officer. As per Assessing Officer, the property which was sold was belonging to the assessee whereas the reinvestment in property (residential house) has been made in the name of Smt. Nikita Jain, wife of the assessee. It was further held by the AO that Smt. Nikita Jain, wife of the assessee, is having her PAN and filing her return of income which is also assessed to tax, therefore, as per income tax provisions,

husband and wife both could not be considered as single entity and the benefit of investment made by an individual assessee cannot be given to another individual assessee. The AO further drawn reference to the provisions of Section 54F of the Act and held that to claim deduction, the investment in new asset should be in the name of assessee himself. It was further held by the AO that in absence of the personal balance sheet of the assessee and absence of proper documentary evidence, it cannot be ascertained whether assessee does not own more than one residential house, other than new asset, on the date of transfer of the original asset. Accordingly, for these two reasons, the claim of the assessee u/s 54F of the I.T.Act, 1961 was disallowed.

4. Being aggrieved, the assessee carried the matter in appeal before the ld CIT(A) and submitted that the purchase of a new residential house has to be purchased by the assessee. However, it is not specifically required under the law that the house should be purchased in the name of assessee only. It was further contended that liberal construction should be given to provisions of section 54F of the Act and if substantive requirement are fulfilled, benefit granted by the Parliament should not be taken away for small and irrelevant inconsistencies. Further, the assessee placed reliance on the decision of Hon'ble Delhi High Court in case of CIT vs. Kamal Wahal (351 ITR 4), wherein, in the context of section 54F of the Act and purchase of house in the name of assessee's wife, it was held that the new residential house need not be purchased by the assessee in his name nor is it necessary that it should be purchased and exclusively in his name. Further, reliance was placed on the decision of Hon'ble Madras High Court in case of CIT vs. V. Natarajan (287 ITR 271) where the house

was purchased in the name of the assessee's wife, deduction under section 54 was allowed. Further, reliance was placed on the decision of Hon'ble Andhra Pradesh High Court in the case of Late Gulam Ali Khan vs. CIT (165 ITR 228) wherein in the context of section 54 of the Act, it was held that the word 'assessee' must be given a wide and liberal interpretation so as to include his legal heirs also. Further, reliance was placed on the decision of Hon'ble Karnataka High Court in the case of DIT vs. Mrs. Jennifer Bhide (349 ITR 80) wherein it was held that where the entire consideration has flown from her husband, merely because either in the sale deed or in the bond, her husband's name is also mentioned, the assessee cannot be denied the benefit of deduction u/s 54 and 54EC of the Act. Further, reliance was placed on the decision of Hon'ble Delhi High Court in case of CIT vs. Ravinder Kumar Arora (342 ITR 38) wherein in the context of section 54F of the Act, it was held that where the assessee has included the name of his wife and the property has been purchased jointly in the names, it would not make any difference and the conditions stipulated in section 54F stand fulfilled.

8. The ld. CIT(A) however relied on the decision of Hon'ble Rajasthan High Court in case of Kalya vs. CIT (251 CTR 174) wherein in the context of section 54B of the Act, it was held that the assessee would not be entitled to get exemption for land purchase by him in the name of his son and daughter-in-law. Further in the said decision, it was held that the word 'assessee' used in the IT Act needs to be given a 'legal interpretation' and not a 'liberal interpretation, as it would tantamount to giving a free hand to the assessee and his legal heirs and it shall curtail the revenue of the Government, which the law does not

permit. Following the decision of Hon'ble Rajasthan High Court in case of Kalya, the ld. CIT(A) upheld the rejection of claim of the assessee u/s 54F of the Act.

9. During the course of hearing, the ld. AR reiterated the submissions made before the ld. CIT(A). Further, ld. AR also drawn our reference to the recent decision of Hon'ble Rajasthan High Court in case of Sh. Mahadev Balai vs. ITO *(D.B. ITA No. 136/2017 & others dated 07.11.2017)* wherein in the context of section 54B, it was held that where the investment is made in the name of the wife, the assessee shall be eligible for claim of deduction u/s 54B of the Act.

10. In the said case, the assessee has sold agricultural land and purchased another agricultural land in the name of his wife and claimed deduction u/s 54B of the Act. The Co-ordinate Bench vide its order in ITA No. 333/JP/2016 dated 26.12.2016 following the decision of Hon'ble Rajasthan High Court in case of Kalya vs. CIT(supra) had decided the issue against the assessee and has confirmed the denial of deduction u/s 54B of the Act. In the context of said facts, on appeal by the assessee, the Hon'ble Rajasthan High Court has framed the following substantial question of law:

"Where ld. ITAT was justified in disallowing the exemption u/s 54B of the Act without appreciating that the funds utilized for the investment for purchase of the property eligible u/s 54B belonged to the appellant only and merely the registered document was executed in the name of the wife and further the wife had not separate source of income."

11. The Hon'ble Rajasthan High Court, after considering its earlier decision in case of Kalya vs. CIT(supra) and the various other decisions of Hon'ble Delhi High Court, Hon'ble Madras High Court, Hon'ble Karnataka High Court, Hon'ble Punjab and Haryana High Court, and Hon'ble Andhra Pradesh High Court, as also relied upon by the assessee, has held that it is the assessee who has to invest and it is not specified in the legislation that the investment is to be in the name of the assessee and where the investment is made in the name of wife, the assessee shall be eligible for deduction and has thus decided the matter in favour of the assessee. The relevant findings of the Hon'ble Rajasthan High Court are contained at para 7.2 and 7.3 of its order which are reproduced as under:-

"7.2 On the ground of investment made by the assessee in the name of his wife, in view of the decision of Delhi High Court in Sunbeam Auto Ltd. and other judgments of different High Courts, the word used is assessee has to invest, it is not specified that it is to be in the name of assessee.

7.3 It is true that the contentions which have been raised by the department is that the investment is made by the assessee in his own name but the legislature while using language has not used specific language with precision and the second reason is that view has also been taken by the Delhi High Court that it can be in the name of wife. In that view of the matter, the contention raised by the assessee is required to be accepted with regard to Section 54B regarding investment in tubewell and others. In our considered opinion, for the purpose of carrying on the agricultural activity, tubewell and other

expenses are for betterment of land and therefore, it will be considered a part of investment and same is required to be accepted."

12. In light of legal proposition so laid down by the Hon'ble Rajasthan High Court in case of Mahadev Balai (supra), where the investment in the new house property has flown from the assessee, which is not in dispute in the instant case, merely for the reason that the new residential house property has been purchased by the assessee in the name of his wife, the same cannot be basis for the denial of deduction claimed u/s 54F of the Act.

13. Regarding the second condition of claiming the deduction u/s 54F, which as per AO, the assessee has not substantiated in the instant case, which requires that assessee does not own more than one residential house, other than new asset, on the date of transfer of the original asset., the Assessing Officer has held that it cannot be ascertained in absence of personal balance sheet of the assessee and in absence of any other proper documentary evidence.

14. It is noted that during the course of appellate proceeding before the ld. CIT(A), the assessee has contended that a confirmation to the effect that not more than one residential house was filed before the AO which was however not accepted without any cogent reason. Our reference was also drawn to an affidavit of the assessee confirming the said fact which was also submitted as confirming evidence before the ld. CIT(A). The ld. AR has contended that ld. CIT(A) has not doubted the said affidavit and has also not confirmed the disallowance on the ground that it could not be verified and it was accordingly submitted that since the revenue is not in appeal against the order of ld. CIT(A),

the contention so raised by the assessee should be accepted. The ld DR fairly submitted that the ld CIT(A) has mainly relied on the decision of Hon'ble Rajasthan High Court in case of Kalya (supra) and has not objected to the confirmation and affidavit so filed by the assessee. We have gone through the affidavit so filed by the assessee and are of the view that the same is clear and self-explanatory wherein the assessee has categorically stated that on the date of purchase of residential property, which happens to be the date prior to date of sale of the original asset, he didn't own any other house other than the new asset. In that view of the matter, the contention so raised by the ld AR is accepted.

15. In light of above and respectfully following the decision of the Hon'ble Rajasthan High Court in case of Mahadev Balai, the assessee is held eligible for deduction under section 54F in respect of residential house property purchased in the name of his wife.

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

Order pronounced in the open court on 08/12/2017.

Sd/-	Sd/-
(विजय पॉल राव)	(विक्रम सिंह यादव)
(Vijay Pal Rao)	(Vikram Singh Yadav)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 08/12/2017.
*Ganesh Kr.
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Vivek Jain, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Circle-07, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 139/JP/2016}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar